



Office of Budget and Management

John R. Kasich
Governor

Timothy S. Keen
Director

October 10, 2017

The Honorable Jon Husted
Ohio Secretary of State
180 E. Broad Street, 16th Floor
Columbus, Ohio 43215

Dear Secretary Husted,

Pursuant to Ohio Revised Code Section 3519.04, this letter contains the Office of Budget and Management's (OBM) fiscal analysis of the proposed constitutional amendment, State Issue 1, the Ohio Crime Victims Bill of Rights. The constitutional proposal will be placed on the November 2017 ballot and would establish the rights of victims of crime.

My Office estimates that State Issue 1, the Ohio Crime Victims Bill of Rights, also known as Marsy's Law, would have a marginal fiscal impact on the state level due to the present existence of a crime victims bill of rights in Ohio's constitution, as well as statutory law related to the rights of victims. Potential costs on the local level could be more significant, particularly as they relate to the court system and public defender costs borne by counties. In areas where State Issue 1 differs from current law or procedure, the effect of those differences is difficult to determine due to uncertainties related to personal choice, the ambiguity of terms included in Issue 1, and the lack of quantifiable data. While this amendment does not explicitly or specifically direct additional expenditures by state or local government entities, the fact that it makes changes to the way courts and related agencies at the state and local level administer victims' rights could impact costs.

I trust that this letter and attached analysis fulfills that statutory requirements of Ohio Revised Code 3519.04. Please contact me if you have any questions concerning the content of either.

Sincerely,

Timothy S. Keen
Director

Attachment

State Issue 1

Current Law Compared to Proposed State Issue 1

State Issue 1 or “Marsy’s Law”, would adopt the Ohio Crime Victims Bill of Rights by repealing and replacing Article I, Section 10a of the Ohio Constitution. This amendment would establish that victims of criminal offenses and delinquent acts would have specific rights for the purpose of securing justice and due process in the criminal and juvenile justice systems. Specifically, if successful, under State Issue 1, victims would have the following rights: (1) to be treated with fairness and respect for the victim’s safety, dignity and privacy; (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings; (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated; (4) to reasonable protection from the accused or any person acting on behalf of the accused; (5) upon request, to reasonable notice of any release or escape of the accused; (6) except as authorized by section 10 of Article I of the Ohio Constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused; (7) to full and timely restitution from criminal or juvenile offender; (8) to proceedings free from unreasonable delay and a prompt conclusion of the case (9) upon request, to confer with the government’s attorney; and, (10) to be informed, in writing, of all rights enumerated in the amendment. Additionally, the rights of victims would be required to be protected as vigorously as the rights of the accused. State Issue 1 would grant a victim, a victim’s representative, or a victim’s attorney the ability to assert the rights enumerated in this proposal in any proceeding involving the criminal offense. A victim or the victim’s representative would also be able to petition the court of appeals in the applicable district if the relief sought is denied.

There is substantial overlap between requirements contained in proposed State Issue 1 and current provisions of the Ohio Revised Code and the Ohio Constitution.¹ Current Article I, Section 10a of the Ohio Constitution requires that victims of crimes be accorded fairness, dignity, and respect in the criminal justice process. It also grants victims the right to reasonable and appropriate notice, information, access, and protection, as well as a meaningful role in the criminal justice process as defined and provided by law by the General Assembly. The Revised Code also already addresses many of the same rights being protected by State Issue 1, primarily in Chapter 2930, which delineates statutory rights for victims. For example, both State Issue 1 and current law ensure that victims receive an explanation of their rights² and be given an opportunity to receive notice of updates regarding public proceedings relating to the offense such as notice of the arrest³ or the release of the offender.⁴ The Revised Code provides more specific requirements than the proposed constitutional amendment in most circumstances. However, in

¹ Ohio Revised Code Chapter 2930 and Ohio Constitution Article 1, Section 10a establish rights for victims. Other similar provisions which overlap with Issue 1 appear in Ohio Constitution, Article 1, Section 16 and in R.C. §§ 109.42, 2152.20, 2947.051, 2929.18, 2929.19, 2929.28, 2949.25, 2967.12, 5120.60, 5139.55, and 5139.56.

