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H.B. 35*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Seitz and Miranda

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SUMMARY

Elimination of limitations period for civil action based on childhood sexual abuse

- Eliminates the current 12-year period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, only for purposes of making claims against a bankruptcy estate.
- Sunsets the above provisions five years after the bill's effective date.
- Names the act the Scout's Honor Law.

SORN Law – pre-January 1, 2008, offenses

Reclassification mechanism

- Provides a mechanism by which a court holds a hearing to determine the pre-2008 classification of a wrongly classified Tier offender for a sexually oriented offense or child-victim oriented offense committed prior to January 1, 2008.
- Requires that upon the court's determination that the pre-2008 classification applies to the wrongly classified Tier offender, the court must specify such pre-2008 classification and vacate the Tier I, Tier II, or Tier III sex offender/child-victim offender classification of such offender.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Requires that a wrongly classified Tier offender who is reclassified under the above mechanism must receive credit toward the registration and verification duties under the new pre-2008 classification for all time that the offender has been in compliance with the registration and verification duties as a Tier I, Tier II, or Tier III sex offender/child-victim offender.
- Requires the proceedings under the above mechanism to be initiated by the filing of a motion by a wrongly classified Tier offender or the state, or by the court's own initiative, within one year after the bill's effective date.
- Provides that if such proceedings are not initiated within that one-year period, the wrongly classified Tier offender Tier classification thereafter must be deemed to be a valid classification subject to enforcement under the SORN Law.
- Requires that if a wrongly classified Tier offender, in a motion or other document filed with the court, affirmatively accepts the Tier classification assigned to the offender, the court must issue an order recognizing that the offender affirmatively accepts the Tier classification and is subject to the SORN Law.

Classification upon imposition of sentence

- Provides that if, on or after the bill's effective date, a person is convicted of a sexually oriented offense or child-victim oriented offense committed prior to January 1, 2008, the court must hold a hearing to determine the pre-2008 classification that should apply to the offender under the SORN Law as it existed immediately prior to January 1, 2008.
- Requires that if the court in the preceding dot point determines that the offender should be classified under the SORN Law as it existed immediately prior to January 1, 2008, the court must determine the appropriate pre-2008 classification for the offender and set forth the pre-2008 classification for the offender.

Emergency clause

- Declares an emergency.

DETAILED ANALYSIS

Background – civil action based on childhood sexual abuse

An action for assault or battery may be brought by a victim of childhood sexual abuse based on childhood sexual abuse or by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse.¹ "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in the Childhood Sexual Abuse Law and would constitute any of the following criminal offenses, if the victim of the violation is at the time of

¹ R.C. 2305.111(C).

the violation a child 18 years of age or a child with a developmental disability or physical impairment under 21 years of age:²

- Rape;
- Sexual battery committed under certain circumstances specified in the Sexual Battery Law in which the offender is a person in authority over the victim;
- Gross sexual imposition or sexual imposition committed under specified circumstances in which the offender is a person in authority over the victim.

Statute of limitations

Current law provides the period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, is 12 years after the cause of action accrues.³

As an exception to the above period of limitation, the bill specifies that only for purposes of making claims against a bankruptcy estate of an organization chartered under part B of subtitle II of Title 36 of the United States Code, an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by a victim asserting any claim resulting from childhood sexual abuse, may be brought at any time after the cause of action accrues.⁴

Under continuing law, relocated by the bill, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority.⁵

Sunset

The bill sunsets its provisions five years after its effective date, such that R.C. 2305.111 will return to the version that is in current law on that date.⁶

Act's name

The bill names the act the Scout's Honor Law.⁷

² R.C. 2305.111(A)(1)(a) and (b).

³ R.C. 2305.111(C)(1).

⁴ R.C. 2305.111(C)(2).

⁵ R.C. 2305.111(C)(3)

⁶ Sections 3, 4, and 5.

⁷ Section 6.

