

HB 343 – Sponsor Testimony
Senate Judiciary Committee 5-31-2022

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Judiciary Committee, I am grateful today for the opportunity to provide sponsor testimony on House Bill 343, known as Marsy's Law, on behalf of victims of crime in Ohio. This bill addresses what must be done to align Ohio's laws and criminal justice system practices with the protections provided in the constitutional amendment that 83% of Ohioans overwhelmingly passed into law back in November of 2017.

Marsy's Law ensures that victims of crime and their families are treated with fairness and respect for their safety, dignity and privacy; and that they have guaranteed rights on the same level as those accused and convicted of crimes. Justice for all as we say every time we recite the pledge of allegiance.

As a result of Article 1, Section 10a and HB 343, not only will victims have these guaranteed rights, they will also have processes in place to help ensure their rights are protected in a manner no less vigorous than the rights of a person accused of committing a crime.

For example, victims now have a guaranteed right to be heard and to request and receive reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act and to be present at these events.

Today, due to high volume or local practice, there are misdemeanor courts in this state where judges routinely settle cases and take pleas from defendants during their initial arraignment – their first day in court.

In all courts, a decision on bail must be made if the defendant is in jail. What if a victim wants to tell the judge key facts or past behaviors of the defendant that may impact decisions about release or sentencing, but the victim is never told when to show up for court? Or what if a grieving family is in the grocery on their way home from their daughter's funeral only to be unexpectedly confronted by the murder suspect who got out on bail without their knowledge? That was the case for the family of young Marsy who started this national movement and for whom this law is named. What is their recourse to appeal or undo what's been done or better yet, how can we make sure it doesn't happen in the first place? What if the victim wants to maintain their privacy, but are hospitalized and hadn't yet been able to ask the court to redact their personal information before case documents are filed and viewable online or released in a news story and into internet perpetuity?

HB 343 addresses these scenarios and more through carefully delineated procedures and requirements that put standards, guardrails and speedbumps in place to help protect and enforce the rights of all victims at every step of the criminal justice process.

While this is indeed a "Victims' Rights Bill," it must be workable in our justice system. A key overarching principle in this bill is to ensure that victims are able to understand, exercise and enforce their rights afforded them by the Ohio Constitution. 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.

Serving for 17 years as an elected clerk of court, I have tremendous respect for 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. This inconsistency and in some cases, ignoring of rights, has resulted in many cases being litigated in trial and appellate courts, as well as the supreme court. In fact, the number of crime victims requesting free legal assistance from Ohio Crime Victim Justice Center to protect and seek enforcement of their rights has increased by 448% from 2016 to 2021.

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 GA, more work was needed to address the issues raised. The dozens of changes hammered out in the version of HB 343 before you 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. However, I am thankful that there were no opponents to the bill by the time we worked through all of the changes collectively – keeping in mind and respecting everyone's constitutional and statutory rights. As we pledge, Justice for All.

I won't go into all of the details of HB 343. But today, I want to highlight just a few of the more significant aspects of the legislation.

- One important component in the bill involves the use of a “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 and to also ensure a victim’s privacy is safeguarded from the beginning.

- 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.

- HB 343 adds more 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. HB 343 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.
- HB 343 also clarifies restitution for victims by establishing a consistent standard to ensure all victims in Ohio are treated equally on a base level.
- With regard to Discovery, the bill clarifies 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.

- 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.

- A final issue that was the subject of much discussion 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. We have tried to build in an expedited 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.

Justice for crime victims should not depend on where you live. That's why this legislation is needed now – to make sure victims are treated fairly and consistently across our state's criminal justice system, that they are not only told their rights but given the full opportunities to exercise them...and to ensure Ohio's laws align with all the rights our Constitution clearly protects – both for the victims, the accused and the state ...whether you're from Cleveland, Coshocton or Clermont County.

It has been my honor to work with so many smart, passionate, dedicated individuals including victims, victim advocates, prosecutors, defense attorneys, judges, clerks of court, law enforcement, corrections officials, the Attorney General's office and other criminal justice professionals who have collectively contributed hundreds of hours toward crafting and helping to pass this bill and making changes since it was first introduced last General Assembly.

Crime victims and their loved ones have already endured too much trauma and pain. They do not need to be revictimized by the very system that should be designed to protect them. I urge you to act as swiftly as possible to ensure Justice for All by passing HB 343.

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Judiciary Committee, thank you for this opportunity to speak today on Marsy's Law and I am happy to answer any questions you may have.