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Opposition Testimony Substitute House Bill 459

Chairperson LaRe, Vice Chairperson White, Ranking Member Leland, Leader Seitz, and members of the House Criminal Justice Committee: my name is Barbara Wright, and I appreciate the opportunity to testify today in opposition to Substitute House Bill 459 restricting certain persons required to register for a conviction of a sexual offense from volunteering with minors.

I am an advocate with Ohio Rational Sexual Offense Laws (OHR SOL). OHR SOL is an advocacy group devoted to evidence-based laws regarding sexual offense registration. OHR SOL opposes dehumanizing registries, and adjunct policies similar to those proposed by Sub HB 459, which are not supported by evidence.

We start with a genuine desire for public safety. Sexual violence can have a devastating impact on survivors. However, in order to be effective, laws must be based on facts, not fear. “Feel good laws” sometimes create dangerous, unintended consequences, without evidence they will protect our children. Such is the case with Sub HB 459.

As threshold issue, OHR SOL opposes Sub HB 459 because it is unclear whether R.C. 2950.035 would be remedial in nature, as stated, or whether courts would find the restrictions punitive, and therefore subject to constitutional prohibitions against retroactivity and due process.

We oppose Sub HB 459 because it:

- would restrict the ability of thousands of parents required to register for a conviction of a sexual offense from participating in their children’s lives, without evidence that those parents pose a risk to children;
- will create severe negative consequences for the families and children of those parents, including shaming, bullying, anxiety and depression;¹
- will cause a child to be reluctant to report inappropriate touching by a parent or loved one.²

¹ Levenson, J.S. and Tewksbury, R. (June 2009). Collateral Damage: Family Members of Registered Sex Offenders. *American Journal of Criminal Justice* 34(1):54-68, DOI:10.1007/s12103-008-9055-x
https://www.researchgate.net/publication/226463284_Collateral_Damage_Family_Members_of_Registered_Sex_Offenders.

² Wilson (2013). The Expansion of Criminal Registries and the Illusion of Control. *Louisiana Law Review*, 73.
<http://digitalcommons.law.lsu.edu/lalrev/vol73/iss2/7>.

In short, we oppose Sub HB 459 because it will not work. Evidence shows that sexual offense registration has not deterred or prevented the incidence of sexual violence.³ And severe restrictions on the freedoms of registered persons only punish the families, without evidence that they accomplish the goal of protecting our children.⁴

In order to effectively combat sexual violence, we must focus on Prevention, Education, and Rehabilitation, and avoid negative, unintended consequences caused by registration, in general, and restrictions similar to those posed by Sub HB 459, in particular.

Risk Assessment as Means of Prevention of Sexual Violence

Prevention can only be accomplished after careful consideration of risk. Consider the following:

- Sexual offense registries are not representative of those at greatest risk to commit sexual violence. Evidence indicates that 95% of sexual offenses are committed by persons not on the registry.⁵
- Only 16% of those required to register would be considered “high risk,” and even the highest risk offender does not remain high risk forever.⁶
- Two-thirds of repeat sexual offenses occur, if at all, during the first three to five years after release into the community.⁷ Thereafter, the risk of re-offense is decreased by approximately one-half each year, until it becomes statistically negligible.⁸

The consideration of risk is an integral part of many aspects of sentencing, corrections, and community supervision, and courts have wide discretion regarding the following, based upon risk:

³ Ad Hoc Committee on Sex Offender Registration, (2016, April). Report and Recommendations. *Ohio Criminal Sentencing Commission*, at p.1.

<https://supremecourt.ohio.gov/Boards/Sentencing/resources/sentencingRecs/AdHocCommSexOffenderReg.pdf>; see also Huffman, M.K., (2016). Moral Panic and the Politics of Fear: The Dubious Logic Underlying Sex Offender Registration Statutes and Proposals for Restoring Measures of Judicial Discretion to Sex Offender Management. *Virginia Criminal Law Association*, 4, p. 241-303, 254. Abstract reprinted by Westlaw. <http://ctsentencingcommission.org/wp-content/uploads/2018/12/Moral-Panic-Article-VJCL-Summer-2016.pdf>.

