

REVISED CODE 2950.99 VIOLATES EQUAL PROTECTION OF THE LAW

ARGUMENT

REVISED CODE 2950.99 VIOLATES EQUAL PROTECTION OF THE LAW BY PROHIBITING IDENTICAL ACTIVITIES OR CONDUCT, FAILURE TO REGISTER OR NOTIFY, AND IMPOSING DIFFERENT PENALTIES THAT DIFFERENTIATE ONLY BECAUSE OF THE SERIOUSNESS OF A REGISTRANT'S PRIOR OFFENSE OR CONDUCT AND NOT BECAUSE OF THE SERIOUSNESS OF THE REGISTRANT'S CURRENT CONDUCT OR OFFENSE.

The variable sentencing scheme for, failure to register, is not based on the seriousness of a registrant's current offender conduct. It is based solely on prior conduct, (as sentencing enhancement factors are) or "the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration requirement." Failure to comply with the obligations, registering and notifying change in registered info, is identical conduct for all registrants who fail to for fill these obligations. This violation of equal protection also convert the registration from regulatory to punishment due to their enhancement of the penalty base on the "oriented offense that was the basis of the registration requirement".

"Therefore, if the statues prohibit identical activity, require identical proof, and yet impose different penalties, then sentencing a person under the statute with the higher penalty violates the Equal Protection Clause." State v Wilson (1979), 58 Ohio St.2d 52, 388 N.E.2d 745,748; also see State v Huff (1984), 14 Ohio App.3d 207, 470 N.E.2d 934, 937-938.

In Wilson and Huff there were two statues that were in conflict in regards to the penalties they imposed. In the situation 2950.99 creates, there is only one statute with conflicting penalties for identical conduct. There is not lawful basis foe this sentencing scheme and its imposition on a registrants is clearly an instrument of oppression and nothing more than a sentence enhancement.

Sec 2950.99 [FROM SB97] Penalties

(A)(1)(a) Except as otherwise provided in 2950.99(A)(1)(b), anyone who fails to register shall be punished as follows:

(i) If the *most serious sexually oriented offense* ¹ *that was the basis of the registration requirement* that was **aggravated murder or murder** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the first degree**.

(ii) If the *most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration* is a **felony of the first, second, or third, or fourth degree** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the same degree** as the most serious offense that was the basis of the registration requirement that was violated, or, if the most serious offense that was the basis of the registration requirement is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in Ohio.

(iii) If the *most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration* requirement is a **felony of the fifth degree or a misdemeanor** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the fourth degree**.

(b) If the offender previously has been convicted of, a violation of failure to register, they shall be punished as follows:

(i) If the *most serious sexually oriented offense* ¹ *that was the basis of the registration requirement* is **aggravated murder or murder** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the first degree**.

(ii) If the *most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration* requirement is a **felony of the first, second, or third, degree** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the same degree** as the most serious offense that was the basis of the registration requirement, or, if the most serious offense that was the basis of the registration requirement is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in Ohio.

(iii) If the *most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration* requirement is a felony of the **fourth or fifth degree** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a **felony of the third degree**.

(iv) If the *most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration* requirement is a **misdemeanor** or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the **fourth degree**.

(2)(a) In addition to any penalty or sanction imposed under 2950.99(A)(1) or any other provision of law for a failure to register, if the offender is subject to a community control sanction, is on parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation **shall**

¹ This division does not include child-victim offenses.

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constitute a violation of the terms and conditions of the community control sanction, parole, post-release control sanction, or other type of supervised release.

(b) In addition to any penalty or sanction imposed under 2950.99(A)(1)(b)(i), (ii), or (iii) of this section or any other provision for a failure to register, if the offender previously has been convicted of failing to register when the most serious offense that was the basis of the requirement is a felony or a comparable category of offense committed in another jurisdiction, the court imposing a sentence upon the offender shall impose a definite prison term of **no less than three years**. The definite prison term imposed under this section is not restricted by 2929.14(B) and shall not be reduced to less than three years pursuant to Chapter 2967 or any other provision.²

(3) As used in 2950.99(A)(1), "comparable category of offense committed in another jurisdiction" means a offense that was the basis of the registration requirement that is a violation of an existing or former law or anywhere else in the world, and that, if it had been committed in Ohio, would constitute or would have constituted aggravated murder, or murder for purposes of 2950.99(A)(1)(a)(i), a felony of the first, second, third, or fourth degree for purposes of 2950.99(A)(1)(a)(ii), a felony of the fifth degree or a misdemeanor for purposes of 2950.99(A)(1)(a)(iii), aggravated murder or murder for purposes of 2950.99(A)(1)(b)(i), a felony of the first, second, or third degree for purposes of 2950.99(A)(1)(b)(ii), a felony of the fourth or fifth degree for purposes of 2950.99(A)(1)(b)(iii), or a misdemeanor for purposes of 2950.99(A)(1)(b)(iv).

(B) *Delinquent child division*.

(C) Whoever violates 2950.13(C) is guilty of a misdemeanor of the first degree.

FIRST FAILURE TO REGISTER ³	
Original offense or felony level	Felony level for failing to register
Aggravated murder or murder	F1 (3 – 10 years)
F1	F1 (3 – 10 years)
F2	F2 (2 – 8 years)
F3	F3 (1 – 5 years)
F4	F4 (6 – 18 months)
F5	F4 (6 – 18 months)
Misdemeanor	F4 (6 – 18 months)

SECOND or SUBSEQUENT FAILURE TO REGISTER ³	
Original offense or felony level	Felony level for failing to register
Aggravated murder or murder	F1 (3 years + 3 – 10 years)
F1	F1 (3 years + 3 – 10 years)
F2	F2 (3 years + 2 – 8 years)
F3	F3 (3 years + 1 – 5 years)
F4	F3 (3 years + 1 – 5 years)
F5	F3 (3 years + 1 – 5 years)
Misdemeanor	F4 (6 – 18 months)

² Second or subsequent failure to register only if the offense that was the basis for registration was a felony. Here we have a gun spec sort of penalty. Anyone who fails to register more than one time will have a mandatory three years added to their sentence. Someone who originally committed a felony five offense and served up to "one year" for that offense will now serve "four to eight years," WOW. In addition, the felony four and five offenders are the only offenders who get a felony level enhancement from this sentencing scheme. Additionally if an offender is under post-release control, they could receive an additional 12 months to the remainder of their time under post-release control. See charts and footnote³.

³ **Different penalties for identical conduct** – This is the same situation we have with 2950.99, yet with only one statute. "Cleveland Codified Ordinance 619.09, soliciting, and Cleveland Codified Ordinance 619.11, prostitution, *prohibit identical activity and require identical proof, while imposing different penalties*. Consequently, the sentencing provision of Ordinance 619.09, which imposes the higher penalty, is unconstitutional as being in violation of the equal protection clauses of USConst amend XIV and OConst art I, § 16: *Cleveland v. Huff* (1984), 14 Ohio App. 3d 207, 470 N.E.2d 934."