



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 235**

132nd General Assembly  
(As Introduced)

**Sens.** Eklund, Skindell, Lehner

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### **BILL SUMMARY**

- Creates a mechanism under which:
    - Certain offenders convicted of "unlawful sexual conduct with a minor" may petition a court for an evaluation as to whether the offender's Sex Offender Registration and Notification Law (SORN Law) duties should be terminated, modified, or continued.
    - The court that receives such a petition, after a hearing, must enter either an order to terminate the offender's SORN Law duties, an order to reclassify the offender from a Tier II Offender to a Tier I Offender under that Law, or an order to continue the offender's classification as a Tier II Offender under that Law.
  - Extends the Conviction Record Sealing Law to apply to an offender convicted of unlawful sexual conduct with a minor when a court has issued an order under the mechanism described above that terminates the offender's SORN Law duties.
  - Adds as a specified type of nonresidential sanction, for an offender convicted of unlawful sexual conduct with a minor committed while under age 21, a requirement that the offender participate in a DRC-certified sex offender treatment program.
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### **CONTENT AND OPERATION**

#### **Overview**

The bill enacts a mechanism pursuant to which certain offenders convicted of the offense of "unlawful sexual conduct with a minor" may petition a specified court for an

evaluation as to whether the offender's duties under the existing Sex Offender Registration and Notification Law<sup>1</sup> (SORN Law) should be terminated, modified, or continued. The mechanism may be utilized only by "eligible offenders," as defined in the bill. The bill also extends the application of the Conviction Record Sealing Law to an offender convicted of unlawful sexual conduct with a minor when a court has issued an order under the mechanism described above that terminates the offender's SORN Law duties and adds participation in a sex offender treatment program as a required type of nonresidential sanction for certain offenders convicted of the offense. The SORN Law has three classifications of persons who are subject to its provisions – Tier I Sex Offender/Child-Victim Offenders, Tier II Sex Offender/Child-Victim Offenders, and Tier III Sex Offender/Child-Victim Offenders<sup>2</sup> (hereafter, respectively, Tier I Offenders, Tier II Offenders, and Tier III Offenders).

For purposes of the bill's mechanism described above, an "eligible offender" is an offender convicted of unlawful sexual conduct with a minor to whom all of the following apply:<sup>3</sup> (1) the sentencing court found the offender at low risk of reoffending based on a presentence investigation report that included a risk assessment under the single validated risk assessment tool selected by the Department of Rehabilitation and Correction (DRC) (see "**Background – DRC single validated risk assessment tool**," below), (2) the sentencing court imposed one or more community control sanctions instead of a prison term and the offender fulfilled every condition of every community control sanction imposed, (3) the offender was under age 21 at the time of committing the offense, (4) the offender has not otherwise been convicted of the offense of "rape" or "sexual battery," the former offense of "felonious sexual penetration," or another offense of unlawful sexual conduct with a minor, (5) the minor with whom the offender engaged in sexual conduct was age 14 or older at the time of the offense and consented to the sexual conduct, with no evidence of coercion, force, or threat of force, and (6) the offender was not in a "position of authority" (see **COMMENT 1**) over the minor with whom the offender engaged in sexual conduct.

## **Mechanism for termination, modification, or continuation of SORN Law duties based on an unlawful sexual conduct with a minor conviction**

### **Unlawful sexual conduct with a minor and SORN Law tier classification**

Under existing law, unchanged by the bill, the prohibition under the offense of "unlawful sexual conduct with a minor" prohibits a person who is age 18 or older from

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<sup>1</sup> R.C. Chapter 2950., not in the bill.

<sup>2</sup> R.C. 2950.01, not in the bill.

