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## Bill Analysis

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**Primary Sponsor:** Rep. Cupp

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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 as 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.
- Prohibits a victim from being required to pay for a copy of any public records related to the victim’s case.
- 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 and requires the Attorney General to create the victim's rights request/waiver form.

### **Law enforcement agencies**

- 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/waiver 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/waiver 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.
- 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 to notify the victim and victim's representative of the right of the victim, representative, or any member of the victim's family or household to request not to receive mail from the inmate who was convicted of the offense against the victim and provides for procedures upon a custodial agency's receipt of a request not to receive mail.

### **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.

### **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.
- 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 that are confidential or privileged by law to request and receive permission from the court before the subpoena is issued.
- 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.
- Allows for a presentence investigation that is made available to the defendant to be 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.

## **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.

### **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.
- Requires restitution ordered in juvenile delinquency proceedings and criminal proceedings to be made to the estate of the victim if the victim is deceased, rather than to a survivor of the victim.
- Broadly allows the victim, victim's representative, victim's attorney, prosecuting attorney, and the offender, delinquent child, or juvenile traffic offender to provide information relevant to the determination of the amount of restitution in a criminal proceeding, juvenile delinquency proceeding, or juvenile traffic offense proceeding.
- Modifies the process for calculating restitution owed for juvenile delinquency, juvenile traffic offenses, and criminal offenses and requires full restitution to be determined by the court by a preponderance of the evidence.

## **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, rather than requiring the notice to the prosecutor.
- 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 certain crimes to generally expand the availability of such alternative means of testimony to child-victims under 16 years old 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 a defendant or juvenile offender from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination.

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## **TABLE OF CONTENTS**

Victim's rights.....	10
Definitions .....	10
Victim's representative .....	11
Who can be a victim's representative.....	11
Acting in best interest of victim .....	11
More than one person seeking to act as victim's representative.....	12
Notification of identity of victim's representative.....	12
Persons prohibited from being victim's representative.....	12
Victim's rights request/waiver form .....	13
Information law enforcement must provide to the victim .....	13
Victim's right to an interpreter .....	15
Paying for public records.....	16

Identifying self as victim to law enforcement.....	16
Notice .....	16
Opting out.....	16
Notice of inactive case.....	16
Notice of arrest or detention .....	17
Custodial agency notifying law enforcement agency .....	18
Notice by court to prosecutor of court proceeding .....	18
Notice of date, time, and place of any proceeding in the case.....	18
Notice to victim of misdemeanor offense.....	19
Notice of motion, request, or agreement .....	19
Notice of defendant’s acquittal or conviction.....	20
Probation department presentence investigation.....	20
Notice of appeal .....	20
Notice of incarceration.....	20
Notice of application or hearing for judicial release .....	21
Notice of judicial release .....	21
Notice of hearing regarding sex offender .....	21
Custodial agency providing form and notice to victim .....	22
Notice of right not to receive mail from defendant.....	23
Notifications regarding probation or community control.....	24
Notice of pardon.....	24
Notice of judicial release hearing.....	25
Notice of sealing or expungement hearing.....	25
Conferring with the prosecutor .....	25
Copies .....	27
Right not to testify.....	28
Redaction of information .....	28
Public Records Law .....	31
Subpoenas .....	31
Contact with victim .....	32
Speedy disposition of case .....	33
Victim’s right to be present and heard .....	33
Generally.....	33
Right to be present and heard at negotiated plea proceeding.....	34
Right to be present and heard at hearing on post-arrest release.....	34
Right to be present and heard at hearing revoking or terminating probation or community control .....	35



Right to be present and heard at proceeding to modify term of probation or community control .....	35
Disclosing victim contact information .....	35
Retention of victim’s property .....	35
Dismissed counts .....	35
Victim’s impact statement – written and oral statement.....	36
Presentence investigation report.....	36
Right to be heard at sentencing .....	36
Right to be heard at proceeding regarding judicial release .....	37
Sealing of records .....	37
Prohibition against retaliation.....	38
Standing.....	38
Standing in judicial release hearing.....	40
Standing in sealing and expungement proceedings.....	40
Pro se victim .....	41
Restitution.....	41
Generally .....	41
Adult criminal proceedings .....	41
Juvenile proceedings .....	42
Determination of restitution .....	42
Victim’s bill of rights.....	45
Effect of failure to provide the pamphlet .....	47
Tolling of speedy trial provisions .....	47
Tolling permitted.....	47
Background.....	47
Victim testimony in criminal cases, juvenile cases, and preliminary hearings.....	48
Generally .....	48
Rights of a child or person with a developmental disability who testifies in open court ....	48
Appointing standby counsel .....	49
Securing physical safety of child victim or victim with a developmental disability .....	49
Proceedings in juvenile court .....	50
Minor victims.....	50
Deposition of a minor victim .....	50
Testimony of a minor victim by CCTV or recording.....	50
Victim with a developmental disability.....	51
Deposition of a victim with a developmental disability .....	51
Testimony of a victim with a developmental disability by CCTV or recording .....	52

Proceedings in criminal court.....	52
Minor victims.....	52
Minor victim depositions.....	52
Testimony of a minor victim by CCTV or recording.....	53
Victim with a developmental disability .....	53
Deposition of a victim with a developmental disability .....	53
Testimony of a victim with a developmental disability by CCTV or recording .....	54
Preliminary hearings in criminal court .....	54
Minor victims.....	54
Victims of trafficking in persons .....	55
Rape shield laws.....	56
Polygraph examination of victim of sex offense.....	56
Victim impact statements .....	56
Costs in misdemeanor proceedings.....	56
Other changes.....	57

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## DETAILED ANALYSIS

### Victim’s rights

#### Definitions

The bill includes the following definitions for the purposes of the Victim’s Right Law:<sup>1</sup>

- “Criminal offense” (rather than “crime”) means an alleged act or commission committed by a person that is punishable by incarceration and is not disposed of by the traffic violations bureau serving the court under Traffic Rule 13.
- “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.

