



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 144**

130th General Assembly  
(As Introduced)

Sen. Seitz

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### **BILL SUMMARY**

- Clarifies the manner in which the current Sex Offender Registration and Notification Law (SORN Law) resulting from Am. Sub. S.B. 10 of the 127th General Assembly (S.B. 10) applies to offenders and delinquent children who had duties under the version of that Law in effect prior to S.B. 10's effective date, and whose classifications made under that version of that Law were reinstated by the Ohio Supreme Court on June 3, 2010, by including those offenders and children within a classification listed in the second succeeding dot point and applying in general the duties and requirements under the SORN Law to offenders and children within those classifications in the same manner as those duties and requirements applied to them prior to S.B. 10's effective date.
- Modifies the SORN Law duties and requirements that were changed by S.B. 10 so that they generally apply only with respect to offenders and delinquent children who committed their sexually oriented offense or child-victim oriented offense on or after S.B. 10's effective date, includes offenders and children who committed their offense prior to S.B. 10's effective date within a classification listed in the next dot point, and generally reinstates those duties and requirements in their pre-S.B. 10 form to apply with respect to offenders and delinquent children who committed their sexually oriented offense or child-victim oriented offense prior to S.B. 10's effective date.
- Defines the classifications "sexual predator," "habitual sex offender," "sexually oriented offender," "aggravated sexually oriented offense," "child-victim predator," "habitual child-victim offender," and "child-victim oriented offender" to include: (1) offenders and delinquent children who had duties under the version of the SORN Law in effect prior to S.B. 10's effective date, and whose classifications made under

that version of that Law were reinstated by the Ohio Supreme Court on June 3, 2010, and (2) offenders and delinquent children who committed their sexually oriented offense or child-victim oriented offense prior to S.B. 10's effective date.

- Repeals provisions enacted in S.B. 10 that provide that if, on or before July 1, 2007, an offender or delinquent child has a duty to comply with the SORN Law and that duty is scheduled to terminate prior to S.B. 10's effective date, under the pre-S.B. 10 version of that Law, the offender's or child's duty to comply with the SORN Law does not terminate as scheduled and remains in effect for a specified period of time.
- Specifies that: (1) the current SORN Law definition of "sexually oriented offense" resulting from S.B. 10 applies only with respect to violations and offenses committed on or after S.B. 10's effective date, (2) an offense or violation committed prior to S.B. 10's effective date is a sexually oriented offense if it was a sexually oriented offense under the definition of that term that existed when it was committed, and (3) the current SORN Law definitions of "Tier I sex offender/child-victim offender," "Tier II sex offender/child-victim offender," and "Tier III sex offender/child-victim offender" enacted in S.B. 10 include only offenders or delinquent children whose sexually oriented offense or child-victim oriented offense was committed on or after S.B. 10's effective date (the bill also makes a few other changes in those definitions).
- Conforms other provisions that use SORN Law terminology from S.B. 10, including provisions relating to DNA collection, GPS monitoring of a convicted felon, information included in an offender's sentence, and the Sexually Violent Predator Sentencing Law, to the changes described in the preceding dot points.
- Enacts provisions and procedures for the classifications of an offender or delinquent child as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender for an offense committed prior to S.B. 10's effective date that generally parallel the provisions and procedures for such classifications that were repealed by S.B. 10.
- Enacts juvenile court procedures regarding sexual predator, habitual sex offender, child-victim predator, and habitual child-victim offender classifications referred to in the preceding dot point that generally parallel the procedures for such classifications that were repealed by S.B. 10.
- Specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing or issue an order under the procedures with respect to the child referred to in the preceding dot point.



- Repeals all existing SORN Law and Delinquent Child Law provisions that provide for the classification of delinquent children as "public registry-qualified juvenile offender registrants" (PRQJO registrants) or that impose special duties or requirements upon delinquent children who are so classified by a juvenile court.
- Specifies that the current SORN Law penalties for violations of a prohibition against failing to comply with a SORN Law registration, notice of intent to reside, change of registered address or identifying information, or address verification requirement apply only with respect to offenses and violations that occur on or after S.B. 10's effective date, and reenacts the pre-S.B. 10 penalties for violations of any such requirement with respect to offenses and violations that occurred prior to that effective date.
- Links the application of the existing SORN Law school, preschool, and child day-care residency restrictions imposed upon persons who have been convicted of a sexually oriented offense or child-victim oriented offense so that (italicized language is added by the bill): (1) no person who has been convicted of or has pleaded guilty to a sexually oriented offense or child-victim oriented offense *that was committed on or after July 31, 2003*, may establish a residence or occupy residential premises within 1,000 feet of any school premises, and (2) *no person who has been convicted of or has pleaded guilty to a sexually oriented offense or child-victim oriented offense that was committed on or after July 1, 2007*, may establish a residence or occupy residential premises *within 1,000 feet of any school premises* or preschool or child day-care premises.
- Modifies provisions of the Forcible Entry and Detainer Law and the Residential Landlord Tenant Law to conform them to the change referred to in the preceding dot point.
- Repeals all authority a sheriff to cause to be publicly disseminated by means of the Internet statements, information, photographs, fingerprints, or materials provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new address, or provides verification of a current residence address under the SORN Law (currently, the authorization applies only if the child is a PRQJO registrant).
- Specifies the manner in which its provisions apply to persons convicted of a sexually oriented offense or child-victim oriented offense committed prior to S.B. 10's effective date and to persons adjudicated a delinquent child for a sexually oriented offense or child-victim oriented offense committed prior to that date.
- Specifies that: (1) regardless of the person's age, a juvenile court retains jurisdiction over a person who has received a serious youthful offender dispositional sentence



under the Delinquent Child Law until the person successfully completes all the traditional juvenile dispositions imposed under the sentence or until the juvenile court invokes the adult portion of the SYO sentence, and (2) a child's attainment of 18 or 21 years of age does not affect or terminate the ability or authority of a juvenile court to conduct a hearing or issue an order to determine whether to invoke the adult portion of a serious youthful offender dispositional sentence.

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## CONTENT AND OPERATION

### Sex Offender Registration and Notification (SORN) Law in general

The Sex Offender Registration and Notification Law (the SORN Law<sup>1</sup>) imposes numerous duties and restrictions upon persons who are or have been convicted of, or who plead or have pleaded guilty to, a "sexually oriented offense" or "child-victim oriented offense" (hereafter, except as expressly stated otherwise, references to convictions are intended to also include guilty pleas). The Law also imposes numerous duties and restrictions upon children who are or have been adjudicated a delinquent child for committing any such offense and who are classified by a juvenile court as a "juvenile offender registrant." See "**Basic SORN Law definitions**" under "**Background**," below, for definitions of any terms listed in quotation marks in this analysis. See "**General SORN Law duties and requirements**" under "**Background**," below, for a summary of general SORN Law duties and for a more detailed description of any of those duties and requirements that are discussed in the analysis.

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<sup>1</sup> R.C. Chapter 2950.

## **Post- and pre-S.B. 10 SORN Law classification systems, reclassification under post-S.B. 10 SORN Law of persons into Tiers, and application of that Law to persons who committed their offense prior to its effective date**

### **Post- and pre-S.B.10 classification systems**

Am. Sub. S.B. 10 of the 127th General Assembly (hereafter, S.B. 10) substantially rewrote the SORN Law to conform it to the federal Adam Walsh Act. Except for a few transitional provisions that took effect on July 1, 2007, S.B. 10 took effect on January 1, 2008 (hereafter, all references to January 1, 2008, are to S.B. 10's general effective date, and all references to July 1, 2007, are to the effective date of the transitional provisions). S.B. 10 enacted a Tier System of classification of offenders and delinquent children. It replaced the pre-S.B. 10 SORN Law categories of offenders and delinquent children. Under the Tier System, all offenders who, on or after S.B. 10's effective date, are convicted of a sexually oriented offense or child-victim oriented offense and all children who, on or after the act's effective date, are adjudicated a delinquent child for committing any such offense and are classified as juvenile offender registrants are included as either a "Tier I sex offender/child-victim offender," a "Tier II sex offender/child-victim offender," or a "Tier III sex offender/child-victim offender." For criminal offenders, the Tier classification is determined automatically based on the offense committed. For delinquent children, some who commit a sexually oriented offense are automatically classified in a special category as "public registry-qualified juvenile offender registrants" (hereafter, "PRQJO registrants"). For all who are not so classified, the juvenile court has some discretion in determining the child's Tier classification.<sup>2</sup>

The pre-S.B. 10 classification system used different terminology and consisted of categories of offenders and delinquent children that were based on the offender's or child's past conduct and likely future conduct instead of the offense committed. Under that system, the SORN Law applied to the following categories of offenders:

(1) Persons who were convicted of a sexually oriented offense or a child-victim oriented offense or who were adjudicated a delinquent child for committing any such offense and were classified by a juvenile court as a juvenile offender registrant;

(2) Persons who were in the category described in paragraph (1) and who also were classified a habitual sex offender or habitual child-victim offender;

(3) Persons who were in the category described in paragraph (1) and who also were classified a sexual predator or child-victim predator;

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<sup>2</sup> R.C. 2950.01; R.C. 2152.82 to 2152.86.



(4) Persons who were in the category described in paragraph (1) and whose sexually oriented offense was an "aggravated sexually oriented offense" (these persons generally were treated in the same manner as persons in the category described in paragraph (3)).

A court, generally the one that sentenced the offender or adjudicated the child a delinquent child for the offense, determined at a hearing whether an offender convicted of, or a child adjudicated a delinquent child for committing, a sexually oriented offense or child-victim oriented offense was, or was not, a habitual offender or predator. A "habitual sex offender" or "habitual child-victim offender" was an offender or delinquent child who had one or more prior convictions or adjudications of a sexually oriented offense or child-victim oriented offense. A "sexual predator" or "child-victim predator" was an offender or a delinquent child who was determined to be likely to engage in the future in one or more such offenses. If the court determined that the offender or delinquent child was a habitual offender or a predator, it included its determination in the offender's sentence and judgment of conviction or in the child's dispositional order.<sup>3</sup>

### **Reclassification under post-S.B. 10 SORN Law of persons into Tiers; unconstitutionality**

Under a S.B. 10 transitional reclassification mechanism, on and after July 1, 2007, each person who was subjected to the pre-S.B. 10 SORN Law was categorized into one of the three Tiers under the current Tier System. The Tier into which a person was reclassified generally was based on the offense the person committed. The Attorney General (the AG) administered the reclassification and notified each person of the reclassification and of the person's new duties under the new SORN Law. The mechanism afforded each person a right to a hearing to contest the application to the person of the new registration requirements under the current, post-S.B. 10 SORN Law.<sup>4</sup>

Under the S.B. 10 reclassification mechanism, it was possible for a person who, prior to January 1, 2008, had been classified a habitual sex offender, a habitual child-victim offender, a sexual predator, or a child-victim predator and whose sexually oriented offense was not an aggravated sexually oriented offense (i.e., a person in the "lowest" classification under the pre-S.B. 10 SORN Law) to be reclassified a Tier III sex offender/child-victim offender (i.e., the "highest" classification under the post-S.B. 10 SORN Law). Under the reclassification mechanism, it also was possible for a person who had been classified a sexual predator or a child-victim predator (i.e., a person in

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<sup>3</sup> Former R.C. 2950.01, 2950.04(A) to (F), 2950.041(A) to (F), 2950.09, and 2950.091.

<sup>4</sup> R.C. 2950.031 to 2950.033.

the "highest" classification under the pre-S.B. 10 SORN Law) to be reclassified a Tier I sex offender/child-victim offender (i.e., the "lowest" classification under the post-S.B. 10 SORN Law). As a result:

(1) It was possible for a person who formerly had been in the "lowest" classification, was not subject to victim notification or community notification, and had SORN Law duties lasting ten years to be reclassified into the "highest" classification, be subject to victim notification and community notification, and have SORN Law duties lasting for his or her entire life.

(2) It was possible for a person who formerly had been in the "highest" classification, was subject to victim notification and community notification, and had SORN Law duties lasting for his or her entire life to be reclassified into the "lowest" classification, not be subject to victim notification or community notification, and have SORN Law duties lasting 10 or 15 years.

The Ohio Supreme Court, in its decision in *State v. Bodyke*,<sup>5</sup> held that the S.B. 10 reclassification mechanism described above was unconstitutional, in violation of the separation of powers doctrine; that the Revised Code sections containing the mechanism (R.C. 2950.031 and 2950.032) may not be applied to offenders previously adjudicated by judges under the pre-S.B. 10 SORN Law; that the reclassifications of those offenders by the AG were invalid; that the classification and community notification and registration orders imposed previously by judges were reinstated; and that the remainder of the provisions of S.B. 10 were capable of being read and of standing alone and were left in place.

### **Application of post-S.B. 10 SORN Law to persons who committed their offense prior to its effective date; unconstitutionality**

Under S.B. 10, each person who, on or after the act's effective date, is convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense is subject to the post-S.B. 10 version of the SORN Law, regardless of whether the offense was committed prior to, on, or after the act's effective date.<sup>6</sup> Under the post-S.B. 10 version of that Law, offenders and children who are convicted of or adjudicated delinquent children for committing a sexually oriented offense or child-victim oriented offense are automatically classified into one of the three Tiers described above. In many cases, those persons are subject to additional reporting

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<sup>5</sup> *State v. Bodyke* (June 3, 2010), 126 Ohio St.3d 266, reconsideration and/or clarification denied (August 17, 2010), Slip Opinion No. 2010-Ohio-3737, \_\_\_ Ohio St.3d \_\_\_.

<sup>6</sup> R.C. 2950.04, 2950.041, 2950.05, 2950.06, 2950.07, 2950.10, and 2950.11.



and registration requirements and for a longer time than they would be subject to if the pre-S.B. 10 version of the SORN Law applied to them.

The Ohio Supreme Court, in *State v. Williams*,<sup>7</sup> held that, when considered in the aggregate, the changes in the SORN Law made by S.B. 10 are punitive when applied to any offender who committed his or her offense prior to the act's effective date. As a result, the Court held that the post-S.B. 10 version of that Law, as applied to any such offender, violates Section 28, Article II of the Ohio Constitution, which prohibits the General Assembly from enacting retroactive laws. In that case, the petitioner committed his offense prior to the effective date of S.B. 10 but was sentenced after that date pursuant to the post-S.B. 10 version of the SORN Law.

**Application of post-S.B. 10 SORN Law to persons who committed their offense prior to S.B. 10's effective date after *Bodyke* and *Williams* decisions – currently and under the bill**

**Currently, and general operation of the bill**

The Supreme Court in *Bodyke, supra*, did not expressly address the manner in which the current, post-S.B. 10 SORN Law is to apply to the persons within the scope of the decision, and, under the language of the statutes that comprise that Law, the manner in which that Law applies to them is unclear. The terminology of the classification systems used in the pre-S.B. 10 Law and the current, post-S.B. 10 Law is completely different. As described below in "**General SORN Law duties and requirements**" under "**Background**," the current SORN Law's address registration, change of address, and periodic address verification provisions, its "notice of intent to reside" provisions, its "1,000-foot residence restriction," its victim notification mechanism, and its community notification mechanism generally do not include any reference to, and do not impose any duties upon, sexual predators, child-victim predators, habitual sex offenders, habitual child-victim offenders, "sexually oriented offenders," or "child-victim oriented offenders." Some of the current SORN Law's provisions that impose duties and responsibilities upon persons refer generally to persons who are convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense. They do not refer to Tier I, Tier II, or Tier III sex offenders/child-victim offenders in imposing the duties and responsibilities. Those provisions include the Law's address registration, change of address, and address verification provisions (residence, school, and place of

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<sup>7</sup> *State v. Williams* (2011), 129 Ohio St.3d 344.



employment address for offenders and delinquent children who are PRQJO registrants and residence address for other delinquent children).<sup>8</sup>

However, other provisions of the current SORN Law that impose duties and responsibilities upon persons do so as a result of, or based upon, their Tier classification or their classification as a PRQJO registrant. Those provisions include the Law's "notice of intent to reside" provisions, its victim notification mechanism, its community notification mechanism, and its school and place of employment address registration, change of address, and address verification for delinquent children.<sup>9</sup> Also, the current SORN Law's provisions that specify the duration of duties and responsibilities imposed upon a person under the Law base that duration upon the person's Tier classification or classification as a PRQJO registrant.<sup>10</sup>

Subsequent to *Bodyke*, the Attorney General took steps to notify offenders and delinquent children affected by the decision that they had reverted back into their pre-S.B. 10 classification.<sup>11</sup> However, as a result of the terminology differences described in the preceding paragraph and the silence of *Bodyke* on the issue, the manner in which the statutes that comprise the SORN Law currently apply to the persons within the scope of the decision is somewhat unclear. The bill clarifies the manner in which the current SORN Law applies to persons whose SORN Law classifications that had been imposed by judges under the pre-S.B. 10 SORN Law were reinstated by *Bodyke*. Related to this, and in light of the decision in *Williams, supra*, the bill generally modifies the SORN Law duties and requirements that were changed by S.B. 10 so that they apply only with respect to sexually oriented offenses or child-victim oriented offenses committed on or after January 1, 2008, and generally reinstates those duties and requirements in their pre-S.B. 10 form to apply with respect to sexually oriented offenses or child-victim oriented offenses committed prior to that date.

**Definitions enacted in the bill to include offenders and delinquent children within the scope of *Bodyke* and *Williams***

The bill enacts a series of definitions for use in the SORN Law that categorize persons whose SORN Law classifications imposed by judges under the pre-S.B. 10 SORN Law were reinstated by the Ohio Supreme Court in *Bodyke, supra*, and that also

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<sup>8</sup> Contained in R.C. 2950.04, 2950.041, and 2950.06, and R.C. 2950.05, which is not in the bill.

<sup>9</sup> Contained in R.C. 2950.04, 2950.041, 2950.06, 2950.10, and 2950.11, and R.C. 2950.05, which is not in the bill.

<sup>10</sup> R.C. 2950.07.

<sup>11</sup> Statements made by a representative of the Attorney General's Office in "Sex Offenders and the Law," Public Practice CLE Seminar, Friday July 9, 2010.



reflect the Court's decision in *Williams, supra*. The definitions also apply to the Delinquent Child Law and the Criminal Sentencing Law.<sup>12</sup> The definitions, which are crucial to an understanding of the other provisions of the bill, are as follows:<sup>13</sup>

**"Sexual predator"** means any of the following:

(1) A person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a sexually oriented offense that was committed prior to January 1, 2008, and was designated by a court a "sexual predator" under the version of the SORN Law that existed immediately prior to July 1, 2007;

(2) A person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a sexually oriented offense that was committed prior to January 1, 2008, and is designated by a court a "sexual predator" under R.C. 2950.09 as enacted in the bill (see "**Designation of offender or delinquent child as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender for offense committed prior to January 1, 2008,**" below);

(3) A person who, in a court of another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a sexually oriented offense that was committed prior to January 1, 2008, and is required to register for the duration of the person's life under the law of the jurisdiction in which the conviction or adjudication occurred.

**"Habitual sex offender"** means a person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a sexually oriented offense that was committed prior to January 1, 2008, if either of the following applies: (1) the person either was classified a "habitual sex offender" under the version of the SORN Law that existed immediately prior to July 1, 2007, or qualifies as a "habitual sex offender" under the version of the SORN Law that existed immediately prior to that date, or (2) the person is classified by a court as a "habitual sex offender" under R.C. 2950.09 as enacted in the bill.

**"Sexually oriented offender"** means any person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a sexually oriented offense that was committed prior to January 1, 2008, and was not an "aggravated sexually oriented offense" and who is not a sexual predator or a habitual sex offender.

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<sup>12</sup> R.C. 2152.02(Y) and 2929.01(KK).

<sup>13</sup> R.C. 2950.01(X) to (DD).

**"Aggravated sexually oriented offense"** means either of the following types of "rape" offenses: (1) a violation of R.C. 2907.02(A)(1)(b) committed on or after June 13, 2002, and prior to January 1, 2008, or (2) a violation of R.C. 2907.02(A)(2) committed on or after July 31, 2003, and prior to January 1, 2008.

**"Child-victim predator"** means any of the following:

(1) A person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a child-victim oriented offense that was committed prior to January 1, 2008, and was designated by a court a "child-victim predator" under the version of the SORN Law that existed immediately prior to July 1, 2007;

(2) A person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a child-victim oriented offense that was committed prior to January 1, 2008, and is designated by a court a "child-victim predator" under R.C. 2950.091 as enacted in the bill;

(3) A person who, in a court of another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States, is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a child-victim oriented offense that was committed prior to January 1, 2008, and is required to register for the duration of the person's life under the law of the jurisdiction in which the conviction, guilty plea, or adjudication occurred.

**"Habitual child-victim offender"** means a person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a child-victim oriented offense that was committed prior to January 1, 2008, when either of the following applies: (1) the person either was classified a "habitual child-victim offender" under the version of the SORN Law that existed immediately prior to July 1, 2007, or qualifies as a "habitual child-victim offender" under the version of the SORN Law that existed immediately prior to that date, or (2) the person is classified by a court as a "habitual child-victim offender" under R.C. 2950.091 as enacted in the bill.

**"Child-victim oriented offender"** means any person who is convicted of, has been convicted of, or is or was adjudicated a delinquent child for committing a child-victim oriented offense that was committed prior to January 1, 2008, and is not a child-victim predator or a habitual child-victim offender.

### **Registration duty**

Existing law specifies the manner in which offenders and delinquent children who are subject to the SORN Law must register an address (residence in all cases and, for offenders and delinquent children who are PRQJO registrants, school, institution of

higher education, and place of employment addresses). It prescribes the content of the form that must be used to register, requires that the completed form and other required materials submitted with it be forwarded to BCII, prohibits an offender or delinquent child from failing to register when required, and provides penalties for a violation of the prohibition (described below in "**Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**").<sup>14</sup> The bill modifies some of the existing provisions as they apply to the registration duties of an offender or delinquent child who committed the sexually oriented offense or child-victim oriented offense in question prior to January 1, 2008. It repeals the existing registration provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions**."<sup>15</sup> Except for that repeal, the bill does not change the existing provisions described above, with respect to delinquent acts committed on or after January 1, 2008.

Under the bill:<sup>16</sup>

(1) Each offender who committed a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, must register as follows:

(a) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county within five days of the offender's coming into a county in which the offender resides or temporarily is domiciled for more than five days.

(b) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in Ohio or another state (this is the same as existing law for all offenders).

(c) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has a temporary domicile in Ohio and has been employed in that county for more than 14 days or for an aggregate period of 30 or more days in that calendar year.

(d) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not

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<sup>14</sup> R.C. 2950.04(A) to (F) and 2950.041(A) to (F).

<sup>15</sup> Repeal of R.C. 2950.04(A)(3)(b); changes to related provisions in R.C. 2950.04.

<sup>16</sup> R.C. 2950.04(A) to (F) and 2950.041(A) to (F).



reside or have a temporary domicile in Ohio and has been employed at any location or locations in Ohio for more than 14 days or for an aggregate period of 30 or more days in that calendar year.

(e) Each such offender must register personally with the sheriff, or the sheriff's designee, or other appropriate person of the other state immediately upon entering into any state other than Ohio in which the offender attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than Ohio for more than 14 days or for an aggregate period of 30 or more days in that calendar year regardless of whether the offender resides or has a temporary domicile in Ohio, the other state, or a different state.

(2) Each delinquent child who committed a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, and who is classified a juvenile offender registrant based on that adjudication must register personally with the sheriff, or the sheriff's designee, of the county within five days of the delinquent child's coming into a county in which the delinquent child resides or temporarily is domiciled for more than five days.

