IN THE SUPREME COURT OF OHIO

STATE OF OHIO, PLAINTIFF-APPELLEE	:	CASE NOS. 2020-0544 2020-0625
V.	:	ON APPEAL FROM THE BUTLER COUNTY COURT OF APPEALS
MIQUAN HUBBARD, DEFENDANT-APPELLANT.	:	TWELFTH APPELLATE DISTRICT
	:	C.A. CASE NO. CA2019-05-086

MERIT BRIEF OF APPELLANT MIQUAN HUBBARD

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Table of Contents

Page No.

Table of Authorities

Page No.

Cases:

Constitutional Provision:

Statutes:

Rule:

Other Authorities:

Statement of the Case and Facts

A. The newly enacted violent offender registry was not in effect at the time of Miquan Hubbard's offense or guilty plea.

On September 10, 2018, Miquan Hubbard was indicted on two counts of murder in violation of R.C. 2903.02, both unclassified felonies; four counts of felonious assault in violation of R.C. 2903.11(A), felonies of the second degree; and one count of discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3), a felony of the first degree. (9/10/18 Indictment). On March 7, 2019, Mr. Hubbard pleaded guilty to one count of murder and an amended firearm specification. (3/7/19 T.p. 14; 3/8/19 Plea of Guilty and Jury Waiver). A sentencing hearing was set for April 30, 2019. (3/7/19 T.p. 15; 3/8/19 Plea of Guilty and Jury Waiver).

On March 20, 2019, the violent offender registry (also known as Senate Bill 231 or "Sierah's Law") went into effect—imposing registry requirements on all offenders convicted of certain enumerated offenses. R.C. 2903.41-44. The newly enacted violent offender registry statute applies retroactively to any person convicted of or pleading guilty to a qualifying offense or who is currently serving a term of imprisonment at the time of the statute's effective date. R.C. 2903.41.

B. At sentencing, the trial court overruled Mr. Hubbard's objection that the violent offender registry is unconstitutionally retroactive.

At sentencing, the trial court advised Mr. Hubbard that he would be required to register as a violent offender pursuant to the newly enacted violent offender registry:

> Before we move into the formal disposition phase, the Court does feel at this time it is required by law to address Senate Bill 231, which took effect on March the 20th, 2019, and it affects an offender sentenced on or after the effective date who have a qualifying offense. And the Court will note for the record, based upon in-chambers discussions, it will allow [counsel] to reserve the opportunity to object; but the Court does feel at this time, based upon the wording of the law, I do need to make this advisement prior to sentencing to you, Mr. Hubbard, okay? Sir, because you have pled guilty to murder, the law presumes that you must now

> register as a violent offender. You have the right to file before or during sentencing a motion to rebut that presumption. If you do, you would have to prove, by a preponderance of the evidence, you are not the principal offender to the offense. If you cannot prove that, you will be required to enroll on the violent offender database once a year for ten years. If you could prove that, the presumption would be rebutted and we would then have a separate hearing.
>
> I would then consider if you have prior convictions for any felony offense of violence, whether those convictions indicated propensity to violence, would also consider a risk assessment test, consider the culpability or involvement in the offense, and would finally consider the public interest and safety; as a result of that, could still order you to register for ten years or order that you not. Do you understand that?

(4/30/19 T.pp. 2-3). Mr. Hubbard objected to the application of the new law, arguing that the law was not in effect at the time of his offense and that because the law is "punitive and not remedial * * * it's unconstitutional to retroactively apply to [Mr. Hubbard in] these circumstances." (4/30/19 T.pp. 3-4). The trial court overruled Mr. Hubbard's objection and constitutional challenge finding that, *as written*, the law applies retroactively and must be applied to Mr. Hubbard. (4/30/19 T.p. 4). Mr. Hubbard was sentenced to an aggregate term of 16 years to life in prison and was notified of his duties for register as a violent offender. (4/30/19 T.pp. 11-13; 5/3/19 Judgment of Conviction Entry).

C. The Twelfth District upheld the constitutionality of the retroactive application of the violent offender registry.

On appeal, Mr. Hubbard argued that the retroactive application of the violent offender registry violates the retroactivity clause of the Ohio Constitution. *State v. Hubbard*, 2nd Dist. Butler No. CA2019-05-086, 2020-Ohio-856, ¶ 8. The Twelfth District Court of Appeals affirmed Mr. Hubbard's violent offender registration, finding that the enrollment requirements are non-punitive and, therefore, are not unconstitutionally retroactive. *Id*. at ¶ 37. In doing so, the Twelfth District distinguished the violent offender registry from this Court's analysis in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, finding that "the violent-offender

enrollment requirements are not so punitive that they impose a new burden in the constitutional sense, as contemplated in *Williams*." *Id*. Accordingly, the Twelfth District held that the "violent-offender enrollment statutes are remedial in nature, and the General Assembly could retroactively impose Sierah's Law without running afoul of Article II, Section 28 of the Ohio Constitution." *Id*.

D. The Fifth District disagreed with the Twelfth District's decision in *Hubbard* and this Court determined that a certified conflict exists.

Shortly after the Twelfth District's decision in *Hubbard*, the Fifth District Court of Appeals issued a conflicting decision. *See State v. Jarvis*, 5th Dist. Muskingum No. CT-2019-0029, 2020-Ohio-1127, ¶ 36. Relying on *Williams*, the Fifth District held that the violent offender registry requirements are punitive because they impose numerous additional burdens and obligations that, if violated, subject the registrant to additional felony prosecution. *Id*. at ¶ 35-36. Subsequently, both courts certified conflict questions as follows:

Fifth District Court of Appeals Certified Question:

> Whether Ohio's Sub.S.B. No. 231, 'Sierah's Law,' R.C. 2903.42 et seq., creating a violent offender database, which became effective March 20, 2019, violates Section 28, Article II of the Ohio Constitution, Ohio's constitutional prohibition on retroactive statutes, when retroactively applied to an offense that occurred before March 20, 2019?

Twelfth District Court of Appeals Certified Question:

> Does retroactive application of the violent offender database enrollment statutes codified in sections 2903.41 through 2903.44 of the Revised Code, commonly known as 'Sierah's Law,' violate the Retroactivity Clause of the Ohio Constitution, as set forth in Article 11, Section 28 of the Ohio Constitution?

07/01/2020 *Case Announcements*, 2020-Ohio-3473. This Court determined that a conflict exists and ordered individual briefing of the certified questions presented in *Hubbard* and *Jarvis*. *Id*.

This Court accepted Mr. Hubbard's jurisdictional appeal and ordered the consolidation of the jurisdictional appeal and certified conflict question for purposes of briefing. *Id*.

Argument

Proposition of Law

The retroactive application of Senate Bill 231—Sierah's Law—is unconstitutional as applied to offenses committed prior to the effective date of the statute. Article II, Section 28 of the Ohio Constitution.

Certified Question[1]

Does retroactive application of the violent offender database enrollment statutes codified in sections 2903.41 through 2903.44 of the Revised Code, commonly known as "Sierah's Law," violate the Retroactivity Clause of the Ohio Constitution, as set forth in Article II, Section 28 of the Ohio Constitution?

A. Introduction.

The question in this case is simple: is the retroactive application of the violent offender registry unconstitutional?

Revised Code Sections 2903.41-44 provide the framework for Ohio's newly enacted violent offender registry. As written, any person who meets the definition of a "violent offender" under R.C. 2903.41(A) must enroll in the violent offender database. Revised Code Section 2903.41(A) defines a "violent offender" as follows:

> (1) A person who on or after the effective date of this section is convicted of or pleads guilty to any of the following:
>
> > (a) A violation of section 2903.01, 2903.02, 2903.03, 2905.01 of the Revised Code or a violation of section 2905.02 of the Revised Code that is a felony of the second degree;
> >
> > (b) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1)(a) of this section.

[1] Mr. Hubbard's proposition of law and the question certified by the Twelfth District Court of Appeals present the same general issue and are not distinguishable for purposes of briefing and argument. S.Ct.Prac.R. 8.03(C). Accordingly, the proposition of law and certified question will be addressed together.

> (2) A person who on the effective date of this section has been convicted of or pleaded guilty to an offense listed in division (A)(1) of this section and is confined in a jail, workhouse, state correctional institution, or other institution, serving a prison term, term of imprisonment, or other term of confinement for the offense.

Accordingly, anyone convicted of any form of aggravated murder, murder, voluntary manslaughter, kidnapping, or abduction is required to register as a violent offender. R.C. 2903.41(A). And, the requirements are expressly retroactive as applied to two distinct groups of people—regardless of when their offense was committed: (1) any person who pleads guilty to or is convicted of one of those enumerated offenses on or after the March 20, 2019, and (2) any person who was serving a period of confinement or incarceration for one of those enumerated offenses on March 20, 2019. R.C. 2903.41(A).

The answer to the question in this case is yes, the violent offender registry's enrollment requirements create additional burdens that did not exist at the time of Mr. Hubbard's offense and this Court's precedent favors a finding that these new restrictions are punitive and violate the Retroactivity Clause of the Ohio Constitution. Accordingly, Mr. Hubbard asks this Court to answer the certified question in the affirmative and vacate his duty to register.

B. Standard of Review.

Article II, Section 28 of the Ohio Constitution states that the "general assembly shall have no power to pass retroactive laws." Further, all laws are presumed to be prospective unless expressly stated within the text of the statute. R.C. 1.48. Accordingly, this Court has developed a two-part test to determine whether a statute is unconstitutionally retroactive. *Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 8, citing *Hyle v. Porter*, 117 Ohio St.3d 165, 2008-Ohio-542, 882 N.E.2d 899, ¶ 7-9.

First, courts must consider "whether the General Assembly expressly made the statute retroactive." (Internal citations omitted). *Id.* Second, courts must determine whether the statute

affects a substantial right. *Id*. at ¶ 9. Because the General Assembly made the statute expressly retroactive, this Court must consider whether the statute affects a substantial right. R.C. 2903.41(A).

A statute affects a substantial right if it "impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right." *Id*. citing *Van Fossen v. Babcock & Wilcox Co*., 36 Ohio St.3d 100, 102, 522 N.E.2d 489 (1988). As a result, "[t]he retroactivity clause nullifies those new laws that 'reach back and create *new* burdens, *new* duties, *new* obligations, or *new* liabilities not existing at the time [the statute becomes effective].'" (Emphasis added.) *Id*. citing *Miller v. Hixson*, 64 Ohio St. 39, 51, 59 N.E. 749 (1901). In contrast, remedial laws affect "only the remedy provided and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right." *Id*. citing *Bielat v. Bielat*, 87 Ohio St.3d 350, 352–353, 721 N.E.2d 28 (2000). This Court has held "where no vested right has been created, 'a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration * * * created at least a reasonable expectation of finality.'" *State ex rel. Matz v. Brown*, 37 Ohio St.3d 279, 281, 525 N.E.2d 805 (1988).

C. Argument.

The constitutionality of Ohio's retroactive offender registries has been the subject of litigation for decades. This Court has considered the constitutionality of each substantive change to Ohio's sex offender classification scheme, while Ohio appellate courts have considered the constitutionality of both the arson and violent offender registries. The mere existence of a non-punitive purpose is not sufficient to overcome a substantive right, instead, courts must closely scrutinize the burdens, duties, and obligations imposed by the new statutory scheme to determine

whether they affect a substantial right. *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110 (Lanzinger, dissenting) ("The General Assembly's stated intent—to protect the public—is not the only point to discuss in determining whether a statute is remedial. The punitive effect must be considered as well.").

i. Despite the "civil" nature of the sex offender registry, this Court has held that registration requirements may be sufficiently punitive to affect a substantial right.

Over the past two decades, this Court has periodically reviewed the constitutionality of retroactive laws in relation to amendments to the sex offender registration scheme. *State v. Cook*, 83 Ohio St.3d 404, 413, 1998-Ohio-291, 700 N.E.2d 570 (1998); *Ferguson* at ¶ 12-40; *Williams* at ¶ 6-22. In *Cook*, this Court held that the duties and obligations imposed by the sex offender registration statutes were remedial because the registry had been in effect since 1963, the amendments were "de minimus procedural requirements" comparable to the inconvenience of obtaining a driver's license, and the changes did not impose such significant additional burdens to violate the prohibition against retroactive laws. *Cook* at 413.

Ten years later, this Court considered the additional amendments to Ohio's sex offender registry requirements. *Ferguson* at ¶ 12-40. This Court's 4-3 decision in *Ferguson* highlighted the unsettled question of whether offender registration requirements are civil or criminal in nature. *Id*. at ¶ 38-40, 45-47; *See also*, *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264 (Lanzinger, dissenting.) (majority and dissenting opinion in disagreement regarding the civil or criminal nature of the sex offender registration requirements). In *Ferguson*, the majority again found that amendments to the sex offender registration scheme remained remedial despite new amendments that removed a registrant's ability to petition the court for termination of the duty to register and increased the notification duties. *Id*. at ¶ 38. However, the three dissenting justices

found that the new requirements were more akin to punishment despite the legislature's express purpose of protecting public safety. *Id.* at ¶ 42-62.

Most recently, this Court analyzed the retroactive application of Ohio's version of the Adam Walsh Act—which created a new tiered registration structure with automatic, offense-based registration requirements. *Williams* at ¶ 6-22. This new structure removed all discretion from the trial court, increasing registration frequency and duties without regard to future dangerousness. *Id*. at ¶ 20. Adopting language from the dissenting opinion in *Ferguson*, this Court determined that the newest amendments removed all doubt that the sex offender registration scheme is punitive. *Id*. at ¶ 16. And, despite that fact that some components of the registry remained remedial, this Court held that the statute was sufficiently punitive that the retroactive application violates the Ohio Constitution's prohibition against retroactive laws. *Id*. at ¶ 21.

ii. Senate Bill 231 created a violent offender registry that imposes new burdens, duties, obligations, and liabilities that did not exist before March 20, 2019.

Ohio's new violent offender registry requires anyone convicted of any form of aggravated murder, murder, voluntary manslaughter, kidnapping, or abduction to register as a violent offender. R.C. 2903.41(A). The registry applies to anyone who is convicted of one of those enumerated offenses on or after the effective date of the statute *and* anyone serving a prison sentence for one of those enumerated offenses on the effective date of the statute. R.C. 2903.41(A). Therefore, irrespective of the date of the offense, individuals who are sentenced or incarcerated on or after March 20, 2019 are subject to the new registration requirements. R.C. 2903.41(A). The law creates a rebuttable presumption that is only available to a fraction of registrants and only exists when an individual proves that he or she was not the principal offender. R.C. 2903.42(A)(4). Only after the court determines that the individual was not the principal offender, does the court conduct a hearing to consider certain enumerated factors for and against registration. R.C. 2903.42(A)(4)(a).

Each of the statute's enumerated registry requirements creates new burdens and obligations that did not exist prior to the statute's effective date. All registrants are now required to register with their local sheriff's office annually and provide the following information: their name; social security number; driver's license number, commercial driver's license number, or state identification number; home address; work address; school address; license plate number, vehicle identification number, and vehicle description for any vehicle owned, operated, or registered; description of scars, tattoos, or distinguishing marks; a photograph; fingerprints; and palm prints. R.C. 2903.43(C)(2). And registrants must notify the sheriff within three business days of any change of home, work, or school address. R.C. 2903.43(E).

