Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee:

I am writing to you as a concerned Ohio resident in opposition of Senate Bill 393's proposed increases in penalties for a first-time sentence for possession of obscenity or sexually oriented material involving a minor or artificially generated depiction of a minor. While I fully support strong measures to protect children and hold offenders accountable, the specific enhancements in SB 393 go far beyond what is necessary or proportionate, especially for individuals with no prior criminal record.

Specifically, SB 393 increases penalties for possession of illicit material from the current fourth degree (F4) to a third degree (F3) or high-tier third degree felony with a mandatory prison term when the material depicts an offense of violence, or includes a minor under the age of 13 or an artificially generated depiction of a minor under the age of 13. This change is excessive and harsher than the federal counterpart* which imposes no mandatory minimum prison term for first-time possession.

Even worse is an additional five-year mandatory prison term that SB 393 would impose upon conviction of a specification that the material possessed by the offender consisted of 100 or more images. For purposes of the bill, a single motion picture, film, video, or digital recording is deemed equivalent to 75 images. As a direct result, the possession of even two short videos it appears would trigger this five-year mandatory enhancement. This provision copies the US Sentencing Commission's 75:1 rule that has led to decades of disproportionately harsh sentences. Please note that this rule was challenged in the Supreme Court following an earlier opinion (Kisor v. Wilkie). In that challenge to the 75:1 sentencing rule (United States v. Roberts), the Court concluded that within the context of sentencing enhancements one video unambiguously constitutes one image, mirroring the treatment of a single picture or photograph.

Mandatory minimum sentences remove judicial discretion, ignore individual circumstances, and further strain Ohio's understaffed and overcrowded prison system. Significantly, as shown on the attached page, a recidivism study of Pennsylvania child porn possessors, revealed a much higher 3-year rearrest rate of 16.7% for those sentenced to prison vs. a 3-year rearrest rate of 6.7% for those sentenced to probation. I therefore ask you to reject SB 393's extreme penalties so as to allow appropriate accountability while preserving proportionality and judicial flexibility for first-time offenders.

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* 18 U.S.C. § 2252A (2023)(b)(2).

attachment

REARREST OUTCOMES AMONG OFFENDERS CHARGED WITH CHILD PORNOGRAPHY IN PENNSYLVANIA

An Infographic Report issued to the Task Force on Child Pornography, by Pennsylvania Commission on Crime and Delinquency (PCCD) researchers

Research Team: Robert Orth, Ph.D., Charles Gartside, and Lindsay Vaughan, J.D.

The Study

885 offenders charged with a child pornography offense (18 Pa.C.S. §6312) between 2014-2020 were examined for recidivism.

RECIDIVISM BY SENTENCE & BEHAVIOR 1 & 3 year rearrest rates

	1 YR REARREST		3 YR REARREST	
Sentence Type	**n**	**%**	**n**	**%**
Probation				
(B) Manufacturing	0/12	**0.0%**	2/6	**33.3%**
(C) Dissemination	1/85	**1.2%**	4/73	**5.5%**
(D) Possession	7/193	**3.6%**	13/150	**8.7%**
County Jail				
(B) Manufacturing	0/30	**0.0%**	2/21	**9.5%**
(C) Dissemination	4/98	**4.1%**	10/85	**11.8%**
(D) Possession	11/219	**5.0%**	13/147	**8.8%**
State Prison				
(B) Manufacturing	1/32	**3.7%**	2/16	**7.6%**
(C) Dissemination	3/87	**4.0%**	2/38	**12.0%**
(D) Possession	7/129	**5.4%**	7/42	**16.7%**

KEY TAKEAWAYS from a study of §6312 charged offenders:

- Offenders sentenced to incarceration (e.g. jail or prison) had higher rates of rearrest than probation.
- Offenders charged with a touch offense (in addition to child pornography) were twice as likely to be rearrested than those without a touch offense charge.
- When recidivism was redefined to count only reoccurring sex offense charges (e.g. §6312 or a related/connected offense), the 3 year rearrest rate dropped by over half from 9.5% (rearrest on any charge) to 4.3%.