Ohio Legislative Service Commission

Final Analysis

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Am. Sub. S.B. 70

129th General Assembly
(As Passed by the General Assembly)

Sens. Schaffer, Hughes, Manning, Bacon, Balderson, Burke, Faber, Hite, Jones, Kearney, LaRose, Lehner, Oelslager, Patton, Peterson, Widener

Reps. Bubp, Conditt, Amstutz, Antonio, Barnes, Carney, Cera, Clyde, Fedor, Garland, Gerberry, Grossman, Hackett, Hottinger, Letson, Lundy, Mallory, McClain, Milkovich, Newbold, Okey, Ruhl, Sprague, Szollosi, Yuko, Batchelder

Effective date: July 1, 2013

ACT SUMMARY

- Requires "arson offenders" and "out-of-state arson offenders" (persons convicted in another jurisdiction of an offense substantially equivalent to aggravated arson or arson) to register personally with the sheriff of the county in which the offender resides or that sheriff's designee.

- Specifies the time periods in which an arson offender who has received notice as described below of the duty to register, and an out-of-state arson offender, must register personally with the sheriff or designee.

- Requires a person who has a duty to register as described above to obtain from the sheriff or designee a copy of a registration form prescribed by the Attorney General (the AG), complete and sign the form, and return to the sheriff or designee the completed and signed form and specified identification records, and specifies the information that must be included on the form.

- Requires each arson offender or out-of-state arson offender to reregister annually, in person, within ten days of the anniversary of the offender's initial registration date.

- Requires the Bureau of Criminal Identification and Investigation (BCII) to establish and maintain a Registry of Arson Offenders and Out-of-State Arson Offenders for public safety purposes and provides that this Registry is not a public record.

- Requires a sheriff or sheriff's designee to collect a registration fee of $50 and an annual reregistration fee of $25 from each arson offender or out-of-state arson offender, allows for waiver of the fee if the offender is indigent, and requires that the fee be sent to the AG to be used for the maintenance of the Registry.

- Provides that a person who fails to register or reregister as required under the act is guilty of a fifth degree felony.

- Requires the AG to prescribe the forms to be used by arson offenders and out-of-state arson offenders to register, reregister, and provide a notice of a change of address and to adopt procedures for sheriffs to use to forward the registration information, photographs, fingerprints, palm prints, and other materials to BCII.

- Requires that each arson offender be provided notice of the arson offender's duty to register personally with the sheriff or the sheriff's designee, identifies by position the person who is to provide the notice, and establishes the time frame for when those offenders are to receive that notice.

- Specifies that the judge, official, or official's designee providing the notice must require the arson offender to read and sign a form stating that the arson offender has received and understands the notice.

- Provides that if the arson offender is unable to read, the judge, official, or official's designee must inform the arson offender of the arson offender's duties as set forth in the notice and must certify on the form that the judge, official, or official's designee informed the arson offender of the arson offender's duties and that the arson offender indicated an understanding of those duties.

- Requires the AG to prescribe the notice and form described in the preceding dot point and requires that the notice include notice of the arson offender's duties to reregister annually.

- Requires the person providing the notice of the duty to register to provide a copy of the notice and signed form to the arson offender, to determine the county in which the offender intends to reside, and to provide a copy of the signed form to the sheriff of that county in accordance with rules adopted by the AG.

CONTENT AND OPERATION

The act establishes a registry for arson offenders and out-of-state arson offenders (persons convicted in another jurisdiction of an offense substantially equivalent to aggravated arson or arson). Definitions of all of the terms in quotation marks in succeeding parts of this analysis are set forth below in "**Definitions**."

