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SUMMARY

Immunity associated with perishable food donation

- Extends the immunity provided to a person who donates perishable food to a nonprofit organization to include donations to a nonprofit that charges individuals an amount to cover food handling costs, rather than limiting the immunity only to donations to a nonprofit that does not charge for the food.

Victims' rights

Procedural changes

- Requires the court to inform all law enforcement agencies that have jurisdiction to enforce a protection order that the order is no longer effective at the time of the order's termination.
- Permits a court to appoint a victim advocate or other appropriate person if the victim is incapacitated, incompetent, or deceased and no family member or victim advocate comes forward to be the victim's representative, or if the victim representative is not acting in the victim's interests.
- Prohibits a court from appointing a person employed by the prosecuting attorney to act as a victim's representative without the prosecuting attorney's consent.

Information provided to victims

- Requires that the specified information the prosecution must supply to the victim be provided within a reasonable time frame after prosecution has commenced, rather than after 14 days.
- Removes the requirement that the prosecutor provide the victim with information on the following:
 - The right of the victim to have a victim's representative;

- How to designate a representative;
- The right of the victim and victim's representative to confer with the prosecutor upon request;
- The fact that the victim can seek the advice of an attorney or have legal representation;
- Information on negotiation.

Time limits

- Requires a court to provide a prosecutor notice of having to seal or expunge a juvenile record not less than 30 days before the hearing.
- Permits a prosecutor and court to agree to a shorter notice period for nonjuvenile sealing and expungement hearings than the otherwise required 60-day notice.
- Removes the maximum time limit of five years from payment of sanctions imposed for misdemeanors.

Privacy concerns

- Removes the requirement that a victim's name and identifying information be filed separately on documents filed with the court.
- Requires a separate redaction request be submitted to the Department of Public Safety for redaction of victim information from motor vehicle accident reports.
- Requires a juvenile judge or judge, where applicable, upon a motion from specified persons and under specified conditions, to order a child victim's testimony be taken outside the room in which the proceeding is being conducted.
- Expands the exemption that allows identifying information of a minor victim who died as a result of a criminal offense or delinquent act to be exempted from the rules regarding a victim's right not to testify regarding certain information to all victims who die as a result of a criminal offense or delinquent act.

Access to forensic interview

- Establishes procedures for a victim or victim's attorney to access and view the forensic interview of the victim.

Victim's rights request form

- Requires the Attorney General to provide access to a sample victim's rights request form.
- Requires the victim's rights request form to be provided in English, Spanish, and Arabic, and any other language upon request.
- Permits the victim's rights compilation to be provided to victims with the information card or other materials regarding information explaining awards of reparations.
- Adds the following to the victim's rights request form:

- A section that allows the victim or victim’s representative to request redaction of the victim’s name, address, and identifying information in case documents.
- A section that allows the victim or victim’s representative to request interpretation services and provide the information necessary for the criminal justice system to provide those services.
- A section explaining that if a victim of specified offenses does not complete the form or request the victim’s rights on first contact with law enforcement, it is considered an assertion of the victim’s rights until the victim completes the form or requests applicable rights, or the prosecutor contacts the victim.
- Removes from the victim’s rights request form the section where the victim or victim’s representative was required to indicate whether the victim was a victim against whom the criminal offense or delinquent act was committed or if the victim was directly or proximately harmed by the commissions of the offense or act.
- Specifies the procedures when a law enforcement agency does not obtain a completed victim’s rights request form from a victim of violating a protection order, an offense of violence, or a sexually oriented offense.
- Specifies the timing to submit a victim’s rights request form to the court by law enforcement or the prosecutor.
- Specifies that if the victim of specified offenses, or the victim’s representative, was unable to complete the victim’s rights request form at the time of first contact with law enforcement, all case documents related to the case must be redacted prior to public release as public records to remove identifying information of the victim.

Costs

- Clarifies how the costs for an interpreter for the victim are allocated.
- Permits charging a victim or victim’s representative for copies of certain case documents at actual cost.
- Eliminates the requirement that the clerk of the sentencing court make an offender’s payment history available to the victim, victim’s representative, victim’s attorney, prosecutor, probation department, and court, upon request, without cost.
- Repeals a section that stated that a victim was not required to pay for a copy of any public records related to the victim’s case.

