

OPINION NO. 2002-040**Syllabus:**

1. Except as provided in R.C. 149.43(A)(1) and R.C. 2950.081(B), sex offender registration information submitted to a county sheriff by a sex offender who is required to register with the sheriff under R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's Web site, provided such access to the public records does not endanger the safety and integrity of the records or interfere with the discharge of the sheriff's duties.
2. A county sheriff that provides sex offender registration information to the general public on the Internet through a Web site must provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A).
3. Except for the persons listed in R.C. 2950.11(A)(1) and 2 Ohio Admin. Code 109:5-2-03(A)(1)(c), a county sheriff may use e-mail to electronically transmit the written notice required by R.C. 2950.11(A). The persons listed in R.C. 2950.11(A)(1) and rule 109:5-2-03(A)(1)(c) must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio; Andrew J. Hinder, Mercer County Prosecuting Attorney, Celina, Ohio; James J. Mayer, Jr., Rich-

land County Prosecuting Attorney, Mansfield, Ohio; Pat Story, Meigs County Prosecuting Attorney, Pomeroy, Ohio; Craig L. Roth, Williams County Prosecuting Attorney, Bryan, Ohio; Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio; C. Keith Plummer, Guernsey County Prosecuting Attorney, Cambridge, Ohio; Gregory A. Perry, Morrow County Prosecuting Attorney, Mt. Gilead, Ohio; Charles F. Kennedy, III, Van Wert County Prosecuting Attorney, Van Wert, Ohio
By: **Betty D. Montgomery, Attorney General, December 30, 2002**

You have each requested an opinion about providing sex offender registration information on the Internet through the county sheriff's Web site. Your letters present the following questions, which we have rephrased for purposes of uniformity:

1. May sex offender registration information submitted to a county sheriff pursuant to R.C. Chapter 2950 be made available to the general public on the Internet through the sheriff's Web site?
2. Does a county sheriff's placement of sex offender registration information on the Internet through the sheriff's Web site constitute written notice for purposes of R.C. 2950.11(A)?

In order to answer your questions, we must first review how information may be transmitted to and among persons by means of the Internet. The Internet is a collection of millions of computers at various locations throughout the world that share information. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxviii, xxx-xxxi (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.02 (1999). As explained in 2000 Op. Att'y Gen. No. 2000-046 at 2-279 n.1:

The Internet is a collection of interconnected networks of computers that permits and enables communications between individuals, universities, governments, organizations, and businesses. By way of the Internet, these entities can send information to one another in an instant. The Internet thus is a medium for transmitting information.

Accord F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxviii, xxx-xxxi (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.02 (1999).

Information made available through the Internet may be transmitted in a variety of different ways. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxviii (1999). One of the most common and popular methods for transmitting information is electronic mail (e-mail), which permits persons to send messages to each other by means of the Internet. *Id.*; George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999).

Another method is discussion groups, which are commonly referred to as "newsgroups" or "Usenet groups." F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxix (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999). Discussion groups allow persons to use the Internet to post messages onto a computerized bulletin board and to read and respond to messages posted there by others. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxix (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999). Generally, discussion groups provide forums through which persons with an interest in a particular subject area may exchange ideas with like-minded persons. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxix (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999). However, unlike e-mail, discussion group messages are not sent to specific persons but are instead posted to a

common electronic bulletin board and are thus made available to persons who choose to navigate to the bulletin board. George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999).

Information made available through the Internet may also be transmitted through chat groups. Chat groups are similar to discussion groups, "but allow users to converse simultaneously by typing messages and reading the messages of others in simulated real-time conversations among groups of people." F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxix-xxx (1999). The information provided in this format is usually for social entertainment, but it may also center on specific topics of interest. *Id.* at xxx.

Finally, information made available by means of the Internet may be accessed and retrieved through the World Wide Web.¹ F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxx (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999). The World Wide Web "allows textual, graphical, video, and audio information to be widely published and accessed by users having Web browser software and Internet access installed on their computers." F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxx (1999). As explained in George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999):

Another important Internet search and retrieval function is the World Wide Web (WWW or the Web). The Web is perhaps the most powerful Internet search tool and it is currently the most user-friendly. Much of the Web's power comes from its ability to integrate and present to users text, graphics, audio, and video material. This integration capability comes from its use of a specific programming language for all of the material incorporated into the Web, *Hypertext Markup Language* (HTML). HTML permits the use of diverse media in Web sites. HTML documents are communicated through the Internet using the *Hypertext Transfer Protocol* (HTTP).

Accord 2002 Op. Att'y Gen. No. 2002-001 at 2-1 n.1.

A Web site on the World Wide Web typically consists of a home page and other pages or documents for the purpose of making the information contained therein available to anyone who gains access to the site. *Id.* A person having Web browser software and Internet access may reach the Web site and view the information made available through the site. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxx (1999). A Web site on the World Wide Web provides a convenient method for disseminating and obtaining information made available through the Internet. F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxx (1999); George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999).

