

Ohio Rational Sexual Offense Laws

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Opponent Testimony Senate Bill 231

Chairman Manning, Ranking Member Celebrezze, and Members of the House Criminal Justice Committee: this testimony is respectfully submitted by Ohio Rational Sexual Offense Laws (Ohio RSOL), the Ohio associate of National Association for Rational Sexual Offense Laws (NARSOL). Ohio RSOL is an organization of over 17,000 persons required to register for conviction of a sexual offense, their friends and families. Ohio RSOL also associates with professionals in reentry, mental health, sentencing reform, and the criminal defense bar.

Ohio RSOL analyzes laws and policies that affect the population it supports. Occasionally, we have an opportunity to analyze the legal, social, and fiscal implications of proposed legislation and advocate for evidence-based practices in other areas. Senate Bill 231 presents such an opportunity, to educate lawmakers on the cost, ineffectiveness and devastating consequences of sex offender registration, lest history repeat itself. The register of sex offenders demonstrates how easy it is to ostracize a group of people due to past conduct, with no little or no evidence of future risk.

The history of sex offender registration in Ohio validates concerns expressed by members of the House Criminal Justice Committee:

1. The Bill would result in joblessness, homelessness, and harassment, for the following reasonsⁱ:
 - Megan's law began as a private database only, but was soon expanded to encompass more acts and eventually became a public database.ⁱⁱ *The same could easily happen with the VOD.*
 - The Internet has created an environment where nothing is private; ordinary citizens can Google friends and neighbors to obtain information that was once only part of a private database. *Information on the Internet is rarely updated, frequently incomplete or just plain inaccurate.*
 - The availability of violent offender information from the county sheriff almost certainly ensures that employers, landlords, neighbors and friends will use the information to discriminate against registered persons.
2. Costs of implementation of the Bill could well exceed the estimates cited by LSC and the Attorney General:
 - The costs of SORN have skyrocketed to well over \$6 million annuallyⁱⁱⁱ, with no demonstrated return on that investment. *Local ordinances imposing additional restrictions, such as residency restrictions which exceed state law, increase that cost.*
 - Despite assurances from Sheriff Wasylyshyn, members of the SOR population report that smaller counties are already stretched to the limits; many smaller counties require appointments to register, and take as long as three weeks to schedule those appointments. *Does that result in a failure to register violation on the part of the registered person?*

3. Registration violations will result in increased prison populations:
 - Over 500 individuals required to register for sexual offenses are currently incarcerated for registration violations. This population represents the fourth largest population of inmates with a conviction for a sexual offense (over 6% of incarcerated sexual offenders)^{iv}.
4. Information is, or could be, available through other databases which avoid the societal costs of registration.
 - The Northwest Ohio Regional Information Systems (NORIS) reports that driver's license images and criminal histories can viewed through Law Enforcement Agencies Data Systems (LEADS).^v
 - The Ohio Office of Criminal Justice Services has been studying and implementing better tracking of criminal justice data, including development of the Ohio Incident-Based Reporting System (OIBRS).^{vi}

Ohio RSOL opposes the passage of SB 231 for many of the same reasons stated in the New York Bar Association Report on Legislation challenging a similar law in New York. Brittany's law has failed in the New York House for seven consecutive years. NYBA reports:

1. "There is no empirical data showing that the Bill will be effective in deterring violent crime... We are unaware of studies in which the effectiveness of violent felony offender registries has been examined. However, studies of sex offender registries conclude that the registries are ineffective, and possibly counterproductive... (B) because they ostracize offenders from communities, these registries may increase the rate of re-offense. In addition, there is little evidence that these registries deter crime. Finally, law enforcement officials (and victim's advocates) recognize that monitoring thousands of people on registries prevents law enforcement from focusing their attention on individuals who pose the highest risk to public safety... Although we recognize that sex offender registries provide an imperfect analogy to a registry for violent felony offenders, we believe that the overwhelming evidence that sex offender registries are futile or, even worse, detrimental, provides strong reason to believe a violent felony offender registry would be the same."^{vii}

"A 2011 study published by the University of Chicago's Journal of Law and Economics examined data from 1998 to 2003 from all 50 states, and concluded that the passage of sex offender registries did not result in a decrease in the rates of sex offenses.^{viii} There has also been documentation of the stigmatization of registered sex offenders, which can lead to protests, threats and even vigilante attacks.^{ix} Research further indicates that sex offender registries are ineffective as a law enforcement tool. Speaking anonymously, law enforcement officials told Human Rights Watch that the increased resources committed to monitoring people on registries detract from the police's ability to focus on high-risk offenders.^x A child safety advocate also complained that an "excessively long list" of registered offenders "does not generate enough accurate information to make registration useful to anyone."^{xi}

2. "The Bill could reduce the number of criminal defendants who plead guilty to violent felony offenses, given that a plea would result in mandatory registration. It is already more difficult to secure these pleas since violent felonies carry longer periods of post-release supervision.