Definition – “case document”

- Excludes from the definition of “case document,” in the law addressing the release of documents pertaining to a victim, motor vehicle accident reports submitted to the Department of Public Safety unless the victim or victim’s representative requests redaction of those reports.

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DETAILED ANALYSIS

Immunity associated with perishable food donation

Under continuing law, a person who makes a perishable food donation to a nonprofit is immune from civil liability for that donation if the nonprofit provides the food free of charge. The act extends that immunity to a person who donates perishable food to a nonprofit that charges individuals in need an amount sufficient to cover the cost of handling the perishable food distributed to them.¹

Victims’ rights

Procedural changes

Under the act, a court is required to inform all law enforcement agencies that have jurisdiction to enforce a protection order that the order is no longer effective at the time the order is terminated.²

Previously, under law repealed by the act, a court was required to appoint a court appointed special advocate, or a guardian ad litem if the court found that a victim’s

¹ R.C. 2305.37.

² R.C. 2903.213(J).

representative was not acting in the best interests. Provisions regarding appointing a victim advocate are retained, as explained in the paragraph below.³

Upon the filing of a complaint or indictment, the court may appoint a victim advocate or other appropriate person if the victim is incapacitated, incompetent, or deceased and no family member or victim advocate comes forward to be the victim's representative, or if the victim's representative is not acting in the victim's interests. If the court finds that the representative is not acting in the victim's interests, the court will appoint a victim advocate or other person the court determines to be appropriate to act as the victim's representative. However, the court cannot appoint any person employed by the prosecuting attorney to act as a victim's representative unless the prosecuting attorney consents to the appointment.⁴

Information provided to victims

The act permits filing a motion for a menacing by stalking protection order or a temporary protection order on behalf of a victim any time after the filing of an indictment, in addition to any time after the filing of a complaint for certain listed offenses and circumstances. The act also permits the prosecutor to file a motion for a menacing by stalking protection order on behalf of the victim.⁵

Previously, the prosecutor, or a designee of the prosecutor other than a court or court employee, was required to give the victim and victim's representative certain information within 14 days after the start of prosecution in a case. The act instead requires the prosecution to give the victim and the victim's representative the information within a reasonable time frame, rather than a set number of days.⁶

The act removes the following from the information the prosecution must provide a victim:⁷

- The right of the victim to have a victim's representative;
- How to designate a representative;
- The right of the victim and victim's representative to confer with the prosecutor upon request;
- The fact that the victim can seek the advice of an attorney or have legal representation;
- Information on negotiation.

Under continuing law, a prosecutor, prosecutor's designee, or a court that is required to notify a victim or victim's representative of hearings, on request, must attempt a notification

³ R.C. 2930.02(B).

⁴ R.C. 2930.02(A)(2).

⁵ R.C. 2903.213 and 2919.26.

⁶ R.C. 2930.06(C).

⁷ R.C. 2930.06(C).

and keep a record of the attempt. Under the act, the record must indicate who the intended recipient of the notice was, the date the attempt was made, the manner in which the attempt was made, and the person who made the attempt. The notification must be provided to the victim using the victim's contact information provided on the victims' rights request form or otherwise provided by the victim or victim's representative by any reasonable means, including regular mail, telephone, or electronic mail.⁸

Continuing law requires the prosecutor to review the victim's rights request form with the victim or victim's representative and file the form with the court within seven days after initiation of a criminal prosecution. The act allows the prosecutor to obtain the victim's and the victim's representative's, if applicable, signatures if the form was not previously completed with law enforcement. Prior law required the prosecutor to obtain those signatures.⁹

Time limits

In determining whether to grant an application to seal or expunge a juvenile record, the court is required to notify the prosecutor not less than 30 days before the hearing. For nonjuvenile sealing and expungement hearings, 60 days' notice is required unless the prosecutor and court agree to a shorter notice period.¹⁰

The act removes the maximum time limit of five years for installment payments of sanctions imposed for misdemeanors.¹¹

