

As Reported by the Senate Judiciary--Criminal Justice Committee

124th General Assembly

Regular Session

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S. B. No. 175

SENATOR Jacobson

A B I L L

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

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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:

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

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As Reported by the Senate Judiciary--Criminal Justice Committee

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

(B)(1) Regardless of when the sexually oriented offense was 32
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

As Reported by the Senate Judiciary--Criminal Justice Committee

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 is a sexual predator. The offender shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender.

(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 sentence is 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 pleaded guilty to any criminal offense, whether the offender completed any sentence imposed for the prior offense and, if the prior offense was a sex offense or a sexually oriented offense, whether the offender participated in available programs for sexual offenders;

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

(h) The nature of the offender'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

As Reported by the Senate Judiciary--Criminal Justice Committee

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 86
sexually oriented offense for which sentence is to be imposed, 87
displayed cruelty or made one or more threats of cruelty; 88

(j) Any additional behavioral characteristics that contribute 89
to 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 109
this section regarding an offender if the sexually oriented 110
offense in question is a sexually violent offense and, if the 111
indictment, count in the indictment, or information charging the 112
offense also included a sexually violent predator specification, 113
and if the offender is convicted of or pleads guilty to that 114
sexually violent predator specification. 115

As Reported by the Senate Judiciary--Criminal Justice Committee

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

(2)(a) If, pursuant to division (C)(1) of this section, the department of rehabilitation and correction sends to a court a recommendation that an offender who has been convicted of or pleaded guilty to a sexually oriented offense be adjudicated as being a sexual predator, the court is not bound by the department's recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator. The court may deny the recommendation and determine that the offender is not a sexual predator without a hearing but shall not make a determination that the offender is a sexual predator in any case 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 the court determines without a hearing that

As Reported by the Senate Judiciary--Criminal Justice Committee

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.

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

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

As Reported by the Senate Judiciary--Criminal Justice Committee

section regarding hearings conducted under that division and, in making a determination under this division as to whether the offender is a sexual predator, the court shall consider all relevant factors, including, but not limited to, all of the factors specified in division (B)(2) of this section. After reviewing all testimony and evidence presented at the sexual predator hearing and the factors specified in division (B)(2) of 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.

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 institutional record.

(ii) 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 but that 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, it shall include its determination that the offender is not a sexual predator but is a habitual sex offender in the offender's institutional record, shall attach the determinations to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a

As Reported by the Senate Judiciary--Criminal Justice Committee

copy of the determinations to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions regarding the offender's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code. The offender shall not be subject to those community notification provisions relative to the sexually 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.

(iii) If the hearing is to 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 and whether to impose a requirement that the offender be subject to the specified community notification provisions, and if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, the court shall proceed as described in division (C)(2)(b)(ii) of this section and may impose a community notification requirement as described in that division. The offender shall not be subject to the specified community notification provisions relative to the 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.

(iv) If the court determined without a hearing that 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

As Reported by the Senate Judiciary--Criminal Justice Committee

predator, and, as such, is a habitual sex offender, and the hearing is solely to determine whether to impose a requirement that the offender be subject to the specified community notification provisions, after the hearing, the court may impose a community notification requirement as described in division (C)(2)(b)(ii) of this section. The offender shall not be subject to the specified community notification provisions relative to the 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.

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

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

As Reported by the Senate Judiciary--Criminal Justice Committee

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

(a) Regardless of when the sexually oriented offense was 301
committed, if, on or after January 1, 1997, the offender is 302
imprisoned or sentenced to a prison term or other confinement for 303
the sexually oriented offense in relation to which the 304
determination was made, the offender initially may file the 305
petition not earlier than one year prior to the offender's release 306
from the imprisonment, prison term, or other confinement by 307

As Reported by the Senate Judiciary--Criminal Justice Committee

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

As Reported by the Senate Judiciary--Criminal Justice Committee

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.

(E) If a person is convicted of or pleads guilty to
committing, on or after January 1, 1997, a sexually oriented
offense, the judge who is to impose sentence on the offender shall
determine, prior to sentencing, whether the offender previously
has been convicted of or pleaded guilty to a sexually oriented
offense. If the judge determines that the offender previously has
not been convicted of or pleaded guilty to a sexually oriented
offense, the judge shall specify in the offender's sentence that
the judge has determined that the offender is not a habitual sex
offender. If the judge determines that the offender previously has
been convicted of or pleaded guilty to a sexually oriented
offense, the judge shall specify in the offender's sentence and
the judgment of conviction that contains the sentence that the
judge has determined that the offender is a habitual sex offender
and may impose a requirement in that sentence and judgment of
conviction that the offender be subject to the community
notification provisions regarding the offender's place of
residence that are contained in sections 2950.10 and 2950.11 of
the Revised Code. Unless the habitual sex offender also has been
adjudicated as being a sexual predator relative to the sexually
oriented offense in question, the offender shall not be subject to
those community notification provisions if the court does not
impose the requirement described in this division in the
offender's sentence and the judgment of conviction.