Let us now consider your first question, whether sex offender registration information submitted to a county sheriff pursuant to R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's Web site. Pursuant to R.C. 2950.04, a

¹We are aware that additional methods for transmitting information made available through the Internet are being used or developed. *See generally* George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999) (computer software is being developed or has been developed to permit Internet users to carry on voice conversations with each other and to permit Internet users to create and receive audio and video programming). For the purpose of this opinion, however, we examine only those methods that currently are in widespread use by the general public.

person who is convicted of, or pleads guilty to, a sexually oriented offense,² or is adjudicated a delinquent child for committing a sexually oriented offense, and who is described in R.C. 2950.04(A), must register with the sheriff of the county in which he resides or is temporarily domiciled for more than seven days. See R.C. 2950.03. A person who is required to register with the county sheriff pursuant to R.C. 2950.04 must provide the county sheriff with his current residence address, the name and address of his employer (if the person is employed at the time of registration or if the person knows at the time of registration that he will be beginning employment with an employer subsequent to registration), his photograph, and any other information required by the Bureau of Criminal Identification and Investigation.³ R.C. 2950.04(C).

In addition, if a person who is required to register with the county sheriff pursuant to R.C. 2950.04 is adjudicated as being a sexual predator⁴ and a court has not subsequently determined that the person is no longer a sexual predator, the person must provide a specific declaration that he has been adjudicated as being a sexual predator and the identification license plate number of each motor vehicle he owns and of each motor vehicle registered in his name. R.C. 2950.04(C)(1) and (2). If a person who is required to register with the county sheriff pursuant to R.C. 2950.04 is determined to be a habitual sex offender⁵

²R.C. 2950.01(D) defines the term “[s]exually oriented offense” for purposes of R.C. Chapter 2950. See also 2 Ohio Admin. Code 109:5-2-01(C). R.C. 2950.01(N) also provides that the phrase “[a]djudicated a delinquent child for committing a sexually oriented offense” includes “a child who receives a serious youthful offender dispositional sentence under [R.C. 2152.13] for committing a sexually oriented offense.”

³2 Ohio Admin. Code 109:5-2-02 sets forth guidelines for completing and transmitting to the Bureau of Criminal Identification and Investigation the “Sex Offender Registration Form,” the “Residence Address Verification Form,” and the “Change of Address Form.”

⁴As used in R.C. Chapter 2950, unless the context clearly requires otherwise, the term “[s]exual predator” means a person who “has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses,” or a person who “has been adjudicated a delinquent child for committing a sexually oriented offense, was fourteen years of age or older at the time of committing the offense, was classified a juvenile sex offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses.” R.C. 2950.01(E); see also R.C. 2971.03(F); rule 109:5-2-01(D).

⁵A “[h]abitual sex offender” is defined as follows for purposes of R.C. Chapter 2950:

“Habitual sex offender” means, except when a juvenile judge removes this classification pursuant to [R.C. 2152.84(A)(2)] or [R.C. 2152.85(C)(2)], a person to whom both of the following apply:

(1) The person is convicted of or pleads guilty to a sexually oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense, was fourteen years of age or older at the time of committing the offense, and is classified a juvenile sex offender registrant based on that adjudication.

(2) One of the following applies to the person:

(a) Regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more sexually oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses and was classified a juvenile sex offender regis-

and a court has not subsequently determined that the person is no longer a habitual sex offender, the person is required to provide a specific declaration that he has been determined to be a habitual sex offender. R.C. 2950.04(C)(1).

A person who is required to register with the county sheriff pursuant to R.C. 2950.04 also must provide written notice of any residence address change to the county sheriff with whom he most recently registered, R.C. 2950.05, and periodically verify his current residence address with the county sheriff with whom he most recently registered, R.C. 2950.06. Accordingly, R.C. 2950.04-.06 require a person who is convicted of, or pleads guilty to, a sexually oriented offense, or is adjudicated a delinquent child for committing a sexually oriented offense, and who is described in R.C. 2950.04(A) to submit certain specified information to the sheriff of the county in which he resides or is temporarily domiciled for more than seven days.

R.C. 2950.081 unequivocally provides that statements, information, photographs, or fingerprints submitted to a county sheriff pursuant to R.C. 2950.04-.06 "are public records open to public inspection under [R.C. 149.43]." *Accord* 1997 Op. Att'y Gen. No. 97-038; *see also State v. Williams*, 88 Ohio St. 3d 513, 526, 728 N.E.2d 342, 356 (2000), *cert. denied*, 531 U.S. 902 (2000); *see also* R.C. 2950.11(E); 2 Ohio Admin. Code 109:5-2-03(D). R.C. 149.43(B)(1), in turn, provides that all public records in the custody of a county sheriff, *inter alia*, are to "be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours."⁶

The purpose of R.C. 149.43 is to promote open government by providing persons with full access to public records. 2000 Op. Att'y Gen. No. 2000-046 at 2-280. This statute thus is construed to further broad access to public records, and any doubt in that regard should be resolved in favor of disclosure. *Id.*

In light of this purpose, a custodian of public records may grant greater access to those records than is prescribed by R.C. 149.43(B). *Id.* In *State ex rel. Fenley v. Ohio Historical Soc.*, 64 Ohio St. 3d 509, 512, 597 N.E.2d 120, 123 (1992), *reh'g denied*, 65 Ohio St. 3d 1436, 600 N.E.2d 679 (1992), the Ohio Supreme Court stated:

trant or out-of-state juvenile sex offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

(b) Regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

R.C. 2950.01(B); *see also* rule 109:5-2-01(E).