All information—except for the registrant's driver's license number, commercial driver's license number, state identification number and social security number— is a public record subject to public inspection. R.C. 2903.43(F)(3). Sheriffs provide all information they receive to the state Bureau of Criminal Identification and Investigation. R.C. 2903.43(F)(2). And, although the Bureau's database is not public, nearly all the information in it is a public record available from the sheriff. R.C. 2903.43(F)(2). And nothing in the statutory scheme prevents a sheriff from publishing that information. R.C. 2903.41-44. The statute provides a single, narrow exception that allows information to be removed from public records upon a showing that the registrant has a legitimate fear for personal safety and removal is in the interest of justice. 2903.43(F)(3)(c)

Further, during the registration period, a registrant is subject to additional criminal prosecution or possible expansion of registration duties. R.C. 2903.43(D)-(I). Failure to comply with registration duties constitutes a new criminal offense and is charged as a felony of the fifth degree. R.C. 2903.43(I). Further, the law permits the prosecutor to move the court for an indefinite

extension of registration duties if the registrant violated his registration duties or commits a new felony or misdemeanor offense during the registration period. R.C. 2903.43(D)(2).

iii. Ohio appellate courts have issued conflicting opinions regarding the retroactive application of the violent offender registry.

The lower court decision in the instant case was Ohio's first appellate decision regarding the retroactive application of the violent offender registry. The Twelfth District Court of Appeals questioned this Court's "depart[ure] from the principle that the commission of a felony does not create an expectation of finality" in *Williams* and relied heavily on distinguishable and non-authoritative caselaw. *Hubbard*, 2020-Ohio-856 at ¶ 26-34, relying on *State v. Caldwell*, 1st Dist. Hamilton No. C-130812, 2014-Ohio-3566, 18 N.E.3d 467 and *State v. White*, 2012-Ohio-2583, 132 Ohio St.3d 344, 972 N.E.2d 534. Rather than applying this Court's most recent analysis of registry requirements, the Twelfth District shunned this Court's opinion that registration requirements can be sufficiently punitive as to overcome the principle that the commission of a felony is not a transaction that creates a reasonable expectation of finality. *Id*. at ¶ 26-27. Instead, the court turned to this Court's decision in *White*. *Id*. at ¶ 32. In that case, this Court reviewed the retroactivity of R.C. 2929.06(B) which requires that a new jury be empaneled for a capital resentencing hearing and determined that the new procedural requirements do not impose new punishments or create a vested right since capital defendants were subject to the same possible penalty—death—prior to the statute's enactment. *White* at ¶ 36-37. Although *White* is distinguishable from the retroactive application of new registration requirements, the Twelfth District relied on *White* for the proposition that this Court had returned from its "departure" in *Williams*. *Hubbard* at ¶ 29-32.

And rather than undergoing an individualized determination of the new burden, obligations, and duties imposed by the violent offender registry, the Twelfth District sought to

distinguish the violent offender registry from the sex offender registry requirements analyzed in *Williams*. *Id*. at ¶ 34-37. In doing so, the Court highlighted several factors that make the sex offender registry arguably more punitive than the violent offender registry. *Id*. at ¶ 32-37. This analysis ignores the fact that *Williams* is not the floor for what is or is not punitive. Instead, a new registry can be punitive in violation of the retroactivity clause despite lower perceived burdens than those identified in *Williams*. Yet, the Twelfth District concluded that the violent offender registry requirements are merely a collateral consequence, that the "*only* additional penalty faced by a violent offender is the penalty triggered by the offender's commission of a new crime," and therefore the statute is remedial. *Id*. at ¶ 32.

In contrast, the Fifth District Court of Appeals relied on *Williams* to find that the new burdens imposed by the violent offender registry affect a substantial right in violation of the retroactivity clause. *Jarvis*, 2020-Ohio-1127, ¶ 35-37. That court emphasized the fact that the violent offender registry did not exist at the time the appellant had committed his offense and determined that, when considered in the aggregate, the application of the violent offender registry requirements violates the retroactivity clause of the Ohio Constitution. *Id*.

Since this Court accepted the certified conflict between the *Hubbard* and *Jarvis*, two additional appellate districts have considered the retroactive application of the violent offender registry. *See State v. Morgan*, 9th Dist. Summit No. 29490, 2020-Ohio-3955, ¶ 35 ("The violent offender database is not so punitive as to impose a new burden in the constitutional sense as contemplated by *Williams*. * * * Instead, the scheme is remedial in nature."); *State v. Jackson*, 10th Dist. Franklin No. 19AP-393, 2020-Ohio-4115, ¶ 8 (finding that the issue was not ripe for appellate review, but opining that "the registration requirements and limited reach of the violent offender database are much more akin to the annual, ten-year 'de minimis administrative'

registration that was approved in *Cook* than the additional punishment rejected in *Williams*, and as such Jackson's arguments are of doubtful merit.").

iv. The violent offender registration requirements are punitive and affect a substantial right in violation of Ohio's retroactivity clause.

Without question, the violent offender registry creates new duties and obligations that did not exist prior to the statute's effective date. Prior to March 20, 2019, all individuals convicted of certain enumerated offenses had an expectation that the obligations and duties imposed at sentencing would end upon the completion of the terms of the sentence and any required period of supervision. Accordingly, the retroactive nature of the violent offender registry reaches back and imposes new burdens on individuals after a final sentence has been imposed. *See Williams* at ¶ 9, citing *Miller*, 64 Ohio St. 39, 51, 59 N.E. 749. Multiple factors indicate that this statutory scheme is punitive and affects a substantial right in violation of the retroactivity clause of the Ohio Constitution.

a. The statute was placed in the criminal code.

As this Court recognized in *Ferguson* and *Williams*, the decision to place the registry provisions within the criminal code is indicative of punitive intent. *Ferguson* at ¶ 52 (Lanzinger, dissenting.); *Williams* at ¶ 11. Like the sex offender registration statutes, the violent offender registration statutes appear in the Ohio criminal code. R.C. 2903.41-44.

b. The General Assembly did not provide an express remedial purpose for the violent offender registry.

Unlike the sex offender registration statutes, neither the statutory language nor legislative history of the violent offender registry provide an express purpose for the enactment. *Compare* R.C. 2950.02 *with* R.C. 2903.41-44. Accordingly, because the statute provides no express purpose,

it cannot be determined that some intended legislative purpose is sufficient to override the punitive aspects of the statute.

c. Registration duties are a direct consequence of a criminal conviction.

The duty to register is inextricably tied to the underlying criminal offense and—unless retroactively applied to currently incarcerated individuals—is imposed at sentencing as part of the criminal punishment. R.C. 2903.41(A)(1)(a). As the dissent in *Ferguson* noted, when registration duties are a "direct consequence of the offender's criminal acts * * * registration duties are [not] collateral to a criminal conviction—they exist only as a direct result of this type of conviction. As such they are punitive." *Ferguson* at ¶ 53 (Lanzinger, dissenting.); *see also*, *Smith v. Doe*, 538 U.S. 84, 113, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003) (Stevens, J., dissenting.) ("[A] sanction that (1) is imposed on everyone who commits a criminal offense, (2) is not imposed on anyone else, and (3) severely impairs a person's liberty is punishment.").

d. Failure to comply with registration requirements subjects registrants to criminal prosecution and potential lifetime registration.

Failure to comply with registration duties subjects registrants to three distinct consequences. First, failing to register constitutes a new fifth degree felony offense—subjecting the registrant to criminal prosecution and the possibility of a term of imprisonment or community control sanctions. R.C. 2903.43(I); 2929.13(B). This additional criminal consequence is further indicia of punishment. *Williams* at ¶ 11; *Ferguson* at ¶ 52 (Lanzinger, dissenting.). Second, the statute specifically provides that failure to comply with registration duties "shall constitute" a violation of the terms and conditions of community control, parole, post-release control, or other supervised release. R.C. 2903.43(I)(2). Finally, if a registrant fails to comply with registration duties or commits a new criminal offense of violence, the statute allows the prosecutor to file a motion to extend the registrant's duties *indefinitely*. R.C. 2903.43(D)(2). If the Court determines

that a violation occurred, the trial court *must* impose an indefinite extension of the offender's duty to register. R.C.2903.43(D)(2). This low threshold requirement provides no judicial discretion, has extreme consequences, and subjects an individual to potential lifetime registration duties. Yet, the statute imposes a significantly higher bar for the removal of the same indefinite registration requirements and, in many cases, no opportunity for removal at all. R.C. 2903.44(A)-(B).

No earlier than five years after the court issues an indefinite extension, the registrant may file a motion to terminate registration duties and must include the following information:

> (1) A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the offender was enrolled in the violent offender database;
>
> (2) Documentation of the date of the offender's discharge from supervision or release, whichever is applicable;
>
> (3) A statement asserting that the offender has not been convicted of or pleaded guilty to any other felony or any misdemeanor offense of violence during the offender's ten-year enrollment period or extended enrollment period;
>
> (4) Evidence that the eligible offender has paid all financial sanctions imposed upon the offender pursuant to section 2929.18 or 2929.28 of the Revised Code.

R.C. 2903.44(A)-(B). Because, the law requires that the registrant submit a statement that he or she has not been convicted of another offense of violence during the enrollment period, any registrant whose initial extension was based on a new conviction is statutorily barred from removal. R.C. 2903.44(B)(3). Accordingly, only registrants who are serving an indefinite extended period of registration for a minor violation are eligible for removal. For those registrants, the trial court has discretion to grant or deny the motion after consideration of the motion, any response from the prosecutor, and a written report from the probation department.

Notably, the violent offender registry is the only offender registry that allows the registration period to be extended after sentencing. *Compare* R.C. 2903.43(D)(2) *with* R.C.

Chapter 2950 *and* R.C. 2909.15(D). The provision requiring an automatic, indefinite extension of registration duties at the request of the prosecutor creates a substantial burden that affects a substantial right. Accordingly, the existence of a duty to register does not merely create an annual obligation to register information with the sheriff's office. Instead, to creates new burdens resulting in real consequences and restrictions of liberties.

e. The violent offender registry is publicly accessible and subject to dissemination by law enforcement officials, media outlets, and private citizens.

The violent offender registry is public. R.C. 2903.43(F)(3) ("any statements, information, photographs, fingerprints, or materials that are provided * * * by a violent offender * * * that are in the possession of a county sheriff are *public records* open to public inspection[.]"). Only the database maintained by the Bureau of Criminal Identification and Investigation and a few personal identification numbers are restricted from public access. R.C. 2903.43(F)(2)-(3). Accordingly, nearly all information provided to the sheriff's office is publicly accessible except for a registrant's social security number, driver's license number, commercial driver's license number, or state identification card number. R.C. 2903.43(F)(3)(b). Other information may only be removed from public record upon motion by the registrant and a finding that the registrant's fears for his or her personal safety require removal. R.C. 2903.43(F)(3)(c). Absent such a motion and finding, each violent offender registrant's personal information is subject to public inspection and potential dissemination.

Further, although the violent offender registry does not provide for public access to a statewide, internet database, the law contains no prohibition against broad public access and dissemination on the internet, television, newspaper, or social media platforms. R.C. 2903.43. Nothing prevents public officials, or anyone else, from making the information publicly available.

R.C. 2903.43. This fact is laid bare by statements made by Ohio's prosecuting attorneys. Shortly after the statute's enactment, the Ohio Attorney General's Office expressed its interest in exploring the extent to which information could be disseminated. *Ohio's New Violent Offender Database Isn't Open to Public*, Denise G. Callahan, April 10, 2019, https://www.govtech.com/public-safety/Ohios-New-Violent-Offender-Database-Isnt-Open-to-Public.html ("The way the law was written, it is written as a tool for law enforcement[.] * * * [T]he law expresses it is exempt from public records law. We are reviewing the law and seeing where and what of the information would be appropriate to make public."). Similarly, Butler County Prosecutor Michael Gmoser expressed his belief that the violent offender database should be as accessible as the current sex offender database. *Id*. ("I'm a firm believer in public information especially if it involves public safety[.] * * * If somebody has committed a violent crime I think that the public ought to have an awareness of that, to the same extent that they are aware of a sex offender living in their neighborhood. I don't see a whole lot of difference between sex violence and physical violence."). As written, the violent offender registry provides no safeguard against widespread dissemination of registry information by public officials, private citizens, or the media.

Finally, the law is silent regarding public access following an offender's successful completion of the registration period. R.C. 2903.43. Accordingly, public access to previously provided information may continue to be inspected indefinitely.

f. The registry removes a registrant's expectation of sentence finality and exposes registrant's to continued and unwarranted suspicion of future conduct.

The General Assembly did not provide an express purpose for the enactment of the violent offender registry. R.C. 2903.41-44. However, proponent testimony for Senate Bill 231 and other

statements from law enforcement officials indicate an intent to use the database as a *potential suspects* list to target and question registrants when a violent offense has taken place:

> Wood County Sheriff Mark Wasylyshyn: "This bill will be a very useful tool for us to know where past convicted violent offenders live. The data base gives us a head start in the early stages of an investigation. We know with abductions and kidnappings the sooner we can find the victim the greater the likelihood they will be found alive. The first 24-36 hours are critical."
>
> Butler County Sheriff Tony Dwyer: "Any tool that we have that we can search to identify people that committed similar crimes is not a bad thing[.] * * * So for me, some years down the road to be working on a case where there has been a homicide or something else similar, we'll be able to search the database for people that have had similar connections in the past, in geographic areas it's just an investigative tool, one of many. I don't see it as per se game-changing but any data that we collect like that is useful to us."

Proponent Statement of Mark Wasylyshyn, November 28, 2017 Senate Judiciary Hearing, Senate Bill 231, https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA132-SB-231; *Ohio's New Violent Offender Database Isn't Open to Public*, Denise G. Callahan, April 10, 2019, https://www.govtech.com/public-safety/Ohios-New-Violent-Offender-Database-Isnt-Open-to-Public.html.

Not only are offenders required to provide significant personal details to the sheriff's office annually, but they are now considered potential suspects for offenses committed in their county of registration and surrounding counties. Prior to this statute's enactment, an individual had an expectation of finality upon the completion of a prison sentence and any period of supervision imposed. *See State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 16. Now, an individual is not only subject to the ramifications of violating registration duties, but is also under the watchful eye of law enforcement officials and may be called in for questioning or approached by law enforcement officers regarding any violent crime simply by virtue of appearing on the violent offender database. In other words, law enforcement may use the database as a list of the

"usual suspects" when a violent crime occurs in a registrant's area. And there is no guarantee that such suspicion and invasion of privacy will end upon the completion of an individual's duty to register.

The enactment of this entirely new registration scheme creates new burdens, new obligations, new duties, and new liabilities that did not exist prior to the effective date of the violent offender registry. In the aggregate, these new registration requirements are sufficiently punitive as to affect a substantial right in violation of the retroactivity clause of the Ohio Constitution.

Conclusion

Accordingly, Mr. Hubbard asks this Court to answer the certified question in the affirmative and hold that the retroactive application of the violent offender registry is unconstitutional in violation of Article II, Section 28 of the Ohio Constitution.

Respectfully submitted,

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Miquan Hubbard

Certificate of Service

The undersigned counsel certifies that a copy of the foregoing **MERIT BRIEF OF APPELLANT MIQUAN HUBBARD** via facsimile number 513-887-3489 upon Michael Greer, Assistant Prosecuting Attorney with the Butler County Prosecutor's Office on this 4th day of September, 2020.

