

Testimony to House Criminal Justice Committee on Senate Bill 36

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Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the committee, thank you for allowing me the opportunity to provide testimony on Senate Bill 36.

My name is Michael Falleur. I am a lawyer based in Columbus. I have been involved with Ohio's crime victims' reparations program since it's earliest days when I was a staff attorney at the Court of Claims. I have been in private practice of law since 1982, and we estimate our office has handled about 6,000 of the claims within this program. We share the goals of seeking to extend this program to those deserving persons who have been physically victimized during crimes, while retaining the limited resources of the reparations fund so that it can support the victims community.

I am overall supportive of the goals sought to be achieved in S.B. 36, but I believe a following revisions to the bill are necessary:

1. The Bill will reintroduce a statute of limitations for the initial filing of a reparations claim. In the early years of the program, a two-year statute was in place. Some years later, all filing limitations on original claims was eliminated. S B 36 would introduce a THREE-YEAR statute of limitations on claims, with specific notation that minor victims would have until age 24 years in which to file their initial claim.

From my personal perspective, this is a tolerable change with ONE EXCEPTION. Sexual abuse victims who are minors when victimized, should have until AGE THIRTY (30) before their statute for filing would run out.

The statute of limitations in Ohio for civil actions to be brought by persons when minors when victimized, per 2305.111 ORC, is age 30 (twelve years from the date of majority). The filing period in this program for the same group of juvenile victims of sexual assault should not be less than the civil rule. I would encourage the laws to have the same statute of limitations window, not closing until age 30 for either.

It is our experience such victims often do not fully comprehend what occurred to them as minors, nor do they have the confidence to speak up or speak out until they are further into their adulthood. I can confidently state that we've had more about victims speak out for the first time after age 25 than between ages 18 and 25.

2. The current version of SB 36 would open eligibility to the reparations program to certain persons previously barred. In the recent past, persons with any felony conviction that has occurred within 10 years of their victimization or during the pendency of their reparations claim, would be barred from the program.

Having experienced prior changes to this code section years ago, I would prefer to see

persons with convictions for first degree felonies remain subject to the 10 year bar from eligibility. The optics of providing the limited benefits of this fund to the worst of all criminals is not good. It may also serve to re-victimize the victims and families of such criminal misbehavior. The statutory elimination of all other conviction restrictions should be removed, as the current bill provides.

3. Ohio has excluded victims who were deemed to have been engaged in felonious conduct at the time of their victimization were excluded from eligibility the program. This rule has included denying eligibility for persons where a toxicology test in an emergency room showed “Presumed Positive” for scheduled medicines. That was not the intent of this restriction when enacted about forty years ago.

Persons actively involved in perpetrating crimes when injured such as an arson, such as the burglar or robber, would still be excluded from the program due to their “contributory misconduct” resulting in their victimization. Eliminating the “felony conduct” language would most significantly eliminate the current restriction on the toxicology claims where the origin of the sample is stated by medical records as not being sufficiently reliable for legal purposes.

Removal of this “conduct / toxicology” exclusion would bring Ohio's program back in line with other states. It also should be written to apply to ALL PENDING CLAIMS in order to avoid any further restrictions upon otherwise worthy victims' claims.

4. SB 36 would codify what we refer to as “victims in their own right” (VIOR) claims for family members or other substantially close persons of victims who have suffered life altering injuries or death. Much like the Wrongful Death statutes of all states, this statutory action recognizes that others beyond the physical victims of crime may have their lives altered significantly by the crime upon a loved one.

It is commendable for such claims to be set forth in the statute rather than be the result of statutory interpretation or adoption of civil case law. These can be difficult claims to prove both eligibility and the extent of injury. We find them to be among the most difficult claims we handle in this program.

However, SB 36 states legal fees will NOT be paid to an attorney for representation of such a VIOR claimant. I do not see the rationale for such restriction. The claimants handling the weight of substantial emotional stress or life altering state is expected to prosecute their claim within this program themselves or pay an attorney for such services is contrary to the very intent of this program. Currently, if victims can find an attorney to undertake their reparations claim, such attorney will be paid a modest rate for work on the victim's behalf. The guideline should be no different for these victims whose main harm has been one of extreme emotional distress due to a crime upon a dependent or loved one.

Making these changes will improve the bill while retaining, if not enhancing, the sponsors' goals. Victims of crime are most worthy of support, and I am glad this General Assembly is taking the time to consider reforms to the system created to provide that support.

Thank you again for the opportunity to testify. I am happy to address any questions at this time.