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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 459  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Cutrona and LaRe

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### SUMMARY

- Enacts restrictions in the Sex Offender Registration and Notification Law (SORN Law) that bar offenders convicted of a sexually oriented offense when the victim was under age 18, or a child-victim oriented offense, from serving in an employer, employee, contractor, or volunteer position that affords extensive contact with minor children if:
  - The offender is either a Tier II or a Tier III Sex Offender/Child-Victim Offender with respect to the offense; or
  - The offense was committed prior to January 1, 2008, and under the version of the SORN Law in effect prior to that date, the offender was adjudicated or classified a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender with respect to the offense.
- Provides that if an offender violates any restriction described above, a prosecutor may bring an action for an injunction for the violation or, if the offender previously had been subjected to an injunction for a violation of such a restriction, that the violation is a criminal offense.
- Expands the information that an offender who registers a place of employment address under the SORN Law and who is in either category described in the first dot point must provide in the registration form with respect to the employer, to require that the form must include in addition to the currently required information:
  - A detailed description of the offender's position and duties in the employment; and
  - Either a signed statement by the offender's employer or supervisor confirming that the description the offender provided is accurate or a sworn statement by the offender that the employer or supervisor, upon the offender's request, refused to provide the offender with such a signed statement.

- Specifies that if an offender who registers a place of employment address under the SORN Law is in either category described in the first dot point:
  - If the offender changes the place of employment, the offender's required registration under that law of the new place of employment address must include the information specified in the preceding dot point in addition to the currently required information.
  - If the offender is verifying the address under that law, the offender's required verification must provide a detailed description of the offender's position and duties in addition to the currently required information.

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## **DETAILED ANALYSIS**

### **Background**

Ohio's Sex Offender Registration and Notification Law<sup>1</sup> (SORN Law) imposes certain duties and restrictions on offenders convicted of a "sexually oriented offense" or "child-victim oriented offense" (defined terms<sup>2</sup>) and on children adjudicated delinquent for committing a comparable act who are age 14 to 17 and to whom the juvenile court judge applies the law.<sup>3</sup>

Each offender convicted of such an offense is automatically classified a Tier I, Tier II, or Tier III Sex Offender/Child-Victim Offender (hereafter a Tier I, Tier II, or Tier III Offender), depending on the offense and the offender's criminal history.<sup>4</sup> Each sexually oriented offense or child-victim oriented offense is within one of the Tiers. Delinquent children to whom the law applies are not automatically classified into any of the Tiers; rather the juvenile court judge who applies the law to the child determines the child's Tier.<sup>5</sup> The Tier III classification applies to offenders convicted of what are considered to be the "most serious" sexually oriented offenses or child-victim offenses, the Tier I classification applies to offenders convicted of what are considered to be the "least serious" such offenses, and the Tier II classification applies to offenders convicted of such offenses considered to be in between the most serious and least serious such offenses. Each Tier has somewhat different responsibilities under the SORN Law and a different duration of being subject to the law.

Prior to January 1, 2008, offenders were not classified into Tiers. Rather, the court sentencing an offender determined based on specified criteria if the offender was a sexual predator, a child-victim predator, a habitual sex offender, or a habitual child-victim offender.<sup>6</sup>

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<sup>1</sup> R.C. Chapter 2950.

<sup>2</sup> R.C. 2950.01(A) and (C).

<sup>3</sup> R.C. 2152.82 and 2152.83, not in the bill.

<sup>4</sup> R.C. 2950.01(E), (F), and (G).

<sup>5</sup> R.C. 2152.82, 2152.83, and 2152.831, not in the bill.

<sup>6</sup> Pre-January 1, 2008, R.C. Chapter 2950.

## **Restrictions on certain offenders serving in a position affording extensive contact with children**

The bill enacts restrictions that bar certain offenders convicted of a sexually oriented offense or child-victim-oriented offense from serving in a specified type of position that affords extensive contact with minor children and sanctions for violations of the restrictions.

### **Restrictions – in general**

#### **Restrictions**

The bill prohibits a person who is in a “restricted offender category” (see “**Definitions**,” below – note that the term includes only convicted criminal offenders and does not include children adjudicated delinquent) from doing either of the following, regardless of whether the person committed the person’s sexually oriented offense or child-victim oriented offense prior to, on, or after the bill’s effective date:<sup>7</sup>

1. On or after the bill’s effective date, commencing service in a position as an employer, employee, or independent contractor, or in a position as a volunteer with any person, group, or organization, in a “capacity affording extensive contact with minor children” (see “**Definitions**,” below);
2. If the person was in the position prior to the bill’s effective date, at any time after the expiration of 90 days after that effective date, serving in a position as an employer, employee, or independent contractor, or in a position as a volunteer with any person, group, or organization, in a “capacity affording extensive contact with minor children.”