<sup>3</sup> R.C. 2950.151(A).



engaging in sexual conduct with another, who is not the offender's spouse, when the offender knows the other person is age 13 or older but less than age 16, or the offender is reckless in that regard.<sup>4</sup> Under the SORN Law, unchanged by the bill, an offender convicted of unlawful sexual conduct with a minor is: (1) a Tier I Offender if the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of rape or sexual battery, the former offense of felonious sexual penetration, or another offense of unlawful sexual conduct with a minor,<sup>5</sup> or (2) a Tier II Offender if the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or if the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of rape or sexual battery, the former offense of felonious sexual penetration, or another offense of unlawful sexual conduct with a minor.<sup>6</sup>

### **Petitioning the court**

The bill provides that, upon completion of all community control sanctions imposed by the sentencing court, "the offender" (see **COMMENT 2**) may petition the appropriate court specified below to review the effectiveness of the offender's participation in community control sanctions and to determine whether to terminate the offender's duty to comply with the requirements of the SORN Law, reclassify the offender as a Tier I Offender under that Law, or continue the offender's current classification (see "**Background – SORN Law**," below). An eligible offender who wishes to file such a petition must file it in the court in which the offender was convicted of the offense, unless the offender was convicted in a jurisdiction other than Ohio. An eligible offender convicted of the offense in a jurisdiction other than Ohio (see **COMMENT 3**) generally must file the petition in the common pleas court of the county in which the offender resides, except that if the eligible offender is not an Ohio resident, the offender must file the petition in the common pleas court of the county in which the offender has registered under the SORN Law (if the offender has registered in more than one county under that Law, the offender may file a petition in only one of those counties).<sup>7</sup>

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<sup>4</sup> R.C. 2907.04, not in the bill.

<sup>5</sup> R.C. 2950.01(E), not in the bill.

<sup>6</sup> R.C. 2950.01(F), not in the bill.

<sup>7</sup> R.C. 2950.151(B) and (C).



An eligible offender who files a petition under the mechanism must include all of the following with the petition:<sup>8</sup> (1) a certified copy of the judgment entry and any other documentation of the sentence given for the offense for which the offender was convicted, (2) documentation of the date of discharge from probation supervision, if applicable, (3) evidence that the offender has completed a sex offender treatment program certified by DRC (see "**Background – DRC sex offender treatment program**," below), (4) any other evidence necessary to show that the offender meets the qualifications to be an "eligible offender," and (5) evidence that the offender has been rehabilitated to a satisfactory degree by successful completion of community control sanctions.

The bill specifies that an eligible offender may obtain, at the offender's expense, a risk assessment or professional opinion recommending relief under the mechanism from a licensed clinical psychologist, social worker, or other professional certified in sex offender treatment. The opinion or assessment may be submitted with the petition as additional evidence of rehabilitation.<sup>9</sup>

### **Court issuance of order**

Under the bill, after a hearing to review "the offender's" (see **COMMENT 2**) petition and all evidence of rehabilitation accompanying the petition, the court must enter one of three types of orders. It must enter either an order to terminate the offender's duty to comply with the SORN Law, an order to reclassify the offender from a Tier II Offender classification under that Law to a Tier I Offender classification under that Law, or an order to continue the offender's classification as a Tier II Offender required to comply with that Law (see **COMMENT 4**). After issuing one of the three types of orders, the court must provide a copy of the order to the offender and the Bureau of Criminal Identification and Investigation (BCII). BCII, upon receipt of the copy, promptly must notify the sheriff with whom the offender most recently registered under the SORN Law of the court's order.<sup>10</sup>

An order issued as described above that reclassifies an offender from a Tier II Offender classification to a Tier I Offender classification or that continues an offender's classification as a Tier II Offender remains in effect for the duration of the offender's duty to comply with the SORN Law (see "**Background – SORN Law**," below), except that an eligible offender may refile a petition under the mechanism at the time described below in "**Second or third petition**." An order of that type issued as

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<sup>8</sup> R.C. 2950.151(D).

<sup>9</sup> R.C. 2950.151(E).