⁶Although R.C. 2950.081 states that sex offender registration information submitted to a county sheriff is a public record open to public inspection under R.C. 149.43, any information submitted to the sheriff that is excepted from disclosure by R.C. 149.43(A)(1) should be redacted before the sex offender registration information is made available for public inspection. *State ex rel. Master v. City of Cleveland*, 75 Ohio St. 3d 23, 31, 661 N.E.2d 180, 187 (1996) (if a public record contains both excepted and non-excepted information, the excepted information "must be redacted and any remaining information must be released"); 1999 Op. Att'y Gen. No. 99-006 at 2-38 (same).

R.C. 149.43(B) establishes a standard with which custodians of public records must comply: to make the records available for inspection during business hours and to make copies available at cost. But, the statute also affords a measure of discretion, which this court has held to govern the method of compliance. Thus, *a custodian of public records who complies with the access requirements specified in R.C. 149.43(B) should have some discretion to determine what if any additional access he or she will permit.* (Emphasis added and citations omitted.)

See also 2000 Op. Att'y Gen. No. 2000-046 at 2-280.

Moreover, "it is within the implied power of a public agency to disseminate information both to those who are directly affected by its operation and the general public," and "the means to be utilized therefor ... lies in the first instance within the sound discretion of the public agency involved." *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470-71, 423 N.E.2d 105, 113 (1981). See also 1999 Op. Att'y Gen. No. 99-030 at 2-202 n.5 ("[i]t is generally accepted that the dissemination of information is a proper function of a public body and that public money may be expended for that purpose"). Accordingly, a county sheriff who makes sex offender registration information submitted to him pursuant to R.C. 2950.04-.06 available for inspection to any person at all reasonable times during regular business hours is vested with discretion to determine whether he will permit additional access to such records through an Internet Web site. See *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d at 470-71, 423 N.E.2d at 113; see also 2000 Op. Att'y Gen. No. 2000-046 (syllabus, paragraph one) ("[a] county recorder who makes indexed public records available for inspection during regular business hours may grant the public additional access to such records through the Internet"). See generally 2002 Op. Att'y Gen. No. 2002-001 (syllabus, paragraph one) ("[a] board of township trustees is authorized pursuant to R.C. 9.03(B) to operate a township web site that communicates information about the plans, policies, and operations of the township to members of the public and other persons who may be affected by township matters"); Susan Oakes, Comment, *Megan's Law: Analysis on Whether it is Constitutional to Notify the Public of Sex Offenders Via the Internet*, 17 J. Marshall J. Computer & Info. L. 1133, 1162 (1999) ("the Internet is an acceptable medium of communication that law enforcement agencies use to solve crimes").

A county sheriff's exercise of discretion in this regard is not unlimited, however. Rather, R.C. 2950.081(B) imposes a specific restriction upon a county sheriff's authority to transmit sex offender registration information through the Internet:

Except when the act that is the basis of a child's classification as a juvenile sex offender registrant is a violation of, or an attempt to commit a violation of, [R.C. 2903.01, R.C. 2903.02, or R.C. 2905.01] that was committed with a purpose to gratify the sexual needs or desires of the child, a violation of [R.C. 2907.02], or an attempt to commit a violation of [R.C. 2907.02], *the sheriff shall not cause to be publicly disseminated by means of the internet any statements, information, photographs, or fingerprints that are provided by a juvenile sex offender registrant⁷ who registers, who provides*

⁷For purposes of R.C. Chapter 2950, a "[j]uvenile sex offender registrant" means the following:

[A] person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense, who is fourteen years of age or

notice of a change of residence address and registers the new residence address, or who provides verification of a current residence address pursuant to [R.C. Chapter 2950] and that are in the possession of a county sheriff. (Emphasis and footnote added.)

Accord rule 109:5-2-03(E); *see also* R.C. 2950.11(E). R.C. 2950.081(B) thus prohibits a county sheriff from using the Internet to publicly disseminate any sex offender registration information submitted to him by a juvenile sex offender registrant unless the basis of a child's classification as a juvenile sex offender registrant is a violation of, or an attempt to commit a violation of, R.C. 2903.01, R.C. 2903.02, or R.C. 2905.01 that was committed with a purpose to gratify the sexual needs or desires of the child, or a violation of, or an attempt to commit a violation of, R.C. 2907.02.

In addition, a county sheriff's exercise of discretion in regard to using an Internet Web site to disseminate sex offender registration information must be reasonable. *See* 2000 Op. Att'y Gen. No. 2000-046 at 2-280. *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty"). Thus, for example, a county sheriff must ensure that making these public records accessible to the public in this manner will not compromise the safety or integrity of any of the public records⁸ or unreasonably interfere with the discharge of his official duties. *See* 2000 Op. Att'y Gen. No. 2000-046 at 2-280; *see also State ex rel. The*

older at the time of committing the offense, and who a juvenile court judge, pursuant to an order issued under [R.C. 2152.82, R.C. 2152.83, R.C. 2152.84, or R.C. 2152.85], classifies a juvenile sex offender registrant and specifies has a duty to register under [R.C. 2950.04].

