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SUMMARY

Victim's rights

Generally

- Broadly defines several terms, including “criminal offense” and “delinquent act” for purposes of the Victim’s Rights Law.
- Defines “victim” for purposes of the Victim’s Rights Law by reference to Article I, Section 10a of the Ohio Constitution.
- Expands the list of persons who may exercise the rights of a victim under the Victim’s Rights Law to include the victim’s representative.
- Modifies procedures for the law enforcement agency responsible for investigating a criminal offense or delinquent act on its initial contact with the victim including materials and information that must be provided to the victim.
- Entitles a victim with a disability, a non-English speaking victim, or a victim with limited English proficiency to a qualified or certified interpreter at all court proceedings, meetings with the prosecutor, and investigative contacts, at no cost to the victim and paid for by the court.
- Entitles a victim and victim’s representative to be present during any public proceeding, other than a grand jury proceeding, and grants the victim, victim’s representative, and victim’s attorney the right to be heard by the court at any proceeding in which any right of the victim is implicated.
- Prohibits a victim from being required to pay for a copy of any public records related to the victim’s case and prohibits the victim and victim’s representative from being required to pay for a copy of the certificate of judgment and judgment entry from the clerk.

- Clarifies the timing of various notices that must be provided to victims of crime under continuing law.
- Makes several changes throughout the Victim's Rights Law and Criminal Code to allow for a victim's representative, where designated, to receive the same notice and standing as a victim.
- Prohibits an employer from retaliating against a victim, victim's family member, or victim's representative for preparation for criminal proceedings and attendance at criminal proceedings pursuant to statutory and constitutional rights or at the prosecutor's request, whether or not attendance is pursuant to subpoena.
- Modifies the victim's bill of rights document that the Attorney General must produce and distribute under continuing law.
- Requires the Supreme Court to create the victim's rights request form.
- Requires that a victim's name and identifying information be documented on a separate page in law enforcement records and court filings, which is not a public record.

Law enforcement agencies

- Requires law enforcement to provide the victim with the victim's rights request form upon initial contact, as well as the victim's rights pamphlet and information card.
- Requires the law enforcement agency investigating a criminal offense or delinquent act with a statute of limitations longer than three years to notify the victim and the victim's representative, if applicable, if an inactive case is reopened, unless notification is waived.
- Requires a person not previously identified as a victim by law enforcement to affirmatively identify themselves as a victim to law enforcement, the prosecutor, and courts, in order to receive information and exercise rights as a crime victim under Ohio's Victim's Rights Law.
- Requires the law enforcement agency that investigates a criminal offense or delinquent act to give the victim or victim's representative notice that the victim may request and receive information on the terms and conditions of bond, the time, place, and date of arraignment, and details of detainment in another jurisdiction.
- Requires a custodial agency of a defendant or delinquent child to provide the victim and victim's representative the victim's rights request form and a notice that failure to affirmatively request these rights is considered a waiver but may be requested at a later time.
- Requires the probation department, during its presentence investigation, to contact the victim, victim's representative, and victim's attorney concerning the victim's economic, physical, psychological, or emotional harm or victim's safety concerns as a result of the offense.

Prosecutors

- In certain cases, requires the prosecutor to inform the victim as soon as practicable if the prosecutor does not file a motion to reconsider the conditions of bond or personal recognizance granted to a defendant or alleged juvenile offender after release from custody or detention on bond or personal recognizance.
- Expands the times at which the prosecutor in a case must confer with the victim, requires these conferences to also include the victim's representative at the victim's request, and allows the prosecutor to designate a person to confer on the prosecutor's behalf.
- Requires the prosecutor, on request of the victim or victim's representative, to keep the victim and victim's representative apprised of requests and communications from the defendant, alleged juvenile offender, or an agent that could affect the victim's privacy rights or safety concerns.
- Adds several items, including the victim's rights request form, to the information that the prosecutor or designee must provide to the victim and specifies that all of the information must be provided within 14 days after prosecution commences and must also be provided to the victim's representative, if applicable.
- Requires the prosecutor to review the victim's rights request form with the victim or victim's representative, obtain signatures from both if the form was not previously completed with law enforcement, and file the form with the court within seven days after initiation of a criminal prosecution.
- Specifies that a prosecutor's notification to a victim or victim's representative of a hearing or application for judicial release, as requested by the victim or representative, must occur not later than seven days after the hearing is scheduled or the application is filed.
- Requires the prosecutor, in any post-conviction proceeding or in regards to any post-conviction relief, to file a motion with the court when the prosecutor has a reasonable basis to believe that the victim's representative is not acting in the interests of the child victim, victim with a developmental disability, or an incapacitated or incompetent victim.

DRC and DYS

- Requires the Department of Rehabilitation and Correction or the Department of Youth Services to directly notify the victim and the victim's representative of services available and the victim's right to be notified of actions the release authority takes with respect to the defendant or alleged juvenile offender.

State Victims Assistance Advisory Council

- Increases the number of members of the State Victims Assistance Advisory Council from 17 to 21, and specifies the organizations those members must represent.

Notice and rights in court proceedings

- Requires the court to provide the prosecutor notice of any court proceeding not less than ten days prior to that court proceeding and to provide that notice to the victim and victim's representative not less than seven days prior to the court proceeding unless the parties agree that a shorter notice is reasonable under the circumstances.
- Requires, once a pro se victim or victim's attorney files a notice of appearance in a case, the victim or attorney to be served copies of all notices, motions, and court orders filed in the case after the notice in the same manner as the parties in the case.
- Entitles a victim or victim's representative to receive a copy of all documents filed with the court in the victim's case at no cost to the victim and allows those copies to be provided in electronic format.
- Entitles a victim, victim's attorney, or victim's representative to obtain recordings of court proceedings at cost and transcripts of the case that have been previously prepared at a reduced cost.
- Entitles a victim to not testify at any court proceeding regarding the victim's address, telephone number, place of employment, or other locating information except under certain specified circumstances and allows the victim or victim's representative to request that information be redacted from case documents prior to public release.
- Entitles a victim to proceedings free from unreasonable delay and a prompt conclusion of the case and requires all participants to endeavor to complete the case within the time frame provided by the Rules of Superintendence.
- Entitles a victim and victim's representative to be present and heard or to elect to not be present at a proceeding in which a negotiated plea for the defendant or alleged juvenile offender will be presented to the court, unless a subpoena served on the victim or victim's representative compels the presence of the victim or representative.
- Entitles a victim and victim's representative to be present at a proceeding in which the court conducts a hearing on the post-arrest release of the person accused of committing a criminal offense or delinquent act against the victim or the conditions of release.
- Entitles a victim and victim's representative to be present and heard at any probation or community control revocation disposition proceeding and certain probation or community control hearings.
- Prohibits the court from ruling on any substantive issue that implicates a victim's right, accepting a plea, or imposing a sentence if the prosecutor has not made reasonable efforts to confer with, or reasonable efforts were not made to provide reasonably and timely notice of the time, place, and nature of the court proceeding to, the victim and victim's representative.
- Requires the court to review records produced in response to a subpoena in-camera where a right of privilege has been asserted.

- Requires that notice of a defendant's acquittal or conviction that must be provided to the victim upon request must occur within seven days of the acquittal or conviction and must also be provided to the victim's representative if requested.
- Requires a notice of conviction provided to a victim or victim's representative to include the purpose of the presentence investigation report, if ordered, and that the victim and victim's representative have the right to review a copy of the report except those portions that are confidential by law and to include notice of the right to file a restitution lien.
- Preserves certain rights of a crime victim despite a negotiated plea agreement or dismissal of charges involving that victim.
- Specifies that an oral statement from a victim or victim's representative permitted during a sentencing or disposition proceeding is not subject to cross-examination.
- Requires the court or court designee, or the probation department to notify the victim and victim's representative, upon request, of various proceedings related to the revocation or modification of terms of probation or community control and any conduct by the defendant or alleged juvenile offender that raises a concern for the victim's safety.
- Requires a court making a determination whether to grant judicial release or other early release to send notice of its determination to the prosecutor of the county in which the criminal or delinquency proceeding was held and, before ordering release, to send the custodial agency a copy of the court's journal entry of the determination.

Governor

- Prior to granting a pardon, commutation, or reprieve for an offense of violence or an act that would be an offense of violence if committed by an adult, requires the Governor or a designee to notify the victim of the application and that the victim, victim's representative, and victim's attorney may submit a written statement concerning the application.

Defendant

- Requires a defendant seeking to subpoena records of or concerning the victim to serve the prosecutor, the victim, and the victim's attorney, if applicable, with a copy of the subpoena.
- Requires the proponent of a subpoena to, upon the filing of a motion to quash, prove that the documents are evidentiary and relevant, that the documents are not otherwise procurable reasonably in advance of trial by exercise of due diligence, that the party cannot properly prepare for trial without the documents, and that the application is made in good faith and is not a violation of the Ohio Rules of Criminal Procedure.
- Prohibits the defendant from subpoenaing a victim for a pretrial hearing without good cause.

- Prohibits the victim from being compelled to submit to an interview on any matter that is conducted by the defendant, the defendant's attorney, or an agent of the defendant and specifies procedures for the defendant to request an interview with the victim through the prosecutor and the victim's attorney, if applicable.
- Requires a presentence investigation that is made available to the defendant prior to the sentencing hearing be simultaneously provided to the prosecutor assigned to the case and to the victim, victim's representative, and victim's attorney, redacted as required by law.

Enforcement

- Creates a mechanism for a victim, victim's representative, or victim's attorney to enforce the victim's rights under the Victim's Rights Law with or without the prosecutor and including enforcement by extraordinary writ.
- Permits the speedy-trial rights of a criminal defendant to be tolled during any period that an appeal or petition for an extraordinary writ to enforce victim's rights is pending.
- Grants a victim, victim's representative, or victim's attorney, if applicable, or the prosecutor, on request of the victim, standing as a matter of right to assert or to challenge an order denying the rights of the victim.
- Requires that an interlocutory appeal concerning the rights of the victim be heard and decided upon within specified time frames.

Financial sanctions

Costs

- Specifically allows for the costs of global positioning system device monitoring to be imposed on an offender as a financial sanction for a misdemeanor.
- Prohibits the court from waiving certain court costs.

Restitution

- Allows the court to order restitution in a juvenile delinquency offense even if that offense would be a minor misdemeanor if committed by an adult.
- Requires the court imposing a sentence on an offender for a felony or misdemeanor to sentence the offender to make restitution.
- Allows the victim, private provider, state, or political subdivision to obtain a certificate of judgment at no cost in a felony or misdemeanor case where a financial sanction has been ordered.
- If a business or corporation is required to pay restitution for a felony or misdemeanor, imposes the duty to pay the restitution, fines, or fees on the person authorized to make disbursements from the assets of the business or corporation, to pay those costs from the assets.

- Requires the clerk of a sentencing court to make the payment history of an offender sentenced to pay restitution for a felony or misdemeanor available to the prosecutor, victim, victim's representative, and the court without cost.
- Prohibits a court that has ordered restitution on an offender for a felony to discharge restitution until it is fully paid by the offender.
- Broadly allows the victim, victim's representative, victim's attorney, prosecuting attorney, and the offender or delinquent child to provide information relevant to the determination of the amount of restitution in a criminal proceeding or juvenile delinquency proceeding.
- Modifies the process for calculating restitution owed for juvenile delinquency and criminal offenses and requires full restitution to be determined by the court by a preponderance of the evidence.
- Requires that all money that remains unclaimed that is for the restitution payments for crime victims must be sent to the Reparations Fund with a list from the clerk specifying the amounts and individual identifying information of the money.
- Provides that if money that is received pursuant to a restitution order is in the Reparations Fund and is not claimed within a period of five years, the Attorney General must use that money for the benefit of other victims of crime.
- Requires the Attorney General to pay any part of the restitution award owed to a victim at any time to the person who has a right to the money upon proper certification from the clerk and documentation from the individual claiming such right.

Record sealing and expungement

- Requires the court in proceedings to seal or expunge criminal records and juvenile records to provide notice to the prosecutor not less than 60 days prior to the hearing.
- Requires the prosecutor in proceedings to seal or expunge juvenile records or in proceedings to seal criminal records to provide timely notice of the proceedings to a victim and victim's representative if the victim or victim's representative requested notice.
- Allows the victim, victim's representative, and victim's attorney to be present at juvenile record sealing or expungement proceedings or in proceedings to seal criminal records and to be heard orally, in writing, or both and requires the court to consider the oral or written statement of any victim, victim's representative, or victim's attorney.
- Requires money owed by the state or a political subdivision to a delinquent child, juvenile traffic offender, or criminal offender who is required to make restitution be assigned to the discharge of that outstanding restitution obligation subject to any superseding federal statutes or regulations.
- Specifies the order in which restitution owed to more than one victim must be paid by a delinquent child, juvenile traffic offender, or criminal offender.

- Prohibits a court from suspending the restitution portion of a delinquent child’s or juvenile traffic offender’s disposition or of a criminal offender’s sentence if the victim or victim’s attorney objects to that portion of the disposition or sentence being suspended.
- Excludes restitution ordered in juvenile delinquency cases, juvenile traffic offenses, and criminal offenses from discharge in bankruptcy, except to the extent required by federal law.
- Requires the Supreme Court to create a standardized form to be made publicly available that provides guidance for victims and victims’ representatives regarding the compilation of evidence to demonstrate losses for the purpose of restitution in juvenile delinquency cases, juvenile traffic cases, and criminal cases.

Trial testimony

- Modifies provisions for testimony by deposition, recording, or other means applicable to victims of crimes to generally expand the availability of such alternative means of testimony to child victims under 18 years old if that child victim would suffer serious emotional harm, and to include victims’ attorneys and advocates in those proceedings.
- Provides rights that apply to a person under 18 or a person with a developmental disability who testifies in open court that may be enforced by the court or by any attorney involved with the proceeding.

Evidence

- Narrows an exception to Ohio’s Rape Shield Law that generally prohibits the introduction of evidence of the victim’s sexual history in rape and gross sexual imposition cases to allow that evidence under limited circumstances when the evidence involves the origin of a sexually transmitted disease or infection, rather than allowing that evidence under limited circumstances when the evidence involves the origin of disease generally.
- Prohibits requiring a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation or prosecution of the alleged sex offense.

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DETAILED ANALYSIS

Victim’s rights

Definitions

The bill includes the following definitions for the purposes of the Victim’s Rights Law (located in R.C. Chapter 2930):¹

- “Criminal offense” (rather than “crime”) means an alleged act or commission committed by a person that is punishable by incarceration and is not eligible to be disposed of by the Traffic Violations Bureau.
- “Delinquent act” means as an alleged act committed by a child, regardless of whether the child is competent, that is not disposed of by the Juvenile Traffic Violations Bureau and that violates any law of this state or the United States, or any ordinance or a

¹ R.C. 2930.01.

political subdivision of the state, that would be an offense if committed by an adult; violates any lawful order of the court made under the Victim's Rights Law, including a child who violates a court order regarding the child's prior adjudication as an unruly child for being a habitual truant; violates any lawful order of the court made under the Juvenile Law other than an order issued under the law prohibiting a child from possessing, using, purchasing, or receiving tobacco products; violates the prohibition against use by a juvenile of false information to enter an adult entertainment establishment; violates the prohibition against underage purchase of a firearm; violates the prohibition against underage purchase of a pseudoephedrine product or ephedrine product; or violates the prohibition against using false information to purchase a pseudoephedrine product or ephedrine product.

