



**Representative Andrea White**  
**41<sup>st</sup> House District**

**HB 343 – Sponsor Testimony**

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Good Morning Chair LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the Ohio House Criminal Justice Committee.

I appreciate the opportunity to stand before you on behalf of victims of crime to present sponsor testimony in support of House Bill 343. This bill addresses what must be done in our criminal justice system to update, clarify and synchronize Ohio’s crime victims’ rights laws with the “Ohio Crime Victim Bill of Rights” contained in the “Marsy’s Law Amendment.” Ohioans overwhelmingly (83%) supported and enshrined this amendment in our Ohio Constitution under Article 1, Section 10a in 2017. (And, for your reference I have provided with my testimony today that language which clearly spells out these rights.)

As a result of this amendment, the Ohio Constitution now requires that victims of crime shall have their rights protected in a manner no less vigorous than that of a person accused of committing a crime. The Constitution also now delineates a broad definition of “victim” to include not only the person against whom the criminal offense or delinquent act is committed, but also those who are directly and proximately harmed by the commission of the offense or act against another person.

With House Bill 343, the constitutional protections and rights for crime victims will be fully enabled with workable statutory provisions to achieve justice and due process for victims. As you may recall, Speaker Cupp introduced a similar bill in the spring of 2020 that was drafted and coordinated with victims’ service organizations and criminal justice officials. After proponent and opponent testimony last General Assembly, more work was needed to address the issues raised.

Speaker Cupp’s new duties necessitated that another member move this bill. I am honored to have been asked to carry the torch forward, so to speak, on behalf of the crime victims of this state. I do not take this lightly.

To get the ball rolling this GA, I introduced House Bill 343 in late June with a small number of agreed upon changes to the original bill. Next, we got to work in good faith and alongside many smart,

passionate, dedicated individuals representing a wide variety of interested parties. We sought input from not only victims' advocates, but prosecutors, defense attorneys, judges, clerks of court, law enforcement and corrections officials. While this is indeed a "Victims' Rights Bill," it must be workable in our justice system.

Serving for 17 years as an elected clerk of court, I have tremendous respect for and acknowledge the differences in the roles and responsibilities of all parties in the criminal justice system. There are thousands of excellent professionals in this state working on all sides to protect the rights of the victim, the accused and the state. People of good will and intent. But they're not mind readers. And because of their roles and because they are human, they're not all the same in how they may approach and interpret the provisions of victim's rights spelled out in our Constitution.

That is why this legislation is needed and why we have included some of the various new provisions I'm about to describe – to ensure consistency across our state's criminal justice system and to ensure alignment with the rights our Constitution clearly protects – both for the victims, the accused and the state whether you live in Cleveland or Clermont County.

The dozens of changes hammered out in this sub bill reflect the combined input of many minds and I truly want to thank the interested parties for working with me to come up with solutions. I want to point out that because of the various criminal justice system roles represented in this process, there will ultimately be differences of opinion in some aspects of this bill. I recognize that this is still a work in progress. We have listened, we have compromised. Now it is time to let the committee process begin.

Out of respect for your time, I won't go into all of the changes in the substitute bill before you today. I am, of course, more than happy to review each and every one with you should you wish to dive that deep. Today, I will outline some of the more significant changes made in the version of HB 343 before you now.

A key overarching principle in this bill is to ensure that victims are able to understand, exercise and enforce their rights accorded to them by the Ohio Constitution - some of which are automatically guaranteed by the Constitution and others which must be invoked, or opted into, as you can see in Article 1, Section 10a. Equally important is the fact that all parties in the criminal justice system must know these rights, respect each victim's choices, and be engaged in uniform procedures so that the rights of everyone can be balanced and protected throughout the criminal justice process.

- To that end, one important clarification in the sub bill involves changes to the "Marsy's Law Victim's Rights Request/Waiver Form." This form will be provided at the initial contact with local law enforcement, will be again be offered to the victim by the prosecutor if it was not previously completed by the victim, and will also be used at the time of conviction should the defendant be transferred to the Department of Rehabilitation and Corrections. The bill outlines form content and directs the Supreme Court of Ohio to create a standardized form.

