124th General Assembly **Regular Session** 2001-2002

S. B. No. 175

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SENATOR Jacobson

A BILL

Т	To amend section 2950.09 of the Revised Code regarding	1
	sexual predator hearings for offenders convicted of	2
	a sexually oriented offense but acquitted of a	3
	sexually violent predator specification, and to	4
	declare an emergency.	5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2950.09 of the Revised Code be amended to read as follows:

Sec. 2950.09. (A) If a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually 9 oriented offense that is a sexually violent offense and also is 10 convicted of or pleads guilty to a sexually violent predator 11 specification that was included in the indictment, count in the 12 indictment, or information charging the sexually violent offense, 13 the conviction of or plea of guilty to the specification 14 automatically classifies the offender as a sexual predator for 15 purposes of this chapter. If a person is convicted of or pleads 16 guilty to a sexually oriented offense in another state, or in a 17 federal court, military court, or an Indian tribal court and if, 18 as a result of that conviction or plea of guilty, the person is 19 required, under the law of the jurisdiction in which the person 20

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was convicted or pleaded guilty, to register as a sex offender 21 until the person's death and is required to verify the person's 22 address on at least a quarterly basis each year, that conviction 23 or plea of guilty automatically classifies the offender as a 24 sexual predator for the purposes of this chapter, but the offender 25 may challenge that classification pursuant to division (F) of this 26 section. In all other cases, a person who is convicted of or 27 pleads guilty to, or has been convicted of or pleaded guilty to, a 28 sexually oriented offense may be classified as a sexual predator 29 for purposes of this chapter only in accordance with division (B) 30 or (C) of this section. 31

32 (B)(1) Regardless of when the sexually oriented offense was committed, if a person is to be sentenced on or after January 1, 33 1997, for a sexually oriented offense that is not a sexually 34 violent offense, or if a person is to be sentenced on or after 35 January 1, 1997, for a sexually oriented offense that is a 36 sexually violent offense and a sexually violent predator 37 specification was not included in the indictment, count in the 38 indictment, or information charging the sexually violent offense, 39 or if a person is to be sentenced on or after the effective date 40 of this amendment for a sexually oriented offense and that person 41 was acquitted of a sexually violent predator specification that 42 was included in the indictment, count in the indictment, or 43 information charging the sexually oriented offense, the judge who 44 is to impose sentence upon the offender shall conduct a hearing to 45 determine whether the offender is a sexual predator. The judge 46 shall conduct the hearing prior to sentencing and, if the sexually 47 oriented offense is a felony, may conduct it as part of the 48 sentencing hearing required by section 2929.19 of the Revised 49 Code. The court shall give the offender and the prosecutor who 50 prosecuted the offender for the sexually oriented offense notice 51 of the date, time, and location of the hearing. At the hearing, 52 the offender and the prosecutor shall have an opportunity to 53

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testify, present evidence, call and examine witnesses and expert 54 witnesses, and cross-examine witnesses and expert witnesses 55 regarding the determination as to whether the offender is a sexual 56 predator. The offender shall have the right to be represented by 57 counsel and, if indigent, the right to have counsel appointed to 58 represent the offender. 59

(2) In making a determination under divisions (B)(1) and (3) of this section as to whether an offender is a sexual predator, the judge shall consider all relevant factors, including, but not limited to, all of the following:

(a) The offender's age;

(b) The offender's prior criminal record regarding all offenses, including, but not limited to, all sexual offenses;

(c) The age of the victim of the sexually oriented offense for which sentence is to be imposed;

(d) Whether the sexually oriented offense for which sentenceis to be imposed involved multiple victims;

(e) Whether the offender used drugs or alcohol to impair the victim of the sexually oriented offense or to prevent the victim from resisting;

(f) If the offender previously has been convicted of or 74 pleaded guilty to any criminal offense, whether the offender 75 completed any sentence imposed for the prior offense and, if the 76 prior offense was a sex offense or a sexually oriented offense, 77 whether the offender participated in available programs for sexual 78 offenders; 79

(g) Any mental illness or mental disability of the offender;

(h) The nature of the offender's sexual conduct, sexual
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contact, or interaction in a sexual context with the victim of the
sexually oriented offense and whether the sexual conduct, sexual
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contact, or interaction in a sexual context was part of a 84 demonstrated pattern of abuse; 85

(i) Whether the offender, during the commission of the sexually oriented offense for which sentence is to be imposed, displayed cruelty or made one or more threats of cruelty;

(j) Any additional behavioral characteristics that contribute89to the offender's conduct.90

(3) After reviewing all testimony and evidence presented at 91 the hearing conducted under division (B)(1) of this section and 92 the factors specified in division (B)(2) of this section, the 93 judge shall determine by clear and convincing evidence whether the 94 offender is a sexual predator. If the judge determines that the 95 offender is not a sexual predator, the judge shall specify in the 96 offender's sentence and the judgment of conviction that contains 97 the sentence that the judge has determined that the offender is 98 not a sexual predator. If the judge determines by clear and 99 convincing evidence that the offender is a sexual predator, the 100 judge shall specify in the offender's sentence and the judgment of 101 conviction that contains the sentence that the judge has 102 determined that the offender is a sexual predator and shall 103 specify that the determination was pursuant to division (B) of 104 this section. The offender and the prosecutor who prosecuted the 105 offender for the sexually oriented offense in question may appeal 106 as a matter of right the judge's determination under this division 107 as to whether the offender is, or is not, a sexual predator. 108

(4) A hearing shall not be conducted under division (B) of
this section regarding an offender if the sexually oriented
offense in question is a sexually violent offense and, if the
indictment, count in the indictment, or information charging the
offense also included a sexually violent predator specification,
and if the offender is convicted of or pleads guilty to that
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sexually violent predator specification.