Privacy concerns

The act removes the requirement that a victim's name and identifying information be filed separately on documents filed with the court.¹² Additionally, law enforcement agencies and prosecutors' offices are no longer required to provide an explanation of the potential risks and benefits of redaction, and the ability of the victim to retain counsel, upon receipt of a request for case documents to have victim information redacted. Under the act, if the victim of a protection order violation, an offense of violence, or a sexually oriented offense, or the victim's representative, was unable to complete the victim's rights request form at the time of first contact with law enforcement, then until the victim's initial interaction with a prosecutor, all case documents related to the case or matters currently before the court regarding that offense must be redacted prior to release under the Public Records Law to remove the name, address, or other identifying information of the victim.¹³

If the victim or victim's representative uses the victim's rights request form to request redaction, that redaction request applies only to the case or cases to which the form pertains. If

⁸ R.C. 2930.06(G).

⁹ R.C. 2930.06(H).

¹⁰ R.C. 2930.171(A).

¹¹ R.C. 2929.28(G).

¹² R.C. 2930.04(C)(1).

¹³ R.C. 2930.07(D)(1)(a).

the victim requests redaction via some other method than the victim's rights request form, that written request must specify the cases or matters to which the request applies.¹⁴

For motor vehicle accident reports, a victim is required to submit a separate redaction request to the Department of Public Safety to have victim identifying information redacted.¹⁵

Under the act, a juvenile judge or judge, whichever is applicable, upon a motion from the prosecution, the child victim, victim with a developmental disability, or the victim's attorney, must do the following:¹⁶

- Where the child victim was younger than 13 when the complaint, indictment, or information was filed, order the child victim's testimony be taken outside the room in which the proceeding is being conducted and broadcast into the room;¹⁷
- Where the child victim was younger than 18 when the complaint, indictment, or information was filed, order the child victim's testimony be taken outside the room in which the proceeding is being conducted and broadcast into the room where the child victim would, by a preponderance of the evidence, suffer serious emotional trauma if required to provide live trial testimony;¹⁸
- Order that the testimony of a victim with a developmental disability be taken in a room other than the one in which the proceeding is being conducted and be broadcast into the room, when a child is charged with an offense that would be an act of violence if committed by an adult, or other specified offenses;¹⁹
- Order that the testimony of a victim with a developmental disability be taken in a room other than the one in which the proceeding is being conducted and be broadcast into the room, when it is shown by a preponderance of the evidence that the victim will suffer serious emotional trauma if required to provide live trial testimony.²⁰

Under continuing law, identifying information of a minor victim who died as a result of a criminal offense or delinquent act is exempted from the rules regarding a victim's right not to testify regarding the victim's address, telephone number, place of employment, or other locating information. The act expands this exemption to apply to all victims who die as a result of a criminal offense or delinquent act.²¹

¹⁴ R.C. 2930.07(D)(1)(b).

¹⁵ R.C. 2930.07(D)(2).

¹⁶ R.C. 2152.81, 2152.811, 2945.481, and 2945.482.

¹⁷ R.C. 2152.81(C)(1)(a) and (D)(1)(a) and 2945.481(C)(1)(a) and (D)(1)(a).

¹⁸ R.C. 2152.81(C)(1)(b) and (D)(1)(b) and 2945.481(C)(1)(b) and (D)(1)(b).

¹⁹ R.C. 2152.811(D)(1)(a) and (E)(1)(a) and 2945.482(D)(1)(a) and (E)(1)(a).

²⁰ R.C. 2152.811(D)(1)(b) and (E)(1)(b) and 2945.482(D)(1)(b) and (E)(1)(b).

²¹ R.C. 2930.07(F)(2).