/s/ Victoria Bader
Victoria Bader #0093505
Assistant State Public Defender

Counsel for Defendant-Appellant,
Miquan Hubbard

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, PLAINTIFF-APPELLEE	:	CASE NOS. 2020-0544 2020-0625
V.	:	ON APPEAL FROM THE BUTLER COUNTY COURT OF APPEALS
MIQUAN HUBBARD, DEFENDANT-APPELLANT.	:	TWELFTH APPELLATE DISTRICT
	:	C.A. CASE NO. CA2019-05-086

APPENDIX TO

MERIT BRIEF OF APPELLANT MIQUAN HUBBARD

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO, :

Appellee, :

- vs - :

MIQUAN D. HUBBARD, :

Appellant. :

CASE NO. CA2019-05-086

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Robert A. Hendrickson, Presiding Judge

Stephen W. Powell, Judge

Robert P. Ringland, Judge

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Appellee,	:	CASE NO. CA2019-05-086
	:	O P I N I O N
- vs -		3/9/2020
	:	
MIQUAN D. HUBBARD,	:	
Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2018-09-1562

Michael T. Gmoser, Butler County Prosecuting Attorney, Michael Greer, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee

Michele Temmel, 6 South Second Street, #305, Hamilton, Ohio 45011, for appellant

HENDRICKSON, P.J.

{¶ 1} Appellant, Miquan D. Hubbard, appeals from his conviction in the Butler County Court of Common Pleas for murder, arguing that a recently enacted law requiring him to register with a violent offender database annually for ten years is unconstitutional as it violates the prohibition on retroactive legislation set forth in Article II, Section 28 of the Ohio Constitution. For the reasons set forth below, we conclude that the registration requirement

is remedial and not substantive in nature and therefore is not unconstitutionally retroactive.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On September 10, 2018, appellant was indicted on one count of murder in violation of R.C. 2903.02(A) and one count of murder in violation of R.C. 2903.02(B), both unclassified felonies, two counts of felonious assault in violation of R.C. 2903.11(A)(1) and two counts of felonious assault in violation of R.C. 2903.11(A)(2), felonies of the second degree, and one count of discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3), a felony of the first degree. Each count was accompanied by a firearm specification as set forth in R.C. 2941.145. The charges arose out of allegations that on August 29, 2018, while in the area of South Front Street in Hamilton, Butler County, Ohio appellant, who was aiding and abetting his accomplice, Kameron Tunstall, discharged a firearm multiple times across the street towards a group of individuals. Appellant wounded Datorion Burns and killed Jaraius Gilbert, Jr.

{¶ 3} Appellant initially pled not guilty to the charged offenses. However, On March 7, 2019, following plea negotiations, appellant pled guilty to murder in violation of R.C. 2903.02(B) and an amended firearm specification. In exchange for appellant's guilty plea, the state dismissed the remaining charges. As part of the plea bargain, appellant was required to testify at Tunstall's trial, and, if he committed perjury, the plea agreement would be voided.

{¶ 4} Following a Crim.R. 11(C) colloquy, the trial court accepted appellant's guilty plea, found him guilty, and set the matter for sentencing. On April 30, 2019, appellant appeared before the court to be sentenced. At that time, the trial court advised appellant of recently enacted Senate Bill 231 (S.B. 231), known as "Sierah's Law," which became effective on March 20, 2019. *See* 2018 Am.Sub.S.B. No. 231. Sierah's Law, codified in sections 2903.41 through 2903.44 of the Revised Code, creates a violent offender database,

sets forth a rebuttable presumption that violent offenders, as defined in R.C. 2903.41(A), register in person annually for ten years with the sheriff of the county in which they reside, and subjects violent offenders to criminal prosecution for failing to register.

{¶ 5} The trial court informed appellant that since he pled guilty to murder, a presumption existed that he would be required to enroll in the violent offender database. The court explained appellant could file a motion to rebut that presumption and the burden would be on appellant to prove by a preponderance of the evidence that he was not the principal offender in the commission of the murder. Appellant elected not to challenge the presumption of enrollment into the violent offender database, but he objected to application of Sierah's Law on the basis that S.B. 231 was "punitive and not remedial; and therefore, * * * unconstitutional to retroactively apply [it]." The trial court overruled appellant's objection, noting that although the commission of the offense and appellant's plea took place prior to the effective date of S.B. 231, the language of R.C. 2903.41 indicated the violent offender statutes were applicable to appellant. The court further found a presumption in favor of the constitutionality of Sierah's Law applied and overruled appellant's constitutional challenge.

{¶ 6} The trial court proceeded to sentence appellant to 15 years to life in prison for murder and to a mandatory one-year sentence on the firearm specification, to be served consecutively for a total prison term of 16 years to life in prison. The trial court informed appellant of his duties to register as a violent offender under S.B. 231 and had him sign a Notice of Duties to Register as a Violent Offender (R.C. 2903.41, et seq.) form. This form was subsequently filed with the court.

{¶ 7} Appellant now appeals from his sentence, raising two assignments of error.[1] As they are related, we will address his assignments of error together.

1. Appellant set forth three assignments of error for review in his appellate brief, but voluntarily withdrew his third assignment of error at oral argument.

II. ANALYSIS

{¶ 8} Assignment of Error No. 1:

{¶ 9} THE TRIAL COURT IMPROPERLY PRESUMED THAT R.C. §2903.41-§2903.44 IS CONSTITUTIONAL.

{¶ 10} Assignment of Error No. 2:

{¶ 11} MR. HUBBARD'S SENTENCE WAS CONTRARY TO LAW.

{¶ 12} In his first assignment of error, appellant argues the violent offender registration scheme set forth in R.C. 2903.41 through 2903.44 is unconstitutional as it violates Section 28, Article II of the Ohio Constitution, which prohibits retroactive laws. Specifically, appellant contends that the violent-offender enrollment statutes are unconstitutionally retroactive as they are substantive, rather than remedial, in nature. In his second assignment of error, appellant argues his sentence is contrary to law as the trial court "erroneously determined that [he] was required to register with the violent offender database." We begin our analysis of these issues by examining the recently enacted statutes.

A. Statutory Provisions Creating a Violent Offender Database

{¶ 13} S.B. 231 "provides for the establishment and operation by the Bureau of Criminal Identification and Investigation (BCII) of a Violent Offender Database (VOD), [and] requires persons convicted of specified violent offenses in Ohio (violent offenders) or those convicted of a comparable offense in another state (out-of-state violent offenders) who become aware of the Database to enroll in the Database." Ohio Legislative Service Commission, Bill Analysis of S.B. 231, as introduced in the Senate on November 14, 2017, at 1. The statutory provisions set forth in R.C. 2903.41 through 2903.44 identify the enrollment requirements and persons subject to those requirements for the violent offender database, provide notice of the manner in which the presumption of enrollment may be rebutted, set forth guidelines for notifying violent offenders of the duty to enroll in the database and for

maintaining enrollment, and impose penalties for violent offenders' failure to enroll in the database.

{¶ 14} R.C. 2903.41 sets forth the definition of a "violent offender." A "violent offender" under division (A)(1) of the statute is a "[a] person who on or after the effective date" of the statute is convicted of or pleads guilty to aggravated murder, murder, voluntary manslaughter, kidnapping, abduction as a second-degree felony, or is convicted or pleads guilty to any attempt to commit, conspiracy to commit, or complicity in committing any of the previously identified offenses. R.C. 2903.41(A)(1)(a) and (b). As relevant to the case before us, a "violent offender" under division (A)(2) of the statute is

> [a] person who on the effective date of this section has been convicted of or pleaded guilty to an offense listed in division (A)(1) of this section and is confined in a jail, workhouse, state correctional institution, or other institution, serving a prison term, term of imprisonment, or other term of confinement for the offense.

R.C. 2903.41(A)(2).[2]

{¶ 15} Pursuant to R.C. 2903.42(A)(1), it is presumed that each person classified as a violent offender "shall be required to enroll in the violent offender database with respect to the offense that so classifies the person and shall have all violent offender database duties with respect to that offense for ten years after the offender initially enrolls in the database." The presumption is rebuttable, and the violent offender must be informed of his or her right to file a motion to rebut the presumption by either the trial court before sentencing, if classified as a violent offender under division (A)(1) of R.C. 2903.41, or, if classified as a violent

2. R.C. 2903.41(C) provides that an "out-of-state violent offender" is "a person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a violation of any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court, that is or was substantially equivalent to any offense listed in division (A)(1) of this section." A "qualifying out-of-state violent offender" is an "out-of-state violent offender who is aware of the existence of the violent offender database." R.C. 2903.41(D). The provisions governing qualifying out-of-state offenders are set forth in R.C. 2903.421. As appellant is not an "out-of-state violent offender," we need not address the requirements of R.C. 2903.421.

offender under division (A)(2) of R.C. 2903.41, by the official in charge of the jail or state correctional institution that the offender is imprisoned in prior to the offender being released from confinement. R.C. 2903.42(A)(1)(a) and (b).

{¶ 16} An offender wishing to rebut the presumption of enrollment in the violent offender database must file a motion with the court prior to or at the time of sentencing if the offender was classified as a violent offender under division (A)(1) of R.C. 2903.41, or, if classified a violent offender under division (A)(2) of R.C. 2903.41, with the court that sentenced the offender prior to the offender's release from confinement. R.C. 2903.42(A)(2)(a) and (b). The motion must assert that the offender was not the principal offender in the commission of the offense and must request that the court not require enrollment in the violent offender database or participation in database duties. *Id.*

{¶ 17} The burden is on the offender to prove, by a preponderance of the evidence, that the offender was not the principal offender in the commission of the offense that led to the violent offender classification. R.C. 2903.42(A)(4). However, even if the offender meets this burden and the presumption of enrollment is rebutted, "the trial court shall continue the hearing for the purpose of determining whether the offender, notwithstanding the rebuttal of the presumption, should be required to enroll in the violent offender database and have all VOD duties with respect to that offense." R.C. 2903.42(A)(4)(a). The court, in making this determination, is required to consider (1) whether the offender has any prior convictions for an offense of violence and whether the prior convictions indicate a propensity for violence; (2) the results of the offender's risk assessment; (3) the offender's degree of culpability or involvement in the offense; and (4) the public interest and safety. R.C. 2903.42(A)(4)(a)(i)-(iv). If, after considering these factors, the court determines that the offender should not be required to enroll in the violent offender database, the court shall issue such an order and provide a copy of the order to the prosecutor and to BCII. R.C. 2903.42(A)(4)(a). However, if

consideration of the factors convinces the court that the offender should be required to enroll in the violent offender database and have all database duties, the court shall issue an order to that effect. *Id.*

{¶ 18} Each violent offender required to enroll in the violent offender database shall be given notice of his or her database duties and informed that those duties last for ten years after initial enrollment. R.C. 2903.42(B) and (C). "Violent offender database duties" are "the duty to enroll, duty to re enroll [sic], and a duty to provide notice of a change of address imposed on a violent offender or a qualifying out-of-state violent offender under section 2903.42, 2903.421, or 2903.44 of the Revised Code." R.C. 2903.41(H). The violent offender is required to sign a form acknowledging that the offender received and understood the provided notice. R.C. 2903.42(C). Copies of the notice and signed acknowledgement are provided to the violent offender, to the sheriff of the county in which the violent offender intends to reside, and to BCII. *Id.*

{¶ 19} Where a violent offender classified under division (A)(1) of R.C. 2903.41 has been ordered to serve a prison sentence for the offense or where an offender has been classified a violent offender under division (A)(2) of R.C. 2903.41, the offender is required to enroll in the violent offender database "within ten days after the violent offender is released from jail, workhouse, state correctional institution, or other institution." R.C. 2903.43(A)(2). The offender must enroll, and then re-enroll annually for a total of ten years, in the violent offender database in person with the sheriff of the county in which the offender resides. R.C. 2903.43(C)(1), (D).[3] The offender is required to complete and sign an enrollment form that

3. Generally, a violent offender's database duties terminate on the expiration of the ten-year enrollment period. R.C. 2903.43(D)(2). However, a court is permitted to extend an offender's enrollment in the database beyond ten years if the prosecutor files a motion seeking an extension and the court finds that the offender violated a term or condition of a sanction imposed under the offender's sentence or finds the offender was convicted of or pled guilty to another felony or misdemeanor offense of violence during the original enrollment period. *Id.* The enrollment period is then extended indefinitely, as are the offender's database duties, unless terminated in accordance with R.C. 2903.44. *Id.*

sets forth (1) the offender's full name and any alias the offender may have used; (2) the offender's address; (3) the offender's social security number; (4) the offender's driver's license number or state identification card number; (5) the offense for which the offender was convicted; (6) the name and address of the offender's employer; (7) the name and address of any school or university the violent offender attends; (8) a description of each vehicle the violent offender operates, as well as the vehicle identification number and license plate number for each vehicle operated; and (9) a description of any scars, tattoos, or other distinguishing marks on the offender. R.C. 2903.43(C)(2)(a)-(i). The offender must also provide finger and palm prints and annually allow his or her photograph to be taken. R.C. 2903.43(C)(3), (D)(1). If the offender moves from his or her address, the offender must notify the sheriff with whom the offender most recently enrolled of the change of address within three business days. R.C. 2903.43(E). An offender who recklessly fails to enroll, re-enroll, or notify the sheriff of a change of address is guilty of a felony of the fifth degree. R.C. 2903.43(I)(1) and (2).

{¶ 20} The violent offender database is maintained by BCII, and is only made available to federal, state, and local law enforcement officers. R.C. 2903.43(F)(2). The database is not a public record under R.C. 149.43, Ohio's public records law. *Id.*

{¶ 21} With these statutory provisions in mind, we turn to the Retroactivity Clause of the Ohio Constitution.[4]

B. Retroactivity Clause of the Ohio Constitution

{¶ 22} Article II, Section 28 of the Ohio Constitution provides that "[t]he general assembly shall have no power to pass retroactive laws * * *." Determining whether a statute's

4. Our analysis under Ohio's Retroactivity Clause is distinct from the analysis required under the Ex Post Facto Clause of the United States Constitution. *See State v. Caldwell*, 1st Dist. Hamilton No. C-130812, 2014-Ohio-3566, ¶ 14, citing *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583. Appellant has not claimed that the violent-offender enrollment statutes violate the Ex Post Facto Clause. Our review is, therefore, limited to the arguments appellant raised under Article II, Section 28 of the Ohio Constitution.

retroactive application violates the Retroactivity Clause involves a two-step analysis. *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, ¶ 27. A court must first determine, as a threshold matter, whether the General Assembly expressly indicated its intent that the statute apply retroactively. *Id.*; *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, ¶ 8; *State v. Gregoire*, 12th Dist. Butler No. CA2019-04-066, 2020-Ohio-415, ¶ 10. If not, the statute may not be applied retroactively. *White* at ¶ 27, citing R.C. 1.48 ("[a] statute is presumed to be prospective in its operation unless expressly made retrospective"). However, if the General Assembly expressly indicated its intention that the statute apply retroactively, a court must move to the second step of the analysis and "determine whether the statute is remedial, in which case retroactive application is permitted, or substantive, in which case retroactive application is forbidden." *Id. See also State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 10; *State v. Cook*, 83 Ohio St.3d 404, 410-411 (1998).

1. Intent of General Assembly to Apply Sierah's Law Retroactively

{¶ 23} The presumption that the violent-offender enrollment statutes apply prospectively may be overcome only upon a "clearly expressed legislative intent" that the statutes apply retroactively. *State v. Caldwell*, 1st Dist. Hamilton No. C-130812, 2014-Ohio-3566, ¶ 16, citing *Walls* at ¶ 10. R.C. 2903.42 provides that enrollment in the violent offender database is presumed for all violent offenders, and R.C. 2903.41(A) defines a "violent offender" as:

> (1) A person who *on or after the effective date* of this section is convicted of or pleads guilty to any of the following:
>
> (a) A violation of section 2903.01 [aggravated murder], 2903.02 [murder], 2903.03 [voluntary manslaughter], 2905.01 [kidnapping] of the Revised Code or a violation of section 2905.02 [abduction] of the Revised Code that is a felony of the second degree;
>
> (b) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1)(a) of this section.