Therefore, by adding another consequence to a conviction for a violent felony, the Bill would increase the number of these cases going to trial and add even more stress to a court system that depends on guilty pleas to function.”^{xii}

3. “It is difficult to foresee all of the hidden costs - financial and otherwise - of implementation of the Bill. However, we are certain that they will be myriad. For instance, the stigmatization of offenders would make it harder for them to find employment and housing and to pursue education. And offenders’ inability to reintegrate into society could lead to a dependence on government assistance as well as a need to live in shelters. Additionally, the property values of homes located near the residence of an offender may decrease. Indeed, homes close to a registered sex offender sell for approximately \$5,500 less than comparable homes.”^{xiii}

In addition to these arguments, Ohio RSOL adds the following:

4. The registry will require the inclusion of individuals already required to register on the SOR for aggravated murder, murder, kidnapping or abduction. The Bill does not indicate whether these individuals will carry dual registration requirements, or whether one law will take precedence over the other. The conflicts between the two laws are numerous:
 - SOR is for life, with no opportunity for early release or removal; VOD registration is for ten years, with numerous opportunities to petition for removal or exemption from registration under certain circumstances;
 - SOR is quarterly, VOD registration is annual;
 - the time during which a person registers under SOR varies from the time during which a person registers under VOD;
 - SOR is public; VOD is private;
 - SOR requires registered persons to supply information on 17 different identifying characteristics, VOD requires 8;
 - SOR requires registration in the county in which the registrant resides, attends school, or is employed; VOD only requires the county of residence;
 - SOR includes residency restrictions and community notification.^{xiv}
5. Registration is required under the Bill without judicial discretion or risk assessment providing a determination of current or future risk to re-offend. Research demonstrates that violent offenders have the lowest rates of recidivism of any other offenses.^{xv} Courts and lawmakers throughout the country have determined that registration is the most effective if it monitors only the worst offenders, and that risk assessment is an integral part of that determination.^{xvi}
6. While information about all violent felony offenders will only be available from the county sheriff, evidence demonstrates that third parties who obtain such information will make that information available through the Internet. The availability of this information has led to a proliferation of laws and restrictions designed to protect society, but which only serve to ostracize registrants and result in job loss, homelessness, harassment and vigilantism.^{xvii}

7. The Bill presents the opportunity for civil rights abuses and violations of the constitutional rights of persons whose names are included on the violent offender registry. It is unclear whether registration alone constitutes probable cause for a search of the home of a person on the violent offender database. Further, use of the database in the manner anticipated by the family of Sierah Joughin presents the potential for discrimination against minorities living in the area of any violent offense.
8. In August, 2017, the Ohio Criminal Justice Recodification Committee recommended numerous changes to criminal laws, sentencing, and sex offender registration. The Attorney General and Governor-Elect has made criminal justice reform a priority in the next legislative session. Adoption of SB 231 before the legislature has fully explored these recommendations would be premature.

The sad reality is that a violent offender database may not have saved Sierah Joughin's life, just as sex offender registration has not been proven to protect society. **For these reasons, Ohio RSOL opposes SB 231.**

Instead, Ohio RSOL urges lawmakers to make monitoring of violent crime a part of a meaningful reform package that uses risk assessment and judicial discretion to identify high risk individuals, both violent offenders and sex offenders alike; that makes use of existing information on LEADS and/ or OIBRS instead of creating a separate database which is costly and ineffective; that limits collateral consequences by prohibiting third party dissemination of information; and that provides rehabilitation and an opportunity for redemption, to allow these citizens to re-integrate into society and become contributing members of society.

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Ohio Rational Sexual Offense Laws

ⁱ Lobanov-Rostovsky, *Adult Sex Offender Management: Sex Offender Management and Planning Initiative (SOMAPI) Research Brief* (U.S. Department of Justice Office of Justice Programs, July 2015) at p. 3.

ⁱⁱ Ohio Department of Rehabilitation and Corrections *Sex Offender Registration and Notification* (October 2007) at pp.1-2.

ⁱⁱⁱ Ohio Criminal Sentencing Commission *Sex Offender Registration Ad Hoc Committee Report and Recommendations* (April 2016) at p.10 calculates costs to local counties between \$2,278,000 and \$10,217,000 for 17,000 registered offenders.

^{iv} *Profile of Sex Offenders in Ohio Prisons* (Correctional Institution Corrections Committee, September 2015).

^v <http://www.noris.org/multi-agency/leads-interface/> .

^{vi} <https://www.ocjs.ohio.gov/cjis.stm>.

^{vii} *Report on Legislation by the Criminal Courts Committee and the Corrections And Community Reentry Committee* (New York Bar Association), at p. 4:

<https://www2.nycbar.org/pdf/report/uploads/20072258-BilltoCreateViolentFelonyOffenderRegistry.pdf#page=5>.

^{viii} *Studies question effectiveness of sex offender laws* (University of Chicago Press Journals, August 2011).

^{ix} *SOMAPI*, supra.

^x Human Rights Watch, *No Easy Answers: Sex Offender Laws in the U.S.* (September 2007)

<https://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf>.

^{xi} *Id.*, at 45.

^{xii} New York Bar, *supra*, at p. 6.

^{xiii} *Id.*, at p. 6.

^{xiv} Ohio Revised Code Chapter 2950 <http://codes.ohio.gov/orc/2950>.

^{xv} Langan & Schmitt, *Recidivism of Sex Offenders Released from Prison in 1994* (U.S. Department of Justice, November 2003); subsequent reports have not confined themselves to sex offenders, but have produced similar results.

^{xvi} Gutierrez, Melody, *State law Oks controversial bills on sanctuary and sex offenders* (San Francisco Chronicles, September 2017).

^{xvii} ODRC, *supra*, at p. 4.