



Ohio Prosecuting Attorneys Association

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House Bill 33 – Biennial Budget
Interested Party Testimony
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Chairman Miller, Ranking Member Miller and members of House Finance Subcommittee on Public Safety, thank you for the opportunity to testify today on a few items in House Bill 33 that are of importance to Ohio prosecutors.

Funding for Victim Rights Implementation

House Bill 343 was enacted at the end of the 134th General Assembly and will be effective in early April of this year. The bill places new and additional obligations on prosecutors to keep victims informed of the status of their case at various points in the process, to make sure they are notified of various proceedings subject to strict timelines, and to ensure their opportunity to be present and to be heard. As the LSC Fiscal Note for HB 343 states:

The bill increases the duties and responsibilities of local criminal and juvenile justice systems with regard to notifications to victims and their representatives and their participation in various proceedings. Local law enforcement, prosecutors, courts, clerks of courts, probation departments, and custodial agencies will incur one-time and ongoing costs to comply with the bill's requirements. Costs will depend on the number of victims, the frequency of notifications, and the capacity and capability of existing victim notification systems to absorb more work, including the availability of staff and electronic communications.

These new statutory mandates have been placed on us at the same time as severe reductions to the VOCA grant funds that have historically funded the victim rights programs that provide these victim services. This past fiscal year prosecutors' offices or the entities that they have designated to provide victim services received approximately \$8 million less in grant funding for victim services statewide than they did in 2019. Because of these cuts prosecutors have been forced to cut back on the number of employees and/or hours of work employees dedicate to victim services. This has happened simultaneously with the legislature requiring us to do more.

We need financial assistance from the legislature to bridge the cuts to VOCA grants so that we can meet our constitutional and statutory obligations to all victims of crime.

OPAA Supports the Following Changes in House Bill 33

R.C. 149.43 – "Specific Investigatory Work Product"

The bill creates a definition of “specific investigatory work product” within the category of confidential law enforcement investigatory records and makes clear that these work product records are excluded from the public records act. We support this change that is being made in response to recent Ohio Supreme Court decisions that have rendered the specific investigatory work product exception virtually meaningless and created confusion for law enforcement about what records will be subject to disclosure and when. This problem was most recently highlighted in a case called *State ex rel. Myers v. Meyers*, Slip Opinion No. 2022-Ohio-1915, where the Court determined that “supplement narratives” that are part of a police report may be subject to public records disclosure depending on the time at which they were created or how they are stored. These supplement narratives, unlike the incident report that has standard fill-in-the-blank information, often include information like the personal notes of the investigating officer, summary witness and victim interviews, and the officer’s evaluation of the alleged offense.

Decisions on the specific investigatory work product exception have made it more difficult for law enforcement and prosecutors to protect victim and witness information from disclosure and require the premature release of investigatory work product to the public. As proposed, the definition of specific investigatory work product, includes prosecuting attorneys. While we support this definition and addressing this issue, we prefer that our attorney work product be treated separately through an exclusion specific to attorney work product records. Our work product has historically been excluded from public records requests through the trial preparation records exclusion that has also been brought into question by these recent cases. Attorney work product is excluded from discovery under Criminal Rule 16. Ohio law should be clear that prosecutors are entitled to the same attorney work product protection as every other attorney.

R.C. 5149.101 – Full Parole Board Hearings

The bill amends the law surrounding parole board hearings in two ways that we support. First, the amendments authorize the prosecuting attorney to submit a request directly to the parole board requesting a full board hearing for a person convicted of a violation of section 2903.01 or 2903.02 of the Revised Code, an offense of violence that is a felony of the first, second, or third degree, or an offense punished by a sentence of life imprisonment, and requires the board to hold the hearing, and require the board to have the full board hearing. Second, the changes provide similar rights for certain family members of a victim to request a full board hearing through the office victims’ services and to receive a full board hearing. We support these changes.

OPAA Opposes the Following Changes in House Bill 33

R.C. 120.06 and 120.08 -

These provisions require the state public defender, when designated by the court, or requested by the county public defender or director of DRC, to provide legal representation in full parole board hearings as well as parole eligibility hearings under R.C. 2967.132. They also authorize the state public defender to contract with private counsel for these services if it determines that it does not have the capacity to do so itself.

Representation at parole board hearings is not indigent defense. These are offenders who have been convicted, most often of horrendous crimes, and who are serving their sentence. They are not entitled to legal counsel provided at public expense in attempts to be released from prison. If offenders are to be provided with the right to counsel at parole hearings at public expense, the General Assembly should provide counsel to the victims of their crimes at public expense as well. Marsy’s Law provides that the rights of victims are to be protected in a manner no less vigorous than the rights afforded to the accused. If the accused is to be

given the right to counsel at public expense to represent them at parole proceedings, victims should be afforded that right as well. We are opposed to this provision, at least without a similar right for victims to be provided with representation at public expense.

R.C. 2925.11

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 ones 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 of immunity. 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.

Both of these concepts that are repealed in HB 33 were negotiated compromises with OPAA when the good Samaritan law was passed. As with the medical marijuana expansion, these changes go back on that compromise. We should be rolling back this law or at least ensuring that there are other mechanisms in place to require people to seek treatment. We are opposed to this change.

Medical Marijuana

Finally, the bill removes the State Board of Pharmacy from its oversight role in the state’s medical marijuana program and places oversight solely within the Ohio Department of Commerce. While this proposal went through a separate Finance subcommittee our Association has public safety concerns with expanding the availability of marijuana in Ohio. The State Board of Pharmacy is, according to their website “the single State agency in Ohio responsible for administering and enforcing laws governing the practice of pharmacy and the legal distribution of drugs.” Marijuana remains a Schedule I controlled substance and should therefore remain subject to oversight by the entity charged with oversight of the legal distribution of drugs - the State Board of Pharmacy.

Thank you again for your consideration of our concerns. I would be happy to answer questions.