> (2) A person who *on the effective date of this section* has been convicted of or pleaded guilty to an offense listed in division (A)(1) of this section and is confined in a jail, workhouse, state correctional institution, or other institution, serving a prison term, term of imprisonment, or other term of confinement for the offense.

(Emphasis added.)

{¶ 24} The enrollment requirements, therefore, expressly apply to any violent offender who "on the effective date * * * has been convicted or pleaded guilty" to a specified violent offense and is confined for that offense. R.C. 2903.41(A)(2). The enrollment requirements also apply to any person who "on or after the effective date * * * is convicted or pleads guilty" to a specified violent offense. R.C. 2903.41(A)(1). Both scenarios necessarily incorporate criminal conduct occurring prior to the effective date of the statutes. As the General Assembly plainly intended the enrollment requirements to apply to conduct occurring before the statutes' effective date, we conclude that the statutes are retroactive.

2. Retroactive Application – Sierah's Law is Remedial

{¶ 25} Having determined that the General Assembly intended for Sierah's Law to apply retroactively, we next analyze whether the statutes are remedial or substantive in nature. As the Ohio Supreme Court has recognized, "'retroactivity itself is not always forbidden by law.'" *White*, 2012-Ohio-2583 at ¶ 31, quoting *Bielat v. Bielat*, 87 Ohio St.3d 350, 353 (2000). "[T]here is a crucial distinction between statutes that merely apply retroactively (or 'retrospectively') and those that do so in a manner that offends [the Ohio] Constitution." *Bielat* at 353. "A purely remedial statute does not violate Section 28, Article II of the Ohio Constitution, even when it is applied retroactively." *Id.* at 354, citing *Cook*, 83 Ohio St.3d at 411. However, a substantive statute – one that "impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations or liabilities as to a past transaction" – offends the constitution and may not be applied

retroactively. *Id.*

{¶ 26} Not every past occurrence, however, results in a blanket prohibition against future legislation. *Caldwell*, 2014-Ohio-3566 at ¶ 22. The Ohio Supreme Court has frequently recognized that "a later enactment will not burden or attach a new disability to a past transaction or consideration in the constitutional sense, unless the past transaction or consideration, if it did not create a vested right, created at least a reasonable expectation of finality." *State ex rel. Matz v. Brown*, 37 Ohio St.3d 279, 281 (1988). *See also Bielat* at 357; *Cook* at 412. The commission of a felony is not a past transaction that creates a reasonable expectation of finality. *White* at ¶ 43. Therefore, "[e]xcept with regard to constitutional protections against ex post facto laws, * * * felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation." *Matz* at 281-282.

{¶ 27} The supreme court appeared to depart from the principle that the commission of a felony does not create an expectation of finality in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374. *See Caldwell* at ¶ 23. In *Williams*, the supreme court was presented with the question of whether Senate Bill 10's sex-offender registration requirements, stemming from Ohio's implementation of the federal Adam Walsh Act, were unconstitutionally retroactive. *Williams* at ¶ 7. Prior supreme court opinions had upheld the retroactive application of earlier versions of the sex-offender registration scheme. *See Cook*, 83 Ohio St.3d at 409; *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824. However, in *Williams*, "[w]ithout considering whether the offenders affected by the changes had a vested right or a 'reasonable expectation of finality' in their registration status, the [supreme] court concluded that the changes rendered the statutory scheme so punitive that they constituted 'new burdens, duties, obligations, or liabilities as to a past transaction.'" *Caldwell* at ¶ 23, quoting *Williams* at ¶ 20. The supreme court, therefore, held that Senate Bill 10's sex-offender registration provisions were unconstitutional if applied retroactively. *Williams* at ¶ 21.

{¶ 28} The supreme court's decision in *Williams* "is hard to reconcile with the court's previous pronouncements that the commission of a felony does not create a reasonable expectation of finality." *Caldwell* at ¶ 24. "Perhaps it is best understood by saying that, in *Williams*, the court simply found the scheme so punitive that it amounted to a violation of the Ohio Constitution, notwithstanding the court's prior jurisprudence on criminal acts and the expectation of finality." *Id.*

{¶ 29} Following *Williams*, the supreme court "returned to analyzing retroactive legislation under the familiar framework of whether the retroactive application of a new law burdened a vested right or a reasonable expectation of finality." *Id.* at ¶ 25, citing *White*, 2012-Ohio-2583. In *White*, the supreme court was tasked with examining the constitutionality of R.C. 2929.06(B), a statute providing that where an offender's death sentence has been set aside, the trial court must empanel a new jury and conduct a new penalty hearing. *White* at ¶ 2. The newly enacted law replaced the rule articulated in *State v. Penix*, 32 Ohio St.3d 369 (1987), which held that where a death sentence imposed by a jury had been vacated for a penalty-phase error, the trial court could not empanel a new jury to impose a new death sentence, but was instead required to impose a sentence of life incarceration. *White* at ¶ 5. The defendant in *White* argued that because his crime took place prior to the enactment of R.C. 2929.06(B), he was entitled to be resentenced under *Penix*. *Id.* at ¶ 12.

{¶ 30} The supreme court disagreed, finding that the retroactive statute was remedial, rather than substantive in nature. *Id.* at ¶ 48. In so holding, the court first considered whether R.C. 2929.06(B) increased the punishment for the offense. *Id.* at ¶ 32. The court found that the new law did not increase the punishment for the underlying crime as the death penalty was available at the time of the defendant's crime and at the time of resentencing. *Id.* at ¶ 33. The court then considered whether the defendant had a vested or accrued right to

be sentenced under *Penix*. *Id.* at ¶ 34-35. The court defined an "accrued right" as a "right that is ripe for enforcement" and is not "dependent for its existence upon the action or inaction of another." *Id.* at ¶ 35, citing *Black's Law Dictionary* 1436 (9th Ed.2009) and *Hatch v. Tipton*, 131 Ohio St.3d 364, 368 (1936), paragraph two of the syllabus. The court concluded that R.C. 2929.06(B) did not impair any accrued right, as the defendant's alleged right to be resentenced under *Penix* could not have vested until his original sentence was invalidated – which was well after the enactment of the statute. *Id.* at ¶ 37.

{¶ 31} Finally, the court considered whether the newly enacted statute imposed a new burden on the defendant. *Id.* at ¶ 38-44. The court found that R.C. 2929.06(B) did not impose a new burden on the defendant as he had the burden of defending against the death penalty at the time of his first trial. *Id.* at ¶ 41. The court went on to explain that even if R.C. 2929.06(B) had imposed a new burden, there had to be some showing that the burden impacted a past transaction that created some reasonable expectation of finality. *Id.* at ¶ 42, citing *Matz*, 37 Ohio St.3d at 281. The court reaffirmed the principle that "'the commission of a felony' is not a transaction that creates a reasonable expectation of finality.'" *Id.* at ¶ 43, quoting *Matz* at 281. The court held that "[b]ecause [the defendant] could have no reasonable expectation of finality with respect to [being sentenced under] *Penix* on the date of the murder, retroactive application of R.C. 2929.06(B) to [the defendant's] resentencing d[id] not create a new burden 'in the constitutional sense.'" *Id.* at ¶ 44, quoting *Matz* at 281. Accordingly, as "the application of R.C. 2929.06(B) to [the defendant's] resentencing would not increase [his] potential sentence, impair any of [his] vested or accrued rights, violate any reliance interest or any reasonable expectation of finality, or impose any new burdens on him," the supreme court concluded that "R.C. 2929.06(B) [was] remedial, not substantive." *Id.* at ¶ 48.

{¶ 32} Applying the analysis utilized in *White*, we find that Sierah's Law is remedial,

rather than substantive, in nature. The violent-offender enrollment statutes do not increase the punishment for the specified violent offenses of aggravated murder, murder, voluntary manslaughter, kidnapping, or abduction as a second-degree felony. Rather, classification as a violent offender and enrollment into the violent offender database "is a collateral consequence of the offender's criminal acts rather than a form of punishment per se." *Ferguson*, 2008-Ohio-4824 at ¶ 34. *See also Caldwell*, 2014-Ohio-3566 at ¶ 30-35 (finding that classification as an arson-offender and registration in the arson-offender registry was a collateral consequence of committing an arson offense and that retroactive application of the arson-offender registration scheme did not violate the Retroactivity Clause of the Ohio Constitution). The only additional penalty faced by a violent offender is the penalty triggered by the offender's commission of a new crime – the failure to enroll in the database, re-enroll in the database, or notify the sheriff of a change of address. *See, e.g., Cook*, 83 Ohio St.3d at 421 (noting that any punishment that flows from a defendant's failure to register as a sex offender under R.C. 2950.99 was "a new violation of the statute" and did not flow from a past sex offense"); *Caldwell* at ¶ 31 (noting that the only additional penalty faced by an arson offender flowed from the arson-offender's commission of a new crime – failing to register). Additionally, appellant does not claim, nor does he have, a vested right in not being subject to violent-offender enrollment requirements at the time he committed the offense. *Id.*

{¶ 33} As the supreme court reiterated in *White*, "'[e]xcept with regard to constitutional protections against ex post facto laws * * *, felons have no reasonable right to expect that their conduct will never thereafter be made the subject of legislation.'" *White*, 2012-Ohio-2583 at ¶ 43, quoting *Matz*, 37 Ohio St.3d at 281-82. At the time he committed murder, appellant could not have had any reasonable expectation of finality with respect to the absence of any postconviction regulation. Retroactive application of the violent-offender enrollment statutes, therefore, does not "create a new burden 'in the constitutional sense.'"

Id. at ¶ 44, quoting *Matz* at 281. *See also Caldwell* at ¶ 32.

{¶ 34} Furthermore, a comparison of the violent-offender enrollment statutes to the sex-offender registration statutes set forth in R.C. Chapter 2950 demonstrate that the violent-offender enrollment requirements are not so punitive that they comprise a new burden as to past felonious conduct. *See, e.g., Caldwell* at ¶ 33-34 (comparing the arson-offender registration requirements to the sex-offender registration requirements under R.C. Chapter 2950 and concluding that the arson-offender registration statutes are not punitive, despite some similarities in the statutes). Although the violent-offender enrollment statutes, like the sex-offender registration statutes, have been placed within R.C. Title 29, Ohio's criminal code, and the failure to register under either scheme subjects the offenders to criminal prosecution, there are significant differences between the two registration schemes. For instance, under R.C. Chapter 2950, "[s]ex offenders are no longer allowed to challenge their classifications as sex offenders because classification is automatic depending on the offense * * * [and] [j]udges can no longer review sex-offender classifications." *Williams*, 2011-Ohio-3374 at ¶ 20. Conversely, while there is a presumption that a violent offender who commits the offense of aggravated murder, murder, voluntary manslaughter, kidnapping, or abduction as a second-degree felony will be required to enroll in the violent offender database, an offender is provided with the right to present evidence before a judge to rebut the presumption of enrollment.

{¶ 35} Additionally, sex offenders must register as frequently as 90 days and must register in as many as three different counties – those in which they reside, work, and attend school. *See Williams* at ¶ 14. Conversely, a violent offender need only register annually in the county in which the offender resides. R.C. 2903.43(C)(1) and (D)(1). The public nature of the sex-offender registry also differs significantly from that of the violent-offender database. Community notifications under the sex-offender registry "expanded to the extent

that any statements, information, photographs, or fingerprints that an offender is required to provide are public record and much of that material is now included in the sex-offender database maintained on the Internet by the attorney general." *Williams* at ¶ 14, citing R.C. 2950.081. Conversely, the violent-offender database is only accessible by federal, state, and local law enforcement officers and the database is not a public record. R.C. 2903.43(F)(2). The sex-offender statutes also impose restrictions on where an offender is permitted to reside. *Williams* at ¶ 14, citing R.C. 2950.031. Violent offenders, on the other hand, are not subject to any residential restrictions.

{¶ 36} The type of criminal prosecution an offender is subject to for failing to register in the sex-offender registry or for failing to enroll in the violent offender database are also significantly different. The failure to enroll in the violent offender database constitutes a fifth-degree felony, which carries a presumption of community control. R.C. 2903.43(I)(2); R.C. 2929.13(B)(1). Conversely, the failure to register as a sex offender as required by Chapter R.C. 2950 constitutes a felony of the same degree as that of the underlying sexually oriented offense. R.C. 2950.99. This means that if a sex offender committed a first-degree felony sex offense and the offender fails to register as required by Chapter R.C. 2950, that failure constitutes another first-degree felony and carries with it a potential indefinite prison term of 11 to 16.5 years. R.C. 2950.99(A)(1)(a); R.C. 2929.14(A)(1)(a); R.C. 2929.144 (B)(1).

{¶ 37} Given the many differences between the sex-offender registration statutes and the violent-offender enrollment statutes, we find that the violent-offender enrollment requirements are not so punitive that they impose a new burden in the constitutional sense, as contemplated in *Williams*. Rather, we find that the violent-offender enrollment requirements are more akin to the arson-offender registration requirements set forth in R.C. 2909.13, 2909.14, and 2909.15, which the First District found were remedial in nature. *See Caldwell*, 2014-Ohio-3566 at ¶ 33-35. Accordingly, as appellant had no expectation of finality

with regard to any duties that may or may not have attached following his conviction for murder, he does not have a substantive right in this regard. *See id.* at ¶ 35; *Cook*, 83 Ohio St.3d at 414. The violent-offender enrollment statutes are remedial in nature, and the General Assembly could retroactively impose Sierah's Law without running afoul of Article II, Section 28 of the Ohio Constitution. Appellant's first assignment of error, is therefore, overruled.

C. Application of Sierah's Law to Appellant

{¶ 38} As it does not offend the Ohio Constitution to apply the violent-offender enrollment statutes retroactively, the next question we must answer is whether the statutes apply to appellant. In his second assignment of error, appellant argues that the trial court "erroneously determined that [he] was required to register with the violent offender database." We find no merit to appellant's argument.

{¶ 39} Appellant pled guilty to murder on March 7, 2019. Thirteen days later, on March 20, 2019, Sierah's Law became effective. At the time the law became effective, appellant was in jail awaiting sentencing for the murder offense.[5] R.C. 2903.41(A)(2) specifically provides that "[a] person who on the effective date of [the statute] * * * has been convicted of or pleaded guilty to * * * [a murder] offense * * * and is confined in a jail, workhouse, [or] state correctional institution * * * serving a prison term, term of imprisonment, or *other term of confinement for the offense*" is a violent offender, subject to enrollment in the violent offender database in accordance with R.C. 2903.42. (Emphasis added.) As appellant pled guilty to murder and was confined in jail awaiting sentencing for the offense at the time Sierah's Law became effective, appellant is subject to the violent-offender enrollment

5. Although the trial court set a cash or surety bond on October 9, 2018, it does not appear from the record that appellant was able to make bond. Appellant therefore remained in jail from the time of his arrest until he was sentenced on April 30, 2019 and transferred to a state correctional facility.

statutes. *See* R.C. 2903.41 and 2903.42. Appellant's sentence is not contrary to law and the trial court did not err in determining that appellant was required to register with the violent offender database upon his release from prison.[6] Appellant's second assignment of error is, therefore, overruled.

III. CONCLUSION

{¶ 40} Having found appellant's assignments of error to be without merit, we hereby affirm appellant's sentence for murder.

{¶ 41} Judgment affirmed.

