Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

Senate Bill 393 Opponent Testimony

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Senate Judiciary Committee

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

On behalf of the Office of the Ohio Public Defender (OPD), thank you for the opportunity to submit opponent testimony on Senate Bill 393 (SB 393). While we recognize the sponsors' intent to modernize Ohio's age of consent and "sexting" statutes, the OPD is concerned that SB 393 will over criminalize consensual, peer-to-peer behavior among teenagers and result in more youth being placed on the sex-offender registry.

The OPD's opposition to SB 393 stems from its reliance on a criminal justice response to behavior that developmental science characterizes as normative adolescent sexual exploration. Research consistently demonstrates that the consensual exchange of digital, intimate images or "sexting" is a common component of contemporary teen culture. As noted in the Journal of Pediatric Health Care, these behaviors occur during a period of significant sexual development, when the prefrontal cortex, the area of the brain responsible for impulse control and risk assessment, is not yet fully mature.[1] Treating such behavior through criminal sanctions rather than developmentally appropriate interventions, may subject youth to severe collateral consequences that can extend well into adulthood.

Experts in adolescent health emphasize that the appropriate response to experimental sexting is education and counseling, not the blunt force response of the juvenile justice system. Using the juvenile justice system to teach teens about digital citizenship does not prevent harm; instead, it risks exposing youth to the trauma of juvenile adjudication and a lifetime of stigma associated with system involvement, including potential placement on the sex-offender registry.

[1] Chiocca E, Hornor G, Sidberry R, *Sexting and Sextortion in Adolescents: Essentials for the PNP*, Journal of Pediatric Health Care, 40, 162-173; https://www.jpedhc.org/article/S0891-5245(25)00240-8/fulltext.

Proponents argue that SB 393 offers a balanced compromise by reducing peer-to-peer sexting from a second-degree felony (F2) to a first-degree misdemeanor (M1). However, the bill's structure will continue to place children on the sex-offender registry for this consensual peer-to-peer behavior. While SB 393 creates a misdemeanor for consensual sexting, it continues to define these acts as "sexually oriented offenses" under R.C. 2950.01. Ohio's current "Romeo and Juliet" registration exception applies only to physical sexual conduct, not the exchange of images.[2] Consequently, a teenager adjudicated delinquent for this new misdemeanor offense would still be subject to sex-offender classification and Tier II sex offender registration requirements. Branding a child a sex offender for sending a consensual image to a peer is an extreme and disproportionate consequence that risks undermining the rehabilitative purpose of the juvenile system.

The bill also explicitly provides that prosecution under the new minor-sexting provisions "does not preclude a prosecution for a violation of any other section of the Revised Code." This allows prosecutors to bypass the M1 entirely and instead charge a child with an F2 for the same underlying conduct. The Ohio Prosecuting Attorneys Association has noted that retaining these higher-level charges provides leverage during plea negotiations.[3] In practice, this creates a coercive dynamic in which children may feel forced to plead to a registrable misdemeanor in order to avoid an adult-level felony sentence.

The availability of the reduced M1 is further limited by narrow eligibility criteria. To qualify, the material must depict "only the other person" or "only the offender." As a result, if two teenagers consensually take a single image together in which both appear in the frame, they are statutorily excluded from the misdemeanor provision and instead must be charged with an F2.

SB 393 also creates a five-year mandatory, consecutive prison term for possession of 100 or more images and defines a single video as equivalent to 75 images. Because prosecutors can bypass the misdemeanor carve-out, this volume-based enhancement significantly expands potential legal exposure for children. A teenager in possession of just two short video clips from a romantic partner would meet the statutory threshold, triggering a mandatory five-year sentence in addition to the felony penalties. A mandatory sentence in this context for non-violent, peer-to-peer conduct is not only highly abnormal for juvenile law, but it also serves as a tool of coercion for the state. Taken together, these provisions create a framework that

[2] R.C. 2950.01(B)(2).
[3] Fiscal Note & Local Statement Impact Statement, S.B. 393, 136th General Assembly, p 4.

expands exposure to severe penalties and registry consequences and undermines the rehabilitative goals of Ohio's juvenile justice system.

If the General Assembly is committed to the idea that the state needs to have a role in responding to minors engaging in peer-to-peer sexting, the OPD urges this body to adopt a framework that presumes diversion over adjudication. Other states, including Illinois, have successfully addressed adolescent sexting since 2011 through a civil framework. Under the Illinois model, the response is handled outside the delinquency system and is purely civil – there is no arrest record, no possibility of incarceration, and no risk of sex-offender registration. Instead, minors are required to participate in counseling or community programming focused on digital safety and decision making, while prosecutors retain the ability to pursue charging severe cases involving harassment or predatory conduct. Ohio could adopt a similar model by presuming diversion for teenage consensual, peer-to-peer sexting, while allowing that presumption to be overcome when the conduct constitutes harassment, abuse, or other predatory acts.

While the OPD agrees that Ohio's statutes should be updated to better protect children from the predatory behavior of adults, it is critical to recognize that children are different. As technology and adolescent culture continuously evolve, we must acknowledge that the consensual, peer-to-peer exchange of digital images has become a normalized aspect of teenage adolescence. Our laws should reflect that reality and foster responses that prioritize educating teens about what safe digital citizenship looks like, rather than defaulting to criminal penalties. As currently drafted, SB 393 creates a system where a single digital mistake by a child can carry consequences as severe as sex-offender registration and mandatory incarceration.

We urge this body to refine this approach and move toward a framework that prioritizes digital safety education, prevention, and diversion over criminalization for Ohio's youth.

Sincerely,

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