Access to forensic interview

The act removes a requirement that a victim or victim's attorney receive an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim. It similarly removes a provision permitting a victim's representative to receive an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim upon request and with the approval of the court, or a redacted copy of the interview subject to the Public Records Law.²²

A law enforcement agency or prosecutor is not prevented from providing a victim's preferred contact information to a designated agency that provides victim services and rights notifications. Any release of documents or information to a law enforcement officer or public official's designee does not constitute a waiver of a victim's right to redaction.²³

Once a case is closed or inactive, a victim or victim's attorney may view the recorded forensic interview of a minor victim or developmentally disabled victim upon request. Releasing an unredacted copy of the forensic interview to a victim, victim's attorney, or victim's representative under the act is not a violation of a requirement to report child abuse or neglect. The act establishes the following procedures for allowing the victim or victim's attorney to view the unredacted forensic interview:²⁴

- The interview may be viewed at the location of the child advocacy center or other agency responsible for the forensic interview;
- An employee or designee of the child advocacy center or agency must be present at all times during the victim's or victim's attorney's viewing of the interview;
- The victim or victim's attorney is not permitted to record, copy, photograph, or remove from the location the forensic interview, or any materials summarizing, documenting, transcribing, or otherwise associated with the forensic interview.

On written application under seal to the court of common pleas in the county where the forensic interview was recorded, a victim, victim's attorney, or victim's representative may request an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim. Upon receiving the application, the court must notify the child advocacy center or other agency responsible for the forensic interview and provide the center or agency an opportunity to respond or object to the application. While the application is pending, the child advocacy center or other agency must not make available for inspection or otherwise disclose the forensic interview or associated materials to the applicant or any person or entity acting on behalf of the applicant. The act requires the forensic interview be made available to the court for an in-camera review. The court may grant the application only upon

²² R.C. 2930.07(F)(3).

²³ R.C. 2930.07(F)(6).

²⁴ R.C. 2930.07(E).

an express finding that allowing the applicant to receive an unredacted copy of the forensic interview is in the interest of the victim under the totality of the circumstances.²⁵

Notifications that are provided upon request of a victim or victim's representative must be provided by the court under the act, as opposed to being provided by the court or the court's designee under prior law.²⁶

Defendant motion regarding victim's rights

Continuing law 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. The act adds a motion for a mistrial to this list of motions.²⁷

Victim's rights request form

Under the act, the Attorney General must provide access to a sample victim's rights request form. Prior law required the Ohio Supreme Court to create the victim's rights request form. The form must be made available in English, Spanish, and Arabic, and any other language upon request. Any organization or entity may use the Attorney General's sample form or a similar form that, at a minimum, contains all the required information. The form may be in print or electronic format.²⁸

The Attorney General must make available the victim's rights compilation, and a law enforcement agency, prosecuting attorney or assistant prosecuting attorney, or a city director of law, assistant city director of law, village solicitor, assistant village solicitor, or similar chief legal officer of a municipal corporation that distributes a copy of the form and compilation may provide the compilation to victims with the information card or other materials regarding information explaining awards of reparations.²⁹

The act does the following in relation to the victim's rights request form:³⁰

- Requires provision of information about the right to designate a victim's representative and the method to designate one, and adds a section that allows a victim who has appointed a victim's representative to opt out of notices;

²⁵ R.C. 2930.07(E).

²⁶ R.C. 2930.161.

²⁷ R.C. 2930.19.

²⁸ R.C. 2930.04(A)

²⁹ R.C. 109.42 and 2743.71(E).

³⁰ R.C. 2930.04(B).

- Adds a section that allows the victim or victim’s representative to request redaction of the victim’s name, address, and identifying information in case documents;
- Adds a section that allows the victim or victim’s representative to request interpretation services and provide the information necessary for the criminal justice system to provide those services;
- Requires the section that indicates that a law enforcement official or the prosecutor provided the form to the victim to also indicate whether the law enforcement officer, the prosecutor, or the victim completed the form;
- Adds a section that explains that if a victim of violating a protection order, an offense of violence, or a sexually oriented offense does not complete the form or request the victim’s applicable rights on first contact with law enforcement, it is considered an assertion of the victim’s rights until the victim completes the form or requests applicable rights, or the prosecutor contacts the victim;
- In addition to advising victims of the right to counsel, requires providing victims with information about available no-cost legal services to help enforce victims’ rights;
- Requires providing information for online or print access to the attorney general information card, victim’s rights request form, and compilation of victim’s bill of rights, including telephone and website information for obtaining copies;
- Removes from the victim’s rights request form the section where the victim or victim’s representative was required to indicate whether the victim was a victim against whom the criminal offense or delinquent act was committed or if the victim was directly or proximately harmed by the commissions of the offense or act;
- Removes the requirement that the custodial agency notify the victim and victim’s representative of the victim’s post-conviction rights and provide post-conviction information;
- Allows the form to be in print or electronic format.

