



Ohio Judicial Conference

The Voice of Ohio Judges

October 30, 2019

The Honorable Tavia Galonski
Ohio House of Representatives
77 South High Street, 10th Floor
Columbus, OH 43215

The Honorable Dick Stein
Ohio House of Representatives
77 South High Street, 11th Floor
Columbus, OH 43215

Re: H.B. 337

Dear Representatives Galonski and Stein:

The Criminal Law and Procedure Committee of the Ohio Judicial Conference has reviewed your bill, H.B. 337, which would expand testimonial privilege to include communications between a victim of certain offenses and a “qualified victim advocate.” I would like to share with you some of the feedback of the Committee.

First, it would appear that some words may be missing from lines 1227 – 1231 of the bill. Those lines currently read as follows: “(M)(1) Subject to division (M)(2) of this section and except as provided in division (M)(3) of this section, a qualified advocate, in any civil, criminal, administrative, or education discipline proceeding, concerning either of the following:...”. This appears to be a simple drafting error.

Second, we have concerns that the bill, as introduced, does not provide adequate means for verification of an advocate’s qualification. The definition of “qualified victim advocate” in the bill is “any person who has completed at least forty hours of training in advocacy and...is under the supervision of a qualified victim services program.” There is no means by which a court can verify that an advocate has met this threshold, or what types of training they have received. Most of the other privileged communications recognized in existing law involve licensed recipients of the communication, recognized by some type of educational qualification standard, and whose profession is regulated by a professional association or governing body. There are a large number of community organizations made up of well-intentioned individuals that do victim outreach and advocacy training, and their standard of professional competence and ethical duty to the client/victim is simply not regulated. Additionally, what constitutes permissible advocacy training is either absent from the legislation or potentially too encompassing.

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Finally, we are concerned that the bill, by limiting the privilege to apply only when dealing with certain offenses, creates the privilege based on the charging decisions of the arresting officer or prosecutor, as opposed to the nature of the communication. For example, if an assault victim gives a statement to a qualified victim advocate, that statement would not be privileged. However, by the time the case makes its way to a grand jury, the charges could be enhanced to a domestic violence felony due to additional information that would qualify the victim as a family or household member, thus raising the possibility that the prior non-privileged statements are now subject to the privilege created by the bill. Additionally, what would happen if multiple charges are filed out of the same criminal act or conduct but, with only one of the charges being one of the offenses listed in the bill? This could lead to confusion as to whether the statements made to a victim advocate are privileged for some of the charges, but not all. While we recognize your intent to limit the new privilege to only those offenses whose victims arguably most need the protection, but doing so could create a great deal of confusion and unintended consequences in the event there are multiple charges, or the charge is at some point amended.

Thank you for considering the feedback of the Ohio Judicial Conference. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Paul E Pfeifer". The signature is written in a cursive style with a large, prominent initial "P".

Paul E. Pfeifer
Executive Director