Duty to register

Offenders who have received notice

The act requires each "arson offender" who has received notice under the act's provisions described below in "**Notice of duty to register**" to register personally with the sheriff of the county in which the arson offender resides or that sheriff's designee within the following time periods:[1]

(1) An arson offender who receives notice under the provision regarding notice to an arson offender serving a "prison" term, term of imprisonment, or other term of confinement must register within ten days after the arson offender is released from a "jail," workhouse, state correctional institution, or other institution, unless the arson offender is being transferred to the custody of another jail, workhouse, state correctional institution, or other institution. The act does not require the arson offender to register with any sheriff or designee prior to release.

(2) An arson offender who receives notice under the provision regarding notice to an arson offender not sentenced to a prison term, term of imprisonment, or other term of confinement must register within ten days after the sentencing hearing.

Out-of-state arson offenders

The act requires each "out-of-state arson offender" to register personally with the sheriff of the county in which the out-of-state arson offender resides or that sheriff's designee within ten days after residing in or occupying a dwelling in Ohio for more than three consecutive days.[2]

Information that must be provided at registration

The act requires a person who registers under any of its provisions described above to obtain from the sheriff or designee a copy of a registration form prescribed by the Attorney General (the AG) that conforms to the requirements described below, to

[1] R.C. 2909.15(A) and (C)(1).

[2] R.C. 2909.15(B) and (C)(1).

complete and sign the form, and to return to the sheriff or designee the completed and signed form together with the identification records required as described below. The registration form to be used under this provision must include or contain all of the following for the arson offender or out-of-state arson offender who is registering:[3]

(1) The arson offender's or out-of-state arson offender's full name and any alias used;

(2) The arson offender's or out-of-state arson offender's residence address;

(3) The arson offender's or out-of-state arson offender's Social Security number;

(4) Any driver's license number, commercial driver's license number, or state identification card number issued to the arson offender or out-of-state arson offender by Ohio or another state;

(5) The offense that the arson offender or out-of-state arson offender was convicted of or pleaded guilty to;

(6) The name and address of any place where the arson offender or out-of-state arson offender is employed;

(7) The name and address of any school or institution of higher education that the arson offender or out-of-state arson offender is attending;

(8) The identification license plate number of each vehicle owned or operated by the arson offender or out-of-state arson offender or registered in the arson offender's or out-of-state arson offender's name, the vehicle identification number of each vehicle, and a description of each vehicle;

(9) A description of any scars, tattoos, or other distinguishing marks on the arson offender or out-of-state arson offender;

(10) Any other information required by the AG.

The act requires the arson offender or out-of-state arson offender to provide fingerprints and palm prints at the time of registration. The sheriff or sheriff's designee must obtain a photograph of the arson offender or out-of-state arson offender at the time of registration.[4]

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[3] R.C. 2909.15(C)(1) and (2).

[4] R.C. 2909.15(C)(3).

Reregistration

The act requires each arson offender or out-of-state arson offender to reregister annually, in person, within ten days of the anniversary of the calendar date on which the offender initially registered. The registrant must reregister by completing, signing, and returning to the sheriff or designee a copy of the registration form prescribed by the AG and described above, amending any information required above that has changed since the registrant's last registration, and providing any additional registration information required by the AG. The sheriff or designee with whom the arson offender or out-of-state arson offender reregisters is required to obtain a new photograph of the offender annually when the offender reregisters. Additionally, if the arson offender's or out-of-state arson offender's most recent registration or reregistration was with a sheriff or designee of a sheriff of a different county, the offender must provide written notice of the offender's change of residence address to that sheriff or a designee of that sheriff.