<sup>10</sup> R.C. 2950.151(F) and (G).

described above may not increase the duration of the offender's duty to comply with the SORN Law.<sup>11</sup>

### **Second or third petition**

Under the bill, if an eligible offender initially files a petition under the mechanism and the court enters an order continuing the offender's classification or reclassifying the offender, the offender may file a second petition not earlier than three years after the court entered the first order. After the second petition, the offender may file one subsequent petition not earlier than five years after the most recent order continuing the offender's classification or reclassifying the offender. A second or third petition filed under the mechanism must comply with the requirements described above regarding the filing, and content, of a petition and the obtaining of a risk assessment or professional opinion.

Upon the filing of a second or third petition, the court must schedule a hearing and review any previous order entered under the mechanism, consider all documents previously submitted, and evaluate any new evidence of rehabilitation presented with the petition. After a hearing on the petition, the court may deny the petition or do either of the following: (1) if the previous order continued the offender's classification as a Tier II Offender, reclassify the offender as a Tier I Offender or terminate the offender's duty to comply with the SORN Law, or (2) if the previous order reclassified the offender as a Tier I Offender, terminate the offender's duty to comply with the SORN Law.<sup>12</sup>

### **Sealing of the record of an unlawful sexual conduct with a minor conviction**

Under the existing Conviction Record Sealing Law,<sup>13</sup> an "eligible offender" (generally, a person convicted of one felony, of not more than two misdemeanors, or of not more than one felony and one misdemeanor) may apply to a specified court for an order requiring the sealing of the official records of the conviction or convictions. An offender may apply at the expiration of three years after final discharge for a felony conviction or at the expiration of one year after final discharge for a misdemeanor conviction. If the court, after following specified procedures, makes specified findings and issues an order to seal the official records, all public offices or agencies that possess any copy of the records generally must seal them and, subject to several specified exceptions, must deny access to the sealed records. The specified exceptions for which inspection of sealed records may be allowed include inspection by a law enforcement

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<sup>11</sup> R.C. 2950.151(H)(1).

<sup>12</sup> R.C. 2950.151(H)(2) and (3).

<sup>13</sup> R.C. 2953.31 to 2953.36 and 2953.60, not in the bill except for R.C. 2953.32 and 2953.36.



officer or prosecutor to determine criminal charges against a person, by an offender's parole or probation officer, by the offender, by a law enforcement agency as a background check of a prospective employee, and by BCII under a statutorily mandated criminal records check. The Conviction Record Sealing Law currently does not apply with respect to certain specified convictions, including a conviction of the offense of "unlawful sexual conduct with a minor."

The bill modifies the Conviction Record Sealing Law to authorize a person convicted of "unlawful sexual conduct with a minor" in specified circumstances to apply for and, in specified conditions, obtain an order for the sealing of the record of the unlawful sexual conduct with a minor conviction. Under the bill, if an offender is convicted of unlawful sexual conduct with a minor, a court has issued an order under the bill's mechanism described above in "**Mechanism for termination, modification, or continuation of SORN Law duties based on unlawful sexual conduct with a minor conviction**" that terminates the offender's SORN Law duties, and the offender otherwise satisfies the existing criteria to be an "eligible offender," the offender may apply under the Conviction Record Sealing Law for an order for the sealing of the record of the unlawful sexual conduct with a minor conviction.<sup>14</sup> With one exception, upon an offender's making of such an application, the existing provisions of the Conviction Record Sealing Law apply regarding the application, the findings and considerations a court must make in order to issue a sealing order, and the effect of a sealing order. The exception is that, in addition to the findings and considerations a court must make under existing law in order to issue a sealing order (see the next paragraph), the court also must determine whether the offender has been rehabilitated to a satisfactory degree. The court may consider all of the following: (1) the offender's age, (2) the facts and circumstances of the offense, (3) the cessation or continuation of criminal behavior, (4) the offender's education and employment history, and (5) any other circumstances that may relate to the offender's rehabilitation.<sup>15</sup>

Currently, the findings and considerations a court must make in order to issue a sealing order, unchanged by the bill except for the additional criterion described in the preceding paragraph, require that the court:<sup>16</sup> (1) determine whether the applicant is an eligible offender under the definition of that term, whether criminal proceedings are pending against the applicant, and whether the applicant has been rehabilitated to the court's satisfaction, (2) consider the reasons against granting the application specified by the prosecutor in any objection to the application, and (3) weigh the applicant's interests

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<sup>14</sup> R.C. 2953.32(A) and 2953.36.