⁴ Lobanov-Rostovsky, C., (2015, July). Adult Sex Offender Management. *U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Assessing, Registering and Tracking, Sex Offender Management Assessment and Planning Initiative Research Brief*

⁵ Sandler, J.C., Freeman, N.J. & Socia, K.M. (2008). Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law. *Psychology, Public Policy, and Law*, 14(4), 284-302. <https://doi.org/10.1037/a0013881>, et seq.

⁶ Hanson, R.K., Harris, A.J.R. et al. (2018). Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender. *Psychology, Public Policy, and Law*, 24(1), 55; see also Hanson, R.K., Harris, A.J.R. & Helmus, L. (2014, March 24). High-Risk Sex Offenders May Not be High-Risk Forever. *Journal of Interpersonal Violence*. <https://doi.org/10.1177/0886260514526062>.

⁷ Sex Offender Classification and Treatment in Ohio Prisons (Correctional Institution Inspection Committee, 2006) <https://www.prisonlegalnews.org/media/publications/sex%20offender%20classification%20and%20treatment%20in%20ohio%20prisons-%20ciic.pdf>;

Langan, Schmitt & Durose: Recidivism of Prisoners Released from Prison in 1994 (Bureau of Justice Statistics November 2003, NCJ 19828). <https://www.bjs.gov/content/pub/pdf/rsorp94.pdf>.

⁸ *Supra*, note 6.

- Penalties and Sentencing – the purposes include protecting the public from “...future crime by the offender and others.” A court has considerable discretion to set penalties at sentencing, based upon the degree of offense;⁹ the existence of aggravating or mitigating circumstances;¹⁰ the existence of serious mental illness of the offender;¹¹ and the existence of certain seriousness and recidivism factors.¹²
- Certificate of Qualification for Employment (“CQE”) - the court must consider whether granting a petition for CQE would pose “...an unreasonable risk to the safety of the public or any individual...”¹³
- Petition for early termination of registration duties – Tier I termination, or youthful offender termination
One of the factors a court may consider in determining whether a person classified Tier I can have his duty to register terminated early is whether the person has participated in community service, or volunteer activities.¹⁴
- Early termination of supervision -
Volunteer service can lead to early termination of supervision for persons classified Tier II or Tier III. Thus, the prohibitions of Sub HB 459 would restrict one of the criteria necessary for a person to “clear his name” and become a contributing member of society.

The Ohio General Assembly considered risk so important that it required the Ohio Department of Rehabilitation and Corrections to adopt the “single validated risk assessment tool” in 2011. That tool, the Ohio Risk Assessment System (“ORAS”) Tool, is required to be used by the municipal, common pleas, and county courts; probation and parole; state, local, private, and community-based correctional facilities; the department of mental health and addiction services; and halfway houses.¹⁵

The Ohio General Assembly has also devoted considerable time, energy and resources to revising sentencing and record sealing laws; to making a distinction between drug users and career criminals; and even to the consideration of “dangerousness” as a factor for setting cash bail. Yet risk is not a consideration in classifying an offender as a Tier II or Tier III, and is not a consideration in restricting the ability of a parent to volunteer at his own child’s school.

Researcher Karl Hanson states that “[t]he entire purpose of registration is defeated when the risk level is negligible.” Without evidence of risk, the prohibition against contact with children becomes meaningless, and even harmful. Hanson instead recommends reassessment over the time an offender spends offense-free in the community, with a corresponding reduction to a lower tier level classification.¹⁶

⁹ R.C. 2929.13.

¹⁰ R.C. 2929.022.

¹¹ R.C. 2929.025.

¹² R.C. 2929.12.

¹³ R.C. 2953.25(C)(3)(c).

¹⁴ R.C. 2950.15(G)(10).

¹⁵ R.C. 5120.114.

¹⁶ *Supra*, note 9, at 58-59.

Education as a Means of Reducing Sexual Violence

Patty Wetterling, the abduction of whose son, Jacob, inspired the first national registry, advocates for prevention and education, rather than devoting time, money, and resources on a broken system.¹⁷

It's not easy to talk to our children about sexual violence. It's easier to talk about "stranger danger" and pass laws which do not actually protect our children. Instead, we need to teach our children that it's not ok to have an adult touch him or her. Children need to have a safe space in which to report inappropriate touching.

We also need to devote resources in school and communities to recognizing the warning signs of sexual abuse. Above all, we need to avoid blaming the victim. Our current system forces the victim to be a whistleblower, often reporting a parent or loved one for inappropriate behavior. Sexual offense registration does nothing to heal the victim, and nothing to prevent future harm. The same can be said for Sub HB 459.