Sex Offender Registration and Notification (SORN) Law

Background

In 1996, Ohio adopted its own version of the federal Megan’s Law to comply with that law to provide the public with notice and information about convicted sex offenders and child-victim offenders in the community. The Ohio law (known as the SORN Law) was amended several times after 1996. The most substantial changes to the SORN Law were enacted in S.B. 10 of the 127th General Assembly, effective January 1, 2008, to implement the federal Adam Walsh Child Protection and Safety Act of 2006. S.B. 10 enacted the classification of sex offenders into three tiers based on the offense of conviction and repealed the previous seven-category classification that Ohio had used.⁸

Under the current SORN Law, “sex offender” generally means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any “sexually oriented offense,” defined to mean specified sex offenses or offenses committed with a sexual motivation. “Child-victim offender” means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any “child-victim oriented offense,” defined to mean specified offenses (such as kidnapping, abduction, unlawful restraint, criminal child enticement) committed by a person, regardless of the person’s age, generally when the victim is under 18 years of age.⁹

The convicted sex offender or child-victim offender is classified into one of three tiers: Tier I sex offender/child-victim offender, Tier II sex offender-child victim offender, and Tier III sex offender/child-victim offender.¹⁰ The offender’s tier classification is determined by the severity of the offender’s convicted offense. Each tier has different registration and verification requirements.

Pre-January 1, 2008 offenses

Reclassification mechanism

The bill provides a mechanism under the SORN Law pursuant to which at any time before a “wrongly classified Tier offender” (see below) completes any registration and verification duties under the existing SORN Law that are associated with the “sexually oriented offense” or “child-victim oriented offense” (defined under the SORN Law) that is the basis of the offender being a wrongly classified Tier offender, the court, upon the request of the state or the offender or on the court’s own initiative, must hold a hearing to determine the “pre-

⁸ See Ohio Attorney General’s Guide to Ohio’s Sex Offender Registration and Notification Laws “[SORN](#),” 2018.

⁹ R.C. 2950.01(A), (B), (C), and (D), not in the bill.

¹⁰ R.C. 2950.01(E), (F), and (G), not in the bill.

2008 classification” (see below) that should apply to the offender under the provisions of the SORN Law as it existed immediately prior to January 1, 2008. This provision applies with respect to a wrongly classified Tier offender who is completing registration and verification duties for the first time or one who has completed those duties one or more times previously and subsequently is completing them again in accordance with the SORN Law.¹¹

The bill defines:

Wrongly classified Tier offender as a sex offender or child-victim offender who has been classified by a court as a “Tier I sex offender/child-victim offender,” a “Tier II sex offender/child-victim offender,” or a “Tier III sex offender/child-victim offender” (defined under the SORN Law) based on a sexually oriented offense or a child-victim oriented offense committed prior to January 1, 2008, and whose Tier classification based on that offense is invalid under the decision of the Ohio Supreme Court in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374.¹²

Pre-2008 classification as one of the categories in which sex offenders and child-victim offenders were included under the SORN Law as it existed immediately prior to January 1, 2008, and that determined the manner in which, and duration for which, the duties under that law applied to such offenders, including habitual sex offenders, sexual predators, habitual child-victim offenders, child-victim predators, sex offenders who were convicted of or pleaded guilty to an aggravated sexually oriented offense, and any other sex offenders or child-victim offenders not included in any of the preceding categories who were subject to duties, responsibilities, and restrictions under that law.¹³

Notice of hearing

The court must give to both the state and the wrongly classified offender at least 30 days’ notice of the date, time, and location of the hearing. The offender has the right to be represented by counsel and, if indigent, the right to have counsel appointed to represent the offender.¹⁴

Hearing

The hearing must be governed by, and held in accordance with, the SORN Law as it existed immediately prior to January 1, 2008, including one of the following as appropriate:¹⁵

- As applicable to sexually oriented offenders, R.C. 2950.09 as it existed immediately prior to that date (classification and court determination of a sexually oriented offender as a

¹¹ R.C. 2950.021(B)(1).

¹² R.C. 2950.021(A)(1).

¹³ R.C. 2950.021(A)(2).

¹⁴ R.C. 2950.021(B)(2).