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(C)(1) If a person was convicted of or pleaded guilty to a 116 sexually oriented offense prior to January 1, 1997, if the person 117 was not sentenced for the offense on or after January 1, 1997, and 118 if, on or after January 1, 1997, the offender is serving a term of 119 imprisonment in a state correctional institution, the department 120 of rehabilitation and correction shall determine whether to 121 recommend that the offender be adjudicated as being a sexual 122 predator. In making a determination under this division as to 123 whether to recommend that the offender be adjudicated as being a 124 sexual predator, the department shall consider all relevant 125 factors, including, but not limited to, all of the factors 126 specified in division (B)(2) of this section. If the department 127 determines that it will recommend that the offender be adjudicated 128 as being a sexual predator, it immediately shall send the 129 recommendation to the court that sentenced the offender and shall 130 enter its determination and recommendation in the offender's 131 institutional record, and the court shall proceed in accordance 132 with division (C)(2) of this section. 133

(2)(a) If, pursuant to division (C)(1) of this section, the 134 department of rehabilitation and correction sends to a court a 135 recommendation that an offender who has been convicted of or 136 137 pleaded guilty to a sexually oriented offense be adjudicated as being a sexual predator, the court is not bound by the 138 department's recommendation, and the court may conduct a hearing 139 to determine whether the offender is a sexual predator. The court 140 may deny the recommendation and determine that the offender is not 141 a sexual predator without a hearing but shall not make a 142 determination that the offender is a sexual predator in any case 143 without a hearing. The court may hold the hearing and make the 144 determination prior to the offender's release from imprisonment or 145 at any time within one year following the offender's release from 146 that imprisonment. If the court determines without a hearing that 147

the offender is not a sexual predator, it shall include its determination in the offender's institutional record and shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the court determined that the offender is not a sexual predator. 148 149 150 150 150 151 152 153

The court may make the determination as to whether the 154 offender previously has been convicted of or pleaded quilty to a 155 sexually oriented offense without a hearing, but, if the court 156 determines that the offender previously has been convicted of or 157 pleaded guilty to such an offense, it shall not impose a 158 requirement that the offender be subject to the community 159 notification provisions regarding the offender's place of 160 residence that are contained in sections 2950.10 and 2950.11 of 161 the Revised Code without a hearing. The court may conduct a 162 hearing to determine both whether the offender previously has been 163 convicted of or pleaded guilty to a sexually oriented offense and 164 whether to impose a requirement that the offender be subject to 165 the community notification provisions as described in this 166 division, or may conduct a hearing solely to make the latter 167 determination. The court shall include in the offender's 168 institutional record any determination made under this division as 169 to whether the offender previously has been convicted of or 170 pleaded guilty to a sexually oriented offense, and, as such, 171 whether the offender is a habitual sex offender. 172

(b) If the court schedules a hearing under division (C)(2)(a) 173 of this section, the court shall give the offender and the 174 prosecutor who prosecuted the offender for the sexually oriented 175 offense, or that prosecutor's successor in office, notice of the 176 date, time, and place of the hearing. If the hearing is to 177 determine whether the offender is a sexual predator, it shall be 178 conducted in the manner described in division (B)(1) of this 179

180 section regarding hearings conducted under that division and, in 181 making a determination under this division as to whether the 182 offender is a sexual predator, the court shall consider all 183 relevant factors, including, but not limited to, all of the 184 factors specified in division (B)(2) of this section. After 185 reviewing all testimony and evidence presented at the sexual 186 predator hearing and the factors specified in division (B)(2) of 187 this section, the court shall determine by clear and convincing 188 evidence whether the offender is a sexual predator. If the court 189 determines that the offender is not a sexual predator, it also 190 shall determine whether the offender previously has been convicted 191 of or pleaded guilty to a sexually oriented offense other than the 192 offense in relation to which the hearing is being conducted.

Upon making its determinations at the hearing, the court shall proceed as follows:

(i) If the hearing is to determine whether the offender is a 195
sexual predator, and if the court determines that the offender is 196
not a sexual predator and that the offender previously has not 197
been convicted of or pleaded guilty to a sexually oriented offense 198
other than the offense in relation to which the hearing is being 199
conducted, it shall include its determinations in the offender's 200
institutional record. 201

(ii) If the hearing is to determine whether the offender is a 202 sexual predator, and if the court determines that the offender is 203 not a sexual predator but that the offender previously has been 204 convicted of or pleaded guilty to a sexually oriented offense 205 other than the offense in relation to which the hearing is being 206 conducted, it shall include its determination that the offender is 207 not a sexual predator but is a habitual sex offender in the 208 offender's institutional record, shall attach the determinations 209 to the offender's sentence, shall specify that the determinations 210 were pursuant to division (C) of this section, shall provide a 211

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212 copy of the determinations to the offender, to the prosecuting 213 attorney, and to the department of rehabilitation and correction, 214 and may impose a requirement that the offender be subject to the 215 community notification provisions regarding the offender's place 216 of residence that are contained in sections 2950.10 and 2950.11 of 217 the Revised Code. The offender shall not be subject to those 218 community notification provisions relative to the sexually 219 oriented offense in question if the court does not so impose the 220 requirement described in this division. If the court imposes those 221 community notification provisions, the offender may appeal the 222 judge's determination that the offender is a habitual sex 223 offender.