S. POWELL and RINGLAND, JJ., concur.

6. Appellant does not challenge, and we therefore need not decide, whether the trial court had a duty to provide the violent-offender enrollment notification at sentencing or whether doing so was unnecessary given the requirement that a violent offender classified under division (A)(2) of R.C. 2903.41 be provided with the notification by the official in charge of the prison where the offender is confined prior to the offender's release from confinement. *See* R.C. 2903.42(A)(1)(a) and (b). *See also Caldwell*, 2014-Ohio-3566, ¶ 36-40 (finding that there was no prejudice in a trial court's decision to notify the defendant of his obligations under the arson-offender registration statutes, even though the court was not required to do so, as the court's decision to provide the notification did not discharge prison representatives of their notification duties).

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

STATE OF OHIO	:	CASE NO. CA2019-05-086
		REGULAR CALENDAR
Appellee,	:	
vs.	:	ENTRY GRANTING MOTION TO CERTIFY CONFLICT
MIQUAN D. HUBBARD,	:	
Appellant.	:	

The above cause is before the court pursuant to a motion to certify a conflict to the supreme court of Ohio filed by counsel for appellant, Miquan D. Hubbard, on April 14, 2020. Appellant asserts that this court's decision is in conflict with a decision by the Fifth District Court of Appeals, *State v. Jarvis*, 5th Dist. Muskingum No. CT2019-0029, 2020-Ohio-1127.

Ohio courts of appeal derive the authority to certify cases to the Supreme Court of Ohio from Section 3(B)(4), Article IV of the Ohio Constitution, which states that whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by another court of appeals, the judges shall certify the record of the case to the supreme court for review and determination.

The present appeal involves the retroactive application of S.B. 231, known as "Sierah's Law," which became effective on March 20, 2019. Sierah's Law, codified in R.C. 2903.41 through 2903.44, created a violent offender database, sets forth a rebuttable presumption requiring violent offenders to register in person annually with the sheriff of the county where they reside, and subjects violent offenders to criminal

prosecution for failing to register. This court found the violent offender enrollment statutes to be remedial in nature, and that the General Assembly could retroactively impose Sierah's law upon offenders without violating Article II, Section 28 of the Ohio Constitution.

As a preliminary matter, we find the motion for certification to be timely filed. This court's decision in the present case was released on March 9, 2020 and served on the parties by the clerk on March 11, 2020. The *Jarvis* decision was not released by the Fifth District until March 23, 2020, 14 days after the release of the present decision and 12 days after service. Moreover, appellant's motion to certify conflict was not filed until April 14, 2020, 34 days after this court's decision was served on the parties and service was noted on the docket.

The timing of events set forth above would ordinarily mean that the motion for certification was not timely filed, but the Ohio Supreme Court's tolling order filed March 27, 2020 tolled time requirements for filing all "pleadings, appeals, and all other filings" under the rules of appellate procedure from March 9, 2020 until expiration of the order. Accordingly, the court finds that the motion for certification is timely filed.

Turning to the merits of the motion, the questions before the Fifth District and this court were identical: Whether retroactive application of the violent offender database enrollment statutes violate the Retroactivity Clause of the Ohio Constitution as set forth in Article II, Section 28. This court found no violation; the Fifth District found the opposite. Accordingly, the motion for certification is with merit and is GRANTED. The certified question is as follows:

Does retroactive application of the violent offender database enrollment statutes codified in sections 2903.41 through 2903.44 of the Revised Code, commonly known as "Sierah's Law," violate the Retroactivity Clause of the Ohio Constitution, as set forth in Article II, Section 28 of the Ohio Constitution?

IT IS SO ORDERED.

Robert A. Hendrickson, Judge

Stephen W. Powell, Judge

Robert P. Ringland, Judge

Baldwin's Ohio Revised Code Annotated
Rules of Practice of the Supreme Court of Ohio (Refs & Annos)
Section 8. Certified-Conflict Cases

S. Ct. Prac. R. Rule 8.03

S.Ct.Prac.R. 8.03 Briefing of certified-conflict cases

Currentness

(A) Briefs. If the Supreme Court determines that a conflict exists, the parties shall file their merit briefs in conformance with S.Ct.Prac.R. 16.01 through 16.10.

(B) Scope. The parties shall brief only the issues identified in the order of the Supreme Court as issues to be considered, and those issues shall be clearly identified in the table of contents, in accordance with S.Ct.Prac.R. 16.02(B)(1).

(C) When a Certified-Conflict Case Is Consolidated With a Jurisdictional Appeal. In cases where a certified-conflict case has been consolidated with an appeal under S.Ct.Prac.R. 7.07(C), the brief shall identify the issues that have been found by the Supreme Court to be in conflict and shall distinguish those issues from any other issues being briefed in the consolidated appeal.

CREDIT(S)
(Adopted eff. 6-1-94; amended eff. 4-1-96, 4-1-00, 6-1-00, 7-1-04, 1-1-08, 1-1-10, 1-1-13)

Supreme Court Rules, Rule 8.03, OH ST S CT Rule 8.03
Current with amendments received through June 15, 2020.

End of Document

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 28

O Const II Sec. 28 Retroactive laws; laws impairing obligation of contracts

Currentness

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

(Article I, Sec. 1 to Article I, Sec. 9)

Const. Art. II, § 28, OH CONST Art. II, § 28
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

Baldwin's Ohio Revised Code Annotated
General Provisions
Chapter 1. Definitions; Rules of Construction (Refs & Annos)
Statutory Provisions (Refs & Annos)

R.C. § 1.48

1.48 Statutes presumed prospective

Currentness

A statute is presumed to be prospective in its operation unless expressly made retrospective.

CREDIT(S)

(1971 H 607, eff. 1-3-72)

R.C. § 1.48, OH ST § 1.48
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Homicide

R.C. § 2903.02

2903.02 Murder

Currentness

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code.

CREDIT(S)

(1998 H 5, eff. 6-30-98; 1996 S 239, eff. 9-6-96; 1972 H 511, eff. 1-1-74)

R.C. § 2903.02, OH ST § 2903.02
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Assault

R.C. § 2903.11

2903.11 Felonious assault

Effective: March 22, 2019
Currentness

(A) No person shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D)(1)(a) Whoever violates this section is guilty of felonious assault. Except as otherwise provided in this division or division (D)(1)(b) of this section, felonious assault is a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer or an investigator of the bureau of criminal identification and investigation, felonious assault is a felony of the first degree.

(b) Regardless of whether the felonious assault is a felony of the first or second degree under division (D)(1)(a) of this section, if the offender also is convicted of or pleads guilty to a specification as described in section 2941.1423 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise provided in this division or unless a longer prison term is required under any other provision of law, the court shall sentence the offender to a mandatory prison term as provided in division (B)(8) of section 2929.14 of the Revised Code. If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the definite prison terms prescribed for a felony of the first degree in division (A)(1)(b) of section 2929.14 of the Revised Code, except that if the violation is committed on or after the effective date of this amendment, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed for a felony of the first degree in division (A)(1)(a) of section 2929.14 of the Revised Code.

(2) In addition to any other sanctions imposed pursuant to division (D)(1) of this section for felonious assault committed in violation of division (A)(1) or (2) of this section, if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1425 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term under division (B)(9) of section 2929.14 of the Revised Code.

(3) If the victim of a felonious assault committed in violation of division (A) of this section is a child under ten years of age and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1426 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, in addition to any other sanctions imposed pursuant to division (D)(1) of this section, the court shall sentence the offender to a mandatory prison term pursuant to division (B)(10) of section 2929.14 of the Revised Code.

(4) In addition to any other sanctions imposed pursuant to division (D)(1) of this section for felonious assault committed in violation of division (A)(2) of this section, if the deadly weapon used in the commission of the violation is a motor vehicle, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(E) As used in this section:

(1) “Deadly weapon” and “dangerous ordnance” have the same meanings as in section 2923.11 of the Revised Code.

(2) “Motor vehicle” has the same meaning as in section 4501.01 of the Revised Code.

(3) “Peace officer” has the same meaning as in section 2935.01 of the Revised Code.

(4) “Sexual conduct” has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.

(5) “Investigator of the bureau of criminal identification and investigation” means an investigator of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under section 109.541 of the Revised Code.

(6) “Investigator” has the same meaning as in section 109.541 of the Revised Code.

(F) The provisions of division (D)(2) of this section and of division (F)(20) of section 2929.13, divisions (B)(9) and (C)(6) of section 2929.14, and section 2941.1425 of the Revised Code shall be known as “Judy's Law.”

CREDIT(S)

(2018 S 201, eff. 3-22-19; 2018 S 20, eff. 3-20-19; 2017 H 63, eff. 10-17-17; 2011 H 86, eff. 9-30-11; 2008 H 280, eff. 4-7-09; 2006 H 461, eff. 4-4-07; 2006 H 347, eff. 3-14-07; 2006 H 95, eff. 8-3-06; 1999 H 100, eff. 3-23-00; 1999 S 142, eff. 2-3-00; 1996 S 239, eff. 9-6-96; 1995 S 2, eff. 7-1-96; 1983 S 210, eff. 7-1-83; 1982 H 269, S 199; 1972 H 511)

R.C. § 2903.11, OH ST § 2903.11
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Violent Offenders

R.C. § 2903.41

2903.41 Definitions for RC 2903.41 to 2903.44

Effective: March 20, 2019
Currentness

As used in sections 2903.41 to 2903.44 of the Revised Code:

(A) "Violent offender" means any of the following:

(1) A person who on or after the effective date of this section is convicted of or pleads guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2905.01 of the Revised Code or a violation of section 2905.02 of the Revised Code that is a felony of the second degree;

(b) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1)(a) of this section.

(2) A person who on the effective date of this section has been convicted of or pleaded guilty to an offense listed in division (A)(1) of this section and is confined in a jail, workhouse, state correctional institution, or other institution, serving a prison term, term of imprisonment, or other term of confinement for the offense.

(B) "Community control sanction," "jail," and "prison" have the same meanings as in section 2929.01 of the Revised Code.

(C) "Out-of-state violent offender" means a person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a violation of any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court, that is or was substantially equivalent to any offense listed in division (A)(1) of this section.

(D) "Qualifying out-of-state violent offender" means an out-of-state violent offender who is aware of the existence of the violent offender database.

(E) "Post-release control sanction" and "supervised release" have the same meanings as in section 2950.01 of the Revised Code.

(F) “Change of address” means a change to a violent offender's or out-of-state violent offender's residence address, employment address, or school or institution of higher education address.

(G) “Violent offender database” means the database of violent offenders and out-of-state violent offenders that is established and maintained by the bureau of criminal identification and investigation under division (F)(2) of section 2903.43 of the Revised Code, that is operated by sheriffs under sections 2903.42 and 2903.43 of the Revised Code, and for which sheriffs obtain information from violent offenders and out-of-state violent offenders pursuant to sections 2903.42 and 2903.43 of the Revised Code.

(H) “Violent offender database duties” and “VOD duties” mean the duty to enroll, duty to re-enroll, and duty to provide notice of a change of address imposed on a violent offender or a qualifying out-of-state violent offender under section 2903.42, 2903.421, 2903.43, or 2903.44 of the Revised Code.

(I) “Ten-year enrollment period” means, for a violent offender who has violent offender database duties pursuant to section 2903.42 of the Revised Code or a qualifying out-of-state violent offender who has violent offender database duties pursuant to section 2903.421 of the Revised Code, ten years from the date on which the offender initially enrolls in the violent offender database.

(J) “Extended enrollment period” means, for a violent offender who has violent offender database duties pursuant to section 2903.42 of the Revised Code or a qualifying out-of-state violent offender who has violent offender database duties pursuant to section 2903.421 of the Revised Code, the offender's enrollment period as extended pursuant to division (D)(2) of section 2903.43 of the Revised Code.

(K) “Prosecutor” means one of the following:

(1) As used in section 2903.42 of the Revised Code, the office of the prosecuting attorney who handled a violent offender's underlying case or the office of that prosecutor's successor.

(2) As used in sections 2903.421, 2903.43, and 2903.44 of the Revised Code, the office of the prosecuting attorney of the county in which a violent offender resides or of the county in which an out-of-state violent offender resides or occupies a dwelling.

CREDIT(S)

(2018 S 231, eff. 3-20-19)

R.C. § 2903.41, OH ST § 2903.41
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Violent Offenders

R.C. § 2903.42

2903.42 Presumption that violent offender required to enroll in violent offender database; notice; motion to rebut

Effective: March 20, 2019
Currentness

(A)(1) For each person who is classified a violent offender, it is presumed that the violent offender shall be required to enroll in the violent offender database with respect to the offense that so classifies the person and shall have all violent offender database duties with respect to that offense for ten years after the offender initially enrolls in the database. The presumption is a rebuttable presumption that the violent offender may rebut as provided in division (A)(4) of this section, after filing a motion in accordance with division (A)(2)(a) or (b) of this section, whichever is applicable. Each violent offender shall be informed of the presumption established under this division, of the offender's right to file a motion to rebut the presumption, of the procedure and criteria for rebutting the presumption, and of the effect of a rebuttal and the post-rebuttal hearing procedures and possible outcome, as follows:

(a) If the person is classified a violent offender under division (A)(1) of section 2903.41 of the Revised Code, the court that is sentencing the offender for the offense that so classifies the person shall inform the offender before sentencing of the presumption, the right, and the procedure, criteria, and possible outcome.

(b) If the person is classified a violent offender under division (A)(2) of section 2903.41 of the Revised Code, the official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender is serving a prison term, term of imprisonment, or other term of confinement for the offense, or the official's designee, shall inform the offender in writing, a reasonable period of time before the offender is released from the confinement, of the presumption, the right, and the procedure, criteria, and possible outcome.

(2) A violent offender who wishes to rebut the presumption established under division (A)(1) of this section shall file a motion in accordance with whichever of the following is applicable, and shall serve a copy of the motion on the prosecutor:

(a) If the person is classified a violent offender under division (A)(1) of section 2903.41 of the Revised Code, the offender shall file the motion with the court that is sentencing the offender for the offense that classifies the person a violent offender. The motion shall assert that the offender was not the principal offender in the commission of that offense and request that the court not require the offender to enroll in the violent offender database and not have all VOD duties with respect to that offense. The motion shall be filed prior to or at the time of sentencing.

(b) If the person is classified a violent offender under division (A)(2) of section 2903.41 of the Revised Code, the offender shall file the motion with the court that sentenced the offender for the offense that classifies the person a violent offender. The motion shall assert that the offender was not the principal offender in the commission of that offense and request that the court

not require the offender to enroll in the violent offender database and not have all VOD duties with respect to that offense. The motion shall be filed prior to the time of the person's release from confinement in the jail, workhouse, state correctional institution, or other institution under the prison term, term of imprisonment, or other term of confinement for the offense listed in division (A)(1) of section 2903.41 of the Revised Code.

(3) If a violent offender does not file a motion under division (A)(2)(a) or (b) of this section, the violent offender shall be required to enroll in the violent offender database with respect to the offense that classifies the person a violent offender and shall have all VOD duties with respect to that offense for ten years after the offender initially enrolls in the database. If the person is classified a violent offender under division (A)(1) of section 2903.41 of the Revised Code, the court shall provide the offender notice of the duties pursuant to division (C) of this section. If the person is classified a violent offender under division (A)(2) of section 2903.41 of the Revised Code, the offender shall be provided notice of the duties pursuant to divisions (B) and (C) of this section.