<sup>15</sup> R.C. 2953.32(C)(1).

<sup>16</sup> R.C. 2953.32(C)(1)(a) to (e).

in having the records pertaining to the conviction sealed against the government's legitimate needs, if any, to maintain those records.

### **Participation in a sex offender treatment program, as a nonresidential sanction for an unlawful sexual conduct with a minor conviction**

Under existing law, the court imposing sentence for a felony generally has discretion to determine the sanctions to impose for the felony. For certain felonies, and in certain circumstances, the court is required to impose a prison term, but otherwise, the court has guided discretion in imposing the sentence and can choose between a prison term or one or more community control sanctions. The community control sanctions include, with examples of each type provided, community residential sanctions (e.g., a term in jail, a community-based correctional facility, or a halfway house), nonresidential sanctions (e.g., a term of house arrest, electronic monitoring, community service, drug treatment, probation, or curfew), and financial sanctions (e.g., a fine, restitution, or reimbursement). The duration of all community control sanctions imposed may not exceed five years, and procedures are specified for violations of a sanction.<sup>17</sup>

The bill adds, as a specified type of nonresidential sanction for an offender who is convicted of unlawful sexual conduct with a minor committed while the offender was under age 21, a requirement that the offender participate in a sex offender treatment program certified by DRC (see "**Background – DRC sex offender treatment program**," below).<sup>18</sup>

### **Background – DRC single validated risk assessment tool**

Ohio's Corrections Law currently requires DRC to select a single validated risk assessment tool for adult offenders. The tool is to be used by: a criminal court that orders an assessment for sentencing or another purpose; court and county probation departments; state, local, and private correctional institutions and facilities; community-based correctional facilities; and the Adult Parole Authority and Parole Board. Every employee of any of those entities who actually uses the tool must be trained and certified by a DRC-certified trainer, and each of those entities utilizing the tool must develop policies and protocols regarding specified types of activities.<sup>19</sup>

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<sup>17</sup> R.C. 2929.13 to 2929.19, not in the bill except for R.C. 2929.17.

<sup>18</sup> R.C. 2929.17(O).

<sup>19</sup> R.C. 5120.114, not in the bill.



## **Background – DRC sex offender treatment program**

The SORN Law currently requires DRC and the Department of Youth Services to adopt rules pertaining to the certification of sex offender and child-victim offender treatment programs, and specifies that the rules must include requirements that the Departments periodically inspect and certify the treatment programs and that they maintain a list of the certified treatment programs that is open to public inspection.<sup>20</sup>

## **Background – SORN Law**

### **In general**

The SORN Law currently imposes certain duties on offenders convicted of a "sexually oriented offense" or "child-victim oriented offense" (both are defined terms) and on certain children adjudicated delinquent for committing a comparable act. Each offender is classified a Tier I Offender, Tier II Offender, or Tier III Offender, depending on the offense that resulted in the offender's conviction and the offender's criminal history. The Tier III classification applies to persons convicted of what are considered to be the "most serious" sex 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. Similar classifications are made by juvenile courts for subject delinquent children.<sup>21</sup>

The duties for offenders and subject delinquent children under the Law, which must be satisfied within specified periods of time, include:<sup>22</sup> (1) registering the person's residence address with the sheriff of the county of residence, (2) for offenders, registering the person's school, institution of higher education, and place of employment address with the sheriff of the county of the location, (3) for certain categories of offenders, notifying the sheriff of the person's intent to reside in the sheriff's county; (4) notifying the sheriff with whom the person registered of a change in the registered address and registering the new address, or of a change in registered vehicle information, email addresses, Internet identifiers, or telephone numbers, and (5) periodically verifying registered addresses with the sheriff with whom the person registered. Criminal penalties generally are provided for violations of these duties. The Law imposes a school, preschool, and day-care residency restriction on offenders convicted of a sexually oriented offense, provides for victim notification and

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<sup>20</sup> R.C. 2950.16, not in the bill.