Generally, an arson offender's or out-of-state arson offender's duty to reregister annually continues until the offender's death, but the act allows the judge to limit an arson offender's duty to reregister at an arson offender's sentencing hearing to not less than ten years if the judge receives a request from the prosecutor and the investigating law enforcement agency to consider limiting the arson offender's registration period. The official in charge of a jail, workhouse, state correctional institution, or other institution must notify the AG in accordance with rules adopted by the AG pursuant to the Administrative Procedure Act if a registered arson offender or out-of-state arson offender is confined in the jail, workhouse, state correctional institution, or other institution.[5]

Bureau of Criminal Identification and Investigation must maintain registry

The act provides that, after an arson offender or out-of-state arson offender registers or reregisters with a sheriff or a sheriff's designee pursuant to its provisions, the sheriff or designee must forward the offender's signed, written registration form, photograph, fingerprints, palm prints, and other materials to the Bureau of Criminal Identification and Investigation (BCII) in accordance with forwarding procedures adopted by the AG as described below. The act requires BCII to establish and maintain a Registry of Arson Offenders and Out-of-State Arson Offenders that includes the information and materials obtained by BCII under the act's provision described above. BCII must make the Registry available to the Fire Marshal's office, state and local law enforcement officers, and to any firefighter who is authorized by the chief of the agency the firefighter serves to review the record through the Ohio Law Enforcement Gateway

[5] R.C. 2909.15(D).

or its successor. The Registry maintained by BCII is not a public record under the state's Public Records Law.[6]

Registration fee

The act requires each sheriff or sheriff's designee with whom an arson offender or out-of-state arson offender registers or reregisters under its provisions to collect a registration fee of $50 and an annual reregistration fee of $25 from each offender who registers or reregisters with the sheriff or designee. By the last day of March, the last day of June, the last day of September, and the last day of December in each year, each sheriff who collects or whose designee collects any fees under this provision in the preceding three-month period must send to the AG the fees collected during that period. The fees must be used for the maintenance of the Registry of Arson Offenders and Out-of-State Arson Offenders. A sheriff or designee may waive a fee for an indigent arson offender or out-of-state arson offender.[7]

Penalties

Under the act, a person who fails to register or reregister as required under the act is guilty of a fifth degree felony. If an arson offender or out-of-state arson offender is subject to a "community control sanction," is on parole, is subject to one or more "post-release control sanctions," or is subject to any other type of "supervised release" at the time of the violation, the violation constitutes a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.[8]

Attorney General to prescribe forms

The act requires the AG to prescribe the forms to be used by arson offenders and out-of-state arson offenders to register, reregister, and provide notice of a change of address under its provisions and to adopt procedures for sheriffs to use to forward information, photographs, fingerprints, palm prints, and other materials to BCII pursuant to its provisions.[9]

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[6] R.C. 2909.15(E).

[7] R.C. 2909.15(F).

[8] R.C. 2909.15(H).

[9] R.C. 2909.15(G).

Notice of duty to register

Provision of notice

The act requires that each arson offender be provided notice of the arson offender's duty to register personally with the sheriff of the county in which the arson offender resides or that sheriff's designee (see "**Duty to register**," above). The act requires the following persons to provide the notice at the following times:[10]

(1) On or after the act's effective date, the official in charge of a jail, workhouse, state correctional institution, or other institution in which an arson offender is serving a prison term, term of imprisonment, or other term of confinement, or the official's designee, must provide the notice to the arson offender before the arson offender is released pursuant to any type of supervised release or before the arson offender is otherwise released from the prison term, term of imprisonment, or other term of confinement.

(2) If an arson offender is sentenced on or after the act's effective date for an arson-related offense and the judge does not sentence the arson offender to a prison term, term of imprisonment, or other term of confinement in a jail, workhouse, state correctional institution, or other institution for that offense, the judge must provide the notice to the arson offender at the time of the arson offender's sentencing.

Receipt and understanding of notice

The act specifies that the judge, official, or official's designee providing the notice of the duty to register with a sheriff or sheriff's designee must require the arson offender to read and sign a form stating that the arson offender has received and understands the notice. If the arson offender is unable to read, the judge, official, or official's designee must inform the arson offender of the arson offender's duties as set forth in the notice and must certify on the form that the judge, official, or official's designee informed the arson offender of the arson offender's duties and that the arson offender indicated an understanding of those duties.[11]

The act requires the AG to prescribe the notice and the form described above. The notice must include notice of the arson offender's duties to reregister annually.[12]

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[10] R.C. 2909.14(A).