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<sup>1</sup> R.C. 2930.01.

- “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 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:<sup>2</sup>

- Any person designated by the victim, as under existing law;
- A member of the victim’s family or a victim advocate 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.<sup>3</sup>

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<sup>2</sup> R.C. 2930.02(A).

<sup>3</sup> R.C. 2930.02(B).

### **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 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.<sup>4</sup>

### **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:<sup>5</sup>

- 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.<sup>6</sup>

The bill also includes “victim’s representative” in numerous sections of the Victim’s Rights Law that address the rights of the victim and information the victim receives.<sup>7</sup>

### **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:<sup>8</sup>

- A suspect;
- A defendant;
- An offender;

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<sup>4</sup> R.C. 2930.02(C).

<sup>5</sup> R.C. 2930.02(D).

<sup>6</sup> R.C. 2930.02(D).

<sup>7</sup> R.C. 2930.06, 2930.08, 2930.09, 2930.12, 2930.13, 2930.14, 2930.15, 2930.16, and 2930.17.

<sup>8</sup> R.C. 2930.02(E).

- An alleged juvenile offender;
- A delinquent child.

### **Victim's rights request/waiver form**

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/waiver form or a substantially similar form that does all of the following:<sup>9</sup>

- Allows for the victim and the victim's representative to request the applicable rights to which the victim and the victim's representative are entitled, on request, under this provision;
- Provides a method for the victim to designate a representative if the victim chooses;
- Includes signature lines for acknowledgment by the law enforcement agency, prosecutor, or custodial agency and victim and victim's representative;
- Includes the address or contact information for the applicable law enforcement agency, prosecutor, or custodial agency;
- Includes the address, telephone number, and electronic mail address, if applicable, for the victim and victim's representative, if applicable.

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.<sup>10</sup>

### **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:<sup>11</sup>

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<sup>9</sup> R.C. 2930.04(A).

<sup>10</sup> R.C. 2930.04(A).

<sup>11</sup> R.C. 2930.04(C).

- 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 these 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;
- The procedures and resources available for the protection of the victim, including protection orders issued by the courts;
- 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.<sup>12</sup>

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/waiver form, or a substantially similar 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.<sup>13</sup>

If a suspect is arrested, the law enforcement agency must submit an executed copy of the victim's rights request/waiver form to the custodial agency as soon as practicable once the law enforcement agency learns of the suspect's arrest. On filing of charges or a complaint, the law enforcement agency must submit an executed copy of that form to the prosecutor. The prosecutor must file the assertion of rights portion of that form, but not the victim's or the

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<sup>12</sup> R.C. 2930.04(C).

<sup>13</sup> R.C. 2930.04(D).

victim's representative's contact information portion of that form, with the court within seven days of initiation of a criminal prosecution.<sup>14</sup>

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.

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/waiver form.<sup>15</sup>

### **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, the Department of Rehabilitation and Correction (DRC), and the Department of Youth Services (DYS), at no cost to the victim.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

"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

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<sup>14</sup> R.C. 2930.04(E).

<sup>15</sup> R.C. 2930.04(G).

<sup>16</sup> R.C. 2930.041(A).

<sup>17</sup> R.C. 2930.041(B).

<sup>18</sup> R.C. 2930.041(C).

interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.<sup>19</sup>

### **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.<sup>20</sup>

### **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.<sup>21</sup>

### **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 providing victims with rights for future offenses by giving a written notification form to the appropriate prosecutor or the prosecutor's designee.<sup>22</sup> 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/waiver 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.<sup>23</sup>

#### **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

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<sup>19</sup> 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.

<sup>20</sup> R.C. 2930.043.

<sup>21</sup> R.C. 2930.044.

<sup>22</sup> R.C. 2930.04(B)(1).

<sup>23</sup> R.C. 2930.04(B)(2).



representative, if applicable, with notice as to whether an inactive case is reopened or closed, unless the victim has waived the right to notifications.<sup>24</sup>

### **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 or 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:<sup>25</sup>

- 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;
- 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.

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.<sup>26</sup>

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

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<sup>24</sup> R.C. 2930.042.

<sup>25</sup> R.C. 2930.05(A).

<sup>26</sup> R.C. 2930.05(A)(4).

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.<sup>27</sup>

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.<sup>28</sup>

### **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.<sup>29</sup>

### **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 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.<sup>30</sup>

### **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.<sup>31</sup>

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

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<sup>27</sup> R.C. 2930.05(B)(1).

<sup>28</sup> R.C. 2930.05(B)(2).

<sup>29</sup> R.C. 2930.051.

<sup>30</sup> R.C. 2930.06(D).

<sup>31</sup> R.C. 2930.06(E).