- "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. "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 (cross-reference to Article I, Section 10a of the Ohio Constitution).
- Replaces "specified delinquent act" with "delinquent act," which means an alleged act or omission committed by a child, regardless of whether the child is competent, that is punishable by incarceration and is not disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1.
- "Victim advocate" means a person employed or authorized by a public or private entity who provides support assistance for a victim of a criminal offense or delinquent act in relation to criminal, civil, administrative, and delinquency cases or proceedings and recovery efforts related to the criminal offense or delinquent act.
- "Victim's attorney" means an attorney retained by the victim for the purpose of asserting the victim's constitutional and statutory rights.
- "Prosecutor's designee" means any person or entity designated by the prosecuting attorney but does not include a court or court employee.
- "Suspect" means a person who is alleged to be the perpetrator of a criminal offense.

Victim's rights under the Ohio Constitution

The bill states that nothing in the Victim's Rights Law prevents a victim or the victim's other lawful representative from asserting the rights enumerated in Article I, Section 10a of the Ohio Constitution.²

² R.C. 2930.011.

Victim's representative

Who can be a victim's representative

The bill modifies the existing law provision that allows a member of a victim's family or another person to exercise the rights of a victim as the victim's representative, if a victim is a minor or is incapacitated, incompetent, or deceased or if the victim chooses to designate another person and instead provides that any of the following persons may, subject to the prohibition against the unauthorized practice of law, exercise the rights of a victim as the victim's representative:³

- Any person designated by the victim, as under existing law;
- A member of the victim's family or a victim advocate designated as the victim's representative if the victim is a minor or is incapacitated, incompetent, or deceased, subject to below;
- If the case involves aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, or negligent homicide, a member of the deceased victim's family, a victim advocate, or another person designated by one or more members of the deceased victim's family.

Acting in best interest of victim

Under the bill, if the prosecutor in the case or the court has a reasonable basis to believe that the victim's representative is not acting in the interests of the child victim, victim with a developmental disability, or an incapacitated or incompetent victim, the prosecutor must file a motion with the court setting forth the reasonable basis for that belief and the court must hold a hearing to determine whether the victim's representative is acting in the interests of the victim. The court must make this determination by a preponderance of the evidence. If the court finds that the victim's representative is not acting in the interests of the victim, the court must appoint a special advocate, a guardian ad litem, or a victim advocate to act as a victim's representative instead of the previously appointed victim's representative.⁴

The requirements above regarding the prosecutor's or the court's duty if there is a reasonable basis to believe that the victim's representative is not acting in the interests of the child victim, victim with a developmental disability, or an incapacitated or incompetent victim, also apply to any post-conviction proceeding.⁵

More than one person seeking to act as victim's representative

The bill modifies the existing law provision that states that if more than one person seeks to act as a particular victim's representative, the court in which the criminal prosecution

³ R.C. 2930.02(A).

⁴ R.C. 2930.02(B).

⁵ R.C. 2930.02(F) and 2945.483(E).

or delinquency proceeding is held must designate one or more of those persons as the victim's representative by including the court that has jurisdiction over the criminal matter in the requirement to make that designation.⁶

Notification of identity of victim's representative to law enforcement

The bill modifies existing law by requiring the victim, if the victim's representative is to exercise the rights of the victim, to notify law enforcement, in addition to the prosecutor and the court in a delinquency proceeding, that the victim's representative is to act for the victim. When the victim has notified law enforcement, in addition to the prosecutor and the court, all of the following apply to the victim's representative, as opposed to only the victim under existing law:⁷

- All notices sent by law enforcement, the prosecutor, or the court, if applicable;
- The granting of all rights under the Victim's Rights Law;
- Generally, all references in the Victim's Rights Law to a victim unless the victim informs the notifying authority that the victim does not wish (as opposed to also wishes under existing law) to receive the notices or exercise the rights.

The bill removes the requirement that, if the Victim's Rights Law requires a victim to make a request in order to receive any notice of a type described above and if a victim's representative is to exercise the rights of the victim, the victim's representative must make the request.⁸

The bill also includes "victim's representative" in numerous sections of the Victim's Rights Law and related provisions that address the rights of the victim and information the victim receives.⁹

Persons prohibited from being victim's representative

The bill prohibits the following persons from acting as a victim's representative relative to the criminal offense or delinquent act involving the victim:¹⁰

- A suspect;
- A defendant;
- An offender;
- An alleged juvenile offender;

⁶ R.C. 2930.02(C).

⁷ R.C. 2930.02(D).

⁸ R.C. 2930.02(D).

⁹ R.C. 109.42, 2151.356, 2151.358, 2930.02, 2930.04, 2930.042, 2930.05, 2930.06, 2930.08, 2930.09, 2930.12, 2930.13, 2930.14, 2930.15, 2930.16, 2930.161, 2930.162, 2930.17, 2930.19, and 2945.481.

¹⁰ R.C. 2930.02(E).

- A delinquent child.

Victim's rights request form

The bill requires the Ohio Supreme Court to create the victim's rights request form that contains all of the information specified below or a similar form that, at a minimum, contains all of the information specified below. The Court must make the form available to all sheriffs, marshals, municipal corporation and township police departments, constables, and other law enforcement agencies, to all prosecuting attorneys, city directors of law, village solicitors, and other similar chief legal officers of municipal corporations, and to organizations that represent or provide services for victims of crime.¹¹ The form must do the following:¹²

- Inform victims of rights that are automatically granted;
- Of the rights that are not automatically granted, allow the victim and victim's representative, if applicable, to select which rights the victim wishes to request;
- Inform victims that an election of rights made on the form can be changed at any time;
- Include a section for law enforcement to indicate that the victim did not make an election or was unable to complete the form at the time of first contact with law enforcement, if applicable, and is therefore considered to have requested all rights until the prosecutor contacts the victim to provide another opportunity to request any right that is not automatically conferred by the Ohio Constitution;
- Inform the victim and victim's representative that failure to affirmatively request the rights that are not automatically granted is a waiver of those rights once contacted by the prosecutor, but that the victim or victim's representative may request those rights at a later date;
- Provide a method for the victim to designate a victim's representative if the victim chooses;
- Include a section where the victim or victim's representative shall indicate whether the victim was a victim against whom the criminal offense or delinquent act was committed or the victim was directly or proximately harmed by the commission of the criminal offense or delinquent act;
- Include a section where the victim or victim's representative shall indicate that a law enforcement official or the prosecutor provided the form to the victim;
- Include the address, telephone number, and electronic mail address, if available, for the victim and victim's representative, if applicable;

¹¹ R.C. 2930.04(A).

¹² R.C. 2930.04(B)(1).

- Include the contact information or address for the law enforcement official, incident report number, badge number of the law enforcement officer, case number, and arraignment date, time, and location, if known;
- Include signature lines for acknowledgment by the applicable law enforcement officer or agency, prosecutor, or custodial agent or agency, and victim and victim's representative;
- Advise victims of the right to counsel and refer the victim to the Attorney General information card and victim's rights handbook online or in print, including telephone and website information for obtaining a copy if not provided by law enforcement officials;
- Inform victims of the responsibility to keep contact information current with the applicable law enforcement official;
- Provide a section for prosecutors to inform the custodial agency of the victim's and victim's representatives, if applicable, name and identifying information. The custodial agency shall notify the victim and victim's representative, if applicable, of the victim's post-conviction rights and provide post-conviction information;
- Contain a statement that the victim's identifying information on the form is not a public record under the Public Records Law.

As part of the victim's rights request form, a law enforcement official must also provide an informational page to the victim that includes information about the following:¹³

- The fact that some rights are automatic and some rights are upon request;
- Appointing a victim representative;
- The importance of the arraignment process for victim's rights;
- The right to refuse interview, deposition and discovery requests from the defendant;
- The potential availability of protection orders;
- Victims' compensation and restitution, and the importance of preserving documentation during the criminal justice process for purposes of obtaining compensation or restitution;
- Privacy for victim addresses through the Address Confidentiality Program, including the website address and contact telephone number for the program;
- Tracking incarcerated offenders through the victim information and notification everyday program, including the website address to register for text message or electronic mail notices of offender release.

¹³ R.C. 2930.04(B)(2).

The portion on the completed victim's rights request form that contains a victim's name and identifying information is not a public record under the Public Records Law. On documents filed with the court, the victim's name and identifying information must be filed separately on a page that is not a public record so that the identity of the victim or victims remains confidential.¹⁴

The bill modifies the provision regarding information the law enforcement agency is required to give to the victim by requiring that, on, rather than after, its initial contact with a victim of a criminal offense or delinquent act, the law enforcement agency responsible for investigating the criminal offense or delinquent act promptly *provide* the victim with a victim's rights request form or a similar form that at a minimum contains the information listed above.¹⁵

Existing law requires, after its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime to promptly give to the victim, in writing, all of the following information: (1) an explanation of the victim's rights under the Victim's Rights Law, (2) information about medical, counseling, housing, emergency, and any other services that are available to a victim, (3) information about compensation for victims under the Reparations Program and the name, street address, and telephone number of the agency to contact to apply for an award of reparations, (4) information about protection that is available to the victim, including orders issued by a court.¹⁶

Information law enforcement must provide to the victim

The bill modifies existing law by requiring, *at the time of* its initial contact with a victim of a criminal offense or delinquent act, or as soon as practicable following the initial contact, the law enforcement agency responsible for investigating the criminal offense or delinquent act to provide the victim, in writing, all of the following information:¹⁷

- The victim's rights under the Victim's Rights Law and the victim's bill of rights under Article I, Section 10a of the Ohio Constitution, including the right to exercise those rights through counsel;
- The availability of crisis intervention services, housing, and emergency and medical services, or contact information for statewide organizations that can direct victims to local resources;
- When applicable, the procedures and resources available for the protection of the victim, including protection orders issued by the courts;

¹⁴ R.C. 2930.04(C).

¹⁵ R.C. 2930.04(B)(1).

¹⁶ R.C. 109.42.

¹⁷ R.C. 2930.04(D).

- Information about public and private victim services programs, including, but not limited to, the crime victims' compensation program and emergency shelter programs, or, if local information is not available, contact information for statewide organizations that can direct a victim to these types of resources;
- The police report number, if applicable, business telephone number of the law enforcement agency investigating the victim's case, and the office address and business telephone number of the prosecutor in the victim's case, when available

Existing law requires the law enforcement agency responsible for investigating the crime, as soon as practicable after its initial contact with the victim of the crime, to give to the victim, all of the following information: (1) the business telephone number of the law enforcement officer assigned to investigate the case, (2) the office address and business telephone number of the prosecutor in the case, and (3) a statement that, if the victim is not notified of the arrest of the offender in the case within a reasonable period of time, the victim may contact the law enforcement agency to learn the status of the case.¹⁸

Under the bill, the law enforcement officer responsible for providing information to the victim must use reasonable efforts to identify the victim. At a minimum, this information should be disseminated to the individual or individuals identified in the police report as victims. If the law enforcement officer generates a report, the law enforcement agency must collect and retain an executed copy of the victim's rights request form, or a similar form that, at a minimum, contains all of the information required by the victim's rights request form. If at the time of contact with a law enforcement agency the victim does not request or waive the victim's applicable rights, the law enforcement agency must designate this on the form. The victim's refusal to request or waive the victim's applicable rights must be considered an assertion of the victim's rights until the prosecutor contacts the victim within seven days of initiation of a criminal prosecution to provide another opportunity to request any right that is not automatically conferred under the Ohio Constitution.¹⁹

If a suspect is arrested, the law enforcement agency must submit an executed copy of the victim's rights request form to the custodial agency as soon as practicable once the law enforcement agency learns of the suspect's arrest.²⁰ On filing of charges or a complaint, the law enforcement agency must submit an executed copy of that form to the prosecutor and to the court. The prosecutor must review the victim's rights request with the victim and the victim's representative and obtain signatures from the victim and the victim's representative, if applicable and must file the form with the court within seven days of initiation of a criminal prosecution.²¹

¹⁸ R.C. 2930.04(D).

¹⁹ R.C. 2930.04(E).

²⁰ R.C. 2930.04(F).

²¹ R.C. 2930.04(G) and 2930.06(H).

If a suspect is cited and released, the law enforcement agency responsible for investigating the offense must inform the victim and the victim's representative, if applicable, of the court date, if known, and how to obtain additional information from the clerk of the court about the arraignment or initial appearance.²²

The bill modifies the existing law provision that allows the law enforcement agency to fulfill its obligation as described above by giving the pamphlet prepared pursuant to the law regarding the pamphlet for a victim with a compilation of statutes relative to a victim's rights or the information card and other material prepared pursuant to the law regarding information explaining awards of reparations to the victim by also including the victim's rights request form.²³

Once the victim's rights request form is completed, the law enforcement agency must provide it to the prosecutor with the information of the victim and the victim's representative along with the complaint and affidavit, and provide it to the court at the time of criminal case filing. If the form has not already been completed and sent to the prosecutor prior to the first interaction between the prosecutor and the victim or victims, then the prosecutor must complete the form during the first interaction with the victim.²⁴

A victim may elect not to receive the notifications provided by law enforcement, in which case the prosecutor must document that refusal. Once the prosecutor has met with the victim, the prosecutor must file the completed or updated victim's rights request form with the court.

Under the bill, if a defendant is convicted and sentenced to the Department of Rehabilitation and Correction (DRC) or the Department of Youth Services (DYS), the court must ask the victim, if present, or the prosecutor if the victim wishes to update the victim's contact information and must inform the victim that it is the victim's duty to notify DRC or DYS of any change in address or contact information.²⁵

Victim's right to an interpreter

The bill provides, pursuant to the "Americans with Disabilities Act of 1990," 104 Stat. 327, 42 U.S.C. 12101, as amended, that a victim with a disability has the right to a qualified or certified interpreter at all court proceedings, all meetings with the prosecutor, and all investigative contacts with law enforcement, the probation department, DRC, and DYS, at no cost to the victim and paid for by the court.²⁶

²² R.C. 2930.04(H).

²³ R.C. 2930.04(I).

²⁴ R.C. 2930.04(J)(1) and (2).

²⁵ R.C. 2930.04(J)(4).

²⁶ R.C. 2930.041(A).