(iii) If the hearing is to determine whether the offender 224 previously has been convicted of or pleaded quilty to a sexually 225 oriented offense other than the offense in relation to which the 226 hearing is being conducted and whether to impose a requirement 227 that the offender be subject to the specified community 228 notification provisions, and if the court determines that the 229 offender previously has been convicted of or pleaded guilty to 230 such an offense, the court shall proceed as described in division 231 (C)(2)(b)(ii) of this section and may impose a community 232 notification requirement as described in that division. The 233 offender shall not be subject to the specified community 234 notification provisions relative to the sexually oriented offense 235 in question if the court does not so impose the requirement 236 described in that division. If the court imposes those community 237 notification provisions, the offender may appeal the judge's 238 determination that the offender is a habitual sex offender. 239

(iv) If the court determined without a hearing that the 240 offender previously has been convicted of or pleaded guilty to a 241 sexually oriented offense other than the offense in relation to 242 which the court determined that the offender is not a sexual 243

244 predator, and, as such, is a habitual sex offender, and the 245 hearing is solely to determine whether to impose a requirement 246 that the offender be subject to the specified community 247 notification provisions, after the hearing, the court may impose a 248 community notification requirement as described in division 249 (C)(2)(b)(ii) of this section. The offender shall not be subject 250 to the specified community notification provisions relative to the 251 sexually oriented offense in question if the court does not so 252 impose the requirement described in that division. If the court 253 imposes those community notification provisions, the offender may 254 appeal the judge's determination that the offender is a habitual 255 sex offender.

(v) If the hearing is to determine whether the offender is a 256 sexual predator, and if the court determines by clear and 257 convincing evidence that the offender is a sexual predator, it 258 shall enter its determination in the offender's institutional 259 record, shall attach the determination to the offender's sentence, 260 shall specify that the determination was pursuant to division (C) 261 of this section, and shall provide a copy of the determination to 262 the offender, to the prosecuting attorney, and to the department 263 of rehabilitation and correction. The offender and the prosecutor 264 may appeal as a matter of right the judge's determination under 265 this division as to whether the offender is, or is not, a sexual 266 predator. 267

(D)(1) Upon the expiration of the applicable period of time 268 specified in division (D)(1)(a) or (b) of this section, an 269 offender who has been convicted of or pleaded guilty to a sexually 270 oriented offense and who has been adjudicated as being a sexual 271 predator relative to the sexually oriented offense in the manner 272 described in division (B) or (C) of this section may petition the 273 judge who made the determination that the offender was a sexual 274 predator, or that judge's successor in office, to enter a 275

276 determination that the offender no longer is a sexual predator. 277 Upon the filing of the petition, the judge may review the prior 278 sexual predator determination that comprises the sexually violent 279 predator adjudication, and, upon consideration of all relevant 280 evidence and information, including, but not limited to, the 281 factors set forth in division (B)(2) of this section, either shall 282 enter a determination that the offender no longer is a sexual 283 predator or shall enter an order denying the petition. The court 284 shall not enter a determination under this division that the 285 offender no longer is a sexual predator unless the court 286 determines by clear and convincing evidence that the offender is 287 unlikely to commit a sexually oriented offense in the future. If 288 the judge enters a determination under this division that the 289 offender no longer is a sexual predator, the judge shall notify 290 the bureau of criminal identification and investigation and the 291 parole board of the determination. Upon receipt of the 292 notification, the bureau promptly shall notify the sheriff with 293 whom the offender most recently registered under section 2950.04 294 or 2950.05 of the Revised Code of the determination that the 295 offender no longer is a sexual predator. If the judge enters an 296 order denying the petition, the prior adjudication of the offender 297 as a sexual predator shall remain in effect. An offender 298 determined to be a sexual predator in the manner described in 299 division (B) or (C) of this section may file a petition under this 300 division after the expiration of the following periods of time:

(a) Regardless of when the sexually oriented offense was
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committed, if, on or after January 1, 1997, the offender is
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imprisoned or sentenced to a prison term or other confinement for
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the sexually oriented offense in relation to which the
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determination was made, the offender initially may file the
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petition not earlier than one year prior to the offender's release
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from the imprisonment, prison term, or other confinement by

discharge, parole, judicial release, or any other final release. If the offender is sentenced on or after January 1, 1997, for the sexually oriented offense in relation to which the determination is made and is not imprisoned or sentenced to a prison term or other confinement for the sexually oriented offense, the offender initially may file the petition upon the expiration of one year after the entry of the offender's judgment of conviction. 308 309 309 310 310 310 311 312 313 314

(b) After the offender's initial filing of a petition under 315
division (D)(1)(a) of this section, thereafter, an offender may 316
file a petition under this division upon the expiration of five 317
years after the court has entered an order denying the most recent 318
petition the offender has filed under this division. 319

(2) Except as otherwise provided in this division, division 320 (D)(1) of this section does not apply to a person who is 321 classified as a sexual predator pursuant to division (A) of this 322 section. If a person who is so classified was sentenced to a 323 prison term pursuant to division (A)(3) of section 2971.03 of the 324 Revised Code and if the sentencing court terminates the offender's 325 prison term as provided in division (D) of section 2971.05 of the 326 Revised Code, the court's termination of the prison term 327 automatically shall constitute a determination by the court that 328 the offender no longer is a sexual predator. If the court so 329 terminates the offender's prison term, the court shall notify the 330 bureau of criminal identification and investigation and the parole 331 board of the determination that the offender no longer is a sexual 332 predator. Upon receipt of the notification, the bureau promptly 333 shall notify the sheriff with whom the offender most recently 334 registered under section 2950.04 or 2950.05 of the Revised Code 335 that the offender no longer is a sexual predator. If an offender 336 who is classified as a sexual predator pursuant to division (A) of 337 this section is released from prison pursuant to a pardon or 338 commutation, the classification of the offender as a sexual 339