R.C. 2950.01(J); *see also* rule 109:5-2-01(I).

⁸A county sheriff must take reasonable precautions to ensure that any sex offender registration information he disseminates to the general public through an Internet Web site is accurate. *See generally* Jane A. Small, Note, *Who are the People in Your Neighborhood? Due Process, Public Protection, and Sex Offender Notification Laws*, 74 N.Y.U. L. Rev. 1451, 1465 (1999) ("[a] significant risk of notification is that of improper notification. Improper notification can take a number of forms: Lists of sex offenders can, through human error, contain persons never convicted of a sex crime; lists can contain persons convicted for conduct that has been decriminalized; and, finally, lists can contain persons who committed crimes so long ago that they can no longer be considered a threat" (footnote omitted)). Sex offender registration information that is hastily compiled and disseminated to the public through an Internet Web site could contain errors. *Id.* at 1466. Such errors could lead to adverse consequences for persons who are the subjects of such information or who are not sex offenders. *See id.*

A county sheriff also must take reasonable precautions to ensure that unauthorized persons are not able to alter sex offender registration information that is made available to the general public through an Internet Web site. Specifically, the sheriff must make certain that adequate security measures are in place to prevent persons from adding or removing names, addresses, or any other information that is made available through an Internet Web site. *See generally* Humma Rasul, *Review of Selected 1998 California Legislation: Crimes: Danger in Numbers: California Updates its Version of Megan's Law and Steps Further to Protect Our Children from Sex Offenders Living Together in Groups*, 30 McGeorge L. Rev. 528, 543-44 (1999) (stating that there are concerns that hackers may add or remove names from

Warren Newspapers, Inc. v. Hutson, 70 Ohio St. 3d 619, 623, 640 N.E.2d 174, 178 (1994); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 171 N.E.2d 508 (1960) (syllabus, paragraph one). If a county sheriff determines that such access will not compromise the safety or integrity of these public records or interfere with the discharge of his official duties, the sheriff may permit the general public access to these records through an Internet Web site. See 2000 Op. Att'y Gen. No. 2000-046 at 2-281.

Thus, in answer to your first question, except as provided in R.C. 149.43(A)(1) and R.C. 2950.081(B), sex offender registration information submitted to a county sheriff by a sex offender who is required to register with the sheriff under R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's Web site, provided such access to the public records does not endanger the safety and integrity of the records or interfere with the discharge of the sheriff's duties.⁹

an Internet registry of sex offenders or that sex offenders will remove their names from the registry).

⁹Whether making sex offender registration information available to the general public through an Internet Web site violates a person's various constitutional rights is a question that cannot be answered by means of an Attorney General opinion. See generally 2002 Op. Att'y Gen. No. 2002-006 at 2-32 n.10 ("the Office of the Attorney General has no authority to determine the constitutionality of a statute, either facially or as applied"). Instead, this determination must be made by the judiciary. 2001 Op. Att'y Gen. No. 2001-003 at 2-18; 1988 Op. Att'y Gen. No. 88-030 at 2-124 and 2-125.

No Ohio court, state or federal, has yet made a definitive ruling on this precise issue. But see generally *State v. Williams*, 88 Ohio St. 3d 513, 728 N.E.2d 342 (2000) (holding that R.C. Chapter 2950 is constitutional, and noting that the Internet is being used more frequently for the dissemination of sex offender data), *cert. denied*, 531 U.S. 902 (2000). Other state and federal courts have examined this issue, however. Some courts have determined that posting information about sex offenders on an Internet Web site does not violate the offenders' constitutional rights. *Femedeer v. Haun*, 227 F.3d 1244 (10th Cir. 2000); *Colorado v. Stead*, Ct. App. No. 00CA2212, 2002 Colo. App. LEXIS 1430 (Col. Ct. App. Aug. 15, 2002); *Gonzalez v. Florida*, 808 So.2d 1265 (Fla. Ct. App. 2002); *Kansas v. Stevens*, 26 Kan. App. 2d 606, 992 P.2d 1244 (Kan. Ct. App. 1999), *petition for review denied*, 268 Kan. 895 (2000); *Young v. Maryland*, 806 A.2d 233 (Md. Ct. App. 2002); see also Susan Oakes, Comment, *Megan's Law: Analysis on Whether it is Constitutional to Notify the Public of Sex Offenders Via the Internet*, 17 J. Marshall J. Computer & Info. L. 1133 (1999). Other courts have reached the opposite conclusion. *Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001), *cert. granted*, 534 U.S. 1126 (2002) (No. 01-729); *Doe v. Dept. of Public Safety ex rel. Lee*, 271 F.3d 38 (2d Cir. 2001), *cert. granted*, 122 S. Ct. 1959 (2002) (No. 01-1231); *A.A. v. New Jersey*, 176 F. Supp. 2d 274 (D. N.J. 2001); *Doe v. Pryor*, 61 F. Supp. 2d 1224 (M.D. Ala. 1999); *Commonwealth v. Breyer*, 55 Pa. D. & C.4th 36 (Pa. C.P. 2001); see also Andrea L. Fischer, Note, *Florida's Community Notification of Sex Offenders on the Internet: The Disregard of Constitutional Protections for Sex Offenders*, 45 Clev. St. L. Rev. 505, 508 (1997); Jane A. Small, Note, *Who are the People in Your Neighborhood? Due Process, Public Protection, and Sex Offender Notification Laws*, 74 N.Y.U. L. Rev. 1451 (1999).