(3) Each person who is convicted or is adjudicated a delinquent child in a court of another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing prior to January 1, 2008, a sexually oriented offense or child-victim oriented offense, and who, at the time of moving to and residing in Ohio or temporarily being domiciled in Ohio for more than the specified period of time, the offender enters Ohio to attend a school or institution of higher education, or the offender is employed in Ohio for more than the specified period of time, has a duty to register as a sex offender or child-victim offender under the law of the other jurisdiction as a result of the conviction or adjudication, must register as follows:

(a) Each such offender and each such delinquent child must register personally with the sheriff, or the sheriff's designee, of the county within five days of the offender's or child's residing or temporarily being domiciled for more than five days.

(b) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county immediately upon coming into a county in which the offender attends a school or institution of higher education on a full-time or part-time basis regardless of whether the offender resides or has a temporary domicile in Ohio or another state (this is the same as existing law for all offenders).

(c) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county in which the offender is employed if the offender resides or has



a temporary domicile in Ohio and has been employed in that county for more than five days or for an aggregate period of 30 days or more in that calendar year.

(d) Each such offender must register personally with the sheriff, or the sheriff's designee, of the county in which the offender then is employed if the offender does not reside or have a temporary domicile in Ohio and has been employed at any location or locations in Ohio for more than five days or for an aggregate period of 30 or more days in that calendar year.

(4) The bill expands the provisions regarding the content of the form that must be used to register to require that, in addition to the information that currently must be included on the form, it must include, if applicable, a specific declaration that the offender or delinquent child has been adjudicated a sexual predator or child-victim predator or has been determined to be a habitual sex offender or habitual child-victim offender, or that the offender has been convicted of an aggravated sexually oriented offense.

(5) The existing provision regarding the forwarding to BCII of the completed form and other required materials submitted with it, and the existing prohibition against failing to register when required, apply to registration required under the bill's provisions described above in (1) to (3).

#### **Notice of intent to reside**

Existing law requires specified categories of offenders and delinquent children who are subject to SORN Law requirements to provide prior notice to the sheriff of a county of an intent to reside in the county. It prescribes the content of the notice, prohibits an offender or delinquent child from failing to provide the notice when required, and provides penalties for a violation of the prohibition (described below in "**Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**").<sup>17</sup>

The bill expands the existing provisions that identify the categories of offenders and delinquent children who must provide prior notice to the sheriff of a county of an intent to reside in the county so that the provisions also apply to any offender or delinquent child who is subject to the SORN Law and who is in any of the following categories:

- (1) A sexual predator;
- (2) A child-victim predator;

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<sup>17</sup> R.C. 2950.04(E) and (G) and 2950.041(E) and (G).

(3) A habitual sex offender subject to community notification under former R.C. 2950.09(C)(2) or (E) as it existed prior to July 1, 2007, or the version of that section that exists on and after the bill's effective date;

(4) A habitual child-victim offender subject to community notification under former R.C. 2950.091(C)(2) or (E) as they existed prior to July 1, 2007, or the version of that section that exists on and after the bill's effective date;

(5) An offender who has SORN Law duties as a result of a conviction of an aggravated sexually oriented offense.

Currently, the only categories of offenders and delinquent children who must provide a notice of an intent to reside are offenders and delinquent children who are subject to the SORN Law and are Tier III sex offenders/child-victim offenders.

The bill expands the content of the notice of intent to reside so that, in addition to the information that currently must be included, the notice also must include, if applicable, a statement that the offender has been adjudicated a sexual predator or child-victim predator, a statement that the delinquent child has been adjudicated a sexual predator or child-victim predator and that, as of the date of the notice, the court has not entered a determination that the child no longer is such a predator, a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender or habitual child-victim offender and that, as of the date of the notice, the determination has not been removed, or a statement that the offender was convicted of an aggravated sexually oriented offense. Currently, the notice must contain the offender's or delinquent child's name, the address or addresses at which the offender or delinquent child intends to reside, and the sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child.<sup>18</sup>

#### **Change of address notification and registration of new address**

Existing law requires an offender or delinquent child who is required to register an address under the SORN Law to provide written notice of any change of address to the sheriff with whom the offender or child most recently registered the address and to register the new address with the appropriate sheriff of the county in which the offender's or child's new address is located. It specifies a time within which the notice to the sheriff must be given and a time within which the registration of the new address must be completed. It requires that the new address be forwarded to BCII, prohibits an offender or delinquent child from failing to register when required, and provides

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<sup>18</sup> R.C. 2950.04(E) and (G) and 2950.041(E) and (G).

penalties for a violation of the prohibition (described below in "**Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**").<sup>19</sup>

The bill revises the existing time limits for giving the written notice of a change in a place of employment address and for completing the registration of a new place of employment address if the offender's sexually oriented offense or child-victim oriented offense was committed prior to January 1, 2008. It repeals the existing time-limit provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions**."<sup>20</sup> In all other circumstances not described below in (1) or (2), the bill retains the existing time limits.

Under the bill:<sup>21</sup>

(1) With respect to a change of an offender's place of employment address, it specifies that the written notice must be given not later than five days after changing the place of employment address if the offender's sexually oriented offense or child-victim oriented offense was committed prior to January 1, 2008, and as under existing law, not later than three days after changing the place of employment address if the offender's sexually oriented offense or child-victim oriented offense was committed on or after that date.

(2) With respect to a change of an offender's place of employment address, it specifies that the registration of the new address must be completed not later than five days after changing the place of employment address if the offender's sexually oriented offense or child-victim oriented offense was committed prior to January 1, 2008, and as under existing law, not later than three days after changing the place of employment address if the offender's sexually oriented offense or child-victim oriented offense was committed on or after that date.

#### **Change of vehicle, e-mail, Internet identifier, or telephone number notification**

Existing law requires an offender or delinquent child who is a PRQJO registrant who is required to register an address under the SORN Law to provide written notice of any change in vehicle information, e-mail addresses, Internet identifiers, or telephone numbers registered to or used by the offender or child to the sheriff with whom the

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<sup>19</sup> R.C. 2950.05(A) to (C) and (E) to (I).

<sup>20</sup> R.C. 2950.05(A), (B), and (E).

<sup>21</sup> R.C. 2950.05(A) to (C) and (E) to (I).



offender or child most recently registered an address. It specifies a time within which the notice to the sheriff must be given. It requires that the new information be forwarded to BCII, prohibits an offender or delinquent child from failing to register when required, and provides penalties for a violation of the prohibition (described below in "**Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**").<sup>22</sup>

The bill revises the existing time limit for an offender giving the written notice of a change in any of the specified information, if the offender's sexually oriented offense or child-victim oriented offense was committed prior to January 1, 2008. It repeals the existing notice provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions**."<sup>23</sup> Under the bill, the written notice must be given not later than five days of the change in vehicle information, e-mail addresses, Internet identifiers, or telephone numbers if the offender's sexually oriented offense or child-victim oriented offense was committed prior to January 1, 2008, and as under existing law, within three days of the change if the offender's sexually oriented offense or child-victim oriented offense was committed on or after that date.<sup>24</sup>

#### **Frequency of periodic address verification**

Existing law requires offenders and delinquent children who are subject to the SORN Law to periodically verify their previously registered addresses, prohibits an offender or delinquent child from failing to verify when required, and provides penalties for a violation of the prohibition (described below in "**Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**").<sup>25</sup> The bill expands the existing provisions that specify the frequency with which offenders and delinquent children must verify their previously registered addresses (residence and, if applicable, school, institution of higher education, and place of employment addresses) so that the provisions also specify the frequency with which an offender or delinquent child who is subject to the SORN Law and who is classified a sexual predator, a child-victim predator, a habitual sex offender, a habitual child-victim offender, a sexually oriented offender, or a child-victim oriented offender, or an offender who has SORN Law duties as a result of a conviction of an aggravated sexually oriented offense must verify their

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<sup>22</sup> R.C. 2950.05(D) to (F).

<sup>23</sup> R.C. 2950.05(D) and (E).

<sup>24</sup> R.C. 2950.05(D) to (F).

<sup>25</sup> R.C. 2950.06.



previously registered addresses. It repeals the existing address-verification provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**"<sup>26</sup> The bill does not change the existing provisions as they currently apply to offenders and delinquent children who are classified as a Tier I sex offender/child-victim offender, a Tier II sex offender/child-victim offender, or a Tier III sex offender/child-victim offender.

Under the bill:<sup>27</sup>

(1) If the person is an offender or delinquent child who is a sexual predator or child-victim predator or is an offender who is required to register under the SORN Law as a result of committing an aggravated sexually oriented offense, the offender must verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child must verify the child's current residence address, in accordance with the existing address verification procedures every 90 days after the offender's or child's initial registration date during the period the offender or child is required to register.

(2) In all circumstances not described in the preceding paragraph or under the existing address verification provisions, the offender must verify the offender's current residence address or current school, institution of higher education, or place of employment address, and the delinquent child must register the child's current residence address, in accordance with the existing address verification procedures on each anniversary of the offender's or child's initial registration date during the period the offender or child is required to register.

(3) If, prior to January 1, 2008, an offender or delinquent child registered an address with a sheriff under the SORN Law as a result of a conviction of or adjudication as a delinquent child for committing a sexually oriented offense or a child-victim oriented offense as those terms were defined prior to January 1, 2008, the duty to register imposed on the offender or delinquent child pursuant to the SORN Law on and after January 1, 2008, is a continuation of the duty imposed upon "the offender" prior to January 1, 2008, and, for purposes of the provisions described in paragraphs (1) and (2), above, "the offender's" initial registration date related to that offense is the date on which "the offender" initially registered under R.C. 2950.04 or 2950.041 (the last two clauses of the provision do not include a reference to a delinquent child).

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<sup>26</sup> R.C. 2950.06(A), (B), (D), (E), (G), and (H).

<sup>27</sup> R.C. 2950.06(A) and (B)(1) to (6).



## **Commencement of registration, change of address, and periodic address verification duties**

The bill modifies an existing provision that specifies when an offender or delinquent child who registered an address under the SORN Law prior to January 1, 2008, initially must register under the SORN Law as it exists on and after that date. The modified provision relates to offenders and delinquent children who were reclassified into a Tier under the transitional reclassification mechanism enacted in S.B. 10. It repeals a similar existing provision that pertains to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**"<sup>28</sup> Except for this modification and repeal, the bill does not change the existing provisions that specify when any other offender or delinquent child who is subject to the SORN Law initially must comply with the requirements of that Law.

Under the bill, the modified provision specifies that if, prior to January 1, 2008, an offender or delinquent child with a duty to register under the SORN Law registered a residence, school, institution of higher education, or place of employment address pursuant to that Law as it existed prior to that date, the offender or child initially must register in accordance with the SORN Law as it exists on and after that date not later than the earlier of: (1) the date on which the offender or child would be required to verify a previously registered address under the SORN Law as it exists on and after January 1, 2008, or (2) if the offender or child has changed a previously registered address, the date on which the offender or child would be required to register a new residence, school, institution of higher education, or place of employment address under the SORN Law as it exists on and after January 1, 2008. The offender's or child's duty to comply thereafter with the SORN Law's registration, change of address, and periodic address verification provisions as they exist on and after January 1, 2008, commences on the date of that initial registration.<sup>29</sup>

The bill retains, without change, the existing provision that specifies that, if an offender's or delinquent child's duty to register was imposed pursuant to R.C. 2950.04 or 2950.041 as they existed prior to January 1, 2008, the offender's or delinquent child's duty to comply with the SORN Law's registration, change of address, and periodic address verification provisions as they exist on and after January 1, 2008, is a continuation of the offender's or delinquent child's former duty to register imposed prior to January 1, 2008, under the SORN Law and must be considered for all purposes

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<sup>28</sup> R.C. 2950.07(A)(6).

<sup>29</sup> Repeal of R.C. 2950.07(A)(7).



as having commenced on the date that the offender's duty under that section commenced.<sup>30</sup>

### **Duration of registration, change of address, and periodic address verification duties**

**Specification of duration.** The bill expands the existing provisions that specify the duration of an offender's or delinquent child's duty to comply with the SORN Law's registration, change of address, and periodic address verification provisions, so that they also specify the duration of the duties for an offender or delinquent child who is subject to the SORN Law and is classified a sexual predator, a child-victim predator, a habitual sex offender, a habitual child-victim offender, a sexually oriented offender, or a child-victim oriented offender, or an offender who has SORN Law duties as a result of a conviction of an aggravated sexually oriented offense. It repeals the existing duration-related provisions that pertain or refer to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**"<sup>31</sup> It does not change the existing provisions that pertain to Tier I, II, or III offenders. The bill does not otherwise change the existing provisions that specify the duration of an offender's or delinquent child's duty to comply with the SORN Law requirements.<sup>32</sup>

Under the bill, the duty of an offender or delinquent child who is classified a sexual predator, a child-victim predator, a habitual sex offender, a habitual child-victim offender, a sexually oriented offender, or a child-victim oriented offender or an offender who has SORN Law duties as a result of a conviction of an aggravated sexually oriented offense to comply after the date of commencement with the specified SORN Law provisions continues as follows:<sup>33</sup>

(1) Except as otherwise described in this paragraph, if the person is an offender or delinquent child who is a sexual predator or child-victim predator or is an offender who has SORN Law duties as a result of a conviction of an aggravated sexually oriented offense, the offender's or child's duty to comply with the specified SORN Law provisions continues until the offender's or child's death. If the judge who made the disposition for a delinquent child or that judge's successor subsequently enters a determination that the child no longer is a sexual predator or child-victim predator, the child's duty to comply with those provisions continues for the period of time that

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<sup>30</sup> R.C. 2950.07(A)(8).

<sup>31</sup> R.C. 2950.07(B).

<sup>32</sup> R.C. 2950.07(B)(1) to (3).

<sup>33</sup> R.C. 2950.07(B)(4) to (6).



otherwise would have been applicable to the child as described in either paragraph (2) or (3) below. In no case can the lifetime duty to comply that is imposed under this provision on an offender be removed or terminated.

(2) Except as otherwise described in this paragraph, if the person is an offender or delinquent child who is a habitual sex offender or a habitual child-victim offender, the offender's or child's duty to comply with the specified SORN Law provisions continues for 20 years from the date of the offender's or child's initial registration. If the judge who made the disposition for a delinquent child or that judge's successor subsequently enters a determination that the child no longer is a habitual sex offender or habitual child-victim offender, the child's duty to comply with those provisions continues for the period of time that otherwise would have been applicable to the child as described in paragraph (3) below.

(3) Except as otherwise described in this paragraph, if the person is an offender or delinquent child who was convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense that was committed prior to January 1, 2008, and if neither of the provisions described above in paragraphs (1) and (2) apply to the offender or child, the offender's or child's duty to comply with the specified SORN Law provisions continues for ten years from the date of the offender's or child's initial registration. If the judge who made the disposition for a delinquent child or that judge's successor subsequently enters a determination that the child no longer is a habitual sex offender or habitual child-victim offender, the child's duty to comply with those provisions terminates upon the court's entry of the determination.

**Related provisions.** The bill modifies three provisions that relate to the duration of an offender's or delinquent child's duty to comply with SORN Law requirements:

(1) It expands an existing provision that specifies that, if an offender or delinquent child has been convicted of or been adjudicated a delinquent child for multiple sexually oriented offenses or child-victim oriented offenses, the period of time for which the offender or child must comply with SORN Law requirements is to be separately calculated for each offense according to the relevant period of time specified for that offense to include references to the periods of time enacted in the bill that are specified above in (1), (2), or (3) under "**Specification of duration.**"<sup>34</sup>

(2) It expands an existing provision that describes the effect of a judge's Tier reclassification upon the duration of a delinquent child's duty to comply with the SORN Law requirements, so that the provision also applies with respect to a judge's

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<sup>34</sup> R.C. 2950.07(C)(1).

determination that a delinquent child no longer is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender. Under the bill, if a child has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and is classified a juvenile registrant relative to the offense and if a juvenile judge subsequently determines that the child no longer is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, whichever is applicable, the judge's subsequent determination to reclassify the child does not affect the date of commencement of the child's duty to comply with the SORN Law requirements, the child's duty to comply with those requirements after the reclassification is a continuation of the child's duty to comply with those requirements that was in effect prior to the reclassification, and the duty continues for the period of time specified by law.<sup>35</sup>

(3) It expands an existing provision that describes the effect of the changes made in S.B. 10 upon the periods of time for which an offender or delinquent child who had a duty to comply with SORN Law requirements prior to S.B. 10, so that the provision also applies with respect to offenders and delinquent children who are classified as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender under the bill. Under the bill, if, prior to January 1, 2008, an offender or delinquent child had a duty to comply with SORN Law requirements for committing a sexually oriented offense or child-victim oriented offense, the applicable period of time specified above in (1), (2), or (3) under "**Specification of duration**" for which a person must comply with those requirements on and after January 1, 2008, automatically replaces the period of time for which the person had to comply with those requirements prior to that date and is a continuation of the person's duty to comply with those requirements that was in effect prior to the reclassification.<sup>36</sup>

#### **Victim notification – subject categories of offenders and delinquent children**

The bill modifies the existing provisions that identify the categories of offenders and delinquent children in relation to whom the SORN Law's victim notification mechanism applies in several ways. It expands those existing provisions to also apply to offenders and delinquent children who are subject to the SORN Law's registration, change of address, and periodic address verification provisions and are classified a sexual predator or child-victim predator, are classified a habitual sex offender or habitual child-victim offender and subjected to the victim notification mechanism, or have SORN Law duties as a result of a conviction of an aggravated sexually oriented offense. It repeals the portions of those existing provisions that pertain to PRQJO

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<sup>35</sup> R.C. 2950.07(C)(2).

<sup>36</sup> R.C. 2950.07(C)(2).



registrants as part of its repeal of all PRQJO registrant provisions described below in **"Repeal of public registry-qualified juvenile offender registrant provisions."** It also revises the portion of those provisions that currently applies in some circumstances to delinquent children who under the pre-S.B. 10 SORN Law were classified as sexual predators, habitual sex offenders, child-victim predators, or habitual child-victim predators. Under the victim notification mechanism, if an offender or delinquent child is in one of the specified categories to whom the mechanism applies and if the victim of the offender's or child's sexually oriented offense or child-victim oriented offense has requested that the victim be provided notification, the sheriff with whom the offender or child registers or provides a notice of a change in a registered address must provide the victim with a written notice containing specified information.<sup>37</sup>

Under the bill, the SORN Law's victim notification mechanism applies with respect to the following categories of offenders and delinquent children (the categories added by the bill are in italics):<sup>38</sup>

(1) An offender who is a Tier III sex offender/child-victim offender relative to the offense for which a victim requested to be provided notice;

*(2) An offender or delinquent child who is a sexual predator or child-victim predator;*

*(3) An offender or delinquent child who is a habitual sex offender or habitual child-victim offender, if a court has imposed a requirement subjecting the habitual sex offender or habitual child-victim offender to the victim notification mechanism, and, with respect to the delinquent child, a juvenile court has not removed pursuant to R.C. 2152.84 or 2152.85 the child's duty to comply with SORN Law requirements;*

(4) A delinquent child who is a Tier III sex offender/child-victim offender, if the child was classified a juvenile offender registrant with respect to a sexually oriented offense or child-victim oriented offense committed on or after January 1, 2008, the court has imposed a requirement subjecting the child to the victim notification mechanism, and a juvenile court has not removed pursuant to R.C. 2152.84 or 2152.85 the child's duty to comply with SORN Law requirements;

*(5) An offender, if the sexually oriented offense for which the offender has the duty to register under the SORN Law is an aggravated sexually oriented offense, regardless of whether the offender has been adjudicated a sexual predator with respect to the offense or has been determined to be a habitual sex offender and, if the offender has been so determined to be a*

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<sup>37</sup> R.C. 2950.10.

<sup>38</sup> R.C. 2950.10(B)(1), and conforming changes in R.C. 2950.10(A)(1) to (3) and (B)(2).

*habitual sex offender, regardless of whether that determination has been removed pursuant to R.C. 2152.84 or 2152.85 regarding a delinquent child.*

### **Community notification – subject categories of offenders and delinquent children**

The bill modifies the existing provisions that identify the categories of offenders and delinquent children to whom the SORN Law's community notification mechanism applies in several ways. It expands those existing provisions to also apply to offenders and delinquent children who are subject to the SORN Law's registration, change of address, and periodic address verification provisions and are classified a sexual predator or child-victim predator, are classified a habitual sex offender or habitual child-victim offender and subjected to the victim notification mechanism, or have SORN Law duties as a result of a conviction of an aggravated sexually oriented offense. It repeals the portions of those existing provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" It also revises the portion of those provisions that currently applies in some circumstances to delinquent children who under the pre-S.B. 10 SORN Law were classified as sexual predators, habitual sex offenders, child-victim predators, or habitual child-victim predators. The bill does not otherwise change the currently identified categories of offenders and delinquent children to whom the SORN Law's community notification mechanism applies. Under the community notification mechanism, if an offender or delinquent child is in one of the specified categories to whom the mechanism applies, the sheriff with whom the offender or child registers or to whom the offender child sends a notice of intent to reside must provide a written notice containing specified information to certain specified persons and entities in the community in which the registered address or intended residence is located.<sup>39</sup>

Under the bill, the SORN Law's community notification mechanism applies with respect to the following categories of offenders and delinquent children (the categories added by the bill are in italics):<sup>40</sup>

(1) An offender or delinquent child who is in any category described above in paragraphs (1), (2), or (5) under "**Victim notification – subject categories of offenders and delinquent children**";

(2) *An offender or delinquent child who is a habitual sex offender or habitual child-victim offender, if a court has imposed a requirement subjecting the habitual sex offender or habitual*

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<sup>39</sup> R.C. 2950.11.

<sup>40</sup> R.C. 2950.11(F)(1) and (2), and conforming changes in R.C. 2950.11(A), (B)(2) and (4), (E), (H)(1)(e), and (I).

*child-victim offender to the community notification mechanism, and, with respect to the delinquent child, a juvenile court has not removed pursuant to R.C. 2152.84 or 2152.85 the child's duty to comply with SORN Law requirements;*

(3) A delinquent child who is a Tier III sex offender/child-victim offender, if the child was classified a juvenile offender registrant with respect to a sexually oriented offense or child-victim oriented offense committed on or after January 1, 2008, the court has imposed a requirement subjecting the child to the community notification mechanism, and a juvenile court has not removed pursuant to R.C. 2152.84 or 2152.85 the child's duty to comply with SORN Law requirements;

(4) The community notification mechanism does not apply to an offender or delinquent child described in paragraphs (1) to (3), above, if a court finds at a hearing after considering a list of ten specified factors and any additional behavioral characteristics that contribute to the offender's or child's conduct, that the offender or child would not be subject to the mechanism that existed immediately prior to January 1, 2008 (substantively unchanged by the bill).

#### **State Registry of Sex Offenders and Child-Victim Offenders**

The bill modifies the existing provision that requires the AG to identify the Tier classification of each person about whom information is provided in the State Registry of Sex Offenders and Child-Victim Offenders that the AG maintains in recognition of the fact that, subsequent to *Bodyke, supra*, some offenders and delinquent children about whom information is provided in the Registry are sexual predators, child-victim predators, habitual sex offenders, or habitual child-victim offenders and do not have a Tier classification. The Registry currently includes the Tier-classification information and many other specified items of information regarding each person who is or has been convicted of a sexually oriented offense or child-victim oriented offense or who is or has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant. The bill does not otherwise change the existing provisions regarding the content of the Registry.