#### **Application regarding offense committed before bill’s effective date**

The bill states that the application of the restrictions described above to a person who committed the person’s sexually oriented offense or child-victim oriented offense prior to the bill’s effective date is procedural and remedial, pertains to conduct of the person occurring on or after that date, and does not impose punishment on the person for the sexually oriented offense or child-victim oriented offense.<sup>8</sup>

#### **Report to prosecuting authority**

Under the bill, if a law enforcement agency, based on a report made to the agency by any person or based on its own investigation, finds that a person to whom either restriction described above applies is violating the restriction, the agency must report that finding to the “prosecuting authority” (see “**Definitions**,” below).<sup>9</sup>

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<sup>7</sup> R.C. 2950.035(A)(1).

<sup>8</sup> R.C. 2950.035(A)(4).

<sup>9</sup> R.C. 2950.035(B)(1).

## **Remedy for violation – injunction**

A violation of either restriction described above that is not also a violation of the provision described below in “**Restriction – after injunction obtained based on prior violation**” is subject to injunctive relief.<sup>10</sup> Under the bill’s injunctive relief provisions, a “prosecuting authority,” upon receipt of a report described above, has a cause of action for injunctive relief against the person and may bring an action to obtain the injunctive relief. The plaintiff is not required to prove irreparable harm in order to obtain the relief.<sup>11</sup>

## **Restriction – after injunction obtained based on prior violation**

### **Restriction**

The bill prohibits a person from violating either restriction described above in paragraphs (1) and (2) under “**Restrictions – in general**” at any time after an injunction has been obtained against the person, as described above, based on a prior violation of either such restriction (hereafter, this prohibition is referred to as the “repeat violator restriction”).<sup>12</sup>

### **Report to prosecuting authority**

Under the bill, if a law enforcement agency, based on a report made to the agency by any person or based on its own investigation, finds that a person to whom the repeat violator restriction applies is violating the restriction, the agency must report that finding to the “prosecuting authority.”<sup>13</sup>

### **Remedy for violation**

A violation of the repeat violator restriction is a criminal offense and is subject to the penalties specified below.<sup>14</sup> Under the bill, a “prosecuting authority,” upon receipt of a report described above, may proceed with a criminal prosecution for the violation.<sup>15</sup>

The penalties for a violation of the repeat violator restriction are:<sup>16</sup>

1. Except as otherwise provided in (2) and (3), below, the violation is a first degree misdemeanor;
2. If the offender once previously has been convicted of a violation of that restriction, the violation is a third degree felony;

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<sup>10</sup> R.C. 2950.035(A)(3).

<sup>11</sup> R.C. 2950.035(B)(2).

<sup>12</sup> R.C. 2950.035(A)(2).

<sup>13</sup> R.C. 2950.035(B)(1).

<sup>14</sup> R.C. 2950.035(A)(3).

<sup>15</sup> R.C. 2950.035(B)(2).

<sup>16</sup> R.C. 2950.99(D).

3. If the offender two or more times previously has been convicted of a violation of that restriction, the violation is a first degree felony.

## **SORN Law registration, change of address, and address verification duties – changes for offenders in a restricted offender category**

The duties that the SORN Law currently imposes on offenders and delinquent children who are subject to the law must be satisfied within specified periods of time and have criminal penalties that apply if they are not timely satisfied. The duties apply to both offenders and children, except as specified to the contrary (references below to a sheriff generally include a designee of a sheriff).<sup>17</sup>

### **Registration duties**

#### **Duties**

An offender or delinquent child who is subject to the SORN Law currently has the following address registration duties: <sup>18</sup> (1) if confined under a sentence or disposition for the offense, registering personally, immediately after sentencing or disposition, with the sheriff of the county in which the offense was committed, (2) if not confined under a sentence or disposition for the offense, or if confined for it and released, registering personally with the sheriff of the county in which the offender or child resides, (3) for offenders only, registering personally with the sheriff of the county in which the offender attends a school or institution of higher education (hereafter, collectively referred to as a “school”) or is employed for a specified period of time, (4) for offenders only, registering with specified officials in any state other than Ohio if the offender attends a school, or is employed for a specified period of time, in the other state, and (5) if the conviction or adjudication was in a state or jurisdiction other than Ohio and the offender or child enters Ohio to reside, attend a school, or be employed, registering in the manner described in (2) to (4), above, for offenders and in (2), above, for children.

