August 12, 2009

The Honorable Robin N. Piper
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515
315 High Street
Hamilton, Ohio 45012-0515

SYLLABUS: 2009-029

R.C. 2950.034(A) does not prohibit a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying a residential premises within 1000 feet of any school premises or preschool or child day-care center premises.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

August 12, 2009

OPINION NO. 2009-029

The Honorable Robin N. Piper
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515
315 High Street
Hamilton, Ohio 45012-0515

Dear Prosecutor Piper:

You have requested an opinion whether the residency restriction of R.C. 2950.034(A) applies to a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense.

R.C. 2950.034(A) provides that, "[n]o person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense shall establish a residence or occupy residential premises within [1000] feet of any school premises or preschool or child day-care center premises."[1] The residency restriction set

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[1] A person who violates R.C. 2950.034(A) may be sanctioned as follows:

> If a person to whom [R.C. 2950.034(A)] applies violates [R.C. 2950.034(A)] by establishing a residence or occupying residential premises within [1000] feet of any school premises or preschool or child day-care center premises, an owner or lessee of real property that is located within [1000] feet of those school premises or preschool or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The

out in R.C. 2950.034(A) therefore applies whenever a juvenile "has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense."[2]

Under Ohio law, a juvenile who has allegedly committed a sexually oriented offense or a child-victim oriented offense is either criminally prosecuted as an adult or subject to a juvenile court proceeding under R.C. Chapter 2152 to determine whether the juvenile is a delinquent child.[3] *See* R.C. 2152.021 (authorizing a person to file a complaint with a juvenile court alleging that a juvenile is a delinquent child); R.C. 2152.03 ("[w]hen a child is arrested under any charge, complaint, affidavit, or indictment for a felony or a misdemeanor, proceedings regarding the child initially shall be in the juvenile court in accordance with [R.C. Chapter 2152]"); R.C. 2152.10 (authorizing the transfer of a juvenile's case from a juvenile court to an appropriate court for criminal prosecution); R.C. 2152.12 (same as the previous parenthetical). *See generally* R.C. 2151.23(A)(1) ("[t]he juvenile court has exclusive original jurisdiction under the Revised Code … [c]oncerning any child who on or about the date specified in the complaint, indictment, or information is alleged … to be … a delinquent … child"); R.C. 2152.02(AA) (for purposes of R.C. Chapter 2152, "transfer" means "the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense").

If a criminal prosecution is undertaken, the juvenile may be convicted of, or plead guilty to, a sexually oriented offense or a child-victim oriented offense. *See* R.C. 2901.05(A); R.C. 2943.03; Ohio R. Crim. P. 5; Ohio R. Crim. P. 10; Ohio R. Crim. P. 11. Upon such a conviction or plea, the juvenile is subject to the residency restriction of R.C. 2950.034(A).

However, if the juvenile is subject to a juvenile court proceeding under R.C. Chapter 2152 to determine whether the juvenile is a delinquent child, the juvenile may not be convicted of, or plead guilty to, a sexually oriented offense or a child-victim oriented offense. Instead, a

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> plaintiff shall not be required to prove irreparable harm in order to obtain the relief.

R.C. 2950.034(B).

[2] The term "person," as used in R.C. 2950.034(A), includes a juvenile. *See* R.C. 2901.01(B); *Merriam-Webster's Collegiate Dictionary* 680 (11th ed. 2005). *See generally* R.C. 2950.01 (the definitions of the terms "sexually oriented offense," "sex offender," "child-victim oriented offense," and "child-victim offender," as used in R.C. Chapter 2950, indicate that a juvenile is a person for purposes of R.C. Chapter 2950).

[3] For purposes of R.C. Chapter 2152, the term "delinquent child" includes, *inter alia*, "[a]ny child, except a juvenile traffic offender, who violates any law of this state … that would be an offense if committed by an adult." R.C. 2152.02(F)(1).

juvenile court determines whether the juvenile is a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and, if the juvenile is adjudicated a delinquent child by the court, the court issues a disposition order sanctioning the juvenile. *See* R.C. 2151.23(A)(1); R.C. 2152.021; R.C. 2152.11; R.C. 2152.19. *See generally* R.C. 2152.01(A) ("[t]he overriding purposes for dispositions under [R.C. Chapter 2152] are to provide for the care, protection, and mental and physical development of children subject to [R.C. Chapter 2152], protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender. These purposes shall be achieved by a system of graduated sanctions and services"). Because a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense has not been convicted of, or pleaded guilty to, a sexually oriented offense or a child-victim oriented offense, R.C. 2950.034(A) does not apply to him. *Cf. In re: C.S.*, 2009-Ohio-1298, 2009 Ohio App. LEXIS 1139, at ¶7 (Wayne County Mar. 23, 2009) ("although a violation of [R.C. 2907.05(A)(4)] is listed as a Tier II offense, it is only a Tier II offense for someone who 'has been convicted of, or has pleaded guilty to' such an offense. C.S. was adjudicated delinquent, he was not 'convicted of' and has not 'pleaded guilty to' a violation of [R.C. 2907.05(A)(4)]. The juvenile court, therefore, correctly determined that 'the new registration requirements [did] not apply to [him] in the manner specified [by the attorney general]").