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predator shall remain in effect after the offender's release, and the offender may file one or more petitions in accordance with the procedures and time limitations contained in division (D)(1) of this section for a determination that the offender no longer is a sexual predator. 340 341 342 343 344

(E) If a person is convicted of or pleads guilty to 345 committing, on or after January 1, 1997, a sexually oriented 346 offense, the judge who is to impose sentence on the offender shall 347 determine, prior to sentencing, whether the offender previously 348 has been convicted of or pleaded guilty to a sexually oriented 349 offense. If the judge determines that the offender previously has 350 not been convicted of or pleaded guilty to a sexually oriented 351 offense, the judge shall specify in the offender's sentence that 352 the judge has determined that the offender is not a habitual sex 353 offender. If the judge determines that the offender previously has 354 been convicted of or pleaded guilty to a sexually oriented 355 offense, the judge shall specify in the offender's sentence and 356 the judgment of conviction that contains the sentence that the 357 judge has determined that the offender is a habitual sex offender 358 and may impose a requirement in that sentence and judgment of 359 conviction that the offender be subject to the community 360 notification provisions regarding the offender's place of 361 residence that are contained in sections 2950.10 and 2950.11 of 362 the Revised Code. Unless the habitual sex offender also has been 363 adjudicated as being a sexual predator relative to the sexually 364 oriented offense in question, the offender shall not be subject to 365 those community notification provisions if the court does not 366 impose the requirement described in this division in the 367 offender's sentence and the judgment of conviction. 368

(F)(1) An offender classified as a sexual predator may
petition the court of common pleas of the county in which the
offender resides or temporarily is domiciled to enter a
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determination that the offender is not an adjudicated sexual372predator in this state for purposes of the sex offender373registration requirements of this chapter or the community374notification provisions contained in sections 2950.10 and 2950.11375of the Revised Code if all of the following apply:376

(a) The offender was convicted of or pleaded guilty to a 377
sexually oriented offense in another state or in a federal court, 378
a military court, or an Indian tribal court. 379

(b) As a result of the conviction or plea of guilty described 380 in division (F)(1)(a) of this section, the offender is required 381 under the law of the jurisdiction under which the offender was 382 convicted or pleaded guilty to register as a sex offender until 383 the offender's death and is required to verify the offender's 384 address on at least a quarterly basis each year. 385

(c) The offender was automatically classified as a sexual
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 predator under division (A) of this section in relation to the
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 conviction or guilty plea described in division (F)(1)(a) of this
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 section.

(2) The court may enter a determination that the offender 390 filing the petition described in division (F)(1) of this section 391 is not an adjudicated sexual predator in this state for purposes 392 of the sex offender registration requirements of this chapter or 393 the community notification provisions contained in sections 394 2950.10 and 2950.11 of the Revised Code only if the offender 395 proves by clear and convincing evidence that the requirement of 396 the other jurisdiction that the offender register as a sex 397 offender until the offender's death and the requirement that the 398 offender verify the offender's address on at least a quarterly 399 basis each year is not substantially similar to a classification 400 401 as a sexual predator for purposes of this chapter.

section 2. That existing section 2950.09 of the Revised Code 402

is hereby repealed.

Section 3. That the version of section 2950.09 of the Revised 404 Code that is scheduled to take effect on January 1, 2002, as 405 amended in Am. Sub. S.B. 3 of the 124th General Assembly, be 406 amended to read as follows: 407

Sec. 2950.09. (A) If a person is convicted of or pleads 408 guilty to committing, on or after January 1, 1997, a sexually 409 oriented offense that is a sexually violent offense and also is 410 convicted of or pleads guilty to a sexually violent predator 411 specification that was included in the indictment, count in the 412 indictment, or information charging the sexually violent offense, 413 the conviction of or plea of guilty to the specification 414 automatically classifies the offender as a sexual predator for 415 purposes of this chapter. If a person is convicted of, pleads 416 guilty to, or is adjudicated a delinquent child for committing, a 417 sexually oriented offense in another state, or in a federal court, 418 military court, or an Indian tribal court and if, as a result of 419 that conviction, plea of quilty, or adjudication, the person is 420 required, under the law of the jurisdiction in which the person 421 was convicted, pleaded guilty, or was adjudicated, to register as 422 a sex offender until the person's death and is required to verify 423 the person's address on at least a quarterly basis each year, that 424 conviction, plea of quilty, or adjudication automatically 425 classifies the person as a sexual predator for the purposes of 426 this chapter, but the person may challenge that classification 427 pursuant to division (F) of this section. In all other cases, a 428 person who is convicted of or pleads guilty to, has been convicted 429 of or pleaded guilty to, or is adjudicated a delinquent child for 430 committing, a sexually oriented offense may be classified as a 431 sexual predator for purposes of this chapter only in accordance 432 with division (B) or (C) of this section or, regarding delinquent 433

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children, divisions (B) and (C) of section 2152.83 of the Revised 434 Code. 435

(B)(1) The judge who is to impose sentence on a person who is 436 convicted of or pleads guilty to a sexually oriented offense or 437 the judge who is to impose or has imposed, pursuant to section 438 2152.82 or division (A) of section 2152.83 of the Revised Code, an 439 order of disposition upon a child who is adjudicated a delinquent 440 child for committing on or after the effective date of this 441 amendment January 1, 2002, a sexually oriented offense shall 442 conduct a hearing to determine whether the offender is a sexual 443 predator if any of the following circumstances apply: 444