A victim who is non-English speaking or has limited English proficiency has the right to a qualified or certified interpreter at all court proceedings, all meetings with the prosecutor, and all investigative contacts with law enforcement, the probation department, DRC, and DYS, at no cost to the victim and paid for by the court.²⁷

The victim's right to a qualified or certified interpreter due to the fact that the victim is non-English speaking or has limited English proficiency is subject to availability but is not subject to the cost of retaining a qualified or certified interpreter. Any of the agencies described in the previous paragraph that are unable to provide a victim with a qualified or certified interpreter as required must maintain records of the agency's attempt to comply with this requirement.²⁸

"Qualified interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.²⁹

Paying for public records

The bill provides that a victim cannot be required to pay for a copy of any public record related to the victim's case.³⁰

Identifying self as victim to law enforcement

Under the bill, a person who has not previously been identified as a victim by law enforcement, including a person claiming to be directly or proximately harmed as a result of the criminal offense or delinquent act, must affirmatively identify the person's self to law enforcement, the prosecutor, and the courts in order to receive the information and exercise the rights under the Victim's Rights Law.³¹

Notice

Opting out

The bill allows a person, who by reason of that person's regular business activities, is the subject of multiple and continuous criminal offenses or delinquent acts as a potential victim (for example, a store owner who is the victim of multiple theft offenses), to opt out of notices and rights available pursuant the Ohio Constitution, the Victim's Rights Law, and other laws

²⁷ R.C. 2930.041(B).

²⁸ R.C. 2930.041(C).

²⁹ R.C. 2930.041(D), however, the cross reference for this definition is incorrect; it should reference 28 Code of Federal Regulations (C.F.R.) §35.104.

³⁰ R.C. 2930.043.

³¹ R.C. 2930.044.

providing victims with rights for future offenses by giving a written notification form to the appropriate prosecutor or the prosecutor's designee.³² The form must include the name and address of the person's business and the period of time that the person wishes to opt out of receiving the notices and rights available. The form may also state that the person is only interested in the notices described under "**Victim's rights request form**" and "**Information law enforcement must provide to the victim**" if restitution is at issue. It must be signed by the person or another person with management authority over the business.³³

Notice of inactive case

Under the bill, in all inactive cases involving one or more criminal offenses or delinquent acts for which the statute of limitations is longer than three years, the law enforcement agency investigating the criminal offense or delinquent act must provide the victim and the victim's representative, if applicable, with notice as to whether an inactive case is reopened or closed, unless the victim has waived the right to notifications.³⁴

Notice of arrest or detention

The bill includes within the notice that the law enforcement agency that investigates the criminal offense or delinquent act is required to give the victim and victim's representative, within a reasonable period of time after the arrest or detention of a defendant or an alleged juvenile offender for the underlying criminal offense or delinquent act, the following:³⁵

- The arrest and detention, once the investigating law enforcement agency has knowledge of the arrest or detention;
- The name of the defendant or alleged juvenile offender once the investigating law enforcement agency has knowledge of the name of the defendant or alleged juvenile offender;
- That the defendant or alleged juvenile offender may be eligible for pretrial release or for release from detention;
- The victim's and the victim's representative's right, if applicable, to telephone the custodial agency to ascertain whether the defendant or alleged juvenile offender has been released from custody or from detention;
- That, on request of the victim or the victim's representative, the prosecutor or the prosecutor's designee must provide the victim and the victim's representative, if applicable, with a copy of the terms and conditions of bond;

³² R.C. 2930.04(K)(1).

³³ R.C. 2930.04(K)(2).

³⁴ R.C. 2930.042.

³⁵ R.C. 2930.05(A).

- Procedures for obtaining additional information from the clerk of the court about the time, place, and date of the arraignment or initial appearance of the defendant or alleged juvenile offender;
- If the defendant or alleged juvenile offender is arrested or detained by another law enforcement agency, the applicable pick-up radius and whether the investigating law enforcement agency will pick up the defendant or alleged juvenile offender, once the investigating law enforcement agency has knowledge of the defendant's or alleged juvenile offender's arrest or detention.

Existing law, unchanged by the bill, also requires the law enforcement agency to include within the notice described above the telephone number of the law enforcement agency.³⁶

Under existing law, if a defendant or alleged juvenile offender has been released from custody on a bond or personal recognizance or has been released from detention and the prosecutor in the case has received the affidavit of a victim stating that the defendant or alleged juvenile offender, or someone acting at the defendant's or juvenile offender's direction, has committed or threatened to commit one or more acts of violence or intimidation against the victim, the victim's family, or the victim's representative, the prosecutor may file a motion asking the court to reconsider the conditions of the bond or personal recognizance granted to the defendant or alleged juvenile offender or to consider returning the defendant or alleged juvenile offender to detention. The bill includes harassment against the victim, the victim's family, or the victim's representative, as one of the acts committed or threatened by the defendant or alleged juvenile offender or by someone acting at the defendant's or juvenile offender's direction.³⁷

The bill also specifies that if the prosecutor elects not to file the motion, the prosecutor or the prosecutor's designee must inform the victim as soon as practicable that the victim or the victim's attorney may file a petition asking the court to reconsider the conditions of the bond or personal recognizance granted to the defendant or alleged juvenile offender.³⁸

Custodial agency notifying law enforcement agency

The bill requires a custodial agency to notify the investigating law enforcement agency of the incarceration of a defendant or the detention of an alleged juvenile offender once the investigating law enforcement agency is known to the custodial agency.³⁹

Notice by court to prosecutor of court proceeding

The bill requires the court, unless a shorter notice period is reasonable under the circumstances, to provide the prosecutor or the prosecutor's designee with oral or written

³⁶ R.C. 2930.05(A)(4).

³⁷ R.C. 2930.05(B)(1).

³⁸ R.C. 2930.05(B)(2).

³⁹ R.C. 2930.051.

notice of any court proceeding not less than ten days prior to that court proceeding unless the parties agree that a shorter notice period is reasonable under the circumstances.⁴⁰

Notice of date, time, and place of any proceeding in the case

The bill modifies the existing law provision that requires the prosecutor or the court, on the request of the victim, to give notice of the date, time, and place of any scheduled criminal or juvenile proceedings in the case and notice of any changes in those proceedings or in the schedule in the case by providing that the victim's representative can request the notice, by removing the requirement that it be any "scheduled" proceedings, and by providing those notices not be less than seven days prior to the criminal or juvenile proceedings in the case unless the parties agree that a shorter notice period is reasonable under the circumstances.⁴¹

Under the bill, a victim or victim's representative who requests the notice described in the previous paragraph and who elects to receive any further notice from the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, the court must keep the prosecutor or the court informed of the victim's or victim's representative's contact information. Existing law requires the victim in that circumstance to keep the prosecutor or the court informed of the victim's current address and telephone number until the case is dismissed or terminated, the defendant is acquitted or sentenced, the delinquent child complaint is dismissed, the defendant is adjudicated a delinquent child, or the appellate process is completed, whichever is the final disposition in the case.⁴²

Notice to victim of misdemeanor offense

The bill removes the existing law provision that provides that, if a defendant is charged with a certain misdemeanor offense and if a police report or a complaint, indictment, or information that charges the commission of that misdemeanor offense and provides the basis for a criminal prosecution of that defendant identifies one or more individuals as victims, after a prosecution in the case has been commenced, the prosecutor or the prosecutor's designee, to the extent practicable, is required to promptly notify each of the individuals identified in the report, complaint, indictment, or information that, if the defendant is convicted of or pleads guilty to the offense, the individual may make an oral or written statement to the court hearing the case regarding the sentence to be imposed upon the defendant and that the court must consider any statement so made that is relevant.⁴³

Notice of motion, request, or agreement

The bill modifies the existing law provision regarding notice to the victim of a motion, request, or agreement that may result in a delay of the case by specifying that the motion,

⁴⁰ R.C. 2930.06(D).

⁴¹ R.C. 2930.06(E).

⁴² R.C. 2930.06(F).

⁴³ R.C. 2930.06(E).

request, or agreement is between the prosecutor and the defendant's or alleged juvenile offender's attorney, rather than between counsel, including a motion, request, or agreement for a continuance in the case, and including the victim's representative as one who can receive the notice. The bill also requires the court, in ruling on the motion, request, or agreement, to consider the victim's right to a speedy disposition of the case if the victim, victim's representative, or victim's attorney, if applicable, objects to the delay.⁴⁴

If the victim, victim's representative, or victim's attorney, if applicable, objects to a delay in the prosecution of the case, the court must grant a motion, request, or agreement for a continuance of the case only if the party seeking the continuance demonstrates that the delay in the prosecution of the case is reasonable under the circumstances or is otherwise in the interest of justice. The court may grant a motion, request, or agreement for a continuance of the case only for the time necessary to serve the interests of justice. If a continuance is granted, the court must state on the record or in a judgment entry the specific reason for the continuance.⁴⁵

Notice of defendant's acquittal or conviction

The bill modifies the existing law requirement that the prosecutor give the victim notice, at the request of the victim, of the defendant's acquittal or conviction by including the victim's representative as the one who can request the notice, allowing the prosecutor's designee to give the notice, and requiring that the notice be given to the victim and the victim's representative within seven days of the acquittal or conviction.⁴⁶ The bill also modifies the existing law provision regarding what must be included in the notice if the defendant is convicted or the alleged juvenile offender is adjudicated a delinquent child by requiring the notice include the following:⁴⁷

- The purposes of the presentence investigation report, if ordered, and that the victim and the victim's representative, if applicable, have the right to review, on request to the prosecutor, a copy of the presentence investigation report except those portions that are confidential by law;
- Notice that, if the court orders restitution, the victim or the victim's attorney, if applicable, has the right to file a lien;
- If the notice includes any disposition ordered for the defendant and any subsequent modification of that disposition, that information which is known to the prosecutor. If a court has not provided timely notice to the prosecutor of a subsequent modification of

⁴⁴ R.C. 2930.08(B).

⁴⁵ R.C. 2930.08(C).

⁴⁶ R.C. 2930.12(A).

⁴⁷ R.C. 2930.12(A)(2), (7), and (8)(b).

that disposition, the court must promptly notify the victim and the victim's representative, if applicable, of the subsequent modification.

Probation department presentence investigation

Under the bill, during the probation department's presentence investigation, the department must contact the victim, the victim's representative, and the victim's attorney, if applicable, concerning the victim's economic, physical, psychological, or emotional harm or victim's safety concerns as a result of the offense.⁴⁸

Notice of appeal

The bill modifies the existing law provision regarding the victim receiving notice of the filing of an appeal by requiring the prosecutor in the case to notify the victim and the victim's representative not later than seven days after receiving the notice of appeal.⁴⁹

Notice of incarceration

The bill modifies the existing law provision regarding the victim receiving notice of a defendant's incarceration or an alleged juvenile offender's commitment by requiring the court or the court's designee to notify the prosecutor in case of the date on which the defendant will be released, or initially will be eligible for release, from confinement, or the prosecutor's reasonable estimate of that date or the date on which the alleged juvenile offender will have served the minimum period of commitment or the prosecutor's reasonable estimate of that date. The bill continues to require the prosecutor to notify the victim of this information and includes the victim's representative. The prosecutor must notify the victim and the victim's representative of the services offered by the Office of Victims' Services and the services provided by the Office of Victims' Services within the release authority of DYS and the victim's right to submit a written request to the release authority to be notified of the actions the release authority takes with respect to the alleged juvenile offender. The bill also requires the victim and the victim's representative to keep the custodial agency informed of the victim's or victim's representative's current contact information, instead of the current address and telephone number under existing law.⁵⁰

Notice of application or hearing for judicial release

The bill also requires the court or the court's designee to notify the prosecutor in the case and the prosecutor promptly, but not later than seven days after the hearing is scheduled or the application is filed, and to notify the victim and the victim's representative of any application or hearing for judicial release. If the court does not hold a hearing or if the victim and the victim's representative, if applicable, do not attend the hearing or make a statement,

⁴⁸ R.C. 2930.12(B).

⁴⁹ R.C. 2930.15(A).

⁵⁰ R.C. 2930.16(A).

the court must notify the victim and the victim's representative of its ruling. Existing law does not specify the circumstance in which the court must notify the victim of its ruling.⁵¹

Notice of judicial release

Under the bill, upon making a determination whether to grant a judicial release to a defendant from a prison term, a release to an offender from a prison term, or a judicial release or early release to an alleged juvenile offender from a commitment to DYS, the court promptly must send notice of its determination to the prosecutor of the county in which the criminal or delinquency proceeding was held against the defendant or alleged juvenile offender. Before ordering a defendant or alleged juvenile offender released from custody, the court must send the custodial agency a copy of its journal entry of the determination.⁵²

Notice of hearing regarding sex offender

The bill modifies the existing law provision regarding a hearing on the sentence of a sex offender by requiring the court or the court's designee to notify the prosecutor in the case and the prosecutor promptly notify the victim's representative, as well as the victim as required under existing law, of any hearing to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term. If the court does not hold a hearing or if the victim and victim's representative, if applicable, do not attend the hearing or make a statement, the court must notify the victim and victim's representative of any order issued at the conclusion of the hearing. Existing law does not specify the circumstances in which the court must notify the victim of its ruling.⁵³

Custodial agency providing form and notice to victim

Under the bill, on first contact with a victim, the custodial agency of a defendant or delinquent child shall verify with the victim and victim's representative, if applicable, that all information and requests are current. If a victim's rights request form was not provided by the prosecutor, the custodial agency must give the victim and the victim's representative, if applicable, the victim's rights request form, or a similar form that, at a minimum, contains the required information on the victim's rights request form. A person claiming direct and proximate harm as a result of a criminal offense or delinquent act must affirmatively identify the person's self and request specified notifications.⁵⁴

⁵¹ R.C. 2930.16(B)(1).

⁵² R.C. 2930.17(C).

⁵³ R.C. 2930.16(B)(2).

⁵⁴ R.C. 2930.16(C)(1).

Existing law allows the victim to receive certain notices from the custodial agency. The bill allows the victim's representative to also receive these notices and makes the following modifications:⁵⁵

- Regarding the prompt notice of the defendant's or alleged juvenile offender's escape from a facility of the custodial agency, of the defendant's or alleged juvenile offender's absence without leave from a mental health or developmental disabilities facility or from other custody, and of the capture of the defendant or alleged juvenile offender after an escape or absence, that notice must be not more than three days after the escape;
- Regarding notice of the defendant's or alleged juvenile offender's death while in confinement or custody, that notice must be within 30 days of the defendant's or alleged juvenile offender's death;
- Regarding notice of the filing of a petition by the DRC director requesting the early release of the defendant, that notice must be within 30 days of the filing of the petition;
- Regarding the notice of the defendant's or alleged juvenile offender's release from confinement or custody and the terms and conditions of release, specifies that the release is post-conviction release, confinement or custody includes jail or local custody, and the notice must be as soon as the custodial agency becomes aware of the release.

Notifications regarding probation or community control

Under the bill, on request of a victim or victim's representative who has provided a current address or other current contact information, the court or the court's designee must notify the victim and victim's representative, if applicable, of any of the following:⁵⁶

- A probation or community control revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or community control of a person who was convicted of committing a criminal offense against the victim;
- Any hearing on a proposed modification on the terms of probation or community control;
- If the person is on supervised probation or community control, the arrest of the person pursuant to a warrant issued for a probation or community control violation;
- The defendant's or alleged juvenile offender's failure to successfully complete a diversion or substantially similar program.

