

To Chairperson Abrams, Vice Chair Williams, Ranking Member Brown, Leader Seitz and members of the House Criminal Justice Committee.

I am writing you today regarding House Bill 289, and specifically the provisions that will extend the duration on the registration for Tier I and Tier II sex offenders who are not compliant with the registry. I understand that the intent of this portion of the bill is to prevent non-compliant registrants from simply “killing their number” without complying with all the terms of registration. I applaud Rep. Blasdel and Rep. Swearingen in their efforts to ensure public safety. The notion of “tolling” the amount of time non-compliant and extending the duty to register by that amount seems common sensical. However, there are several problems that are overlooked in this effort, and without addressing these issues, this legislation should be rejected.

In brief, this legislation fails on three major counts. First, tolling time against non-compliant registrant fails to create a sufficient mechanism to force compliance with the registry. Failure to comply is already a criminal offense. For chronic non-compliant registrants, this tolling adds no further incentive to comply. Someone who has already decided he will ignore the rules of registration will undoubtedly ignore this tolling. Unless law enforcement actually arrests him for his failure to comply, he can live out the rest of his life de-facto free of the registry already. The solution to chronic non-compliance should be enforcement of existing laws, not additional restrictions.

Second, this measure is poised to punish those attempting to be compliant far more than those who are chronically non-compliant. I understand from previous testimony before the House Criminal Justice Committee that the intent of this legislation is to target those chronically non-compliant registrants. However, there is nothing in the legislation as written that clarifies that. As written, the legislation says

*“If a person who is an offender...who violates section(s)...of the Revised Code, the period of time that the offender...has a duty to comply with those sections...is tolled for the amount of time the offender...is in violation of any of those sections. The period of time that the offender...has a duty to comply with those sections...resumes once the offender...is no longer in violation of any of those sections.” (Ellipses to generalize the text across both Tier II and Tier I sections.)*

There is nothing in the proposed legislation that targets only the egregiously non-compliant, but spares those who have committed minor registration infractions. Thus it follows that those who have broken off all contact with law enforcement and have been non-compliant for years will suffer no greater burden from this legislation, but a registrant who is seeking to comply, but who makes mistakes (such as forgetting to unregister in a county he no longer works in, when that county is not his home county) could face the full enforcement. More, how this legislation is applied currently would seem to be at the whim of law enforcement, which means there is the opportunity for grossly different penalties applied for the same offense. Thus this legislation does nothing to further public safety, because those whom are purportedly targeted will undoubtedly face no repercussions, while those who are seeking to be compliant – and thus are a much smaller risk to the public – will bear the brunt of the burden.

This increased burden on those seeking to comply with the registry is in itself a public risk. Numerous studies have demonstrated that instability is a serious risk factor towards re-offense. Instability in house, instability in employment, instability in social relations all place an offender at a higher risk of committing another crime. The instability that this legislation introduces, with how it can be

inconsistently applied, could have the unintended effect of driving more registrants to non-compliance or even further offenses. While any application of legal penalties does increase stress on offenders, and some of that has to be accepted as a necessary risk, this legislation, as already demonstrated, does not offer sufficient gain to compensate for the increased risks.

Third, this legislation as written faces a constitutionality question that needs addressed. In numerous previous cases before the courts, it has been ruled that certain registration laws do not apply to those who were sentenced before the laws came into effect. In the text of HB 289, there is no provision stating that these new registration requirements apply to offenders convicted after such and such a date. This means the text is open to the interpretation of retroactively applying to registrants. Indeed, as the intent of this bill is to address the number of registrants who are chronically non-compliant, the immediate interpretation, without any further clarification, would assume retroactive application. This undoubtedly will face legal opposition, as it effectively extends the sentence of a registrant without due process. Most likely the cases will be resolved as others have in the past, that this new legislation will only apply those offenders convicted after HB 289 has been enacted into law. Thus this legislation again fails to provide any new measures of safety for the public, for it will not even apply to those who are non-compliant currently, and as noted above, will ultimately fail to curtail chronically non-compliant registrants in the future.

I strongly recommend that the House Criminal Justice Committee reject HB 289 as currently written. It is legislation that fundamentally does not add any additional protection the public, introduces confusion into the registry, punishes those who are least likely to offend, and likely faces constitutional challenges.

Thank you for your time,

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