In addition, sex offenders who are required to register with the sheriff of Cuyahoga County pursuant to R.C. 2950.04-.06 have filed with the United States District Court for the Northern District of Ohio a verified complaint for a temporary restraining order, preliminary and permanent injunctive relief, and declaratory judgment to prevent the sheriff from

Let us now consider your second question, which asks whether a county sheriff's placement of sex offender registration information on the Internet through the sheriff's Web site constitutes written notice for purposes of R.C. 2950.11(A). R.C. 2950.11(A) provides, in part:

If a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense or a person is adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile sex offender registrant or is an out-of-state juvenile sex offender registrant based on that adjudication, and if the offender or delinquent child is in any category specified in [R.C. 2950.11(F)(1)], the sheriff with whom the offender or delinquent child has most recently registered under [R.C. 2950.04 or R.C. 2950.05] and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under [R.C. 2950.04], within the period of time specified in [R.C. 2950.11(C)], shall provide a

placing on an Internet Web site sex offender registration information. *Doe v. McFaul*, Case No. 1:02CV784 (N.D. Ohio filed Apr. 25, 2002). Plaintiffs allege in their complaint that making sex offender registration information available to the general public through an Internet Web site violates the plaintiffs' rights as guaranteed by various provisions of the United States and Ohio Constitutions. *Id.* By agreement between the parties, the proceedings in this case have been stayed by the federal district court pending the United States Supreme Court's decision in *Godfrey v. Doe*, No. 01-729 (*cert. granted*, 534 U.S. 1126 (2002)) and *Dept. of Public Safety ex rel. Lee v. Doe*, No. 01-1231 (*cert. granted*, 122 S. Ct. 1959 (2002)). *Doe v. McFaul*, Case No. 1:02CV784 (N.D. Ohio June 4, 2002) (order granting stay).

The Supreme Court heard oral argument in *Godfrey v. Doe and Dept. of Public Safety ex rel. Lee v. Doe* on November 13, 2002. The issue presented to, and argued before, the Supreme Court in *Godfrey v. Doe* was whether Alaska's sex offender registration act, which requires convicted sex offenders to register with law enforcement authorities and authorizes public disclosure of information in the sex offender registry, either facially or as applied, violates the Ex Post Facto Clause of the United States Constitution, which prohibits new punishments for old crimes, *see* U.S. Const. art. I, § 10. *See* Petitioners' Brief, *Godfrey* (No. 01-729). The issue presented to, and argued before, the Supreme Court in *Dept. of Public Safety ex rel. Lee v. Doe* was whether Connecticut's sex offender registration law violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by failing to afford a person a hearing regarding his "current dangerousness" before disclosing his sex offender registration information to the general public. *See* Petitioners' Brief, *Dept. of Public Safety ex rel. Lee* (No. 01-1231). In each of these cases sex offender registration information was disseminated by governmental entities to the general public through an Internet Web site.

Neither of the cases before the Supreme Court directly concerns the constitutionality of any of the provisions of R.C. Chapter 2950, Ohio's sex offender registration law. However, the Supreme Court's decision could have a significant effect nationwide, including Ohio, on the issue whether governmental entities may make sex offender registration information available to the general public through Internet Web sites. In particular, it is possible that the Supreme Court's decision will provide guidance to the United States District Court for the Northern District of Ohio when it considers the constitutionality of those provisions of Ohio's sex offender registration law that are at issue in *Doe v. McFaul*.

written notice containing the information set forth in [R.C. 2950.11(B)]¹⁰ to all of the following persons:

(1) All occupants of residences within one thousand feet of the offender's or delinquent child's place of residence that are located within the county served by the sheriff and all additional neighbors of the offender or delinquent child who are within any category that the attorney general by rule adopted under [R.C. 2950.13] requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3)(a) The superintendent of each board of education of a school district that has schools within the specified geographical notification area and that is located within the county served by the sheriff;

(b) The principal of the school within the specified geographical notification area and within the county served by the sheriff that the delinquent child attends;

(c) If the delinquent child attends a school outside of the specified geographical notification area or outside of the school district where the delinquent child resides, the superintendent of the board of education of a school district that governs the school that the delinquent child attends and the principal of the school that the delinquent child attends.

(4)(a) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within

¹⁰R.C. 2950.11(B) provides as follows:

The notice required under [R.C. 2950.11(A)] shall include all of the following information regarding the subject offender or delinquent child:

(1) The offender's or delinquent child's name;

(2) The address or addresses at which the offender or delinquent child resides;

(3) The sexually oriented offense of which the offender was convicted, to which the offender pleaded guilty, or for which the child was adjudicated a delinquent child;

(4) A statement that the offender or delinquent child has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender or delinquent child no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender or delinquent child is a habitual sex offender and that, as of the date of the notice, the determination has not been removed pursuant to [R.C. 2152.84 or R.C. 2152.85].