(a) Regardless of when the sexually oriented offense was 445 committed, the offender is to be sentenced on or after January 1, 446 1997, for a sexually oriented offense that is not a sexually violent offense. 448

(b) Regardless of when the sexually oriented offense was 449 committed, the offender is to be sentenced on or after January 1, 450 1997, for a sexually oriented offense that is a sexually violent 451 offense and a sexually violent predator specification was not 452 included in the indictment, count in the indictment, or 453 information charging the sexually violent offense. 454

(c) The delinquent child was classified a juvenile sex 455 offender registrant pursuant to section 2152.82 or division (A) of 456 section 2152.83 of the Revised Code. A judge shall not conduct a 457 hearing under division (B) of this section regarding a delinquent 458 child unless the delinquent child is in the category of delinquent 459 children described in this division. 460

(d) Regardless of when the sexually oriented offense was 461 committed, the offender is to be sentenced on or after the 462 effective date of this amendment for a sexually oriented offense, 463 and that offender was acquitted of a sexually violent predator 464 specification that was included in the indictment, count in the 465

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indictment, or information charging the sexually oriented offense. 466

(2) The judge shall conduct the hearing prior to sentencing 467 and, if the sexually oriented offense is a felony and if the 468 hearing is being conducted under division (B)(1)(a) or, (b), or 469 (c) of this section, the judge may conduct it as part of the 470 sentencing hearing required by section 2929.19 of the Revised 471 472 Code. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case 473 against the delinquent child for the sexually oriented offense 474 notice of the date, time, and location of the hearing. At the 475 hearing, the offender or delinquent child and the prosecutor shall 476 have an opportunity to testify, present evidence, call and examine 477 witnesses and expert witnesses, and cross-examine witnesses and 478 expert witnesses regarding the determination as to whether the 479 offender or delinquent child is a sexual predator. The offender or 480 delinquent child shall have the right to be represented by counsel 481 and, if indigent, the right to have counsel appointed to represent 482 the offender or delinquent child. 483

(3) In making a determination under divisions (B)(1) and (4)
of this section as to whether an offender or delinquent child is a
sexual predator, the judge shall consider all relevant factors,
including, but not limited to, all of the following:

(a) The offender's or delinquent child's age;

(b) The offender's or delinquent child's prior criminal or
delinquency record regarding all offenses, including, but not
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limited to, all sexual offenses;
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(c) The age of the victim of the sexually oriented offense
for which sentence is to be imposed or the order of disposition is
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to be made;

(d) Whether the sexually oriented offense for which sentence495is to be imposed or the order of disposition is to be made496

involved multiple victims;

(e) Whether the offender or delinquent child used drugs or
alcohol to impair the victim of the sexually oriented offense or
to prevent the victim from resisting;
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(f) If the offender or delinquent child previously has been 501 502 convicted of or pleaded guilty to, or been adjudicated a delinquent child for committing an act that if committed by an 503 adult would be, a criminal offense, whether the offender or 504 delinquent child completed any sentence or dispositional order 505 imposed for the prior offense or act and, if the prior offense or 506 act was a sex offense or a sexually oriented offense, whether the 507 offender or delinquent child participated in available programs 508 for sexual offenders; 509

(g) Any mental illness or mental disability of the offender or delinquent child;

(h) The nature of the offender's or delinquent child's sexual
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conduct, sexual contact, or interaction in a sexual context with
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the victim of the sexually oriented offense and whether the sexual
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conduct, sexual contact, or interaction in a sexual context was
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part of a demonstrated pattern of abuse;
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(i) Whether the offender or delinquent child, during the
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commission of the sexually oriented offense for which sentence is
to be imposed or the order of disposition is to be made, displayed
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cruelty or made one or more threats of cruelty;
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(j) Any additional behavioral characteristics that contribute 521to the offender's or delinquent child's conduct. 522

(4) After reviewing all testimony and evidence presented at
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the hearing conducted under division (B)(1) of this section and
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the factors specified in division (B)(3) of this section, the
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court shall determine by clear and convincing evidence whether the
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subject offender or delinquent child is a sexual predator. If the

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528 court determines that the subject offender or delinquent child is 529 not a sexual predator, the court shall specify in the offender's 530 sentence and the judgment of conviction that contains the sentence 531 or in the delinquent child's dispositional order, as appropriate, 532 that the court has determined that the offender or delinquent 533 child is not a sexual predator. If the court determines by clear 534 and convincing evidence that the subject offender or delinquent 535 child is a sexual predator, the court shall specify in the 536 offender's sentence and the judgment of conviction that contains 537 the sentence or in the delinquent child's dispositional order, as 538 appropriate, that the court has determined that the offender or 539 delinquent child is a sexual predator and shall specify that the 540 determination was pursuant to division (B) of this section. The 541 offender or delinquent child and the prosecutor who prosecuted the 542 offender or handled the case against the delinquent child for the 543 sexually oriented offense in question may appeal as a matter of 544 right the court's determination under this division as to whether 545 the offender or delinquent child is, or is not, a sexual predator.

(5) A hearing shall not be conducted under division (B) of
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this section regarding an offender if the sexually oriented
offense in question is a sexually violent offense and, if the
offense also included a sexually violent predator specification,
offender is convicted of or pleads guilty to that
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(C)(1) If a person was convicted of or pleaded guilty to a 553 sexually oriented offense prior to January 1, 1997, if the person 554 was not sentenced for the offense on or after January 1, 1997, and 555 if, on or after January 1, 1997, the offender is serving a term of 556 imprisonment in a state correctional institution, the department 557 of rehabilitation and correction shall determine whether to 558 recommend that the offender be adjudicated as being a sexual 559

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560 predator. In making a determination under this division as to 561 whether to recommend that the offender be adjudicated as being a 562 sexual predator, the department shall consider all relevant 563 factors, including, but not limited to, all of the factors 564 specified in division (B)(2) of this section. If the department 565 determines that it will recommend that the offender be adjudicated 566 as being a sexual predator, it immediately shall send the 567 recommendation to the court that sentenced the offender and shall 568 enter its determination and recommendation in the offender's 569 institutional record, and the court shall proceed in accordance 570 with division (C)(2) of this section.

