



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB293 Reduction of Agency Regulations Sponsors Senators Peterson and McColley

Chairman LaRose, Vice Chair Kunze, Ranking Member Schiavoni, and members of the Senate Transportation, Commerce and Workforce Committee. Thank you for the opportunity to provide testify in opposition of SB293 on behalf of the Office of the Ohio Public Defender.

According to a survey of CEOs nationwide by Chief Executive Magazine, Ohio is ranked 10th among the most business friendly states. This is the second year in a row Ohio has been in the top 10. The categories considered in the survey were taxation, workforce quality, favorable living environment, and regulation.¹ This shows that Ohio's business climate is not in such direr need of reform that Ohio should pass this overly broad legislation. Arbitrarily requiring the elimination of 30% of regulations that use words like "shall," "must," and "may not" will lead to haphazard results that do nothing to further the interest of Ohio's businesses. If there are areas of regulation that need reform, the better approach would be to identify those areas and work with those agencies to reduce regulations. Requiring a broad sweep reduction to all regulations will just harm the health and safety of all Ohioans.

If over regulation of business is of concern to the legislature, it is recommended that this bill be amended to require a reduction of regulations governing private business and non-governmental business contracts and work. However, where taxpayer dollars are used and where business is involved in the delivery of governmental services, the legislature should ensure that tax payer dollars are used wisely and with transparency.

¹ St. Clair, Jeff, *Survey of CEOs Says Ohio Has Improving Business Climate*, WOSU Public Radio, May 21, 2018, <http://radio.wosu.org/post/survey-ceos-says-ohio-has-improving-business-climate>.

Indigent defense is a perfect example of the delivery of governmental services. About a week ago, the Ohio Public Defender Commission submitted a rule to JCARR that would prohibit indigents defendants from having a privately funded attorney on their case as well as a publically funded appointed counsel or public defender. The commission drafted this rule because we became aware of a situation where an attorney received public funds as compensation to be the appointed counsel on a case and a retainer from the client's family as a private consultant on the same case. As we looked into the matter further, we learned that, on occasion, an indigent defendant who receives a state funded defense attorney will also hire a privately paid attorney on the same case. Obviously, this is not fair to taxpayers. The reason an individual gets a public defender or appointed counsel is because they cannot afford an attorney. If an attorney is hired, the state should no longer shoulder the burden of paying for that individual's representation. This proposed regulation in no way impinges upon a private lawyer's business dealings with private clients. The only regulations that the commission drafts govern the delivery of constitutionally mandated services to those in poverty. A lack of regulation makes this misuse of taxpayer dollars impossible to enforce.

This proposed rule is consistent with others the commission has codified in Ohio Administrative Code 120. The rules in this section do not impact private business. The commission does not tell private attorney how to handle their cases or manage their business. Nothing in any of the commission rules impacts how private lawyers deal with private clients. Instead these regulations only impact the representation of indigent defendants. The commission oversees the disbursement of approximately \$80 million to counties. It is the statutory duty of the commission to provide quality oversight, through regulation, of taxpayer dollars. Although the work of the commission is critical to ensuring proper use of public funds, OAC 120 in its entirety is only 22 pages printed with only three chapters and 22 rules. Throughout these regulations, the term "shall" is used is used 87 times, the term "must" is used 62 times, and the term "may not" is used four



times. These terms are used in regulations that establish the requirements for attorneys receiving state funds for representation of indigent defendants and regulations ensuring the protection of confidential personal information. Not once do these terms impact the private practice of law.

Unlike, perhaps, some other areas of the Ohio Administrative Code, the Ohio judicial system is not over regulated. In fact, it could be argued that it needs more oversight. Currently, there are a number of crime labs in Ohio processing potentially critical evidence that are not certified. The State of Ohio has no idea how many people are on probation or in jail at this moment. Recently, the Ohio Supreme Court attempted to determine the cost of our criminal justice system. They were unable to receive the necessary information from the local courts. We still have no idea how much is spent on criminal justice every year in Ohio.

Under SB293, the Ohio Public Defender Commission would have to rescind or amend 30% of OAC 120. This will result in fewer protections for confidential personal information and fewer qualification requirements for attorneys taking on cases. Not only is it unethical to have unqualified attorneys representing indigent defendants, it is also unconstitutional. If these qualifications are rescinded, it will not cut costs, but will actually increase cost. If unqualified individuals handle cases, Ohio will see an increase in post-conviction litigation because defendants will raise successful constitutional claims and claims of ineffective assistance of counsel, resulting in cases having to be tried multiple times.

Many agencies are statutorily required to adopt regulations. SB293's requirement to eliminate 30% of restrictive regulations does not distinguish between regulations that are discretionary and those which are required by statute. If an agency fails to meet its statutory obligation to regulate certain behavior, an aggrieved party can file a writ of mandamus seeking a court order to require the agency to act consistent with the statute. Although SB293 was drafted to with the hope of creating a more business friendly climate, it will create a more burdened court system.



The Office of the Ohio Public Defender encourages the bill sponsors to consider an amendment that would limit this statute to agencies that regulate private businesses or limit its impact to regulations that are discretionary and not statutorily mandated. In its current form, SB293 is far too broad. It will require the elimination of regulations that provide transparency and ensure good stewardship of public funds to the detriment of all Ohioans.

Thank you for the opportunity to provide testimony to your committee. I am happy to answer questions at this time.