2 Ohio Admin. Code 109:5-2-03 also provides that the written notice provided by a county sheriff under R.C. 2950.11(A) may contain any other identifying information.

the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in [R.C. 2950.11(A)(3)];

(b) Regardless of the location of the school, the appointing or hiring officer of a chartered nonpublic school that the delinquent child attends.

(5) The director, head teacher, elementary principal, or site administrator of each preschool program governed by [R.C. Chapter 3301] that is located within the specified geographical notification area and within the county served by the sheriff;

(6) The administrator of each child day-care center or type A family day-care home that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified type B family day-care home that is located within the specified geographical notification area and within the county served by the sheriff....

(7) The president or other chief administrative officer of each institution of higher education, as defined in [R.C. 2907.03], that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department established under [R.C. 3345.04 or R.C. 1713.50], if any, that serves that institution;

(8) The sheriff of each county that includes any portion of the specified geographical notification area;

(9) If the offender or delinquent child resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender or delinquent child resides or, if the offender or delinquent child resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender or delinquent child resides. (Emphasis and footnote added.)

Accordingly, when a sex offender described in R.C. 2950.11(A) registers with a county sheriff pursuant to R.C. Chapter 2950, the sheriff who registers the offender is required by R.C. 2950.11(A) to provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A)(1)-(9). *Accord* rule 109:5-2-03.

The primary purpose of the community notification provisions of R.C. 2950.11 is "to protect the safety and general welfare of the people of this state." R.C. 2950.02(B); *accord State v. Cook*, 83 Ohio St. 3d 404, 413, 700 N.E.2d 570, 578-79 (1998), *cert. denied*, 525 U.S. 1182 (1999). In order to accomplish this objective, the General Assembly requires the county sheriff to provide the persons listed in R.C. 2950.11(A) with adequate written notice of the presence of sex offenders in their community, *See generally* R.C. 2950.02(A)(1) ("[i]f the public is provided adequate notice and information about sexual predators, habitual sex offenders, and certain other offenders and delinquent children who commit sexually oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the sexual predator's, habitual sex offender's, or other offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention"). Pursuant to R.C. 2950.13(A)(3), the Attorney General has

adopted a rule that governs the manner in which the written notice required by R.C. 2950.11(A) is to be transmitted to the persons listed in R.C. 2950.11(A)(1)-(9). Under rule 109:5-2-03, except as provided in rule 109:5-2-03(A)(3), the written notice required by R.C. 2950.11(A) "may be transmitted by mail, fax, *electronically* or in person." (Emphasis added.)

It reasonably follows that in order for the written notice required by R.C. 2950.11(A) to be adequate the persons listed in R.C. 2950.11(A) must receive the notice. Accordingly, a county sheriff must transmit this written notice in a manner that is reasonably calculated to ensure receipt by the persons listed in R.C. 2950.11(A).

While the Internet is, *inter alia*, an electronic medium of communication, it is our opinion that the placement of sex offender registration information on the Internet through a county sheriff's Web site, standing alone, is not a method of communication that is reasonably calculated to ensure the receipt of this information by the persons listed in R.C. 2950.11(A). First, not every person has Web browser software or Internet access. If a person listed in R.C. 2950.11(A) does not have either of these, the person will not receive the sheriff's written notice of the presence of sex offenders in the community. *See generally* Thomas J. Schramkowski, Note, *A Mandate Without a Duty: The Apparent Scope of Georgia's Megan's Law*, 15 Ga. St. U. L. Rev. 1131, 1160 (1999) (community notification of sexual offenders should not be limited to those persons with Internet access).

Second, even if a person who is required to receive written notice under R.C. 2950.11(A) has Web browser software and Internet access, the person will not receive the notice unless he takes affirmative action to gain access to the information on the sheriff's Web site. As explained in Susan Oakes, Comment, *Megan's Law: Analysis on Whether it is Constitutional to Notify the Public of Sex Offenders Via the Internet*, 17 J. Marshall J. Computer & Info. L. 1133, 1161 (1999):

Community notification methods take all forms. First, mailing post cards, distributing fliers, and publishing registry information in newspapers are more invasive than the Internet. These methods merely require the ability to read. In essence, registry information is placed in the mailbox, personally handed to, or printed in a section of the newspaper. The only way registry information is not conveyed is if the person discards the material without reading it. *The Internet requires more than just the ability to read. Initially, a person must have a computer with Internet access. Then, the website's address must be known and entered, and perhaps additional information, like a zip code, county, city, or name may be required before access is given.* Second, knocking on doors is the most invasive method of notifying the public of sex offenders because direct communication is used. Unless a person is hearing impaired, registry information is verbally conveyed to the occupant of the residence. *It is clear that the Internet is not as invasive as knocking on doors because direct communication is not initiated and affirmative steps must be made by Internet users to gain access to registry information. Thus, in comparing the Internet with other methods of community notification, using the Internet to access registry information is not as direct or easily obtained as using other methods.* (Emphasis added and footnote omitted.)

