



Sub. S.B. 97*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Sens. Stivers, Schaffer, Faber, Clancy, Bocchieri, Mumper, Austria

BILL 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, 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, 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 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, and (c) if the most serious offense that was the basis of the requirement violated is a felony of the fourth or fifth degree or a misdemeanor, the offender is guilty of a felony of the third degree and, in

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

addition to any other sanction imposed, the court must impose a definite prison term of no less than three years.

- Provides that, by January 1, 2008, the Bureau of Criminal Identification and Investigation, with the assistance of the Office of Criminal Justice Services, must include on the Internet Sex Offender and Child-victim Offender Database the Bureau maintains 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 must include on the database a link of that nature.
- Provides that, by January 1, 2008, the Internet Sex Offender and Child-victim Offender Database the Bureau of Criminal Identification and Investigation maintains and each sheriff's Internet sex offender and child-victim offender database is required to inform offenders and "tier III 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.

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CONTENT AND OPERATION

Background

The Sex Offender Registration and Notification Law (the SORN Law) is contained in R.C. Chapter 2950. It imposes a series of duties and restrictions upon a person who is convicted of or pleads guilty to a "sexually oriented offense" that is not a "registration-exempt sexually oriented offense" or a "child-victim oriented offense" (all three terms are defined in R.C. 2950.01, which is not in the bill). Among the duties and restrictions are duties that require a person who is or has been convicted of, or pleads or has pleaded guilty to, any such offense to register a residence address and a school, institution of higher education, or work address, to provide notice of a change of address and register the new address, and to periodically verify the registered address, and a restriction against residing within 1,000 feet of any school premises (R.C. 2950.04, 2950.041, 2950.05, and 2950.06, which are not in the bill). A child who is adjudicated a delinquent child for committing an act that is a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and whom the juvenile court classifies a "juvenile offender registrant" or who is an out-of-state juvenile offender registrant also is subject to the duties and restrictions (R.C. 2152.82 to 2152.851, 2950.04, 2950.041, 2950.05, and 2950.06, which are not in the bill).

Additional duties and restrictions are imposed if the offender is adjudicated a "sexual predator," "habitual sex offender," "child-victim predator," or "habitual child-victim offender" or if the offense in question is an "aggravated sexually oriented offense" (all five terms are defined in R.C. 2950.01, which is not in the bill; the Law prescribes procedures in R.C. 2950.09 and 2950.091, which are not in the bill, pursuant to which the predator and habitual offender adjudications are made). The additional duties and restrictions include a duty to provide notice of an intent to reside in a county and a mechanism for providing victim notification and community notification of a residence address the person registers (R.C. 2950.04(G), 2950.041(G), 2950.10, and 2950.11, which are not in the bill).

The SORN Law specifies a period of time for which an offender or delinquent child upon whom SORN Law duties are imposed is subject to the duties. The duration of the duties last for a period ranging from ten years to life, depending upon the classification of the offender or delinquent child. If the offender or delinquent child is classified a sexual predator or child-victim predator relative to the offense on which the duties are based or the offender is required to register based on an "aggravated sexually oriented offense" (defined in R.C. 2950.01, which is not in the bill), the duty continues until the offender's or delinquent child's death (but a juvenile court may remove a delinquent child's

predator classification and reduce the duration of the duty to one of the other specified durations described below). If the offender or delinquent child is classified a habitual sex offender or habitual child-victim offender relative to the offense on which the duties are based, the offender's duty continues until his or her death or, if specified criteria apply, for 20 years and the delinquent child's duty continues for 20 years (but a juvenile court may remove a delinquent child's habitual offender classification and reduce the duration of the duty to the specified duration described below). In all other cases, the offender's or delinquent child's duty continues for ten years. The duration of the duties is "tolled" during any period during which an offender or delinquent child is returned to confinement in a secure facility or is imprisoned. (R.C. 2950.07, which is not in the bill.)

Penalty for failure to comply with SORN Law duty

Prohibitions

Existing law prohibits a person who is or has been convicted of, or pleads or has pleaded guilty to, a sexually oriented offense that is not a registration-exempt 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 that is not a registration-exempt 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, as described above in "**Background**" (R.C. 2950.04(E), 2950.041(E), 2950.05(E), and 2950.06(F), which are not in the bill).

The bill does not change any of the above prohibitions.

Penalties

Operation of the bill. The bill 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 of the bill). Under the bill, a person who violates any of those prohibitions must be punished as follows (see "**Existing law**," below for description of current penalties):

(1) Except as otherwise described below in (2), under the bill, 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, 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, under the bill, 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 (it is unclear how this provision would apply if the most serious sexually oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder, murder, or a comparable category of offense committed in another jurisdiction, because those offenses are not classified as a "degree" of offense).

(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, under the bill, 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 bill, 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, 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, under the bill, 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 (it is unclear how this provision would apply if the most serious sexually oriented offense that was the basis of the requirement that was violated under the prohibition is aggravated murder, murder, or a comparable category of offense committed in another jurisdiction, because those offenses are not classified as a "degree" of offense). 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 or a misdemeanor if committed by an adult, or a comparable category of offense committed in another jurisdiction, under the bill, 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.

(3) The bill retains, without any substantive change, the existing penalty-related provisions for a violation of the SORN Law requirements that are described below in paragraphs (3) and (4) of "**Penalties**" under "**Existing law.**"

The bill retains the existing definition of "comparable category of offense committed in another jurisdiction" that is described below in "**Penalties**" under "**Existing law.**" That definition is used in the above provisions, but conforms the

definition to the penalty changes described in (1) and (2), above. (R.C. 2950.99(A)(2)(a), (A)(3), and (B).)

