



Am. Sub. S.B. 97
127th General Assembly
(As Passed by the General Assembly)

Sens. Stivers, Schaffer, Faber, Clancy, Bocchieri, Mumper, Austria, Goodman, Harris, Padgett, Spada, Wilson, Cates

Reps. Latta, Jones, Bulp, Blessing, Hughes, Bacon, Barrett, Batchelder, Beatty, Bolon, Boyd, Brady, Carmichael, Combs, Core, DeBose, DeGeeter, Domenick, Dyer, Evans, Flowers, Gerberry, Gibbs, J. Hagan, Healy, Heard, Hottinger, Luckie, Lundy, Mandel, Oelslager, Otterman, Patton, Sayre, Schindel, Setzer, Stebelton, Szollosi, Uecker, Wagoner, Webster, B. Williams, Yuko, Zehringer

Effective date: Emergency, June 30, 2007; Sections 1 to 3 effective July 1, 2007; certain other provisions effective July 1, 2007, August 15, 2007, September 4, 2007, and January 1, 2008

ACT SUMMARY

- Modifies the penalties for a violation of any prohibition in the Sex Offender Registration and Notification Law that prohibits a person from failing to comply with the Law's address registration, notice of intent to reside, change of address, and address verification, so that: (1) subject to clause (2) of this paragraph, (a) if the most serious offense that was the basis of the requirement violated is aggravated murder or murder, the offender is guilty of a felony of the first degree, (b) if the most serious offense is a felony of the first, second, third, or fourth degree, the offender is guilty of a felony of the same degree as the most serious offense that was the basis of the requirement violated, and (c) if the most serious offense is a felony of the fifth degree or a misdemeanor, the offender is guilty of a felony of the fourth degree, (2) if the offender previously has been convicted of or pleaded guilty to or been adjudicated delinquent for violating any of the prohibitions: (a) if the most serious offense that was the basis of the requirement violated is aggravated murder or murder, the offender is guilty of a felony of the first degree, (b) if the most serious offense is a felony of the first, second, or third degree, the offender is guilty of a felony of the same degree as the most serious

offense that was the basis of the requirement violated and, in addition to any other sanction imposed, the court must impose a definite prison term of no less than three years, (c) if the most serious offense that was the basis of the requirement violated is a felony of the fourth or fifth degree, the offender is guilty of a felony of the third degree and, in addition to any other sanction imposed, the court must impose a definite prison term of no less than three years, and (d) if the most serious offense that was the basis of the requirement violated is a misdemeanor, the offender is guilty of a felony of the fourth degree.

- Provides that, by January 1, 2008, BCII, with the assistance of the Office of Criminal Justice Services, must include on BCII's Internet Sex Offender and Child-victim Offender Database a link to educational information for the public on current research about sex offenders and child-victim offenders and that each sheriff who has established on the Internet a sex offender and child-victim offender database may include on the database a link of that nature.
- Provides that, by January 1, 2008, BCII's Internet Sex Offender and Child-victim Offender Database and each sheriff's Internet sex offender and child-victim offender database is required to inform offenders and public registry-qualified juvenile offender registrants that they may contact the sheriff of the county in which the offender or delinquent child registered an address if the offender or delinquent child believes that information contained on the Internet Sex Offender and Child-victim Offender Database or sheriff's Internet sex offender and child-victim offender database is incorrect.
- Modifies the definition of "sexually oriented business" as enacted in Sub. S.B. 16 of the 127th General Assembly.
- Gives townships the authority, by resolution, to restrict the residency of sex offenders and child-victim offenders in the same manner as municipal corporations.
- Directs the Superintendent of BCII to establish and maintain a Retained Applicant Fingerprint Database comprised of fingerprints of individuals on whom BCII has conducted criminal records checks for the purpose of determining eligibility for employment with or licensure by a public office.

- Prohibits a superintendent of a school district, educational service center, community school, or public or private employer from permitting the operation of a vehicle used for pupil transportation within Ohio by an individual unless certain information about that driver has been submitted to the Department of Education and a criminal records check by BCII, including information from the FBI, has been completed and received by the Superintendent or public or private employer.
- Prohibits the owner of a school bus or van from permitting a person to operate the bus or van for six years after the date on which the person pleads guilty to or is convicted of state OVI or state OVUAC or a substantially equivalent municipal ordinance.