² Division (A) of Section 2930.04, Division (B)(4) of Section 2930.06, and Section 109.42 of the Ohio Revised Code.

³ Section 2930.05 of the Ohio Revised Code.

⁴ Section 2930.16 of the Ohio Revised Code.

certain situations, State Issue 1 sets out entirely new requirements which do not appear in the Revised Code or the Ohio Constitution. This analysis presumes that additional expenditures would be associated with new or contrasting legal requirements which do not otherwise appear in the Ohio Revised Code or the Ohio Constitution.

The first area of difference noted by OBM is the expansion of victim court participation from some to all related court proceedings. State Issue 1 would grant a victim, a victim's representative, or a victim's attorney the ability to assert the rights enumerated in the proposed amendment in any proceeding involving the criminal offense. Additionally, a victim or the victim's representative would also be able to petition the court of appeals in the applicable district if the relief sought is denied. State Issue 1 requires that the applicable court of appeals must promptly consider and decide the petition. Current law does not provide victims the opportunity to assert these rights in all proceedings; furthermore, Ohio law does not provide a mechanism for victims to petition an appellate court. Rather, only a defendant or the State itself can file an appeal under current law. Additionally, under current law, victims have the option to receive notice of the filing of an appeal by the defendant or juvenile offender from the prosecutor.⁵ It is unclear how the ability to petition a court of appeals under State Issue 1 would operate or if the right to appeal carries the same rights of legal representation enjoyed by defendants and juvenile offenders. Under State Issue 1, victims would also have the right to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated. Existing law provides that victims are permitted to provide a statement during particular proceedings.⁶ However, current law and court procedures do not appear to guarantee a right of the victim to be heard in a public proceeding involving a plea.

The second noted area of distinction relates to the applicable definitions of "crime" and "victim." As proposed, State Issue 1 does not contain a definition of "crime," and it could be interpreted to mean all types of criminal offenses or delinquent acts. Particular offenses constitute a "crime" for the purposes of Chapter 2930, including all felony offenses and only certain misdemeanor offenses.⁷ The amendment in State Issue 1 could therefore be interpreted to expand the scope of crimes for which victims' rights would apply. Similarly, the definition of victim in State Issue 1 could be interpreted to include more individuals than under current law. State Issue 1 defines "victim" as "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." A person who is directly and proximately harmed could include a member of the victim's family, or depending upon the type of act or offense committed or the time or location of the act or offense, could include witnesses to the act or offense. This differs from current law, which defines "victim" as either 1) "a person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings..." or 2) "a person who receives injuries as a result of an accident involving a motor vehicle, watercraft, or aircraft operated... [under impairment] and for which

⁵ Section 2930.15 of the Ohio Revised Code.

⁶ See Sections 2930.13, 2930.14, and 2947.051 of the Ohio Revised Code

⁷ Division (A) of Section 2930.01 of the Ohio Revised Code.

medical treatment was received.”⁸ A “member of the victim’s family” is defined separately to mean “...a spouse, child, stepchild, sibling, parent, stepparent, grandparent, or other relative of a victim.”⁹ By having a definition of the term “victim,” current law reserves the rights accorded to victims under statutory law to a limited, identifiable pool of persons. Like the definition in State Issue 1, it permits a victim’s representative (who can be a member of the victim’s family or another person designated by the victim) to exercise the victim’s rights if the victim is a minor, or is incapacitated, incompetent, or deceased. Unlike State issue 1, current law does not confer those victim’s rights to a member of the victim’s family who may serve as the victim’s representative.