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.<sup>32</sup>

### **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.<sup>33</sup>

### **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, 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.<sup>34</sup>

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.<sup>35</sup>

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<sup>32</sup> R.C. 2930.06(F).

<sup>33</sup> R.C. 2930.06(E).

<sup>34</sup> R.C. 2930.08(B).

<sup>35</sup> R.C. 2930.08(C).

## **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.<sup>36</sup> 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:<sup>37</sup>

- 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 restitution 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 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.<sup>38</sup>

## **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.<sup>39</sup>

## **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

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<sup>36</sup> R.C. 2930.12(A).

<sup>37</sup> R.C. 2930.12(A)(2), (7), and (8)(b).

<sup>38</sup> R.C. 2930.12(B).

<sup>39</sup> R.C. 2930.15(A).

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. If the custodial agency is DRC, the custodial agency, instead of the prosecutor, must notify the victim and the victim's representative of the services offered by the Office of Victims' Services and if the custodial agency is DYS, the custodial agency, rather than the prosecutor, must notify the victim and the victim's representative of 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.<sup>40</sup>

### **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, 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.<sup>41</sup>

### **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.<sup>42</sup>

### **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,

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<sup>40</sup> R.C. 2930.16(A).

<sup>41</sup> R.C. 2930.16(B)(1).

<sup>42</sup> R.C. 2930.17(C).

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.<sup>43</sup>

### **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 give the victim and victim's representative, if applicable, the victim's rights request/waiver form, or a substantially similar form. The custodial agency shall include a notice to the victim and victim's representative that failure to affirmatively request these rights is considered a waiver of these rights, but the victim or victim's representative may request the rights at a later time. 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.<sup>44</sup>

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:<sup>45</sup>

- 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.

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<sup>43</sup> R.C. 2930.16(B)(2).

<sup>44</sup> R.C. 2930.16(C)(1).

<sup>45</sup> R.C. 2930.16(C)(2).

## Notice of right not to receive mail from defendant

Under the bill, within seven days after a defendant is sentenced to a term of incarceration, the prosecutor, or the prosecutor's designee, must provide written notice to the victim and victim's representative, if applicable, of the right of the victim or victim's representative, any member of the victim's family, or any member of the victim's household to request not to receive mail from the inmate who was convicted of committing a criminal offense against the victim. The notice does all of the following:<sup>46</sup>

- Informs the victim or victim's representative of the right of the victim or victim's representative, or any member of the victim's family or household, to request not to receive mail from the inmate;
- Instructs the victim or victim's representative on how to file the request with the custodial agency;
- Includes the following statement:

If the defendant is incarcerated, you have the right to request that the defendant not send you, members of your family, or members of your household, mail. If the defendant sends you or your family or household members mail after you have made this request, you or the members of your family or household have the right to report the incident to the custodial agency for sanctions against the defendant.

On receipt of a post-conviction notice request in which a request not to receive mail is indicated, the custodial agency must notify the inmate of the request and that sending mail to the victim or victim's representative, or the family or household members who are denoted by the victim or victim's representative, will result in appropriate sanctions, including, but not limited to, reduction or denial of earned release credits and review of all outgoing mail.<sup>47</sup>

The custodial agency is prohibited from knowingly forwarding mail addressed to any person who requests not to receive mail. The custodial agency must retain inmate mail and forward the mail to the prosecutor that prosecuted the inmate for the underlying offense and must retain the mail for at least one year from the date the inmate is released.<sup>48</sup>

The provisions described above should not be construed as altering or limiting an order from a court of competent jurisdiction permitting contact between an incarcerated offender and the child or children of that offender.<sup>49</sup>

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<sup>46</sup> R.C. 2930.161(A).

<sup>47</sup> R.C. 2930.161(B).

<sup>48</sup> R.C. 2930.161(C).

<sup>49</sup> R.C. 2930.161(D).

## **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:<sup>50</sup>

- 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.

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:<sup>51</sup>

- 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;
- Any conduct by the defendant or alleged juvenile offender that raises a concern for the victim's safety;
- 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 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,

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<sup>50</sup> R.C. 2930.162(A).

<sup>51</sup> R.C. 2930.162(B).



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.<sup>52</sup>

### **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.<sup>53</sup> 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.<sup>54</sup> 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 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.<sup>55</sup>

### **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 60 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.<sup>56</sup>

### **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

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<sup>52</sup> R.C. 2930.163.

<sup>53</sup> R.C. 2929.20(E)(1) and (2).

<sup>54</sup> R.C. 2929.20(I).

<sup>55</sup> R.C. 2929.20(K).

<sup>56</sup> R.C. 2151.356(C)(2)(c), 2151.358(B)(4)(b) and (c), and 2953.32(B).

prosecutor or the prosecutor's designee confer with the victim and, if applicable, the victim's representative 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.*<sup>57</sup>

Under the bill, if the victim or the victim's representative requested to confer with the prosecutor, the court must inquire as to whether or not the prosecutor conferred with the victim and the victim's representative at 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.

The bill also removes the provision that states that a prosecutor's failure to confer with a victim and a court's failure to provide the notice do not affect the validity of an agreement between the prosecutor and the defendant or alleged offender in the case, a pretrial diversion of the defendant or alleged juvenile offender, an amendment or dismissal of an indictment, information, complaint filed against the defendant or alleged juvenile offender, a plea entered by the defendant or alleged juvenile offender, an admission entered by the defendant or alleged juvenile offender, or any other disposition in the case.<sup>58</sup>

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.<sup>59</sup>

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:<sup>60</sup>

- 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

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<sup>57</sup> R.C. 2930.06(A)(1).