Law enforcement agency duties

Law enforcement agencies are required to collect and retain a completed copy of the victim’s rights request form if the offense for which a report is generated is violating a protection order, an offense of violence, or a sexually oriented offense at the time of initial contact with the victim. If a law enforcement agency does not obtain a completed victim’s rights request, it must designate this on the form. The law enforcement agency will use the form to document the name and contact information of the victim and the victim’s representative, if applicable, or will ensure the victim’s noncompletion is documented in a written or electronic police report, along with the names of the victim and the victim’s representative, if applicable. Additionally, the law enforcement agency will provide the prosecutor with access to the form or report, and will provide the victim access upon request.

The victim's failure to complete the form is considered an assertion of the victim's rights, including redaction, a change from prior law that stated a victim's refusal to request or waive rights was an assertion.³¹

If the law enforcement agency does not obtain a completed form from a victim of a protection order violation, an offense of violence, or a sexually oriented offense, the agency must do all of the following:³²

- Review the form with the victim, or the victim's representative, if applicable;
- Provide the victim with a copy of the form;
- Provide the victim with the arraignment information as set forth in the notice of arrest or detention of an offender that would also be provided to a victim if the victim completes the form.

If the offense for which a report is generated is not violating a protection order, an offense of violence, or a sexually oriented offense, the law enforcement agency will provide the victim with information on how to obtain a copy of the form and the victim's right compilation, or, if practicable, the agency may provide a copy of the form and review the victim's rights with the victim.³³

Continuing law requires the law enforcement agency to submit a copy of a victim's rights request form to the custodial agency as soon as practicable, if a suspect is arrested, once the law enforcement agency learns of the suspect's arrest. The act specifies that the law enforcement agency must submit the form if one was completed upon initial contact with law enforcement, or submit the name and contact information for the victim and victim's representative to the custodial agency.³⁴

Under the act, a law enforcement agency must submit a copy of the victim's rights request form, if completed, or a copy of the police report that contains the name and contact information of the victim and the victim's representative, if applicable, to the prosecutor and to the court upon the filing of charges if the victim is a victim of violating a protection order, an offense of violence, or a sexually oriented offense. For all other violations, the law enforcement agency must submit a copy of the form to the prosecutor and the court when the victim has submitted a form to the law enforcement agency.³⁵ Under prior law, the law enforcement agency was required to submit an executed copy of the form to the prosecutor and the court on the filing of charges or a complaint.³⁶

³¹ R.C. 2930.04(E)(2)(a).

³² R.C. 2930.04(E)(2)(b).

³³ R.C. 2930.04(E)(2)(c).

³⁴ R.C. 2930.04(F).

³⁵ R.C. 2930.04(I)(1).

³⁶ Former R.C. 2930.04(G), repealed by the act.

During the first interaction between the prosecutor and the victim, the prosecutor must review the victim's rights request form with the victim, or victim's representative, if applicable, if the form was not previously completed with law enforcement. The prosecutor must then file the form with the court after initiation of a criminal prosecution and provide a copy to law enforcement.³⁷ Under prior law, once the victim's rights request form was completed, the law enforcement agency was required to provide the victim's rights request form with the information of the victim or victims to the prosecutor with the complaint and affidavit and provide it to the court at the time of the criminal case filing. If the form containing the information of the victim or victims is not completed and sent to the prosecutor prior to the first interaction between the prosecutor and the victim or victims, the prosecutor was required to complete the form during the prosecutor's first interaction with the victim.³⁸

If a defendant is convicted and sentenced to the Department of Rehabilitation and Correction or the Department of Youth Services, the court must forward a copy of the most recently filed victim's rights request form to the custodial agency to which the defendant is sentenced and to the probation department, if applicable.³⁹