It is easy to pass "feel good laws." The challenge for this committee is to pass laws which effectively reduce the incidence of sexual violence against children. Sub HB 459 is not one of those laws. Instead, it will cause irreparable harm to children and families.

For these reasons, I urge the members of this committee to oppose Sub HB 459.

Thank you for this opportunity to speak to you today. I am happy to answer any questions at this time.

¹⁷ Jacob Wetterling Resource Center, (2017, May 27). We Spend Too Much Money Watching Sex Offenders. *Texas Voices for Reason and Justice*. <http://texasvoices.org/jacob-wetterling-resource-center-we-spend-too-much-money-watching-sex-offenders/>.

MEMORANDUM SUPPORTING OPPOSITION
TO SUBSTITUTE HOUSE BILL 459
PROHIBITING VOLUNTEERING IN
ANY CAPACITY INVOLVING MINORS

Sub HB 459 would restrict the ability of thousands of parents required to register for a conviction of a sexual offense from participating in their children's lives, without evidence that those parents pose a risk to children; and will create severe negative consequences for the families and children of those parents, including shaming, bullying, anxiety and depression; and will compromise the very safety it promises, by creating the illusion of control, and causing law enforcement and parents to overlook others likely to commit sexual harm

Sub HB 459 is contrary to the recommendations of national groups, including the American Law Institute, and the Association for the Treatment and Prevention of Sexual Abuse, which recommend limiting the class of offenders to those proven to be a risk to children, and recommend elimination of collateral consequences, such as those presented by Sub HB 459.

Sub HB 459 is unnecessary and duplicative, and will impose new burdens on law enforcement.

Sub H.B. 459 will cause harm to families and children of members of the restricted class, without evidence that they are a risk to harm children

Sub HB 459 would restrict the ability of thousands of parents required to register for a conviction of a sexual offense from participating in their children's lives, without evidence that those parents pose a risk to children; and will create severe negative consequences for the families and children of those parents, including shaming, bullying, anxiety and depression.

Sub HB 459 would prohibit persons in the restricted class from volunteering "...in (any) capacity affording extensive contact with minor children." This definition is broad enough to prohibit a parent from volunteering at his child's school, coaching his child's team, or participating in any meaningful way with his child in any extracurricular activities, without evidence that he is any risk to those children. Research indicates that the resulting shame, harassment, and even vigilantism severely negatively impacts the entire family of the offender, but especially the child. Studies have found that children of registered offenders suffer depression, and even commit suicide, at a much higher rate than other children.¹

The members of the restricted class, and their families, are already prohibited from living within 1,000 feet of a school, preschool, or daycare center.² In many communities, they are also barred from living within as much as 2,000 feet from parks, public pools, ballfields, even bus stops, despite a lack of evidence that proximity to children increases risk. Even when they are in compliance with these laws, they still suffer discrimination and harassment. Consider the case of J.H.:

¹ Levenson, J.S. and Tewksbury, R. (June 2009). Collateral Damage: Family Members of Registered Sex Offenders. *American Journal of Criminal Justice* 34(1):54-68, DOI:10.1007/s12103-008-9055-x https://www.researchgate.net/publication/226463284_Collateral_Damage_Family_Members_of_Registered_Sex_Offenders.

² R.C. 2950.031 (prior law), 2950.034 (current law).

J.H. and his family were forced to move out of a home they occupied for years before J.H.'s daughter was born. J.H. consulted with the authorities when he was convicted of a non-contact crime, and was told his home complied with all residency restrictions. J.H. was low risk, and was sentenced to community supervision, which was suspended early for good behavior. But eventually, it was determined that he lived slightly less than 1,000 feet from a daycare center in the church where J.H. volunteered. Despite the fact that the daycare center and church were aware of his conviction, and allowed him to volunteer, he was forced to move.

J.H. and his family moved to a new house, in compliance with state laws. But his neighbor, upon discovering that he was registered for a sex crime, has conducted a hate campaign designed to force him out of the neighborhood. She yells obscenities at his three-year-old daughter when she is in the yard, and has tried to enlist the support of neighbors to force him out. She has posted negative posts on Google, and called J.H.'s boss. She even contacted the school where his wife teaches.

