



# Ohio Prosecuting Attorneys Association

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House Bill 343  
Interested Party Testimony  
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Chairman LaRe, Vice-Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide interested party testimony on House Bill 343 regarding victim rights. My name is Jane Hanlin and I am the Jefferson County Prosecuting Attorney, President-Elect of the OPAA, and current Chair of the OPAA Legislative Committee. Part of the mission of the OPAA is to advocate for public policies that strengthen prosecuting attorneys' ability to secure justice for the victims of crime. Prosecutors are driven by their desire to do that. They work diligently to keep victims informed about what is going on in their case, to make sure that they have the opportunity to be heard, and to make sure that their rights are otherwise respected. House Bill 343, with some additional changes, will help provide clarity on a variety of these issues.

I want to first commend Representative White for her work getting the bill to the point where it is and trying to build consensus among a diverse group of stakeholders on some complex criminal justice system issues. The bill that we have been working on will be a better law for it. There have been four main areas of the bill that we have sought changes to: (1) the definition of victim, (2) the right to confer with the prosecutor, (3) the interlocutory appeal, and (4) funding for implementation.

## Definition of Victim

The legislation provides in R.C. 2930.01(H) that "victim" has the same meaning as in section 10a of Article I of the Ohio Constitution. Section 10a of Article I provides that "'victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim."

This arguably creates two types of victims for the purposes of Marsy's Law, the direct victim of the act and some other undefined persons who suffer some indirect or proximate harm as a result of the direct victim's victimization. The problem is that the constitutional definition is unclear and arguably conflates the direct victim and the indirect victims through the use of the phrase "directly and proximately." Because it requires that these indirect victims suffer "direct and proximate" harm we are concerned that this could be interpreted by courts narrowly and in a way that unnecessarily excludes indirect victims who should be entitled to Marsy's Law rights.

To prevent the exclusion of at least those victims who are most likely to suffer proximate harm as a result of another person having a crime committed against them, we suggest an amendment to the definition of victim in R.C. 2930.01 that would provide for the purposes of Chapter 2930 that "directly and proximately" means "a person who has suffered psychological or financial harm as a result of a criminal offense or delinquent act that has been charged and that was committed against the person's family or household member." This would define

the scope of what it means to be an indirect victim ensuring the rights of those most likely to suffer proximate harm and also necessarily excluding those who might make unwarranted assertions that they are entitled to victim's rights. Our proposed definition is attached.

#### The Right to Confer with The Prosecutor

The substitute version of the bill provides in R.C. 2930.06(A)(3) that "If the court determines that timely notice was not given to the victim and victim's representative, if applicable, that the victim and victim's representative were not adequately informed of the nature of the court proceeding, or that the prosecutor failed to confer with the victim and victim representative as required by this section or Ohio Constitution, Article I, Section 10a, the court shall not rule on any substantive issue that implicates a victim's right, accept a plea, or impose a sentence and shall continue the court proceeding for the time necessary to notify the victim and victim's representative, if applicable, of the time, place, and nature or the court proceedings."

We have concerns with what it means to provide "timely notice," what it means to make sure that the victim is "adequately" informed of the nature of the proceedings, and with the court being prohibited from accepting a plea or imposing a sentence unless the prosecutor has actually conferred with the victim or victim's representative. We previously had an agreement with the proponents that the requirement to confer with the victim be the same as it is in R.C. 2930.06(A)(1), a requirement to confer "to the extent practicable."

To clarify these concerns, we suggest an amendment that requires the court to inquire as to whether or not the prosecutor made reasonable efforts to confer with the victim at all stages set forth in R.C. 2930.06(A)(1), and if reasonable efforts were not made, to require the court to continue the proceeding for the time necessary to allow the prosecutor to make reasonable efforts to notify the victim. The division should also allow the court to act if failure to do so could result in a dismissal of charges due to a speedy trial violation. Our proposed amendments are attached.

#### The Interlocutory Appeal

The substitute version of the bill sets out to establish strict timelines for an interlocutory appeal to take place in order for a victim to enforce his or her rights. It does this by requiring the court of appeals enter an order establishing an expedited schedule and says that the court shall enter judgment within thirty days of submission of the briefs or oral argument, whichever is later.