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CONTENT AND OPERATION

Penalty for failure to comply with SORN Law duty

Prohibitions

Ongoing law prohibits a person who is or has been convicted of, or pleads or has pleaded guilty to, a sexually oriented offense or a child-victim oriented offense, and a person who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant from failing to comply with the address registration, notice of intent to reside, change of address notification, and address verification duties prescribed under R.C. 2950.04, 2950.041, 2950.05, and 2950.06 (R.C. 2950.04(E), 2950.041(E), 2950.05(E), and 2950.06(F), which are not in the act).

The act does not change any of the above prohibitions, but it does change some of the penalties for violations of these prohibitions.

Penalties

The act modifies the penalties for a violation of any prohibition in the SORN Law described above in "Prohibitions," with the modifications to take effect on January 1, 2008 (Sections 3 to 5). Under the act, a person who violates any of those prohibitions must be punished as follows:

(1) Except as otherwise described below in (2), under the act, the offender must be punished as follows (R.C. 2950.99(A)(1)(a)):

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree.

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of: (i) a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, or (ii) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated was a comparable category

of offense committed in another jurisdiction, a felony of the same degree as that offense committed in the other jurisdiction would constitute if it had been committed in Ohio.

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

(2) If the offender previously has been convicted of or pleaded guilty to, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions in the SORN Law described above in "Prohibitions," under the act, the offender must be punished as follows (R.C. 2950.99(A)(1)(b) and (A)(2)(b)):

(a) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is aggravated murder or murder if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the first degree. In addition to any penalty or sanction imposed under this provision, or any other provision of law for the violation, the court must impose a definite prison term of no less than three years. The definite prison term is not restricted by R.C. 2929.14(B), which generally requires a sentencing court to impose the shortest prison term authorized for the offense unless the court makes specified findings, and cannot be reduced to less than three years pursuant to R.C. Chapter 2967. or any other Revised Code provision.

(b) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated is a felony of the first, second, or third degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of: (i) a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, or (ii) if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated was a comparable category of offense committed in another jurisdiction, a felony of the same degree as that offense committed in the other jurisdiction would constitute if it had been committed in Ohio. In addition to any penalty or sanction imposed under this provision, or any other provision of law for the violation, the court must impose a definite prison term of no less than three years. The definite prison term is not restricted by R.C. 2929.14(B), which generally requires a sentencing court to impose the shortest prison term authorized for the offense unless the court makes

specified findings, and cannot be reduced to less than three years pursuant to R.C. Chapter 2967. or any other Revised Code provision.

(c) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the fourth or fifth degree if committed by an adult, or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the third degree. In addition to any penalty or sanction imposed under this provision, or any other provision of law for the violation, the court must impose a definite prison term of no less than three years. The definite prison term is not restricted by R.C. 2929.14(B), which generally requires a sentencing court to impose the shortest prison term authorized for the offense unless the court makes specified findings, and cannot be reduced to less than three years pursuant to R.C. Chapter 2967. or any other Revised Code provision.

(d) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a misdemeanor if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the fourth degree.

The act retains, without any substantive change, the following penalty-related provisions for a violation of the SORN Law requirements:

(1) In addition to any penalty or sanction imposed under the provisions described above in paragraphs (1) and (2) or any other provision of law for a violation of any of the prohibitions in the SORN Law described above in "*Prohibitions*," if the offender or delinquent child is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(2) If a person violates any of the prohibitions in the SORN Law described above in "*Prohibitions*" that applies to the person as a result of the person being adjudicated a delinquent child and being classified a juvenile offender registrant or as an out-of-state juvenile offender registrant, both of the following apply: (a) if the violation occurs while the person is under 18, the person is subject to proceedings under the Delinquent Child Law based on the violation, and (b) if the violation occurs while the person is 18 or older, the person is subject to criminal prosecution based on the violation.



Internet Sex Offender and Child-victim Offender Database--link to educational information on current research about sex offenders and child-victim offenders and notice to offenders and public registry-qualified juvenile offender registrants regarding incorrect information

Ongoing law requires the Attorney General (the AG), through the Bureau of Criminal Identification and Investigation (BCII) to establish and operate on the Internet a Sex Offender and Child-victim Offender Database that contains specified information for every offender and public registry-qualified juvenile offender registrant who has committed either a sexually oriented offense or a child-victim oriented offense and who registers in any Ohio county pursuant to the SORN Law. BCII is required to determine the information to be provided on the database for each offender and public registry-qualified juvenile offender registrant and to obtain that information from the information contained in the State Registry of Sex Offenders and Child-victim Offenders. (R.C. 2950.13(A)(11).)

