



Ohio Prosecuting Attorneys Association

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Written Interested Party Testimony
Substitute House Bill 33
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Chairman Edwards, Vice-Chair LaRe, Ranking Member Sweeney and members of House Finance Committee, I want to thank you on behalf of Ohio's prosecutors for two things that are included in the substitute version of House Bill 33 and raise one remaining issue we have with the bill.

Funding for Victim Rights Implementation

First, we are most grateful for your inclusion of \$8 million per year for prosecutor victim programs to be used for grants that will enable prosecutors across the state to provide assistance to the victims of crime and to promote victim rights implementation. This funding is critical to our efforts to serve all victims of crime in this state following the passage of the Marsy's Law constitutional amendment and the enactment last year of House Bill 343 (Victim Rights). We want to serve the victims of crime in this state and to make sure that their rights are upheld. Your support for this funding helps us meet our obligations to the victims of crime, to secure justice for them, and to promote the public's safety. We thank you and the communities we represent thank you.

Definitions of "Specific Investigatory Work Product" and "Attorney Work Product"

Second, we want to thank you for the amendment to the public records law that ensures that our attorney work product records are not subject to public records disclosure. The As Introduced version of the bill defined "specific investigatory work product" within the category of confidential law enforcement investigatory records to make clear that these work product records are excluded from the public records act. This is a change that we support in response to recent Ohio Supreme Court decisions that have rendered the specific investigatory work product exception virtually meaningless, have created confusion for law enforcement about what records will be subject to public records disclosure and when, have made it more challenging for law enforcement and prosecutors to protect victim and witness information, and have brought into question the privileged nature of our own attorney work product, from which the specific investigatory work product exception is derived.

Attorney work product has historically been excluded from public records request through the exception for trial preparation records and is even excluded from discovery under Criminal Rule 16. The attorney work product privilege is something that every other attorney enjoys and it should be no different for an attorney for the state. Ohio law should be clear that prosecutors are entitled to the same attorney work product protection as every other attorney. This version of the bill does that by clearly defining attorney work product records. This will help us in our efforts to secure justice on behalf of the state and in our representation of county government.

R.C. 2925.11 – Immunity from Prosecution

Finally, we respectfully request that the changes to R.C. 2925.11 be removed from the bill. Amendments to this section make changes to the “good Samaritan” law by repealing the requirement that someone asserting immunity obtain a screening and receive a referral for treatment and repealing the currently cap in immunity that allows people to claim immunity twice.

Ohio prosecutors are not opposed and in fact support providing the drug addicted with opportunities to seek treatment. Prosecutors have been at the forefront of creating prosecutor diversion programs for drug offenders, the creation of specialized drug court dockets, and implementing intervention in lieu of conviction. We oppose the expansion of the good Samaritan law for one simple reason – it has been our on the ground experience that the current law doesn’t work. It leaves drug addicts who experience an overdose on their own without incentives to seek treatment or supervision in doing so. Prosecutors and law enforcement are the regularly faced with pleas from family and friends of addicts asking them to do something. We are the ones whose hands are tied because of this law and who are forced to tell those same loved ones that there is nothing we can do because the legislature has tied our hands. The “good Samaritan” law, while it feels good, is an obstacle to bringing people into a system that can help get addicts the supervision and treatment that they need. It leaves people on their own to seek the treatment they need. And now this bill would eliminate even the small amount of motivation to obtain a treatment assessment that the current law provides.

Both of these concepts that are repealed in HB 33 were negotiated compromises with OPAA when the good Samaritan law was passed. They are intended to give people the opportunity to call for help without fear of arrest or prosecution but only up to a point. At some point people should be held accountable and, for their own benefit, should be brought into the criminal justice system where they can receive the court supervision and mandatory treatment that they need.

Again, thank you for your support of Ohio prosecutors and for addressing these issues that are critical to our ability to serve our communities and to promote public safety in the State of Ohio.