Under the bill, the Registry must include a statement for each person listed in the Registry as to whether the person is a Tier I sex offender/child-victim offender, a Tier II sex offender/child-victim offender, a Tier III sex offender/child-victim offender, *a sexual predator, a child-victim predator, a habitual sex offender, a habitual child-victim offender, a sexually oriented offender, or a child-victim oriented offender* (the italicized language is

added by the bill). The bill does not change the other information that currently must be provided in the Registry regarding each person who is listed in the Registry.<sup>41</sup>

### **BCII Internet sex offender and child-victim offender database**

The bill modifies the existing provisions that specify the information that BCII currently must include on the Internet sex offender and child-victim offender database that it maintains so that some of that information is to be included only with respect to an offender who commits the sexually oriented offense or child-victim oriented offense that is the basis of the offender's duty to register *prior to January 1, 2008* (the information in question was added by S.B. 10, so it is possible that this provision mistakenly refers to offenses committed prior to that date instead of to offenses committed on or after that date). It repeals the portions of those existing provisions that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" The bill does not otherwise change the existing provisions regarding the database.

Under the bill, the following information is to be included on the database only with respect to an offender who commits the sexually oriented offense or child-victim oriented offense that is the basis of the offender's duty to register prior to January 1, 2008:<sup>42</sup>

(1) The identification license plate number of each vehicle the offender owns, each vehicle registered in the offender's name, each vehicle the offender operates as a part of employment, and each other vehicle that is regularly available to be operated by the offender;

(2) A description of where each vehicle identified in paragraph (1) is habitually parked, stored, docked, or otherwise kept;

(3) If required by BCII, a photograph of each vehicle identified in paragraph (1);

(4) A chart describing which sexually oriented offense and child-victim oriented offenses are included within the definitions of Tier I, II, and III sex offender/child-victim offender;

(5) Fingerprints and palmprints of the offender and a DNA specimen from the offender;

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<sup>41</sup> R.C. 2950.13(A)(1).

<sup>42</sup> R.C. 2950.13(A)(11).



(6) Any outstanding arrest warrants for the offender.

### **Charging a fee for registration or address verification**

The bill expands an existing provision that permits a sheriff to charge a fee each time an offender registers an address, registers a new residence address, or verifies a current residence address under the SORN Law so that the provision also applies to offenders and delinquent children who are classified a sexual predator or child-victim predator, are classified a habitual sex offender or habitual child-victim offender and subjected to the community notification mechanism, or have SORN Law duties as a result of a conviction of an aggravated sexually oriented offense. Under existing law, retained by the bill, a sheriff cannot require the payment of any fee from a delinquent child until the child reaches 18, and, after a child reaches that age, the sheriff may charge the same fee as may be charged for offenders.

Under the bill, if a sheriff charges one or more of the fees described in the preceding paragraph, all of the following apply (the italicized language is added by the bill):

(1) For an offender who is a Tier III sex offender/child-victim offender, *a sexual predator or a child-victim predator or who has a duty to register as a result of committing an aggravated sexually oriented offense*, the fees may not exceed a total of \$100 for each registration year.

(2) *For an offender who is a habitual sex offender or a habitual child-victim offender, who is not described in paragraph (1), and for whom the sentencing judge had required community notification, the fee may not exceed a total of \$50 for each registration year.*

(3) For an offender who has been convicted of a sexually oriented offense or child-victim oriented offense and who is not described in paragraph (1) or (2), the fees may not exceed a total of \$25 for each registration year.

The bill does not change other provisions of existing law that pertain to registration or address verification of persons who do not pay the fee, determination and treatment of persons who are unable to pay the fee, and use of the fees paid.<sup>43</sup>

### **SORN Law intent**

The bill expands an existing provision that identifies the General Assembly's intent in enacting the SORN Law's community notification provisions to include references to sexual predators, child-victim predators, habitual sex offenders, and

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<sup>43</sup> R.C. 311.171.

habitual child-victim offenders and removes a reference to PRQJO registrants from the provision. Under the bill (the italicized language is added by the bill), the provision states that the General Assembly declares that, in providing under the SORN Law for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or child-victim oriented offenses and for community notification regarding Tier III sex offenders/child-victim offenders, *sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders* who are criminal offenders and certain juvenile offender registrants who are about to be or have been released from confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the General Assembly's intent to protect the safety and general welfare of the people of Ohio. It repeals a reference in the existing provision to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**"<sup>44</sup>

#### **Notification of SORN Law duties**

Existing law provides for notification of a person who is subject to the SORN Law's requirements and specifies the content of the notice, who must give the notice, and when the notice must be given. One of the notification provisions specifies who must give the notice to offenders and delinquent children who are subject to SORN Law duties for a sexually oriented offense or child-victim oriented offense committed prior to July 1, 2007, and who were subject to the reclassification provisions found to be unconstitutional in *Bodyke, supra*. Another specifies who must give the notice to a child who is adjudicated a delinquent child for a sexually oriented offense or child-victim oriented offense and who is classified as both a juvenile offender registrant and a PRQJO registrant on or after January 1, 2008.

The bill specifies that the notification provision that applies with respect to offenders and delinquent children who were subject to the reclassification provisions found to be unconstitutional in *Bodyke, supra*, applies only if the offense in question was committed on or after January 1, 2008. The bill repeals the notification provision that applies with respect to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**"<sup>45</sup>

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<sup>44</sup> R.C. 2950.02.

<sup>45</sup> R.C. 2950.03(A)(5), redesignated as R.C. 2950.03(A)(4); repeal of current R.C. 2950.03(A)(4) and conforming changes to R.C. 2929.13(I) and 2950.03(B) and (C).



### **S.B. 10 transitional reclassification mechanism**

The bill specifies that the transitional reclassification mechanism enacted in S.B. 10 that *Bodyke, supra*, found to be unconstitutional does not apply to any person who, under the version of the SORN Law that existed immediately prior to July 1, 2007, is classified a sexual predator, habitual sex offender, sexually oriented offender, child-victim predator, habitual child-victim offender, or child-victim offender based on any sexually oriented offense or child-victim oriented offense committed prior to July 1, 2007. It also removes all references in the mechanism to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" The bill repeals existing language that relates to the AG complying with the transitional reclassification mechanism with respect to an offender or delinquent child who registers with a sheriff under the SORN Law on or after December 1, 2007, upon being notified by the sheriff that the offender or child has registered and that the offender or child previously has not registered with any sheriff.

Under the language of the statutes that contain the transitional reclassification mechanism, on and after July 1, 2007, each person who was subjected to the pre-S.B. 10 version of the SORN Law was categorized into one of the three Tiers under the current Tier System. The Tier into which a person was reclassified generally was to be based on the offense the person committed that subjected the person to the SORN Law. The AG administered the reclassification and notified each person of the reclassification and of the person's new duties under the new SORN Law. The mechanism afforded each person a right to a hearing to contest the application to the person of the new registration requirements under the current, post-S.B. 10 SORN Law.<sup>46</sup>

### **S.B. 10 voiding of termination and continuance of SORN Law duties**

The bill repeals provisions enacted in S.B. 10 that provide that if, on or before July 1, 2007, an offender or delinquent child has a duty to comply with the SORN Law and that duty is scheduled to terminate prior to January 1, 2008, under the pre-S.B. 10 version of that Law, the offender's or child's duty to comply with the SORN Law does not terminate as scheduled and remains in effect for a specified period of time. The bill replaces the repealed provisions with a transitional provision that states that if, on or before January 1, 2008, a person who has been convicted of or been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense that existed immediately prior to July 1, 2007, had a duty to comply with then-existing SORN Law requirements based on that offense, the offender's or delinquent

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<sup>46</sup> R.C. 2950.031, 2950.032, and 2950.043.

child's duty to comply with those requirements continues under the requirements as they exist on and after the bill's effective date.

Under the provisions repealed by the bill, if, on or before July 1, 2007, an offender or delinquent child has a duty to comply with the SORN Law and the offender's or child's duty to comply with that Law is scheduled to terminate on or after July 1, 2007, and prior to January 1, 2008, under the pre-S.B. 10 version of that Law, notwithstanding that scheduled termination of that duty, the offender's or child's duty to comply with the SORN Law does not terminate as scheduled and remains in effect for the following period of time: (1) if the offender or child requests a hearing to contest his or her reclassification under the S.B. 10 transitional reclassification mechanism, the duty continues at least until the court issues its decision on the request at or subsequent to the hearing and, unless the court's decision terminates the duty or provides a different duration for the duty, it continues subsequent to the decision in accordance with, and for the duration specified in, the reclassification notice, (2) if the offender or child does not request a hearing to contest his or her reclassification under the transitional reclassification mechanism, the duty continues in accordance with, and for the duration specified in, the reclassification notice, or (3) if the offender or child does not receive a reclassification notice required under the transitional reclassification mechanism, notwithstanding the failure to receive the notice, the offender's or child's duty to comply with the SORN Law continues in accordance with, and for the duration specified in, the SORN Law as it exists under the post-S.B. 10 SORN Law. These provisions that would be repealed by the bill only apply to a delinquent child who is adjudicated delinquent for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, and who is a PRQJO registrant under the post-S.B. 10 SORN Law.<sup>47</sup>

#### **SORN Law "sexually oriented offense" definition**

S.B. 10 modified the definition of "sexually oriented offense," effective January 1, 2008. The bill amends the current SORN Law definition of "sexually oriented offense" (i.e., the post-S.B. 10 law definition of that term – see "**Basic SORN Law definitions**" under "**Background**," below) to specify that the current definition applies with respect to the violations and offenses included within the definition only if they were committed on or after January 1, 2008. With respect to offenses or violations committed prior to January 1, 2008, the bill specifies that the offense or violation is a "sexually oriented offense" if either of the following applies: (1) it is an offense or violation committed prior to that date by a person 18 or older that, when committed, was a "sexually oriented offense" under the SORN Law definition of that term that existed on

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<sup>47</sup> R.C. 2950.033.

the date on which the violation or offense was committed, or (2) it is an act committed prior to that date by a person under 18 that, when committed, was a "sexually oriented offense" under the SORN Law definition of that term that existed on the date on which the act was committed.<sup>48</sup>

### **SORN Law Tier definitions**

S.B. 10 enacted definitions of the terms "Tier I sex offender/child-victim offender," "Tier II sex offender/child-victim offender," and "Tier III sex offender/child-victim offender," effective January 1, 2008. The bill modifies the current SORN Law definitions of those terms to specify that those definitions include only sex offenders and child-victim offenders who are convicted of, have been convicted of, or are or were adjudicated a delinquent child for committing any of the specified offenses, provided the offense was committed on or after January 1, 2008. It also adds language to the current definitions of "Tier II sex offender/child-victim offender" and "Tier III sex offender/child-victim offender" with respect to a person convicted of a specified offense who had a SORN Law duty of a specified nature under pre-S.B. 10 law, removes language from those current definitions that automatically classifies a person within one of the definitions if the person had a SORN Law duty of a specified nature under pre-S.B. 10 law, and clarifies language in the current definition of "Tier III sex offender/child-victim offender" with respect to the inclusion of persons with certain convictions or delinquent child adjudications that occur in a court other than an Ohio court, and to make other changes in the definitions. Under the bill, the terms are defined as follows (italicized language is added by the bill; substantive language repealed by the bill is identified in the part of the definition from which it is removed):<sup>49</sup>

**"Tier I sex offender/child-victim offender"** means any of the following:<sup>50</sup>

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses *that was committed on or after January 1, 2008*: (a) "sexual imposition," "importuning," "voyeurism," or "pandering obscenity," (b) "unlawful sexual conduct with a minor" when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of "rape," "sexual battery," or "unlawful sexual conduct with a minor" or the former offense of "felonious sexual penetration," (c) "gross sexual imposition" committed other than when the victim, or one of the victims, is less

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<sup>48</sup> R.C. 2950.01(A).

<sup>49</sup> R.C. 2950.01(E) to (G).

<sup>50</sup> R.C. 2950.01(E).



than 13, (d) "illegal use of a minor in a nudity-oriented material or performance" based on possession or viewing of the material or performance, (e) when committed with a sexual motivation, "menacing by stalking," "unlawful restraint," or "criminal child enticement," (f) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (a) to (e) of this paragraph, or (g) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a) to (g) of this paragraph.

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a child-victim oriented offense *that was committed on or after January 1, 2008*, and who is not within either category of child-victim offender described in paragraph (2) under the definition, below, of either Tier II sex offender/child-victim oriented offender or Tier III sex offender/child-victim oriented offender.

(3) A sex offender who is adjudicated or has been adjudicated a delinquent child for committing *on or after January 1, 2008*, any sexually oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier I sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated or has been adjudicated a delinquent child for committing *on or after January 1, 2008*, any child-victim oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier I sex offender/child-victim offender relative to the offense.

**"Tier II sex offender/child-victim offender"** means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, *was* convicted of, or pleaded guilty to any of the following sexually oriented offenses *that was committed on or after January 1, 2008*: (a) "compelling prostitution," "pandering obscenity involving a minor," or "pandering sexually oriented matter involving a minor," (b) "unlawful sexual conduct with a minor" when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of "rape," "sexual battery," "unlawful sexual conduct with a minor," or the former offense of "felonious sexual penetration," (c) "gross sexual imposition" committed when the victim is under 13 (but see the definition of Tier III sex offender/child-victim offender, below) or "illegal use of a minor in a nudity-oriented material or performance" that is based on proscribed

conduct other than possessing or viewing the material or performance, (d) "kidnapping," other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation, (e) "kidnapping" committed for the purpose of engaging in sexual activity with the victim against the victim's will, when the victim of the offense is 18 or older, (f) "abduction" committed with a sexual motivation, or "endangering children" committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter, (g) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (a) to (f) of this paragraph, (h) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a) to (g) of this paragraph, or (i) any sexually oriented offense committed after the sex offender previously has been convicted of, pleaded guilty to, or has been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the sex offender *either* was classified a Tier I sex offender/child-victim offender *under the current SORN Law or was classified a sexually oriented offender or child-victim oriented offender under the version of the SORN Law that existed immediately prior to January 1, 2007* (the effective date of certain transitional provisions of S.B. 10).

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed *on or after January 1, 2008, and* after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a Tier I sex offender/child-victim offender.

(3) A sex offender who is or has been adjudicated a delinquent child for committing *on or after January 1, 2008, any* sexually oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier II sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated or has been adjudicated a delinquent child for committing *on or after January 1, 2008, any* child-victim oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier II sex offender/child-victim offender relative to the offense.



(5) The bill repeals a provision that currently includes as a Tier II sex offender/child-victim offender a sex offender or child-victim offender who is not in any category of Tier II sex offender/child-victim offender set forth in paragraphs (1) to (4) under this definition, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, and who prior to that date was determined to be a habitual sex offender or determined to be a habitual child-victim offender, unless either of the following applies: (a) the sex offender or child-victim offender is reclassified pursuant to R.C. 2950.031 or 2950.032 as a Tier I sex offender/child-victim offender or a Tier III sex offender/child-victim offender relative to the offense, or (b) a juvenile court, pursuant to the Delinquent Child Law, classifies the child a Tier I sex offender/child-victim offender or a Tier III sex offender/child-victim offender relative to the offense.

**"Tier III sex offender/child-victim offender"** means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses *that was committed on or after January 1, 2008*: (a) "rape" or "sexual battery," (b) "gross sexual imposition" committed when the victim is less than 12, the offender knowingly touches the genitalia of the victim, the touching is not through clothing, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, (c) "aggravated murder," "murder," or "felonious assault" when the violation was committed with a sexual motivation, (d) "involuntary manslaughter," when the base offense is a felony and the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation, (e) "kidnapping" committed for the purpose of engaging in sexual activity with the victim against the victim's will, when the victim of the offense is under 18, (f) "kidnapping" when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, and when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense, (g) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (a) to (f) of this paragraph, (h) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a) to (g) of this paragraph, or (i) any sexually oriented offense committed after the sex offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender *either* was classified a Tier II sex offender/child-victim offender or a Tier III sex offender/child-victim offender *under the current SORN Law or was classified a sexual predator, child-victim*



*predator, habitual sex offender, or habitual child-victim offender under the version of the SORN Law that existed immediately prior to January 1, 2007 (the effective date of certain transitional provisions of S.B. 10).*

(2) A child-victim offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any child-victim oriented offense when the child-victim oriented offense is committed *on or after January 1, 2008, and* after the child-victim offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a Tier II sex offender/child-victim offender or a Tier III sex offender/child-victim offender.

(3) A sex offender who is adjudicated or has been adjudicated a delinquent child for committing *on or after January 1, 2008, any* sexually oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier III sex offender/child-victim offender relative to the offense.

(4) A child-victim offender who is adjudicated or has been adjudicated a delinquent child for committing *on or after January 1, 2008, any* child-victim oriented offense and who a juvenile court, pursuant to the Delinquent Child Law, classifies a Tier III sex offender/child-victim offender relative to the offense.

(5) The bill repeals a provision that currently includes as a Tier II sex offender/child-victim offender a sex offender or child-victim offender who is not in any category of Tier III sex offender/child-victim offender set forth in paragraphs (1) to (4) under this definition, who prior to January 1, 2008, was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or adjudicated a child-victim predator, unless either of the following applies (the bill removes a reference to an offender "who was convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense" from this provision): (a) the sex offender or child-victim offender is reclassified pursuant to R.C. 2950.031 or 2950.032 as a Tier I sex offender/child-victim offender or a Tier II sex offender/child-victim offender relative to the offense, or (b) the sex offender or child-victim offender is a delinquent child, and a juvenile court, pursuant to the Delinquent Child Law, classifies the child a Tier I sex offender/child-victim offender or a Tier II sex offender/child-victim offender relative to the offense.

(6) A sex offender who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense *that was committed on or after January 1, 2008, if* the sexually oriented offense and the circumstances in which it was committed are such that R.C. 2970.03(F), which is part of the Sexually Violent Predator Sentencing



Law, automatically classifies the offender as a Tier III sex offender/child-victim offender.

(7) A sex offender or child-victim offender who, *in a court of another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States*, is convicted of, pleads guilty to, was convicted of, pleaded guilty to, or is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense if *the offense is committed on or after January 1, 2008*, and both of the following apply (related to the bill's enactment of the italicized language in the first to third lines of this paragraph, it relocates the phrase "in another state, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States" from its present location after the term "child-victim offense"): (a) under the law of the other jurisdiction, the offender or delinquent child is in a category substantially equivalent to a category of Tier III sex offender/child-victim offender described in paragraphs (1) to (6) under this definition, and (b) subsequent to the conviction, plea of guilty, or adjudication in the other jurisdiction, the offender or delinquent child resides, has temporary domicile, attends school or an institution of higher education, is employed, or intends to reside in Ohio in any manner and for any period of time that subjects the offender or delinquent child to a duty to register or provide notice of intent to reside under R.C. 2950.04 or 2950.041.

#### **Other provisions that use SORN Law terminology from S.B. 10**

**DNA collection.** Current law provides for the collection of a DNA specimen from a person who has been or is convicted of any felony offense or any of a list of specified misdemeanor offenses. The list of specified misdemeanor offenses includes a sexually oriented offense or child-victim oriented offense that is a misdemeanor if, in relation to that offense, the offender is a Tier III sex offender/child-victim offender under the current SORN Law. The bill expands this list of specified misdemeanor offenses so that it also includes a sexually oriented offense or child-victim oriented offense that is a misdemeanor if, in relation to that offense, the offender is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender under the SORN Law as amended by the bill.<sup>51</sup>

**GPS monitoring of convicted felon.** Currently, when a court is sentencing an offender for a sexually oriented offense that is a felony, if the offender is a Tier III sex offender/child-victim offender under the current SORN Law relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. The cost of any monitoring so ordered is borne by the offender, provided that if the offender is

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<sup>51</sup> R.C. 2901.07.

indigent, the cost is paid by the Crime Victims Reparations Fund. The bill expands this provision so that it also applies with respect to an offender convicted of a sexually oriented offense that is a felony, if the offender is a sexual predator under the SORN Law as amended by the bill relative to that offense, and the offender does not serve a prison term or jail term.<sup>52</sup>

**Information included in felon's sentence.** Currently, a court that sentences an offender for a felony must include specified information in the offender's sentence. Among the information that must be included in the sentence is a statement that the offender is a Tier III sex offender/child-victim offender if the offender is being sentenced under any of the following circumstances: (1) for a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and the offender is adjudicated a sexually violent predator relative to that offense, (2) for a sexually oriented offense committed on or after January 1, 1997, and the offender is a Tier III sex offender/child-victim offender relative to that offense, (3) on or after July 31, 2003, for a child-victim oriented offense, and the offender is a Tier III sex offender/child-victim offender relative to that offense, (4) for a rape offense in violation of R.C. 2907.02(A)(1)(b) committed on or after January 1, 2007, under the Sexually Violent Predator Sentencing Law, (5) for a rape offense, to a term of life without parole under R.C. 2907.02(B), (6) for attempted rape committed on or after January 2, 2007, that if completed would have been child rape, when other criteria are satisfied, or (7) for kidnapping, aggravated murder, or murder, when the offense was committed on or after January 1, 2008, with a sexual motivation, other specified criteria apply, and the sentence is imposed under the Sexually Violent Predator Sentencing Law. If any of the criteria specified in those provisions apply, the court must impose sentence on the offender as described in the provision.

The bill replaces the dates that determine when the provisions described in clauses (1) to (4) and (6) of the second sentence of the preceding paragraph, as specified in those provisions, with the date of January 1, 2008 – as a result, those provisions apply only if the type of offense referred to in those clauses occurred on or after January 1, 2008. The bill adds the date of January 1, 2008, to the provision described in clause (5) of the second sentence of the preceding paragraph – as a result, that provision applies only when the rape offense for which the offender is sentenced to a term of life without parole under R.C. 2907.02(B) occurred on or after that date.

Related to the changes described in the preceding paragraph, the bill also adds a provision that requires a court sentencing an offender for a felony to include in the offender's sentence a statement that the offender has been adjudicated a sexual

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<sup>52</sup> R.C. 2929.13(L); also R.C. 2929.01(KK).

predator, had been adjudicated a child-victim predator, or has been convicted of an aggravated sexually oriented offense if the offender is being sentenced under any of the following circumstances:

(1) For a violent sex offense or designated homicide, assault, or kidnapping offense that the offender committed on or after January 1, 1997, and prior to January 1, 2008, and the offender is adjudicated a sexually violent predator relative to that offense;

(2) For a sexually oriented offense or child-victim oriented offense that the offender committed prior to January 1, 2008, and the court determined pursuant to R.C. 2950.09(B) or 2950.091(B), both as enacted in the bill, that the offender is a sexual predator or child-victim predator;

(3) For an aggravated sexually oriented offense, as defined in the bill, committed prior to January 1, 2008;

(4) For a rape offense in violation of R.C. 2907.02(A)(1)(b) committed on or after January 1, 2007, and prior to January 1, 2008, under the Sexually Violent Predator Sentencing Law;

(5) For a rape offense committed prior to January 1, 2008, to a term of life without parole under R.C. 2907.02(B);

(6) For attempted rape committed on or after January 2, 2007, and prior to January 1, 2008, that if completed would have been child rape, when other criteria are satisfied.<sup>53</sup>

**Information included in misdemeanor's sentence.** Currently, if a court sentences an offender for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 2007, and if the offender is a Tier III sex offender/child-victim offender, or the offense is a misdemeanor offense to which the DNA collection mechanism described above applies, the judge must include in the offender's sentence a statement that the offender is a Tier III sex offender/child-victim offender. The court also must comply with the SORN Law's notification requirements, described in another part of this analysis, and to the DNA collection mechanism described above. The bill expands this provision so that it also applies to an offender who is a sexual predator or child-victim predator relative to the sexually oriented offense or child-victim oriented offense for which sentence is being imposed.<sup>54</sup>

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<sup>53</sup> R.C. 2929.19(B)(3); also R.C. 2929.01(KK).