Costs

Interpreter costs

Under the act, a victim with a disability has the right to a registered or certified American sign language interpreter on the registry for interpreters for the deaf, rather than under prior law which provided the right to a qualified or certified interpreter. While previously the costs of an interpreter were paid for by the court, under the act the costs of the interpreter will be paid for as follows:⁴⁰

- By the court at all court proceedings and for all contacts with the probation department;
- By the prosecutor at all meetings with the prosecutor;
- By the law enforcement agency for all investigative contacts with law enforcement;
- By the custodial agency for all contacts with the Department of Rehabilitation and Correction or the Department of Youth Services.

Under prior law, a victim who is nonEnglish speaking or has limited English proficiency had a right to a qualified or certified interpreter at all court proceedings. Under the act, a victim who is nonEnglish speaking or has limited English proficiency has the right to a certified,

³⁷ R.C. 2930.04(1)(2).

³⁸ Former R.C. 2930.04(J), repealed by the act.

³⁹ R.C. 2930.04(1)(4).

⁴⁰ R.C. 2930.041(A).

provisional, registered, or language-skilled foreign language interpreter at all of the following at no cost to the victim:⁴¹

- Court proceedings, paid for by the court;
- Meetings with the prosecutor, paid for by the prosecutor;
- Investigative contacts with law enforcement, except that law enforcement officers in the field may utilize technology assisted interpretation if interpretation services are not reasonably available, paid for by the law enforcement agency;
- Contacts with the probation department, paid for by the court;
- Contacts with the Department of Rehabilitation and Correction and the Department of Youth Services, paid for by the custodial agency.

A victim's right to a certified, provisional, registered, or language-skilled foreign language interpreter, previously a qualified or certified interpreter, is subject to availability, but is not subject to the cost of retaining an interpreter.⁴²

Copies provided free of charge

Under the act, unless otherwise provided, a victim, the victim's attorney, or victim's representative has the right to receive copies free of charge of any of the following:⁴³

- Court records available for public access related to the victim's case, including the offender's payment history in the criminal or delinquency matter when sentenced to pay restitution, a fine, or incarceration costs;
- Any certificate of judgment obtained by a victim executing on a restitution order;
- The judgment entry ordering restitution be paid from the offender to the victim;
- Any proceedings in aid of execution thereof from the clerk.

Certified copies may be requested and provided by the clerk at actual cost.

Prior law, repealed by the act, provided that a victim was not required to pay for a copy of any public records related to the victim's case.⁴⁴

A victim, victim's attorney, or victim's representative may obtain a video recording or audio recording of the offender's criminal or delinquency court proceedings that has been previously prepared for the actual cost to copy the video recording or audio recording.⁴⁵

⁴¹ R.C. 2930.041(B).

⁴² R.C. 2930.041(C).

⁴³ R.C. 2930.063(A).

⁴⁴ R.C. 2930.043, repealed by the act.

⁴⁵ R.C. 2930.063(B).

Any copies provided may be provided in an electronic format.⁴⁶

Restitution

Under the act, if an offender is sentenced to pay restitution, a fine, fee, or incarceration costs, the clerk of the sentencing court is no longer required to make the offender’s payment history available to the victim, victim’s representative, victim’s attorney, the prosecutor, the probation department, or the court without cost.⁴⁷

Upon notification by the court, *if notice is provided* (added by the act), money owed by the state or by a political subdivision to an offender who is required to make restitution, will be assigned to the discharge of the offender’s outstanding restitution obligation.⁴⁸

Definition – case document

The act includes the following under the definition of a “case document” in the law addressing the release of documents pertaining to a victim: audio or video recordings of a victim of violating a protection order, an offense of violence, or a sexually oriented offense. The term “case document” under this law excludes motor vehicle accident reports submitted to the Department of Public Safety unless the victim or victim’s representative requests redaction and submits that request to the Department of Public Safety.⁴⁹

HISTORY

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⁴⁶ R.C. 2930.063(C).

⁴⁷ R.C. 2929.28(J).

⁴⁸ R.C. 2929.281.

⁴⁹ R.C. 2930.07(A)(1).