The third area of difference to consider involves victim restitution. The amendment in State Issue 1 would require that victims have a right to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim. While courts must consider whether to impose restitution under current law, unlike State issue 1, it is only mandatory for certain offenses.¹⁰ Currently, restitution for misdemeanor and felony offenses is based on the victim’s economic loss, excluding restitution for minor misdemeanors.¹¹ In both felony and misdemeanor cases, the court may base the amount of restitution on an amount recommended by the victim or the offender, estimates or receipts of repair or replacement, and other information. The restitution received must be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim.¹² Additionally, under Section 2152.20 of the Revised Code, there is the potential of restitution, if ordered by the court, of the violation of certain acts of a delinquent child or juvenile traffic offender. As demonstrated by the foregoing, State Issue 1 could potentially expand those offenses for which a victim can claim restitution. Additionally, it is not clear whether the restitution outlined in current law sufficiently satisfies the “full” restitution requirements under the proposed constitutional amendment. Further, neither current law or State Issue 1 seems to specify what “timely” restitution would be, therefore, the timeliness of the restitution that is espoused as a victim’s right under State Issue 1 is likely a matter of interpretation, as many juvenile offenders and defendants may not have the economic means to pay restitution quickly or in full.¹³

⁸ Division (H) of Section 2930.01 of the Ohio Revised Code.

⁹ Division (D) of Section 2930.01 of the Ohio Revised Code.

¹⁰ Division (B) of Section 2929.28 of the Ohio Revised Code

¹¹ Sections 2929.18 and 2929.28 of the Ohio Revised Code.

¹² *Id.*

¹³ It is important to note that the Crime Victims Services Section in the Office of the Attorney General administers the Victim Compensation Fund, which provides financial assistance to victims of a violent crime. It also provides training for professionals who assist victims, grants for victim service providers, and a directory of victim service providers throughout the state. It is the payor of last resort and will not pay for economic losses that can be recovered from another source. Eligibility for the assistance is granted to victims injured as a result of a violent crime, dependents of homicide victims, or claimants responsible for the expenses of crime victims, such as parents or guardians. These payments can cover items such as medical expenses, counseling, lost wages, and funeral and burial expenses.

Impact on Certain Agencies, Departments, and Institutions

In addition to reviewing the differences between the law as proposed by State Issue 1 and current law, the fiscal effect of the passage of this constitutional amendment must also take into consideration its impact on various state and local agencies, departments, and offices, the court system and individuals involved in court proceedings, and others involved in the provision of victim's services. These include: the Department of Rehabilitation and Correction, the Department of Youth Services, the Office of the Attorney General, the State Public Defender's Office, juvenile, municipal and common pleas courts, the appellate court system, the Ohio Supreme Court, county public defenders' offices, county prosecutors' offices, sheriffs, and other law enforcement personnel or agencies, and county governments among others.

Summary of the Fiscal Analysis

Given that the State of Ohio currently has a crime victims bill of rights in its constitution in addition to statutory law related to the rights of victims, any increased costs resulting from the passage of State Issue 1 is expected to be marginal on the state level. The proposed constitutional amendment in State Issue 1 does not explicitly or specifically direct additional expenditures by state or local government entities, but the fact that the amendment makes changes to the way courts and related agencies at the state and local level administer victims' rights could impact costs. Potential costs on the local level could be more significant, particularly as they relate to the court system and public defender costs borne by counties. In areas where State Issue 1 differs from current law or procedure, the effect of those differences is difficult to determine due to uncertainties related to personal choice, the ambiguity of terms included in Issue 1, and the lack of quantifiable data.

Components of the Fiscal Analysis

Methodology

OBM conducted research on the experience of other states that had passed a version of Marsy's Law or had been identified by the National Crime Victim Law Institute as having victims' rights in their constitution along with implementing and clarifying statutory law. Although substantially similar in most respects, only North Dakota, South Dakota, and Montana appear to permit the victim, the attorney for the government upon request of the victim, or the victim's other lawful representative to assert the rights enumerated in each state's victims bill of rights in any trial or appellate proceeding. Ohio's version of the law in State Issue 1 would also provide for the assertion of the rights enumerated under the proposal and should the relief sought be denied, grant the victim or the victim's lawful representative the right to petition the court of appeals for the applicable district.