A strict timeline is needed in order to prevent intractable delay in the midst of the state's case. While we appreciate the amendments to the interlocutory appeal that have taken place, more clarity is still needed. A court of appeals could still delay decisions on these appeals by delaying the briefing and oral argument dates. We are continuing to work with Rep. White to ensure that the entire interlocutory appeal will take place within a thirty-day time frame in most cases. One other idea that we have sought to include in this area of the bill is a motion to dismiss framework that would allow the State or the defense to seek to have frivolous interlocutory appeals dismissed at the outset to prevent even a thirty-day delay. We continue to believe that this concept has merit and encourage the committee to consider including it in the bill.

#### Funding for Implementation

The final critical request we have is for financial help to implement Marsy's Law. Prosecutors are asked to do more for more victims under the constitutional amendment and this legislation. They are being asked to do this at a time when the funding that supports their ability to do this has been drastically cut. Victims of Crime Act (VOCA) grants are the primary source of federal funding for victim service providers across the nation. Prosecutors offices rely on these grants to employ victim/witness advocates who are responsible for staying in contact with victims, keeping them informed about cases, and otherwise ensuring that the needs of victims who

are involved in the criminal justice system are met. Ohio's allocation from the federal fund decreased 67% over three years starting in 2019. Last year, Congress passed legislation that will eventually restore some VOCA funds but it will take some time for those funds to replenish and to be disbursed to the states.

During the last biennial budget, you restored several million dollars of funding for rape crisis centers and for domestic violence programs. These are dollars that are well spent and well deserved for these programs. Prosecutors offices have constitutional obligations to the victims that they serve and they are struggling to meet their constitutional obligations due to loss of these VOCA funds. We need some restoration of funds too, at least temporarily, in order to meet these obligations. It is critical if we are to make this legislation and the constitutional amendment work.

Thank you again for the opportunity to provide interested party testimony. I would be happy to answer questions.

2930.01

(H) “Victim” means either of the following:

(1) A person against whom the criminal offense or delinquent act is committed. ~~A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.~~

(2) A person directly and proximately harmed by the commission of the criminal offense or delinquent act. ~~A person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section, whichever is applicable~~

(3) “Directly and proximately harmed” means a person who has suffered psychological or financial harm as a result of a criminal offense or delinquent act that was committed against the person’s family or household member and that has been formally charged.

(4) “Family or household member” means a spouse, person living as a spouse, parent, foster parent, child, adopted child, brother or sister of the whole or half-blood, and legal guardian or custodian of a minor child who was residing with the guardian or custodian at the time of the offense or act.

(5) “Person living as a spouse” means a person who is residing with the person against whom the criminal act was committed in a common law marital relationship or who is otherwise is cohabiting with the person against whom the criminal act was committed.

(6) The term “victim” in this division does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

2930.06

(A)(1)

The prosecutor in a case or the prosecutor's designee, to the extent practicable, shall, upon the victim's request, confer with the victim in the case before and, upon the victim's request, the victim's representative, if applicable, at each of the following stages: ...

(A)(3)

If the victim or the victim's representative requested to confer with the prosecutor, the court shall inquire as to whether or not the prosecutor made reasonable efforts to confer with the victim and the victim's representative, if applicable, at the stages set forth in division (A)(1) of this section. If the prosecutor fails to confer with the victim and the victim's representative, if applicable, at any of those times, the court, if informed of the failure, shall note on the record the failure and the prosecutor's reasons for the failure. If the court determines that reasonable efforts were not made to notify the victim and victim's representative, if applicable, of the time and nature of any court proceeding for the stages set forth in division (A)(1) of this section, the court shall continue the court proceeding for the time necessary to allow the prosecutor to make reasonable efforts to notify the victim and victim's representative, if applicable, of the time, place, and nature of the court proceeding. A prosecutor's failure to confer with a victim as required by this division and a court's failure to provide the notice as required by this division do not affect the validity of an agreement between the prosecutor and the defendant or alleged juvenile offender in the case, a pretrial diversion of the defendant or alleged juvenile offender, an amendment or dismissal of an indictment, information, or complaint filed against the defendant or alleged juvenile offender, a plea entered by the defendant or alleged juvenile defender, an admission entered by the defendant or alleged juvenile offender, or any other disposition in the case. Nothing in this section prohibits a court from accepting a plea or taking any other action necessary to ensure that a person charged with an offense is brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code.