(2)(a) If, pursuant to division (C)(1) of this section, the 571 department of rehabilitation and correction sends to a court a 572 recommendation that an offender who has been convicted of or 573 pleaded guilty to a sexually oriented offense be adjudicated as 574 being a sexual predator, the court is not bound by the 575 department's recommendation, and the court may conduct a hearing 576 to determine whether the offender is a sexual predator. The court 577 may deny the recommendation and determine that the offender is not 578 a sexual predator without a hearing but shall not make a 579 determination that the offender is a sexual predator in any case 580 without a hearing. The court may hold the hearing and make the 581 determination prior to the offender's release from imprisonment or 582 at any time within one year following the offender's release from 583 that imprisonment. If the court determines without a hearing that 584 the offender is not a sexual predator, it shall include its 585 determination in the offender's institutional record and shall 586 determine whether the offender previously has been convicted of or 587 pleaded quilty to a sexually oriented offense other than the 588 offense in relation to which the court determined that the 589 offender is not a sexual predator. 590

The court may make the determination as to whether the 591

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592 offender previously has been convicted of or pleaded guilty to a 593 sexually oriented offense without a hearing, but, if the court 594 determines that the offender previously has been convicted of or 595 pleaded guilty to such an offense, it shall not impose a 596 requirement that the offender be subject to the community 597 notification provisions regarding the offender's place of 598 residence that are contained in sections 2950.10 and 2950.11 of 599 the Revised Code without a hearing. The court may conduct a 600 hearing to determine both whether the offender previously has been 601 convicted of or pleaded guilty to a sexually oriented offense and 602 whether to impose a requirement that the offender be subject to 603 the community notification provisions as described in this 604 division, or may conduct a hearing solely to make the latter 605 determination. The court shall include in the offender's 606 institutional record any determination made under this division as 607 to whether the offender previously has been convicted of or 608 pleaded guilty to a sexually oriented offense, and, as such, 609 whether the offender is a habitual sex offender.

(b) If the court schedules a hearing under division (C)(2)(a)610 of this section, the court shall give the offender and the 611 prosecutor who prosecuted the offender for the sexually oriented 612 offense, or that prosecutor's successor in office, notice of the 613 date, time, and place of the hearing. If the hearing is to 614 determine whether the offender is a sexual predator, it shall be 615 conducted in the manner described in division (B)(1) of this 616 section regarding hearings conducted under that division and, in 617 making a determination under this division as to whether the 618 offender is a sexual predator, the court shall consider all 619 relevant factors, including, but not limited to, all of the 620 factors specified in division (B)(2) of this section. After 621 reviewing all testimony and evidence presented at the sexual 622 predator hearing and the factors specified in division (B)(2) of 623

this section, the court shall determine by clear and convincing evidence whether the offender is a sexual predator. If the court determines that the offender is not a sexual predator, it also shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the hearing is being conducted. 624 625 625 626 627 628 628 629

Upon making its determinations at the hearing, the court shall proceed as follows:

(i) If the hearing is to determine whether the offender is a
sexual predator, and if the court determines that the offender is
not a sexual predator and that the offender previously has not
been convicted of or pleaded guilty to a sexually oriented offense
other than the offense in relation to which the hearing is being
conducted, it shall include its determinations in the offender's
fastitutional record.

(ii) If the hearing is to determine whether the offender is a 639 sexual predator, and if the court determines that the offender is 640 not a sexual predator but that the offender previously has been 641 convicted of or pleaded guilty to a sexually oriented offense 642 other than the offense in relation to which the hearing is being 643 conducted, it shall include its determination that the offender is 644 not a sexual predator but is a habitual sex offender in the 645 offender's institutional record, shall attach the determinations 646 to the offender's sentence, shall specify that the determinations 647 were pursuant to division (C) of this section, shall provide a 648 copy of the determinations to the offender, to the prosecuting 649 attorney, and to the department of rehabilitation and correction, 650 and may impose a requirement that the offender be subject to the 651 community notification provisions regarding the offender's place 652 of residence that are contained in sections 2950.10 and 2950.11 of 653 the Revised Code. The offender shall not be subject to those 654 community notification provisions relative to the sexually 655

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oriented offense in question if the court does not so impose the requirement described in this division. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender.

661 (iii) If the hearing is to determine whether the offender previously has been convicted of or pleaded guilty to a sexually 662 oriented offense other than the offense in relation to which the 663 hearing is being conducted and whether to impose a requirement 664 that the offender be subject to the specified community 665 notification provisions, and if the court determines that the 666 offender previously has been convicted of or pleaded guilty to 667 such an offense, the court shall proceed as described in division 668 (C)(2)(b)(ii) of this section and may impose a community 669 notification requirement as described in that division. The 670 offender shall not be subject to the specified community 671 notification provisions relative to the sexually oriented offense 672 in question if the court does not so impose the requirement 673 described in that division. If the court imposes those community 674 notification provisions, the offender may appeal the judge's 675 determination that the offender is a habitual sex offender. 676

