



# Ohio Crime Victim Justice Center

To: Ohio House Criminal Justice Committee  
From: Elizabeth Well, Legal Director, Ohio Crime Victim Justice Center  
Date: May 19, 2020  
Re: H.B. 610 Proponent Testimony

Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Ohio House Criminal Justice Committee:

Good morning. My name is Elizabeth Well, and I am the Legal Director at Ohio Crime Victim Justice Center. OCVJC provides free legal representation to victims of crime during the criminal justice process. OCVJC has existed for twenty years with the mission of ensuring that the constitutional and statutory rights of Ohio's crime victims are protected and enforced.

I am here today on behalf of OCVJC to offer proponent testimony for House Bill 610 because the will of Ohio's voters must be implemented consistently across the state to ensure every victim can exercise every right every time.

With the passage of the Marsy's Law amendment to the Ohio Constitution, the will of the people was made clear-- victims' rights in the criminal justice process must be meaningful and enforceable. Since the passage of Marsy's Law, inconsistent enforcement of the constitutional amendment ultimately led to the creation of an interested party group, led by OCVJC, prosecutors, court representatives, law enforcement, victim advocates, custodial agency representatives, and other allied professionals. OCVJC also invited the Ohio Public Defender's Office to participate, as well, but the invitation was declined.

This group spent, collectively, hundreds of hours drafting House Bill 610. Then, Representative Cupp convened another, smaller interested party group that refined the original draft into the bill before you today. I am so grateful for the commitments of time and talent that created this remarkable bill.

Importantly, this bill will bring the Ohio Revised Code into compliance with the constitutional mandates of Marsy's Law. Key provisions provide the clarification and guidance sought by criminal justice system officials concerning new constitutional guarantees such as the enforceability of rights and ability to seek appellate review, the right to privacy, the right to full and timely restitution, the right to be heard by the court when victims' rights are implicated, and the right to be treated with fairness and dignity.

For the first time, Ohio crime victims are constitutionally guaranteed the right to privacy. To implement this guarantee, House Bill 610 provides victims the ability to seek



# Ohio Crime Victim Justice Center

redaction of their names and identifying information from any public record. This right is crucially important for many victims, including child victims and victims of violent crimes. Several years ago, I was contacted by a young woman. She was applying for a job that she felt very passionate about. As the time for her job interview approached, she learned that the employer had Googled her name and found court records containing the intimate details of a sexual assault that was committed against her when she was a child. While some survivors choose to share their experiences, others do not. This young woman was mortified and upset that our criminal justice system had exposed the most horrific time of her life to everyone who could Google her name. While my office was able to work with the court system to have her name removed from the record, she did not take that job.

If she had the right to seek redaction from the beginning, she would have never been put into that position. To comply with letter and spirit of Marsy's Law, the constitutional right to privacy must include redaction to protect Ohio crime victims from having the most intimate details of crimes committed against them become a public record, available to the general public, and, often, published on the internet.

House Bill 610 also provides uniformity and guidance in terms of how to ensure victims' rights are afforded, including the expanded right to be heard directly by our courts when victims' rights are implicated. For example, House Bill 610 creates the victims' rights request/waiver form. Since 1996, R.C 2930.04 has required law enforcement to inform crime victims of their rights in writing. However, many crime victims report they never received notification of their rights. Currently, there is no delineated process for a victim to follow to inform law enforcement and the prosecutor that they are asserting their rights. The form will ensure victims have been notified of their rights and provide victims a mechanism to request or waive their rights in a uniform and written manner. The form will follow the case ensuring there is a record of the request or waiver as the case moves through the system.

In addition, law enforcement will be required to inform victims of arraignment procedures in each jurisdiction, giving victims the ability to attend arraignment and exercise their right to be heard concerning release terms for offenders. Without the form and this notification from law enforcement, victims are often left unaware of arraignment and are stripped of any meaningful opportunity to seek protection from courts and provide courts with crucial information when courts decide whether to release offenders pretrial and under which terms to release them. Without the protection of the courts, our clients are often left in a dangerous situation when offenders are released. Use of the form and this notification will keep victims and communities safer.

House Bill 610 also provides direction on how to implement Ohio's constitutional guarantee that victims be treated with fairness and respect for their safety, dignity, and



# Ohio Crime Victim Justice Center

privacy. For Ohio's children, this includes special accommodations in our courtrooms. My office represented a child victim in a particularly heinous case, in which the child was abducted, brutally assaulted, and left in the woods to die by his offender. The victim was terrified that he would have to walk past his offender entering the courtroom, just inches from his reach, to take the stand and testify a few feet away. He wanted to testify to ensure that he did everything he could to hold the offender accountable and protect others from harm. My office was able to ensure this child could testify via closed circuit television. However, not every child victim is afforded this option by law.