(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

As Reported by the Senate Judiciary--Criminal Justice Committee

determination that the offender is not an adjudicated sexual predator in this state for purposes of the sex offender registration requirements of this chapter or the community notification provisions contained in sections 2950.10 and 2950.11 of the Revised Code if all of the following apply:

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

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

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

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

Section 2. That existing section 2950.09 of the Revised Code

is hereby repealed. 403

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 guilty, 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 guilty, 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

As Reported by the Senate Judiciary--Criminal Justice Committee

children, divisions (B) and (C) of section 2152.83 of the Revised Code. 434
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(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 447
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

indictment, or information charging the sexually oriented offense.

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(2) The judge shall conduct the hearing prior to sentencing and, if the sexually oriented offense is a felony and if the hearing is being conducted under division (B)(1)(a) ~~or~~, (b), or (c) of this section, the judge may conduct it as part of the sentencing hearing required by section 2929.19 of the Revised Code. The court shall give the offender or delinquent child and the prosecutor who prosecuted the offender or handled the case against the delinquent child for the sexually oriented offense notice of the date, time, and location of the hearing. At the hearing, the offender or delinquent child and the prosecutor shall 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 delinquent child is a sexual predator. The offender or delinquent child shall have the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender or delinquent child.

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(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:

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

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(b) The offender's or delinquent child's prior criminal or delinquency record regarding all offenses, including, but not 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 to be made;

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

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involved multiple victims; 497

(e) Whether the offender or delinquent child used drugs or 498
alcohol to impair the victim of the sexually oriented offense or 499
to prevent the victim from resisting; 500

(f) If the offender or delinquent child previously has been 501
convicted of or pleaded guilty to, or been adjudicated a 502
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 510
or delinquent child; 511

(h) The nature of the offender's or delinquent child's sexual 512
conduct, sexual contact, or interaction in a sexual context with 513
the victim of the sexually oriented offense and whether the sexual 514
conduct, sexual contact, or interaction in a sexual context was 515
part of a demonstrated pattern of abuse; 516

(i) Whether the offender or delinquent child, during the 517
commission of the sexually oriented offense for which sentence is 518
to be imposed or the order of disposition is to be made, displayed 519
cruelty or made one or more threats of cruelty; 520

(j) Any additional behavioral characteristics that contribute 521
to the offender's or delinquent child's conduct. 522

(4) After reviewing all testimony and evidence presented at 523
the hearing conducted under division (B)(1) of this section and 524
the factors specified in division (B)(3) of this section, the 525
court shall determine by clear and convincing evidence whether the 526
subject offender or delinquent child is a sexual predator. If the 527

As Reported by the Senate Judiciary--Criminal Justice Committee

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court determines that the subject offender or delinquent child is
not a sexual predator, the court shall specify in the offender's
sentence and the judgment of conviction that contains the sentence
or in the delinquent child's dispositional order, as appropriate,
that the court has determined that the offender or delinquent
child is not a sexual predator. If the court determines by clear
and convincing evidence that the subject offender or delinquent
child is a sexual predator, the court shall specify in the
offender's sentence and the judgment of conviction that contains
the sentence or in the delinquent child's dispositional order, as
appropriate, that the court has determined that the offender or
delinquent child is a sexual predator and shall specify that the
determination was pursuant to division (B) of this section. The
offender or delinquent child and the prosecutor who prosecuted the
offender or handled the case against the delinquent child for the
sexually oriented offense in question may appeal as a matter of
right the court's determination under this division as to whether
the offender or delinquent child is, or is not, a sexual predator.

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(5) 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
sexually violent predator specification.

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(C)(1) If a person was convicted of or pleaded guilty to a
sexually oriented offense prior to January 1, 1997, if the person
was not sentenced for the offense on or after January 1, 1997, and
if, on or after January 1, 1997, the offender is serving a term of
imprisonment in a state correctional institution, the department
of rehabilitation and correction shall determine whether to
recommend that the offender be adjudicated as being a sexual

As Reported by the Senate Judiciary--Criminal Justice Committee

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

(2)(a) If, pursuant to division (C)(1) of this section, the department of rehabilitation and correction sends to a court a recommendation that an offender who has been convicted of or pleaded guilty to a sexually oriented offense be adjudicated as being a sexual predator, the court is not bound by the department's recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator. The court may deny the recommendation and determine that the offender is not a sexual predator without a hearing but shall not make a determination that the offender is a sexual predator in any case 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 the court determines without a hearing that 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.

The court may make the determination as to whether the

As Reported by the Senate Judiciary--Criminal Justice Committee

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

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

As Reported by the Senate Judiciary--Criminal Justice Committee

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.

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 institutional record.

(ii) 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 but that 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, it shall include its determination that the offender is not a sexual predator but is a habitual sex offender in the offender's institutional record, shall attach the determinations to the offender's sentence, shall specify that the determinations were pursuant to division (C) of this section, shall provide a copy of the determinations to the offender, to the prosecuting attorney, and to the department of rehabilitation and correction, and may impose a requirement that the offender be subject to the community notification provisions regarding the offender's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code. The offender shall not be subject to those community notification provisions relative to the sexually

As Reported by the Senate Judiciary--Criminal Justice Committee

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.

