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S. B. No. 357

Senator Gavarone

Cosponsors: Senators Cirino, Craig, DeMora, Hicks-Hudson, Ingram, Johnson, Lang, Liston, O'Brien, Patton, Reineke, Romanchuk, Schaffer, Smith, Timken, Weinstein, Wilkin

To amend sections 2903.41, 2903.42, and 2903.43 and to enact section 5503.102 of the Revised Code to expand the violent offender database, to make public records in that database available on the internet, and to make the database information available through LEADS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2903.41, 2903.42, and 2903.43 be amended and section 5503.102 of the Revised Code be enacted to read as follows:

Sec. 2903.41. 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~~ March 20, 2019, is convicted of or pleads guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, or 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~~ March 20, 2019, 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;

(3) A person who on or after the effective date of this amendment is convicted of or pleads guilty to a violation of section 2903.18 of the Revised Code that is a felony of the second degree.

(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) or (3) 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.

Sec. 2903.42. (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) or (3) 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) or (3) 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) or (3) 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.

Sec. 2903.43. (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) or (3) 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) or (3) 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 violent 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 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 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 and shall enter the information into the law enforcement automated data system created by section 5503.10 of the Revised Code. 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 and shall be included in a publicly available online portal to be established by the bureau of criminal identification and investigation pursuant to division (J) of this section.

(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.

(J) The bureau of criminal identification and investigation shall establish and maintain a publicly available online database, similar to the database created under section 2950.13 of the Revised Code, that includes the information subject to public disclosure under division (F)(3) of this section.

Sec. 5503.102. The superintendent of the state highway patrol shall ensure that the law enforcement automated data system created in section 5503.10 of the Revised Code, and known as LEADS, contains all of the information provided for entry into LEADS by a sheriff under section 2903.43 of the Revised Code and shall ensure that a flag will prominently display when a law enforcement officer is directed to the main information page of a violent offender who is registered under that section.

Section 2. That existing sections 2903.41, 2903.42, and 2903.43 of the Revised Code are hereby repealed.