<sup>54</sup> R.C. 2929.23(A).

**Sexually Violent Predator Sentencing Law.** Currently, certain offenders who are sentenced under the Sexually Violent Predator Sentencing Law are automatically classified as a Tier III sex offender/child-victim offender for purposes of the SORN Law. The bill modifies the provisions so that the offender is classified a sexual predator if the offender committed the offense in question prior to January 1, 2008, and is classified a Tier III sex offender/child-victim offender if the offender committed the offense on or after January 1, 2008.<sup>55</sup> The offenders with respect to which these provisions apply are:

(1) An offender who is convicted of a "violent sex offense" and also is convicted of a "sexually violent predator specification" or is convicted of a "designated homicide, assault, or kidnapping offense" and also is convicted of both a "sexual motivation specification" and a "sexually violent predator specification";

(2) An offender who is convicted of committing on or after January 2, 2007, rape under R.C. 2907.02(A)(1)(b) if either the offender is sentenced under the Sexually Violent Predator Sentencing Law or a sentence of life without parole is imposed under R.C. 2907.02(B);

(3) An offender who is convicted of committing on or after January 2, 2007, attempted rape and also is convicted of a specification of the type described in R.C. 2941.1418, 2941.1419, or 2941.1420.

A separate provision, substantively unchanged by the bill, specifies that an offender who is convicted of committing on or after January 1, 2008, kidnapping, aggravated murder, or murder of a person less than 13 years of age in specified circumstances and also is convicted of a "sexual motivation specification" automatically is classified a sex offender/child-victim offender for purposes of the SORN Law.<sup>56</sup>

Currently, an offender sentenced under the Sexually Violent Predator Sentencing Law is sentenced to life imprisonment or an indefinite term consisting of a specified minimum term and a maximum of life imprisonment. An offender sentenced to an indefinite term must serve the entire term in a state correctional institution under the control of the Parole Board, provided that in specified circumstances (including that the offender has served the minimum term) the Parole Board may terminate its control over the offender and transfer control over service of the term to the sentencing court. When control over service of the term is transferred to the sentencing court, in specified circumstances, the court may modify or terminate the offender's prison term or grant the offender conditional or final release. The termination of the offender's prison term

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<sup>55</sup> R.C. 2971.03(F).

<sup>56</sup> R.C. 2971.03(F); also R.C. 2907.02.

does not affect the classification of the offender as a Tier III sex offender/child-victim offender.<sup>57</sup> Consistent with its changes described in the preceding paragraph, the bill expands this provision to specify that the termination of the offender's prison term also does not affect the classification of the offender as a sexual predator, if applicable. The classification of the offender as a sexual predator is permanent and continues until the offender's death as described in the SORN Law.<sup>58</sup>

### **Designation of offender or delinquent child as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender for offense committed prior to January 1, 2008**

The bill enacts mechanisms and procedures for the designation of an offender who committed a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender. The mechanisms and procedures relate to the decisions in *Williams, supra*, and *Bodyke, supra*, and to the changes the bill makes in SORN Law provisions in response to those decisions.

#### **Automatic classification of offender as a sexual predator**

The bill provides that, if a person is convicted of a sexually oriented offense that was committed before January 1, 2008, and if the sexually oriented offense is a "violent sex offense or a designated homicide, assault, or kidnapping offense" and the offender is adjudicated a "sexually violent predator" in relation to that offense (both terms are defined in the Sexually Violent Predator Sentencing Law), the conviction of the offense and the adjudication as a sexually violent predator automatically classifies the offender a sexual predator. If a person is convicted of a sexually oriented offense that is rape in violation of R.C. 2907.02(A)(1)(b) and that was committed before January 1, 2008, and if either the person is sentenced under the Sexually Violent Predator Sentencing Law or the court imposes upon the offender a sentence of life without parole under R.C. 2907.02(B), the conviction of the offense automatically classifies the offender a sexual predator. If a person is convicted of attempted rape that was committed before January 1, 2008, and also is convicted of a specification of the type described in R.C. 2941.1418, 2941.1419, or 2941.1420, the conviction of the offense and the specification automatically classify the offender a sexual predator. If a person is convicted or is adjudicated a delinquent child in a court in another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for a sexually oriented offense that was committed before January 1, 2008, and if, as a result of that

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<sup>57</sup> R.C. 2971.03 to 2971.05.

<sup>58</sup> R.C. 2971.05(D)(3).



conviction, plea of guilty, or adjudication, the person is required, under the law of that jurisdiction to register as a sex offender until the person's death, that conviction, plea of guilty, or adjudication automatically classifies the person a sexual predator, but the person may challenge that classification as described below in "**Challenge to sexual predator or child-victim predator classification by a person convicted or adjudicated in a jurisdiction other than Ohio.**"<sup>59</sup>

If, prior to July 1, 2003, a person was convicted of or was adjudicated a delinquent child for committing a sexually oriented offense, if prior to that date the offender or child was classified a sexual predator in relation to that offense pursuant to the SORN Law as it then existed, and if on or after that date the sexually oriented offense upon which the classification was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of the offense, the classification of the offender or child as a sexual predator remains valid and in effect on and after July 31, 2003, and on and after the bill's effective date.<sup>60</sup>

#### **Automatic classification of offender as a child-victim predator**

If, prior to July 31, 2003, a person was convicted of or was adjudicated a delinquent child for committing a sexually oriented offense, if prior to that date the offender or child was adjudicated a sexual predator in relation to that offense under the SORN Law or Delinquent Child Law as they then existed, if on and after that date the sexually oriented offense upon which the adjudication was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, and if the provision described in the preceding paragraph does not apply, notwithstanding the redesignation of the offense, on and after July 31, 2003, and on and after the bill's effective date, the offender or child automatically is classified a child-victim predator. If a person is convicted or is adjudicated a delinquent child in a court of another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing before January 1, 2008, a child-victim oriented offense, and if, as a result of that conviction or adjudication, the person is required under the law of that jurisdiction to register as a child-victim offender or sex offender until the person's death, that conviction or adjudication automatically classifies the person a child-victim predator for the purposes of the SORN Law, but the person may challenge that classification as described below in "**Challenge to sexual predator or child-victim**

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<sup>59</sup> R.C. 2950.09(A).

<sup>60</sup> R.C. 2950.091(A)(1).



**predator classification by a person convicted or adjudicated in a jurisdiction other than Ohio."**<sup>61</sup>

**Classification of offender or delinquent child as a sexual predator or child-victim predator at a hearing; habitual sex offender or habitual child-victim offender determination**

**In general**

In all cases not described above in the provisions regarding the automatic classification of a person as a sexual predator or child-victim predator, a person who commits before January 1, 2008, a sexually oriented offense may be classified as a sexual predator for purposes of the SORN Law and a person who commits before that date a child-victim oriented offense may be classified a child-victim predator for purposes of that Law only in accordance with the provisions described below in "**Hearing for convicted offender or adjudicated delinquent child**" or "**Hearing for imprisoned offender.**"<sup>62</sup>

**Sexual predator or child-victim predator hearing for convicted offender or adjudicated delinquent child**

Unless the offender is automatically classified a sexual predator or child-victim predator as described above, the judge who is to impose sentence on a person who is convicted of a sexually oriented offense that was committed before January 1, 2008, must conduct a hearing to determine whether the offender is a sexual predator, and the judge who is to impose sentence on a person who is convicted of a child-victim oriented offense that was committed before that date must conduct a hearing to determine whether the offender is a child-victim predator. No hearing is to be conducted if the person automatically is classified a sexual predator or child-victim predator as described above.

The judge who is to impose an order of disposition upon a child who is adjudicated a delinquent child for committing before January 1, 2008, a sexually oriented offense must conduct a hearing to determine whether the child is a sexual predator, and the judge who is to impose an order of disposition upon a child who is adjudicated a delinquent child for committing before that date a child-victim oriented offense must conduct a hearing to determine whether the child is a child-victim predator if, in the particular case, the judge is required by R.C. 2152.82 or R.C. 2152.83(A) to classify the child a juvenile offender registrant, or if R.C. 2152.83(B) applies to the child, the judge conducts a hearing under that provision, and the judge

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<sup>61</sup> R.C. 2950.091(A)(2).

<sup>62</sup> R.C. 2950.09(A) and 2950.091(A)(3).



determines at that hearing that the child is a juvenile offender registrant (see "**Juvenile court procedures regarding sexual predator, habitual sex offender, child-victim predator, and habitual child-victim offender determinations**," below).

The judge must conduct the hearing for an offender prior to sentencing. If the sexually oriented offense or child-victim oriented offense for which sentence is to be imposed is a felony, the judge may conduct the hearing as part of the sentencing hearing required by R.C. 2929.19. The judge may conduct the hearing for a delinquent child at the same time as, or separate from, the dispositional hearing, as specified in the applicable provision of R.C. 2152.82 or 2152.83. The court must give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the child for the sexually oriented offense or child-victim oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor have an opportunity to testify, present evidence, call and examine witnesses and expert witnesses, and cross-examine witnesses and expert witnesses regarding the determination as to whether the offender or child is a sexual predator or child-victim predator. The offender or delinquent child has the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or child.

After reviewing all testimony and evidence presented at the hearing and the factors specified in the next paragraph, the court must determine by clear and convincing evidence whether the subject offender or delinquent child is a sexual predator or child-victim predator. If the court determines that the subject offender or delinquent child is not such a predator, the court must specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order that the court has determined that the offender or child is not a sexual predator or child-victim predator and the reason or reasons why the court determined that the subject offender or child is not such a predator. If the court determines by clear and convincing evidence that the subject offender or delinquent child is such a predator, the court must specify in the offender's sentence and the judgment of conviction that contains the sentence or in the delinquent child's dispositional order that the court has determined that the offender or child is a sexual predator or child-victim predator and that the determination was pursuant to this provision. If the hearing pertains to a sexually oriented offense and the sexually oriented offense in question is an aggravated sexually oriented offense, the court must specify in the offender's sentence and the judgment of conviction that contains the sentence that the offender's offense is an aggravated sexually oriented offense. The offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the child for the sexually oriented offense in question may

appeal as a matter of right the court's determination under this provision as to whether the offender or child is, or is not, a sexual predator or child-victim predator.

In making a determination at a hearing whether an offender or delinquent child is a sexual predator or child-victim predator, the judge must consider all relevant factors, including, but not limited to, all of the following (for child-victim predator hearings, the references in the factors to "sexual offense," "sexually oriented offense," or "sexual offenders" are construed, respectively, as being references to "child-victim oriented offense" and "child-victim offenders"):

- (1) The offender's or child's age;
- (2) The offender's or child's prior criminal or delinquency record regarding all offenses, including, but not limited to, all sexual offenses;
- (3) The age of the victim of the sexually oriented offense for which sentence is to be imposed or disposition is to be made;
- (4) Whether the sexually oriented offense for which sentence is to be imposed or disposition is to be made involved multiple victims;
- (5) Whether the offender or child used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;
- (6) If the offender or child previously has been convicted of, or has been adjudicated a delinquent child for committing an act that if committed by an adult would be, a criminal offense, whether the offender or child completed any sentence or dispositional order imposed for the prior offense or act and, if the prior offense or act was a sex offense or a sexually oriented offense, whether the offender or child participated in available programs for sexual offenders;
- (7) Any mental illness or mental disability of the offender or child;
- (8) The nature of the offender's or child's sexual conduct, sexual contact, or interaction in a sexual context with the victim of the sexually oriented offense and whether the sexual conduct, sexual contact, or interaction in a sexual context was part of a demonstrated pattern of abuse;
- (9) Whether the offender or child, during the commission of the sexually oriented offense for which sentence is to be imposed or disposition is to be made, displayed cruelty or made one or more threats of cruelty;

(10) Any additional behavioral characteristics that contribute to the offender's or child's conduct.<sup>63</sup>

The bill adds language to the Felony Sentencing Law and the Misdemeanor Sentencing Law to require a court that is sentencing an offender for a sexually oriented offense or child victim oriented offense committed prior to January 1, 2008, to conduct the hearing described above.<sup>64</sup>

**Sexual predator or child-victim predator hearing for imprisoned offender; habitual sex offender or habitual child-victim offender determination**

If a person was convicted of a sexually oriented offense or child-victim oriented offense that was committed before January 1, 2008, if the person is serving a term of imprisonment in a state correctional institution as of the bill's effective date, and if the person previously has not received a hearing to determine whether the person is a sexual predator or child-victim predator, the bill specifies duties that the Department of Rehabilitation and Correction (DRC) must undertake. If the hearing relates to a sexually oriented offense and the sexually oriented offense, regardless of the age of the victim of the offense, was aggravated murder, murder, felonious assault, kidnapping, or involuntary manslaughter based on a felony offense and was committed with a sexual motivation, or it was a violent sex offense, DRC must *notify* the court that sentenced the offender of this fact, and the court must conduct a hearing to determine whether the offender is a sexual predator. If the offense is a sexually oriented offense that is not described in the preceding sentence or the offense is a child-victim oriented offense, DRC must determine whether to recommend that the offender be adjudicated a sexual predator or child-victim predator. In making this determination, DRC must consider all relevant factors, including, but not limited to, all of the factors specified in the preceding paragraph. In making this determination, if DRC determines that it will recommend that the offender be adjudicated a sexual predator or child-victim predator it immediately must send its *recommendation* to the court that sentenced the offender, and if it determines that it will not so recommend, it immediately must send its *determination* to that court. In all cases, DRC must enter its determination and recommendation in the offender's institutional record, and the court must proceed as described below.

If DRC sends to a court a *notice* as described in the preceding paragraph with respect to a specified sexually oriented offense, the court must conduct a hearing to determine whether the subject offender is a sexual predator. If DRC sends a court a

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<sup>63</sup> R.C. 2950.09(B) and 2950.091(B).

<sup>64</sup> R.C. 2929.19(A)(2) and 2929.23(B).



*recommendation* that an offender be adjudicated a sexual predator or child-victim predator, the court is not bound by DRC's recommendation, and the court must conduct a hearing to determine whether the offender is a sexual predator or child-victim predator. The court may not make a determination as to whether the offender is, or is not, such a predator without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment.

If DRC sends the court a *determination that it is not recommending* that an offender be adjudicated a sexual predator or child-victim predator, the court may not make any determination as to whether the offender is, or is not, such a predator but must determine whether the offender previously has been convicted of a sexually oriented offense or child-victim predator other than the offense in relation to which DRC made its determination, or, for a recommendation regarding a sexually oriented offense, previously has been convicted of a child-victim oriented offense. The court may conduct a hearing to determine whether the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense but may make the determination without a hearing. However, if the court determines that the offender previously has been convicted of such an offense, it may not subject the offender to the community notification provisions in the SORN Law without a hearing. For a recommendation regarding a sexually oriented offense, in determining whether to impose the community notification requirement, the court, in the circumstances described below in "**Classification of offender or delinquent child as a habitual sex offender or habitual child-victim offender**," must apply the presumption specified in that provision. In all cases, the court must include in the offender's institutional record any determination made under this provision as to whether the offender previously has been convicted of a sexually oriented offense or child-victim oriented offense, and, as such, whether the offender is a habitual sex offender or habitual child-victim offender.

Upon scheduling a hearing under either provision described in the two preceding paragraphs, the court is required to give the offender and the prosecutor who prosecuted the offender for the sexually oriented offense or child-victim oriented offense, or that prosecutor's successor, notice of the date, time, and place of the hearing. If the hearing is to determine whether the offender is a sexual predator, the prosecutor may contact DRC and request that DRC provide to the prosecutor all information DRC possesses regarding the offender that is relevant and necessary for use in determining whether the offender is a predator and that is not privileged or confidential under law. If the prosecutor requests that information, DRC promptly must provide to the prosecutor all information DRC possesses regarding the offender that is not privileged or confidential under law and that is relevant and necessary for making that determination.



If the hearing is to determine whether the offender is a sexual predator or child-victim predator, the court must conduct it in the manner described above in "**Sexual predator or child-victim predator hearing for convicted offender or adjudicated delinquent child**" regarding hearings conducted under that provision and, in determining under this provision whether the offender is a sexual predator or child-victim predator, whichever is applicable, the court must consider all relevant factors, including, but not limited to, the factors specified above in "**Sexual predator or child-victim predator hearing for convicted offender or adjudicated delinquent child.**" After reviewing all testimony and evidence presented at the hearing and the specified factors, the court must determine by clear and convincing evidence whether the offender is a sexual predator or child-victim predator. If the court determines at the hearing that the offender is not such a predator, it also must determine whether the offender previously has been convicted of a sexually oriented offense or child-victim oriented offense other than the offense in relation to which the hearing is being conducted.

Upon making its determinations at the sexual predator or child-victim predator hearing, the court must proceed in one of three specified manners. First, if the court determines that the offender is not a sexual predator or child-victim predator and that the offender previously has not been convicted of a sexually oriented offense or child-victim oriented offense other than the offense in relation to which the hearing is being conducted (and, at a sexual predator hearing, previously has not been convicted of a child-victim oriented offense), it must include in the offender's institutional record its determinations and the reason or reasons why it determined that the offender is not such a predator. Second, if the court determines that the offender is not a sexual predator or child-victim predator but that the offender previously has been convicted of a sexually oriented offense or child-victim oriented offense other than the offense in relation to which the hearing is being conducted (or, at a sexual predator hearing, previously has been convicted of a child-victim oriented offense), it must include in the offender's institutional record its determination that the offender is not such a predator but is a habitual sex offender or habitual child-victim offender and the reasons why it determined that the offender is not such a predator, attach the determinations and the reasons to the offender's sentence, specify that the determinations were pursuant to this provision, and provide a copy of the determinations and the reasons to the offender, the prosecuting attorney, and DRC. The court may impose a requirement that the offender be subject to the community notification provisions contained in the SORN Law. With respect to a sexual predator hearing, the court must apply the presumption described below in "**Classification of offender or delinquent child as a habitual sex offender or habitual child-victim offender**" in determining whether to impose the community notification requirement. The offender cannot be subject to the community notification provisions if the court does not impose the requirement. If the court imposes the

requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender or habitual child-victim offender. Third, if the court determines by clear and convincing evidence that the offender is a sexual predator or child-victim predator, it must enter its determination in the offender's institutional record, attach the determination to the offender's sentence, specify that the determination was pursuant to this provision, and provide a copy of the determination to the offender, the prosecuting attorney, and DRC. The offender and the prosecutor may appeal as a matter of right the judge's determination under these provisions as to whether the offender is, or is not, a sexual predator or child-victim predator, whichever is applicable.

If the hearing is to determine whether the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense or whether to subject the offender to the community notification provisions contained in the SORN Law, upon making the determination, the court must attach the determination or determinations to the offender's sentence and provide a copy to the offender, the prosecuting attorney, and DRC, and may impose a requirement that the offender be subject to the community notification provisions. With respect to a sexual predator hearing, the court must apply the presumption described below in "**Classification of offender or delinquent child as a habitual sex offender or habitual child-victim offender**" in determining whether to impose the community notification requirement. The offender cannot be subject to the community notification provisions relative to the sexually oriented offense or child-victim oriented offense in question if the court does not impose the requirement. If the court imposes the requirement, the offender may appeal the judge's determination that the offender is a habitual sex offender.<sup>65</sup>

The bill specifies that the hearing provisions described above do not require a court to conduct a new hearing for any offender regarding a child-victim oriented offense if, prior to July 31, 2003: (1) the court previously conducted a hearing under the SORN Law as it then existed regarding that offense, while it formerly was classified a sexually oriented offense, to determine whether the offender was a sexual predator, or (2) pursuant to the SORN Law as it then existed, DRC recommended that the offender be adjudicated a sexual predator regarding that offense, while it formerly was classified a sexually oriented offense, and the court denied the recommendation and determined that the offender was not a sexual predator without a hearing. The second provision does not apply if the child-victim oriented offense in question was aggravated murder, murder, felonious assault, kidnapping, or involuntary manslaughter based on a felony and it was committed with a sexual motivation.<sup>66</sup>

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<sup>65</sup> R.C. 2950.09(C) and 2950.091(C).

<sup>66</sup> R.C. 2950.091(C)(3).



## **Review, or permanence, of classification as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender**

A person who has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and who has been determined by a juvenile court judge to be a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender may petition the adjudicating court for a reclassification or declassification pursuant to R.C. 2152.85. A judge who is reviewing a sexual predator or child-victim predator determination for a delinquent child under R.C. 2152.84 or 2152.85 must comply with all the provisions described above relative to sexual predator or child-victim predator determinations. At the hearing, the judge must consider all relevant evidence and information, including, but not limited to, the factors specified above in "**Sexual predator or child-victim predator hearing for convicted offender or adjudicated delinquent child.**" The judge may not enter a determination that the delinquent child no longer is a sexual predator or child-victim predator, unless the judge determines by clear and convincing evidence that the child is unlikely to commit a sexually oriented offense or child-victim oriented offense, whichever is applicable, in the future. If the judge enters a determination under this provision that the delinquent child no longer is a predator, the judge must notify BCII of the determination and include in the notice a statement of the reasons for its determination. Upon receipt of the notification, BCII promptly must notify the sheriff with whom the delinquent child most recently registered of the determination that the child no longer is a sexual predator or child-victim predator.

If an offender who has been convicted of a sexually oriented offense is automatically classified a sexual predator or has been adjudicated a sexual predator relative to the offense pursuant to the provisions described above, or an offender who has been convicted of a child-victim oriented offense is classified a child-victim predator or has been adjudicated a child-victim predator pursuant to those provisions, subject to the provisions described below regarding an appeal by a person convicted or adjudicated in a jurisdiction other than Ohio, the classification or adjudication of the offender as a predator is permanent and continues in effect until the offender's death, and in no case may the classification or adjudication be removed or terminated.<sup>67</sup>

## **Classification of offender or delinquent child as a habitual sex offender or habitual child-victim offender**

### **Automatic classification as a habitual child-victim offender**

If, prior to July 31, 2003, a person was convicted of or adjudicated a delinquent child for committing a sexually oriented offense, if, on and after July 31, 2003, the

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<sup>67</sup> R.C. 2950.09(D) and 2950.091(D).



sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, if, prior to July 31, 2003, a judge determined that the offender or child was a habitual sex offender, and if one or more of the offenses that was the basis of the offender or child being a habitual sex offender remains on and after July 31, 2003 a sexually oriented offense, notwithstanding the redesignation of the offense, the determination and classification of that person as a habitual sex offender remains valid and in effect on and after July 31, 2003, and on and after the bill's effective date.