⁵⁵ R.C. 2930.16(C)(2).

⁵⁶ R.C. 2930.161(A).

On request of a victim or victim's representative who has provided current contact information, the probation department must notify the victim and victim's representative, if applicable, of the following as soon as it becomes known to the probation department:⁵⁷

- Any proposed modification to any term of probation or community control if the modification affects restitution, incarceration, or detention status or the defendant's or alleged juvenile offender's contact with or safety of the victim;
- The victim's and victim's representative's right to be heard at a hearing that is set to consider any modification to be made to any term of probation or community control;
- Any violation of any term of probation or community control that results in the filing of a petition with the court to revoke probation or community control;
- Following a risk assessment of the terms of probation or community control, including the period of supervision and any modifications to the terms of probation or community control, any restricted locations and any other conditions of probation or community control that impact victim safety.

Notice of pardon

Under the bill, prior to the Governor granting a pardon, commutation of sentence, or reprieve to an offender convicted of or found guilty of an offense of violence or adjudicated a delinquent child for a delinquent act that would be an offense of violence if committed by an adult, the Governor, or the Governor's designee, must notify the victim, victim's representative, and victim's attorney, if applicable, that the offender or delinquent child has applied for a pardon, commutation of sentence, or reprieve. The Governor must notify the victim, victim's representative, and victim's attorney, if applicable, regarding the application not less than 30 days prior to issuing a decision on the application. The Governor must inform the victim, victim's representative, and victim's attorney, if applicable, that the victim, victim's representative, and victim's attorney, if applicable, may submit a written statement concerning the application.⁵⁸

Notice of judicial release hearing

When a court schedules a hearing for judicial release the court must notify the victim of the offense and the victim's representative, if applicable, rather than notifying either the victim or the representative under current law.⁵⁹ The court is also required to notify the victim and the victim's representative after ruling on the motion, rather than notifying only the victim under current law.⁶⁰ If the court grants a motion for judicial release, under the bill the court must notify the victim and the victim's representative, if applicable, of the judicial release unless the

⁵⁷ R.C. 2930.161(B).

⁵⁸ R.C. 2930.162.

⁵⁹ R.C. 2929.20(E)(1) and (2).

⁶⁰ R.C. 2929.20(I).

victim or victim's representative has requested to not be notified. Current law instead requires that notice to the victim or the victim's representative, unless either has requested to not be notified.⁶¹

Notice of sealing or expungement hearing

Continuing law requires the court to notify the prosecuting attorney of any proceedings to seal or expunge records and the bill specifies that the notification must occur not less than 30 days prior to the hearing. The prosecuting attorney must provide timely notice of the hearing to a victim and a victim's representative, if applicable, if the victim or victim's representative requested notice of the proceedings in the underlying case.⁶²

Conferring with the prosecutor

Existing law requires the prosecutor in a case, to the extent practicable, to confer with the victim in the case before pretrial diversion is granted to the defendant or alleged juvenile offender in the case, before amending or dismissing an indictment, information, or complaint against that defendant or alleged juvenile offender, before agreeing to a negotiated plea for that defendant or alleged juvenile offender, before a trial of that defendant by judge or jury, or before the juvenile court conducts an adjudicatory hearing for that alleged juvenile offender. The bill modifies existing law by allowing the prosecutor's designee to confer with the victim and requiring the prosecutor or the prosecutor's designee to confer with the victim's representative if the victim so requests. The bill also modifies existing law by providing that the prosecutor or the prosecutor's designee confer, on the victim's request, with the victim and, if applicable, the victim's representative, if applicable, before amending or dismissing an indictment, information, or complaint against the defendant or alleged juvenile *unless the amendment to the indictment, information, or complaint is a correction of a procedural defect that is not substantive in nature*.⁶³

Under the bill, the court must inquire as to whether the victim or victim's representative requested to confer with the prosecutor, and whether or not the prosecutor conferred with the victim and the victim's representative, if applicable, at a hearing at any of the stages set forth in the previous paragraph. The bill also modifies the existing law provision that requires the court, if the prosecutor fails to confer with the victim at any of those stages, to note on the record the failure and the prosecutor's reasons for the failure by removing the requirement that the court be informed of the prosecutor's failure in order to make that note on the record.⁶⁴

If the court determines that reasonable efforts were not made to confer with the victim and the victim's representative, or reasonable efforts were not made to provide the victim or victim's representative with reasonable and timely notice of the time, place, and nature of the

⁶¹ R.C. 2929.20(K).

⁶² R.C. 2151.356(C)(2)(c), 2151.358(B)(3), and 2953.32(B).

⁶³ R.C. 2930.06(A)(1).

⁶⁴ R.C. 2930.06(A)(3).

court proceeding, then the court will not rule on any substantive issue that implicates a victim's rights, accept a plea, or impose a sentence, and will continue the proceeding for the time necessary to provide the required notice to the victim and victim's representative.⁶⁵ However, a court is not prohibited from taking any necessary action to ensure that a person charged with an offense is brought to a speedy trial.⁶⁶

Under the bill, on request of the victim or the victim's representative, the prosecutor must keep the victim and the victim's representative, if applicable, apprised of requests and communications from the defendant, alleged juvenile offender, the attorney for the defendant or alleged juvenile offender, or the agent of the defendant or alleged juvenile offender that could affect the victim's privacy rights or safety concerns.⁶⁷

The bill modifies the existing law provision that requires a prosecutor, after a prosecution in a case has been commenced, or the prosecutor's designee other than a court or court employee, to the extent practicable, to give the victim certain specified information but requiring this information to be given to the victim or the victim's representative within 14 days after a prosecution in the case has commenced and removes that the promptness be to the extent practicable. With regards to the information the prosecutor or the prosecutor's designee must give to the victim or the victim's representative, the bill makes modifications to that information and includes additional information, described as follows:⁶⁸

- A clear and concise, rather than a brief, statement regarding the procedural steps in a criminal prosecution or delinquency proceeding involving a criminal offense or delinquent act similar to the criminal offense or delinquent act with which the defendant or alleged juvenile offender has been charged and the right of the victim or the victim's representative to be present during all proceedings held throughout the prosecution of the case;
- A summary of the rights of a victim under Article I, Section 10a of the Ohio Constitution;
- Procedures the victim, the victim's representative, or the prosecutor may follow if the victim becomes subject to threats of violence, harassment, or intimidation, instead of just threats or intimidation, by the defendant, alleged juvenile offender, or any other person;
- The name and business telephone number of the office, rather than a person, to contact for further information with respect to the cases;

⁶⁵ R.C. 2930.06(A)(3).

⁶⁶ R.C. 2930.06(A)(5).

⁶⁷ R.C. 2930.06(B).

⁶⁸ R.C. 2930.06(C).

- The right of the victim and victim's representative, if applicable, to confer with the prosecutor on a request and the procedures the victim or victim's representative must follow to confer with the prosecutor;
- The fact that the victim can seek the advice of an attorney or have legal representation to enforce the victim's rights;
- The victim's rights request form, or a similar form that, at a minimum, contains the information required by the victim's rights request form, that allows the victim and the victim's representative, if applicable, to request applicable rights to which the victim and victim's representative are entitled under the Victim's Rights Law, including notice to the victim and the victim's representative that failure to affirmatively request these rights will be considered a waiver of these rights, but that the victim may request these rights at a later date;
- A person who, by reason of that person's regular business activity, is the subject of multiple and continuing criminal offenses or delinquent acts as a potential victim (for example, a store owner who is the victim of multiple theft offenses) may choose to opt out of the notices and rights available pursuant to the Ohio Constitution, the Victim's Rights Law, and any other Revised Code provision that provides a victim with rights for future offenses by giving a written notification form to the appropriate prosecutor or prosecutor's designee. The form must include the name and address of the person's business and the period of time that the person wishes to opt out of the applicable notices and rights and may also state that the person is only interested in the applicable notices if restitution is at issue. The form must be signed by the person or another person with management authority of the business.

Copies

Under the bill, on request, a victim or victim's representative has the right to receive a copy of the certificate of judgment and the judgment entry from the clerk at no cost to the victim. Copies of other case documents may be requested and provided by the clerk at cost. Such copies may be provided in an electronic format.⁶⁹

The bill also provides that in any criminal or delinquency proceeding in which a video recording or audio recording of the court proceedings has been previously prepared, the victim, victim's attorney, or victim's representative may obtain a copy of the video recording or audio recording for the actual cost to copy the recording. If a transcript of the court proceedings has been previously prepared, the victim, victim's attorney, or victim's representative may obtain a copy of the transcript at the same reduced cost that is available to a party to the case.⁷⁰

⁶⁹ R.C. 2930.063(A).

⁷⁰ R.C. 2930.063(B).

Right not to testify

The bill provides that the victim and victim's representative, if applicable, have the right at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court determines that the fundamental demands of due process in the fair administration of criminal justice prevails over the victim's rights to keep the information confidential.⁷¹ The court must make this determination pursuant to an in-camera review. If the court determines that the information must be disclosed, the court proceeding must be closed during the disclosure.⁷² "Court" means a court of common pleas, juvenile court, municipal court, or county court and also includes a court of appeals and the Supreme Court.⁷³

Redaction of information

Under the bill, any public office or public official that is charged with the responsibility of knowing the name, address, or other identifying information of a victim or victim's representative as part of the office's or official's duties has full and complete access to the name, address, or other identifying information of the victim or victim's representative. That public office or public official must take measures to prevent the public disclosure of that information of the victim or victim's representative through the use of redaction. A public agency is not prohibited from maintaining unredacted records of a victim's or victim's representative's name, contact information, and identifying information for its own records and use or a public office or public official from allowing another public office or public official to access or obtain copies of its unredacted records. The release of unredacted records to a public office or official does not constitute a waiver of any exemption or exception pursuant to the Public Records Law. The bill does prohibit the public release of unredacted case documents pursuant to the Public Records Law and the provision addressing redaction (R.C. 2930.07(D)).⁷⁴ "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.⁷⁵ "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.⁷⁶ "Case document" means a document or information in a document regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor or filed with a clerk of court, including, but not limited to, pleadings, motions, exhibits, transcripts, orders, and judgments, or

⁷¹ R.C. 2930.07(B).

⁷² R.C. 2930.07(B).

⁷³ R.C. 2930.07(A)(2) (cross reference to R.C. 2930.01(J)).

⁷⁴ R.C. 2930.07(C).

⁷⁵ R.C. 2930.07(A)(4) (cross reference to R.C. 149.011(A)).

⁷⁶ R.C. 2930.07(A)(4) (cross reference to R.C. 149.011(D)).

any documentation prepared by a court, clerk of court, or law enforcement agency or officer, or a prosecutor regarding a case. It does not include materials subject to the work product doctrine, materials that by law are subject to privilege or confidentiality, or materials that are otherwise protected or prohibited from disclosure by state or federal law.⁷⁷

On written request of the victim or victim's representative to a law enforcement agency or prosecutor's office and following a brief explanation from that law enforcement agency or prosecutor's office of the potential risks and benefits of redaction and the ability of the victim to retain counsel, all case documents related to the cases or matters specified by the victim maintained by the entity to whom the victim or victim's representative submitted the request are to be redacted prior to public release pursuant to the Public Records Law to remove the name, address, or other identifying information of the victim.⁷⁸

On written application under seal of a victim or victim's representative to a court, and following a brief explanation from that court of the potential risks and benefits of redaction and the ability of the victim to retain counsel, all case documents related to the cases or matters specified by the victim maintained by the entity to whom the victim or victim's representative submitted the request are to be redacted prior to public release pursuant to the Rules of Superintendence to remove the name, address, or other identifying information of the victim. The application must be deemed to be filed under seal and the court shall promptly rule on the application. The court is prohibited from releasing any unredacted records while the application is pending.⁷⁹

If multiple victims are involved in a single case, the public office or official is required to take reasonable precautions to protect the information of the victims from other victims, unless all of the victims consent to the release of information.⁸⁰

The provisions described in the preceding paragraphs do not apply to any disclosure of the name, address, or other identifying information of a victim that is required to be made in the statewide emergency alert program, missing person alert system, or other similar alert system and do not apply to any disclosure of the name, address, or other identifying information of a minor victim of a criminal offense or delinquent act that resulted in the death of the minor victim. A "minor victim" means any person who was under age 18 at the time of the commission of the criminal offense or delinquent act of which the person is a victim.⁸¹

A victim, victim's representative, or a victim's attorney is not prohibited from receiving a copy of any case document with the victim's name, contact information, and identifying information unredacted. A public office's or official's provision of a copy of a case document

⁷⁷ R.C. 2930.07(A)(1).

⁷⁸ R.C. 2930.07(D)(1).

⁷⁹ R.C. 2930.07(D)(2).

⁸⁰ R.C. 2930.07(D)(3).

⁸¹ R.C. 2930.07(A)(3) and (E)(1) and (2).

with the victim's name, contact information, and identifying information unredacted to a victim, victim's representative, or victim's attorney, if applicable, does not constitute a waiver of any exemption or exception under the Public Records Law. A victim, victim's representative, or victim's attorney will receive an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim. A victim's representative may receive an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim upon request and with approval of the court, or a redacted copy of the interview on request, subject to the Public Records Law.⁸²

The provisions described in the preceding paragraphs do not affect either of the following: (1) any rights of a victim or victim's representative to be provided with notice or to make any written or oral statement under the Victim's Rights Law or other applicable law, and (2) the disclosure of the location where the reported criminal offense or delinquent act occurred.⁸³

The bill also states that the defendant is not prohibited from including necessary information about the victim in filings with the trial court, court of appeals, or the supreme court. The victim's name and identifying information in the filings is not a public record under the Public Records Law if the victim has requested that the victim's name and identifying information be redacted from public records.⁸⁴

The bill repeals existing R.C. 2930.07, which allows the prosecutor, if the prosecutor in a case determines that there are reasonable grounds for the victim in a case to be apprehensive regarding acts or threats of violence or intimidation by the defendant or alleged juvenile offender in the case or at the defendant's or alleged juvenile offender's direction against the victim, the victim's family, or the victim's representative, to file a motion with the court requesting that the court issue an order specifying that the victim and other witnesses in the case not be compelled in any phase of the criminal or delinquency proceeding to give testimony that would disclose the victim's or victim's representative's address, place of employment, or similar identifying facts without the victim's or victim's representative's consent. The court must hold a hearing on the motion in chambers, and a court reporter must make a record of the proceeding. If the court orders that the victim's or victim's representative's address, telephone number, place of employment, or other identifying facts are confidential, the court files or documents cannot contain that information unless it is used to identify the location of the crime or specified delinquent act. The hearing must be recorded, and the court must order the transcript sealed.⁸⁵

⁸² R.C. 2930.07(E)(3).

⁸³ R.C. 2930.07(E)(4).