#### **Form**

The registration form used under the duties described above must include the offender’s or delinquent child’s name, aliases used, Social Security number, date of birth, and other specified information.<sup>19</sup> The bill expands the information that must be included on the form, with respect to an offender who is employed, as follows:<sup>20</sup>

1. Currently, an offender or delinquent child registering under a duty described above in (2) to (5) under “**Duties**” must include in the form the offender’s or child’s current residence address, the name and address of the offender’s or child’s employer at the

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<sup>17</sup> R.C. 2950.04(A) and (G), 2950.041(A) and (G), 2950.05, 2950.06, and 2950.99.

<sup>18</sup> R.C. 2950.04(A) and 2950.041(A).

<sup>19</sup> R.C. 2950.04(C) and 2950.041(C).

<sup>20</sup> R.C. 2950.04(C)(4) and (5) and 2950.041(C)(4) and (5).

time of registration or definite future employer and any other employment information, and the name and address of the offender's (but not the child's) school attended at the time of registration or definitely to be attended in the future;

2. Currently, an offender (but not a child) registering under a duty described above in (2) to (5) under "**Duties**," as a result of attending a school in Ohio or being employed in Ohio for the specified period of time, must include in the form the name and current address of the school or place of employment, and any other employment information;
3. The bill expands the information that an offender, in the circumstances described in both (1) and (2) above, must provide in the form with respect to an employer to also require that, if the offender is in a "restricted offender category" (see "**Definitions**," below), the form also must include: (a) a detailed description of the offender's position and duties in the employment, and (b) either a signed statement by the offender's employer or the offender's supervisor with that employer confirming that the description provided by the offender is accurate or a sworn statement by the offender that the employer or supervisor, upon the offender's request, refused to provide the offender with such a signed statement.

### **Provision to BCII**

Currently, after an offender or delinquent child registers with a sheriff under a duty described above, the sheriff must forward the registration form and other material to the Bureau of Criminal Identification and Investigation (BCII) under specified procedures. If an offender registers a school or place of employment address, the sheriff also must notify the law enforcement agency with jurisdiction over the premises of the school or place of employment of the offender's name and that the offender has registered that address as a place at which the offender attends school or is employed. BCII must include the information and materials forwarded to it in the State Registry of Sex offenders and Child-Victim Offenders established and maintained under the SORN Law.

The bill expands the information that the sheriff must provide to BCII to also require the sheriff to provide the description and the signed or sworn statement regarding employment, described above in (3) under "**Form**," if they were included with the registration. As with other information and materials provided to it, BCII must include this description or statement in the State Registry.<sup>21</sup>

### **Change of address duties**

Under existing law, an offender or delinquent child who is subject to the SORN Law and who registers an address as described above in "**Registration duties**" must notify the

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<sup>21</sup> R.C. 2950.04(D) and 2950.041(D).

sheriff with whom the offender or child registered of any change in the registered address, and must register the new address with the appropriate sheriff.<sup>22</sup>

An offender's notice of a change of school or place of employment address to the sheriff with whom the address previously was registered also must include the name of the new school or place of employment. The registration of the new address with the appropriate sheriff is done using the same form as is used for an initial registration, as described above in "**Registration duties.**" The bill adds language indicating that the form filed with the sheriff regarding the new address must be fully completed and must include all of the information specified regarding an initial registration, including, in the circumstances specified in the bill's provisions regarding an offender who is in a "restricted offender category," either the required signed statement by the offender's employer or supervisor or the offender's sworn statement of the employer's or supervisor's refusal.<sup>23</sup>

### **Address verification duties**

Under existing law, an offender or delinquent child who is subject to the SORN Law and who registers an address as described above in "**Registration duties**" must periodically verify, with specified frequency and in a specified manner, the offender's or child's current address, with the sheriff with whom the offender or child registered the address. The offender or delinquent child must verify the current address by completing and signing a copy of the verification form prescribed by BCII. The verification form must contain specified information, depending on the address the offender or child is verifying.<sup>24</sup>

Regarding an offender who is verifying a current school or place of employment address, currently, the form must contain the name and current address of the school or place of employment of the offender and any other information required by BCII. The bill expands the information required of an offender who is verifying a current place of employment address and who is in a "restricted offender category" to also require that the offender provide a detailed description of the offender's position and duties.<sup>25</sup>

### **Penalties for failure to comply with duties**

Current law prohibits an offender or delinquent child from failing to comply with the SORN Law's registration, change of address, or address verification duties that apply to the offender or child.<sup>26</sup> The bill does not change these prohibitions, but they will apply to an offender or delinquent child who, in attempting to satisfy any of those duties, fails to include

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<sup>22</sup> R.C. 2950.05(A).