This form is so important as it outlines guaranteed rights for the victim and provides the opportunity for the victim to “opt-in” or waive rights which must be requested – such as the right to reasonable and timely notice of all public proceedings and to confer with the attorney for the government during the criminal justice process. It enables victims to identify their designated representative or victim advocate, and it empowers them to decide how they wish to be contacted and at what address. By placing this information on the record, the court becomes aware of the victim’s choices and that record is preserved in case an individual believes their rights were violated and they wish to appeal. This was also done in response to the argument that the Marsy’s Law constitutional amendment is too vague.

- Dovetailing off the use of this form, a significant addition to the sub bill involves the interplay between Ohio’s public records law, the Supreme Court Public Access Rules of Superintendence and the victim’s right to be treated with fairness and respect for their safety, dignity and privacy. I have spent many hours considering this because as we know, there are people seeking access to police and court records often from the moment a crime occurs. That means we need to get this aspect of privacy right from the beginning. What we arrived at was a change that basically works like this:
  - A victim’s first contact with law enforcement is usually at the crime scene where they provide their name and identifying information as part of the initial interview. When an officer files their report, they will now record that confidential information separately in their record management system. This will shield victims’ privacy by keeping their names out of the initial summary report that becomes public when a suspect is officially charged. Officers will also file victim identifying information with the court on a separate non-public paper or electronic document to ensure victims are identified upfront to court clerk staff so that their privacy can be protected. Additionally, many courts are now receiving initial criminal complaints and affidavits online so they need a way to know whose privacy needs to be protected as documents are scanned for redaction.
  - As I mentioned earlier if, for some reason, a victim is incapacitated or chooses not to complete the “Marsy’s Law Form” with law enforcement, they will again be asked to complete the form by the prosecutors when they become involved in the case. If the victim doesn’t fill out the form at this stage – or opts out by waiving their rights – then the victim has alerted the courts, prosecution and all involved parties that they may proceed without redactions or other confidential page withholdings.
  - When the case reaches the sentencing stage, the court must again ask the victim (if they are there and involved) if they want to update their form’s contact information and notify them that – moving forward – they need to let probation or the

Department of Rehabilitation and Corrections know of any change. This is so that these entities know who to contact and how when post-conviction matters arise.

- This structure is how we have tried to respect the privacy rights of victims while alleviating unnecessary redaction burdens and continuing the flow of public information in accordance with laws, rules and the Constitution. I want to add that there are some technical language around this process that still need work, but I have outlined the basic system here.
- Another aspect - the bill addresses when and how a victim is notified and consulted when defendants request record sealing or expulsion if the victim has opted in to these rights. This allows a victim who wishes to speak or be present the opportunity to convey their thoughts to the court.
- The bill adds protections for child victims as well as victims with disabilities.
  - Under current law, if a victim is under the age of 13, and the underlying crime charged is one of the codified crimes listed, they are granted additional protections regarding live testimony. The sub bill keeps this, but expands these protections to all juvenile victims under the age of 18 if the prosecution – or the victim’s legal representative – can show that live testimony would produce serious emotional trauma. This expansion does require a burden of proof, but it should serve to protect these juvenile victims who are most vulnerable.
  - Similarly, under current law, if the victim has a developmental disability, and the underlying crime charged is one of the codified crimes listed, they are also granted additional protections regarding live testimony. The sub bill again retains this, but expands these protection to all victims with a developmental disability – for any underlying crime charged – if the prosecution – or the victim’s legal representative – can show that live testimony would produce serious emotional trauma.
- Throughout the bill, there are clarifying updates around who can attend court proceedings, who has a right to speak, and who should be notified in what time frames. Again, the return of the Marsy’s Law form will assist with this by keeping all parties informed regarding service and notice.
- The “As Introduced” version of the bill and the substitute bill also differ in the section which addresses restitution. Several parties felt the original bill language went too far, or was too prescriptive to the courts. While we want some clear parameters to ensure all victims in Ohio are treated equally on a base level, we understand there are cases now being litigated

so we have tried to remain silent on some aspects. The sub bill still establishes a consistent standard but contemplates that other items may constitute “restitution.”

