



SB 227
Proponent Testimony
February 10, 2016

Chairman Coley, Vice Chairman Seitz, Ranking Member Yuko, and members of the Senate Government Oversight and Reform Committee -- thank you for the opportunity to testify in support of Senate Bill 227. My name is William O’Gorman, and I am the Senate legislative liaison for the Ohio Attorney General Mike DeWine’s Office. Over the past three years, we have been compiling a list of minor legislative changes so that our office can more thoroughly and effectively carry out its duties to protect Ohio families. Because the vast majority of these proposed changes are relatively minor in scope, we have combined them into an omnibus bill for your consideration. It is my intention to give a general overview of the legislation and defer to our office’s experts to respond to any questions the committee may have.

Ohio Organized Crime Investigations Commission

The Ohio Attorney General’s Organized Crime Investigations Commission (OOCIC) promotes cooperative law enforcement efforts to combat organized crime. Since the OOCIC must oftentimes “follow the money” to find a thief or thieves, there is no way around the need for obtaining financial records. Our office spends thousands of dollars on rates that financial institutions charge for complying with subpoenas. Under current law, subpoenas that prosecuting attorneys and grand juries issue are exempt from such fees. SB 227 would grant that same exemption for the Attorney General.

The OOCIC is also requesting the creation of the Organized Crime Law Enforcement Trust Fund. The money for this fund would come from criminals via court order, and it would not establish any new fees. This would merely create a designated fund within the Attorney General’s office.

Public Records

We are also seeking minor changes to certain aspects of Ohio Public Records Law. SB 227 provides that materials submitted to a public office in response to a competitive solicitation become public record either on the date when the public office announces the award of a contract or 180 days after the public office opens the bids or the request for proposal period expires -- whichever is earlier. This change is designed to prevent would-be bid riggers from gaining valuable information on other potential bidders prior to the bids being opened.

Another clarification to Ohio Public Records Law would be to expand exemptions to include “personal information,” which is defined as an individual’s Social Security Number, federal tax ID, driver’s license number, checking and savings account number, or credit card number. The current protections are both incomplete and convoluted to apply, so this would provide a clear exemption by cross-referencing into R.C. 149.43(A)(1)(dd) the “personal information” defined in R.C. 149.45, adding it to R.C. 149.43(A)(1)’s list of records that are not public records.

Additionally, SB 227 would also expand the Public Records Law training that the Attorney General’s Office provides to include Open Meetings Law training.

Collections Enforcement

The AG's office has the legal authority to collect debt owed to the State. Our Collections Enforcement Section is responsible for collecting outstanding debt owed to state agencies, institutions, boards, commissions, public universities and hospitals, and local government entities. SB 227 clarifies that debtors who have avoided paying their obligations on time have to bear the cost of collection. The alternative requires taxpayers who timely pay their State obligations to bear these costs.

To assist individuals and businesses who are seeking to resolve their financial obligations to the State, our office contracts with private collection entities. Currently, the law requires these collection entities to use AGO letterhead -- but only in the collection of certain taxes. There does not appear to be any logic in the types of debt that require the use of letterhead and those that do not. So, this legislation would clarify the intentions of the General Assembly that special counsel should use AGO letterhead in all collection cases. With this clarification, if a taxpayer has a complaint about actions taken by special counsel or wants to confirm who special counsel is, the AGO's contact information is on the letter they received.

SB 227 also would modify the Medicaid Estate Recovery Program by eliminating the requirement to complete a transfer on death affidavit unless the decedent was or may have been a Medicaid recipient. It would eliminate the obligation that county recorders send transfer on death affidavits to the administrator of the Medicaid Estate Recovery program for every decedent. This would save time and money for the AGO, which is the administrator of the Medicaid Estate Recovery Program, as well as county recorders by reducing unnecessary filings by an estimated 75 percent. The new form, as described in this legislation, is simpler, and county recorders would not need to mail it. The AGO would not have to handle the forms for non-Medicaid decedents, thus saving both time and money.

Bureau of Criminal Investigation

The Attorney General's Bureau of Criminal Investigation (BCI) has an Identification Division that provides up-to-date records and serves as the central repository for fingerprints, palm prints, photographs, and other information related to arrests within the state. In an attempt to clarify language from recent collateral sanctions legislation, SB 227 would allow the release of information during a background check if criminal action resulting from an arrest is still pending.

To further clarify when certain information can be released during background checks, this bill contains language that would permit a law enforcement agency -- the Ohio Department of Rehabilitation and Correction or the Department of Youth Services -- to inspect a sealed criminal conviction record of a person who applies for employment in any capacity within that agency or department.

It would also allow a court to have an individual's fingerprints taken at the time of sentencing if they had not previously been taken at the time of arrest, arraignment, or first appearance as required. This allows for a more timely disposition of reporting to BCI and supports new LiveScan technology that has been or is being distributed to over 100 courts for collection purposes.

The bill would also allow the AGO to establish an additional fee to be paid to seal a conviction, unless the applicant is indigent. Another provision would make it clear that the Superintendent of BCI may assist a coroner in identifying a deceased person through BCI fingerprint records.

The Investigation Division of BCI assists local, state, federal, and international law enforcement agencies in securing and analyzing evidence, addressing legal issues, and providing other services necessary to help with thorough and successful criminal investigations. This language makes an addition to existing law to allow BCI to receive a share of assets that have been forfeited and awarded to the state, as current law only allows BCI to receive shares from federal forfeitures. This change would allow BCI to provide more assistance to law enforcement agencies at every level.

