



# Office of the Ohio Public Defender

---

*Timothy Young, State Public Defender*

## **Testimony in Opposition of HB92 Public Indecency Classification Sponsor Representative Schaffer**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to provide written testimony in opposition of HB92.

As this committee knows, current law prohibits an individual from in engaging in masturbation, sexual conduct, or "conduct that to an ordinary observer would appear to be sexual conduct or masturbation" when the individual's behavior is "likely to be viewed by and affront" a minor who resides in the person's household. Amended HB92 removes the requirement that the minor be in the person's household. Instead, the bill requires that the minor be in physical proximity of the behavior. The amended bill also requires that the individual register as a Tier 1 sex offender if the individual is ten or more years older than the minor and has a prior conviction. Registration is at the discretion of the court when the individual is less ten years older than the minor or when the individual is ten years older or more and does not have a prior conviction.

By removing the language that requires that this behavior occur in front of a minor in the home, the bill moves this consideration into the public sphere. This becomes problematic when you consider that some of the prohibited behavior includes "conduct that to an ordinary observer appears to be sexual conduct..." We live in a society where simulated sex acts, or conduct that appears to be sexual conduct, are everywhere. They are in advertisements, television shows, theatre performances, and are major parts of some dance culture. In each case, this behavior could appear to be sexual conduct to an ordinary observer. It is not hard to think of recent incidents when an individual's performance at a televised music event caused public outrage because of the sexual content of the performance. Those

types of reactions also happen on the local level. Ohioans acting or dancing, if in the physical proximity of a minor, could be prosecuted under HB92, and possibly made to register as sex offender, simply because a patron of the performance with a minor feels offended. Obviously, this could result in a swarm of First Amendment litigation.

Under the relevant section of the revised code, public indecency is a misdemeanor of the first degree, punishable by a maximum of 6 months in jail. If an individual has two or more prior convictions, the offense is a felony of the fifth degree, punishable by a maximum of one year in prison. These penalties make sense given the offense. While it may be disgusting and incredibly inappropriate for a child to witness a person engaged in sexual conduct or masturbation, the child is not ultimately injured or violated by the act. Under HB92, in addition to any incarceration, the individual may also have to register as a sex offender. In Ohio, a Tier I sex offender classification requires registration for 15 years. For 15 years, the individual will have to (1) register in the county of the of individual's residence and in any county where the individual attends a school or is employed, (2) provide notice of a change of address, (3) provide their vehicle registration information, email addresses, internet identifiers, or telephone numbers to the sheriff, (4) undergo a periodic verification of each previously registered address, (5) live not closer than 1000 feet of school or child day-care center, and (6) be included on internet Sex Offender and Child-Victim Offender Database maintained by the Attorney General, which is a public record. A study of individuals on the Wisconsin sex offender registry found that 83% reported that they had been excluded from a residence, and 57% reported they had a loss of employment as a result of being on the registry. Additionally, 77% reported threats and harassment, and 67% reported emotional harm to their family. Frequently, individuals on the Ohio sex offender registry suffer the same fate as those in the Wisconsin study. They are feared or harassed, and their families often suffer these consequences along with the registrant. In this case, the severity of this 15-year requirement is disproportionate to the offense itself.<sup>1</sup>

---

<sup>1</sup> See Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, National Institute of Justice (2000) <https://www.ncjrs.gov/pdffiles1/nij/179992.pdf>



Thank you for the opportunity to provide written testimony to your committee.