⁸⁴ R.C. 2930.07(E)(5).

⁸⁵ Existing R.C. 2930.07, repealed.

Public Records Law

The bill also exempts records that constitute “protected victim information” made confidential under “**Redaction of information**,” above, from the definition of a “public record” that may be obtainable under Ohio’s Public Records Law.⁸⁶

Subpoenas

The bill requires a defendant who seeks to subpoena records of or concerning the victim to serve the prosecutor, the victim, and the victim’s attorney, if applicable, with a copy of the subpoena. The prosecutor must ensure that the defendant is provided the information necessary to effect service.⁸⁷

The bill allows the court, pursuant to Criminal Rule 17, on a motion made promptly and at or before the time specified in the subpoena for compliance, to quash or modify the subpoena if compliance would be unreasonable or oppressive.⁸⁸ Upon filing of a motion to quash, the court must conduct a hearing in which the proponent of the subpoena must prove the following:⁸⁹

- That the documents are evidentiary and relevant;
- That the documents are not otherwise procurable reasonably in advance of trial by exercise of due diligence;
- That the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial;
- That the application is made in good faith and is not a violation of Ohio Rules of Criminal Procedure.

If the court does not quash the subpoena, the court must conduct an in-camera review of any records to which a right of privilege has been asserted. If the court determines that any of the records reviewed in camera are privileged or constitutionally protected, the court must balance the victim’s rights and privileges against the constitutional rights of the defendant. The disclosure of any portion of the records to the prosecutor does not make the records subject to discovery, unless the material is such that due process requires that the prosecutor provide it to the defendant pursuant to the Brady Rule.⁹⁰

⁸⁶ R.C. 149.43(A)(1)(nn).

⁸⁷ R.C. 2930.071(A)(1).

⁸⁸ R.C. 2930.071(A)(2)(a).

⁸⁹ R.C. 2930.071(A)(2)(b).

⁹⁰ R.C. 2930.071(A)(4).

As used in the bill, the “Brady Rule” means the rule established pursuant to the decision of the United States Supreme Court in *Brady v. Maryland* (1963), 373 U.S. 83.⁹¹

Before any victim may be subpoenaed by a defendant to testify at any pretrial hearing, the defendant must show good cause at a hearing with the prosecutor and the victim, victim’s representative, and victim’s attorney, if applicable, as to why the court should issue the subpoena.⁹²

Contact with victim

The bill provides that, unless the victim consents in writing, which may be executed at the time of the interview, the victim cannot be compelled to submit to an interview on any matter, including any charged criminal offense witnessed by the victim and that occurred on the same occasion as the offense against the victim or filed in the same indictment or information or consolidated for trial, that is conducted by the defendant, the defendant’s attorney, or an agent of the defendant. A victim is not permitted to ignore or disregard a subpoena seeking witness testimony issued pursuant to the Criminal Rules. When a notice of appearance has been filed by the defendant’s attorney, the prosecutor must inform the victim of the defense counsel’s name, and of the victim’s right to refuse to submit to an interview or, subject to Criminal Rule 15 or Juvenile Rule 25, as applicable, a deposition with the defendant, the defendant’s attorney, or an agent of the defendant. The prosecutor must also inform the victim of the victim’s right to an attorney. If a defendant, defendant’s attorney, or agent of a defendant attempts to contact a victim, that person must first identify self as such.⁹³

If the victim consents to an interview or, subject to Criminal Rule 15 or Juvenile Rule 25, as applicable, a deposition, the victim or the victim’s attorney, if applicable, and the defendant, the defendant’s attorney, or an agent of the defendant must determine and specify a mutually agreed upon time and place for the interview or deposition, along with any other conditions requested by the victim. The victim has the right to terminate the interview or deposition at any time or refuse to answer any question during the interview or deposition. If the victim refuses to answer questions during the deposition or terminates the deposition, the deposition may not be used in lieu of trial testimony. The victim’s attorney, if applicable, or the prosecutor, at the request of the victim, has standing to protect the victim from harassment, intimidation, or abuse and, pursuant to that standing, may seek any appropriate protective order. The victim may request or the victim’s attorney, if applicable, or the prosecutor, with the victim’s consent, may request that the deposition be audio or video recorded.⁹⁴

⁹¹ R.C. 2743.48, not in the bill.

⁹² R.C. 2930.071(B).

⁹³ R.C. 2930.072(A) and (B).

⁹⁴ R.C. 2930.072(C).

If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed or deposed, the court must instruct the jury that the victim has the right to refuse an interview or deposition.⁹⁵

Speedy disposition of case

Under the bill, the court and the prosecutor involved in the case must take appropriate action to ensure a speedy disposition of the case. A victim has the right to proceedings free from unreasonable delay and a prompt conclusion of the case. The court and all participants must endeavor to complete the case within the time frame provided by the Rules of Superintendence.⁹⁶

Victim's right to be present and heard

Generally

The bill modifies the existing law provision regarding a victim's right to be present whenever the defendant or alleged juvenile offender in the case is present during any stage of the case against the defendant or alleged juvenile offender, that is conducted on the record, other than a grand jury proceeding by removing a provision that specifies that the defendant or alleged juvenile offender in the case is present during any stage of the case against the defendant or alleged juvenile offender, removing a provision that specifies that the case must be conducted on the record and instead providing that the victim has the right to be present during any public proceeding, and removing the exception to this right if the court determines that exclusion of the victim is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or to a fair delinquency proceeding. The bill also modifies the existing law provision that requires the court to permit the victim to be accompanied by an individual at any stage of the case at which the victim is present by removing the requirement that the victim request to be accompanied by an individual, specifying that instead of an individual, the victim can be accompanied by an individual to provide support to the victim, a victim advocate, and the victim's representative, and by removing the exception to this requirement if the court determines that exclusion of the individual is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or a fair delinquency proceeding. The bill also grants the victim, victim's representative, and victim's attorney the right to be heard orally, in writing, or both, if present.⁹⁷

Under the bill, if the victim or victim's representative is not present at a court proceeding in which a right of the victim is at issue, the court is to ask the prosecutor all of the following:⁹⁸

⁹⁵ R.C. 2930.072(D).

⁹⁶ R.C. 2930.08(A).

⁹⁷ R.C. 2930.09(A)(1).

⁹⁸ R.C. 2930.09(A)(2)(a).

- Whether the victim and victim's representative, if the victim or victim's representative requested notifications, were notified of the time, place, and purpose of the court proceeding;
- To disclose to the court any and all attempts made to give each victim and victim's representative, if applicable, notice;
- Whether the victim or victim's representative were advised that the victim and victim's representative had a right to be heard at the court proceeding;
- Whether the prosecutor conferred with the victim and victim's representative.

If the court determines that timely notice was not given to the victim and victim's representative, if applicable, or 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's representative as required, the court cannot rule on any substantive issue that implicates a victim's right, accept a plea, or impose a sentence and must continue the court proceeding for the time necessary to notify the victim and victim's representative, if applicable, of the time, place, and nature of the court proceeding.⁹⁹

If the victim or victim's representative is not present at a court proceeding in which a right of the victim is at issue, the court may proceed with the hearing if the prosecutor informs the court that the victim or victim's representative, if notifications were requested, were notified of the time, place, and purpose of the court proceeding, and that the victim or victim's representative had a right to be heard at the court proceeding, and any and all attempts to give the victim or victim's representative notice. The prosecutor must inform the court of the victim's and victim's representative's, if applicable, position on the matter before the court if the position is known to the prosecutor.¹⁰⁰

Right to be present and heard at negotiated plea proceeding

The bill provides that the victim and victim's representative, if applicable, have the right to be present and be heard at any proceeding in which a negotiated plea for the defendant or alleged juvenile offender will be presented to the court. If present, the victim, victim's representative, and victim's attorney, if applicable, have the right to be heard orally, in writing, or both prior to the acceptance of the plea by the court. The victim and the victim's representative, if applicable, have a right to elect to not be present at a proceeding in which a negotiated plea for the defendant or alleged juvenile offender will be presented to the court, unless a subpoena was served on the victim or victim's representative, if applicable, compelling the presence of the victim or the victim's representative.¹⁰¹

⁹⁹ R.C. 2930.09(A)(2)(b).

¹⁰⁰ R.C. 2930.09(A)(2)(c).

¹⁰¹ R.C. 2930.09(B).

The court is prohibited from accepting a negotiated plea agreement if the victim or the victim's representative is absent from the proceeding unless all of the following apply:¹⁰²

- The prosecutor advises the court that before requesting and agreeing to a negotiated plea, the prosecutor conferred with the victim and victim's representative, if applicable, if the victim or victim's representative requested to confer with the prosecutor.
- The prosecutor made reasonable efforts to give the victim and victim's representative, if applicable, notice of the plea proceedings and to inform the victim and victim's representative of the victim's and victim's representative's right to be present and be heard at the plea proceedings.
- The prosecutor discloses to the court any and all attempts made to give each victim and victim's representative, if applicable, notice of the plea agreement, including the offense or delinquent act to which the defendant or alleged juvenile offender will plead guilty, the date that the plea will be presented to the court, and the terms of any sentence or disposition agreed to as part of the negotiated plea.
- The prosecutor informs the court of any objection by the victim or victim's representative to the plea agreement.
- The prosecutor advises the court that to the best of the prosecutor's knowledge the Victim's Rights Law notice requirements have been complied with.

Right to be present and heard at hearing on post-arrest release

Under the bill, the victim and victim's representative, if applicable, have the right to be present and be heard orally, in writing, or both at any proceeding in which the court conducts a hearing on the post-arrest release of the person accused of committing a criminal offense or delinquent act against the victim or the conditions of that release, including the arraignment or initial appearance.¹⁰³

Right to be present and heard at hearing revoking or terminating probation or community control

The bill provides that the victim and victim's representative, if applicable, have the right to be present and be heard orally, in writing, or both at any probation or community control revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation or community control of the person who is convicted of committing a criminal offense or delinquent act against the victim.¹⁰⁴

¹⁰² R.C. 2930.09(C).

¹⁰³ R.C. 2930.09(D).

¹⁰⁴ R.C. 2930.09(E).

Right to be present and heard at proceeding to modify term of probation or community control

The victim and victim's representative, if applicable, have the right to be heard orally, in writing, or both at any proceeding in which the court is requested to modify the terms of probation or community control of a person if the modification will affect the person's contact with or the safety of the victim or if the modification involves restitution or incarceration status.¹⁰⁵

Disclosing victim contact information

Nothing in the provisions described above requires a prosecutor to disclose victim contact information.¹⁰⁶

Retention of victim's property

The bill modifies the existing law provision that requires the law enforcement agency responsible for investigating a criminal offense or delinquent act to retain any of the victim's property that is needed as evidence in the case if the prosecutor certifies to the court a need to retain the property instead of a photograph or of another evidentiary substitute for the property itself by requiring that this be done pursuant to the Ohio Rules of Appellate Procedure.¹⁰⁷

Dismissed counts

Under the bill, if a prosecutor dismisses a count or counts of a complaint, information, or indictment involving the victim as a result of a negotiated plea agreement, the victim and victim's representative, on request, may exercise all of the applicable specified in the victim's bill of rights under Article I, Section 10a of the Ohio Constitution, including the right to restitution.¹⁰⁸

Victim's impact statement – written and oral statement

The bill modifies the existing law provision that allows a victim and victim's representative, if applicable, to make a written statement regarding the impact of the criminal offense or delinquent act to the person whom the court orders to prepare the victim impact statement or to the probation officer or other person by allowing the victim's representative to make the statement and allows the statement to be written and oral.¹⁰⁹

¹⁰⁵ R.C. 2930.09(F).

¹⁰⁶ R.C. 2930.09(G).

¹⁰⁷ R.C. 2930.11(B).

¹⁰⁸ R.C. 2930.121.

¹⁰⁹ R.C. 2930.13(A) and (B).

Presentence investigation report

If the presentence investigation report is made available to the defendant prior to the sentencing hearing, the bill requires the court to provide a copy of the report simultaneously to the prosecutor assigned to the case. If requested, the prosecutor must promptly forward a copy of the report to the victim, victim's representative, and victim's attorney, if applicable, except those parts of the report that are redacted by the court or made confidential by law.¹¹⁰

If the court redacts any portion of the presentence investigation report, the court must state on the record the court's reason for the redaction.¹¹¹

Right to be heard at sentencing

The bill modifies the existing law provision that allows the victim and victim's representative, if applicable, to make a statement before a sentence is imposed or an order for disposition is entered by allowing the victim's representative to make the statement and allowing the victim or victim's representative to be heard orally, in writing, or both during the sentencing or disposition proceeding. The bill also provides that the oral statement is not subject to cross-examination.¹¹²

A sentencing court must consider any relevant oral and written statement made by the victim, the victim's representative, the victim's attorney, if applicable, the defendant, the defense attorney, and the prosecuting authority regarding sentencing for a misdemeanor.¹¹³

Right to be heard at proceeding regarding judicial release

The bill modifies the existing law provision that allows the victim to make a statement concerning the effects of the criminal offense or delinquent act on the victim, the circumstances surrounding the criminal offense or delinquent act, the manner in which the criminal offense or delinquent act was perpetrated, and the victim's opinion whether the defendant or alleged juvenile offender should be released by allowing the victim's representative to make such a statement and to allow the statement to be heard orally, in writing, or both. The bill also allows the victim and the victim's representative, if applicable, to be heard in writing, orally, or both, rather than just in writing, at the victim's or victim's representative's discretion, instead of at the court's discretion. The bill also requires the court to allow the defendant or juvenile offender to review a copy of any written impact statement made by the victim or the victim's representative.¹¹⁴

¹¹⁰ R.C. 2930.131(A).

¹¹¹ R.C. 2930.131(B).

¹¹² R.C. 2930.14(A).

¹¹³ R.C. 2929.22(D)(1).

¹¹⁴ R.C. 2930.17(A).