Existing law. Existing law provides that a person who violates any prohibition described above in "**Prohibitions**" must be punished as follows (R.C. 2950.99(A)(1), (A)(2), and (B)):

(1) Except as otherwise described below in (2), the offender must be punished as follows:

(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, murder, or 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 a felony of the third degree.

(b) 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, a misdemeanor 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 or a misdemeanor 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 or a misdemeanor of the same degree as that offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.

(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**," the offender must be punished as follows:

(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, murder, or 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 a felony of the third degree.

(b) 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 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 fourth degree.

(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 misdemeanor of the first 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 fifth degree.

(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 other than a misdemeanor of the first degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of: (i) a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense that was the basis of the requirement that was violated, 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, the offender is guilty of a misdemeanor that is one degree higher than the most serious sexually oriented offense or child-victim oriented offense committed in the other jurisdiction would constitute or would have constituted if it had been committed in Ohio.

(3) 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.

(4) 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.

As used in the SORN Law penalty provisions described above in paragraphs (1) and (2), "comparable category of offense committed in another jurisdiction" means a 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, that is a violation of an existing or former law of another state or the United States, an existing or former law applicable in a military court or in an Indian tribal court, or an existing or former law of any nation other than the United States, and that, if it had been committed in Ohio, would constitute or would have constituted aggravated murder, murder, or a felony of the first, second, or third degree for purposes of the provision described above in paragraph (1)(a), a felony of the fourth or fifth degree or a misdemeanor for purposes of the provision described above in paragraph (1)(b), aggravated murder, murder, or a felony of the first, second, third, or fourth degree for purposes of the provision described above in paragraph (2)(a), a felony of the fifth degree for purposes of the provision described above in paragraph (2)(b), a misdemeanor of the first degree for purposes of the provision described above in paragraph (2)(c), or a misdemeanor other than a misdemeanor of the first degree for purposes of the provision described above in paragraph (2)(d) (R.C. 2950.99(A)(3)).

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 juvenile registrants regarding incorrect information

Existing law

Existing law requires the Attorney General (the AG), through the Bureau of Criminal Identification and Investigation (BCII), not later than January 1, 2004, to establish and operate on the Internet a Sex Offender and Child-victim Offender Database that contains information for every offender who has committed either a sexually oriented offense that is not a registration-exempt 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 to obtain that information from the information contained in the State Registry of Sex Offenders and Child-victim Offenders the AG currently maintains, which information, while in the possession of the sheriff who provided it, is a public record open for inspection under the

state's Public Records Law (the State Registry contains all information the AG receives from a person who complies with the SORN Law's address registration, change of address notification, and address verification duties prescribed under R.C. 2950.04, 2950.041, 2950.05, and 2950.06, as described above in "**Background**"). The information provided for each offender must include at least the offender's name, the address or addresses of the offender's residence, school, institution of higher education, or place of employment, as applicable, the sexually oriented offense or child-victim oriented offense of which the offender was convicted or to which the offender pleaded guilty, a statement that the offender has been adjudicated a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, to the extent applicable, and the offender's photograph.

The Database is a public record open for inspection under section 149.43 of the Revised Code, and it must be searchable by offender name, by county, by ZIP Code, and by school district. The Database must provide a link to the web site of each sheriff who has established and operates on the Internet a sex offender and child-victim offender database that contains information for offenders who register in that county pursuant to the SORN Law, with the link being a direct link to the sex offender and child-victim offender database for the sheriff. (R.C. 2950.13(A)(11).)

Operation of the bill

The bill 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, pursuant to Sections 3 to 5 of the bill):

(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 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 "tier III juvenile offender registrants" (that term does not exist in the current SORN Law and is not enacted by the bill) 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 juvenile registrants regarding incorrect information

Existing law

Existing law provides that any statements, information, photographs, or fingerprints that are required to be provided, and that are provided, by an offender or delinquent child pursuant to the SORN Law's 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, as described above in **'Background,'** and that are in the possession of a county sheriff are public records open to public inspection under the state's Public Records Law. (R.C. 2950.081(A).)

Existing law generally does not address the establishment and maintenance by a sheriff of an Internet database to include information of the type described in the preceding paragraph. Existing law does provide that, except when the child is classified a juvenile offender registrant and the act that is the basis of the classification is the offense of "aggravated murder," "murder," or "kidnapping" committed with a purpose to gratify the sexual needs or desires of the child, the offense of "rape," or an attempt to commit the offense of "rape," the sheriff cannot cause to be publicly disseminated by means of the Internet any statements, information, photographs, or fingerprints provided by a juvenile offender registrant who sends a notice of intent to reside, registers, provides notice of a change of residence address and registers the new residence address, or provides verification of a current residence address pursuant to the SORN Law and that are in the possession of a county sheriff. It also provides that, upon the request of any sheriff, the AG must provide technical guidance to the requesting sheriff in establishing on the Internet a sex offender and child-victim offender database for the public dissemination of some or all of the materials described in the preceding paragraph that are public records and that pertain to offenders who register in that county pursuant to the SORN Law. (R.C. 2950.081(B) and 2950.13(A)(12).)

Operation of the bill

The bill 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, pursuant to Sections 3 to 5 of the bill):

(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 must 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 juvenile 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 term does not exist in the current SORN Law and is not enacted by the bill) 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.

HISTORY

ACTION	DATE
Introduced	03-06-07
Reported, S. Judiciary - Criminal Justice	---

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