J.H. fears for his daughter's mental health, and even for her safety, but has been unable to find suitable housing elsewhere. Sub. HB 459 would only exacerbate this condition by preventing J.H. from actively participating in his daughter's life, and may subject her to additional shame and possible bullying.

Sub HB 459 applies broadly to a restricted class that includes many persons convicted of consensual sexual acts, often between consenting youth. Consider the case of J.S.:

J.S. is one such member prohibited from participating in a meaningful way in his child's life. J.S. was 19 when he met a 15-year-old girl in church. They began dating, and eventually had consensual sex, twice in 2007 and once in 2008. She became pregnant, and her doctor was required to report the pregnancy of a minor. J.S. pleaded guilty to a misdemeanor charge, was sentenced to a mere 60 days in jail, which was suspended upon his graduation from high school. But under a law passed in 2008, J.S. was classified a "Tier II sex offender" and required to register for twenty-five years. The couple married, and are now raising four beautiful children, one of them special needs. The school where the children attend has already barred J.S. from participating in his children's lives, not because of state law, but because of erroneous public perception that he is a danger to the community.

J.S. and J.H. are both classified Tier II, not because they are a danger to children, but because they are classified by offense, not risk.³ Both, and many others, would be subject to the restrictions of Sub HB 459, without evidence that they pose a risk to children.

³ Senate Bill 10, effective January 1, 2008, replaced the risk-based system of registration with tier level classifications based upon a list of offenses dictated by the federal SORNA, in order to avoid losing federal JAG funds.

Sub HB 459 will not enhance public safety because it will cause a false sense of security, and cause law enforcement and the community to overlook many others at risk to commit sexual harm

Sexual offense registration in general, and Sub HB 459 in particular, causes law enforcement and society to overlook those with no criminal record, who have proven to be a significant risk to children. 95% of sexual offenses are committed by someone not on the sexual offense registry.⁴

At the same time, Sub HB 459 suggests that it will keep children safe from harm. This belief is based upon the erroneous myth that most, or all, members of the restricted class are a risk to commit a sexually oriented offense against children.

Sexual offense registration laws, and the collateral consequences associated with them, fail to consider the evidence that the majority of offenders are medium to low risk; only 16% are “high risk” to commit a new sexually oriented offense. And even those at highest risk achieve desistance after 17-20 years.⁵

Consider D.J. D.J was convicted in 1982 of sexual conduct with his daughter. He spent over 19 years in prison, followed by two-and one-half years of intensive supervision. His supervision included a year at a treatment facility/ halfway house. He eventually married, and has a beautiful 17-year-old daughter. His daughter is prepared to testify as to the harm it has caused her to have her father identified as a “sex offender.”

It has been forty years since D.J. committed any sexual harm to a child. D.J., and others like him, deserve the right to demonstrate that they are no longer a risk, and can be permitted to volunteer in a child’s classroom, or as a coach, or in any other capacity involving his child.

Researcher Karl Hanson states that “[t]he entire purpose of registration is defeated when the risk level is negligible.” Without evidence of risk, the prohibition against contact with children becomes meaningless, and even harmful. Hanson instead recommends reassessment over the time an offender spends offense-free in the community, with a corresponding reduction to a lower tier level classification.⁶

⁴ Sandler, J.C., Freeman, N.J. & Socia, K.M. (2008). Does a watched pot boil? A time-series analysis of New York State's sex offender registration and notification law. *Psychology, Public Policy, and Law*, 14(4), 284-302. <https://doi.org/10.1037/a0013881>, et seq.

⁵ Hanson, R.K. (2012, November 7). Declaration in United States District Court for the Northern District of California https://www.eff.org/files/filenode/024_hanson_decl_11.7.12.pdf.

⁶ Hanson, R.K., Harris, A.J.R. et al. (2018). Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender. *Psychology, Public Policy, and Law*, 24(1), 55, at 58-59; see also Hanson, R.K., Harris, A.J.R. & Helmus, L. (2014, March 24). High-Risk Sex Offenders May Not be High-Risk Forever. *Journal of Interpersonal Violence*. <https://doi.org/10.1177/0886260514526062>.

