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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 35  
135<sup>th</sup> General Assembly

## Final Analysis

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**Primary Sponsors:** Reps. Seitz and Miranda

**Effective date:** Emergency: R.C. 2305.111 effective October 12, 2023; R.C. 2950.021 effective January 11, 2024; amendments to R.C. 2305.11 reversed effective October 12, 2028

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## SUMMARY

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

- Temporarily eliminates the 12-year period of limitation for an action for assault or battery brought by a victim based on childhood sexual abuse, or an action brought by a victim asserting any claim resulting from childhood sexual abuse, but only for purposes of making claims against a bankruptcy estate of a federally chartered organization (the Boy Scouts of America).
- Sunsets this provision effective October 12, 2028, which is five years after its effective date, returning the law to the version in effect prior to the act's changes.
- Names the act the Scout's Honor Law.

### SORN Law – pre-January 1, 2008, offenses

#### Reclassification mechanism

- Establishes a temporary 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 the pre-2008 classification and vacate the Tier I, Tier II, or Tier III sex offender/child-victim offender classification of the offender.
- Requires that a wrongly classified Tier offender who is reclassified 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 this mechanism to be initiated by filing a motion by a wrongly classified Tier offender or the state, or by the court’s own initiative, within one year after the reclassification provisions’ January 11, 2024, effective date.
- Requires that if proceedings are not initiated within that one-year period, the wrongly classified Tier offender’s 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**

- Stipulates that if, on or after January 11, 2024, a person is convicted of a sexually oriented 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 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.

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## **DETAILED ANALYSIS**

### **Background – civil action based on childhood sexual abuse**

Any conduct that constitutes any of the following criminal offenses, if the victim at the time of the violation is a child under age 18, or a child with a developmental disability or physical impairment under age 21, is “childhood sexual abuse”:<sup>1</sup>

- Rape;
- Sexual battery committed under certain circumstances 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.

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<sup>1</sup> R.C. 2305.111(A)(1)(a) and (b).

## Statute of limitations

Generally, a victim of childhood sexual abuse must bring an action for assault or battery, or any claim resulting from childhood sexual abuse, within 12 years after the cause of action accrues. The cause of action accrues upon the date the victim reaches the age of majority.<sup>2</sup>

The act makes a five-year exception to this period of limitation, specifying 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.<sup>3</sup> As a result, this will allow victims of childhood sexual abuse while in the Boy Scouts of America to be compensated in damages under the Boy Scouts' bankruptcy settlement.

### Sunset

The act sunsets these provisions five years after they take effect, so that on October 12, 2028, R.C. 2305.111 will return to the version in effect prior to the act's changes.<sup>4</sup>

### Act's name

The act is named the Scout's Honor Law.<sup>5</sup>

## Sex Offender Registration and Notification (SORN) Law

### Background

In 1996, Ohio adopted its 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 were enacted in S.B. 10 of the 127<sup>th</sup> 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.<sup>6</sup>

Under the SORN Law, "sex offender" means a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, or is or has been adjudicated a delinquent child

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<sup>2</sup> R.C. 2305.111(C)(1) and (3).

<sup>3</sup> R.C. 2305.111(C)(2).

<sup>4</sup> Sections 3, 4, and 5.

<sup>5</sup> Section 6.

<sup>6</sup> See [Ohio Attorney General's Guide to Ohio's Sex Offender Registration and Notification Laws "SORN" \(PDF\)](#), 2018, which is available via a keyword search for "SORN" on the Attorney General's website, [ohioattorneygeneral.gov](http://ohioattorneygeneral.gov).