House Bill 610 increases the ages of children able to testify via closed circuit television or recorded deposition and will also provide additional accommodations for both child witnesses and witnesses who are developmentally disabled. Some of these accommodations include permitting a comfort item to accompany the witness, obscuring the witness's view of the offender, and the right to be asked questions in a manner the witness can understand.

House Bill 610's implementation of the right to be heard also includes a much-needed clarification on a crucial aspect of victim involvement in the criminal justice process-- victim impact statements. As a victims' rights attorney, I have stood next to victims while they have read their victim impact statements to the court at sentencing. For many victims, reading their victim impact statement is the first, and, often, the only time in the criminal justice process where their voice is truly heard. Getting to share this voice at sentencing can be both empowering and help bring closure for victims of crime.

Unfortunately, as a victims' rights attorney, I have also had victims call me after justice system officials have either completely denied them the opportunity to give a victim impact statement at sentencing or limited this opportunity to submitting a written statement, rather than letting them stand up and speak about the terrible trauma and loss they experienced, and how it has impacted their life. Ohio's crime victims are constitutionally guaranteed the right to be heard at sentencing. House Bill 610 empowers the victim to decide how to make their voices heard.

House Bill 610 provides direction on how to implement the constitution's guarantee of full and timely restitution. Restitution is often critical to the victim's financial well-being in the aftermath of a crime. Unfortunately, even after restitution became constitutionally mandated, many Ohio courts ignored this right and refused to order offenders to compensate victims for their losses. My office recently represented a victim of grand theft, where her vehicle was stolen and totaled by the offender. Even though the victim submitted a written victim impact statement, including receipts and estimates, requesting restitution for her economic loss, the court did not award any restitution. Through our representation, the victim was able to get an order that the trial court must re-open



# Ohio Crime Victim Justice Center

sentencing and hold a restitution hearing. While this victim was able to obtain a favorable outcome, many victims will not have the same outcome without House Bill 610.

Finally, House Bill 610 provides victims with the meaningful ability to enforce their rights. Without this key provision, the rights provided in Marsy's Law and the remainder of this bill could be rendered meaningless. House Bill 610 explicitly provides victims of crime with the same appellate options provided to any person in Ohio who has a constitutional or statutory right. Specifically, victims of crime can file an interlocutory appeal, a direct appeal after the conclusion of the case, or a complaint for an extraordinary writ. Each of these means to seek appellate review is different, and each may be applicable in different situations.

For instance, my office often represents victims who are seeking to protect their privacy from offenders who are seeking private victim information to humiliate, harass, and abuse victims. It is, shockingly, very common for a defendant in a child sex crimes case to seek pretrial access to the child's phone, computer, or counseling records. My office once helped a victim in a case where the defense issued 27 subpoenas for victim private records, including school records, housing records, employment records, medical and counseling provider records, and even the adult victim's mother's employment and cell phone records.

Recently, there has been an even more appalling trend--defense motions to access a victim's home to search and photograph it, all while the victim is excluded from their own home.

As the law in Ohio currently stands, in many jurisdictions, courts are only permitting victims to seek appellate review through extraordinary writs. While extraordinary writs may be effective after a case has concluded, unlike appeals, extraordinary writs do not "pause" the underlying criminal case. As a result, a victim who seeks appellate review of a trial court's decision to give a defendant a copy of the victim's entire phone or give the defendant unfettered access to search a victim's home, could still be held in contempt for refusing to comply with the court's order. One Ohio court has gone so far as to suggest that victims should allow courts to hold victims in contempt and possibly jail them, and then file an appeal from their jail cell. Essentially, in Ohio right now, courts are asking victims to choose between enforcing their rights and their freedom.

House Bill 610 will put a stop to this Hobson's Choice by allowing victims to file interlocutory appeals. These appeals will pause the trial court proceeding, thus stopping the trial court from enforcing an order against a victim while the appeals court is considering the case. Interlocutory appeals can be resolved more quickly than most original actions, because they only involve briefing the court, and do not involve the filing of pleadings, discovery, and motion practice like extraordinary writs do. The



# Ohio Crime Victim Justice Center

appellate review mechanisms in House Bill 610 are absolutely imperative to ensure that the will of Ohio's voters is given effect and victims in Ohio are provided the meaningful rights to which they are entitled.

Ohio Crime Victim Justice Center supports House Bill 610 because it provides crime victims with meaningful, enforceable rights and provides criminal justice system officials with the necessary guidance to comply with Ohio's Constitution.