Sealing of records

Under the bill, in determining whether to grant an application to seal a record of conviction under the Sealing Law or an application to seal or expunge a juvenile record under the Juvenile Sealing and Expungement Law, the court must notify the prosecutor regarding the hearing of the matter not less than 60 days before the hearing. The prosecutor must provide timely notice to a victim of the criminal offense or delinquent act for which the offender or juvenile was incarcerated or committed and the victim's representative, if applicable, if the victim or victim's representative has requested notice and maintains current contact information with the prosecutor. The court must permit a victim, the victim's representative, and the victim's attorney, if applicable, to make a statement, in addition to any other statement made under the Victim's Rights Law, concerning the effects of the criminal offense or delinquent act on the victim, the circumstances surrounding the criminal offense or delinquent act, the manner in which the criminal offense or delinquent act was perpetrated, and the victim's, victim's representative's, or victim's attorney's, if applicable, opinion whether the record should be sealed or expunged. The victim, victim's representative, or victim's attorney, if applicable, may be heard in writing, orally, or both at the victim's, victim's representative's, or victim's attorney's, if applicable, discretion. The court must give the offender or juvenile an opportunity to review a copy of any written impact statement made by the victim, victim's representative, and victim's attorney, if applicable. The court must give to either the Adult Parole Authority (APA) or DYS, whichever is applicable, a copy of any written impact statement made by the victim, victim's representative, and victim's attorney, if applicable.¹¹⁵

In deciding whether to seal or expunge a record under this section, the court must consider statements made by the victim, victim's representative, and victim's attorney, if applicable.¹¹⁶

Upon making a determination whether to grant an application to seal a record of conviction under the Sealing Law or an application to seal or expunge a juvenile record under the Juvenile Sealing and Expungement Law, the court promptly must notify the prosecutor of the determination. The prosecutor must promptly notify the victim and the victim's representative, if applicable, after receiving the notice from the court.¹¹⁷

Prohibition against retaliation

The bill modifies the existing law provision that prohibits an employer of a victim from discharging, disciplining, or otherwise retaliating against the victim, a member of the victim's family, or a victim's representative by adding the circumstance that any of those persons attended a criminal or delinquency proceeding if the victim's attendance is pursuant to a victim's constitutional and statutory rights. The bill also removes the existing law provision that

¹¹⁵ R.C. 2930.171(A).

¹¹⁶ R.C. 2930.171(B).

¹¹⁷ R.C. 2930.171(C).

states that an employer is generally not required to pay an employee for time lost as a result of attendance at a criminal or delinquency proceeding.¹¹⁸

Standing

Under the bill, a victim, victim's representative, or victim's attorney, if applicable, or the prosecutor, on request of the victim, has standing as a matter of right to assert, or to challenge an order denying, the rights of the victim provided by law in any judicial or administrative proceeding. The court must act promptly on a request to enforce, or on a challenge of an order denying, the rights of the victim. In any case, the court must hear the matter within ten days of the assertion of the victim's rights. The reasons for any decision denying relief must be clearly stated on the record or in a judgment entry.¹¹⁹

If the trial court denies the relief sought, the court must do all of the following:¹²⁰

- Provide the victim, the victim's representative, if applicable, the victim's attorney, if applicable, and the parties with notice of the decision and a copy of the judgment entry.
- Provide the victim, the victim's representative, if applicable, and the victim's attorney, if applicable, with a specified notice of the option to appeal the decision or petition to the court of appeals for an extraordinary writ. If such an interlocutory appeal or extraordinary writ is sought while the case is still pending in the trial court, it must be initiated no later than 14 days after notice of the decision was provided to the victim. If the interlocutory appeal or petition does not comply with the 14-day limit, the court will dismiss it as untimely.

The prosecutor or the prosecutor's designee must provide notice to the victim and keep a sufficient record of that notice to prove to the court the prosecutor or the prosecutor's designee sent the notice.

If the court denies the relief sought, the victim or the victim's attorney, if applicable, or the prosecutor, on request of the victim, may appeal or, if the victim has no remedy on appeal, petition the court of appeals or Supreme Court for an extraordinary writ, and the victim has standing to assert a right of limited appeal as it pertains to the decisions impacting the rights of the victim.

If the victim or victim's attorney, if applicable, files an appeal, an interlocutory appeal divests the trial court of jurisdiction of the portion of the case implicating the victim's rights until the appeal is resolved by the appellate court.¹²¹

¹¹⁸ R.C. 2930.18(A).

¹¹⁹ R.C. 2930.19(A)(1).

¹²⁰ R.C. 2930.19(A)(2)(a).

¹²¹ R.C. 2930.19(A)(2)(b)(i).

Upon filing of an interlocutory appeal, the trial court must transmit the relevant transcript to the court of appeals within five business days. Once the transcript is received by the court of appeals, the party that initiated the appeal has eight days to file a merit brief. Once the merit brief is filed, the appellee has eight days to file a response brief. The court of appeals must decide such appeal not later than 35 days after the appeal is filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. The court of appeals has the remaining time after all parties have filed to enter judgment. The victim, the victim's attorney, the prosecutor, or the defendant may notify the Supreme Court if a court of appeals has failed to issue a judgment within the required time. This notification is a public record.¹²²

The time frame applying to interlocutory appeals and extraordinary writs does not apply to a direct appeal that is filed after a court sentences the defendant. A victim who wishes to directly appeal a court order sentencing the defendant must file the notice of appeal within 30 days of that entry.¹²³

If the victim or victim's attorney, if applicable, petitions for an extraordinary writ, the court of appeals or the Supreme Court must enter an order establishing an expedited schedule for its proceedings, place the petition on its accelerated calendar, and immediately notify the trial court of the petition. The trial court must transmit to the court of appeals or the Supreme Court the relevant transcript within five business days of the filing or the appeal or petition. The court must enter judgment within 45 days after the petition for an extraordinary writ is filed. The litigants may stipulate to a different period of time for briefing and issuance of the decision and judgment with the approval of the court. The victim, the victim's attorney, the prosecutor, or the defendant may notify the Supreme Court if a court of appeals has failed to issue a judgment within the required time. This notification is a public record.¹²⁴

If any interlocutory appeal is pursued to the Supreme Court, the Supreme Court must enter an order establishing an expedited schedule for its proceedings and will place the appeal on its accelerated calendar. The court must enter judgment within 60 days after the appeal is filed. The Supreme Court must immediately notify the trial court of the appeal and the trial court must transmit the relevant transcript within five business days of the filing of the appeal. The litigants may stipulate to a different period of time for briefing and issuance of the decision and judgment with the approval of the court.¹²⁵

¹²² R.C. 2930.19(A)(2)(b)(ii).

¹²³ R.C. 2930.19(A)(2)(b)(iii).

¹²⁴ R.C. 2930.19(A)(2)(c).

¹²⁵ R.C. 2930.19(A)(2)(d).

A victim who wishes to appeal from an appellate entry after the court sentences the defendant must file the appropriate notice of appeal to the supreme court within 30 days of entry.¹²⁶

A victim of a criminal offense or delinquent act has the right to be represented by retained counsel. This does not create a right to counsel at public expense for a victim. If a victim is represented by counsel, the court must notify the victim's counsel in the same manner in which the parties are notified under applicable law or rule. Counsel for the victim must be included in all bench conferences, meetings in chambers, and sidebars with the trial court that directly involve a decision implicating that victim's rights. This cannot be construed as making a victim a party to the case.¹²⁷

A defendant has a right to respond and be represented by an attorney for appeals and writs the victim, the victim's attorney, if applicable, or the prosecutor file. An indigent defendant has the right to appointed counsel for appeals and writs and have counsel provided if the defendant cannot employ counsel.¹²⁸

The bill modifies the existing law provision regarding a public official's or public agency's failure to comply with the requirements of the Victim's Rights Law by also including the public official's or public agency's designee.¹²⁹

The bill prohibits a defendant or juvenile offender from raising the failure to afford a right to a victim as error in any legal argument to provide an advantage to that defendant or juvenile offender in any motion, including a dispositive motion, motion for new trial, or motion to have a conviction, sentence, or disposition set aside, in any petition for post-conviction relief, or in any assignment of error on appeal.¹³⁰

"Post-conviction release" means judicial release, early release, and parole, but does not mean relief pursuant to a federal petition in habeas corpus.¹³¹

Standing in judicial release hearing

The bill specifically allows for the victim's attorney to present relevant written and oral information to the court hearing a motion for judicial release or on a motion to revoke judicial release granted for health reasons. Current law allows the victim or victim's representative to present that information, but does not specifically mention the victim's attorney.¹³² The court may grant judicial release without a hearing under the bill only if the victim and victim's

¹²⁶ R.C. 2930.19(A)(2)(e).

¹²⁷ R.C. 2930.19(B)(1).

¹²⁸ R.C. 2930.19(B)(2).

¹²⁹ R.C. 2930.19(C).

¹³⁰ R.C. 2930.19(F).

¹³¹ R.C. 2930.19(H).

¹³² R.C. 2929.20(I) and (S).

representative who have received notice of the motion, indicate that they do not wish to participate in the hearing or present information relevant to the motion. Current law requires either the victim or the victim's representative to decline the hearing.¹³³

Standing in sealing and expungement proceedings

The bill allows the victim, victim's representative, and victim's attorney, if applicable to be present and heard orally, in writing, or both at juvenile record sealing or expungement proceedings or in proceedings to seal criminal records.¹³⁴ The court must consider the oral or written statement of any victim, victim's representative, and victim's attorney, if applicable, in criminal sealing proceedings and must consider the oral and written statement of any victim, victim's representative, and victim's attorney, if applicable, in juvenile sealing and expungement proceedings.¹³⁵

Pro se victim

Once a pro se victim or victim's attorney, if applicable, files a notice of appearance in a case, the pro se victim or victim's attorney must be served copies of all notices, motions, and court orders filed thereafter in the case in the same manner as the parties in the case.¹³⁶

Restitution

Generally

The bill requires restitution ordered in juvenile delinquency proceedings and criminal proceedings to be made to a survivor of the victim or the victim's estate if the victim is deceased, instead of only to a survivor of the victim. A victim has a right not to seek restitution.¹³⁷

Adult criminal proceedings

With regard to a criminal offender being sentenced for a felony offense, the bill requires the court to sentence the offender to make restitution. Under existing law, the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. The bill allows the victim to also file a motion, as well as the victim's estate or victim's attorney, if applicable. If the court grants the motion, existing law allows for the modification of the payment terms as the court determines appropriate, but the bill prohibits the court from reducing the amount of the ordered restitution except as allowed as described under "**Determination of**

¹³³ R.C. 2929.20(E)(2).

¹³⁴ R.C. 2151.356(C)(2)(d)(ii) and (iii), 2151.358(B)(4)(b) and (c), and 2953.32(B).

¹³⁵ R.C. 2151.356(C)(2)(d)(ii) and (iii), 2151.358(B)(4)(b) and (c), and 2953.32(C)(1)(f).

¹³⁶ R.C. 2930.191.

¹³⁷ R.C. 2152.20, 2929.18, and 2929.28.

restitution,” below, and prohibits the court from discharging restitution until it is fully paid by the offender.¹³⁸

With regard to a criminal offender being sentenced for a misdemeanor offense, the bill requires the court to sentence the offender to make restitution if the offender is being sentenced for a criminal offense, including a minor misdemeanor, whereas existing law prohibited restitution as a financial sanction if the offense was a minor misdemeanor. Under existing law, the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. The bill allows the victim’s attorney, if applicable, or the attorney for the victim’s estate to request that the prosecutor file a motion for modification. If the court grants the motion, existing law allows for the modification of the payment terms as the court determines appropriate, but the bill prohibits the court from reducing the amount of the ordered restitution except as allowed as described under **“Determination of restitution,”** below.¹³⁹ The bill also includes among the financial sanctions for a misdemeanor offense reimbursement by the offender for the costs of global positioning system device monitoring.¹⁴⁰

The bill allows, once the financial sanction is imposed as a judgment or order for a felony or misdemeanor, the victim, private provider, state, or political subdivision to obtain from the clerk of the court in which the judgment was entered a certificate of judgment *at no cost*.¹⁴¹

Under the bill, if the court imposes restitution, fines, fees, or incarceration on a business or corporation for a felony or misdemeanor, it is the duty of the person authorized to make disbursements from the assets of the business or corporation to pay the restitution, fines, fees, or incarceration costs from those assets.¹⁴²

If an offender is sentenced to pay restitution, a fine, fee, or incarceration costs for a felony or misdemeanor, the clerk of the sentencing court, on request, must make the offender’s payment history available to the prosecutor, victim, victim’s representative, victim’s attorney, if applicable, the probation department, and the court without cost.¹⁴³

Juvenile proceedings

The bill allows the juvenile court to order restitution in a delinquency proceeding even if the offense would be a minor misdemeanor if committed by an adult.¹⁴⁴

¹³⁸ R.C. 2929.18(A).

¹³⁹ R.C. 2929.28(A).

¹⁴⁰ R.C. 2929.28(A)(3)(a)(i).

¹⁴¹ R.C. 2929.18(D) and 2929.28(E).

¹⁴² R.C. 2929.18(I) and 2929.28(I).

¹⁴³ R.C. 2929.18(J) and 2929.28(J).

¹⁴⁴ R.C. 2152.20(A)(3).

Determination of restitution

In determining the amount of restitution for a criminal offense, delinquent act, or juvenile traffic offense, the court must order full restitution for any expenses related to the victim's economic loss as a result of the criminal offense or delinquent act. The amount of restitution must be reduced by any payments to the victim for economic or other loss made under an insurance policy or governmental program.¹⁴⁵

Economic loss includes, but is not limited to, the following:¹⁴⁶

1. Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property is the replacement cost of the property or the actual cost of repairing the property when repair is possible;
2. Medical expenses;
3. Mental health counseling expenses;
4. Wages or profits lost due to the victim's injury or harm to the victim as determined by the court. Lost wages include commission income as well as base wages. Commission income is established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.
5. Expenses related to making a vehicle or residence accessible to the victim if the victim is partially permanently disabled or totally permanently disabled as a direct result of the delinquent act.

With regard to a criminal offense, the court may require the execution of a satisfactory performance bond or take other action permitted by law to ensure the offender pays restitution.¹⁴⁷

The victim, victim's representative, victim's attorney, if applicable, the prosecutor or the prosecutor's designee, and the offender, delinquent child, or juvenile traffic offender may provide information relevant to the determination of the restitution amount and the court must determine the full restitution amount by the preponderance of the evidence.¹⁴⁸

Upon notification by the court, any money owed by the state or by a political subdivision of the state to an offender or delinquent child who is required to make restitution, including any tax refund owed to the offender or delinquent child is assigned to the discharge

¹⁴⁵ R.C. 2152.203(B) and 2929.281(A).

¹⁴⁶ R.C. 2152.203(B) and 2929.281(A).

¹⁴⁷ R.C. 2929.281(B).

¹⁴⁸ R.C. 2152.20, 2929.18, and 2929.28.

of the offender's or delinquent child's restitution obligation, subject to any superseding federal statutes or regulations, including court-ordered support obligations.¹⁴⁹

If an offender, delinquent child, or juvenile traffic offender is required to make restitution in the form of monetary payments to more than one victim, the offender, delinquent child, or juvenile traffic offender must make the payments to the victims in the following order of priority:¹⁵⁰

- Individuals;
- Nonprofit organizations;
- Business entities;
- Governmental entities.