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, or is 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 age 18.<sup>7</sup>

The convicted sex offender or child-victim offender is classified into one of three tiers: Tier I, Tier II, or Tier III sex offender/child-victim offender.<sup>8</sup> 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 act establishes a temporary mechanism by which the court, upon request of the state or a “wrongly classified Tier offender” (see below) or on the court’s own initiative, must hold a hearing to determine the “pre-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. The request must be made before the wrongly classified Tier offender completes any registration and verification duties under the SORN Law that are associated with the sexually oriented or child-victim oriented offense that is the basis of the offender being a wrongly classified Tier offender, and within one year from January 11, 2024. This mechanism applies 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.<sup>9</sup>

If proceedings are not initiated within that one-year period, the offender’s Tier classification thereafter must be deemed to be a valid classification subject to enforcement under the SORN Law.<sup>10</sup>

The act defines the following terms:

**Wrongly classified Tier offender** means a sex offender or child-victim offender who has been classified by a court as a Tier I, Tier II, or Tier III sex offender/child-victim offender under the SORN Law based on a sexually oriented or child-victim oriented offense committed prior to January 1, 2008, and whose Tier classification based on that offense is invalid under the 2011

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<sup>7</sup> R.C. 2950.01(A), (B), (C), and (D), not in the bill.

<sup>8</sup> R.C. 2950.01(E), (F), and (G), not in the bill.

<sup>9</sup> R.C. 2950.021(B)(1) and (B)(7).

<sup>10</sup> R.C. 2950.021(B)(7).

decision of the Ohio Supreme Court in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374.<sup>11</sup> In *State v. Williams*, the Ohio Supreme Court held that the Tier classification scheme under S.B. 10 of the 127<sup>th</sup> General Assembly was intended to apply retroactively, and that the various provisions were punitive to offenders who committed sex offenses prior to that act's enactment. The Court found that this retroactive application was invalid under Article II, Section 28 of the Ohio Constitution (prohibits General Assembly from passing retroactive laws).<sup>12</sup>

**Pre-2008 classification** means 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 how and for how long the duties under that law applied to the 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 who were subject to duties, responsibilities, and restrictions under that law.<sup>13</sup>

### **Notice of hearing**

The court must give to both the state and the wrongly classified Tier offender at least 30 days' notice of the hearing's date, time, and location. The offender has the right to be represented by counsel and, if indigent, the right to have appointed counsel.<sup>14</sup>

### **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 either:<sup>15</sup>

- Regarding 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 sexual predator, habitual sex offender, sex offender who was convicted of or pleaded guilty to an aggravated sexually oriented offense, or other classification); or
- Regarding 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 as it existed immediately prior to January 1, 2008, the court must: (1) determine the appropriate pre-2008 classification for the offender,

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<sup>11</sup> R.C. 2950.021(A)(1).

<sup>12</sup> *Id.*

<sup>13</sup> R.C. 2950.021(A)(2).

<sup>14</sup> R.C. 2950.021(B)(2).

<sup>15</sup> R.C. 2950.021(B)(3).

(2) make any other necessary findings under those provisions, and (3) file an entry that does the following:<sup>16</sup>

- 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, Tier II, or Tier III sex offender/child-victim offender.

### **Credit for registration duties as Tier offender**

Any wrongly classified Tier offender who is reclassified under the act's 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.<sup>17</sup>

### **No limit on direct appeal of Tier classification**

Under the act, the new 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, Tier II, or Tier III sex offender/child-victim offender.<sup>18</sup>

### **Acceptance of Tier classification**

Under the act, 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 that 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.<sup>19</sup>

### **Classification upon imposition of sentence**

The act stipulates that if, on or after January 11, 2024, a person is convicted of or pleads guilty to a sexually oriented or child-victim oriented offense committed prior to January 1, 2008, the court imposing sentence 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

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<sup>16</sup> R.C. 2950.021(B)(4).

<sup>17</sup> R.C. 2950.021(B)(5).

<sup>18</sup> R.C. 2950.021(B)(6).

<sup>19</sup> R.C. 2950.021(B)(8).

January 1, 2008. The provisions described above in “**Hearing**” apply with respect to that hearing.<sup>20</sup>

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 (1) sets forth the pre-2008 classification that the court determined for the offender, and (2) 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.<sup>21</sup>

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## HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Civil Justice	03-16-23
Passed House (95-0)	03-29-23
Reported, S. Judiciary	09-27-23
Passed Senate (31-0)	09-27-23
House concurred in Senate amendments (88-0)	10-11-23

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<sup>20</sup> R.C. 2950.021(C).

<sup>21</sup> *Id.*