(iii) If the hearing is to 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 and whether to impose a requirement
that the offender be subject to the specified community
notification provisions, and if the court determines that the
offender previously has been convicted of or pleaded guilty to
such an offense, the court shall proceed as described in division
(C)(2)(b)(ii) of this section and may impose a community
notification requirement as described in that division. The
offender shall not be subject to the specified community
notification provisions relative to the 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.

(iv) If the court determined without a hearing that 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, and, as such, is a habitual sex offender, and the
hearing is solely to determine whether to impose a requirement
that the offender be subject to the specified community
notification provisions, after the hearing, the court may impose a
community notification requirement as described in division
(C)(2)(b)(ii) of this section. The offender shall not be subject
to the specified community notification provisions relative to the

As Reported by the Senate Judiciary--Criminal Justice Committee

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.

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

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

As Reported by the Senate Judiciary--Criminal Justice Committee

of the Revised Code. 720

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
described in division (B) or (C) of this section may petition the 726
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
parole board of the determination. Upon receipt of the 744
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

As Reported by the Senate Judiciary--Criminal Justice Committee

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

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

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

As Reported by the Senate Judiciary--Criminal Justice Committee

terminates the offender's prison term, the court shall notify the
bureau of criminal identification and investigation and the parole
board of the determination that the offender no longer is a sexual
predator. Upon receipt of the notification, the bureau promptly
shall notify the sheriff with whom the offender most recently
registered under section 2950.04 or 2950.05 of the Revised Code
that the offender no longer is a sexual predator. If an offender
who is classified as a sexual predator pursuant to division (A) of
this section is released from prison pursuant to a pardon or
commutation, the classification of the offender as a sexual
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.

(E) If a person is convicted of or pleads guilty to
committing, on or after January 1, 1997, a sexually oriented
offense, the judge who is to impose sentence on the offender shall
determine, prior to sentencing, whether the offender previously
has been convicted of or pleaded guilty to a sexually oriented
offense. If a person is classified a juvenile sex offender
registrant, pursuant to section 2152.82 or division (A) of section
2152.83 of the Revised Code, the adjudicating judge shall
determine, prior to entering the order classifying the delinquent
child a juvenile sex offender registrant, whether the delinquent
child previously has been adjudicated a delinquent child for
committing a sexually oriented offense. If the adjudicating judge
has classified the delinquent child under division (A) of section
2152.83 of the Revised Code based on that adjudication a juvenile
sex offender registrant, the judge shall determine, prior to
entering the classification order, whether the delinquent child
previously has been adjudicated a delinquent child for committing

As Reported by the Senate Judiciary--Criminal Justice Committee

a sexually oriented offense. If the judge determines that the offender previously has not been convicted of or pleaded guilty to a sexually oriented offense or that the delinquent child previously has not been adjudicated a delinquent child for committing a sexually oriented offense, the judge shall specify in the offender's sentence or in the order classifying the delinquent child a juvenile sex offender registrant that the judge has determined that the offender or delinquent child is not a habitual sex offender. If the judge determines that the offender previously has been convicted of or pleaded guilty to a sexually oriented offense or that the delinquent child previously has been adjudicated a delinquent child for committing a sexually oriented offense, the judge shall 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 sex offender registrant that the judge has determined that the offender or delinquent child is a habitual sex offender and 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 regarding the offender's or delinquent child's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code. Unless the habitual sex offender also has been adjudicated as being a sexual predator relative to the sexually oriented offense in question, the offender or delinquent child shall be subject to those community notification provisions only if the court imposes the requirement described in this division in the offender's sentence and the judgment of conviction or in the order classifying the delinquent child a juvenile sex offender registrant.

(F)(1) An offender or delinquent child classified as a sexual predator may petition the court of common pleas or, for a delinquent child, the juvenile court of the county in which the

As Reported by the Senate Judiciary--Criminal Justice Committee

offender or delinquent child resides or temporarily is domiciled 848
to enter a determination that the offender or delinquent child is 849
not an adjudicated sexual predator in this state for purposes of 850
the sex offender registration requirements of this chapter or the 851
community notification provisions contained in sections 2950.10 852
and 2950.11 of the Revised Code if all of the following apply: 853

(a) The offender or delinquent child was convicted of, 854
pleaded guilty to, or was adjudicated a delinquent child for 855
committing, a sexually oriented offense in another state or in a 856
federal court, a military court, or an Indian tribal court. 857

(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 866
classified as a sexual predator under division (A) of this section 867
in relation to the conviction, guilty plea, or adjudication 868
described in division (F)(1)(a) of this section. 869

(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

As Reported by the Senate Judiciary--Criminal Justice Committee

the offender or delinquent child verify the offender's or 880
delinquent child's address on at least a quarterly basis each year 881
is not substantially similar to a classification as a sexual 882
predator for purposes of this chapter. 883

Section 4. That all existing versions of section 2950.09 of 884
the 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