<sup>58</sup> R.C. 2930.06(A)(3).

<sup>59</sup> R.C. 2930.06(B).

<sup>60</sup> R.C. 2930.06(C).

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;
- 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/waiver form, or a substantially similar 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 all documents filed with the court in the victim's case at no cost to the victim. Such copies may be provided in an electronic format.<sup>61</sup>

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<sup>61</sup> R.C. 2930.063(A).

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.<sup>62</sup>

### **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 orders disclosure on finding that a compelling need exists to disclose that information.<sup>63</sup> The court proceeding to determine if a compelling need exists to disclose that information is in-camera. The victim and the victim's attorney, if applicable, must be present during the in-camera proceeding. If the court determines that the information must be disclosed, the court proceeding must be closed during the disclosure.<sup>64</sup> "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.<sup>65</sup>

A defendant may not compel any witness to a criminal offense or delinquent act to testify at any proceeding, including any juvenile court proceeding, regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents in writing or the court orders disclosure of that information on finding that a compelling need for that information exists. The court proceeding to determine if a compelling need exists to disclose that information is in-camera and the victim and the victim's attorney, if applicable, must be present during the in-camera proceeding.<sup>66</sup>

### **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

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<sup>62</sup> R.C. 2930.063(B).

<sup>63</sup> R.C. 2930.07(B)(1)(a).

<sup>64</sup> R.C. 2930.07(B)(1)(b).

<sup>65</sup> R.C. 2930.07(A)(2) (cross reference to R.C. 2930.01(J)).

<sup>66</sup> R.C. 2930.07(B)(2).

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)).<sup>67</sup> “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.<sup>68</sup> “Public official” includes all officers, employees, or duly authorized representatives or agents of a public office.<sup>69</sup> “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 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.<sup>70</sup>

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.<sup>71</sup>

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.<sup>72</sup>

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<sup>67</sup> R.C. 2930.07(C).

<sup>68</sup> R.C. 2930.07(A)(4) (cross reference to R.C. 149.011(A)).

<sup>69</sup> R.C. 2930.07(A)(4) (cross reference to R.C. 149.011(D)).

<sup>70</sup> R.C. 2930.07(A)(1).

<sup>71</sup> R.C. 2930.07(D)(1).

<sup>72</sup> R.C. 2930.07(D)(2).

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.<sup>73</sup>

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.<sup>74</sup>

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 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. Pursuant to that law, a victim, victim’s representative, or victim’s attorney cannot receive an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim absent a court order compelling disclosure of the interview. A victim, victim’s representative, or victim’s attorney has the right to receive a redacted copy of the interview on request, subject to the Public Records Law.<sup>75</sup>

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.<sup>76</sup>

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

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<sup>73</sup> R.C. 2930.07(D)(3).

<sup>74</sup> R.C. 2930.07(A)(3) and (E)(1) and (2).

<sup>75</sup> R.C. 2930.07(E)(3).

<sup>76</sup> R.C. 2930.07(E)(4).

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.<sup>77</sup>

### **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.<sup>78</sup>

### **Subpoenas**

The bill requires a defendant who seeks to subpoena records of or concerning the victim that are confidential or privileged by law to request permission from the court before the subpoena is issued. The defendant is required to file a written motion regarding the relevance, admissibility, and materiality of the records and the defendant must serve the motion on the prosecutor and the victim's attorney, if applicable. The court must issue the subpoena if the court finds by a preponderance of the evidence that the records are not protected by privilege and the records contain relevant, admissible, and material evidence that is not available through other evidence or witnesses. The records are to be produced to the court for an in-camera review.<sup>79</sup>

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. If the court does not quash the subpoena, the court must conduct an in-camera review of the records. If, after conducting an in-camera review of the records, the court determines that due process requires the disclosure of any portion of the records, the court must provide copies of the information the court intends to disclose to the prosecutor, the victim, and the victim's attorney, if applicable. The prosecutor, the victim, and the victim's attorney, if applicable, have seven days to seek appellate review before the records are disclosed to the defendant. The disclosure of any portion of the records to the prosecutor does not make the records subject to discovery.<sup>80</sup>

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

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<sup>77</sup> Existing R.C. 2930.07, repealed.

<sup>78</sup> R.C. 149.43(A)(1)(nn).

<sup>79</sup> R.C. 2930.071(A)(1) and (2).

<sup>80</sup> R.C. 2930.071(A)(3) and (4).

representative, and victim's attorney, if applicable, as to why the court should issue the subpoena.<sup>81</sup>

### **Contact with victim**

The bill provides that, unless the victim consents in writing, 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. The defendant, the defendant's attorney, or an agent of the defendant can only contact the victim through the prosecutor and the victim's attorney, if applicable, to schedule an interview or, subject to Criminal Rule 15 or Juvenile Rule 25, a deposition. The prosecutor must promptly inform the victim or the victim's attorney, if applicable, of the defendant's request for an interview and advise the victim of the victim's right to refuse the interview. The prosecutor must also inform the victim of the victim's right to an attorney.<sup>82</sup>

If the victim consents to an interview or, subject to Criminal Rule 15 or Juvenile Rule 25, as applicable, a deposition, the prosecutor or the victim's attorney, if applicable, must inform the defendant, the defendant's attorney, or an agent of the defendant of the time and place the victim has selected for the interview or deposition, along with any other conditions requested by the victim, except that an interview of a child victim is only permitted with leave of the court. 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. 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.<sup>83</sup>

The prosecutor, or the prosecutor's designee, may attend all interviews and depositions between the victim and the defendant, defendant's attorney, or an agent of the defendant. On request of the prosecutor, the prosecutor must receive a copy of the transcript or recording of the interview or deposition at the prosecutor's expense if a transcript or recording of the interview or deposition is made.<sup>84</sup>

During the trial, the defendant or defendant's attorney cannot comment on the victim's refusal to be interviewed or deposed. If the defendant or the defendant's attorney comments

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<sup>81</sup> R.C. 2930.071(B).