(iv) If the court determined without a hearing that the 677 offender previously has been convicted of or pleaded guilty to a 678 sexually oriented offense other than the offense in relation to 679 which the court determined that the offender is not a sexual 680 predator, and, as such, is a habitual sex offender, and the 681 hearing is solely to determine whether to impose a requirement 682 that the offender be subject to the specified community 683 notification provisions, after the hearing, the court may impose a 684 community notification requirement as described in division 685 (C)(2)(b)(ii) of this section. The offender shall not be subject 686 to the specified community notification provisions relative to the 687

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sexually oriented offense in question if the court does not so impose the requirement described in that division. If the court imposes those community notification provisions, the offender may appeal the judge's determination that the offender is a habitual sex offender. 688 690 691 692

(v) If the hearing is to determine whether the offender is a 693 sexual predator, and if the court determines by clear and 694 convincing evidence that the offender is a sexual predator, it 695 shall enter its determination in the offender's institutional 696 record, shall attach the determination to the offender's sentence, 697 shall specify that the determination was pursuant to division (C) 698 of this section, and shall provide a copy of the determination to 699 the offender, to the prosecuting attorney, and to the department 700 of rehabilitation and correction. The offender and the prosecutor 701 may appeal as a matter of right the judge's determination under 702 this division as to whether the offender is, or is not, a sexual 703 predator. 704

(D)(1) Division (D) of this section applies to persons who 705 have been convicted of or pleaded guilty to a sexually oriented 706 offense. The procedures set forth in division (D) of this section 707 regarding a determination of whether a person no longer is a 708 sexual predator also apply, to the extent specified in section 709 2152.84 or 2152.85 of the Revised Code, to persons who have been 710 adjudicated a delinquent child for committing a sexually oriented 711 offense and have been determined by a juvenile court judge to be a 712 sexual predator. A person who has been adjudicated a delinquent 713 child for committing a sexually oriented offense and who has been 714 classified by a juvenile court judge a juvenile sex offender 715 registrant or, if applicable, additionally has been determined by 716 a juvenile court judge to be a sexual predator or habitual sex 717 offender, may petition the adjudicating court for a 718 reclassification or declassification pursuant to section 2152.85 719

of the Revised Code.

Upon the expiration of the applicable period of time 721 specified in division (D)(1)(a) or (b) of this section, an 722 offender who has been convicted of or pleaded guilty to a sexually 723 oriented offense and who has been adjudicated as being a sexual 724 predator relative to the sexually oriented offense in the manner 725 726 described in division (B) or (C) of this section may petition the judge who made the determination that the offender was a sexual 727 predator, or that judge's successor in office, to enter a 728 determination that the offender no longer is a sexual predator. 729 Upon the filing of the petition, the judge may review the prior 730 sexual predator determination that comprises the sexually violent 731 predator adjudication, and, upon consideration of all relevant 732 evidence and information, including, but not limited to, the 733 factors set forth in division (B)(3) of this section, either shall 734 enter a determination that the offender no longer is a sexual 735 predator or shall enter an order denying the petition. The judge 736 shall not enter a determination under this division that the 737 offender no longer is a sexual predator unless the judge 738 determines by clear and convincing evidence that the offender is 739 unlikely to commit a sexually oriented offense in the future. If 740 the judge enters a determination under this division that the 741 offender no longer is a sexual predator, the judge shall notify 742 the bureau of criminal identification and investigation and the 743 744 parole board of the determination. Upon receipt of the notification, the bureau promptly shall notify the sheriff with 745 whom the offender most recently registered under section 2950.04 746 or 2950.05 of the Revised Code of the determination that the 747 offender no longer is a sexual predator. If the judge enters an 748 order denying the petition, the prior adjudication of the offender 749 as a sexual predator shall remain in effect. An offender 750 determined to be a sexual predator in the manner described in 751

division (B) or (C) of this section may file a petition under this 752 division after the expiration of the following periods of time: 753

(a) Regardless of when the sexually oriented offense was 754 committed, if, on or after January 1, 1997, the offender is 755 imprisoned or sentenced to a prison term or other confinement for 756 the sexually oriented offense in relation to which the 757 758 determination was made, the offender initially may file the petition not earlier than one year prior to the offender's release 759 from the imprisonment, prison term, or other confinement by 760 discharge, parole, judicial release, or any other final release. 761 If the offender is sentenced on or after January 1, 1997, for the 762 sexually oriented offense in relation to which the determination 763 is made and is not imprisoned or sentenced to a prison term or 764 other confinement for the sexually oriented offense, the offender 765 initially may file the petition upon the expiration of one year 766 after the entry of the offender's judgment of conviction. 767

(b) After the offender's initial filing of a petition under
division (D)(1)(a) of this section, thereafter, an offender may
file a petition under this division upon the expiration of five
years after the court has entered an order denying the petition
under division (D)(1)(a) of this section or the most recent
petition the offender has filed under this division.

(2) Except as otherwise provided in this division, division 774 (D)(1) of this section does not apply to a person who is 775 classified as a sexual predator pursuant to division (A) of this 776 section. If a person who is so classified was sentenced to a 777 prison term pursuant to division (A)(3) of section 2971.03 of the 778 Revised Code and if the sentencing court terminates the offender's 779 prison term as provided in division (D) of section 2971.05 of the 780 Revised Code, the court's termination of the prison term 781 automatically shall constitute a determination by the court that 782 the offender no longer is a sexual predator. If the court so 783

784 terminates the offender's prison term, the court shall notify the 785 bureau of criminal identification and investigation and the parole 786 board of the determination that the offender no longer is a sexual 787 predator. Upon receipt of the notification, the bureau promptly 788 shall notify the sheriff with whom the offender most recently 789 registered under section 2950.04 or 2950.05 of the Revised Code 790 that the offender no longer is a sexual predator. If an offender 791 who is classified as a sexual predator pursuant to division (A) of 792 this section is released from prison pursuant to a pardon or 793 commutation, the classification of the offender as a sexual 794 predator shall remain in effect after the offender's release, and 795 the offender may file one or more petitions in accordance with the 796 procedures and time limitations contained in division (D)(1) of 797 this section for a determination that the offender no longer is a 798 sexual predator.

