



# Wes Retherford State Representative

## **Sponsor Testimony of Representative Wes Retherford Regarding the Victims Privacy and Protection Act (House Bill 451) Before the Senate Judiciary Committee Tuesday, November 13, 2018**

Chairman Bacon, Vice Chair Dolan, and Ranking Member Thomas thank you for allowing me to testify on behalf of House Bill 451, or as we are calling it, the Victims Privacy and Protection Act. The Victims Privacy and Protection Act was introduced in the House last year with almost 70 co-sponsors.

In August of 2017, while talking with Sgt. Patrick Erb, Investigative Division of the Hamilton, OH police department, on an unrelated subject, he brought something to my attention. He informed me of Open Records training the department had just taken. The instructor informed them of an Ohio Supreme Court case decided in Dec of 2016, *Caster v. Columbus*. The public records expert that was giving the training talked about the potential for Re-victimization because of this ruling.

Hypothetically, what we could have is the following scenario: A person is charged with a sexually oriented crime, Voyeurism for example. Under current investigatory rules and practices, that evidence is not subject to Public Records Requests. However, once the disposition of the court case is finalized, the exemption no longer exists. The concern brought to me by Sgt Erb is under this scenario, you could have as evidence, photos, videos, digital images of the victim in compromising levels of undress. Once the initial court case is finished and the defendant is convicted or plead guilty; those images could be obtained from the police department under public records requests.

To paraphrase Sgt. Erb, "The defendant upon release from incarceration could request those images back, a partner in the crime who was not caught could request them, or any other sicko off the street could get ahold of them. These could then be used for their own perverted personal use or in a very twisted and sick scenario, be sold to an adult web site. We are here to protect victims, their rights and privacy and could in effect be forced to follow the law and allow them to become victims all over again."

This is not right. Therefore, I immediately contacted Michael Lenzo and Sheila Willamowski, from our caucus legal staff, who are our in house Public Records experts. After verifying that what HPD was taught in this class was correct, we then set out to scour State Laws and Court Cases that could be used to protect these victims. We were not successful with that search so we then worked to have this legislation drafted, establishing these protections very clearly in the ORC. In effect, HB451, would exempt compromising videos, images, photos, etc. of VICTIMS of sexually oriented crimes from Public Records Laws.

Ohio is a very open and transparent state and we have some of the most transparent Public Records Laws in the Country. Government Transparency is key to an effective Republic. However, ascertaining these photos, videos, images, etc. would have no effect on ensuring public protection thru Open Records laws, instead would just lead to the potential of having an already violated individual become victimized again, when they should be focused on rebuilding in the aftermath.

Sgt. Erb laid out two potential outcomes; #1. The department would do what I believe is the right thing to do and deny the request. They could then be taken to court to have the issue ruled on, potentially against the best interests of the victims or #2. They could issue the requested records and face a lawsuit from the victim/s. Either case would result in a lengthy court process and undue expenses to the taxpayers. I will say that the Chief of Hamilton Police did say in an article to the Journal News about the legislation that his Department would fight any such requests and then added, "Why take that chance? Why fight it in court and hope you're going to win as opposed to shutting down an absurd loophole in the law." I would, with your indulgence Mr. Chairman, like to take a moment to praise Chief Bucheit for his stance on protecting victims in this situation. I hope it is a stance that every Law Enforcement Agency in this State would take if asked to release such records.

While this has not been, to the best of my knowledge, an issue yet, I believe that the proper thing for the General Assembly to do is to take a proactive approach to this issue. Why should we wait for this to happen before we respond? My hopes are, Mr Chairman, this bill will get further hearings where you will be able to hear from law enforcement and victims' rights groups, about the importance of this issue. I would like to thank you and the committee for your time on this matter and will be happy to answer questions that the committee may have.



Wes Retherford  
State Representative  
Ohio House District 51