(4) If a violent offender files a motion under division (A)(2)(a) or (b) of this section, the offender has the burden of proving to the court that is sentencing, or that has sentenced, the offender, by a preponderance of the evidence, that the offender was not the principal offender in the commission of the offense that classifies the person a violent offender. If a violent offender files such a motion, one of the following applies:

(a) If the violent offender proves to the court, by a preponderance of the evidence, that the offender was not the principal offender in the commission of the offense that classifies the person a violent offender, the presumption is rebutted and the court shall continue the hearing for the purpose of determining whether the offender, notwithstanding the rebuttal of the presumption, should be required to enroll in the violent offender database and have all VOD duties with respect to that offense. In making that determination, the court shall consider all of the factors identified in divisions (A)(4)(a)(i) to (iv) of this section. If the court, after considering those factors at the hearing, determines that the offender, notwithstanding the rebuttal of the presumption, should be required to enroll in the violent offender database and have all VOD duties with respect to that offense, the court shall issue an order specifying that the offender is required to enroll in the violent offender database with respect to that offense and will have all VOD duties with respect to that offense for ten years after the offender initially enrolls in the database. Upon the court's issuance of such an order, the offender shall be required to enroll in the violent offender database and will have all VOD duties with respect to that offense for ten years after the offender initially enrolls in the database. The court shall provide the offender notice of the duties pursuant to division (C) of this section, and shall provide a copy of the order to the prosecutor and to the bureau of criminal identification and investigation. Absent such a determination at the hearing after consideration of those factors, the court shall issue an order specifying that the offender is not required to enroll in the violent offender database and has no VOD duties with respect to the offense that classifies the person a violent offender, and shall provide a copy of the order to the prosecutor and to the bureau of criminal identification and investigation. In making a determination at a hearing under this division, a court shall consider all of the following factors:

(i) Whether the offender has any convictions for any offense of violence, prior to the offense at issue that classifies the person a violent offender, and whether those prior convictions, if any, indicate that the offender has a propensity for violence;

(ii) The results of a risk assessment of the offender conducted through use of the single validated risk assessment tool established under section 5120.114 of the Revised Code;

(iii) The degree of culpability or involvement of the offender in the offense at issue that classifies the person a violent offender;

(iv) The public interest and safety.

(b) If the violent offender does not prove to the court, by a preponderance of the evidence, that the offender was not the principal offender in the commission of the offense that classifies the person a violent offender, the court shall issue an order specifying that the offender is required to enroll in the violent offender database and has all VOD duties with respect to that offense, and shall provide a copy of the order to the prosecutor and to the bureau of criminal identification and investigation. Upon the court's issuance of such an order, the offender shall be required to enroll in the violent offender database with respect to that offense and will have all VOD duties with respect to that offense for ten years after the offender initially enrolls in the database. The court shall provide the offender notice of the duties pursuant to division (C) of this section.

(B) Each person who is classified a violent offender under division (A)(2) of section 2903.41 of the Revised Code and who does not file a motion under division (A)(2)(a) or (b) of this section shall be provided notice of the offender's duty to enroll in the violent offender database with respect to the offense that classifies the person a violent offender and of all VOD duties with respect to that offense and that those duties last for ten years after the offender initially enrolls in the database. The official in charge of the jail, workhouse, state correctional institution, or other institution in which the offender is serving the prison term, term of imprisonment, or other term of confinement, or the official's designee, shall provide the notice to the offender before the offender is released pursuant to any type of supervised release or before the offender is otherwise released from the prison term, term of imprisonment, or other term of confinement.

(C) The judge, official, or official's designee providing the notice under division (A)(3), (A)(4), or (B) of this section shall require the violent offender to read and sign a form stating that the violent offender has received and understands the notice. If the violent offender is unable to read, the judge, official, or official's designee shall inform the violent offender of the violent offender's duties as set forth in the notice and shall certify on the form that the judge, official, or official's designee informed the violent offender of the violent offender's duties and that the violent offender indicated an understanding of those duties.

The attorney general shall prescribe the notice and the form provided under this division. The notice shall inform the offender that, to satisfy the duty to enroll, the violent offender must enroll personally with the sheriff of the county in which the offender resides or that sheriff's designee and include notice of the offender's duties to re-enroll annually and when the offender has a change of address.

The person providing the notice under this division shall provide a copy of the notice and signed form to the violent offender. The person providing the notice also shall determine the county in which the violent offender intends to reside and shall provide a copy of the signed form to the sheriff of that county in accordance with rules adopted by the attorney general pursuant to Chapter 119. of the Revised Code and to the bureau of criminal identification and investigation.

This division also applies with respect to a qualifying out-of-state violent offender, when specified under division (C) of section 2903.421 of the Revised Code.

CREDIT(S)

(2018 S 231, eff. 3-20-19)

R.C. § 2903.42, OH ST § 2903.42
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End of Document

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Violent Offenders

R.C. § 2903.43

2903.43 Enrollment in violent offender database

Effective: March 20, 2019
Currentness

(A) Each violent offender who has VOD duties imposed pursuant to section 2903.42 of the Revised Code shall enroll in the violent offender database personally with the sheriff of the county in which the violent offender resides or that sheriff's designee within the following time periods:

(1) If the person is classified a violent offender under division (A)(1) of section 2903.41 of the Revised Code and the judge sentencing the offender for the offense that so classifies the offender does not sentence the offender to a prison term, term of imprisonment, or other term of confinement in a jail, workhouse, state correctional institution, or other institution for that offense, the offender shall enroll in the violent offender database within ten days after the sentencing hearing.

(2) If the person is classified a violent offender under division (A)(2) of section 2903.41 of the Revised Code or the person is classified a violent offender under division (A)(1) of that section and division (A)(1) of this section does not apply, the offender shall enroll in the violent offender database within ten days after the violent offender is released from a jail, workhouse, state correctional institution, or other institution, unless the violent offender is being transferred to the custody of another jail, workhouse, state correctional institution, or other institution. The violent offender is not required to enroll in the violent offender database with any sheriff or designee prior to release.

(B) Each qualifying out-of-state violent offender who has VOD duties imposed pursuant to section 2903.421 of the Revised Code shall enroll in the violent offender database personally with the sheriff of the county in which the out-of-state violent offender resides or occupies a dwelling or that sheriff's designee within ten days after either of the following:

(1) Residing in or occupying a dwelling in this state, after the offender becomes aware of the database and has the duty, for more than three consecutive days;

(2) Residing in or occupying a dwelling in this state, after the offender becomes aware of the database and has the duty, for an aggregate period in a calendar year of fourteen or more days in that calendar year.

(C)(1) A violent offender or qualifying out-of-state violent offender who has VOD duties imposed pursuant to section 2903.42 or 2903.421 of the Revised Code shall enroll in the violent offender database, personally with the sheriff of the county in which the offender resides or that sheriff's designee. The enrollee shall obtain from the sheriff or designee a copy of an enrollment form prescribed by the attorney general that conforms to division (C)(2) of this section, shall complete and sign the form, and

shall return to the sheriff or designee the completed and signed form together with the identification records required under division (C)(3) of this section.

(2) The enrollment form to be used under division (C)(1) of this section shall include or contain all of the following for the violent offender or qualifying out-of-state violent offender who is enrolling:

(a) The violent offender's or out-of-state violent offender's full name and any alias used;

(b) The violent offender's or out-of-state violent offender's residence address;

(c) The violent offender's or out-of-state violent offender's social security number;

(d) Any driver's license number, commercial driver's license number, or state identification card number issued to the violent offender or out-of-state violent offender by this or another state;

(e) The offense that the violent offender or out-of-state violent offender was convicted of or pleaded guilty to;

(f) The name and address of any place where the violent offender or out-of-state violent offender is employed;

(g) The name and address of any school or institution of higher education that the violent offender or out-of-state violent offender is attending;

(h) The identification license plate number of each vehicle owned or operated by the violent offender or out-of-state violent offender or registered in the violent offender's or out-of-state violent offender's name, the vehicle identification number of each vehicle, and a description of each vehicle;

(i) A description of any scars, tattoos, or other distinguishing marks on the violent offender or out-of-state violent offender.

(3) The violent offender or qualifying out-of-state violent offender who is enrolling shall provide fingerprints and palm prints at the time of enrollment. The sheriff or sheriff's designee shall obtain a photograph of the violent offender or out-of-state violent offender at the time of enrollment.

(D)(1) Each violent offender or qualifying out-of-state violent offender who has VOD duties imposed pursuant to section 2903.42 or 2903.421 of the Revised Code shall re-enroll in the violent offender database annually, in person, with the sheriff of the county in which the violent offender resides or the out-of-state violent offender resides or occupies a dwelling or that sheriff's designee within ten days prior to the anniversary of the calendar date on which the offender initially enrolled. The duty to re-enroll under this division remains in effect for the entire ten-year enrollment period of the offender. The offender shall re-enroll by completing, signing, and returning to the sheriff or designee a copy of the enrollment form prescribed by the attorney general and described in divisions (C)(1) and (2) of this section, amending any information required under division (C) of this section that has changed since the enrollee's last enrollment, and providing any additional enrollment information required by the attorney general. The sheriff or designee with whom the violent offender or qualifying out-of-state violent offender re-enrolls

shall obtain a new photograph of the offender annually when the offender re-enrolls. Additionally, if the violent offender's or qualifying out-of-state violent offender's most recent enrollment or re-enrollment was with a sheriff or designee of a sheriff of a different county, as part of the duty to re-enroll, the offender shall provide written notice of the offender's change of residence address to that sheriff or a designee of that sheriff.

(2) Except as otherwise provided in this division, if a violent offender or qualifying out-of-state violent offender has VOD duties imposed pursuant to section 2903.42 or 2903.421 of the Revised Code, the offender's VOD duties shall terminate on the expiration of the ten-year enrollment period of the offender. The ten-year enrollment period may be extended, but only if the prosecutor files a motion with the court of common pleas of the county in which the violent offender resides or in which the qualifying out-of-state offender resides or occupies a dwelling requesting that the court extend the offender's ten-year enrollment period as specified in this division and the court makes the appropriate finding specified in this division. For a violent offender, the court may extend the offender's ten-year enrollment period only if the court finds that the offender has violated a term or condition of a sanction imposed under the offender's sentence or has been convicted of or pleaded guilty to another felony or any misdemeanor offense of violence during that enrollment period. For a qualifying out-of-state offender, the court may extend the offender's ten-year enrollment period only if the court finds that the offender has violated a term or condition of a sanction imposed under the offender's sentence by the court of the other jurisdiction or has been convicted of or pleaded guilty to another felony or any misdemeanor offense of violence during that enrollment period. If a court finds as described in this division that the offender has violated a term or condition of a sanction imposed under the offender's sentence or that the offender has been convicted of or pleaded guilty to another felony or any misdemeanor offense of violence during the ten-year enrollment period, the court shall issue an order that extends the VOD duties of the violent offender or qualifying out-of-state violent offender indefinitely and the offender's VOD duties shall continue indefinitely, subject to termination under section 2903.44 of the Revised Code.

If the court issues an order under this division that extends an offender's VOD duties, the court shall promptly forward a copy of the order to the bureau of criminal identification and investigation and to the prosecutor. Upon receipt of the order from the court, the bureau shall update all records pertaining to the offender to reflect the extended enrollment period. The bureau also shall provide notice of the issuance of the order to every sheriff with whom the offender has most recently enrolled or re-enrolled.

(3) The official in charge of a jail, workhouse, state correctional institution, or other institution shall notify the attorney general in accordance with rules adopted by the attorney general pursuant to Chapter 119. of the Revised Code if a violent offender or qualifying out-of-state violent offender is confined in the jail, workhouse, state correctional institution, or other institution.

(E) Each violent offender or qualifying out-of-state violent offender who has VOD duties imposed pursuant to section 2903.42 or 2903.421 of the Revised Code shall notify the sheriff with whom the offender most recently enrolled or re-enrolled or that sheriff's designee in person within three business days of a change of address that occurs during the ten-year enrollment period or extended enrollment period of the offender.

(F)(1) After a violent offender or qualifying out-of-state violent offender who has VOD duties imposed pursuant to section 2903.42 or 2903.421 of the Revised Code enrolls or re-enrolls in the violent offender database with a sheriff or a sheriff's designee pursuant to this section, the sheriff or designee shall forward the offender's signed, written enrollment form, photograph, fingerprints, palm prints, and other materials to the bureau of criminal identification and investigation in accordance with forwarding procedures adopted by the attorney general under division (G) of this section. The bureau shall include the information and materials forwarded to it under this division in the violent offender database established and maintained under division (F)(2) of this section.

(2) The bureau of criminal identification and investigation shall establish and maintain a database of violent offenders and qualifying out-of-state violent offenders that includes the information and materials the bureau receives pursuant to division (D)(1) or (F)(1) of this section. The bureau shall make the database available to federal, state, and local law enforcement officers. The database of violent offenders and qualifying out-of-state violent offenders maintained by the bureau is not a public record under section 149.43 of the Revised Code.

(3)(a) Except as otherwise provided in divisions (F)(3)(b) and (c) of this section, any statements, information, photographs, fingerprints, or materials that are provided pursuant to this section by a violent offender or qualifying out-of-state violent offender who has VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code and that are in the possession of a county sheriff are public records open to public inspection under section 149.43 of the Revised Code.

(b) The following information is not a public record and shall not be open to public inspection: the social security number and any driver's license number, commercial driver's license number, or state identification card number provided to the county sheriff by a violent offender or qualifying out-of-state violent offender.

(c) A violent offender or qualifying out-of-state violent offender who has VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code may file a motion with the court of common pleas in the county in which the offender resides stating that the offender fears for the offender's safety if the statements, information, photographs, fingerprints, or materials provided by the offender pursuant to this section and that are in the possession of a county sheriff are open for public inspection, and requesting the court to issue an order to ban or restrict access to those statements, photographs, fingerprints, and materials and that information. A motion filed with a court under this division shall expressly state the reasons for which the violent offender or qualifying out-of-state violent offender fears for the offender's safety, shall identify each county in which the offender has enrolled or re-enrolled, and shall provide information and materials in support of the motion. The court, upon the filing of the motion under this division, may determine whether to grant or deny the motion without a hearing or may conduct a hearing to determine whether to grant or deny the motion. The court may grant the motion if it determines, upon review of the motion, the supporting information and materials provided with the motion, and, if the court conducts a hearing, any additional information provided at the hearing, that the offender's fears for the offender's safety are valid and that the interests of justice and the offender's safety require that the motion be granted.

If the court grants the motion, the statements, information, photographs, fingerprints, or materials provided by the offender pursuant to this section and that are in the possession of a county sheriff are not public records open to public inspection under section 149.43 of the Revised Code and the court shall issue an order to that effect. A court that grants a motion and issues an order under this division shall notify the sheriff in each county in which the offender has enrolled or re-enrolled of the issuance of the order, and each of those sheriffs shall comply with the order.

(G) The attorney general shall prescribe the forms that violent offenders and qualifying out-of-state violent offenders who have VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code shall use to enroll, re-enroll, and provide notice of a change of address under divisions (A) to (D) of this section. The attorney general shall adopt procedures for sheriffs to use to forward information, photographs, fingerprints, palm prints, and other materials to the bureau of criminal identification and investigation pursuant to division (F)(1) of this section.

(H) The attorney general, in accordance with Chapter 119. of the Revised Code, may adopt rules regarding enrollment dates different than those prescribed in divisions (A), (B), and (D) of this section for any violent offender or qualifying out-of-state violent offender who has VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code and who also is an

arson offender, as defined in section 2909.13 of the Revised Code, or a sex offender or child-victim offender, both as defined in section 2950.01 of the Revised Code.

(I)(1) No violent offender or qualifying out-of-state violent offender who has VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code shall recklessly fail during the ten-year enrollment period or extended enrollment period of the offender to enroll, re-enroll, or notify the sheriff or sheriff's designee of a change of address as required by this section.