(E) If a person is convicted of or pleads guilty to 799 committing, on or after January 1, 1997, a sexually oriented 800 offense, the judge who is to impose sentence on the offender shall 801 determine, prior to sentencing, whether the offender previously 802 has been convicted of or pleaded guilty to a sexually oriented 803 offense. If a person is classified a juvenile sex offender 804 registrant, pursuant to section 2152.82 or division (A) of section 805 2152.83 of the Revised Code, the adjudicating judge shall 806 determine, prior to entering the order classifying the delinquent 807 child a juvenile sex offender registrant, whether the delinquent 808 child previously has been adjudicated a delinquent child for 809 committing a sexually oriented offense. If the adjudicating judge 810 has classified the delinguent child under division (A) of section 811 2152.83 of the Revised Code based on that adjudication a juvenile 812 sex offender registrant, the judge shall determine, prior to 813 entering the classification order, whether the delinquent child 814 previously has been adjudicated a delinquent child for committing 815

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816 a sexually oriented offense. If the judge determines that the 817 offender previously has not been convicted of or pleaded guilty to 818 a sexually oriented offense or that the delinquent child 819 previously has not been adjudicated a delinquent child for 820 committing a sexually oriented offense, the judge shall specify in 821 the offender's sentence or in the order classifying the delinquent 822 child a juvenile sex offender registrant that the judge has 823 determined that the offender or delinquent child is not a habitual 824 sex offender. If the judge determines that the offender previously 825 has been convicted of or pleaded guilty to a sexually oriented 826 offense or that the delinquent child previously has been 827 adjudicated a delinquent child for committing a sexually oriented 828 offense, the judge shall specify in the offender's sentence and 829 the judgment of conviction that contains the sentence or in the 830 order classifying the delinquent child a juvenile sex offender 831 registrant that the judge has determined that the offender or 832 delinquent child is a habitual sex offender and may impose a 833 requirement in that sentence and judgment of conviction or in that 834 order that the offender or delinquent child be subject to the 835 community notification provisions regarding the offender's or 836 delinquent child's place of residence that are contained in 837 sections 2950.10 and 2950.11 of the Revised Code. Unless the 838 habitual sex offender also has been adjudicated as being a sexual 839 predator relative to the sexually oriented offense in question, 840 the offender or delinquent child shall be subject to those 841 community notification provisions only if the court imposes the 842 requirement described in this division in the offender's sentence 843 and the judgment of conviction or in the order classifying the 844 delinquent child a juvenile sex offender registrant.

(F)(1) An offender or delinquent child classified as a sexual
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predator may petition the court of common pleas or, for a
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delinquent child, the juvenile court of the county in which the
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offender or delinquent child resides or temporarily is domiciled848to enter a determination that the offender or delinquent child is849not an adjudicated sexual predator in this state for purposes of850the sex offender registration requirements of this chapter or the851community notification provisions contained in sections 2950.10852and 2950.11 of the Revised Code if all of the following apply:853

(a) The offender or delinquent child was convicted of,
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pleaded guilty to, or was adjudicated a delinquent child for
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committing, a sexually oriented offense in another state or in a
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federal court, a military court, or an Indian tribal court.
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(b) As a result of the conviction, plea of guilty, or 858 adjudication described in division (F)(1)(a) of this section, the 859 offender or delinquent child is required under the law of the 860 jurisdiction under which the offender or delinquent child was 861 convicted, pleaded guilty, or was adjudicated to register as a sex 862 offender until the offender's or delinquent child's death and is 863 required to verify the offender's or delinquent child's address on 864 at least a quarterly basis each year. 865

(c) The offender or delinquent child was automatically
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classified as a sexual predator under division (A) of this section
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in relation to the conviction, guilty plea, or adjudication
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described in division (F)(1)(a) of this section.

(2) The court may enter a determination that the offender or 870 delinquent child filing the petition described in division (F)(1)871 of this section is not an adjudicated sexual predator in this 872 state for purposes of the sex offender registration requirements 873 of this chapter or the community notification provisions contained 874 in sections 2950.10 and 2950.11 of the Revised Code only if the 875 offender or delinquent child proves by clear and convincing 876 evidence that the requirement of the other jurisdiction that the 877 offender or delinquent child register as a sex offender until the 878 offender's or delinquent child's death and the requirement that 879

the offender or delinquent child verify the offender's or880delinquent child's address on at least a quarterly basis each year881is not substantially similar to a classification as a sexual882predator for purposes of this chapter.883

Section 4. That all existing versions of section 2950.09 of884the Revised Code are hereby repealed.885

Section 5. Sections 3 and 4 of this act shall take effect on 886 January 1, 2002. 887

Section 6. This act is hereby declared to be an emergency 888 measure necessary for the immediate preservation of the public 889 peace, health, and safety. The reason for such necessity is that, 890 because sexual predators are subjected to more stringent 891 registration requirements and to community notification 892 requirements that provide for increased public safety, it is 893 crucial for courts to have the mechanism enacted in this act for 894 determining whether a person who is convicted of a sexually 895 oriented offense but acquitted of a sexually violent predator 896 specification included in the charges for that offense is a sexual 897 predator. Therefore, this act shall go into immediate effect. 898