If, prior to July 31, 2003, a person was convicted of or adjudicated a delinquent child for committing a sexually oriented offense, if, on and after July 31, 2003, the sexually oriented offense no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, if, prior to July 31, 2003, a judge determined that the offender or child was a habitual sex offender, and if none of the offenses that was the basis of the offender or child being a habitual sex offender remains on and after July 31, 2003, a sexually oriented offense, on and after July 31, 2003, and on and after the bill's effective date, the offender or child automatically is classified a habitual child-victim offender.<sup>68</sup>

#### **Classification by a judge**

The judge who is to impose sentence on or after the bill's effective date on a person who is convicted of a sexually oriented offense or child-victim oriented offense that was committed before January 1, 2008, must determine prior to sentencing whether the offender previously has been convicted of or been adjudicated a delinquent child for committing a sexually oriented offense and is a habitual sex offender or a child-victim oriented offense and is a habitual child-victim offender. The judge who is to impose an order of disposition on or after the bill's effective date upon a child who is adjudicated a delinquent child for committing before January 1, 2008, a sexually oriented offense or a child-victim oriented offense must determine prior to entering the order classifying the child a juvenile offender registrant whether the child previously has been convicted of, or been adjudicated a delinquent child for committing, a sexually oriented offense and is a habitual sex offender or a child-victim oriented offense and is a habitual child-victim oriented offender, if either of the following applies:

(1) The judge is required to classify the child a juvenile offender registrant.

(2) R.C. 2152.83(B) applies to the child, and the judge determines at a hearing that the child is a juvenile offender registrant.

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<sup>68</sup> R.C. 2950.091(E)(1) and (2).

If, under the provisions described above, the judge determines that the offender or delinquent child previously has not been convicted of, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense or that the offender otherwise does not satisfy the criteria for being a habitual sex offender or for being a habitual child-victim offender, the judge must specify in the offender's sentence or in the order classifying the child a juvenile offender registrant that the judge has determined that the offender or child is not a habitual sex offender or habitual child-victim offender.

If, under the provisions described above, the judge determines that the offender or delinquent child previously has been convicted of, or been adjudicated a delinquent child for committing, a sexually oriented offense or a child-victim oriented offense and that the offender satisfies all other criteria for being a habitual sex offender or for being a habitual child-victim offender, the offender or child is a habitual sex offender or habitual child-victim offender, and the court must determine whether to impose a requirement that the offender or delinquent child be subject to the community notification provisions in the SORN Law. In making the determination regarding community notification for a habitual sex offender, if at least two of the sexually oriented offenses or child-victim oriented offenses that are the basis of the habitual sex offender determination were committed against a victim who was under 18, it is presumed that subjecting the offender or delinquent child to the community notification provisions is necessary to comply with the General Assembly's determinations, findings, and declarations regarding sex offenders and child-victim offenders (the bill is inconsistent regarding the application of this presumption to habitual child-victim offenders). When a judge determines that an offender or delinquent child is a habitual sex offender or a habitual child-victim offender, the judge must specify in the offender's sentence and the judgment of conviction that contains the sentence or in the order classifying the delinquent child a juvenile offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender or habitual child-victim offender. The judge may impose a requirement in that sentence and judgment of conviction or in that order that the offender or delinquent child be subject to the community notification provisions contained in the SORN Law. Unless the habitual sex offender or habitual child-victim offender also has been adjudicated a sexual predator relative to the sexually oriented offense or child-victim offense in question, or the sexually oriented offense was an aggravated sexually oriented offense, the offender or delinquent child may be subject to those community notification provisions only if the court imposes the requirement in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile offender registrant. If the court determines that an offender is a habitual sex offender or habitual child-victim offender, the determination is permanent and continues in effect

until the offender's death, and in no case may the determination be removed or terminated.

If a court in another state, a federal court, military court, or Indian tribal court, or a court in any nation other than the United States determines a person to be a habitual sex offender or habitual child-victim offender in that jurisdiction, the person is considered to be determined to be a habitual sex offender or habitual child-victim offender in Ohio. If the court in the other jurisdiction subjects the habitual sex offender or child-victim offender to community notification regarding the person's place of residence, the person, as much as is practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in the SORN Law, unless the court that so subjected the person to community notification determines that the person no longer is subject to community notification.<sup>69</sup>

### **Challenge to sexual predator or child-victim predator classification by a person convicted or adjudicated in a jurisdiction other than Ohio**

An offender or delinquent child who is automatically classified as described above as a sexual predator or child-victim predator based on a conviction or adjudication in a court of another state, in a federal court, military court, or Indian tribal court, or in a court of any nation other than the United States for committing a sexually oriented offense or child-victim oriented offense may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the offender or child resides or temporarily is domiciled to enter a determination that the offender or child is not an adjudicated sexual predator or child-victim predator in Ohio for purposes of the SORN Law requirements or its community notification provisions if the offender or child is required under the law of that other jurisdiction to register as a sex offender or child-victim offender until the offender's or child's death. The court may enter a determination that the offender or delinquent child is not an adjudicated sexual predator or an adjudicated child-victim predator in Ohio for purposes of the SORN Law requirements or the community notification provisions only if the offender or child proves by clear and convincing evidence that the requirement of the other jurisdiction that the offender or child register as a sex offender or child-victim offender until the offender's or child's death is not substantially similar to a classification as a sexual predator or child-victim predator for purposes of the SORN Law. If the court enters a determination that the offender or delinquent child is not an adjudicated sexual predator or child-victim predator in Ohio for those purposes, the court must include in the determination a statement of the reason or reasons why it so determined.<sup>70</sup>

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<sup>69</sup> R.C. 2950.09(E) and 2950.091(E)(3) and (4).

<sup>70</sup> R.C. 2950.09(F) and 2950.091(F).



## **Transition provisions regarding prior SORN Law change regarding child-victim oriented offenses**

The bill provides that if, prior to July 31, 2003, an offender or delinquent child was adjudicated a sexual predator or was determined to be a habitual sex offender and if, on and after July 31, 2003, the sexually oriented offense upon which the classification or determination was based no longer is considered a sexually oriented offense but instead is a child-victim oriented offense, notwithstanding the redesignation of that offense, on and after July 31, 2003, all of the following apply:<sup>71</sup>

(1) The provisions enacted in the bill regarding child-victim predator and habitual child-victim offender determinations in R.C. 2950.091(A)(1) and (2) or (E)(1) and (2) apply to the offender or child, and the judge's classification or determination made prior to July 31, 2003, are to be considered for all purposes to be a classification or determination that classifies the offender or child as described in those divisions.

(2) The offender's or child's classification or determination under those provisions enacted in the bill are to be considered, for purposes of the law governing the duration of a person's SORN Law duties and for all other purposes, to be a continuation of the classification or determination made prior to July 31, 2003.

(3) The offender's or child's duties under the SORN Law relative to that classification or determination are to be considered for all purposes to be a continuation of the duties related to that classification or determination as they existed prior to July 31, 2003.

## **Juvenile court procedures regarding sexual predator, habitual sex offender, child-victim predator, and habitual child-victim offender determinations**

Currently, under the Delinquent Child Law, if a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, the juvenile court is required in certain circumstances and is authorized in other circumstances to classify the child a juvenile offender registrant and require the child to comply with the duties imposed under the SORN Law. If the court classifies the child a juvenile offender registrant, it also must determine whether the child is a Tier I, Tier II, or Tier III sex offender/child-victim offender and, in specified circumstances, to classify the child a PRQJO registrant. The bill expands the provisions of that Law to require the juvenile court in specified circumstances to determine whether a child who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense prior to January 1, 2008, and is classified a juvenile offender

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<sup>71</sup> R.C. 2951.09(G).



registrant is a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender and repeals the provisions that relate to classification of the child as a PRQJO registrant.<sup>72</sup>

**Mandatory juvenile offender registrant classification at time of disposition, if repeat offender**

Currently, a juvenile court that adjudicates a child a delinquent child is required to issue as part of the dispositional order an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with the SORN Law's requirements if: (1) the child's delinquent act is a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 2002, (2) the child was 14, 15, 16, or 17 at the time of the offense, (3) the court determines that the child previously was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the prior offense was committed and regardless of the child's age at the time of the offense, and (4) the court is not required to classify the child as both a juvenile offender registrant and a PRQJO registrant. An order required under this provision is issued when the judge makes the order of disposition for the delinquent child. Prior to issuing the order, the court generally must conduct a hearing under provisions described below to determine whether the child is a Tier I, II, or III sex offender/child-victim offender. The order must contain specified information, including the child's Tier designation, and be provided to specified persons. If the court determines that the child is a Tier III sex offender/child-victim offender and the child is not a PRQJO registrant, the judge may impose a requirement subjecting the child to the SORN Law's victim and community notification provisions. If a court issued an order under this provision before January 1, 2008, and if other specified circumstances apply, not later than February 1, 2008, the court was required to terminate the order and issue a new order that reclassified the child as both a juvenile offender registrant and a PRQJO registrant.<sup>73</sup>

The bill modifies some of the existing provisions described above, as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. Except as described below in (3), the bill does not change the existing provisions described above, with respect to delinquent acts committed on or after January 1, 2008.

Under the bill:<sup>74</sup>

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<sup>72</sup> R.C. 2152.82 to 2152.851, and repeal of R.C. 2152.86.

<sup>73</sup> R.C. 2152.82.

<sup>74</sup> R.C. 2152.82.

(1) If the child adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense committed the act prior to January 1, 2008, prior to issuing a mandatory order under those provisions that classifies the delinquent child a juvenile offender registrant, the court must conduct a hearing under provisions described below to determine whether the child is a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender.

(2) If the child adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense committed the act prior to January 1, 2008, the court must include in the order classifying the child a juvenile offender registrant any determination that the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender that the judge makes under the bill and any related information required or authorized under the provision under which the determination is made, including, but not limited to, any requirements imposed by the court subjecting a child who is a habitual sex offender or habitual child-victim offender to community notification.

(3) The bill repeals the existing provisions that, in specified circumstances, require the reclassification of a delinquent child as a PRQJO registrant in conformity with the bill's repeal of the PRQJO registrant provisions.

(4) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing under the provisions described above with respect to the child (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described below in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**

Currently, a juvenile court that adjudicates a child a delinquent child is required to issue as part of the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, to issue at the time of the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with the SORN Law's requirements if: (1) the child's delinquent act is a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 2002, (2) the child was 16 or 17 at the time of the offense, and (3) the court was not required under the provisions described above to classify the child a juvenile offender registrant or as both a juvenile offender registrant and a PRQJO registrant. Prior to issuing the order, the court generally must conduct a hearing under provisions described below to determine

whether the child is a Tier I, II, or III sex offender/child-victim offender. The order must contain specified information, including the child's Tier designation, and be provided to specified persons. If the court determines that the child is a Tier III sex offender/child-victim offender and the child is not a PRQJO registrant, the judge may impose a requirement subjecting the child to the SORN Law's victim and community notification provisions. If a court issued an order under this provision before January 1, 2008, and if other specified circumstances apply, not later than February 1, 2008, the court was required to terminate the order and issue a new order that reclassified the child as both a juvenile offender registrant and a PRQJO registrant.<sup>75</sup>

The Ohio Supreme Court addressed the application of the provisions described above in *State ex rel. Jean-Baptiste v. Kirsch*.<sup>76</sup> In that case, a 17-year old committed a sexually oriented offense, he was adjudicated a delinquent child the day after his 18th birthday, he was committed to the custody of the Department of Youth Services for at least one year and not longer than his attainment of age 21, approximately 17 months later he was transferred to an adult jail under an immigration detainer, he attained age 21 while in the jail and was discharged on that day from the Department's legal custody (but he still remained in the jail), he was released from the jail a few weeks after his attainment of age 21, the juvenile judge scheduled a juvenile-offender classification hearing under the provisions described above for a date approximately one month after his attainment of age 21, and he challenged the jurisdiction of the juvenile court to conduct the hearing. In its decision, the Supreme Court held that no statute gives a juvenile court jurisdiction to conduct a juvenile-offender classification hearing under the provisions described above after the subject delinquent child's attainment of age 21 and that the provisions described above require that a juvenile court that is conducting a juvenile-offender classification hearing conduct it at the time of the juvenile offender's release from the custody of a secure facility, not at some time after that release.

The bill requires a juvenile court that adjudicates a child a delinquent child to issue as part of *or subsequent to* (added by the bill) the dispositional order or, if the court commits the child for the delinquent act to the custody of a secure facility, to issue at the time of *or subsequent to* (added by the bill) the child's release from the secure facility, an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with the SORN Law's requirements if the criteria described in clauses (1) to (3) of the preceding paragraph apply. It also modifies some of the existing provisions described above, as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. It repeals the existing provisions

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<sup>75</sup> R.C. 2152.83(A), (C)(2) and (3), (E), and (F).

<sup>76</sup> *State ex rel. Jean-Baptiste v. Kirsch* (2012), 134 Ohio St. 421.



described above that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" Except for that repeal and as described below in (4), the bill does not change the existing provisions described above, with respect to delinquent acts committed on or after January 1, 2008.

Under the bill:<sup>77</sup>

(1) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, prior to issuing a mandatory order under those provisions that classifies the delinquent child a juvenile offender registrant, the court must conduct a hearing to determine whether the child is a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender.

(2) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, the court must include in the order classifying the child a juvenile offender registrant any determination that the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender and any related information required or authorized under the provision under which the determination is made, including, but not limited to, any requirements imposed by the court subjecting a child who is a habitual sex offender or habitual child-victim offender to community notification.

(3) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, if the judge issues an order classifying the child a juvenile offender registrant, and if the court determines that the child is a habitual sex offender or habitual child-victim offender, the judge may impose a requirement subjecting the child to community notification and include it in the order.

(4) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing under the provisions described above with respect to the child (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

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<sup>77</sup> R.C. 2152.83(A), (C)(2) and (3), (E), and (F).

### **Discretionary classification at time of disposition or release, if no prior mandatory classification**

Currently, a juvenile court that adjudicates a child a delinquent child, on the judge's own motion, may conduct at the time of disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, may conduct on its own motion or the recommendation of a specified official at the time of the child's release from the secure facility, a hearing for the purposes described in the next paragraph if: (1) the child's delinquent act is a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 2002, (2) the child was 14 or 15 at the time of the offense, and (3) the court was not required to classify the child a juvenile offender registrant or as both a juvenile offender registrant and a PRQJO registrant.

The hearing described in the preceding paragraph is to review the effectiveness of the disposition made of the child and of any treatment provided for the child placed in a secure setting and to determine whether the child should be classified a juvenile offender registrant. If the judge conducts the hearing, upon completion of the hearing, the judge, after consideration of specified factors, must either: (1) decline to issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with the requirements of the SORN Law, or (2) issue an order that classifies the child a juvenile offender registrant and specifies that the child has a duty to comply with the requirements of the SORN Law. Prior to issuing such an order, the judge generally must conduct a hearing to determine whether the child is a Tier I, II, or III sex offender/child-victim offender. If the judge issues such an order, it also must state the determination the judge makes at the hearing held under the provisions described in the preceding sentence as to whether the child is a Tier I, II, or III sex offender/child-victim offender. If the judge issues such an order, it must contain specified information, including the child's Tier designation, and be provided to specified persons. If the court determines that the child is a Tier III sex offender/child-victim offender and the child is not a PRQJO registrant, the judge may impose a requirement subjecting the child to the SORN Law's victim and community notification provisions. If a court issued an order under the provisions described above before January 1, 2008, and if other specified circumstances apply, not later than February 1, 2008, the court was required to terminate the order and issue a new order that reclassified the child as both a juvenile offender registrant and a PRQJO registrant.<sup>78</sup>

The bill modifies the existing provisions described above so that they authorize a juvenile court to conduct the specified hearing at the time of *or subsequent to* the

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<sup>78</sup> R.C. 2152.83(B) to (F).



disposition of the child or, if the court commits the child for the delinquent act to the custody of a secure facility, at the time of *or subsequent to* the child's release from the secure facility, if the criteria described in clauses (1) to (3) of the second preceding paragraph apply (the bill adds the words "or subsequent to" to these provisions; the changes relate to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**"). It also modifies some of the existing provisions described above, as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. It repeals the existing provisions described above that pertain to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" Except for that repeal, the bill does not change the existing provisions described above, with respect to delinquent acts committed on or after January 1, 2008.

Under the bill:<sup>79</sup>

(1) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, prior to issuing an order under those provisions that classifies the delinquent child a juvenile offender registrant, the court must conduct a hearing to determine whether the child is a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender.

(2) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, and the judge after the hearing issues an order classifying the child a juvenile offender registrant, the judge must state in the order the judge's determination made as described in (1) whether the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender.

(3) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, if the judge issues an order classifying the child a juvenile offender registrant, and if the court determines that the child is a habitual sex offender or habitual child-victim offender, the judge may impose a requirement subjecting the child to community notification and include it in the order.

(4) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, the bill expands the

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<sup>79</sup> R.C. 2152.83(B) to (F).

factors that the judge must consider at the hearing to determine whether to classify the child a juvenile offender registrant. Under the bill, in addition to the factors that currently must be considered, the judge must consider all of the factors described above in the last paragraph under "**Sexual predator or child-victim predator hearing for convicted offender or adjudicated delinquent child.**"

(5) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing under the provisions described above with respect to the child (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

**Juvenile court hearing for determination of additional classification of a juvenile offender registrant**

Currently, if a juvenile court adjudicates a child a delinquent child and classifies the child a juvenile offender registrant, before issuing the order that classifies the child a juvenile offender registrant, the court generally must conduct a hearing to determine whether to classify the child a Tier I, II, or III sex offender/child-victim offender. When a judge issues the order that classifies the child a juvenile offender registrant, in addition to the other required statements and information, the judge must include in the order its determination made as to the child's Tier classification. When a judge issues an order that reclassifies a delinquent child from one Tier of sex offender/child-victim offender to a different Tier, in addition to the other required statements and information, the judge must include in the order its determination as to the reclassification of the child and the Tier to which the child is reclassified. These provisions do not apply to a delinquent child if the court is required to classify the child as both a juvenile offender registrant and a PRQJO registrant.<sup>80</sup>

The bill modifies some of the existing provisions described above, as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. It repeals the existing provision described above that pertains to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" Except for that repeal and as described below in (4), the bill does not change the existing provisions described above with respect to delinquent acts committed on or after January 1, 2008.

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<sup>80</sup> R.C. 2152.831.

Under the bill:<sup>81</sup>

(1) If a child is adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, at the hearing required by existing law the judge must determine as enacted in the bill and described above whether the child is a sexual predator, a habitual sex offender, a child-victim predator, or a habitual child-victim offender and must otherwise comply with those provisions.

(2) When a judge issues the order that classifies the child a juvenile offender registrant, if the child committed the delinquent act prior to January 1, 2008, in addition to the other statements and information required by the section under which the order is issued, the judge must include in the order its determination made at the hearing required by existing law whether the child is a sexual predator, a child-victim predator, a habitual sex offender, or a habitual child-victim offender.

(3) When a judge issues an order that reclassifies a delinquent child who committed the delinquent act prior to January 1, 2008, from a classification as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender to one of those other classifications, that removes a child from one of those classifications and specifies that the child remains a juvenile offender registrant, or that specifies that the child no longer is a juvenile offender registrant, in addition to the other statements and information required by the section under which the order is issued, the judge must include in the order its determination as to the reclassification, retention, or removal of the child and, if reclassified, the new classification of the child.

(4) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing or issue an order under the provisions described above (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

**Juvenile court reclassification or declassification of a delinquent child as a juvenile offender registrant – mandatory upon completion of disposition, and continuation, modification, or termination of prior registration order**

Currently, when a juvenile court judge issues an order that classifies a delinquent child a juvenile offender registrant and specifies that the child has a duty to comply with the requirements of the SORN Law, upon completion of the disposition of that child made for the offense on which the juvenile offender registrant order was based, the judge or the judge's successor is required to conduct a hearing to review the

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<sup>81</sup> R.C. 2152.831.

effectiveness of the disposition and of treatment provided for the child, to determine the risks that the child might re-offend, to determine whether the classification of the child as a juvenile offender registrant should be continued or terminated, and, generally, to determine whether its prior determination as to whether the child is a Tier I, II, or III sex offender/child-victim offender should be continued or modified.

Upon completion of the hearing described in the preceding paragraph, the judge, after consideration of all relevant factors, including, but not limited to, the factors described above in the last paragraph of "**Discretionary classification at time of disposition or release, if no prior mandatory classification,**" the judge must enter one of three types of orders. The first type of order is an order that continues the classification of the child as a juvenile offender registrant and the prior Tier classification of the child. If the judge issues such an order, the prior classification and Tier determination remain in effect. The second type of order, permitted only when the prior order was not a mandatory juvenile offender registrant order, is an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the requirements of the SORN Law. This type of order also terminates all prior Tier classifications of the child/child-victim offender. The third type of order, permitted regardless of whether the prior order was a mandatory or a discretionary juvenile offender registrant order, is an order that continues the classification of the child as a juvenile offender registrant and that modifies the prior Tier classification of the child. This type of order cannot increase to a higher Tier the Tier classification of the child, but it may decrease the Tier classification of the child. If the judge issues an order that declassifies or reclassifies a child, it must contain specified information, including the child's Tier designation, and be provided to specified persons. If a judge issues the first or third type of order described above, the child's attainment of 18 or 21 years of age does not affect or terminate the order. The provisions described in this paragraph and the preceding paragraph do not apply to a delinquent child who is classified as both a juvenile offender registrant and a PRQJO registrant.<sup>82</sup>

The bill modifies some of the existing provisions described above as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. It repeals the existing provision described above that pertains to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" Except for that repeal and as described below in (6), the bill does not change the existing provisions described above with respect to delinquent acts committed on or after January 1, 2008.

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<sup>82</sup> R.C. 2152.84.

Under the bill:<sup>83</sup>

(1) When a juvenile court judge conducts the required hearing upon completion of the disposition of the child, if the child committed the delinquent act prior to January 1, 2008, in addition to reviewing the effectiveness of the disposition and of treatment provided for the child, determining the risks that the child might re-offend, and determining whether the classification of the child as a juvenile offender registrant should be continued or terminated, the court must determine, if applicable, whether the prior classification of the child as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender should be continued or modified. Upon completion of the hearing for a delinquent child who committed the delinquent act prior to January 1, 2008, the judge, after consideration of the specified and other relevant factors, must enter one of the following six types of orders:

(a) An order that continues the classification of the child as a juvenile offender registrant and continues any sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender determination included in the order;

(b) If the prior order was a mandatory juvenile offender registrant order that includes a determination that the child is a sexual predator or child-victim predator, an order that: (i) contains a determination that the child no longer is a sexual predator, all reasons for that determination, and either a determination that the child is a habitual sex offender or a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender, or (ii) contains a determination that the child no longer is a child-victim predator, all reasons for that determination, and either a determination that the child is a habitual child-victim offender or a determination that the child remains a juvenile offender registrant but is not a child-victim predator or child-victim offender;

(c) If the prior order was a mandatory juvenile offender registrant order that does not include a determination that the child is a sexual predator or child-victim predator but includes a determination that the child is a habitual sex offender or a habitual child-victim offender, an order that: (i) contains a determination that the child no longer is a habitual sex offender and a determination that the child remains a juvenile offender registrant and is not a habitual child-victim offender, or (ii) contains a determination that the child no longer is a habitual child-victim offender and a determination that the child remains a juvenile offender registrant but is not a habitual sex offender;

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<sup>83</sup> R.C. 2152.84.

(d) If the prior order was a discretionary juvenile offender registrant order that includes a determination that the child is a sexual predator or child-victim predator, an order that: (i) contains a determination that the child no longer is a sexual predator, all reasons for that determination, and either a determination that the child is a habitual sex offender, a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender, or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with SORN Law requirements, or (ii) contains a determination that the child no longer is a child-victim predator, all reasons for that determination, and either a determination that the child is a habitual child-victim offender, a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender, or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with SORN Law requirements;

(e) If the prior order was a discretionary juvenile offender registrant order that does not include a determination that the child is a sexual predator or child-victim predator but includes a determination that the child is a habitual sex offender or a habitual child-victim offender, an order that: (i) contains a determination that the child no longer is a habitual sex offender and either a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with SORN Law requirements, or (ii) contains a determination that the child remains no longer is a habitual child-victim offender and either a determination that the child is a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with SORN Law requirements;

(f) If the prior order was a discretionary juvenile offender registrant order that does not include a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender determination, an order that contains a determination that the delinquent child no longer is a juvenile offender registrant and no longer has a duty to comply with SORN Law requirements.