<sup>82</sup> R.C. 2930.072(A) and (B).

<sup>83</sup> R.C. 2930.072(C).

<sup>84</sup> R.C. 2930.072(D).



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.<sup>85</sup>

### **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.<sup>86</sup>

### **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 case must be conducted on the record 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 a victim advocate or 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.<sup>87</sup>

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 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 and that the victim and victim's representative had a right to be heard at the court proceeding. 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, 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

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<sup>85</sup> R.C. 2930.072(E).

<sup>86</sup> R.C. 2930.08(A).

<sup>87</sup> R.C. 2930.09(A)(1).

the time necessary to notify the victim and victim's representative, if applicable, of the time, place, and nature of the court proceeding.<sup>88</sup>

### **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.<sup>89</sup>

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:<sup>90</sup>

- 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

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<sup>88</sup> R.C. 2930.09(A)(2).

<sup>89</sup> R.C. 2930.09(B).

<sup>90</sup> R.C. 2930.09(C).

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.<sup>91</sup>

### **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.<sup>92</sup>

### **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.<sup>93</sup>

### **Disclosing victim contact information**

Nothing in the provisions described above requires a prosecutor to disclose victim contact information.<sup>94</sup>

### **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 Appellate Rule 9, which addresses the record on appeal.<sup>95</sup>

### **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 rights of a crime victim

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<sup>91</sup> R.C. 2930.09(D).

<sup>92</sup> R.C. 2930.09(E).

<sup>93</sup> R.C. 2930.09(F).

<sup>94</sup> R.C. 2930.09(G).

<sup>95</sup> R.C. 2930.11(B).

throughout the criminal justice process as though the count or counts involving the victim had not been dismissed.<sup>96</sup>

As to each count that is dismissed as a result of a negotiated plea agreement, the prosecutor must notify the probation department or custodial or supervisory agency, as applicable, if the victim or victim's representative requested the victim's rights.<sup>97</sup>

For each victim and victim's representative who is involved in the counts dismissed as a result of a negotiated plea agreement and who requested the victim's rights, the prosecutor or the prosecutor's designee must forward to the probation department or custodial or supervisory agency, as applicable, any available information that would enable the probation department or custodial or supervisory agency to carry out its duties.<sup>98</sup>

### **Victim's impact statement – written and oral statement**

The bill modifies the existing law provision that allows a victim 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.<sup>99</sup>

### **Presentence investigation report**

If the presentence investigation report is made available to the defendant, the bill requires the court to provide a copy of the report to the prosecutor assigned to the case at least seven days prior to the sentencing hearing. The prosecutor must, upon request, provide a copy of the report to the victim, victim's representative, and victim's attorney, if applicable, at least five days prior to the sentencing hearing, except those parts of the report that are redacted by the court or made confidential by law.<sup>100</sup>

If the court redacts any portion of the presentence investigation report, the court must inform the parties and the victim, victim's representative, and victim's attorney, if applicable, of the court's decision and must state on the record the court's reason for the redaction.<sup>101</sup>

### **Right to be heard at sentencing**

The bill modifies the existing law provision that allows the victim 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

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<sup>96</sup> R.C. 2930.121(A).

<sup>97</sup> R.C. 2930.121(B).

<sup>98</sup> R.C. 2930.121(C).

<sup>99</sup> R.C. 2930.13(A) and (B).

<sup>100</sup> R.C. 2930.131(A).

<sup>101</sup> R.C. 2930.131(B).

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.<sup>102</sup>

### **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.<sup>103</sup>

### **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.<sup>104</sup>

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<sup>102</sup> R.C. 2930.14(A).

<sup>103</sup> R.C. 2930.17(A).

<sup>104</sup> R.C. 2930.171(A).

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.<sup>105</sup>

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.<sup>106</sup>

### **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 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.<sup>107</sup>

### **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.<sup>108</sup>

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.<sup>109</sup>

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. The court of appeals must take up and decide such appeal giving the case the same priority as cases decided under Appellate Rule

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<sup>105</sup> R.C. 2930.171(B).

<sup>106</sup> R.C. 2930.171(C).

<sup>107</sup> R.C. 2930.18(A).

<sup>108</sup> R.C. 2930.19(A)(1).

<sup>109</sup> R.C. 2930.19(A)(2)(a).