The act expands the required content of the Sex Offender and Child-victim Offender Database operated by BCII, as follows (R.C. 2950.131; the changes will take effect on January 1, 2008 (Sections 3 to 5):

(1) **Link to educational information on current research about sex offenders and child-victim offenders**. It provides that, by January 1, 2008, BCII, with the assistance of the Office of Criminal Justice Services, must include on the Internet Sex Offender and Child-victim Offender Database a link to educational information for the public on current research about sex offenders and child-victim offenders.

(2) **Notice to offenders and public registry-qualified juvenile registrants regarding incorrect information**. It provides that, by January 1, 2008, the Internet Sex Offender and Child-victim Offender Database is required to inform offenders and public registry-qualified juvenile offender registrants that they may contact the sheriff of the county in which the offender or delinquent child registered an address if the offender or delinquent child believes that information contained on the Internet Sex Offender and Child-victim Offender Database or a sheriff's internet sex offender and child-victim offender database is incorrect.

Internet sex offender and child-victim offender database established and maintained by a sheriff--link to educational information on current research about sex offenders and child-victim offenders and notice to offenders and public registry-qualified juvenile offender registrants regarding incorrect information

The act enacts new provisions that relate to any Internet sex offender and child-victim offender database established and maintained by a sheriff, as follows (R.C. 2950.131; the changes will take effect on January 1, 2008 (Sections 3 to 5):

(1) **Link to educational information on current research about sex offenders and child-victim offenders.** It provides that each sheriff who has established on the Internet a sex offender and child-victim offender database may include on the database a link to educational information for the public on current research about sex offenders and child-victim offenders.

(2) **Notice to offenders and public registry-qualified juvenile offender registrants regarding incorrect information.** It provides that, by January 1, 2008, each sheriff's Internet sex offender and child-victim offender database is required to inform offenders and public registry-qualified juvenile offender registrants that they may contact the sheriff of the county in which the offender or delinquent child registered an address if the offender or delinquent child believes that information contained on the sheriff's internet sex offender and child-victim offender database or the Internet Sex Offender and Child-victim Offender Database is incorrect.

Definition of "sexually oriented business" in Sub. S.B. 16 of the 127th General Assembly

Substitute S.B. 16 of the 127th General Assembly defined a "sexually oriented business" for purposes of several prohibitions pertaining to these businesses. That act defined a "sexually oriented business" as meaning an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America. (R.C. 2907.40(B)(15).)

The act changes the definition so that a "sexually oriented business" means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials *that may depict sex*. (R.C. 2907.40(B)(15).) The act also specifies that this amendment to R.C. 2907.40 takes effect on the same date as Sub. S.B. 16 takes effect (Section 3).

Township authority to regulate the residency of sex offenders and child-victim offenders

The act specifies that townships, by resolution, have authority to exercise all powers of local self-government within their limits regarding the residency of a person who has been convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense and to adopt and enforce within their limits any local police, sanitary, and similar regulations regarding the residence of such persons that are not in conflict with general laws. The act also states that townships have the same rights, powers, and duties pursuant to this authority as municipal corporations have under Section 3, Article XVIII of the Ohio Constitution relative to their authority to exercise powers of local self-government and to adopt and enforce within their limits local police, sanitary, and similar regulations, except to the extent that the rights, powers, and duties that municipal corporations have by their nature clearly are inapplicable to townships and to the exercise by townships of this authority regarding the residence of sex offenders and child-victim offenders.

The act provides that this authority applies to all townships. If a township has adopted a limited home rule government pursuant to R.C. Chapter 504., this authority is in addition to the powers and authority granted under that chapter. (R.C. 503.60 and 504.04(A)(4).)

These provisions take effect January 1, 2008 (Section 3).

Provisions pertaining to school bus drivers

Background checks for school bus drivers

The act prohibits a superintendent of a school district, educational service center, community school, or public or private employer from permitting the operation of a vehicle used for pupil transportation within Ohio by an individual unless both of the following apply (R.C. 3327.10(G), conforming change in R.C. 3319.39(A)(1) for new hires):

(1) Information pertaining to that driver has been submitted to the Department of Education, pursuant to Department procedures. Information to be reported includes the name of the employer or school district, name of the driver, driver license number, date of birth, date of hire, status of physical evaluation, and status of training.

(2) A criminal records check by BCII, including information from the FBI, has been completed and received by the Superintendent or public or private employer.