(2) A judge may issue an order under the provisions described above in (1)(a) to (f) that contains a determination that a child no longer is a sexual predator or no longer is a child-victim predator only if the judge, in accordance with specified procedures enacted in the bill and described in the preceding parts of this analysis, determines at the hearing by clear and convincing evidence that the child classified as a sexual predator is unlikely to commit a sexually oriented offense in the future or that the child classified as a child-victim predator is unlikely to commit a child-victim oriented

offense in the future. If the judge issues that type of order, the judge must provide specified notifications, and the recipient must comply with specified requirements. A judge may not issue an order under the provisions described above in (1)(a) to (f) that reclassifies a child from a habitual sex offender or habitual child-victim offender classification to a sexual predator or child-victim predator classification, or that reclassifies a child from a juvenile offender registrant classification to a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender classification.

(3) If a judge issues an order of a type described above in (1)(a) to (f) that reclassifies the delinquent child, other than one that continues the prior classification of the child or that contains a determination that the child no longer is a sexual predator or a child-victim predator, the judge must provide a copy of the order to BCII, and BCII, upon receipt of the order, promptly must notify the sheriff with whom the child most recently registered under the SORN Law of the reclassification.

(4) If a judge issues an order of a type described above in (1)(a) to (f), the judge must notify the persons specified under existing law for notification when an order is issued under existing law, the order remains in effect as specified under existing law for orders issued under existing law, and the child's attainment of 18 or 21 years of age does not affect or terminate the order.

(5) In making a decision under the provisions described above with respect to a delinquent child who committed the delinquent act prior to January 1, 2008, a judge must consider all relevant factors, including, but not limited to, the factors described above in the last paragraph of "**Discretionary classification at time of disposition or release, if no prior mandatory classification.**"

(6) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing or issue an order under the provisions described above (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

**Juvenile court reclassification or declassification of a delinquent child as a juvenile offender registrant – reclassification or declassification upon petition of juvenile offender registrant**

Currently, regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of a specified period of time (see the next paragraph), a delinquent child who has been classified a juvenile offender registrant generally may petition the judge who made the classification, or that judge's successor,

to do one of the following, depending upon the nature of the order classifying the child a juvenile offender registrant:

(1) If that order also classifies the child a Tier III sex offender/child-victim offender, to enter, as applicable, an order that reclassifies the child as either a Tier I or a Tier II sex offender/child-victim offender, the reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements;

(2) If that order also classifies the child a Tier II sex offender/child-victim offender, to enter, as applicable, an order that reclassifies the child as a Tier I sex offender/child-victim offender, the reasons for that reclassification, and a determination that the child remains a juvenile offender registrant, or an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements;

(3) If that order also classifies the child a Tier I sex offender/child-victim offender, to enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements.

A child who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, regardless of when the offense was committed, and who has been classified a juvenile offender registrant relative to that offense may file a petition as described above requesting reclassification or declassification after the expiration of a specified period of time. The child initially may file a petition not earlier than three years after the entry of the juvenile court judge's order after the mandatory hearing conducted under R.C. 2152.84, as described above, after completion of the child's disposition made for the offense to review the disposition and treatment effectiveness, determine re-offend risks, and whether to continue that classification. After the child's initial filing of a petition as described in the preceding sentence, the child may file a second petition not earlier than three years after the judge enters an order deciding the petition under that paragraph. After the child's filing of a petition as described in the preceding sentence, thereafter, the child may file a petition upon the expiration of five years after the judge enters an order deciding the petition under that provision or the most recent petition the child has filed under this paragraph.

Upon the filing of a petition requesting declassification or reclassification, the judge may review the prior classification in question and, upon consideration of all relevant factors and information, including, but not limited to, the factors described

above in the last paragraph of "**Discretionary classification at time of disposition or release, if no prior mandatory classification,**" the judge must enter either an order denying the petition or an order that reclassifies or declassifies the child in the requested manner. If a judge denies a petition, the prior classification of the delinquent child as a juvenile offender registrant and the prior Tier classification remain in effect. If a judge issues an order that declassifies a child, the order also terminates all prior determinations that the child is a Tier I, II, or III sex offender/child-victim offender. When the judge issues an order, it must contain specified information and be provided to specified persons, and the child's attainment of 18 or 21 years of age does not affect or terminate the order. The provisions described in this paragraph and the two preceding paragraphs do not apply to a delinquent child who is classified as both a juvenile offender registrant and a PRQJO registrant.<sup>84</sup>

The bill modifies some of the existing provisions described above as they apply to a delinquent child who committed the delinquent act in question prior to January 1, 2008. It repeals the existing provision described above that pertains to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant provisions.**" Under the bill:<sup>85</sup>

(1) Regardless of when the delinquent child was classified a juvenile offender registrant, upon the expiration of the applicable period of time specified under existing law, a delinquent child who has been classified a juvenile offender registrant for a delinquent act committed prior to January 1, 2008, generally may petition the judge who made the classification, or that judge's successor, to do one of the following, depending upon the nature of the order classifying the child a juvenile offender registrant:

(a) If that order also includes a determination by the judge that the child is a sexual predator or child-victim predator and if that determination remains in effect, enter, as applicable, either of the following:

(i) An order that contains a determination that the child no longer is a sexual predator, all reasons for that determination, and either a determination that the child is a habitual sex offender or a determination that the child remains a juvenile offender registrant but is not a sexual predator or habitual sex offender;

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<sup>84</sup> R.C. 2152.85.

<sup>85</sup> R.C. 2152.85.

(ii) An order that contains a determination that the child no longer is a child-victim predator, all reasons for that determination, and either a determination that the child is a habitual child-victim offender or a determination that the child remains a juvenile offender registrant but is not a child-victim predator or habitual child-victim offender.

(b) If that order does not also include a sexual predator or child-victim predator determination as described above in (1)(a) but includes a determination by the judge that the child is a habitual sex offender or habitual child-victim offender, and if that determination remains in effect, enter, as applicable, either of the following:

(i) An order that contains a determination that the child no longer is a habitual sex offender and either a determination that the child remains a juvenile offender registrant or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements;

(ii) An order that contains a determination that the child no longer is a habitual child-victim offender and either a determination that the child remains a juvenile offender registrant or a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements.

(c) If that order does not include a sexual predator or child-victim predator determination or a habitual sex offender or habitual child-victim offender determination as described above in (1)(a) or (b), enter an order that contains a determination that the child no longer is a juvenile offender registrant and no longer has a duty to comply with the SORN Law's requirements.

(2) If a judge denies a petition filed under the bill requesting any of the changes described above in (1)(a) to (c), the prior classification of the delinquent child as a juvenile offender registrant and the prior determination that the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender remain in effect. If a judge issues an order that declassifies a child, the order also terminates all prior determinations that the child is a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender.

(3) A judge may issue an order under the provisions described above in (1)(a) to (c) that contains a determination that a child who committed the delinquent act prior to January 1, 2008, no longer is a sexual predator or no longer is a child-victim predator only if the judge conducts a hearing and, in accordance with procedures specified in the bill and described in the preceding parts of this analysis, determines at the hearing by clear and convincing evidence that the child classified as a sexual predator is unlikely to commit a sexually oriented offense in the future or that the child classified as a child-

victim predator is unlikely to commit a child-victim oriented offense in the future. If the judge issues that type of order, the judge must provide specified notifications, and the recipient must comply with specified requirements. A judge may issue an order under the provisions described above in (1)(a) that contains a determination that a child who committed the delinquent act prior to January 1, 2008, is a habitual sex offender or habitual child-victim offender only if the judge conducts a hearing and determines at the hearing that the child is a habitual sex offender or habitual child-victim offender. If the judge issues that type of order, the judge may impose a requirement subjecting the child to community notification provisions as described in the applicable division.

(4) The bill specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability of a juvenile court to conduct a hearing or issue an order under the provisions described above (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").

#### **Transition provisions regarding juvenile offender registrants**

Existing law provides that if, prior to January 1, 2008, a judge issued an order that classified a delinquent child a juvenile offender registrant based on an adjudication for a sexually oriented offense or a child-victim oriented offense as those terms were defined in the pre-S.B. 10 SORN Law, and if, on and after January 1, 2008, the offense upon which the order was based is a sexually oriented offense or a child-victim oriented offense as those terms are defined under the post-S.B. 10 SORN Law, notwithstanding the changes to the provisions under which the order was issued that are made on January 1, 2008, on and after that date, the order remains in effect for the period described in the section "under which it was issued as that section exists on and after January 1, 2008," subject to subsequent modification or termination by the juvenile court or, if the child was classified a PRQJO registrant, for the period of time prescribed for such children, and the duty to comply with the SORN Law requirements is considered for all purposes to be "a continuation of the duty imposed upon the child prior to January 1, 2008, under the order that classified the child a juvenile offender registrant."<sup>86</sup>

The bill modifies this existing provision in three ways. First, it changes the portion of the provision that specifies the general duration of the order, so that the portion states that the order generally remains in effect for the period described in the section "under which it *originally* was issued" (instead of the section "under which it was issued as that provision exists on and after January 1, 2008"). Second, it removes the references to PRQJO registrants as part of its repeal of all PRQJO registrant provisions described below in "**Repeal of public registry-qualified juvenile offender registrant**

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<sup>86</sup> R.C. 2152.851.



**provisions."** Third, it changes the portion of the provision that specifies that the duty to comply with the SORN Law requirements is considered to be a continuation of the child's prior duty, so that the portion states that the duty is considered to be "a continuation of the *original* duty imposed upon the child prior to January 1, 2008, under the order that classified the child a juvenile offender registrant."<sup>87</sup>

### **Juvenile court jurisdiction with respect to classification, reclassification, and declassification hearings**

The bill adds language to the existing provision that delineates the jurisdiction of juvenile courts to specify that, regardless of the person's age, a juvenile court retains jurisdiction over a person who has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense on or after January 1, 2002, for the purpose of imposing, modifying, or terminating an order under R.C. 2152.82, 2152.83, 2152.831, 2152.84, and 2152.85, all as described above, with respect to the classification, reclassification, or declassification of a child in a Tier (as under existing law) or as a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender (as under the bill).<sup>88</sup>

## **Public registry-qualified juvenile offender registrants under S.B. 10**

### **In general, and unconstitutionality**

Under S.B. 10, some children who are adjudicated delinquent children on or after January 1, 2008 (the act's general effective date), for committing a specified serious sexually oriented offense must be classified by the adjudicating juvenile court as PRQJO registrants. Some children who were adjudicated delinquent children prior to January 1, 2008, for committing a specified serious sexually oriented offense must be reclassified by the adjudicating juvenile court as PRQJO registrants.<sup>89</sup> PRQJO registrants are subject to more stringent registration and notification requirements (generally, lifetime), and more stringent eligibility criteria for possible reclassification, than are other children who are adjudicated delinquent children for committing a sexually oriented offense or child-victim oriented offense, are classified juvenile offender registrants, but who are not classified as PRQJO registrants.<sup>90</sup> Also, information regarding PRQJO registrants is included on the state's Internet database of sex offenders, but information is not included on that database for juvenile offender registrants who are not classified as

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<sup>87</sup> R.C. 2152.851(A).

<sup>88</sup> R.C. 2151.23(L).

<sup>89</sup> R.C. 2152.02(Y), 2152.82(D), 2152.83(F), 2152.86, and 2950.01(N).

<sup>90</sup> R.C. 2950.04, 2950.05, 2950.06, 2950.07, 2950.10, 2950.11, and 2950.15.

PRQJO registrants.<sup>91</sup> In addition, a sheriff may cause to be publicly disseminated on the Internet information about a delinquent child who is classified a PRQJO registrant but may not cause information to be publicly disseminated on the Internet about other delinquent children.<sup>92</sup>

The Ohio Supreme Court, in its decision in *In re C.P.*,<sup>93</sup> held that, to the extent that they impose automatic, lifelong registration and notification requirements on juvenile sex offenders tried within the juvenile court system, the PRQJO registrant provisions of the post-S.B. 10 SORN Law violate the constitutional prohibition against cruel and unusual punishment contained in the 8th Amendment to the U.S. Constitution and Section 9, Article I of the Ohio Constitution and the Due Process Clause of the 14th Amendment to the U.S. Constitution and Section 16, Article I of the Ohio Constitution.

### **Repeal of public registry-qualified juvenile offender registrant provisions**

In light of the Ohio Supreme Court's decision in *In re C.P.*, *supra*, the bill repeals all existing SORN Law and Delinquent Child Law provisions that provide for the classification of delinquent children as PRQJO registrants or that impose special duties or requirements upon delinquent children who are so classified by a juvenile court. Specifically, the bill repeals the provisions that: (1) require the classification of some children who are, or previously were, adjudicated delinquent children for committing a specified serious sexually oriented offense to be classified by the adjudicating juvenile court as PRQJO registrants,<sup>94</sup> (2) subject PRQJO registrants to more stringent registration and notification requirements, and more stringent eligibility criteria for possible reclassification, than are other children who are adjudicated delinquent children for committing a sexually oriented offense or child-victim oriented offense, are classified juvenile offender registrants, but who are not classified as PRQJO registrants,<sup>95</sup> (3) include information regarding PRQJO registrants on the state's Internet database of sex offenders,<sup>96</sup> and (4) allow a sheriff to cause to be publicly disseminated on the Internet information about a delinquent child who is classified a PRQJO

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<sup>91</sup> R.C. 2950.13.

<sup>92</sup> R.C. 2950.081.

<sup>93</sup> *In re C.P.* (2012), 131 Ohio St.3d 513.

<sup>94</sup> Repeal of R.C. 2152.82(D), 2152.83(F), 2152.86, and 2950.01(N); also R.C. 2152.02(Y).

<sup>95</sup> Repeal of R.C. 2950.04(A)(3)(b); also R.C. 2950.04(A)(4), (A)(5), (C)(4), and (C)(5), 2950.05(A), (B), (D), and (E), 2950.06(A), (B)(3), (D), (E), (G), and (H), 2950.07(A)(6) and (B), 2950.10(B), 2950.11(B) and (F), and 2950.15.

<sup>96</sup> R.C. 2950.13(A)(11).

registrant (but see "**Internet dissemination by sheriff of information about juvenile offender registrant,**" below).<sup>97</sup>

In addition to the changes described in the preceding paragraph relative to PRQJO registrants, the bill repeals the following provisions of existing law that pertain or refer to PRQJO registrants:<sup>98</sup> (1) provisions that pertain to the release in a criminal records check of information regarding an adjudication or conviction of a child for a sexually oriented offense when the child was classified a PRQJO registrant, (2) a provision that authorizes the AG or an employee to inspect sealed juvenile records to determine whether a child is a PRQJO registrant, (3) provisions that include repealed R.C. 2152.86 within a range of sections that are specified as applying to certain delinquent children, (4) provisions that specify that certain SORN Law-related hearing provisions do not apply when a court is required to classify a delinquent child as a PRQJO registrant, (5) a provision that excludes PRQJO registrants from the operation of a mechanism under which other juvenile offender registrants may be reclassified by a juvenile court, (6) a provision that sets forth a special transitional provision for PRQJO registrants from pre-S.B. 10 law to post-S.B. 10 law, (7) a provision that includes PRQJO registrants in the list of categories of offenders included in the General Assembly's statement of intent in enacting the SORN Law, (8) provisions that set forth special times of notification to PRQJO registrants regarding their SORN Law duties, (9) provisions that identify the transitional reclassification mechanism enacted in S.B. 10, as applied to a PRQJO registrant, and (10) a provision that requires the state's Internet Sex Offender and Child-victim Offender Database and each sheriff's Internet sex offender/child-victim offender database to inform PRQJO registrants that they may contact the sheriff of the county in which they registered if they believe information contained on a database is incorrect.

### **Penalties for a violation of a SORN Law registration, intent to reside, change of address or identifying information, or address verification duty**

Existing law prohibits a person who is required under the SORN Law to register an address, to send a notice of an intent to reside, to provide notice of a change of a registered address and register a new address, to provide notice of a change in registered identifying information (vehicle information, e-mail addresses, Internet identifiers, and telephone numbers), or to verify a registered address from failing to

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<sup>97</sup> R.C. 2950.081(B) and 2950.13(A)(12).

<sup>98</sup> R.C. 109.57(E)(2), 109.572(F)(2), and 109.578(E)(2); R.C. 2151.357; R.C. 2151.23(A)(15), 2152.191, and 2152.22; R.C. 2152.82(A) and (B), 2152.83(A) to (C), 2152.831(C), and 2152.84(E); R.C. 2152.85(G); R.C. 2152.851(A); R.C. 2950.02(B); R.C. 2950.03(A)(4), (B), and (C); R.C. 2950.031, 2950.032, and 2950.033; and R.C. 2950.131.

comply with any of those requirements.<sup>99</sup> It specifies penalties that apply to a person who is convicted of a violation of any of the prohibitions and sanctions that apply to a person who violates any of the prohibitions that applies to the person as a result of his or her delinquent child adjudication and classification as a juvenile offender registrant. The penalties and sanctions were changed in S.B. 10. Under the post-S.B. 10 version of the SORN Law, they are the same for any offender or delinquent child, regardless of when the person committed the sexually oriented offense or child-victim oriented offense that is the basis of the SORN Law duties and regardless of when the person is convicted of or adjudicated a delinquent child for committing the offense.<sup>100</sup>

The Ohio Supreme Court, in its decision in *State v. Howard*,<sup>101</sup> held that if a person has any registration, notice of intent to reside, change of registered address or identifying information, or address verification duties under the SORN Law, if those duties originally were imposed upon the person under the pre-S.B. 10 version of the SORN Law, and if the person changes his or her registered address and fails to provide the required notice of the change and register the new address, the penalties in effect immediately prior to the January 1, 2008, effective date of S.B. 10 apply to the person.

The bill enacts new penalties for a person who has any of the SORN Law duties described in the second preceding paragraph, whose duties were imposed under the pre-S.B. 10 version of the SORN Law, and who violates any of the prohibitions described in that paragraph. The penalties are the same as the penalties that existed under the pre-S.B. 10 version of the SORN Law and that were repealed by S.B. 10. The bill retains the existing penalties, but it specifies that they apply only to a person who has any of the SORN Law duties described in the second preceding paragraph, whose duties were imposed under the post-S.B. 10 version of the SORN Law, and who violates any of the prohibitions described in that paragraph. In an existing special penalty provision that pertains to a person who commits the violation while on a specified type of supervised release, the bill adds a reference to "probation" as one of the types of supervised release. The bill retains the existing sanctions that apply to a person who violates any of the prohibitions that apply to the person as a result of his or her delinquent child adjudication and classification as a juvenile offender registrant, but it specifies that the sanctions apply regardless of when the person's SORN Law duties were imposed.<sup>102</sup> Under the bill:

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<sup>99</sup> R.C. 2950.04(E), 2950.041(E), 2950.05(F)(1) and (2), and 2950.06(F).

<sup>100</sup> R.C. 2950.99.

<sup>101</sup> *State v. Howard* (2012), 134 Ohio St.3d 467.

<sup>102</sup> R.C. 2950.99.

(1) A person who has any registration, notice of intent to reside, change of address or identifying information, or address verification duties under the SORN Law and who violates a prohibition against failing to perform any of those duties must be punished as follows if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition was committed prior to January 1, 2008:<sup>103</sup>

(a) Except as otherwise described in (1)(c), below, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder, murder, or a first, second, or third degree felony if committed by an adult, the offender is guilty of a felony of the third degree.

(b) Except as otherwise described in (1)(c), below, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a fourth or fifth degree felony if committed by an adult or is a misdemeanor if committed by an adult, the offender is guilty of a felony of the same degree or a misdemeanor of the same degree as the most serious such offense that was the basis of the requirement that was violated under the prohibition.

(c) If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition against failing to perform any SORN Law registration, notice of intent to reside, change of address or identifying information, or address verification duty, the offender must be punished as follows:

(i) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder, murder, or a first, second, third, or fourth degree felony if committed by an adult, the offender is guilty of a felony of the third degree;

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a fifth degree felony if committed by an adult, the offender is guilty of a felony of the fourth degree;

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a first degree misdemeanor if committed by an adult, the offender is guilty of a felony of the fifth degree;

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<sup>103</sup> R.C. 2950.99(A).

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a misdemeanor other than a first degree misdemeanor if committed by an adult, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated.

(2) A person who has any registration, notice of intent to reside, change of address or identifying information, or address verification duties under the SORN Law and who violates a prohibition against failing to perform any of those duties must be punished as follows if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition was committed on or after January 1, 2008:<sup>104</sup>

(a) Except as otherwise described in (2)(d), below, if the most serious sexually oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a "comparable category of offense committed in another jurisdiction" (see (2)(e), below), the offender is guilty of a first degree felony.

(b) Except as otherwise described in (2)(d), below, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a first, second, third, or fourth degree felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a "comparable category of offense committed in another jurisdiction," the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

(c) Except as otherwise described in (2)(d), below, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a fifth degree felony or a misdemeanor if committed by an adult or a "comparable category of offense committed in another jurisdiction," the offender is guilty of a fourth degree felony.

(d) If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition against

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<sup>104</sup> R.C. 2950.99(B) and (E).



failing to perform any SORN Law registration, notice of intent to reside, change of address or identifying information, or address verification duty, the offender must be punished as follows:

(i) If the most serious sexually oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a "comparable category of offense committed in another jurisdiction," the offender is guilty of a first degree felony;

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a first, second, or third degree felony if committed by an adult or a "comparable category of offense committed in another jurisdiction," the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a "comparable category of offense committed in another jurisdiction," the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state;

(iii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a fourth or fifth degree felony if committed by an adult or a "comparable category of offense committed in another jurisdiction," the offender is guilty of a third degree felony;

(iv) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a fourth degree felony.

(e) As used in (2)(a) to (d), above, "comparable category of offense committed in another jurisdiction" means a sexually oriented offense or child-victim oriented offense that was the basis of the SORN Law requirement that was violated, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in Ohio, would constitute or would have constituted the offense or classification of offense specified in (2)(a) to (d), above, whichever is applicable.

(3) In addition to any penalty or sanction imposed as described above in (1) or (2) or any other provision of law for a violation of a prohibition against failing to perform any SORN Law registration, notice of intent to reside, change of address or identifying

information, or address verification duty, if the offender or delinquent child is subject to a community control sanction, is on *probation* (added by the bill) or 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, *probation* (added by the bill), parole, post-release control sanction, or other type of supervised release.<sup>105</sup>

(4) Unchanged by the bill but relevant to all of the penalty provisions described above in (1) and (2), if the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of a prohibition against failing to perform any SORN Law registration, notice of intent to reside, change of address or identifying information, or address verification duty, when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated under the prohibition is a felony if committed by an adult or a comparable category of offense committed in another jurisdiction, the sentencing court must impose upon the offender a definite prison term of no less than three years. The definite prison term generally may not be reduced to less than three years pursuant to any provision of the Revised Code.<sup>106</sup>

(5) If a person violates a prohibition against failing to perform any SORN Law registration, notice of intent to reside, change of address or identifying information, or address verification duty that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or an out-of-state juvenile offender registrant, *regardless of whether the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition was committed prior to, on, or after January 1, 2008* (italicized language is added by the bill), both of the following apply: (1) if the violation occurs while the person is under 18, the person is subject to Delinquent Child proceedings based on the violation, and (2) if the violation occurs while the person is 18 or older, the person is subject to criminal prosecution based on the violation.

