Ohioans for Rational Sex Offense Laws

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Senate Bill 393
Written Opponent Testimony
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Chair Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee — Thank you for the opportunity to provide testimony on Senate Bill 393.

I urge you to reject the most extreme provisions of SB 393 because they do not make Ohio safer. They replace judicial discretion with rigid formulas. They use age gaps, image counts, and mandatory penalties as shortcuts for the facts that should actually matter: force, coercion, grooming, abuse of authority, exploitation, prior conduct, treatment needs, and actual risk to the public. Ohio already has the ability to punish serious cases severely. Judges already have authority to impose prison when the facts justify it. SB 393 goes further than that. It strips judges of discretion and forces severe outcomes based on blunt numerical triggers.

The clearest example is SB 393's mandatory five-year prison specification for possession cases involving 100 or more images. This provision turns a crude digital counting rule into a mandatory prison sentence. Proponents argue that federal sentencing guidelines count each video as 75 images, but that argument is misleading. SB 393 does not simply adopt the federal guideline system. It borrows one federal counting rule and weaponizes it. Federal law uses image count as part of a graduated, advisory sentencing calculation. SB 393 uses 100 images as a mandatory five-year prison trigger. That is not the same policy. Even the U.S. Sentencing Commission has recognized that federal image-count enhancements often fail to meaningfully distinguish offenders in modern digital cases. Ohio should not take a flawed advisory guideline and turn it into an automatic prison mandate.

The 75-images-per-video provision is especially indefensible when attached to a mandatory prison term. A video may be more serious than a still image, but SB 393 treats every video as 75 images regardless of length, context, duplication, whether it was downloaded intentionally, whether it was ever viewed, whether it involved the same file copied multiple times, or whether it came from a phone, cache, deleted space, or automated download. Under this bill, two videos can equal five mandatory years. That is not justice and does nothing for public safety.

Community control in a sex offense case is not a 'slap-on-the-wrist' as is commonly claimed. It can include intensive supervision, treatment, monitoring, device restrictions, strict compliance requirements, and prison exposure for violations. The available data

does not show that mandatory incarceration is necessary to reduce reoffense. Pennsylvania's child-pornography recidivism data suggests incarceration was associated with higher rearrest rates than probation. It is important that the re-arrest rate for a sexual offense was very low in both sets of offenders. In fact, many studies have shown that sexual offense recidivism rates are significantly lower than most other types of offenses. Broader research on incarceration and recidivism also does not support the assumption that prison automatically reduces future crime. Mandatory prison can strip away employment, housing, treatment continuity, and family support, which are exactly the protective factors associated with lower recidivism. A sentence that feels tougher is not necessarily a sentence that makes the public safer.

SB 393's 16- and 17-year-old age-gap provisions raise the same problem. They go far beyond targeting predators. The bill criminalizes based on a rigid age-gap formula, not actual exploitation. It does not require force, coercion, grooming, trafficking, abuse of authority, manipulation, or even a power imbalance. Some Ohioans are 17 when they start college. Under SB 393, if a 17-year-old college freshman has consensual sex with a 21-year-old college junior, the older student could be prosecuted and placed on the sex-offender registry, not because there was force, coercion, grooming, or exploitation, but because the age gap crossed four years. That is not a predator law. That is a trap for young adults.

Legislators should be clear about what they are voting for. These are not just ordinary criminal penalties. The Legislative Service Commission analysis shows that the new unlawful sexual conduct provisions would trigger Ohio's sex-offender registration system, including Tier II registration in certain circumstances, and that the new gross sexual imposition provision can trigger Tier I registration. SB 393 can put someone on the sex-offender registry for consensual conduct involving a 16- or 17-year-old even where there is no force, coercion, grooming, trafficking, or abuse of authority. The bill also allows prosecution if the accused knew the person's age or was merely reckless about it. That is a dangerously low standard when the punishment can include felony prosecution and sex-offender registration. If Ohio is going to impose life-altering consequences in cases involving 16- and 17-year-olds, the state should have to prove actual knowledge of age and actual exploitation, not just an age-gap calculation.

SB 393's 13- to 15-year-old provisions should also give legislators pause, not because Ohio should treat these cases lightly, but because Ohio already criminalizes them. The question is whether SB 393 makes the law smarter, safer, and more just, or whether it simply escalates punishment based on another blunt age-gap formula. Under the bill, if a 23-year-old has unlawful sexual conduct with a 14-year-old, the offense is an F4 because the age gap is less than 10 years. But if a 24-year-old engages in the exact same conduct with the exact same 14-year-old, the offense jumps to an F2 because the age gap reaches 10 years. Nothing about force, coercion, grooming, abuse of authority, prior record, or actual risk or harm has changed. Only the math changed.

The same problem appears in the new gross sexual imposition provision for sexual contact with a 13- to 15-year-old when the accused is four or more years older. That provision makes the offense an F4. This means SB 393 is not limited to sexual intercourse or rape-level conduct. It also reaches sexual contact cases through the same "knows or reckless" age standard. A 19-year-old who has sexual contact with a 15-year-old could face a felony and sex-offender registration even if there is no force, no coercion, no authority relationship, and no prior record. That is a serious expansion, and legislators should not treat it as a minor technical change.

Lawmakers should be focused on the facts that actually matter. Was there force? Was there coercion? Was there grooming? Was there an abuse of authority or trust? Was the person targeted, manipulated, threatened, trafficked, or exploited? Is there a prior history or evidence of ongoing danger? Those are the factors that separate a serious case from an even more serious one. SB 393 skips that analysis and replaces it with automatic penalty escalation based on birthdays, age gaps, and file counts. That is not careful public-safety policy.

Once registration is triggered, the consequences extend far beyond the courtroom: housing barriers, employment barriers, public stigma, family disruption, and long-term reentry instability. Those consequences do not automatically make the public safer. In many cases, they make stability harder, and stability is one of the things that actually reduces risk. If the goal is public safety, SB 393 should preserve judicial discretion and focus enhanced penalties on cases involving actual exploitation, coercion, abuse of authority, repeat offending, or demonstrated risk. Ohio law should punish harmful conduct. It should not pretend that arithmetic is the same thing as justice.

For these reasons, SB 393 should be amended to remove the mandatory five-year specification, reject the 100-image mandatory trigger, avoid turning the 75-images-per-video guideline into a prison mandate, and narrow the age-gap provisions so enhanced penalties and registration consequences are tied to exploitation, coercion, abuse of authority, repeat conduct, or actual risk.

Sources

1. Pennsylvania Commission on Crime and Delinquency, *Task Force on Child Pornography Final Report*, including Appendix G, "Rearrest Outcomes Among Offenders Charged with Child Pornography in Pennsylvania."

2. U.S. Sentencing Commission, *Federal Sentencing of Child Pornography: Non-Production Offenses*, June 2021.

3. Mitchell, O., Cochran, J. C., Mears, D. P., & Bales, W. D. "Examining Prison Effects on Recidivism: A Regression Discontinuity Approach." *Justice Quarterly*, 34(4), 571–596.