

Senate Judiciary Committee
Ohio House Bill 289
Written Opponent Testimony
Spencer J Cahoon
12/2/24

Thank you Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee for the opportunity to submit opponent testimony on Ohio House Bill 289.

My name is Spencer Cahoon. I'm an Ohio resident and 17-year criminal defense attorney. Prior to my legal career, I worked as a social worker with Lutheran Social Services working with Faith Mission, here in Columbus, as well as their Transitional Housing Program.

A quick review of sponsor and proponent testimony indicates that almost nobody, neither the bill sponsors, Attorney General, nor the Ohio Prosecuting Attorneys Association, addressed the new 30-day registration requirement. My testimony today only addresses that portion of the bill.

The proposed, enhanced registration requirement for homeless registrants to every 30 days is a solution in search of a problem. As written, it will likely be struck down as unconstitutional by the Ohio Supreme Court.

Current Requirements

For the various types of reporting tiers, people convicted of sex offenses must register every 90 days, 180 days, or yearly. That requirement stems from the Adam-Walsh Act, which changed our classification system for sexual offenses. Those requirements are part of a person's sentence by law and because the Ohio Supreme Court ruled in 2011 that the classification system with the associated restrictions had become "punitive" – punishment focused – in the Adam Walsh Act. This was predominantly due to two facts:

Firstly, that the classification was made automatically by offense with no individualized determinations, unlike the prior system under Megan's Law.

Secondly, the level of requirement imposed was much heavier; addressed with criminal law and penalties as opposed to an inconvenience such as “renewing a driver’s license.”¹

Impact of the Proposed Change

The proposed 30-day registration requirement increases the registration obligations of homeless people 3x, 6x, or 12x depending on their registration tier. The authors likely intended this change to help assure the homeless people are regularly updating their address if and when it changes.

Ohio Revised Code § 2950.05 (A) and (B) already noted that people with no fixed address (homeless) “shall include a detailed description of the place or places at which the offender or delinquent child (or public registry juvenile offender registrant) intends to stay” and that it “shall be considered the person’s residence address” for the purposes of RC § 2950.05(I). Subsection (I) currently requires that registrants update changes of address within 1 business day of any change that renders their old address “no longer accurate, regardless of whether the person in question has a new address.”² As the prior section indicates that non-fixed address count as the person’s address for subsection (I), that 1-business-day, update duty applies to people registered as homeless.

Requiring them to update their registration in person every 30 days does nothing to reduce their responsibility under the existing law to update their address within 1 business day of when they get a conventional, fixed address OR when their registered homeless address is no longer accurate.

Consequently, the current version of this bill only adds an additional in-person reporting requirement unassociated with a timely recording of changes in address. This bill fails to create law in a manner that would achieve its desired end, since the existing duty to update is more severe.

Constitutionality

Because the Adam Walsh Act was determined to be punitive in nature by the Ohio Supreme Court, its restrictions cannot be applied retroactively.

¹ *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108 (Citing *State v. Cook*, 83 Ohio St.3d 404, 409, 1998 Ohio 291, 700 N.E.2d 570)

² Compare ORC 2950.05(A) & (B), *with* ORC 2950.05(I).

This is because, broadly speaking, criminal punishment can only be imposed by the judicial branch when invested with the jurisdiction and legal authority to do so. Legislative changes that increase the punishment for prior adjudications are defined as ex post facto or “after the fact” laws that inherently violate Article 1, Section 10 of the United States Constitution, which says “[n]o state shall . . . pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts. . . .” If applied to everyone registering as homeless as the current language indicates, the law would be struck down as unconstitutional.

Constitutionally, any 30-day, in-person registration requirement could only legally apply to people whose convictions occurred after it went into effect. For those folks, it would become a part of their new sentences. The result will be that Sheriff’s Offices and registrants will have widely disparate treatment (30-day, in-person registration vs. standard, 1-business-day registration) for people with the same temporary characteristic (homelessness) depending on their sentencing date. This will only add confusion for all parties involved in this process.

Conclusion

HB 289 makes an unconstitutional misstep with its ex post facto attempt to require in-person registration for people who are homeless and have registration duties. Further, the 30-day registration does not change the 1-business-day, update requirement already in the law. These sections of the bill should be removed.

The bill’s other facet, however, that addresses tolling of the registration period for people who are non-compliant with their registration duties has no such critical flaw. Likely that is why the tolling section was the only section addressed in testimony by the sponsors, the Attorney General’s Office, and the Ohio Prosecuting Attorney’s Association.

I recommend that you either (1) amend the bill to remove the sections addressing the 30-day, in-person registration requirement or (2) vote against the bill if there is not the will or time to amend it within the current session.