## **Residency restrictions under SORN Law**

### **In general and unconstitutionality of retroactive application**

The SORN Law contains residency restrictions that prohibit a person who has been convicted of or is convicted of a sexually oriented offense or a child-victim

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<sup>105</sup> R.C. 2950.99(C)(1).

<sup>106</sup> R.C. 2950.99(C)(2).



oriented offense from establishing a residence or occupying residential premises within 1,000 feet of any school premises or preschool or child day-care premises. If a person to whom the residency restriction applies violates the prohibition, an owner or lessee of real property that is located within 1,000 feet of those school premises or preschool or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The Law does not provide a criminal penalty for a violation of the prohibition.<sup>107</sup>

The Ohio Supreme Court, in its decision in *Hyle v. Porter*,<sup>108</sup> held that, because the school premises residency restriction (the preschool and child day-care center premises residency restrictions had not been enacted at the time of the facts in the case and were not at issue) was not expressly made retroactive by the General Assembly, it does not apply to an offender who bought his or her home and committed his or her offense before the effective date of the restriction. The restriction that pertains to schools took effect on July 31, 2003, and the restrictions that pertain to preschool and child day-care premises took effect on July 1, 2007. The residency restrictions do not apply to children who have been adjudicated delinquent children for committing a sexually oriented offense or a child-victim oriented offense.

### **Linkage of application of restrictions to their effective dates**

The bill modifies the existing SORN Law school, preschool, and child day-care residency restrictions that apply to persons who have been convicted of a sexually oriented offense or child-victim oriented offense in light of the Ohio Supreme Court's decision in *Hyle, supra*. The bill links the application of each of those restrictions to the date on which the restriction took effect. It does not change any other portion of the existing residency restrictions. Under the bill (italicized language is added by the bill):

(1) No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or child-victim oriented offense *that was committed on or after July 31, 2003*, may establish a residence or occupy residential premises within 1,000 feet of any school premises.

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<sup>107</sup> R.C. 2950.034.

<sup>108</sup> *Hyle v. Porter* (2008), 117 Ohio St.3d 165.



(2) No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or child-victim oriented offense that was committed on or after July 1, 2007, may establish a residence or occupy residential premises within 1,000 feet of any school premises or preschool or child day-care premises.<sup>109</sup>

### **Other changes regarding residency restrictions**

An existing Forcible Entry and Detainer Law provision specifies the types of proceedings that may be had under that Law. One type of proceeding that may be had under it is a proceeding against a resident or occupant of residential rental premises who, pursuant to a rental agreement, resides or occupies residential premises within 1,000 feet of any school premises or preschool or day-care premises if other specified criteria apply. A second type that may be had is a proceeding against any tenant who permits any person to occupy residential premises within 1,000 feet of any school premises or preschool or day-care premises if other specified criteria apply. The bill specifies that the residence in or occupation of the residential premises referred to in the provision must be *in violation of the SORN Law residency restriction*, as amended by the bill and described above.<sup>110</sup>

Related existing provisions of the Residential Landlord Tenant Law permit a landlord of residential premises that are within 1,000 feet of any school premises or preschool or day-care premises to bring an action under the Forcible Entry and Detainer Law if the name of the tenant or other occupant who resides in or occupies the premises appears on the State Registry of Sex Offenders and Child-Victim Offenders and other specified criteria apply, and prohibit a tenant of residential premises located within 1,000 feet of any school premises or preschool or day-care premises from allowing any person to occupy the residential premises if the person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders and other specified criteria apply. The bill modifies each of these provisions to specify that the residency at or occupancy of the premises referred to in the particular provision must be *in violation of the SORN Law residency restriction*, as amended by the bill and described above.<sup>111</sup>

### **Internet dissemination by sheriff of information about juvenile offender registrants**

The bill repeals a sheriff's authority to cause information regarding certain juvenile offender registrants to be publicly disseminated on the Internet. Currently,

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<sup>109</sup> R.C. 2950.034.

<sup>110</sup> R.C. 1923.02.

<sup>111</sup> R.C. 5321.03 and 5321.051.

except when the child is classified a PRQJO registrant, a sheriff may not cause to be publicly disseminated by means of the Internet any statements, information, photographs, fingerprints, or materials that are provided by a delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address under the SORN Law and that are in the possession of a county sheriff. If a sheriff establishes on the Internet a sex offender and child-victim offender database for the public dissemination of some or all of those materials with respect to a PRQJO registrant, in addition to all of the other information and materials included, the sheriff must include in the database a chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of Tier I, Tier II, and Tier III sex offender/child-victim offender and for each delinquent child in relation to whom information and materials are provided a statement as to whether the child is a Tier I, a Tier II, or a Tier III sex offender/child-victim offender.

Under the bill, a sheriff may not cause to be publicly disseminated by means of the Internet any statements, information, photographs, fingerprints, or materials that are provided by any delinquent child who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address under the SORN Law and that are in the possession of a county sheriff. In a related existing provision that requires a sheriff who establishes on the Internet a sex offender and child-victim offender database for the public dissemination of some or all of those materials with respect to a delinquent child who is a PRQJO registrant to include in the database a statement as to whether the child is a Tier I, a Tier II, or a Tier III sex offender/child-victim offender, the bill removes all references to delinquent children and specifies that the provision applies only with respect to offenders.<sup>112</sup>

Related to the changes described above, the bill clarifies an existing provision that pertains to the inclusion, by a sheriff who has established on the Internet a sex offender and child-victim offender database for the public dissemination of information regarding such offenders, of information the sheriff receives from DRC or the Department of Youth Services (DYS) about an offender or delinquent child who is a sex offender and child-victim offender. Currently, a sheriff who has established such a database and who receives information from DRC or DYS regarding the release from the Department of an offender who has been convicted of or pleaded guilty to a sexually oriented offense or child-victim oriented offense must enter that information

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<sup>112</sup> R.C. 2950.081 and 2950.11(E).

on the database. The bill clarifies that a sheriff may not enter any information received from DRC or DYS regarding any delinquent child on that database.<sup>113</sup>

### **Application of bill's provisions to offenders and delinquent children for offense committed prior to January 1, 2008**

The bill enacts language that specifies the manner in which its provisions are intended to apply to an offender or delinquent child for an offense committed prior to January 1, 2008. On and after the bill's effective date, the provisions of the SORN Law and of the Delinquent Child Law that are amended or enacted in the bill and that specify that they apply with respect to a person who is or has been convicted of a sexually oriented offense or child-victim oriented offense committed prior to January 1, 2008, or to a person who is or has been adjudicated a delinquent child for a sexually oriented offense or child-victim oriented offense committed prior to that date, apply with respect to such persons. Also, on and after the bill's effective date, except as described in the preceding sentence, the provisions of the SORN Law and of the Delinquent Child Law as they existed prior to July 1, 2007, apply with respect to a person who is or has been convicted of a sexually oriented offense or child-victim oriented offense prior to January 1, 2008, or to a person who is or has been adjudicated a delinquent child for a sexually oriented offense or child-victim oriented offense committed prior to that date, except to the extent that by their nature they clearly would be inapplicable.<sup>114</sup>

### **Juvenile court jurisdiction in serious youthful offender proceedings**

The bill clarifies juvenile court jurisdiction in serious youthful offender proceedings when the involved offender is over 18.

#### **Existing law**

##### **Serious youthful offender dispositional sentencing in general**

The existing Delinquent Child Law specifies various categories of alleged delinquent children who are eligible for a serious youthful offender (SYO) dispositional sentence. Some of the eligible categories are mandatory SYO cases, and some are discretionary SYO cases. One criterion for being eligible for SYO is that the act alleged would be a felony if committed by an adult. The Law specifies procedures that are followed in SYO cases. If a child is adjudicated a delinquent child in a mandatory SYO case, the juvenile court must: (1) impose upon the child under the Criminal Sentencing

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<sup>113</sup> R.C. 2950.14(D).

<sup>114</sup> R.C. 2152.851(B) and 2950.011(B).



Law a sentence available for the violation as if the child were an adult, other than a sentence of death or life without parole, (2) impose upon the child one or more traditional juvenile dispositions, and (3) stay the adult portion of the SYO sentence pending the successful completion of the traditional juvenile dispositions imposed. If a child is adjudicated a delinquent child in a discretionary SYO case: (1) if the juvenile court makes specified findings as to the fact that the juvenile system's resources and programming might not be adequate in the case, it may impose upon the child under the Criminal Sentencing Law a sentence available for the violation as if the child were an adult, other than a sentence of death or life imprisonment without parole, (2) if an adult sentence is imposed under (1), the court also must impose upon the child one or more traditional juvenile dispositions, and (3) the court must stay the adult portion of the SYO sentence pending the successful completion of the traditional juvenile dispositions imposed. If the juvenile court does not find that a sentence should be imposed under the provision described in clause (1) of the preceding sentence, it may impose one or more traditional juvenile dispositions.<sup>115</sup>

### **"Reverse bindover" serious youthful offender proceedings**

The existing Delinquent Child Law provides a special mechanism for determining the sanction for children who are convicted of a crime in criminal court (the offense of conviction) after their case is transferred from juvenile court under a mandatory transfer provision, if they were alleged in juvenile court to have been a delinquent child for any of a list of specified serious offenses and other specified criteria applied to their case.

Under the mechanism, the court in which the child is convicted of the crime after the transfer (the court of conviction) must determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child *for committing an act that would be the offense of conviction* if committed by an adult, the Delinquent Child Law's mandatory transfer provisions would have required transfer of the case or the Delinquent Child Law's discretionary transfer provisions would have allowed transfer of the case for criminal prosecution. Depending upon the finding, the court of conviction either: (1) transfers the case back to juvenile court, and the juvenile court must impose one or more traditional juvenile dispositions upon the child, (2) imposes sentence upon the child under the Criminal Sentencing Law, or (3) determines the sentence it believes should be imposed upon the child under the Criminal Sentencing Law, imposes that sentence upon the child, and stays the sentence pending completion of special "reverse bindover" procedures described below.

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<sup>115</sup> R.C. 2152.11 and 2152.13.

Under the "reverse bindover" procedures, upon imposition and staying of the sentence, the court of conviction transfers jurisdiction of the case back to the juvenile court that initially transferred the case, and the juvenile court must proceed as described below. The mechanism specifies that the juvenile court retains jurisdiction for purposes of making a disposition under this provision. Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

(1) Except as described in (2), below, the juvenile court must impose an SYO sentence upon the child as if the case was a mandatory SYO case as described above consisting of both a traditional juvenile disposition and an adult portion of the sentence that is imposed under the Criminal Sentencing Law. In imposing the adult portion of the sentence, the juvenile court must consider and give preference to the sentence imposed by the court of conviction. Upon imposing an SYO sentence upon the child, the juvenile court must notify the court of conviction that the sentence imposed by that court is terminated and the conviction is to be considered and treated for all purposes other than as described in the next paragraph to have been a delinquent child adjudication of the child.

(2) Upon the transfer of jurisdiction back to the juvenile court, the prosecuting attorney may file a motion in that court that objects to the imposition of an SYO sentence upon the child and requests that the sentence imposed upon the child by the court of conviction be invoked. Upon the filing of such a motion, the juvenile court must hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court finds either of those things, the court must grant the motion. Absent either such finding, the juvenile court must deny the motion. If the juvenile court grants the motion, it must transfer jurisdiction of the case back to the court of conviction, and the sentence imposed by that court is invoked. If the juvenile court denies the motion, it must impose an SYO sentence upon the child as described above in (1).<sup>116</sup>

#### **Invoking adult portion of a serious youthful offender sentence**

In any case in which a juvenile court imposes an SYO sentence on a person, in specified circumstances, a prosecuting attorney or, in some cases, the juvenile court that imposed the SYO sentence, the Department of Youth Services, or a probation department may file a motion with the juvenile court that imposed the SYO sentence requesting that the court invoke the adult portion of the SYO sentence. The Delinquent Child Law specifies procedures that are to be filed in deciding such a motion and

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<sup>116</sup> R.C. 2152.121; also R.C. 2151.23(H).

specifies findings that the juvenile court must make in order to invoke the adult portion of the SYO sentence.<sup>117</sup>

### **Operation of the bill**

The bill specifies that, regardless of the person's age, a juvenile court retains jurisdiction over a person who has received an SYO sentence under either Delinquent Child Law provision described above in "**Existing law**" until the person successfully completes all the traditional juvenile dispositions imposed under the SYO sentence or until the juvenile court invokes the adult portion of the SYO sentence.<sup>118</sup>

It also specifies that a child's attainment of 18 or 21 years of age does not affect or terminate the ability or authority of a juvenile court to conduct a hearing or issue an order to determine whether to invoke the adult portion of an SYO sentence (this change relates to issues possibly resulting from the Ohio Supreme Court's decision described above in "**Mandatory classification at time of disposition or release from secure facility, if not repeat offender**").<sup>119</sup>

## **Background**

### **Basic SORN Law definitions**

Existing law specifies that, as used in the SORN Law:<sup>120</sup>

"**Child-victim offender**" means a person who is or has been convicted of, or is or has been adjudicated a delinquent child for committing, any child-victim oriented offense.

"**Child-victim oriented offense**" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under 18 and is not a child of the person who commits the violation: (1) "kidnapping," other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the violation is not included in paragraph (7) of the definition of "sexually oriented offense" set forth below, (2) except when committed with a sexual motivation, "abduction," "unlawful restraint," or "criminal

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<sup>117</sup> R.C. 2152.14.

<sup>118</sup> R.C. 2151.23(K).

<sup>119</sup> R.C. 2152.14(G).

<sup>120</sup> R.C. 2950.01.



child enticement," (3) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (1) or (2) of this paragraph, or (4) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (1) to (3) of this paragraph.

**"Juvenile offender registrant"** means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and specifies has a duty to comply with the SORN Law. The term includes a person who, prior to January 1, 2008, was a "juvenile offender registrant" under the definition of that term in existence prior to January 1, 2008, and a person who, prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.

**"Public registry-qualified juvenile offender registrant"** (or PRQJO registrant; the bill repeals this definition) means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a "serious youthful offender dispositional sentence" under R.C. 2152.13 before, on, or after, January 1, 2008, and to whom all of the following apply: (1) the person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing "rape," "gross sexual imposition" committed when the victim is under 12, the offender knowingly touches the victim's genitalia, and the touching is not through clothing and is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or "sexual battery" when the victim was under 12, or "aggravated murder," "murder," or "kidnapping" committed with a purpose to gratify the sexual needs or desires of the child, (2) the person was 14, 15, 16, or 17 at the time of committing the act, and (3) a juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the SORN Law, and classifies the person a public registry-qualified juvenile offender registrant and the classification has not been terminated pursuant to the Delinquent Child Law.

**"Sex offender"** means, subject to the provision described in the next sentence, a person who is or has been convicted of, or is or has been adjudicated a delinquent child for committing, any sexually oriented offense. "Sex offender" does not include a person who is or has been convicted of, or is or has been adjudicated a delinquent child for committing, a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and either of the following applies: (1) the victim of the offense was 18 or older and, at the time of the offense, was not under the



custodial authority of the person who is or was convicted of, or is or was adjudicated a delinquent child for committing, the offense, or (2) the victim of the offense was 13 or older, and the person who is or was convicted of, or is or was adjudicated a delinquent child for committing, the offense is not more than four years older than the victim.

**"Sexually oriented offense"** means any of the following violations or offenses committed by a person, regardless of whether the person is 18 or older or is under 18:

(1) "Rape," "sexual battery," "gross sexual imposition," "sexual imposition," "importuning," "voyeurism," "compelling prostitution," "pandering obscenity," "pandering obscenity involving a minor," "pandering sexually oriented matter involving a minor," or "illegal use of a minor in nudity-oriented material or performance";

(2) "Unlawful sexual conduct with a minor" when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of "rape," "sexual battery," "unlawful sexual conduct with a minor," or the former offense of "felonious sexual penetration";

(3) "Unlawful sexual conduct with a minor" when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of "rape," "sexual battery," "unlawful sexual conduct with a minor," or the former offense of "felonious sexual penetration";

(4) "Aggravated murder," "murder," or "felonious assault" committed with a sexual motivation;

(5) "Involuntary manslaughter," when the base offense is a felony and the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) "Menacing by stalking" committed with a sexual motivation;

(7) "Kidnapping," other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;



(8) "Kidnapping" committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(9) "Kidnapping" when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(10) "Abduction," "unlawful restraint," and "criminal child enticement" committed with a sexual motivation, or "endangering children" committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(11) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in paragraphs (1) to (10) under this definition;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraphs (1) to (11) under this definition.

### **General SORN Law duties and requirements**

Most existing duties and requirements under the SORN Law are summarized below (**the bill changes many of these duties and requirements in some respects – see the CONTENT AND OPERATION portion of this analysis for a description of the changes**).

#### **Address registration**

The SORN Law imposes several types of address registration duties on offenders who are convicted of a sexually oriented offense or child-victim oriented offense and children who are adjudicated delinquent children for committing any such offense and are classified juvenile offender registrants based on the offense. The Law specifies procedures to accomplish the registration and the content of the registration form. Among the information that must be included on the form is the registrant's name, Social Security number, and date of birth; any aliases the registrant uses; the registrant's employment and school-attendance information in specified circumstances; the license plate numbers of vehicles owned or used by the registrant; the registrant's driver's license or state identification card number; and any e-mail addresses, Internet identifiers, and telephone numbers registered to the registrant. The registration must be

with the specified sheriff or that sheriff's designee. A summary of the registration duties follows:<sup>121</sup>

(1) One registration duty requires each such offender who is sentenced to any type of confinement for the offense and each such delinquent child who is committed to a secure facility for the offense to register personally with the sheriff of the county in which the offender or child was convicted of or adjudicated a delinquent child for committing the offense, immediately after the sentencing or dispositional hearing and before the offender or child is transferred to the institution where the offender will be confined or the secure facility where the child will be committed. A law enforcement officer present at the sentencing or dispositional hearing transports the offender or child to the appropriate sheriff for the registration.

(2) A second registration duty requires each such offender and each such child who is a PRQJO registrant to: (a) register personally with the sheriff of the county within three days of the offender's or registrant's coming into a county in which the offender or registrant resides or temporarily is domiciled for more than three days, (b) register personally with the sheriff of the county immediately upon coming into a county in which the offender or registrant attends a school or institution of higher education on a full-time or part-time basis, (c) register personally with the sheriff of the county where employed if the offender or registrant resides or has a temporary domicile in Ohio and has been employed in that county for more than three days or for an aggregate period of 14 or more days in that calendar year or the county where employed if the offender or registrant does not reside or have a temporary domicile in Ohio and has been employed at any Ohio location or locations more than three days or for an aggregate period of 14 or more days in that calendar year, and (d) register personally with the sheriff or other appropriate person of the other state immediately upon entering into a state other than Ohio in which the offender or registrant attends a school or institution of higher education on a full-time or part-time basis or upon being employed in any state other than Ohio for more than three days or for an aggregate period of 14 or more days in that calendar year regardless of whether the offender or registrant resides or has a temporary domicile in Ohio, the other state, or a different state.

(3) A third registration duty requires each such child who is not a PRQJO registrant to register personally with the sheriff of the county within three days of the child's coming into a county in which the child resides or temporarily is domiciled for more than three days. The registration duty described above in (2) does not apply to delinquent children who are not PRQJO registrants.

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<sup>121</sup> R.C. 2950.04(A) to (C) and 2950.041(A) to (C).

(4) A fourth registration duty requires each such offender or child who is convicted or is adjudicated a delinquent child in a court in a state other than Ohio, in a federal court, military court, or Indian tribal court, or in a court in any nation other than the United States for committing the sexually oriented offense or child-victim oriented offense to comply with the following registration requirements if, at the time the offender or child moves to and resides in Ohio or temporarily is domiciled in Ohio for more than three days, the offender or child who is a PRQJO registrant enters Ohio to attend a school or institution of higher education, or the offender or child who is a PRQJO registrant is employed in Ohio for more than the specified period of time, the offender or child has a duty to register as a sex offender or child-victim offender under the law of that other jurisdiction as a result of the conviction or adjudication: (a) each offender and child must register personally with the sheriff of the county within three days of the offender's or child's coming into the county in which the offender or child resides or temporarily is domiciled for more than three days, and (b) each offender and PRQJO registrant must register personally with the sheriff of the county immediately upon coming into a county in which the offender or registrant attends a school or institution of higher education on a full-time or part-time basis, the sheriff of the county in which the offender or registrant is employed if the offender or registrant resides or has a temporary domicile in Ohio and has been employed in that county for more than three days or for an aggregate period of 14 days or more in that calendar year, and the sheriff of the county in which the offender or registrant is employed if the offender or registrant does not reside or have a temporary domicile in Ohio and has been employed at any Ohio location or locations for more than three days or for an aggregate period of 14 or more days in that calendar year.

#### **Notice of intent to reside in county**

Under the SORN Law, if an offender or delinquent child who is required to register under that Law is a Tier III sex offender/child victim offender, the offender or child also must send the sheriff of the county in which the offender or child intends to reside written notice of his or her intent to reside in the county. The offender or child must send the notice of intent to reside at least 20 days prior to the date he or she begins to reside in the county. The notice of intent to reside must contain the offender's or child's name, the address or addresses at which he or she intends to reside, and the sexually oriented offense or child-victim oriented offense of which the offender was convicted or for which the child was adjudicated a delinquent child.<sup>122</sup>

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<sup>122</sup> R.C. 2950.04(G) and 2950.041(G).



### **Change of address notification and registration of new address**

The SORN Law requires a delinquent child who is required to register an address under that Law but is not a PRQJO registrant to provide written notice of any change of residence address to the sheriff with whom the child most recently registered the address at least 20 days prior to changing the residence address. An offender or PRQJO registrant must provide written notice of any change of residence address, school, institution of higher education, or place of employment address to the sheriff with whom the person most recently registered the address at least 20 days prior to changing the residence, school, or institution of higher education address and not later than three days after changing the address of the place of employment. A written notice of a change of school, institution of higher education, or place of employment address must include, in addition to the changed address, the name of the new school, institution of higher education, or place of employment. The Law provides a special manner of providing the written notice of a change of residence address that is not to a fixed address.

For an offender or delinquent child to whom the notification provisions described in the preceding paragraph apply, at least 20 days prior to changing the residence, school, or institution of higher education address and not later than three days after changing the place of employment address, the offender or child must register the new address in the manner and using the form required for original registrations with the sheriff of the county in which the offender's or child's new address is located. The Law provides a special manner of registering a new residence address when the change of residence address is not to a fixed address.<sup>123</sup>

### **Change of vehicle, e-mail, Internet identifier, or telephone number notification**

The SORN Law requires an offender or delinquent child who is a PRQJO registrant who is required to register an address under that Law to provide written notice, within three days of the change, of any change in vehicle information, e-mail addresses, Internet identifiers, or telephone numbers registered to or used by the offender or PRQJO registrant to the sheriff with whom the offender or registrant most recently registered that information.<sup>124</sup>

### **Periodic verification of registered address**

Under the SORN Law, a delinquent child who is not a PRQJO registrant must periodically verify the child's residence address, and an offender and delinquent child

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<sup>123</sup> R.C. 2950.05(A) and (B).