Obtaining the complete driving record of a driver

The act also provides, modifying former law, that not later than 30 days after June 30, 2007, each owner of a school bus or motor van must obtain the complete driving record for each person who is currently employed or otherwise authorized to drive the school bus or motor van. An owner of such a bus or van is prohibited from permitting a person to operate the vehicle for the first time before the owner has obtained the person's complete driving record. Thereafter, the owner must obtain the person's driving record not less frequently than semiannually (increased from the one-year requirement of former law) if the person remains employed or otherwise authorized to drive the school bus or van. An owner is also prohibited from permitting a person to resume operating a school bus or van, after an interruption of one year or longer, before the owner has obtained the person's complete driving record. (R.C. 3327.10(F)(1).)

State OVI as a disqualifying offense

Under former law, an owner of a school bus or van was prohibited from permitting a person to operate the bus or van for seven years after the date of a violation for which six points are assessed under R.C. 4510.036. The act repeals this provision and instead prohibits the owner of a school bus or van from permitting a person to operate the bus or van for six years after the date on which the person pleads guilty to or is convicted of state OVI or state OVUAC or a substantially equivalent municipal ordinance. (R.C. 3327.10(F)(2).)

The act provides that for qualified drivers who, on the effective date of the these provisions, are employed by the owner of a school bus or motor van to drive the school bus or motor van, any instance in which the driver was convicted of or pleaded guilty to state OVI or state OVUAC or a substantially equivalent municipal ordinance prior to two years prior to the effective date of these provisions is not to be considered a disqualifying event (R.C. 3327.10(I)).

The act additionally specifies that an owner of a school bus or motor van is prohibited from permitting any person to operate such a vehicle unless the person meets all other requirements contained in rules adopted by the State Board of Education (R.C. 3327.10(F)(3)).

The act's school bus driver provisions take effect July 1, 2007 (Section 3).

Retained Applicant Fingerprint Database

The act directs the Superintendent of BCII, within six months of the provision's effective date, to establish and maintain a database of fingerprints of individuals on whom BCII has conducted criminal records checks for the purpose

of determining eligibility for employment with or licensure by a public office. The Superintendent must maintain the database separate and apart from other records maintained by BCII, and the database is to be known as the Retained Applicant Fingerprint Database.

When the Superintendent receives information that an individual whose name is in the Database has been arrested for or convicted of any offense, the Superintendent must promptly notify any participating public office that employs or that licensed the individual of the arrest or conviction. The public office that receives the notification and its employees and officers may use the information contained in the notification solely to determine the individual's eligibility for continued employment with the public office or to retain a license issued by the public office. The public office and its employees and officers are prohibited from disclosing that information to any person for any other purpose. (R.C. 109.5721(B) and (C).)

The act also requires the AG to adopt rules in accordance with the Administrative Procedure Act governing the operation and maintenance of the Database. The rules must provide for, but are not limited to, both of the following (R.C. 109.5721(D)):

(1) The expungement or sealing of records of individuals who are deceased or who are no longer employed or licensed by the public office that required submission of the individual's fingerprints;

(2) The terms under which a public office may elect to receive notification of an arrest or conviction, including payment of any reasonable fee that may be charged for the purpose.

The act also provides that no public office or employee of a public office is to be considered negligent in a civil action solely because the public office did not elect to be a participating public office (R.C. 109.5721(E)).

Finally, the act creates two new criminal prohibitions associated with the unlawful use of the Database. First, the act prohibits a person from knowingly using information contained in or received from the Database for purposes not authorized by R.C. 109.5721. Second, the act prohibits a person from knowingly using information contained in or received from the Database with the intent to harass or intimidate another person. A violation of either of these prohibitions is the offense of "unlawful use of retained applicant fingerprint database records." A violation of the first prohibition is a misdemeanor of the fourth degree. A violation of the second prohibition is a misdemeanor of the first degree.

These provisions take effect August 15, 2007 (Section 3).



Definitions

For purposes of the Retained Applicant Fingerprint Database, the following definitions are applicable (R.C. 109.5721(A)):

(1) "Employment" includes volunteer service.

(2) "Licensure" means the authorization, evidenced by a license, certificate, registration, permit, or other authority that is issued or conferred by a public office, to engage in a profession, occupation, or occupational activity or to have control of and operate certain specific equipment, machinery, or premises over which a public office has jurisdiction.

(3) "Participating public office" means a public office that requires a fingerprint background check as a condition of employment with or licensure by the public office and that elects to receive notice of an arrest or conviction in accordance with rules adopted by the AG.

(4) "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government (referencing R.C. 117.01).

HISTORY

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