(2) Whoever violates division (I)(1) of this section is guilty of a felony of the fifth degree. If a violent offender or qualifying out-of-state violent offender who violates division (I)(1) of this section 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 shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

CREDIT(S)

(2018 S 231, eff. 3-20-19)

R.C. § 2903.43, OH ST § 2903.43
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2903. Homicide and Assault
Violent Offenders

R.C. § 2903.44

2903.44 Motion to terminate extended enrollment period and VOD duties; proceedings thereon

Effective: March 20, 2019
Currentness

(A) Pursuant to this section, if a violent offender or qualifying out-of-state violent offender has VOD duties imposed under section 2903.42 or 2903.421 of the Revised Code and if a court has extended the offender's ten-year enrollment period pursuant to division (D)(2) of section 2903.43 of the Revised Code, the offender may file a motion to the court of common pleas of the county in which the offender resides requesting that the court terminate the offender's extended enrollment period and VOD duties during that period. A violent offender or qualifying out-of-state violent offender may file a motion under this division at any time during the offender's extended enrollment period, but may not file more than one motion under this division in any five-year period.

(B) A violent offender or qualifying out-of-state violent offender who makes a motion under division (A) of this section shall include with the motion all of the following:

(1) A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the offender was enrolled in the violent offender database;

(2) Documentation of the date of the offender's discharge from supervision or release, whichever is applicable;

(3) A statement asserting that the offender has not been convicted of or pleaded guilty to any other felony or any misdemeanor offense of violence during the offender's ten-year enrollment period or extended enrollment period;

(4) Evidence that the eligible offender has paid all financial sanctions imposed upon the offender pursuant to section 2929.18 or 2929.28 of the Revised Code.

(C) Upon the filing of a motion pursuant to division (A) of this section, the offender shall serve a copy of the motion on the prosecutor.

Upon the filing of the motion, the court shall set a tentative date for a hearing on the motion that, except as otherwise provided in this division, is not later than ninety days after the date on which the motion is filed. The court may set a tentative date for a hearing that is later than that specified time if good cause exists to hold the hearing at a later date. The court shall notify the offender and the prosecutor of the date, time, and place of the hearing. The court shall forward a copy of the motion and its supporting documentation to the court's probation department or another appropriate agency to investigate the merits of the

motion. The probation department or agency shall submit a written report detailing its investigation to the court within sixty days after receiving the motion and supporting documentation.

Upon receipt of the written report from the probation department or other appropriate agency, the court shall forward a copy of the motion, the supporting documentation, and the written report to the prosecutor.

(D) After the prosecutor is served with a copy of the motion and notice of the hearing as described in division (C) of this section, at least seven days before the hearing date, the prosecutor may file an objection to the motion with the court and serve a copy of the objection to the motion to the offender or the offender's attorney.

(E) In determining whether to grant a motion made under division (A) of this section, the court shall consider the evidence that accompanies the motion described in division (B) of this section and shall consider the written report submitted pursuant to division (C) of this section.

(F)(1) The court, without a hearing, may issue an order denying the offender's motion to terminate the offender's extended enrollment period and VOD duties during that period if the court, after considering the evidence, materials, and information specified under division (E) of this section, finds that the extended enrollment period and duties should not be terminated.

(2) If the prosecutor does not file an objection to the offender's motion as provided in division (D) of this section, the court, without a hearing, may issue an order that grants the motion and terminates the eligible offender's extended enrollment period and VOD duties during that period if the court, after considering the evidence, materials, and information specified under division (E) of this section, finds that the extended enrollment period and VOD duties should be terminated. This division does not apply if the prosecutor files an objection to the offender's application as provided in division (D)(2) of this section.

(3) If the court does not issue an order under division (F)(1) or (2) of this section, the court shall hold a hearing to determine whether to grant or deny the motion. At the hearing, the Rules of Civil Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. At the hearing, the offender has the burden of going forward with the evidence and, except as otherwise provided in this division, the burden of proof, by a preponderance of the evidence, that the extended enrollment period and VOD duties should be terminated. If the prosecutor files an objection to the motion as provided in division (D) of this section that includes an allegation that the offender has been convicted of or pleaded guilty to any other felony or any misdemeanor offense of violence during the offender's ten-year enrollment period or extended enrollment period, the prosecutor has the burden of proving that allegation.

The court shall issue an order denying the offender's motion to terminate the offender's extended enrollment period and VOD duties if the prosecutor files such an objection to the motion that includes an allegation that the offender has been convicted of or pleaded guilty to any other felony or any misdemeanor offense of violence during the offender's ten-year enrollment period or extended enrollment period and proves that allegation. If, after considering the evidence, materials, and information specified under division (E) of this section, the court finds that the prosecutor has not alleged in an objection and proved that the offender has been convicted of or pleaded guilty to any other felony or any misdemeanor offense of violence during the offender's ten-year enrollment period or extended enrollment period, the court shall do one of the following:

(a) If the court finds that the offender has satisfied the burden of proof imposed on the offender as described in this division, the court shall issue an order that grants the motion and terminates the offender's extended enrollment period and VOD duties.

(b) If the court finds that the offender has not satisfied the burden of proof imposed on the offender, the court shall issue an order denying the motion.

(4) If the court issues an order under division (F)(1) or (3) of this section denying an offender's motion to terminate the offender's extended enrollment period and VOD duties, the offender may subsequently file another motion under this section requesting termination of the extended enrollment period and VOD duties but may not file more than one such motion in any five-year period.

(5)(a) Upon its issuance of an order under division (F)(1), (2), or (3) of this section, the court shall provide prompt notice of the order to the offender or the offender's attorney.

(b) If the court issues an order under division (F)(2) or (3) of this section that grants the offender's motion and terminates the offender's extended enrollment period and VOD duties, the court shall promptly forward a copy of the order to the bureau of criminal identification and investigation and to the prosecutor. Upon receipt of the order from the court, the bureau shall update all records pertaining to the offender to reflect the termination order. The bureau also shall provide notice of the issuance of the termination order to every sheriff with whom the offender has most recently enrolled or re-enrolled. Upon receipt of the order from the court, the prosecutor shall notify the victim of any offense for which the offender is enrolled in the violent offender database that the offender's extended enrollment period and VOD duties have been terminated.

CREDIT(S)

(2018 S 231, eff. 3-20-19)

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End of Document

 KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or PreemptedHeld Unconstitutional by State v. Dingus, Ohio App. 4 Dist., Apr. 26, 2017

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2909. Arson and Related Offenses (Refs & Annos)
Disruption, Vandalism, Damaging, and Endangering

R.C. § 2909.15

2909.15 Arson offender registry

Effective: July 1, 2013
Currentness

(A) Each arson offender who has received notice pursuant to section 2909.14 of the Revised Code shall register personally with the sheriff of the county in which the arson offender resides or that sheriff's designee within the following time periods:

(1) An arson offender who receives notice under division (A)(1) of section 2909.14 of the Revised Code shall register within ten days after the arson offender is released from a jail, workhouse, state correctional institution, or other institution, unless the arson offender is being transferred to the custody of another jail, workhouse, state correctional institution, or other institution. The arson offender is not required to register with any sheriff or designee prior to release.

(2) An arson offender who receives notice under division (A)(2) of section 2909.14 of the Revised Code shall register within ten days after the sentencing hearing.

(B) Each out-of-state arson offender shall register personally with the sheriff of the county in which the out-of-state arson offender resides or that sheriff's designee within ten days after residing in or occupying a dwelling in this state for more than three consecutive days.

(C)(1) An arson offender or out-of-state arson offender shall register personally with the sheriff of the county in which the offender resides or that sheriff's designee. The registrant shall obtain from the sheriff or designee a copy of a registration form prescribed by the attorney general that conforms to division (C)(2) of this section, shall complete and sign the form, and shall return to the sheriff or designee the completed and signed form together with the identification records required under division (C)(3) of this section.

(2) The registration form to be used under division (C)(1) of this section shall include or contain all of the following for the arson offender or out-of-state arson offender who is registering:

(a) The arson offender's or out-of-state arson offender's full name and any alias used;

(b) The arson offender's or out-of-state arson offender's residence address;

(c) The arson offender's or out-of-state arson offender's social security number;

(d) Any driver's license number, commercial driver's license number, or state identification card number issued to the arson offender or out-of-state arson offender by this or another state;

(e) The offense that the arson offender or out-of-state arson offender was convicted of or pleaded guilty to;

(f) The name and address of any place where the arson offender or out-of-state arson offender is employed;

(g) The name and address of any school or institution of higher education that the arson offender or out-of-state arson offender is attending;

(h) The identification license plate number of each vehicle owned or operated by the arson offender or out-of-state arson offender or registered in the arson offender's or out-of-state arson offender's name, the vehicle identification number of each vehicle, and a description of each vehicle;

(i) A description of any scars, tattoos, or other distinguishing marks on the arson offender or out-of-state arson offender;

(j) Any other information required by the attorney general.

(3) The arson offender or out-of-state arson offender shall provide fingerprints and palm prints at the time of registration. The sheriff or sheriff's designee shall obtain a photograph of the arson offender or out-of-state arson offender at the time of registration.

(D)(1) Each arson offender or out-of-state arson offender shall reregister annually, in person, with the sheriff of the county in which the offender resides or that sheriff's designee within ten days of the anniversary of the calendar date on which the offender initially registered. The registrant shall reregister by completing, signing, and returning to the sheriff or designee a copy of the registration form prescribed by the attorney general and described in divisions (C)(1) and (2) of this section, amending any information required under division (C) of this section that has changed since the registrant's last registration, and providing any additional registration information required by the attorney general. The sheriff or designee with whom the arson offender or out-of-state arson offender reregisters shall obtain a new photograph of the offender annually when the offender reregisters. Additionally, if the arson offender's or out-of-state arson offender's most recent registration or reregistration was with a sheriff or designee of a sheriff of a different county, the offender shall provide written notice of the offender's change of residence address to that sheriff or a designee of that sheriff.

(2)(a) Except as provided in division (D)(2)(b) of this section, the duty of an arson offender or out-of-state arson offender to reregister annually shall continue until the offender's death.

(b) The judge may limit an arson offender's duty to reregister at an arson offender's sentencing hearing to not less than ten years if the judge receives a request from the prosecutor and the investigating law enforcement agency to consider limiting the arson offender's registration period.

(3) The official in charge of a jail, workhouse, state correctional institution, or other institution shall notify the attorney general in accordance with rules adopted by the attorney general pursuant to Chapter 119. of the Revised Code if a registered arson offender or out-of-state arson offender is confined in the jail, workhouse, state correctional institution, or other institution.

(E)(1) After an arson offender or out-of-state arson offender registers or reregisters with a sheriff or a sheriff's designee pursuant to this section, the sheriff or designee shall forward the offender's signed, written registration form, photograph, fingerprints, palm prints, and other materials to the bureau of criminal identification and investigation in accordance with forwarding procedures adopted by the attorney general under division (G) of this section. The bureau shall include the information and materials forwarded to it under this division in the registry of arson offenders and out-of-state arson offenders established and maintained under division (E)(2) of this section.

(2) The bureau of criminal identification and investigation shall establish and maintain a registry of arson offenders and out-of-state arson offenders that includes the information and materials the bureau receives pursuant to division (D)(1) of this section. The bureau shall make the registry available to the fire marshal's office, to state and local law enforcement officers, and to any firefighter who is authorized by the chief of the agency the firefighter serves to review the record through the Ohio law enforcement gateway or its successor. The registry of arson offenders and out-of-state arson offenders maintained by the bureau is not a public record under section 149.43 of the Revised Code.

(F) Each sheriff or sheriff's designee with whom an arson offender or out-of-state arson offender registers or reregisters under this section shall collect a registration fee of fifty dollars and an annual reregistration fee of twenty-five dollars from each arson offender or out-of-state arson offender who registers or reregisters with the sheriff or designee. By the last day of March, the last day of June, the last day of September, and the last day of December in each year, each sheriff who collects or whose designee collects any fees under this division in the preceding three-month period shall send to the attorney general the fees collected during that period. The fees shall be used for the maintenance of the registry of arson offenders and out-of-state arson offenders. A sheriff or designee may waive a fee for an indigent arson offender or out-of-state arson offender.

(G) The attorney general shall prescribe the forms to be used by arson offenders and out-of-state arson offenders to register, reregister, and provide notice of a change of residence address under divisions (A) to (D) of this section. The attorney general shall adopt procedures for sheriffs to use to forward information, photographs, fingerprints, palm prints, and other materials to the bureau of criminal identification and investigation pursuant to division (E)(1) of this section.

(H) Whoever fails to register or reregister as required by this section is guilty of a felony of the fifth degree. If an arson offender or out-of-state arson offender 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 shall constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised released.

CREDIT(S)

(2012 S 70, eff. 7-1-13)

R.C. § 2909.15, OH ST § 2909.15
Current through File 41 of the 133rd General Assembly (2019-2020).

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2923. Conspiracy, Attempt, and Complicity; Weapons Control (Refs & Annos)
Weapons Control

R.C. § 2923.162

2923.162 Discharge of firearm on or near prohibited premises; penalties

Currentness

(A) No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within one hundred yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution;

(3) Discharge a firearm upon or over a public road or highway.

(B)(1) Division (A)(1) of this section does not apply to a person who, while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) Whoever violates this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) of this section shall be punished as follows:

(1) Except as otherwise provided in division (C)(2), (3), or (4) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in division (C)(3) or (4) of this section, if the violation created a substantial risk of physical harm to any person or caused serious physical harm to property, a violation of division (A)(3) of this section is a felony of the third degree.

(3) Except as otherwise provided in division (C)(4) of this section, if the violation caused physical harm to any person, a violation of division (A)(3) of this section is a felony of the second degree.

(4) If the violation caused serious physical harm to any person, a violation of division (A)(3) of this section is a felony of the first degree.

CREDIT(S)

(2004 H 52, eff. 6-1-04; 1999 S 107, eff. 3-23-00)

R.C. § 2923.162, OH ST § 2923.162
Current through File 41 of the 133rd General Assembly (2019-2020).

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2929. Penalties and Sentencing (Refs & Annos)
Penalties for Murder

R.C. § 2929.06

2929.06 Resentencing after sentence of death is set aside, nullified, or vacated

Effective: October 12, 2016
Currentness

(A) If a sentence of death imposed upon an offender is set aside, nullified, or vacated because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, is set aside, nullified, or vacated pursuant to division (C) of section 2929.05 of the Revised Code, or is set aside, nullified, or vacated because a court has determined that the offender is a person with an intellectual disability under standards set forth in decisions of the supreme court of this state or the United States supreme court, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose upon the offender a sentence of life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the

time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a sentence of death was not imposed of a sentence of life imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section, the court or panel shall impose the sentence so required. In all other cases, the sentences of life imprisonment that are available at the hearing, and from which the court or panel shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If a sentence of life imprisonment without parole imposed upon an offender pursuant to section 2929.021 or 2929.03 of the Revised Code is set aside, nullified, or vacated for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

(E) This section, as amended by H.B. 184 of the 125th general assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after March 23, 2005, including offenders who, on March 23, 2005, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of March 23, 2005, have not yet been resentenced.

CREDIT(S)

(2016 H 158, eff. 10-12-16; 2007 S 10, eff. 1-1-08; 2004 H 184, eff. 3-23-05; 1998 S 107, eff. 7-29-98; 1996 H 180, eff. 1-1-97; 1996 S 258, eff. 10-16-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 S 4, eff. 9-21-95; 1981 S 1, eff. 10-19-81)

R.C. § 2929.06, OH ST § 2929.06
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2929. Penalties and Sentencing (Refs & Annos)
Felony Sentencing

R.C. § 2929.13

2929.13 Sentencing guidelines for various specific offenses and degrees of offenses

Effective: October 17, 2019
Currentness

(A) Except as provided in division (E), (F), or (G) of this section and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose any sanction or combination of sanctions on the offender that are provided in sections 2929.14 to 2929.18 of the Revised Code.