11.2, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration.<sup>110</sup>

If the victim or victim's attorney, if applicable, petitions for an extraordinary writ, the court of appeals or the Supreme Court may issue the writ on the order of a single judge. If the court of appeals or the Supreme Court denies the relief sought, the reasons for the denial must be clearly stated on the record in a written opinion.<sup>111</sup>

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.<sup>112</sup>

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.<sup>113</sup>

The bill also modifies the existing law provision regarding the failure of any person or entity to provide a right, privilege, or notice to a victim under the Victim's Rights Law does not constitute grounds for declaring a mistrial or new trial, for setting aside a conviction, sentence, adjudication, or disposition, or for granting post-conviction release to a defendant or alleged juvenile offender by instead providing that the failure to use reasonable efforts to perform a duty or afford a right is not cause to seek to set aside a conviction after trial. Failure to afford a right under the Victim's Rights Law does not provide grounds for a new trial. A victim or victim's attorney, if applicable, may file a motion to reopen a plea or sentence only if all of the following apply:<sup>114</sup>

- The victim was not voluntarily absent from the proceeding and has asserted the right to be heard before, or attempted to assert the right during, the proceeding at issue and the right to be heard was denied;
- The victim files the motion within 14 days of the entry of the plea or sentence;
- In the case of a plea, the accused has not pleaded guilty to the highest offense charged.

The bill removes the provision that states that if there is a conflict between a provision in the Victim's Rights Law and a specific Revised Code section governing the procedure in a case

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<sup>110</sup> R.C. 2930.19(A)(2)(b).

<sup>111</sup> R.C. 2930.19(A)(2)(c).

<sup>112</sup> R.C. 2930.19(B).

<sup>113</sup> R.C. 2930.19(C).

<sup>114</sup> R.C. 2930.19(D)(1).

involving a capital offense, the specific Revised Code section supersedes the provision in the Victim's Rights Law.<sup>115</sup>

Under the bill, unless the offender has served the offender's entire sentence, the failure to use reasonable efforts to provide notice and a right to be present or be heard pursuant to the Victim's Rights Law at a proceeding that involves post-conviction release is grounds for the victim to seek to set aside the post-conviction release until the victim is afforded an opportunity to be present or be heard.<sup>116</sup>

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.<sup>117</sup>

"Post-conviction release" means judicial release, early release, and parole, but does not mean relief pursuant to a federal petition in habeas corpus.<sup>118</sup>

### **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.<sup>119</sup> The court may grant judicial release without a hearing under the bill only if the victim and victim'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.<sup>120</sup>

### **Standing in sealing and expungement proceedings**

The bill allows the victim, victim's representative, and victim's attorney, if applicable to be present at juvenile record sealing or expungement proceedings or in proceedings to seal criminal records.<sup>121</sup> 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

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<sup>115</sup> R.C. 2930.19(D).

<sup>116</sup> R.C. 2930.19(D)(2).

<sup>117</sup> R.C. 2930.19(E).

<sup>118</sup> R.C. 2930.19(G).

<sup>119</sup> R.C. 2929.20(I) and (S).

<sup>120</sup> R.C. 2929.20(D)(2).

<sup>121</sup> R.C. 2151.356(C)(2)(d)(ii) and (iii), 2151.358(B)(4)(b) and (c), and 2953.32(B).



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.<sup>122</sup>

### **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.<sup>123</sup>

## **Restitution**

### **Generally**

The bill requires restitution ordered in juvenile delinquency proceedings and criminal proceedings to be made to the victim's estate if the victim is deceased, instead of to a survivor of the victim.<sup>124</sup>

### **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 restitution**," below, and prohibits the court from discharging restitution until it is fully paid by the offender.<sup>125</sup>

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**,"

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<sup>122</sup> R.C. 2151.356(C)(2)(d)(ii) and (iii), 2151.358(B)(4)(b) and (c), and 2953.32(C)(1)(f).

<sup>123</sup> R.C. 2930.191.

<sup>124</sup> R.C. 2152.20, 2929.18, and 2929.28.

<sup>125</sup> R.C. 2929.18(A).

below.<sup>126</sup> 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.<sup>127</sup>

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*.<sup>128</sup>

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.<sup>129</sup>

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.<sup>130</sup>

### **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.<sup>131</sup>

### **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 past and future expenses related to the victim's economic loss as a result of the criminal offense, delinquent act, or juvenile traffic offense. The court cannot consider the offender's, delinquent child's, or juvenile traffic offender's ability to pay restitution and 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. A pending insurance or governmental program claim made by a victim does not delay a court-ordered restitution payment.<sup>132</sup>

Past and future economic loss includes, but is not limited to, the following:<sup>133</sup>

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<sup>126</sup> R.C. 2929.28(A).

<sup>127</sup> R.C. 2929.28(A)(3)(a)(i).

<sup>128</sup> R.C. 2929.18(D) and 2929.28(E).

<sup>129</sup> R.C. 2929.18(I) and 2929.28(I).

<sup>130</sup> R.C. 2929.18(J) and 2929.28(J).

<sup>131</sup> R.C. 2152.20(A)(3).

<sup>132</sup> R.C. 2152.203(B) and 2929.281(A).

<sup>133</sup> R.C. 2152.203(B) and 2929.281(A).