This conclusion is further supported by the fact that, if the General Assembly expected a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense to comply with the residency restriction of R.C. 2950.034(A), it could have used language similar to that used elsewhere in the Revised Code to convey such an intent. *Cf.* R.C. 2152.82-.86 (authorizing a juvenile court in certain circumstances to issue an order applying the sex offender registration and notification provisions of R.C. Chapter 2950 to a juvenile who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense). *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Or, the General Assembly could have made the residency restriction applicable to a person who is classified as a "sex offender" or "child-victim offender" under R.C. Chapter 2950 instead of a "person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense or a child-victim oriented offense." *See generally* R.C. 2950.01(B)(1) (as used in R.C. Chapter 2950, "sex offender" means, "subject to [R.C. 2950.01(B)(2)], a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense"); R.C. 2950.01(D) (for purposes of R.C. Chapter 2950, "child-victim offender" means "a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any child-victim oriented offense"). By doing neither of these things, the General Assembly has indicated that it does not expect a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense to comply with the residency restriction set forth in R.C. 2950.034(A). Accordingly, R.C. 2950.034(A) does not prohibit a juvenile who has been adjudicated a

delinquent child for committing a sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying a residential premises within 1000 feet of any school premises or preschool or child day-care center premises.[4]

As a final matter, we are aware that R.C. 2152.191 provides:

> If a child is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense, if the child is fourteen years of age or older at the time of committing the offense, and if the child committed the offense on or after January 1, 2002, … the following [applies]:
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> (A) [R.C. 2152.82-.86] and [R.C. Chapter 2950] apply to the child and the adjudication.

By its terms, this language would appear to make every provision of R.C. Chapter 2950, including the residency restriction of R.C. 2950.034(A), applicable to a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense via R.C. 2152.191(A). Yet a closer review of the legislation enacting R.C. 2152.191 strongly indicates that the General Assembly did not intend such a result. *See generally State v. Jordan*, 89 Ohio St. 3d 488, 492, 733 N.E.2d 601 (2000) (a court, "in determining the intent of the General Assembly, may consider several factors, including the object sought to be obtained, the legislative history, and other laws upon the same or similar subjects"); *State ex rel. Wolfe v. Delaware County Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000) ("[l]egislative intent is the preeminent consideration in construing a statute").

R.C. 2152.191 was enacted on January 1, 2002, by Am. Sub. S.B. 3, which appears in 2001-2002 Ohio Laws, Part I, at 537. The purpose of Am. Sub. S.B. 3, as stated in its title, was, in part, "to apply the Sex Offender Registration and Notification Law to persons adjudicated delinquent children for committing a sexually oriented offense while 14 years of age or older." To accomplish this purpose, Am. Sub. S.B. 3 enacted R.C. 2152.191 and R.C. 2152.82-.85 so as to empower a juvenile court in certain circumstances to issue an order applying the sex offender

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[4] That the General Assembly may have chosen not to impose the residency restriction of R.C. 2950.034(A) upon a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense may be attributed to the fact that a juvenile who violates a law of the state that would be an offense if committed by an adult has long been treated differently than an adult who has been convicted of, or pleaded guilty to, a criminal offense. *See* R.C. Chapter 2152. One reason for the different treatment is that, until a juvenile is emancipated, the juvenile's parents are legally responsible for the juvenile. *See* R.C. 3103.03; R.C. 3109.01. As part of this responsibility, the juvenile's parents must decide where the juvenile will reside. *See* R.C. 3103.03. Because an unemancipated juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense does not exercise control over where he resides, the General Assembly may have been reluctant to extend R.C. 2950.034(A)'s residency restriction to such a juvenile.

registration and notification provisions of R.C. Chapter 2950 to a juvenile who is adjudicated a delinquent child for committing a sexually oriented offense.

In addition, legislation subsequent to Am. Sub. S.B. 3 has enacted R.C. 2152.831, R.C. 2152.851, and R.C. 2152.86 and made the provisions of R.C. 2152.191 and R.C. 2152.82-.86 applicable to a juvenile who has been adjudicated a delinquent child for committing a child-victim oriented offense. *See* Am. Sub. S.B. 10, 127th Gen. A. (2006) (eff. June 30, 2007, with certain sections effective July 1, 2007); 2003-2004 Ohio Laws, Part IV, 6558 (Am. Sub. S.B. 5, eff. July 31, 2003, with certain sections effective Jan. 1, 2004). Thus, by the terms of the title of Am. Sub. S.B. 3 and subsequent legislation, R.C. 2152.191(A) appears to have been intended to only apply the sex offender registration and notification provisions of R.C. Chapter 2950 to a juvenile who is adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense when the conditions set forth in R.C. 2152.82-.86 are satisfied. *Accord* Ohio Legislative Service Comm'n, 124-SB3 LSC Final Analysis, at 24. The indicia of the legislative intent underlying the statutes thus indicate that R.C. 2152.191(A) does not require a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense to comply with the residency restriction of R.C. 2950.034(A).

If this outcome is not desirable as a matter of sound public policy, the remedy lies with the General Assembly, which is empowered to amend the pertinent statutes. Indeed, legislation now pending before the General Assembly seeks to amend R.C. 2950.034(A) for the purpose of adding language extending the statute's residency prohibition to "*any* person required to register under Ohio's Sex Offender Registration and Notification Law who establishes or occupies residential premises within [1000] feet of any school premises, recreation center, playground, or other place where it is reasonable to expect children to frequent or linger," which includes a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and who is required by a juvenile court to register under Ohio's Sex Offender Registration and Notification Law. *See* H.B. 11, 128th Gen. A. (2009) (title) (introduced Feb. 17, 2009, and referred that same date to the House Criminal Justice Committee) (emphasis added).

In conclusion, it is my opinion, and you are hereby advised that R.C. 2950.034(A) does not prohibit a juvenile who has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying a residential premises within 1000 feet of any school premises or preschool or child day-care center premises.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General