Medicaid

SB 227 would codify the practice of the AGO Medicaid Fraud Control unit to carry concealed firearms in performance of their duties. These investigators receive more than the minimum amount of firearms training that is required for peace officers. Also the legislation would make Patient Abuse, as it relates to abuse by a care facility employee against a resident or patient of the care facility, an offense of violence. Patient Abuse includes all of the elements of Assault, and since the assailant holds a position of trust or authority over their victim, the nature of the offense is more serious than other crimes currently defined as offenses of violence.

Anti-Trust

SB 227 contains proposed revisions to the Valentine Act (Ohio's antitrust statute) and related statutes. The bill includes a provision protecting the confidentiality of all information gathered in an antitrust investigation. This change is designed to make it easier for individuals and businesses to cooperate with an AGO investigation by protecting their sensitive business information from public scrutiny. The restriction is modeled after a similar statutory provision already contained in the Consumer Sales Practices Act.

The bill also clarifies that collusion between a vendor and a public employee in the letting or awarding of a public contract is a violation of Ohio's antitrust law. This change would enhance the Act's effectiveness in punishing vendors who enlist the services of public employees to override the competitive process and steer business.

The proposed amendments also seek to modify the penalties contained in the Valentine Act to more adequately address some of the most egregious forms of economic crimes, such as price-fixing and bid-rigging. Even with the proposed amendments, the Valentine Act's penalties will not be as severe as sanctions for violations of federal antitrust laws. However, this bill clarifies what constitutes a violation and imposes sanctions for violations of the Act that are more in line with penalties currently provided for in the Revised Code for similar economic crimes.

Likewise, the proposal, which is modeled after other similar statutes in the Revised Code, contains a graduated scale for penalties based on the amount of the underlying contract and whether the transaction involves public dollars. Additionally, the bill adds a violation of the

Valentine Act to the long list of economic crimes that are predicate acts for a violation of Engaging in a Pattern of Corrupt Activity under Ohio law.

Consumer Protection

SB 227 makes several updates and clarifications to the Consumer Sales Practices Act (CSPA) without expanding its jurisdiction. First, this bill would make a supplier's failure to be licensed, registered, insured, or bonded as required by state law or local ordinance an unfair or deceptive act or practice. Furthermore, the proposed amendments clarify that R.C. 1345.031 applies only to scams involving the origination of mortgage loans and that R.C. 1345.03 can still apply to those scams related to other aspects of consumers' mortgages. The amendment would not expand the overall jurisdiction of the CSPA, because a transaction must still meet the definition of consumer transaction in R.C. 1345.01(A).

Language in SB 227 also updates sections of the Homes Solicitation Sales Act (HSSA) and Prepaid Entertainment Contracts Act (PECA). The HSSA and PECA set forth certain requirements that a supplier must follow if he or she solicits a consumer in their home or for the purchase of a prepaid entertainment contract (e.g., package of dance lessons or a gym membership). Due to concerns of potential deception, consumers currently have a three-day right to cancel the transaction into which they entered. The proposed changes in SB 227 would update current law, as it was drafted before the advent of modern technology. The changes will give consumers the ability to cancel by certified mail, personal delivery, fax, or email. This bill would also add Martin Luther King Jr. Day to the list of days excluded when calculating a consumer's right to cancel.

The last modification regarding the Consumer Protection Section is a change that would require the AGO to submit a report of enforcement actions taken against loan officers or mortgage brokers as they occur, rather than quarterly as required by existing law. The current law was drafted during the mortgage foreclosure crisis, and there have been very few enforcement actions over the last several years.

Charitable

SB 227 would make a clarifying change that would require out-of-state charitable organizations, professional solicitors, and fund-raising counsel to pay late fees for failure to submit required information on time. Currently, only in-state charitable organizations are required to pay these fees. This change would bridge an inconsistency in the Ohio Revised Code.

Crime Victim Services

Rather than propose new revenue sources, SB 227 would allow the Reparations Fund to retain its own interest. This proposed change is estimated to contribute about \$50,000 each year to help victims of crime in Ohio. The legislation would also remove the statute of limitations for juveniles to be eligible to receive compensation from the Reparations Fund. By leaving the statute of limitations for juveniles in place, minors may be left in an unfair position. There is no statute of limitations for adults.

Environmental Section

The AGO Environmental Section has also requested two changes. The first change is a simple clarification of R.C. 2923.02 that deals with crimes in relation to the attempt at illegally disposing of hazardous waste. This clarifying change only cleans up the current provision, and does not change enforcement authority.

Second, the bill would add certain felony violations of the Solid and Hazardous Wastes Law to conduct constituting corrupt activity under the Ohio racketeering law. Currently, no environmental offenses are predicate offenses as defined in the state RICO statute. However, it is common for groups of individuals to conspire to violate these statutes due to the profit available from such violations and the utilization of cash to pay for activities that may violate these statutes. This would allow prosecutors to more adequately address these criminal schemes.

Children's Initiatives

Finally, SB 227 would require any child pornography that is offered as evidence or that comes into the custody or control of the prosecutor or court to remain in the custody of the prosecutor or court's control. In the federal system, the defense is permitted to inspect the material, but is not provided with a copy. Child pornography, by its nature, is contraband, and in no other prosecution does the state provide contraband to the defense. This provision would simply mirror federal law to help protect victims who are children.

Chairman Coley and members of the committee, thank you again for your time and attention to these matters. I would be happy to answer any questions you may have and defer to AGO experts when relevant.