Consequently, the placement of sex offender registration information on an Internet Web site is not an electronic method of communication that is reasonably calculated to ensure the receipt of this information by the persons listed in R.C. 2950.11(A). Accordingly, a county sheriff that provides sex offender registration information to the general public on

the Internet through a Web site is still required to provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A).

On the other hand, we believe that, except as provided in rule 109:5-2-03(A)(3), the use of Internet e-mail to transmit the written notice required by R.C. 2950.11(A) is an electronic method of communication that is reasonably calculated to ensure receipt by the persons listed in R.C. 2950.11(A), and thus constitutes sufficient written notice for purposes of R.C. 2950.11(A). As in the case of regular mail and personal delivery, the county sheriff may direct the written notice to specific persons once he has their e-mail addresses. This increases the likelihood that the persons entitled to the notice will receive the notice, and thus develop constructive plans to prepare themselves and others for the re-entry of a sex offender into the community. See R.C. 2950.02(A)(1). The sheriff also may verify that a person entitled to the written notice has received the notice. Finally, rule 109:5-2-03 only permits a county sheriff to electronically transmit the required written notice to governmental and private entities that are highly likely to have e-mail addresses.¹¹ Compare rule 109:5-2-03(A)(3) (the occupants of residences adjacent to a sex offender's place of residence must receive written notice by regular mail or by personal delivery to their residences) with rule 109:5-2-03(A)(2) and rule 109:5-2-03(B)(2) (a county sheriff may electronically transmit the written notice required by R.C. 2950.11(A) to other sheriffs, law enforcement agencies, executive directors of public children services agencies, and officers and employees of public schools, chartered nonpublic schools, preschools, child day-care centers, and institutions of higher education). Therefore, except as provided in rule 109:5-2-03(A)(3), a county sheriff may use e-mail to electronically transmit the written notice required by R.C. 2950.11(A). Rule 109:5-2-03. See generally *State ex rel. Cuyahoga County Hosp. v. Bur. of Workers' Comp.*, 27 Ohio St. 3d 25, 28, 500 N.E.2d 1370, 1372 (1986) (“[a]dministrative regulations issued pursuant to statutory authority have the force and effect of law”).

The exception provided in rule 109:5-2-03(A)(3) states that the written notice required by R.C. 2950.11(A) to be transmitted to the persons listed in rule 109:5-2-03(A)(1)(c) must “be transmitted by regular mail or by personal delivery to the residences.”¹² Rule 109:5-2-03(A)(1)(c), in turn, requires a county sheriff to provide written notice to the following persons:

All occupants of residences adjacent to the registrant's place of residence, all occupants of residences which would be adjacent to the registrant's place of residence except for the existence of a road or street or a railroad track, all occupants or residences in the same multi-resident building which share a common hall way with the registrant's place of residence and either the manager of the multi-resident building in which the registrant resides or any party authorized by the owner to exercise management, custody and control of said multi-resident building.

A county sheriff thus may not use e-mail to electronically transmit the written notice required by R.C. 2950.11(A) to the persons listed in rule 109:5-2-03(A)(1)(c). Rule 109:5-2-03(A)(3). Instead, these persons must receive written notice by regular mail or by personal delivery to their residences. *Id.*

¹¹If a person who is entitled to a written notice under R.C. 2950.11(A) does not have an e-mail address, a county sheriff must transmit the person's written notice by mail, facsimile transmission, or in person. See rule 109:5-2-03(A)(2), (B)(2).

¹²Personal delivery to a residence may be made by placing the notice under the door of the residence. Rule 109:5-2-03(A)(3).

As a final matter, it should be noted that rule 109:5-2-03 was adopted and promulgated by the Attorney General to implement and administer the community notification provisions of R.C. 2950.11. *See* R.C. 2950.13(A)(3); *see also* R.C. 2950.11(A)(1). Originally, the list of persons set forth in rule 109:5-2-03(A)(1)(c) was substantially similar to the list of persons set forth in R.C. 2950.11(A)(1) prior to the enactment of Am. Sub. S.B. 175, 124th Gen. A. (2002) (eff. May 7, 2002).¹³ Under rule 109:5-2-03(A)(1)(c) and the former version of R.C. 2950.11(A)(1), the county sheriff was required to provide written notice to occupants of residences *adjacent*¹⁴ to the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11.

Am. Sub. S.B. 175 has amended R.C. 2950.11(A)(1) to require a county sheriff to provide written notice to “[a]ll occupants of residences *within one thousand feet* of the offender’s or delinquent child’s place of residence that are located within the county served by the sheriff.” (Emphasis added.) Rule 109:5-2-03(A) has not been similarly amended. Rule 109:5-2-03(A) thus does not set forth provisions to govern the manner in which the written notice required by R.C. 2950.11(A) is to be transmitted to occupants of residences within one thousand feet of, but not adjacent to, the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11. *See generally* *Harding v. Conrad*, 121 Ohio App. 3d 598, 601, 700 N.E.2d 639, 640 (Franklin County 1997) (“[c]ourts must give effect to the words explicitly used in a statute or rule rather than deleting words used, or inserting words not used, in order to interpret an unambiguous statute or rule”), *appeal denied*, 80 Ohio St. 3d 1424, 685 N.E.2d 237 (1997); *Clark v. State Bd. of Registration for Professional Engineers & Surveyors*, 121 Ohio App. 3d 278, 284, 699 N.E.2d 968, 972 (Summit County 1997) (absent ambiguity, the language of administrative regulations is not to be enlarged or construed in any way other than that which its words demand), *appeal denied*, 80 Ohio St. 3d 1432, 685 N.E.2d 543 (1997).