- With regard to the Discovery section of the “As Introduced” version of the bill, significant changes have been made to clarify when and how protections are needed for victims. I recognize – and fully appreciate – that in the United States of America a defendant also has rights and these rights must be protected. The discovery phase is important, and if exculpatory evidence is found, it should – and must – be turned over to the defendant and their attorney. What we clarified in the substitute bill is that a victim who has opted in to notification rights and kept their contact information current should at least know when the defendant is doing something like seeking their medical or psychological records. They should have a chance to object and make a motion to quash. We have built this in “at the back end” rather than at the front end, so that a defendant doesn’t *first* have to prove to a court why they believe they need that information -- we were told this could jeopardize their defense strategy. So, we collectively landed here, and I appreciate all the work that has been done by interested parties to find a path forward in this section.
- Another matter brought to our attention in good faith by the defense bar was that the way the “As Introduced” bill was written, they couldn’t really confer with the victim if the victim wanted to talk to the defendant and/or their lawyer. We amended the bill so that – should a victim agree – a defendant’s attorney can reach out to them, tell them who they are, and speak with them. The prosecution isn’t the “gatekeeper” in this area if the victim wishes to speak to the defendant.
- With regard to re-opening pleas and/or sentences, we have addressed this in the substitute bill. This is another “tug-of-war” issue amongst the interested parties. Indeed, the Constitutional amendment isn’t particularly clear, and I have heard horror stories of victims who were excluded against their will without remedy. We have chosen to generally leave the current law in regarding opening a plea or sentence. However, we have placed “speedbumps” into the bill which clearly direct the courts to document if the prosecutor has attempted to confer with the victim who has requested this right, and to continue the hearing without ruling on substantive issues that impact victims’ rights if they have not. We have also added in language regarding post-conviction relief - an area that has proved to be less controversial.
- The substitute bill also removes some “As Introduced” language that mandated DRC review a lot of mail and maintain records on court orders for who a defendant can contact – for example if the defendant’s children reside at the home where the victim lives. We believe Protective Orders and other mechanisms exist to protect the victims from harassment from incarcerated individuals, and so I agreed to remove that burdensome language from the bill.

- A final issue that we have been tackling is the matter of interlocutory appeals. This is a complex area, as all interests don't line up. I understand that, and I respect that. But, we need a practical solution that is going to be transparent and workable within the constraints of the court system, since victims have a right to ask a court to review and to appeal when they believe their rights are being violated at the trial court level. Let's keep in mind that this potential rights violation may be unintentional on the part of the case parties, as this is a new area of law that lacks significant court case law precedence. To try to resolve issues quickly, we have proposed that the victims have 14 days to file their appeal once told of a final order by a prosecutor. Some say this is too long, others say this is too short. We have tried to build in a system that quickly answers the question on appeal so that the trial court can get the case moving again before the evidence gets stale or the case time limits stretch too long.

We are requiring the reviewing court to place the appeal on their expedited schedule, so that resolution can come quickly. One thing we heard from the appellate court position was that they might have an issue getting the transcript to them in time. To address this, we added a provision that they can order outside parties – through the court rules process – to transcribe the record. This would get the transcript to the reviewing party quicker so that the case can be decided more expeditiously, and the lower court can proceed with the criminal case. I admit this section remains a work in process, but I believe we have come a long way – and I appreciate the honest conversations our interested party groups have had to get here. I intend to continue to seek input in this particular area, but at this point we have revealed in the substitute bill where we are at this time.

Balancing the rights of victims, the accused, and the state is essential to preserving the foundations of justice for all. We have attempted to strike this balance with this substitute bill and more work will be needed, no doubt.

I know this is a lot of information and this is a big bill. But, I hope this committee has the appetite to review it all and promptly consider this bill. I believe it will go a long way towards giving guidance to the parties currently navigating this in the criminal justice system – and does so in a way that respects the rights of victims as enshrined in Ohio's Constitution.

.With that I thank you for your time, and welcome any questions you may have.