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 and, if the victim is a minor, wages or profits lost by the minor victim's parent or guardian while caring for the injured minor victim. 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. Wages or profits lost by the victim and if the victim is a minor, wages or profits lost by the minor victim's parent or guardian due to time spent as a witness or assisting law enforcement or the prosecutor. Lost wages include commission income as well as base wages. Commission income is established as described in (4) above.
6. Actual and reasonable attorney's fees and other costs accrued by a private entity on behalf of a victim;
7. When the offender is an adult, expenses incurred by an adult victim in relocating away from an offender, including, but not limited to, deposits for utilities, deposits for rental housing, temporary food and lodging expenses, and clothing and personal items;
8. Expenses related to installing or increasing security related to felony or misdemeanor offenses of violence, including, but not limited to, a security device or system or the replacement or addition of locks;
9. Expenses related to monitoring the credit report of and repairing the credit of a victim of identity fraud for a period of time reasonably necessary to make the victim whole.

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.<sup>134</sup>

The court may order that restitution be made by a single lump sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments. The length of time of scheduled payments is the shortest time in which full payment reasonably can be paid. In-kind payments may be in the form of the return of property, replacement of property, or if the victim agrees, services rendered to the victim or a person or organization other than the victim. The court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other

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<sup>134</sup> R.C. 2152.20, 2929.18, and 2929.28.

action to ensure payment of restitution, including, in the case of an adult offender, an order that bail moneys deposited with the clerk be applied to payment of restitution.<sup>135</sup>

Any money owed by the state or by a political subdivision of the state to an offender, delinquent child, or juvenile traffic offender who is required to make restitution, including any tax refund owed to the offender, delinquent child, or juvenile traffic offender, is assigned to the discharge of the offender's, delinquent child's, or juvenile traffic offender's restitution obligation, subject to federal law or regulations (for delinquent child or juvenile traffic offender-subject to superseding federal statutes or regulations), including court-ordered support obligations.<sup>136</sup>

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:<sup>137</sup>

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

A court that imposes restitution as part of the offender's, delinquent child's, or juvenile traffic offender's sentence or disposition cannot suspend that part of the sentence or disposition if the victim, victim's representative (if the offender is an adult), or the victim's attorney, if applicable, objects to the suspension of the restitution as part of the sentence.<sup>138</sup>

A restitution obligation is not subject to discharge in bankruptcy or to any other statutory or common-law relief proceeding against creditors, except to the extent required by federal law.<sup>139</sup>

If the offender is an adult, a court-imposed restitution obligation does not expire until paid in full. The court retains jurisdiction over the restitution order and the obligation continues to be enforceable by a victim, victim's representative, victim's attorney, if applicable, or victim's estate until the obligation is satisfied.<sup>140</sup> If the offender is a delinquent child or juvenile traffic offender, a court-imposed restitution obligation also does not expire until paid in full. The court retains jurisdiction over the restitution order until the delinquent child or juvenile traffic

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<sup>135</sup> R.C. 2152.203(C) and 2929.281(B).

<sup>136</sup> R.C. 2152.203(D) and 2929.281(C).

<sup>137</sup> R.C. 2152.203(E) and 2929.281(D).

<sup>138</sup> R.C. 2152.203(F) and 2929.281(E).

<sup>139</sup> R.C. 2152.203(G) and 2929.281(F).

<sup>140</sup> R.C. 2929.281(G).

offender turns 21 and the obligation continues to be enforceable by a victim, victim's representative, or victim's attorney, if applicable, until the obligation is satisfied or the delinquent child or juvenile traffic offender turns 21. Any restitution order registered as a civil judgment does not expire when the delinquent child or juvenile traffic offender turns 21.<sup>141</sup>

If money that is received pursuant to a restitution order cannot be paid to the victim or the victim's estate within 60 days of receipt, the person or agency that receives the money must provide written notice of that inability of payment to a crime victim service organization at least 60 days prior to paying the money to the Division of Unclaimed Funds. If the money cannot be paid to the victim or the victim's estate after the expiration of 60 days from service of the notice to the crime victim service organization, the person or agency that received the money must pay it to the Division of Unclaimed Funds.<sup>142</sup>

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.<sup>143</sup>

## 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 is also required, under the bill, to create the "victim's rights request/waiver form" which must include all of the information specified in "**Victim's rights request/waiver form,**" above. The Attorney General must distribute the victim's bill of rights pamphlet under continuing law, and the victim's rights request/waiver form, under the bill, 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.<sup>144</sup>

The victim's bill of rights pamphlet, as modified by the bill, must include all of the following, expanded by the bill as specified:<sup>145</sup>

- 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

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<sup>141</sup> R.C. 2152.203(H).

<sup>142</sup> R.C. 2152.203(I) and 2929.281(H).

<sup>143</sup> R.C. 2152.203(J) and 2929.281(I).

<sup>144</sup> R.C. 109.42(A), by reference to R.C. 2930.04.

<sup>145</sup> R.C. 109.42(A).

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 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:<sup>146</sup>

- 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;

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<sup>146</sup> R.C. 109.42(A).

- 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.

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.<sup>147</sup>

### **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.<sup>148</sup>

## **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.<sup>149</sup>

### **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.<sup>150</sup>

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<sup>147</sup> R.C. 109.42(B)(1)(c).

<sup>148</sup> R.C. 109.42(B)(2) (repealed).

<sup>149</sup> R.C. 2945.72(J).

<sup>150</sup> R.C. 2945.72, not in the bill and R.C. 2945.73.

## **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.<sup>151</sup>

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:<sup>152</sup>

- 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;
- 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);

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<sup>151</sup> R.C. 2945.483(D)(2).

<sup>152</sup> R.C. 2945.483(B).



- 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.<sup>153</sup>

### **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.<sup>154</sup>

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<sup>153</sup> R.C. 2945.483(C).