A court that imposes restitution as part of the offender's, delinquent child's sentence or disposition cannot suspend that part of the sentence or disposition if the victim or the victim's attorney, if applicable, objects to the suspension of the restitution as part of the sentence.¹⁵¹

A restitution obligation imposed by a court does not expire until paid in full. If an order remains unpaid in full, a court order for restitution must be reduced to a civil judgment in favor of the victim prior to the termination of the court's jurisdiction upon the delinquent child's attainment of 21 years of age. If the order is reduced to such a judgment, the person required to pay the restitution under the order is the judgment debtor. The court retains jurisdiction over the restitution order until the delinquent child attains 21 years of age and the civil judgment obligation continues to be enforceable by a victim, victim's representative, or victim's attorney, if applicable, until the obligation is satisfied. If the offender is an adult, a court-imposed restitution obligation may be reduced to a certificate of judgment in favor of the victim. If the order is reduced to such judgment, the person required to pay the restitution is the judgment debtor.¹⁵²

A court may order community service for an act that, if committed by an adult, would be a minor misdemeanor if that order would generate funds for restitution.¹⁵³

Unclaimed money in the Reparations Fund does not revert to the general fund of the public office.¹⁵⁴ All money that remains unclaimed that is for the restitution payments for crime

¹⁴⁹ R.C. 2152.203(C) and 2929.281(C).

¹⁵⁰ R.C. 2152.203(D) and 2929.281(D).

¹⁵¹ R.C. 2152.203(E) and 2929.281(E).

¹⁵² R.C. 2152.203(F) and 2929.281(F).

¹⁵³ R.C. 2152.20(D).

¹⁵⁴ R.C. 9.39.

victims must be sent to the Reparations Fund with a list from the clerk specifying the amounts and individual identifying information of the money.¹⁵⁵

If money that is received pursuant to a restitution order is in the Reparations Fund are not claimed within a period of five years, the Attorney General must use that money for the benefit of other victims of crime. However, the Attorney General must pay any part of the restitution award owed to a victim at any time to the person who has a right to the money upon proper certification from the clerk and documentation from the individual claiming such right.¹⁵⁶

Under existing law, the court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, must impose court costs in the sum of \$30 for a felony and \$9 for a misdemeanor. These costs are then deposited into the Reparations Fund. The court cannot waive the payment of these costs unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. The bill prohibits the court from waiving the \$30 and \$9 court costs.¹⁵⁷

The Ohio Supreme Court is required to create a standardized form to be made publicly available that provides guidance for victims and victims' representatives regarding the compilation of evidence to demonstrate losses for the purpose of determining restitution.¹⁵⁸

On the request of the victim, if a judge determines that, under the circumstances, it is appropriate and the victim has not been coerced, a victim may accept a settlement that is less than the full restitution order.¹⁵⁹

Victim's bill of rights

The bill requires the Attorney General to include constitutional provisions in the victim's bill of rights pamphlet that the Attorney General prepares and has printed under continuing law. The Attorney General must make the victim's bill of rights pamphlet available to all sheriffs, marshals, municipal corporations, and township police departments, constables, and other law enforcement agencies, to all prosecuting attorneys, city directors of law, village solicitors, and other similar chief legal officers of municipal corporations, and to organizations that represent or provide services for victims of crime.¹⁶⁰

The bill requires a peace officer from the law enforcement agency investigating a criminal offense or delinquent act to determine whether the victim has access to the internet

¹⁵⁵ R.C. 1901.31(G), 1907.20(D) and 2335.35(B).

¹⁵⁶ R.C. 2743.191(D).

¹⁵⁷ R.C. 2743.70(A).

¹⁵⁸ R.C. 2152.203(G) and 2929.281(G).

¹⁵⁹ R.C. 2152.203(H) and 2929.281(H).

¹⁶⁰ R.C. 109.42(A), by reference to R.C. 2930.04.

and whether the victim would prefer to access the victim's rights pamphlet online or if the victim requires a paper copy upon first contact with the victim. The peace officer may either provide the victim with a paper copy of the pamphlet or the Attorney General's telephone number to access the pamphlet at a later time. The bill requires the Attorney General to provide a website from which a printable version of the victim's rights pamphlet can be downloaded and printed locally, and also to provide limited paper copies of the victim's rights pamphlet to law enforcement agencies that order copies directly and to law enforcement agencies and prosecutors to provide to victims. The Attorney General is also required to create a webpage within the Attorney General's website that is easy to access and navigate which contains the entire content of the victim's rights pamphlet and a link to the web address where the printable version of the pamphlet may be found.¹⁶¹

The victim's bill of rights pamphlet, as modified by the bill, must include all of the following, expanded by the bill as specified:¹⁶²

- The right of the victim to receive restitution from an offender or delinquent child (current law requires the pamphlet to inform of the *possibility* of receiving restitution).
- The right of a victim *and* a victim's representative, if applicable, pursuant to state statute and the Ohio Constitution, to attend a proceeding before a grand jury, in a juvenile case, or in a criminal case without being discharged from employment, having employment terminated, having pay decreased or withheld, or otherwise being punished, penalized, or threatened as a result of time away from work because of attendance at the proceeding, regardless of whether a subpoena was issued for the victim or representative's attendance (current law requires that the pamphlet include that the victim *or* representative may attend without punishment, penalty, or threat and the protected attendance only applies to attendance *pursuant to a subpoena*).
- The right of the victim *and* a victim's representative, if applicable, pursuant to state statute and the Ohio Constitution, to receive notice of a pending motion for judicial release or other early release of the person who committed the offense against the victim, to make a statement orally, in writing, or both, and to be notified of the court's decision on such a motion. (The pamphlet under current law specifies that the right applies *in certain criminal or juvenile cases* and applies to a victim *or* victim's representative pursuant to statute, and makes no reference to the right applying pursuant to the Ohio Constitution.)
- The right of the victim *and* a victim's representative, if applicable, pursuant to state statute and the Ohio Constitution, to receive notice of any pending commutation, pardon, parole, transitional control, discharge, other form of authorized release, post-release control, or supervised release for the person who committed the offense against

¹⁶¹ R.C. 109.42(B)(1)(a) and (b)(i).

¹⁶² R.C. 109.42(A).

the victim or any application for release of that person and to send a written statement relative to the victimization and pending action to the APA or the release authority of DYS. (The pamphlet under current law specifies that the right applies *in certain criminal or juvenile cases*, applies to a victim *or* victim's representative pursuant to statute, and makes no reference to the right applying pursuant to the Ohio Constitution.)

Additionally, the bill removes the following from the items required to be included in the victim's bill of rights pamphlet:¹⁶³

- The right of the victim in certain criminal or juvenile cases or a victim's representative to receive, pursuant to continuing law, notice of the date, time, and place of the trial or delinquency proceeding in the case or, if there will not be a trial or delinquency proceeding, information from the prosecutor regarding the disposition of the case;
- The right of the victim in certain criminal or juvenile cases or a victim's representative to receive, pursuant to continuing law, notice of the name of the person charged with the violation, the case or docket number assigned to the charge, and a telephone number or numbers that can be called to obtain information about the disposition of the case;
- The right of the victim in certain criminal or juvenile cases or of the victim's representative pursuant to existing law, subject to any reasonable terms set by the court as authorized under existing law, to make a statement about the victimization and, if applicable, a statement relative to the sentencing or disposition of the offender;
- The right of the victim in certain criminal or juvenile cases or a victim's representative to receive notice of the escape from confinement or custody of the person who committed the offense, to receive that notice from the custodial agency of the person at the victim's last address or telephone number provided to the custodial agency, and to receive notice that, if either the victim's address or telephone number changes, it is in the victim's interest to provide the new address or telephone number to the custodial agency.

Existing law requires a prosecuting attorney, assistant prosecuting attorney, city director of law, assistant city director of law, village solicitor, or similar chief legal officer of a municipal corporation or an assistant of any of those officers who prosecutes an offense committed in Ohio, upon first contact with the victim of the offense, the victim's family, or the victim's dependents, to give the victim, the victim's family, or the victim's dependents a copy of the pamphlet described above and explain, upon request, the information in the pamphlet. The bill also requires those persons to give the victim, victim's family, or victim's dependents a copy of the victim's rights request form or a similar form that, at a minimum, contains all the required information in the form and to explain, upon request, the information in the form.¹⁶⁴

¹⁶³ R.C. 109.42(A).

¹⁶⁴ R.C. 109.42(B)(1)(a).

The bill also eliminates a requirement that old copies of the victim's bill of rights be used until the official or agency distributing them has distributed all of the copies.¹⁶⁵

The bill requires the Attorney General to create an information card containing all of the following:¹⁶⁶

- An outline list of victim's rights contained in the Ohio Constitution and Revised Code;
- A reference to the victim's rights request form;
- The Attorney General's crime victim's services office telephone number, electronic mailing address, website, and contact address, and a description of how to access victim's rights information;
- The Ohio Crime Victim's Justice Center's telephone number, electronic mailing address, and contact address, and the website for accessing the Center's victim's rights toolkit.

The law enforcement agency investigating the criminal offense or delinquent act is required to provide the victim with the card upon first contact.

The bill modifies existing law by providing that a law enforcement agency, a prosecuting attorney or assistant prosecuting attorney, or a city director of law, assistant city director of law, village solicitor, assistant village solicitor, or similar chief legal officer of a municipal corporation that distributes a copy of the *form* and pamphlet (instead of just the pamphlet) is not required to distribute a copy of an information card or other printed material provided by the clerk of the Court of Claims.¹⁶⁷ The bill also provides the cost of printing and distributing the form (as well as the pamphlet under continuing law) is paid out of the Reparations Fund.¹⁶⁸

Effect of failure to provide the pamphlet

The bill eliminates a provision that specifies that the failure of a law enforcement agency, prosecuting attorney, assistant prosecuting attorney, city law director, assistant village solicitor, or similar chief legal officer of a municipal corporation or an assistant to any of those officers to give the pamphlet to the victim of an offense or delinquent act, the victim's family, or dependents of the victim does not give the victim, family, or dependents any rights under continuing law.¹⁶⁹

¹⁶⁵ R.C. 109.42(B)(1)(c).

¹⁶⁶ R.C. 109.42(B)(1)(c)(i).

¹⁶⁷ R.C. 109.42(B)(2).

¹⁶⁸ R.C. 109.42(C).

¹⁶⁹ R.C. 109.42(B)(2), repealed.

Tolling of speedy trial provisions

Tolling permitted

The bill permits the speedy-trial rights of a criminal defendant to be tolled during any period that an appeal or petition for an extraordinary writ to enforce victim's rights (see "**Victim's right to be present and heard – Standing**," above) is pending.¹⁷⁰

Background

Continuing law provides the time by which a criminal defendant must be brought to trial, depending on the severity of the offense that the defendant is charged with violating. The time for trial may be up to 270 days after the accused is indicted. For purposes of computing time under the speedy trial statute, any day in which the accused is held in jail in lieu of bail on the pending charge counts as three days. Continuing law allows this time period to be extended only for statutorily prescribed periods, such as during any period of delay occasioned by the neglect or improper act of the accused or the period of continuance granted on the accused's own motion and the period of any reasonable continuance granted other than upon the accused's own motion.¹⁷¹

Victim testimony in criminal cases, juvenile cases, and preliminary hearings

Generally

Rights of a child or person with a developmental disability who testifies in open court

The bill provides rights that apply to a person under 18 or a person with a developmental disability who testifies in open court. The court is required to enforce any violations of these rights through its contempt power.¹⁷²

Under the bill, when a child or person with a developmental disability testifies in open court, the child or person with a developmental disability has the following rights that may be enforced by the court on its own motion or upon motion or notice of any attorney involved in the proceeding:¹⁷³

- To be asked questions in a manner the child or person with a developmental disability can reasonably understand, including, but not limited to, a child-friendly oath;
- To be free of harassment or intimidation tactics in the proceeding;

¹⁷⁰ R.C. 2945.72(J).

¹⁷¹ R.C. 2945.72 and R.C. 2945.73, not in the bill.

¹⁷² R.C. 2945.483(D)(2).

¹⁷³ R.C. 2945.483(B).

- To have an advocate or victim's representative of the child's or person with a developmental disability's choosing present in the courtroom and in a position clearly visible in close proximity to the child or person with a developmental disability (except as provided below);
- To have the courtroom or hearing room adjusted to ensure the comfort and protection of the child or person with a developmental disability;
- To have flexibility in the formalities of the proceedings in an effort to ensure the comfort of the child or person with a developmental disability;
- To permit a comfort item to be present inside the courtroom or hearing room and to accompany the child or person with a developmental disability throughout the hearing;
- To permit the use of a properly constructed screen that would allow the judge and jury in the courtroom or hearing room to see the child or person with a developmental disability but would obscure the child's or person with a developmental disability's view of the defendant or alleged juvenile offender or the public or both;
- To have a secure and comfortable waiting area provided for the child or person with a developmental disability during the court proceedings and to have a support person of the child's or person with a developmental disability's choosing stay with the child or person with a developmental disability while waiting (except as provided below);
- To have an advocate or victim's representative inform the court about the child's or person with a developmental disability's ability to understand the nature of the proceedings, special accommodations that may be needed for the child's or person with a developmental disability's testimony, and any other information relevant to any of the rights provided by the bill for a child or person with a developmental disability who testifies in open court.

If the prosecutor in the case or the court has a reasonable basis to believe that the victim's representative is not acting in the interests of the victim who is a child or a person with a developmental disability, the bill requires the prosecutor to file a motion setting forth the reasonable basis for this belief and the court must hold a hearing to determine whether the victim's representative is acting in the interests of the victim. The court must make this determination by a preponderance of the evidence. If the court finds that the victim's representative is not acting in the interests of the victim, the court must appoint a court-appointed special advocate, guardian ad litem, or a victim advocate to act as the victim's representative in lieu of the previously appointed victim's representative.

Appointing standby counsel

The bill allows the court to appoint standby counsel in circumstances where the accused in a proceeding has chosen to proceed without counsel. The court may order standby counsel to question a child or person with a developmental disability on behalf of the *pro se* party if the

court finds that there is a substantial likelihood that serious emotional trauma would come to the child or person with a developmental disability if the *pro se* party were allowed to question the child or person with a developmental disability directly.¹⁷⁴

Securing physical safety of child victim or victim with a developmental disability

If the child or person with a developmental disability is the victim of a criminal offense or delinquent act, the court must ensure that all steps necessary to secure the physical safety of the child or person with a developmental disability, both in the courtroom and during periods of time that the child or person with a developmental disability may spend waiting for court, have been taken. The court and all attorneys involved in a court proceeding involving a child or person with a developmental disability must not disclose to any third party any discovery, including, but not limited to, the child's or person with a developmental disability's name, address, and date of birth, any and all interviews of the child or person with a developmental disability, and any other identifying information of the child or person with a developmental disability.¹⁷⁵

Proceedings in juvenile court

Minor victims

Deposition of a minor victim

The bill allows the prosecution, a victim under the age of 13, or the attorney of a victim under the age of 13 to motion a juvenile court to order that the testimony of the victim be taken by deposition in juvenile court proceedings involving a complaint, indictment, or information in which a child is charged with unlawful restraint, criminal child enticement, rape, sexual battery, gross sexual imposition, sexual imposition, importuning, public indecency, compelling prostitution, procuring, soliciting, engaging in solicitation after a positive HIV test, disseminating material harmful to juveniles, pandering obscenity, pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, illegal use of a minor or impaired person in a nudity-oriented material or performance, endangering children, or an act that would be an offense of violence if committed by an adult. Under current law, only the prosecution can make such a motion.¹⁷⁶ Additionally, under the bill, in any proceeding that is not eligible for the protections described above and in which an alleged victim was under the age of 18 at the time of the complaint, indictment, or information was filed, whichever occurred earlier, upon motion of the child victim, the child victim's attorney, if applicable, or an attorney for the prosecution, shows by a preponderance of the evidence that the child will suffer serious emotional trauma if required to provide live trial testimony, then the juvenile judge must order that the testimony of the victim be taken by

¹⁷⁴ R.C. 2945.483(C).