Sub HB 459 is contrary to those recommendations. It is also contrary to the recommendations of prestigious national groups such as the American Law Institute (the “ALI”) and the Association for Treatment and Prevention of Sexual Abuse (“ATSA”). ALI recommends limiting the number of persons required to register to eleven of the most severe offenses, and limiting the duration of the duty to register to fifteen years, with an opportunity for termination after ten years.⁷ Both groups also recommend elimination of collateral consequences, such as those presented by Sub HB 459.⁸

⁷ Tentative Draft No. 6 American Law Institute Model Penal Code, Section 213.11F Sentencing and Collateral Sanctions, Duration of Registration Requirement, Appendix B, amended and approved March 2, 2022 https://www.ali.org/media//filer_public/05/8e/058eb1a1-5c05-40d5-83db-407445e510b2/sexual_assault_-_td6.pdf, 126-128; revisions adopted at May, 2022 meeting summarized on the ALI site: <https://www.ali.org/projects/show/sexual-assault-and-related-offenses/>.

The ALI, in its project to revise the Model Penal Code for use by the states in adopting their own Penal Code, considered, and rejected, numerous objections by attorneys general, the Department of Justice, and the National Center for Missing and Exploited Children, finding instead that the Council’s “...considered judgment, based on extensive research and wide consultation with other experts... led to (the) conclusion that these public-access policies are unjust and counterproductive, even in terms of the public-safety goals they purport to serve.” Schulhofer, S.J. (May 4, 2022). Reporter’s Memorandum for Model Penal Code: Sexual Assault and Related Offenses Tentative Draft No. 6. *The ALI Adviser* <https://www.thealiadviser.org/sexual-assault/reporters-memorandum-for-model-penal-code-sexual-assault-and-related-offenses-tentative-draft-no-6/>.

⁸ *Supra*, note 7: Section 213.11H Access to Registry Information, Appendix B, at 129-130; see also Association for the Treatment and Prevention of Sexual Abuse (Sept. 2020). Registration and Community Notification of Adults Convicted of a Sexual Crime <https://www.atsa.com/policy-papers/adultsorn, 11-13>. “SORN laws as currently applied to adults convicted of a sexual offense in the U.S. are not evidenced-based, do not enhance community safety or prevent sexual abuse. ATSA takes the position that sex offender registration and notification laws for adults should be reformed to better meet the goals of community safety, victim protection, and the effective rehabilitation of those who have committed such offenses,” Conclusion and Recommendations, at 13.

	American Law Institute (ALI) Model Penal Code	American Society for the Treatment of Sexual Abusers (ATSA)	Ohio Criminal Justice Recodification Committee (OCJRC)
Registration and Classification	<i>Limit number of offenses required to register (5)</i> Changed to 11	Risk assessment and individualized treatment	<i>Maintain tier levels, but implement risk assessment</i>
Making it Easier to Register	Update by email or other readily accessible means of communication	<i>Silent on ease of use</i>	Centralized registration and elimination of dual registration
Duration of Duties	Fifteen (15) years, with relief for good behavior after ten (10)	<i>No change</i>	<i>No change</i>
Public Access to Info	No public access	<i>Limit community notification</i> <i>Take steps to ensure the accuracy of the information</i>	<i>No change</i>
Burdens to Reintegration	<i>Collateral sanctions may only be imposed on a case-by-case basis</i>	Eliminate residency restrictions and adjunct policies which create unnecessary barriers for community reintegration;	Eliminate residency restrictions and bars to employment
Registration Violations	Knowing violations are a misdemeanor, provided no affirmative defenses apply	<i>No change</i>	<i>Knowing violations are a misdemeanor on a first offense, and an F5 upon a second or subsequent violation</i>
Relief from Registration	Discretionary any time prior to expiration of sanctions; otherwise, review at 10 years	Recommends relief from registration	Tier I – 5 years Tier II – 10 years Tier III – 15 years
Juveniles	<i>Only register juveniles 16 or older for Sexual Assault by Aggravated Physical Force or Restraint (essentially matches AWA)</i>	Recommends complete abolition	<i>Does not address juveniles</i>
Other	Eliminate “ineffective consent” laws and focus on force or threat of force	Utilize registration as part of a larger management scheme for adults convicted of sexual crimes, with greater collaboration and focus on rehabilitative and reintegration efforts	Re-classify all Tier III but aggravated rape, kidnapping, aggravated murder and murder with sexual motivation
		Strengthen partnerships between law enforcement and sexual offense specific management professionals, including mental health professionals	Re-classify USCM to Tier I