<sup>154</sup> R.C. 2945.483(D).

## Proceedings in juvenile court

### Minor victims

#### Deposition of a minor victim

The bill allows a victim under the age of 16, or the attorney of a victim under the age of 16 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. 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. Under current law, the provision only applies to a victim under the age of 13, only the prosecution can make such a motion, and no standard of proof is specified. 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.

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.

The bill adds a requirement that in depositions in juvenile court proceedings involving a violation or act specified above, the judge must rule on objections of the victim or victim's attorney, if applicable. 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.<sup>155</sup>

#### ***Testimony of a minor victim by CCTV or recording***

The bill also expands the circumstances under which testimony in a juvenile court proceeding involving one of the offenses listed in "**Deposition of a minor victim,**" 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 closed circuit equipment (CCTV) or recorded to be shown in that room. The bill allows a victim to testify via CCTV or recording if the victim was under 16 years old when the complaint or information in the case was filed and the judge determines

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<sup>155</sup> R.C. 2152.81(A).

that the victim is “unavailable” to testify. Current law allows this closed circuit televised testimony or recorded testimony only in cases where the victim is under 13 years old and unavailable to testify.

The bill also allows the child-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.<sup>156</sup>

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:<sup>157</sup>

- 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 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 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, or an act that would be an offense of violence if committed by an adult.

The bill allows the 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. 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 attorney for the child who is charged with the violation or act of the date, time, and place for taking the deposition. The prosecution, victim, or victim’s

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<sup>156</sup> R.C. 2152.81(C).

<sup>157</sup> R.C. 2152.81(E).

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.

The bill also adds a requirement that in depositions of a victim with a developmental disability in juvenile court proceedings involving a violation or act specified above, the judge must rule on objections of the victim. 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.<sup>158</sup>

### **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.<sup>159</sup>

## **Proceedings in criminal court**

### **Minor victims**

#### **Minor victim depositions**

The bill allows a victim under the age of 16, or the attorney of a victim under the age of 16 to motion a criminal court to order that the testimony of the child-victim be taken by deposition in any proceeding in the prosecution of a charge of unlawful restraint, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, 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 offense of violence. Under continuing law, the judge must notify the victim, the prosecution, the victim’s attorney if applicable (added by the bill), and defense of the date, time, and place for taking the deposition.

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<sup>158</sup> R.C. 2152.811(B).

<sup>159</sup> R.C. 2152.811(D) and (E).

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.<sup>160</sup>

### **Testimony of a minor victim by CCTV or recording**

The bill also expands the circumstances under which testimony in any proceeding in the prosecution of a charge involving one of the offenses listed in "**Minor victim depositions,**" 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 a victim to testify via CCTV or recording if the victim was under 16 years old when the complaint or information in the case was filed and the judge determines that the victim is unavailable to testify. Current law allows this closed circuit televised testimony or recorded testimony only in cases where the victim is under 13 years old and unavailable to testify.

The bill also allows the child-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.<sup>161</sup>

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:<sup>162</sup>

- 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,

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<sup>160</sup> R.C. 2945.481(A).

<sup>161</sup> R.C. 2945.481(C).

<sup>162</sup> R.C. 2945.481(E).

compelling prostitution, procuring, 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 offense of violence.

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.<sup>163</sup>

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.<sup>164</sup>

### **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.<sup>165</sup>

## **Preliminary hearings in criminal court**

### **Minor victims**

The bill allows the preliminary hearing testimony of a child-victim who was under 16 years old when the complaint or information was filed to be taken in a room outside the

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<sup>163</sup> R.C. 2945.482(B).

<sup>164</sup> R.C. 2945.482(C).

<sup>165</sup> R.C. 2945.482(D) and (E).

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. Current law allows this CCTV testimony in preliminary hearings involving the above-listed offense only for a victim who is under 13 years old at the time when the complaint or information in the case was filed.

The bill also allows the victim or the victim's attorney to file a motion with the judge requesting testimony by CCTV 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 16 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 applies only to a victim who was under 13 when the complaint or information was filed, allows only the prosecutor to file such a motion, and requires the testimony to be "recorded and preserved on videotape."<sup>166</sup>

### **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 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.<sup>167</sup>

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<sup>166</sup> R.C. 2937.11(B).

<sup>167</sup> R.C. 2937.11(D).

## 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.<sup>168</sup>

## 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 or for any other purpose. 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.<sup>169</sup>

## 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.<sup>170</sup> 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.<sup>171</sup>

## 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,

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<sup>168</sup> R.C. 2907.02(D) and 2907.05(E).

<sup>169</sup> R.C. 2907.10.

<sup>170</sup> R.C. 2947.051.

<sup>171</sup> R.C. 2929.20(D).



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.<sup>172</sup>

## Other changes

The bill also makes a number of stylistic, conforming, and cross-reference changes consistent with the items discussed above.<sup>173</sup>

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## HISTORY

Action	Date
Introduced	04-16-20

H0610-EXPANDED-133/ts

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<sup>172</sup> R.C. 2929.28(A)(3).

<sup>173</sup> 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); 2929.28(E)(2); 2930.01(B), (C), (D), and (P)(1); 2930.03(B)(1); 2930.04(A) and (C); 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(F); 2937.11(C); 2945.481(F)(1); 2945.482(B)(1) and (G)(1); 2945.483(D)(2); and 2951.041(A)(2).