[11] R.C. 2909.14(B).

[12] R.C. 2909.14(C).

Under the act, the person providing the notice of the duty to register with a sheriff or sheriff's designee must provide a copy of the notice and signed form to the arson offender. The person providing the notice also must determine the county in which the arson offender intends to reside and must provide a copy of the signed form to the sheriff of that county in accordance with rules adopted by the AG pursuant to the Administrative Procedure Act.[13]

Definitions

The act provides the following definitions that apply to its provisions described above:[14]

"**Arson-related offense**" means any of the following violations or offenses committed by a person:

(1) A violation of R.C. 2909.02 (aggravated arson) or 2909.03 (arson);

(2) Any attempt to commit, conspiracy to commit, or complicity in committing aggravated arson or arson.

"**Arson offender**" means any of the following;

(1) A person who on or after the act's effective date is convicted of or pleads guilty to an arson-related offense;

(2) A person who on the act's effective date has been convicted of or pleaded guilty to an arson-related offense and is confined in a jail, workhouse, state correctional institution, or other institution, serving a prison term, term of imprisonment, or other term of confinement for the offense;

(3) A person who on or after the act's effective date is charged with committing, attempting to commit, conspiring to commit, or complicity in committing aggravated arson or arson and who pleads guilty to a violation of any provision of R.C. Chapter 2909. other than aggravated arson or arson.

"**Community control sanction**" means a sanction that is not a prison term and that is described in R.C. 2929.15, 2929.16, 2929.17, or 2929.18 or a sanction that is not a jail term and that is described in R.C. 2929.26, 2929.27, or 2929.28. "Community control sanction" includes probation if the sentence involved was imposed for a felony committed prior to July 1, 1996, or if the sentence involved was imposed for a

[13] R.C. 2909.14(D).

[14] R.C. 2909.13.

misdemeanor committed prior to January 1, 2004 (by reference to R.C. 2929.01, not in the act).

"**Firefighter**" means any member of a fire department as defined in R.C. 742.01 (by reference to R.C. 4765.01, not in the act).

"**Jail**" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of Ohio (by reference to R.C. 2929.01, not in the act).

"**Out-of-state arson offender**" means a person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a violation of any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court, that is or was substantially equivalent to aggravated arson or arson.

"**Post-release control sanction**" means a period of supervision by the Adult Parole Authority after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 (by reference to R.C. 2950.01, not in the act).

"**Prison**" means a residential facility used for the confinement of convicted felony offenders that is under the control of the Department of Rehabilitation and Correction but does not include a violation sanction center operated under the authority of R.C. 2967.141 (by reference to R.C. 2929.01, not in the act).

"**Supervised release**" means a release of an offender from a prison term, a term of imprisonment, or another type of confinement that either (1) is on parole, a conditional pardon, under a community control sanction, under transitional control, or under a post-release control sanction, and it requires the person to report to or be supervised by a parole officer, probation officer, field officer, or another type of supervising officer or (2) is any type of release not described in clause (1) of this definition that requires the person to report to or be supervised by a probation officer, a parole officer, a field officer, or another type of supervising officer (by reference to R.C. 2950.01, not in the act).

Delayed effective date

The act specifies that its provisions described above take effect on July 1, 2013.[15]

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[15] Section 2.

HISTORY

ACTION	DATE
Introduced	02-10-11
Reported, S. Judiciary	04-18-12
Passed Senate (33-0)	04-18-12
Reported, H. Judiciary & Ethics	11-15-12
Passed House (91-2)	11-28-12
Senate refused to concur in House amendments (10-23)	12-05-12
House requested conference committee	12-11-12
Senate acceded to request for conference committee	12-11-12
Senate agreed to conference committee report (33-0)	12-12-12
House agreed to conference committee report (89-0)	12-13-12

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