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Interested Party Testimony on House Bill 610
House Criminal Justice Committee
November 19, 2020

Chair Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for the opportunity to provide written testimony as an interested party in consideration of House Bill 610 (“HB 610”). Disability Rights Ohio (“DRO”) is the state designated and federally authorized protection and advocacy system in Ohio for people with disabilities. In working toward our mission of advocating for the human, civil, and legal rights of people with disabilities, DRO provides services to hundreds of crime victims with disabilities each year, empowering victims with disabilities to fully participate in our justice system.

DRO educates and informs victims of their rights to programs, services, and assistance while advocating that these services are available and accessible to people with disabilities. To provide victims with disabilities comprehensive support, DRO partners with local victim advocates, law enforcement, and prosecutors. Because of this work, DRO brings a unique perspective to HB 610.

DRO applauds Representative Cupp for introducing this much needed piece of legislation. This bill affords and protects rights of victims with disabilities under Marsy’s law. After careful consideration of this bill, DRO would like to address three (3) critical aspects of the legislation in this testimony:

- 1) Access to interpreter services;**
- 2) Ensuring the privacy of victims with disabilities is protected; and**
- 3) Raising the standard of proof for testimony via deposition.**

I. Accessibility

This legislation would rightly guarantee a qualified interpreter to victims during all stages of the criminal justice process, allowing victims barrier-free communication that mirrors the opportunities made available to victims without disabilities. This right currently only exists for victims during court hearings. By extending this right to all stages of the case, it ensures that victims can play a meaningful role in the entire criminal justice process. It also encourages victims to report crime knowing that communication will not be a barrier to justice.

While this addition is a step in the right direction, the Americans with Disabilities Act (“ADA”) entitles people with disabilities to effective communication. This requires public entities to provide a variety of auxiliary aids and services - not just qualified interpreters - when needed to communicate effectively with people who have communication disabilities. Extending this legislation to be consistent with the ADA would clarify what services and aids need to be provided to victims while they navigate the criminal justice system.

II. Right to Privacy

HB 610 would standardize the circumstances in which the defendant could obtain victims' records and interviews. The current statutes do not adequately protect the privacy of victims of crime with disabilities, often subjecting victims to unnecessary and unreasonable record requests related to their disability. This approach can be discriminatory and used to question a victim's competency and credibility. In many of our cases, the defense has used our client's disability as a method to relieve the defendant of responsibility. Requiring defendants to first establish that the records are relevant, admissible, and contain material evidence that is not available through other means will dramatically increase a victim's right to privacy, further preventing discriminatory arguments against a victim because of their disability.

While HB 610 would protect victims from unnecessary record requests from the defendant, it does not cover secondary methods by which defendants might obtain a victim's records. Often, the State will request a victim's records without their consent, then submit these to the defendant's attorney through discovery, where the defendant may access them, all done without the victim's knowledge or consent. DRO believes that victims should be afforded the same rights to privacy, regardless of whether they are requested from the State or the defendant directly.

Much like record requests, victims with disabilities are often asked to undergo invasive psychological evaluations to 'prove' that they are capable of testifying. HB 610 would block these inappropriate requests from the defense. In DRO's experience, despite clear guidance in case law, defense counsel still attempt to secure psychological evaluations of victims with disabilities. This often leads to months of motions and court dates to determine the request is inappropriate. HB 610 would provide specific guidance to courts that protects the victims' right to privacy while also ensuring a speedy trial for all parties.

III. Testimonial Flexibility

HB 610 would raise the standard of proof required to allow victims with developmental disabilities to testify via deposition. This could lead to serious, long-term consequences for victims. Testifying live in court can lead to serious emotional trauma for victims with disabilities. The justice system can make testifying with a disability intimidating, difficult, or even impossible. To the extent that HB 610 raises the standard that an individual must meet to testify via deposition, this creates a barrier for victims with developmental disabilities where one does not currently exist.

Furthermore, all victims with disabilities should have the option to testify via deposition under the current standard of proof, effectively accommodating all victims with disabilities in the same way those with developmental disabilities are accommodated under current statute.

Similarly, while HB 610 would provide more flexibility for victims with developmental disabilities that testify in court, such as allowing an advocate or comfort item present during testimony, this

flexibility is needed by all victims with disabilities. This measure truly captures the spirit and intent of Marcy's law—that is, to account for the needs of a victim. However, this measure does not apply to other victims with disabilities who may be vulnerable to further emotional trauma while taking the stand. Again, expanding these measures to all victims with disabilities could significantly lessen re-traumatization in victims, providing better outcomes both inside and outside the courtroom. Overall, HB 610 standardizes accommodations for victims' needs in open court, but it could have further positive impact by providing this flexibility for all victims with disabilities.

Thank you for allowing Disability Rights Ohio to provide interested party testimony in consideration of HB 610. DRO looks forward to working with the sponsor and the committee as this bill progresses. If you have any questions or wish to discuss the issue further, please reach out to Jordan Ballinger, Policy Director (614-466-7264, ext. 136 or jballinger@disabilityrightsohio.org).