OBM also contacted these states and/or reviewed any available fiscal analyses that may have been conducted to determine potential areas of financial concern. Of the states that had

conducted a fiscal analysis or were aware of the existence of an analysis, only North Dakota¹⁴ was able to assign any dollar costs to the institution of State Issue 1. These costs primarily consisted of: additional personnel needed to ensure that restitution to victims was prioritized over other payments such as delinquent child support; education of staff working with victims with disabilities; increased jury fees, mileage, and bailiffs' costs; additional costs related to more hearings, jury trials, and orders to show cause, and lost revenues that would now be diverted to victims' restitution, which had priority. The highest cost estimate was attributed to county governments tasked with providing notification and other support services for an increased number of victims due to the expansion of the types of crimes covered under the bill of rights. Included in the cost estimate of over \$1.7 million was the delay in some initial and bond hearings due to the time taken to identify and contact victims of property, misdemeanor, municipal and juvenile crimes and the resulting increase in jail and prisoner transport costs.

In addition, discussions with personnel from the Departments of Rehabilitation and Correction, Youth Services, and the State Public Defender's Office were conducted to determine potential areas of cost or concern with Issue 1. Other potential interested parties such as the Ohio Prosecutor's Association, the Ohio State Bar Association and the Ohio Judicial Conference among others were contacted as well.

Challenges

In reviewing the provisions for victim rights in other states' constitutions, it was clear that no two were exactly alike and using the experience of those states could likely lead to an dissimilar comparison. Compounding this fact was the existence of differing code sections or statutes that interpreted or clarified the constitutional rights of victims in these states.

California, for instance, defines "victim" as "a person" against whom a crime has been committed.¹⁵ Ohio currently defines "victim" as either "...a person who is identified as a victim of crime or specified delinquent act in a police report or in a complaint, indictment, or information..." or "a person who receives injuries as a result of a vehicle...or aircraft accident...and who receives medical treatment...".¹⁶ Issue 1 proposes to expand Ohio's current definition of "victim" to "...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."¹⁷ The larger the population accorded rights, the more costly it may become to enforce those rights.

State Issue 1 as proposed, also states that it is "self-executing and severable" and "supersedes all conflicting state laws".¹⁸ This in effect, could leave the tenets of the amendment to interpretation by a court without the existence of clarifying statutory language. While this

¹⁴ See Fiscal Impact memorandum of the North Dakota Office of Management and Budget to the North Dakota Legislative Council available at: http://www.legis.nd.gov/files/committees/64-2014%20appendices/17_5151_03000appendixc.pdf

¹⁵ California Penal Code Section 679.01.

¹⁶ Division (H) of Section 2930.01 of the Ohio Revised Code.

¹⁷ Division (D) of Article 1, Section 10a as proposed.

¹⁸ Division (E) of Article 1, Section 10a as proposed.

analysis makes no judgment about whether clarifying legislation is necessary, OBM acknowledges that the interpretation of the language by a court related to a challenge for failure to comply could result in some potential additional operational costs if adjustments or additional actions are necessary to comply with certain requirements of the amendment. Notably, the Ohio Department of Rehabilitation and Correction has expressed concerns about their responsibilities under passage of Issue 1 should inmates be placed on or released to treatment transfer or post-release control and whether the Department needs to make any adjustments. Additionally, while it appears that the State of Ohio has a well-established protocol for providing notice and assistance to victims of violent crime, the services provided to victims of “lesser crimes” (e.g., petty theft, fraud, or harassment) are less clear, and are likely more dependent upon local rules and procedures. The extent to which current practice in this area at the local level conflicts or corresponds to State Issue 1 can affect those rules and procedures in the future and may prompt the expenditure of additional funds to address the discrepancies.

Potential State Costs:

OBM has identified at least five state agencies that may experience additional, minimal costs as a result of the passage of Issue 1: the Ohio Attorney General’s Office, the Department of Rehabilitation and Correction, the Department of Youth Services, the Ohio Court of Claims, and the Ohio Public Defender. Broadly speaking, these costs can be attributed to increased notification requirements, the ability of a victim or a victim’s representative to petition the applicable appellate district if the relief sought is denied, and the right to full and timely restitution.

