



Office of the Ohio Public Defender

Timothy Young, State Public Defender

SB196 Interested Party Testimony Testimonial Privilege-Sex Crimes Sponsor Senator Eklund

Chair Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to provide written interested party testimony on behalf of the Office of the Ohio Public Defender (“OPD”) regarding Senate Bill 196 (“SB196”).

As the committee knows, the bill makes communications from a victim to a “qualified victim services program” privileged. As defined in the bill, qualified victim services programs include “rape crisis programs.”¹ Below is the definition of a “rape crisis program” from the LSC analysis of SB196.

“Rape crisis program” means, by reference to existing R.C. 109.921 (not in the bill), any of the following: (1) the nonprofit state sexual assault coalition designated by the Center for Injury Prevention and Control of the Federal Centers for Disease Control and Prevention, (2) **a victim witness assistance program operated by a prosecuting attorney**, [Emphasis Added.] or (3) a program operated by a government-based or nonprofit entity that provides a full continuum of services to victims of sexual assault, including hotlines, victim advocacy, and support services from the onset of the need for services through the completion of healing, that does not provide medical services, and that may refer victims to physicians for medical care but does not engage in or refer for services for which the use of genetic services funds is prohibited by R.C. 3701.511 (not in the bill).

Allowing privilege for victim witness assistance programs operated through a prosecutor’s office could result in violations of *Brady v. Maryland*, 373 U.S. 83 (1963), if all exculpatory information is not provided to the defendant. As you know, a Brady violation occurs

¹ Lines 1334 – 1343.

when the state does not disclose evidence that is favorable to the defendant. “[T]he individual prosecutor has a duty to learn of any favorable evidence *known to others acting on the government’s behalf* in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) [Emphasis added.]. If the program is operated by a prosecuting attorney, it will be impossible to determine where the nonprofit work ends and the work of the prosecutor begins. If the advocate is acting on behalf of the prosecutor’s office for any part of the case, then the advocate must adhere to Brady or a violation of the defendant’s due process rights could result.

To avoid Brady concerns, OPD recommends an exception that requires exculpatory and impeachment information provided to a victim advocate that works through a prosecutor’s office be provided to the defendant as required by Brady.

Thank you for your consideration of this suggestion and the opportunity to provide written-only testimony.