¹⁵ R.C. 2950.021(B)(3).

sexual predator, habitual sex offender, sex offender who was convicted of or pleaded guilty to an aggravated sexually oriented offense, or other classification);

- As applicable to child-victim offenders, R.C. 2950.091 as it existed immediately prior to that date (classification as a child-victim predator or habitual child-victim offender).

Court's determination

If, at the conclusion of the hearing, the court determines that the wrongly classified Tier offender should be classified under the SORN Law provisions as they existed immediately prior to January 1, 2008, the court must: (a) determine the appropriate pre-2008 classification for the offender, (b) make any other necessary findings under those provisions, and (c) file an entry that does the following:¹⁶

- Sets forth the pre-2008 classification that the court determined for the offender and other relevant information;
- Specifies that the pre-2008 classification that the court determined for the offender is subject to enforcement under the SORN Law as it existed immediately prior to January 1, 2008; and
- Vacates the prior classification of the offender as a Tier I sex offender/child-victim offender, Tier II sex offender/child-victim offender, or Tier III sex offender/child-victim offender.

Credit for registration duties as Tier offender

The bill provides that any wrongly classified Tier offender who is reclassified under the above mechanism must receive credit toward the registration and verification duties under the new pre-2008 classification for all time that the offender has been in compliance with the registration and verification duties as a Tier I sex offender/child-victim offender, Tier II sex offender/child-victim offender, or Tier III sex offender/child-victim offender.¹⁷

No limit on direct appeal of Tier classification

Under the bill, the above mechanism does not limit the state or a wrongly classified Tier offender from challenging on direct appeal a classification of the offender as a Tier I sex offender/child-victim offender, Tier II sex offender/child-victim offender, or Tier III sex offender/child-victim offender.¹⁸

Time for initiation of proceedings

The bill requires that proceedings under the above mechanism must be initiated by the filing of a motion by a wrongly classified Tier offender or the state, or by the court's own

¹⁶ R.C. 2950.021(B)(4).

¹⁷ R.C. 2950.021(B)(5).

¹⁸ R.C. 2950.021(B)(6).

initiative, within one year after the bill's effective date. If proceedings are not initiated within that one-year period with respect to a wrongly classified Tier offender, the offender's Tier classification thereafter must be deemed to be a valid classification subject to enforcement under the SORN Law.¹⁹

Acceptance of Tier classification

Under the bill, no hearing as described above under "**Hearing**," may be held with respect to a wrongly classified Tier offender if the offender, in writing in a motion or in another document filed with the court, affirmatively accepts the Tier classification assigned to the offender. Upon such acceptance, the court must issue an order recognizing that the wrongly classified Tier offender affirmatively accepts the Tier classification and is subject to the SORN Law.²⁰

Classification upon imposition of sentence

The bill provides that if, on or after the bill's effective date, a person is convicted of or pleads guilty to a sexually oriented offense or child-victim oriented offense committed prior to January 1, 2008, the court imposing sentence for the offense must hold a hearing to determine the pre-2008 classification that should apply to the offender under the provisions of the SORN Law as it existed immediately prior to January 1, 2008. The provisions described above in "**Hearing**" apply with respect to that hearing.²¹

If, at the conclusion of the hearing, the court determines that the offender should be classified under the provisions of the SORN Law as it existed immediately prior to January 1, 2008, the court must determine the appropriate pre-2008 classification for the offender and file an entry that does both of the following: (a) sets forth the pre-2008 classification that the court determined for the offender, and (b) specifies that the pre-2008 classification that the court determined for the offender is subject to enforcement under the SORN Law as it existed immediately prior to January 1, 2008.²²

Emergency clause

The bill declares an emergency to ensure the maximum number of individuals receive the maximum amount of each individual's claim in the bankruptcy settlement.²³

¹⁹ R.C. 2950.021(B)(7).

²⁰ R.C. 2950.021(B)(8).

²¹ R.C. 2950.021(C).

²² *Id.*

²³ Section 7.

HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Civil Justice	03-16-23
Passed House (95-0)	03-29-23
Reported, S. Judiciary	---