<sup>124</sup> R.C. 2950.05(D).

who is a PRQJO registrant must periodically verify the offender's or registrant's residence, school, or institution of higher education, or place of employment address, with the sheriff with whom he or she registered. The verification must be done by personally appearing before the sheriff not earlier than ten days before the date on which verification is required and not later than the date of required verification and filing a specified registration form. The verification is complete when the offender or delinquent child personally appears before the sheriff or designee and completes and signs the form as described in this paragraph. A sheriff may send reminders of upcoming verification dates to offenders or children and must send a warning to an offender or child who fails to register that provides a seven-day grace period after the failure before a prosecution for the failure may be commenced.

The frequency with which an offender or delinquent child must verify his or her current residence, school, institution of higher education, or place of employment address is as follows, regardless of when the relevant sexually oriented offense or child-victim oriented offense was committed: (1) if the offender or child is a Tier I sex offender/child-victim offender, the offender or child must verify all applicable addresses on each anniversary of his or her initial registration date during the period he or she is required to register, (2) if the offender or child is a Tier II sex offender/child-victim offender, the offender or child must verify his or her applicable addresses every 180 days after his or her initial registration date, and (3) if the offender or child is a Tier III sex offender/child-victim offender, the offender or child must verify the applicable addresses every 90 days after his or her initial registration date.<sup>125</sup>

#### **Restriction on residence**

The SORN Law prohibits a person who is or was convicted of a sexually oriented offense or a child-victim oriented offense from living within 1,000 feet of school premises or preschool or child day-care center premises. An offender who violates this prohibition is subject to a forcible entry and detainer action, a landlord may repossess residential premises located within 1,000 feet of a school premises or preschool or child day-care center premises from a sex offender or child-victim offender, a tenant is prohibited from allowing a sex offender or child-victim offender to live in residential premises that are within 1,000 feet of school premises or preschool or child day-care center premises, and a landlord may terminate a rental agreement of a tenant who permits a sex offender or child-victim offender from living within 1,000 feet of school premises or preschool or child day-care center premises.<sup>126</sup>

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<sup>125</sup> R.C. 2950.06.

<sup>126</sup> R.C. 2950.034; also R.C. 1923.02, 5321.03, and 5321.051, and R.C. 1923.01 and 5321.01, not in the bill.



## Commencement of SORN Law duties

Under the SORN Law, an offender or delinquent child upon whom duties are imposed under that Law must begin complying with those duties on whichever of the following is applicable:<sup>127</sup>

(1) If the offender's or child's duty to register is the duty to register immediately after sentencing or disposition in the county in which was committed the offense on which the duty is based, the duty to comply commences immediately after the entry of judgment of conviction or the order of disposition, whichever is applicable.

(2) If the offender's duty to register is imposed for a sexually oriented offense or child-victim oriented offense and requires him or her to register within a specified period of time in the county of residence, the county of attendance at a school or institution of higher education, and the county of employment, subject to paragraph (6), below, the duty to comply commences on the date of release from confinement or, if the offender is not sentenced to confinement, on the date of the entry of the judgment of conviction of the offense on which the duty is based.

(3) If the offender's or child's duty to register is based on an offense committed in another jurisdiction, the offender's duty to comply commences regarding residence addresses on the date the offender begins to reside or becomes temporarily domiciled in Ohio, the offender's duty regarding addresses of schools, institutions of higher education, and places of employment commences on the date the offender begins attending any school or institution of higher education in Ohio on a full-time or part-time basis or becomes employed in Ohio, and the child's duty commences on the date the child begins to reside or becomes temporarily domiciled in Ohio.

(4) If the child's duty to register requires him or her to register within a specified period of time in the county of residence, if the child's classification as a juvenile offender registrant is made at the time of the child's disposition for the sexually oriented offense or child-victim oriented offense, and if the child is committed for that offense to a secure facility, the duty to comply commences on the date of the child's discharge or release from the secure facility.

(5) If the child's duty to register requires him or her to register within a specified period of time in the county of residence and if either the child's classification as a juvenile offender registrant is made at the time of the child's disposition for that offense and the child is not committed to a secure facility or the child's classification as a juvenile offender registrant is made for an offense committed after January 1, 2002, the

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<sup>127</sup> R.C. 2950.07(A).



child was 16 or 17 at the time of the offense, and the child does have a prior such disposition, the duty to comply commences on the date of entry of the court's order that classifies the child a juvenile offender registrant.

(6) If the offender's or child's duty to register is described in paragraph (2), (3), or (4), above, and if the offender or child prior to January 1, 2008, has registered a residence, school, institution of higher education, or place of employment address pursuant to the SORN Law, the offender or child initially must register in accordance with the SORN Law's requirements as they exist on and after January 1, 2008, not later than the earlier of the following dates: (a) the date that is six months after the date on which the offender or child receives a registered letter from the AG notifying the offender or child of the act's changes to the SORN Law, of the offender's or child's classification under that Law, and the offender's or child's right to a hearing to contest that classification, or (b) the earlier of the date on which the offender or child would be required to verify a previously registered address under the law as it exists on and after January 1, 2008, or, if the offender or child has changed a previously registered address, the date on which the offender or child would be required to register a new address under the law as it exists on and after January 1, 2008. The duty to comply thereafter with the SORN Law's requirements as they exist on and after January 1, 2008, commences on the date of that initial registration.

(7) If the offender's or child's duty to register was imposed pursuant to the SORN Law's requirements as they exist prior to January 1, 2008, the duty to comply with the SORN Law's requirements as they exist on and after January 1, 2008, is a continuation of the duty to register imposed prior to January 1, 2008, under the SORN Law's requirements and are to be considered for all purposes as having commenced on the date that the duty commenced under the SORN Law's requirements in existence prior to January 1, 2008.

#### **Duration of SORN Law duties**

Under the SORN Law, an offender or delinquent child upon whom duties are imposed under that Law must comply with those duties, after the date of commencement, for whichever of the following periods is applicable:<sup>128</sup>

(1) Except as otherwise described in this paragraph, if the person is an offender who is a Tier III sex offender/child-victim offender, if the person is a delinquent child who is a Tier III sex offender/child-victim offender, or if the person is a delinquent child who is a PRQJO registrant, the offender's or child's duty to comply continues until the offender's or child's death. Regarding a delinquent child who is a Tier III sex

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<sup>128</sup> R.C. 2950.07(B).

offender/child-victim offender but is not a PRQJO registrant, if the judge who made the disposition for the child or that judge's successor subsequently enters a determination that the child no longer is a Tier III sex offender/child-victim offender, the child's duty to comply continues for the period of time that is applicable to the child, based on the reclassification of the child into a different Tier. In no case may the lifetime duty to comply imposed under this provision on an offender who is a Tier III sex offender/child-victim offender be removed or terminated. A delinquent child who is a PRQJO registrant may have the lifetime duty to register terminated only pursuant to a specified procedure in R.C. 2950.15.

(2) If the person is an offender who is a Tier II sex offender/child-victim offender, the offender's duty to comply continues for 25 years. Except as otherwise described in this paragraph, if the person is a delinquent child who is a Tier II sex offender/child-victim offender, the child's duty to comply continues for 20 years. Regarding a delinquent child who is a Tier II sex offender/child-victim offender but is not a PRQJO registrant, if the judge who made the disposition for the child or that judge's successor subsequently enters a determination that the child no longer is a Tier II sex offender/child-victim offender but remains a juvenile offender registrant, the child's duty to comply continues for the period of time that is applicable to the delinquent child, based on the reclassification of the child into Tier I.

(3) Except as otherwise described in this paragraph, if the person is an offender who is a Tier I sex offender/child-victim offender, the offender's duty to comply continues for 15 years. Except as otherwise described in this paragraph, if the person is a delinquent child who is a Tier I sex offender/child-victim offender, the child's duty to comply with the SORN Law continues for ten years. Regarding a delinquent child who is a Tier I sex offender/child-victim offender but is not a PRQJO registrant, if the judge who made the disposition for the child or that judge's successor in office subsequently enters a determination that the child no longer is a juvenile offender registrant, the child's duty to comply is terminated. An offender who is a Tier I sex offender/child-victim offender may have the 15-year duty to comply terminated only pursuant to a specified procedure in R.C. 2950.15.

(4) The duration of the duties to comply is tolled during any period during which an offender or delinquent child is returned to confinement in a secure facility or is imprisoned, and if an offender or delinquent child has the duties for multiple offenses, the duration of the duties is calculated separately for each of the offenses.

### **Victim notification**

Under the SORN Law, if a person is an offender or delinquent child upon whom duties are imposed under that Law, if the offender or child is in any of a list of specified

categories of offenders and delinquent children with respect to whom the mechanism applies (see below), and if the victim of the offense has made a request in accordance with rules adopted by the AG that specifies that the victim would like to be provided notification under the mechanism, the sheriff with whom the offender or child registers or provides a notice of a change in a registered address, within a specified period of time (see below), must provide a written notice containing specified information (the address registered and the fact that it was registered, or the new address and the fact that the previously registered address was changed, etc.) to the victim. The duty to provide the notices to victims applies regarding any offender or delinquent child who is in any of a list of specified categories of offenders and delinquent children.

A sheriff required to provide victim notification regarding an offender or delinquent child must provide the notice to the victim at the most recent residence address available for the victim and not later than five days after the offender or child registers with the sheriff or notifies the sheriff of the change in the offender's or child's registered address, whichever is applicable.

The offenders and delinquent children with respect to whom the victim notification mechanism applies are: (1) an offender who is a Tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense that is the basis of the registration duty and for which a victim requested to be provided notice, (2) a delinquent child who is a PRQJO registrant, if a juvenile court has not removed pursuant to the SORN Law the child's duty to comply with the SORN Law's requirements, (3) a delinquent child who is a Tier III sex offender/child-victim offender who is not a PRQJO registrant, if the child was subjected to victim notification/community notification prior to January 1, 2008, as a sexual predator, habitual sex offender, child-victim predator, or habitual child-victim offender and a juvenile court has not removed pursuant to the Delinquent Child Law the child's duty to comply with the SORN Law's requirements, and (4) a delinquent child who is a Tier III sex offender/child-victim offender who is not a PRQJO registrant, if the child was classified a juvenile offender registrant on or after January 1, 2008, the court has imposed a requirement under the Delinquent Child Law subjecting the child to victim/community notification, and a juvenile court has not removed pursuant to the Delinquent Child Law the child's duty to comply with the SORN Law's requirements.<sup>129</sup>

### **Community notification**

Under the SORN Law, if a person is an offender or delinquent child upon whom duties are imposed under that Law and if the offender or child is in any of a list of specified categories of offenders and delinquent children in relation to whom the

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<sup>129</sup> R.C. 2950.10.

mechanism applies, the sheriff with whom the offender or child has most recently registered and the sheriff to whom the offender or child most recently sent a notice of intent to reside, within a specified period of time (see below), must provide a written notice containing specified information to specified persons and officials in the community (see below). If the sheriff has sent a notice to the specified persons and officials as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or child registers.

The duty to provide the notices to persons and officials in the community as described in the preceding paragraph applies regarding any offender or delinquent child who is in any of a list of specified categories of offenders and delinquent children, subject to an exception if determined to be applicable under a specified hearing mechanism. The exception is described below. In addition to the exception, the SORN Law provides limited circumstances in which a judge may suspend the community notification provisions as they apply to an offender who is subject to the provisions and is not in a category for which such a suspension is prohibited, and the Delinquent Child Law provides limited circumstances in which a juvenile judge may reclassify a delinquent child from a Tier III classification or declassify the child if the child is not a PRQJO registrant and, thus, remove the child from the categories of persons who are subject to community notification.

When community notification is required, the sheriff required to provide the community notification notice must provide it to the sheriff of each other county that includes any portion of the "specified geographical notification area" (a defined term). Each sheriff who receives a notice under this provision from another sheriff then must provide community notification notices to the specified neighbors of the offender or delinquent child, specified officials of specified public children services agencies, schools, preschools, day-care centers or homes, and institutions of higher education, specified law enforcement officials, and specified volunteer organizations that are located within the specified geographical notification area and within the county served by the sheriff in question.

A sheriff required to provide community notification regarding an offender or delinquent child must provide the notice within the following time periods: (1) the sheriff must provide the notice to the specified neighbors and the specified law enforcement personnel as soon as practicable, but no later than five days after the offender sends the notice of intent to reside to the sheriff and again no later than five days after the offender or delinquent child registers with the sheriff or, if the sheriff is providing secondary community notification, no later than five days after the sheriff is

provided the notice from the other sheriff, and (2) the sheriff must provide the notice to all other specified persons and entities as soon as practicable, but not later than seven days after the offender or delinquent child registers with the sheriff or, if the sheriff is providing secondary community notification, no later than five days after the sheriff is provided the notice from the other sheriff.

If an offender or delinquent child in relation to whom the provisions requiring community notification subsequent to registration or the sending of a notice of intent to reside apply verifies the offender's or delinquent child's current residence, school, institution of higher education, or work address, as applicable, with a sheriff pursuant to the SORN Law's address verification provisions, the sheriff may provide a written community notification notice to the persons and entities to whom mandatory community notification is required subsequent to registration or the sending of a notice of intent to reside. Any such notice is to contain the same information as a mandatory community notification notice. If a sheriff provides any such notice to a sheriff of another county that includes any portion of the specified geographical notification area, the recipient sheriff may provide, but is not required to provide, secondary community notification notices.

Except as otherwise described in this paragraph, the offenders and delinquent children with respect to whom the community notification mechanism applies are the same categories of offenders and delinquent children with respect to whom the victim notification mechanism applies, as described above in "**Victim notification.**" The notification provisions do not apply to an offender or delinquent child in any of those categories if a court finds at a hearing after considering specified factors that the offender or child would not be subject to the community notification provisions that were in the version of the community notification mechanism that existed immediately prior to January 1, 2008.<sup>130</sup>

When community notification is required, the sheriff must provide the written notice to all of the following persons and officials:<sup>131</sup>

(1) Neighbors of the offender or delinquent child, in accordance with the following: (a) any occupant of each residential unit that is located within 1,000 feet of the offender's or child's residential premises, is within the county served by the sheriff, and is not in a multi-unit building, (b) if the offender or child resides in a multi-unit building, any occupant of each residential unit located in that multi-unit building and "shares a common hallway" with the offender or child, (c) the building manager, or the

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<sup>130</sup> R.C. 2950.11; and R.C. 2152.84 and 2152.85.

<sup>131</sup> R.C. 2950.11(A).



person the building owner or condominium unit owners association authorizes to exercise management and control, of each multi-unit building that is located within 1,000 feet of the offender's or child's residential premises, including a multi-unit building in which the offender or child resides, and is within the county served by the sheriff (in addition to this notice, the sheriff must either post the notice in the building in a specified manner or provide it to all building occupants), and (d) all additional persons within any category of neighbors of the offender or child that the AG by rule requires to be provided the notice and who reside within the sheriff's county;

(2) Specified officials of the public children services agency with jurisdiction within the "specified geographical notification area" and within the sheriff's county ("specified geographical notification area" means the geographic area or areas within which the AG, by rule, requires the notices to be given to the persons identified in this paragraph and in paragraphs (3) to (6), below; O.A.C. 109:5-2-01, as adopted by the AG pursuant to R.C. 2950.13, provides that "specified geographical notification area" means the school district, as classified and defined in R.C. Chapter 3311., within which the person who is subject to community notification resides, is employed, or attends a school or institution of higher education);

(3) Specified officials of each school district, school, and chartered nonpublic school within the specified geographical notification area and within the sheriff's county, including the principal of the school the child attends or the appointing or hiring authority of each chartered nonpublic school, and, regardless of the school's location, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends;

(4) Specified officials of each preschool program and each child and family day-care center or home located within the specified geographical notification area and within the sheriff's county;

(5) Specified officials of each institution of higher education located within the specified geographical notification area and within the sheriff's county and the chief law enforcement officer of the university or campus law enforcement agency serving that institution;

(6) The sheriff of each county that includes any portion of the specified geographical notification area (this sheriff then has the duty to provide the written notice to all the other persons and entities listed in paragraphs (1) to (5), (7), and (8) within the sheriff's county);

(7) If the offender or child resides within the sheriff's county, the chief of police, marshal, or other chief law enforcement officer of the municipality in which the



offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or police chief of the township in which the offender or delinquent child resides;

(8) Volunteer organizations in which contact with minors or other vulnerable individuals might occur or any organization, company, or individual who requests notification regarding a specific offender or child or regarding all offenders or children who are located in the specified geographical notification area.

### **State Registry of Sex Offenders and Child-Victim Offenders**

The SORN Law requires the AG, not later than July 1, 1997, to establish and maintain a State Registry of Sex Offenders and Child-Victim Offenders that is housed at BCII and that contains all of the registration, change of residence, school, institution of higher education, or place of employment address, and verification information BCII receives pursuant to the SORN Law regarding each person who is or has been convicted of a sexually oriented offense or a child-victim oriented offense and each person who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, all of the information BCII receives from the Department of Rehabilitation and Correction or Department of Youth Services pursuant to R.C. 2950.14, and any notice of an order terminating or modifying an offender's or delinquent child's duty to comply with the SORN Law the bureau receives from a juvenile court pursuant to the Delinquent Child Law. For a person who was convicted of the offense, the Registry also must indicate whether the person was convicted of the offense in a criminal prosecution or in a serious youthful offender case. The Registry may not be open to inspection by the public or by any person other than a specified peace officer, law enforcement officer, or government official.<sup>132</sup> In addition to the information and material previously identified in this paragraph, the Registry must include all of the following regarding each person who is listed in it:<sup>133</sup>

(1) A citation for, and the name of, all sexually oriented offenses or child-victim oriented offenses of which the person was convicted or for which the person was adjudicated a delinquent child and that resulted in a registration duty, and the date on which those offenses were committed;

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<sup>132</sup> R.C. 2950.13(A)(1).

<sup>133</sup> R.C. 2950.13(A)(1).



(2) The text of the sexually oriented offenses or child-victim oriented offenses identified in paragraph (1) as those offenses existed at the time the person was convicted of or was adjudicated a delinquent child for committing those offenses, or a link to a database that sets forth the text of those offenses;

(3) A statement as to whether the person is a Tier I, II, or III sex offender/child-victim offender for the sexually oriented offenses or child-victim oriented offenses identified in paragraph (1);

(4) The community supervision status of the person, including, but not limited to, whether the person is serving a community control sanction and the nature of any such sanction, whether the person is under supervised release and the nature of the release, or regarding a juvenile, whether the juvenile is under any other type of authorized release and the nature of any such release;

(5) The offense and delinquency history of the person, as determined from specified types of information;

(6) The BCII tracking number assigned to the person if one has been so assigned, the FBI number assigned to the person if one has been assigned and BCII is aware of the number, and any other state identification number assigned to the person of which BCII is aware;

(7) Fingerprints and palmprints of the person;

(8) A DNA specimen from the person;

(9) Whether the person has any outstanding arrest warrants;

(10) Whether the person is in compliance with the person's duties under the SORN Law.

#### **BCII Internet sex offender and child-victim offender database**

The SORN Law requires the AG, through BCII and not later than January 1, 2004, to establish and operate on the Internet a sex offender and child-victim offender database that contains information for every offender who has committed a sexually oriented offense or a child-victim oriented offense and registers in any county in Ohio under the SORN Law and for every delinquent child who has committed a sexually oriented offense, is a PRQJO registrant, and registers in any county in Ohio pursuant to that Law. BCII may not include on the database the identity of any offender's or PRQJO registrant's victim, any offender's or PRQJO registrant's Social Security number, the name of any school or institution of higher education attended by any offender or

PRQJO registrant, the name of the place of employment of any offender or PRQJO registrant, any tracking or identification number for the person that is in the State Registry of Sex Offenders and Child-Victim Offenders, or any information regarding the offender's or PRQJO registrant's driver's or commercial driver's license or state identification card provided with registration. BCII must provide on the database, for each offender and each PRQJO registrant, at least the information specified in paragraphs (1) to (8), below. Otherwise, BCII must determine the information to be provided on the database for each offender and PRQJO registrant and must obtain that information from the information contained in the State Registry of Sex Offenders and Child-Victim Offenders, which information, while in the possession of the sheriff who provided it, is a public record open for inspection. The database is a public record open for inspection under the state's Public Records Law, and it must be searchable by offender or PRQJO registrant name, by county, by ZIP Code, and by school district. The database must provide a link to the web site of each sheriff who has established and operates on the Internet a sex offender and child-victim offender database that contains information for offenders and PRQJO registrants who register in that county pursuant to the SORN Law, with the link being a direct link to the database for the sheriff.<sup>134</sup> BCII must provide on the database, for each offender and PRQJO registrant, at least the following information:<sup>135</sup>

(1) The information described above in paragraphs (1) to (4) under "**State Registry of Sex Offenders and Child-Victim Offenders**" relative to the offender or registrant;

(2) The address of the offender's or registrant's school, institution of higher education, or place of employment provided in a registration form;

(3) The identification license plate number of each vehicle the offender or registrant owns, each vehicle registered in the offender's or registrant's name, each vehicle the offender or registrant operates as a part of employment, and each other vehicle that is regularly available to be operated by the offender or registrant, a description of where each such vehicle is habitually parked, stored, docked, or otherwise kept, and, if required by BCII, a photograph of each such vehicle;

(4) A chart describing which sexually oriented offenses and child-victim oriented offenses are included in the definitions of Tier I, II, and III sex offender/child-victim offenders;

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<sup>134</sup> R.C. 2950.13(A)(11).

<sup>135</sup> R.C. 2950.13(A)(11).

(5) Fingerprints and palm prints of the offender or registrant and a DNA specimen from the offender or registrant;

(6) The information required to be included in community notifications under the SORN Law;

(7) Any outstanding arrest warrants for the offender or registrant;

(8) The offender's or registrant's compliance status with duties under the SORN Law.

#### **Duties under pre-January 1, 2008, SORN Law**

Under the pre-January 1, 2008, version of the SORN Law, the Law's address registration, change of address, and periodic address verification provisions applied to all persons who were convicted of a sexually oriented offense or child-victim oriented offense and all children who were adjudicated delinquent children for committing an act that is a sexually oriented offense or a child-victim oriented offense and who were classified by the juvenile court as juvenile offender registrants. However, other provisions of that Law did not apply to persons in some of the categories: (1) the Law's "notice of intent to reside" provisions applied only to persons who under the pre-January 1, 2008, version of the Law were adjudicated a sexual predator or child-victim predator, adjudicated a habitual sex offender or child-victim offender and subjected to the Law's community notification mechanism, or convicted of an aggravated sexually oriented offense,<sup>136</sup> (2) the Law's "1,000-foot residence restriction" applied only to persons who under the pre-January 1, 2008, version of the Law were convicted of a sexually oriented offense that was not a "registration exempt sexually oriented offense" or a child-victim oriented offense,<sup>137</sup> (3) the Law's victim notification mechanism applied only to persons who under the pre-January 1, 2008, version of the Law were adjudicated a sexual predator or child-victim predator, adjudicated a habitual sex offender or habitual child-victim offender and subjected to the Law's community notification provisions, or convicted of an aggravated sexually oriented offense,<sup>138</sup> and (4) the Law's community notification mechanism applied only to persons in any of the categories described in clause (3) of this paragraph.<sup>139</sup>

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<sup>136</sup> Former R.C. 2950.04(G) and 2950.041(G), in effect prior to January 1, 2008.

<sup>137</sup> Former R.C. 2950.031, in effect prior to January 1, 2008.

<sup>138</sup> Former R.C. 2950.10, in effect prior to January 1, 2008.

<sup>139</sup> Former R.C. 2950.11, in effect prior to January 1, 2008.

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## HISTORY

ACTION

DATE

Introduced

06-12-13

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