If the offender is eligible to be sentenced to community control sanctions, the court shall consider the appropriateness of imposing a financial sanction pursuant to section 2929.18 of the Revised Code or a sanction of community service pursuant to section 2929.17 of the Revised Code as the sole sanction for the offense. Except as otherwise provided in this division, if the court is required to impose a mandatory prison term for the offense for which sentence is being imposed, the court also shall impose any financial sanction pursuant to section 2929.18 of the Revised Code that is required for the offense and may impose any other financial sanction pursuant to that section but may not impose any additional sanction or combination of sanctions under section 2929.16 or 2929.17 of the Revised Code.

If the offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, in addition to the mandatory term of local incarceration or the mandatory prison term required for the offense by division (G)(1) or (2) of this section, the court shall impose upon the offender a mandatory fine in accordance with division (B)(3) of section 2929.18 of the Revised Code and may impose whichever of the following is applicable:

(1) For a fourth degree felony OVI offense for which sentence is imposed under division (G)(1) of this section, an additional community control sanction or combination of community control sanctions under section 2929.16 or 2929.17 of the Revised Code. If the court imposes upon the offender a community control sanction and the offender violates any condition of the community control sanction, the court may take any action prescribed in division (B) of section 2929.15 of the Revised Code relative to the offender, including imposing a prison term on the offender pursuant to that division.

(2) For a third or fourth degree felony OVI offense for which sentence is imposed under division (G)(2) of this section, an additional prison term as described in division (B)(4) of section 2929.14 of the Revised Code or a community control sanction as described in division (G)(2) of this section.

(B)(1)(a) Except as provided in division (B)(1)(b) of this section, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense, the court shall sentence the offender to a community control sanction or combination of community control sanctions if all of the following apply:

(i) The offender previously has not been convicted of or pleaded guilty to a felony offense.

(ii) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(iii) The offender previously has not been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.

(b) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following apply:

(i) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(ii) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.

(iii) The offender violated a term of the conditions of bond as set by the court.

(iv) The offense is a sex offense that is a fourth or fifth degree felony violation of any provision of Chapter 2907. of the Revised Code.

(v) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

(vi) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(vii) The offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(viii) The offender committed the offense for hire or as part of an organized criminal activity.

(ix) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

(x) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

(c) A sentencing court may impose an additional penalty under division (B) of section 2929.15 of the Revised Code upon an offender sentenced to a community control sanction under division (B)(1)(a) of this section if the offender violates the conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer.

(2) If division (B)(1) of this section does not apply, except as provided in division (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the fourth or fifth degree, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(C) Except as provided in division (D), (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

(b) A community control sanction or a combination of community control sanctions would not demean the seriousness of the offense, because one or more factors under section 2929.12 of the Revised Code that indicate that the offender's conduct was less serious than conduct normally constituting the offense are applicable, and they outweigh the applicable factors under that section that indicate that the offender's conduct was more serious than conduct normally constituting the offense.

(E)(1) Except as provided in division (F) of this section, for any drug offense that is a violation of any provision of Chapter 2925. of the Revised Code and that is a felony of the third, fourth, or fifth degree, the applicability of a presumption under division (D) of this section in favor of a prison term or of division (B) or (C) of this section in determining whether to impose a prison term for the offense shall be determined as specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the Revised Code, whichever is applicable regarding the violation.

(2) If an offender who was convicted of or pleaded guilty to a felony violates the conditions of a community control sanction imposed for the offense solely by reason of producing positive results on a drug test or by acting pursuant to division (B)(2)(b) of section 2925.11 of the Revised Code with respect to a minor drug possession offense, the court, as punishment for the violation of the sanction, shall not order that the offender be imprisoned unless the court determines on the record either of the following:

(a) The offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program.

(b) The imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code.

(3) A court that sentences an offender for a drug abuse offense that is a felony of the third, fourth, or fifth degree may require that the offender be assessed by a properly credentialed professional within a specified period of time. The court shall require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes addiction services and recovery supports included in a community-based continuum of care established under section 340.032 of the Revised Code. If the court imposes addiction services and recovery supports as a community control sanction, the court shall direct the level and type of addiction services and recovery supports after considering the assessment and recommendation of community addiction services providers.

(F) Notwithstanding divisions (A) to (E) of this section, the court shall impose a prison term or terms under sections 2929.02 to 2929.06, section 2929.14, section 2929.142, or section 2971.03 of the Revised Code and except as specifically provided in section 2929.20, divisions (C) to (I) of section 2967.19, or section 2967.191 of the Revised Code or when parole is authorized for the offense under section 2967.13 of the Revised Code shall not reduce the term or terms pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code for any of the following offenses:

(1) Aggravated murder when death is not imposed or murder;

(2) Any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been guilty of a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and would be sentenced under section 2971.03 of the Revised Code;

(3) Gross sexual imposition or sexual battery, if the victim is less than thirteen years of age and if any of the following applies:

(a) Regarding gross sexual imposition, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and the victim of the previous offense was less than thirteen years of age;

(b) Regarding gross sexual imposition, the offense was committed on or after August 3, 2006, and evidence other than the testimony of the victim was admitted in the case corroborating the violation.

(c) Regarding sexual battery, either of the following applies:

(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(ii) The offense was committed on or after August 3, 2006.

(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2905.32, 2907.07, 2921.321, or 2923.132 of the Revised Code if the section requires the imposition of a prison term;

(5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;

(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;

(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:

(a) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed in division (F)(7)(a) of this section that resulted in the death of a person or in physical harm to a person.

(8) Any offense, other than a violation of section 2923.12 of the Revised Code, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to division (B)(1)(a) of section 2929.14 of the Revised Code for having the firearm;

(9) Any offense of violence that is a felony, if the offender wore or carried body armor while committing the felony offense of violence, with respect to the portion of the sentence imposed pursuant to division (B)(1)(d) of section 2929.14 of the Revised Code for wearing or carrying the body armor;

(10) Corrupt activity in violation of section 2923.32 of the Revised Code when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree;

(11) Any violent sex offense or designated homicide, assault, or kidnapping offense if, in relation to that offense, the offender is adjudicated a sexually violent predator;

(12) A violation of division (A)(1) or (2) of section 2921.36 of the Revised Code, or a violation of division (C) of that section involving an item listed in division (A)(1) or (2) of that section, if the offender is an officer or employee of the department of rehabilitation and correction;

(13) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, with respect to the portion of the sentence imposed pursuant to division (B)(5) of section 2929.14 of the Revised Code;

(14) A violation of division (A)(1) or (2) of section 2903.06 of the Revised Code if the offender has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, with respect to the portion of the sentence imposed pursuant to division (B)(6) of section 2929.14 of the Revised Code;

(15) Kidnapping, in the circumstances specified in section 2971.03 of the Revised Code and when no other provision of division (F) of this section applies;

(16) Kidnapping, abduction, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, a violation of division (A)(1) or (2) of section 2907.323 of the Revised Code that involves a minor, or endangering children in violation of division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code, if the offender is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense;

(17) A felony violation of division (A) or (B) of section 2919.25 of the Revised Code if division (D)(3), (4), or (5) of that section, and division (D)(6) of that section, require the imposition of a prison term;

(18) A felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code, if the victim of the offense was a woman that the offender knew was pregnant at the time of the violation, with respect to a portion of the sentence imposed pursuant to division (B)(8) of section 2929.14 of the Revised Code;

(19)(a) Any violent felony offense if the offender is a violent career criminal and had a firearm on or about the offender's person or under the offender's control during the commission of the violent felony offense and displayed or brandished the firearm, indicated that the offender possessed a firearm, or used the firearm to facilitate the offense, with respect to the portion of the sentence imposed under division (K) of section 2929.14 of the Revised Code.

(b) As used in division (F)(19)(a) of this section, "violent career criminal" and "violent felony offense" have the same meanings as in section 2923.132 of the Revised Code;

(20) Any violation of division (A)(1) of section 2903.11 of the Revised Code if the offender used an accelerant in committing the violation and the serious physical harm to another or another's unborn caused by the violation resulted in a permanent, serious disfigurement or permanent, substantial incapacity or any violation of division (A)(2) of that section if the offender used an accelerant in committing the violation, the violation caused physical harm to another or another's unborn, and the physical harm resulted in a permanent, serious disfigurement or permanent, substantial incapacity, with respect to a portion of the sentence imposed pursuant to division (B)(9) of section 2929.14 of the Revised Code. The provisions of this division and of division (D)(2) of section 2903.11, divisions (B)(9) and (C)(6) of section 2929.14, and section 2941.1425 of the Revised Code shall be known as "Judy's Law."

(21) Any violation of division (A) of section 2903.11 of the Revised Code if the victim of the offense suffered permanent disabling harm as a result of the offense and the victim was under ten years of age at the time of the offense, with respect to a portion of the sentence imposed pursuant to division (B)(10) of section 2929.14 of the Revised Code.

(22) A felony violation of section 2925.03, 2925.05, or 2925.11 of the Revised Code, if the drug involved in the violation is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound and the offender is convicted of or pleads guilty to a specification of the type described in division (B) of section 2941.1410 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, with respect to the portion of the sentence imposed under division (B)(11) of section 2929.14 of the Revised Code.

(G) Notwithstanding divisions (A) to (E) of this section, if an offender is being sentenced for a fourth degree felony OVI offense or for a third degree felony OVI offense, the court shall impose upon the offender a mandatory term of local incarceration or a mandatory prison term in accordance with the following:

(1) If the offender is being sentenced for a fourth degree felony OVI offense and if the offender has not been convicted of and has not pleaded guilty to a specification of the type described in section 2941.1413 of the Revised Code, the court may impose upon the offender a mandatory term of local incarceration of sixty days or one hundred twenty days as specified in division (G)(1)(d) of section 4511.19 of the Revised Code. The court shall not reduce the term pursuant to section 2929.20, 2967.193, or any other provision of the Revised Code. The court that imposes a mandatory term of local incarceration under this division shall specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender shall serve the term in the type of facility specified by the court. A mandatory term of local incarceration imposed under division (G)(1) of this section is not subject to any other Revised Code provision that pertains to a prison term except as provided in division (A)(1) of this section.

(2) If the offender is being sentenced for a third degree felony OVI offense, or if the offender is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration under division (G)(1) of this

section, the court shall impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or shall impose upon the offender a mandatory prison term of sixty days or one hundred twenty days as specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code if the offender has not been convicted of and has not pleaded guilty to a specification of that type. Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the court shall not reduce the term pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of the Revised Code. The offender shall serve the one-, two-, three-, four-, or five-year mandatory prison term consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under this division in any intensive program prison established pursuant to section 5120.033 of the Revised Code other than the privately operated and managed prison.

(H) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a felony committed on or after January 1, 1997, the judge shall require the offender to submit to a DNA specimen collection procedure pursuant to section 2901.07 of the Revised Code.

(I) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under division (A)(2) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that section, or, if required under division (A)(6) of section 2950.03 of the Revised Code, the judge shall perform the duties specified in that division.

(J)(1) Except as provided in division (J)(2) of this section, when considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense in violation of section 2923.02 of the Revised Code, the sentencing court shall consider the factors applicable to the felony category of the violation of section 2923.02 of the Revised Code instead of the factors applicable to the felony category of the offense attempted.

(2) When considering sentencing factors under this section in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense, the sentencing court shall consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.

(K) As used in this section:

(1) "Community addiction services provider" has the same meaning as in section 5119.01 of the Revised Code.

(2) "Drug abuse offense" has the same meaning as in section 2925.01 of the Revised Code.

(3) "Minor drug possession offense" has the same meaning as in section 2925.11 of the Revised Code.

(4) "Qualifying assault offense" means a violation of section 2903.13 of the Revised Code for which the penalty provision in division (C)(8)(b) or (C)(9)(b) of that section applies.

(L) At the time of sentencing an offender for any sexually oriented offense, if the offender is a tier III sex offender/child-victim offender relative to that offense and the offender does not serve a prison term or jail term, the court may require that the offender be monitored by means of a global positioning device. If the court requires such monitoring, the cost of monitoring shall be borne by the offender. If the offender is indigent, the cost of compliance shall be paid by the crime victims reparations fund.

CREDIT(S)

(2019 H 166, eff. 10-17-19; 2018 S 201, eff. 3-22-19; 2018 S 20, eff. 3-20-19; 2018 S 1, eff. 10-31-18; 2018 S 66, eff. 10-29-18; 2017 H 63, eff. 10-17-17; 2016 S 319, eff. 7-1-17; 2016 S 97, eff. 9-14-16; 2016 H 110, eff. 9-13-16; 2016 H 60, eff. 9-13-16; 2015 H 64, eff. 9-29-15; 2013 H 59, eff. 9-29-13; 2012 S 160, eff. 3-22-13; 2012 H 62, eff. 3-22-13; 2012 H 262, eff. 6-27-12; 2011 H 86, eff. 9-30-11; 2010 S 58, eff. 9-17-10; 2008 H 130, eff. 4-7-09; 2008 H 280, eff. 4-7-09; 2008 S 183, eff. 9-11-08; 2007 S 10, eff. 1-1-08; 2006 S 281, eff. 4-5-07; 2006 H 461, eff. 4-4-07; 2006 S 260, eff. 1-2-07; 2006 H 95, eff. 8-3-06; 2004 H 473, eff. 4-29-05; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2003 S 5, § 3, eff. 1-1-04; 2003 S 5, § 1, eff. 7-31-03; 2002 S 123, eff. 1-1-04; 2002 H 485, eff. 6-13-02; 2002 H 327, eff. 7-8-02; 2000 S 222, eff. 3-22-01; 2000 H 528, eff. 2-13-01; 1999 S 22, eff. 5-17-00; 1999 S 107, eff. 3-23-00; 1999 S 142, eff. 2-3-00; 1998 H 122, eff. 7-29-98; 1998 H 293, eff. 3-17-98; 1997 S 111, eff. 3-17-98; 1997 H 32, eff. 3-10-98; 1996 H 180, eff. 1-1-97; 1996 S 166, eff. 10-17-96; 1996 S 269, eff. 7-1-96; 1996 H 445, eff. 9-3-96; 1995 S 2, eff. 7-1-96)

R.C. § 2929.13, OH ST § 2929.13
Current through File 41 of the 133rd General Assembly (2019-2020).

End of Document


KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or PreemptedUnconstitutional as Applied by In re Bruce S., Ohio, Dec. 06, 2012

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2950. Sex Offenders (Refs & Annos)

R.C. § 2950.02

2950.02 Legislative findings; public policy declaration

Effective: January 1, 2008
Currentness

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and child-victim offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender or a child-victim offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders and child-victim offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

(B) The general assembly hereby declares that, in providing in this chapter for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding tier III sex offenders/child-victim offenders who are criminal offenders, public registry-qualified juvenile offender registrants, and certain other juvenile offender registrants who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sex offenders and child-victim offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sex offenders and child-victim offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

CREDIT(S)

(2007 S 10, eff. 1-1-08; 2003 S 5, eff. 7-31-03; 2001 S 3, eff. 1-1-02; 1996 H 180, eff. 7-1-97)

R.C. § 2950.02, OH ST § 2950.02
Current through File 41 of the 133rd General Assembly (2019-2020).

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