<sup>23</sup> R.C. 2950.05(A) and (B).

<sup>24</sup> R.C. 2950.06.

<sup>25</sup> R.C. 2950.06(D)(2).

<sup>26</sup> R.C. 2950.04(E), 2950.041(E), 2950.05(F)(1) and (2), and 2950.06(F).

the additional, new information that the bill requires to be provided in the forms for registration, change of address, or address verification.

The current penalties for violating any of the prohibitions against failing to satisfy any of those duties, unchanged by the bill, are as follows:<sup>27</sup>

1. Except as otherwise described below in (2)(a) to (d), the penalties are as follows:
  - a. If the most serious sexually oriented offense that was the basis of the duty that was not satisfied is aggravated murder or murder or a comparable category of offense committed in another jurisdiction, the violation is a first degree felony;
  - b. If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a first, second, third, or fourth degree felony or a comparable category of offense committed in another jurisdiction, the violation is a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a comparable category of offense committed in another jurisdiction, the violation is a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in Ohio;
  - c. If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a fifth degree felony or a misdemeanor or a comparable category of offense committed in another jurisdiction, the violation is a fourth degree felony.
2. If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions against failing to satisfy any of those duties, the penalties are as follows:
  - a. If the most serious sexually oriented offense that was the basis of the duty that was not satisfied is aggravated murder or murder or a comparable category of offense committed in another jurisdiction, the violation is a first degree felony;
  - b. If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a first, second, or third degree felony or a comparable category of offense committed in another jurisdiction, the violation is a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a comparable category of offense committed in another jurisdiction, the violation is a felony of the same degree as

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<sup>27</sup> R.C. 2950.99(A).

- that offense committed in the other jurisdiction would constitute if committed in Ohio;
- c. If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a fourth or fifth degree felony or a comparable category of offense committed in another jurisdiction, the offender is guilty of a third degree felony;
  - d. If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a misdemeanor or a comparable category of offense committed in another jurisdiction, the offender is guilty of a fourth degree felony.
3. In addition to any penalty or sanction imposed for violating any of the prohibitions against failing to satisfy any of those duties:
- a. 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;
  - b. If the offender previously has been convicted of, or previously has been adjudicated a delinquent child for committing, a violation of any of the prohibitions against failing to satisfy any of those duties when the most serious sexually oriented offense or child-victim oriented offense that was the basis of the duty that was not satisfied is a felony or a comparable category of offense committed in another jurisdiction, the court must impose a definite prison term of not less than three years.

## Definitions

The bill defines the following terms that apply to its provisions described above:<sup>28</sup>

**“Adjudicated a sexual predator,” “adjudicated a child-victim predator,” “habitual sex offender,”** and **“habitual child-victim offender”** have the meanings of those terms that applied to them under the SORN Law prior to January 1, 2008.

**“Capacity affording extensive contact with minor children”** means any capacity in which a person would be “working directly and in an unaccompanied setting” (see below) with minor children on more than an incidental and occasional basis or would have supervision or disciplinary power over minor children.

**“Prosecuting authority”** means the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which a person serves in a position in violation of any restriction enacted in the bill, as

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<sup>28</sup> R.C. 2950.01(Y) and (Z) and 2950.035(C).

described above in **“Restrictions – in general”** and **“Restriction – after injunction obtained based on prior violation.”**

A person is in a **“restricted offender category”** if both of the following apply with respect to the person:

1. The person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense where the victim was under age 18 or a child-victim oriented offense;
2. With respect to the offense described above in (1), one of the following applies:
  - a. The person is a Tier II Sex Offender/Child-Victim Offender or is a Tier III Sex Offender/Child-Victim Offender; or
  - b. If that offense was committed prior to January 1, 2008, under the version of R.C. Chapter 2950 in effect prior to that date, the person was adjudicated a sexual predator, was adjudicated a child-victim predator, was classified a habitual sex offender, or was classified a habitual child-victim offender.

**“Working directly and in an unaccompanied setting”** includes, but is not limited to, providing goods or services to minors.

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## HISTORY

Action	Date
Introduced	10-19-21

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