<sup>21</sup> R.C. 2950.01, not in the bill; also, R.C. 2152.82 to 2152.85, not in the bill.

<sup>22</sup> R.C. 2950.04, 2950.041, 2950.05, and 2950.06, not in the bill.





community notification with respect to the address registration of offenders and delinquent children who are Tier III Offenders, and provides for a State Registry of Sex Offenders and Child-Victim Offenders housed at BCII for use of specified law enforcement personnel and government officials and a BCII-operated Internet sex offender and child-victim offender database regarding offenders convicted of a sexually oriented offense or child-victim oriented offense that is a searchable public record.<sup>23</sup>

### **Duration of SORN Law duties**

An offender or subject delinquent child must comply with the SORN Law duties described above for whichever of the following periods is applicable:<sup>24</sup>

(1) Except as otherwise described in this paragraph, a Tier III Offender's duty to comply continues until death. If the Tier III classification is based on a delinquent child adjudication, a juvenile court judge may enter a determination that the child no longer is a Tier III offender, and the child's duty to comply continues for the period of time based on the reclassification of the child into a different Tier. In no case may the lifetime duty to comply imposed on an offender who is a Tier III Offender be removed or terminated.

(2) A Tier II Offender's duty to comply continues for 25 years if the duty is based on a criminal conviction and, except as otherwise described in this paragraph, for 20 years if based on a delinquent child adjudication. If the Tier II classification is based on a delinquent child adjudication, a juvenile court judge may enter a determination that the child no longer is a Tier II Offender but remains a registrant and reclassify the child into Tier I, and the child's duty to comply continues for the period of time based on the reclassification.

(3) Except as otherwise described in this paragraph, a Tier I Offender's duty to comply continues for 15 years if the duty is based on a criminal conviction and for ten years if based on a delinquent child adjudication. If the Tier I classification is based on a delinquent child adjudication, a juvenile court judge may enter a determination that the child no longer is a juvenile offender registrant and the child's duty to comply is terminated. If the Tier I classification is based on a criminal conviction, the person may have the 15-year duty to comply terminated by a court only pursuant to a separate specified procedure.

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<sup>23</sup> R.C. 2950.10, 2950.11, and 2950.13, not in the bill.

<sup>24</sup> R.C. 2950.07, not in the bill.



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## COMMENT

1. The bill does not define "position of authority" as used in this provision and no existing section of the Revised Code defines the phrase for purposes of this provision.

2. In its provisions initially authorizing the filing of a petition for termination or reclassification under the SORN Law and pertaining to a court's issuance of an order based on the petition, the bill refers to the "offender." In its other provisions regarding such a petition and order, the bill refers to the "eligible offender," which is a defined term under the bill. Presumably, to be consistent with the bill's other provisions, the references in the provisions initially authorizing the filing of the petition and pertaining to a court's issuance of an order based on the petition are intended to be to an "eligible offender."

3. The bill refers to "eligible offenders" convicted in a jurisdiction other than Ohio applying for relief under the mechanism. However, its definition of "eligible offender" refers only to offenders convicted of the Ohio offense of "unlawful sexual conduct with a minor" and does not refer to offenders convicted of a comparable offense in a jurisdiction other than Ohio.

4. Although some offenders who file a petition under the bill's mechanism might be Tier I Offenders, the bill does not expressly provide as an option for the court the issuance of an order to continue the offender's classification as a Tier I Offender. As a result, it is unclear what the outcome would be if an eligible offender who is a Tier I Offender applies to a court under the mechanism and the court does not terminate the offender's SORN Law duties.

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## HISTORY

ACTION	DATE
Introduced	11-27-17

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