Nevertheless, by again reading the provisions of R.C. 2950.11 and rule 109:5-2-03 together, it is our belief that the intentions of the General Assembly are not carried out unless a county sheriff transmits by regular mail or by personal delivery the written notice required by R.C. 2950.11(A) to occupants of residences within one thousand feet of, but not adjacent to, the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11.

As stated above, the General Assembly has determined that all occupants of residences within one thousand feet of the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11 must receive adequate written notice of the presence of such sex offenders in their community. *See* R.C. 2950.02; Am. Sub. S.B.

¹³Prior to Am. Sub. S.B. 175, 124th Gen. A. (2002) (eff. May 7, 2002), R.C. 2950.11(A)(1) required written notice to be provided to the following persons:

All occupants of residences *adjacent* to the offender’s or delinquent child’s place of residence that are located within the county served by the sheriff and all additional neighbors of the offender or delinquent child who are within any category that the attorney general by rule adopted under [R.C. 2950.13] requires to be provided the notice and who reside within the county served by the sheriff[.] (Emphasis added.)

Am. Sub. S.B. 3, 124th Gen. A. (2001) (eff. Jan. 1, 2002).

¹⁴As used in Ohio Admin. Code Chapter 109:5-2, “adjacent” means “next to, abutting, or bordering on.” Rule 109:5-2-01(B).

175 (amending R.C. 2950.11(A)(1)). Moreover, by the adoption and promulgation of rule 109:5-2-03, the Attorney General has determined that in order to implement the General Assembly's policy and ensure adequate written notice, the occupants of residences adjacent to the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11 must be provided the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery. This increases the likelihood that these occupants will receive the written notice and develop constructive plans to prepare themselves and their children for the re-entry of a sex offender into the community. *See* R.C. 2950.02.

Because occupants of residences within one thousand feet of, but not adjacent to, the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11 are exposed to the same dangers from these sex offenders as the occupants of residences adjacent to the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11, the occupants of the former group should receive their written notice in the same manner as the occupants of the latter group. We can conceive of no significant reason why the occupants of these two categories of residences should be treated differently. Rather, in light of the determinations, findings, and declarations set forth by the General Assembly in R.C. 2950.02, it is our belief that sound public policy demands that we treat these two groups equally. Consequently, all occupants of residences within one thousand feet of the place of residence of a sex offender who is subject to the community notification provisions of R.C. 2950.11 must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences. *See generally* *Benefits Comm. of Saint-Gobain Corp. v. Key Trust Co. of Ohio*, 160 F. Supp. 2d 816, 827 (N.D. Ohio 2001) (although opinion letters issued by an administrative agency need not be given deference by a court, they may have persuasive value if thoroughly considered and well reasoned), *rev'd on other grounds*, 2002 U.S. App. LEXIS 25734 (6th Cir. Dec. 16, 2002); *Taylor v. Nat'l Group of Co.*, 790 F. Supp. 142, 145 (N.D. Ohio 1992) ("[i]n general, policy guidelines issued by an agency responsible for enforcing a statute are entitled to deference").

In summary, a county sheriff that provides sex offender registration information to the general public on the Internet through a Web site must provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A). Additionally, except for the persons listed in R.C. 2950.11(A)(1) and rule 109:5-2-03(A)(1)(c), a county sheriff may use e-mail to electronically transmit the written notice required by R.C. 2950.11(A). The persons listed in R.C. 2950.11(A)(1) and rule 109:5-2-03(A)(1)(c) must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences.

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Except as provided in R.C. 149:43(A)(1) and R.C. 2950.081(B), sex offender registration information submitted to a county sheriff by a sex offender who is required to register with the sheriff under R.C. Chapter 2950 may be made available to the general public on the Internet through the sheriff's Web site, provided such access to the public records does not endanger the safety and integrity of the records or interfere with the discharge of the sheriff's duties.
2. A county sheriff that provides sex offender registration information to the general public on the Internet through a Web site must provide a written notice containing the information set forth in R.C. 2950.11(B) to all the persons listed in R.C. 2950.11(A).

3. Except for the persons listed in R.C. 2950.11(A)(1) and 2 Ohio Admin. Code 109:5-2-03(A)(1)(c), a county sheriff may use e-mail to electronically transmit the written notice required by R.C. 2950.11(A). The persons listed in R.C. 2950.11(A)(1) and rule 109:5-2-03(A)(1)(c) must receive the written notice required by R.C. 2950.11(A) by regular mail or by personal delivery to their residences.