¹⁷⁵ R.C. 2945.483(D).

¹⁷⁶ R.C. 2152.81(A)(2)(a).

deposition.¹⁷⁷ Under continuing law, the judge must notify the victim, the prosecution, the victim's attorney if applicable (added by the bill), and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition.¹⁷⁸

The prosecution, victim, or victim's attorney, if applicable, may also request, under the bill, that the deposition be recorded, rather than allowing only the prosecution to make such a motion under current law for the deposition to be "videotaped." If the court orders a deposition to be recorded in this fashion, the bill adds the victim's attorney and victim's representative to the persons who may be present for the deposition.¹⁷⁹

Continuing law requires that such depositions be taken in the same manner as depositions in civil cases, except that the judge must preside at the taking of depositions and must rule at that time on any objections of the prosecution or the attorney for the child charged with the violation or act.¹⁸⁰

Testimony of a minor victim by CCTV or recording

The bill allows the child victim or the child victim's attorney to file a motion with the juvenile judge requesting testimony by closed circuit equipment (CCTV) or by recording where only the prosecution may file such a motion under current law.¹⁸¹

Under continuing law, unchanged by the bill, a victim is "unavailable" for purposes of determining whether testimony must be allowed by CCTV or recording if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following:¹⁸²

- The persistent refusal of the child victim to testify despite judicial requests to do so;
- The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

Victim with a developmental disability

Deposition of a victim with a developmental disability

The bill modifies the requirements for a victim with a developmental disability to provide testimony in a juvenile proceeding by deposition. Under continuing law, these

¹⁷⁷ R.C. 2152.81(A)(2)(b).

¹⁷⁸ R.C. 2152.81(A)(2)(c).

¹⁷⁹ R.C. 2152.81(A)(2)(b) and (3).

¹⁸⁰ R.C. 2152.81(A).

¹⁸¹ R.C. 2152.81(C) and (D).

¹⁸² R.C. 2152.81(E).

deposition procedures apply in a proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with failing to provide for a functionally impaired person, patient abuse or neglect, patient endangerment, rape, sexual battery, gross sexual imposition, compelling prostitution, procuring, soliciting, engaging in sollicitation after a positive HIV test, disseminating material harmful to juveniles, pandering obscenity, pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, illegal use of a minor or impaired person in a nudity-oriented material or performance, or an act that would be an offense of violence if committed by an adult.

The bill allows the victim or victim's attorney to motion the court to have testimony of a victim with a developmental disability taken by deposition. Current law only allows the prosecution to make such a motion. Under continuing law, the judge must notify the victim, the prosecution, the victim's attorney if applicable (added by the bill), and the attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition.¹⁸³

In any proceeding that is not otherwise eligible for the protections provided above, the prosecution, the victim, or the victim's attorney, if applicable, may make a motion for a victim with a developmental disability to provide testimony in a juvenile proceeding by deposition. The judge must grant the motion upon a showing, by a preponderance of the evidence, that the victim will suffer serious emotional trauma if required to provide live trial testimony. The prosecution, the victim, or the victim's attorney, if applicable, may request that the deposition be recorded.¹⁸⁴

Testimony of a victim with a developmental disability by CCTV or recording

The bill also modifies the procedures under which testimony in a juvenile court proceeding involving one of the offenses listed in "**Deposition of a victim with a developmental disability**," above, may be taken in a room other than the room in which the proceedings are being held and either televised into that room by CCTV or recorded to be shown in that room. The bill allows the victim or the victim's attorney to file a motion with the juvenile judge requesting testimony by CCTV or by recording where only the prosecution may file such a motion under current law.¹⁸⁵

Proceedings in criminal court

Minor victims

Minor victim depositions

Under the bill, any proceeding that is not otherwise eligible for the protections described above and in which an alleged victim of the violation was a child who was less than

¹⁸³ R.C. 2152.811(B)(1)(a) and (c).

¹⁸⁴ R.C. 2152.811(B)(1)(b).

¹⁸⁵ R.C. 2152.811(D) and (E).

18 years old when the complaint, indictment, or information was filed, whichever occurred earlier, upon motion of the child victim, the child victim's attorney, if applicable, or an attorney for the prosecution, and upon a showing by a preponderance of the evidence that the child will suffer serious emotional trauma if required to provide live trial testimony, the judge of the court in which the prosecution is being conducted shall order that the testimony of the child victim be taken by deposition.¹⁸⁶

The prosecution may also request, under the bill, that the deposition be recorded, rather than that the deposition be "videotaped" under existing law.¹⁸⁷

Testimony of a minor victim by CCTV or recording

The bill allows the child victim or the child victim's attorney in any proceeding in the prosecution of a charge involving one of the offenses listed in "**Minor victim depositions**," above, to file a motion with the judge requesting testimony by CCTV or by recording where only the prosecution may file such a motion under current law.¹⁸⁸

Under continuing law, unchanged by the bill, a minor victim is "unavailable" for purposes of determining whether testimony must be allowed by CCTV or recording if the judge determines that the child victim is unavailable to testify in the room in the physical presence of the child charged with the violation or act due to one or more of the following:¹⁸⁹

- The persistent refusal of the child victim to testify despite judicial requests to do so;
- The inability of the child victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason;
- The substantial likelihood that the child victim will suffer serious emotional trauma from so testifying.

Victim with a developmental disability

Deposition of a victim with a developmental disability

The bill modifies the requirements for a victim with a developmental disability to provide testimony in a criminal proceeding by deposition. Under continuing law, these deposition procedures apply in any proceeding in the prosecution of failing to provide for a functionally impaired person, patient abuse or neglect, patient endangerment, unlawful restraint, rape, sexual battery, gross sexual imposition, sexual imposition, public indecency, compelling prostitution, procuring, soliciting, engaging in solicitation after a positive HIV test, pandering obscenity, pandering obscenity involving a minor or impaired person, pandering

¹⁸⁶ R.C. 2945.481(A)(2)(b).

¹⁸⁷ R.C. 2945.481(A)(2)(a).

¹⁸⁸ R.C. 2945.481(C).

¹⁸⁹ R.C. 2945.481(E).

sexually oriented matter involving a minor or impaired person, illegal use of a minor or impaired person in a nudity-oriented material or performance, or an offense of violence.¹⁹⁰

The bill allows the victim or victim's attorney to motion the court to have testimony of a victim with a developmental disability be taken by deposition. Current law only allows the prosecution to make such a motion. The judge must grant the motion upon a showing, by a preponderance of the evidence, that the victim will suffer serious emotional trauma if required to provide live trial testimony. Current law does not specify the standard of proof that applies to the motion. Under continuing law, the judge must notify the victim, the prosecution, the victim's attorney if applicable (added by the bill), and the defense of the date, time, and place for taking the deposition. The prosecution, victim, or victim's attorney, if applicable, may also request, under the bill, that the deposition be recorded, rather than allowing only the prosecution to make such a motion under current law for the deposition to be "videotaped." If the court orders a deposition to be recorded in this fashion, the bill adds the victim's attorney and victim's representative to the persons who may be present for the deposition.¹⁹¹

Additionally, the bill allows for the deposition of a victim with a developmental disability to be entered into the evidence upon motion of the victim or the victim's attorney in addition to procedures under current law that allow for the admission of such a deposition upon motion by the prosecutor. Under continuing law, unchanged by the bill, the deposition is only admissible if it is not excluded by the hearsay rule and is admissible under the Ohio Rules of Evidence.¹⁹²

Testimony of a victim with a developmental disability by CCTV or recording

The bill also modifies the procedures under which testimony in a criminal proceeding involving one of the offenses listed in "**Deposition of a victim with a developmental disability**," above, may be taken in a room other than the room in which the proceedings are being held and either televised into that room by CCTV or recorded to be shown in that room. The bill allows the victim or the victim's attorney to file a motion with the judge requesting testimony by CCTV or by recording where only the prosecution may file such a motion under current law.¹⁹³

Preliminary hearings in criminal court

Minor victims

The bill allows the victim or the victim's attorney to file a motion with the judge requesting testimony by CCTV when the complaint or information was filed to be taken in a room outside

¹⁹⁰ R.C. 2945.482(B)(1)(a).

¹⁹¹ R.C. 2945.482(B).

¹⁹² R.C. 2945.482(C).

¹⁹³ R.C. 2945.482(D) and (E).

the hearing room and televised by CCTV into the preliminary hearing room in a case involving an alleged felony violation of child enticement, trafficking in persons, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, compelling prostitution, soliciting, engaging in solicitation after a positive HIV test, pandering obscenity, pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, illegal use of a minor or impaired person in a nudity-oriented material or performance, or an alleged offense of violence, where only the prosecution may file such a motion under current law. In cases involving an alleged violation of one of the above-listed offenses and in which an alleged victim of the offense was under 13 years old where the complaint or information was filed, the bill allows the prosecutor, victim, or victim's attorney to file a motion to have testimony of the child victim at the preliminary hearing recorded and preserved. Current law allows only the prosecutor to file such a motion, and requires the testimony to be "recorded and preserved on videotape."¹⁹⁴

Under the bill, upon motion of the prosecution, victim, or victim's attorney, if applicable, the testimony of a victim in a case not otherwise eligible for testimony by CCTV may request to give CCTV testimony at the preliminary hearing if the alleged victim of the offense was under 18 years old when the complaint, indictment, or information was filed, whichever occurred earlier, and the alleged victim is able to show by a preponderance of the evidence that the victim will suffer serious emotional trauma if required to provide live testimony, or the alleged victim has a developmental disability and the alleged victim is able to show by a preponderance of the evidence that the victim will suffer serious emotional trauma if required to provide live testimony.¹⁹⁵

Victims of trafficking in persons

The bill also modifies the process for taking testimony of a victim of trafficking in persons in a room outside the hearing room and televising the testimony by CCTV into the preliminary hearing. The bill, in a case involving trafficking in persons, allows testimony at a preliminary hearing to be taken by CCTV upon motion of the prosecution, victim, or victim's attorney, if applicable. Current law only allows such testimony by CCTV upon motion of the prosecution.

Under continuing law, the motion may be granted only if the judge or magistrate determines that the victim is unavailable to testify in the room in the physical presence of the accused due to the inability of the victim to communicate about the alleged offense because of extreme fear, severe trauma, or another similar reason; the substantial likelihood that the victim will suffer severe emotional trauma from testifying; or the victim is at a hospital for care and treatment for any physical, mental, or emotional injury suffered by reason of the alleged offense. If the motion is granted to have testimony taken by CCTV, the bill adds attorneys for the victim to the list of persons who may be present in the room while the CCTV testimony is

¹⁹⁴ R.C. 2937.11(B)(1) and (C).

¹⁹⁵ R.C. 2937.11(B)(2).

taken and removes a requirement that a person chosen by the victim to be present at the preliminary hearing must not be a witness in the preliminary hearing.¹⁹⁶

Rape shield laws

The bill narrows an exception to Ohio's Rape Shield Law that generally prohibits the introduction of evidence of the victim's or defendant's sexual history in rape and gross sexual imposition cases. Under the bill, that evidence may be admitted when it involves the origin of sexually transmitted disease or infection, to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Current law allows that evidence to be admitted when the evidence involves the origin of disease generally, to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.¹⁹⁷

Polygraph examination of victim of sex offense

The bill prohibits a peace officer, prosecutor, other public official, defendant, defendant's attorney, alleged juvenile offender, or alleged juvenile offender's attorney from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation or prosecution of the alleged sex offense. Existing law applied only to a peace officer, prosecutor, or other public official, and applied only when the polygraph examination was a condition for proceeding with the investigation of the alleged sex offense.¹⁹⁸

Victim impact statements

The bill requires any statement made by the victim's representative for inclusion in the victim impact statement to be included in the victim impact statement that must be prepared in every felony case involving physical harm, an attempt to cause physical harm, or the risk of physical harm to a victim. Any statement made by the victim for that purpose must also be included in the victim impact statement under continuing law.¹⁹⁹ Similarly, the bill requires a sentencing court to consider, among other statements required to be considered at sentencing for a misdemeanor offense, statements of the victim's representative or the victim's attorney, if applicable. The bill also narrows the requirement to require the court to consider those statements only when they are oral *and* written, rather than requiring the court to consider statements of either sort under current law.²⁰⁰

¹⁹⁶ R.C. 2937.11(D).

¹⁹⁷ R.C. 2907.02(D) and 2907.05(E).

¹⁹⁸ R.C. 2907.10.

¹⁹⁹ R.C. 2947.051.

²⁰⁰ R.C. 2929.20(D).

Costs in misdemeanor proceedings

The bill specifically allows for the costs of a global positioning system device to be imposed on an offender as a financial sanction for a misdemeanor offense. Continuing law already permits the court imposing financial sanctions on an offender for any misdemeanor, including a minor misdemeanor, to require reimbursement by the offender of the costs of sanctions incurred by the government, including, but not limited to, all or part of the costs of implementing any community control sanction.²⁰¹

State Victims Assistance Advisory Council

The bill increases the number of members of the State Victims Assistance Advisory Council from 17 to 21 members. The council is required to include the following: one member who is a board member or employee of any statewide organization that exists primarily to provide no cost legal representation to crime victims to seek enforcement of crime victims' rights during criminal proceedings; one member who is an employee of an agency that provides services to individuals with developmental or intellectual disabilities; one member of a victim service disability agency; and one employee from a statewide forensic nursing organization.²⁰²

Other changes

The bill also makes a number of stylistic, conforming, and cross-reference changes consistent with the items discussed above.²⁰³

HISTORY

Action	Date
Introduced	06-08-21
Reported, H. Criminal Justice	05-12-22
Passed House (90-1)	05-18-22

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²⁰¹ R.C. 2929.28(A)(3).

²⁰² R.C. 109.91(B).

²⁰³ R.C. 109.42(B), (C), and (D), 2152.81(C) and (F), 2152.811(B)(1) and (G)(1); 2929.18(A)(1), 2929.20(L), 2929.22(C), 2929.28(E)(2), 2930.01(B), (C), (D), and (P)(1), 2930.03(B)(1), 2930.04(B) and (D), 2930.05(A), 2930.06(C)(1), (3), (10), and (F), 2930.062, 2930.08(B), 2930.11(A) and (B), 2930.12(A)(1), (4), and (5), 2930.13, 2930.14(A), 2930.15(A), 2930.17(A), 2930.19(G), 2937.11(C), 2945.481(F)(1), 2945.482(B)(1) and (G)(1), 2945.483(D)(2), and 2951.041(A)(2).