a. The Ohio Attorney General’s Office

The Ohio Attorney General’s Office currently administers the Victim’s Compensation Fund on behalf of the state through its Crime Victims Services Section which provides a financial compensation from the state fund to eligible victims of crime. One of the elements of State Issue 1 is the guarantee of full and timely restitution to a victim from the person who committed the criminal offense or delinquent act against the victim.¹⁹ While this may differ from the state government program (that pays many of the out-of-pocket expenses of violent crime even when there is no arrest or prosecution²⁰), it is possible that the Attorney General’s Office may experience an increased demand for crime victim’s compensation awards under the requirement of full and timely restitution under State Issue 1. Although a distinction can be made between compensation and restitution, this does not mean that victims of crime will recognize that distinction and fail to apply for an award under the program. This may result in increased personnel costs depending on the degree to which demands for compensation increase.

The Crime Victims Services Section in the Ohio Attorney General’s Office is also responsible for printing the Ohio Crime Victims’ Rights booklet and the Crime Victims’ Fiscal Annual Report. Slight costs for printing and the distribution of modifications may be incurred due to the expansion of the meaning of the term “victim” to a person who is directly and proximately

¹⁹ Division (A)(7) of Section 10a of Article 1 as proposed.

²⁰ <http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution#comp> viewed September 13, 2017.

harmed by the commission of the offense or act. The potential increase in the “pool” of victims may also lead to slight programming or increased server capacity needs for the Victim Information Notification Everyday (VINE) system sponsored by the Ohio Attorney General’s Office. VINE is a free, anonymous, computer-based service providing information and notification to victims of crime. It will provide information on the status of offenders within the departments of rehabilitation and correction and youth services as well as county jails including any upcoming hearings or court events.

b. The Departments of Rehabilitation and Correction and Youth Services

The Departments of Rehabilitation and Correction and Youth Services may also experience additional costs related to victim notification as both agencies currently offer these services out of their respective Office of Victim Services. The extent to which these agencies or offices will experience increased notification costs is not known, as, under State Issue 1, notification is not automatic and must be requested by the victim. These agencies may also experience increased costs related to additional court proceedings for perpetrators of crime that are in state custody or under state supervision. Under current law, appeals related to the commission and sentencing of a crime are conducted by attorneys for the state or the defendant. In comparison, the constitutional amendment in State Issue 1 grants the victim or the victim’s representative the ability to petition the applicable appellate court “...should the relief sought be denied...”²¹ related to victim’s rights under the amendment or other provisions of law. It is not clear how many petitions would be filed under these circumstances. To the extent that appeals are filed and the defendant or juvenile offender is in the custody of a state agency, the agency may incur additional costs related to incarceration or parole hearings. If an appeal is filed while the defendant or juvenile offender is released, but under the respective agency’s supervision, and the appeal would cause the extension of that supervision, additional costs related to that supervision will be incurred.

c. State Appellate Courts and the Court of Claims

Both state appellate courts and the Court of Claims could experience increased caseloads as a result of some of the provisions in State Issue 1. For appellate courts, whose personnel costs are paid through the Ohio Supreme Court, additional caseloads could result if victims exercise the appeal rights mentioned above. The increase in caseloads may result in increased costs related to personnel such as additional personnel hires or hours worked. With respect to the Court of Claims, increased caseloads (and thus operating costs) are possible if increased claims for victim’s compensation through the Attorney General’s Office are realized because the Court of Claims has appellate jurisdiction over these claims.

d. The Office of the Public Defender

The Office of the Public Defender may also experience additional costs related to the provision of representation to indigent persons. To the extent that victims exercise the additional rights granted by State Issue 1, including the right to petition a court of appeals, the number, duration,

²¹ Division (B) of Section 10a of Article I as proposed.

and complexity of appellate cases throughout the state may increase, which would result in increased caseloads for public defenders employed by the state. Additionally, there may be increased general litigation costs associated with challenges to the implementation and interpretation of the new rights granted by State Issue 1.

Potential Local Costs

As in the case of potential state costs, potential additional local costs can be attributed to increased notification requirements and the right to full and timely restitution under State Issue 1. Any increase in costs related to notification is solely dependent upon the number of victims, as well as the victims' propensity to request notification. Current notification procedures may vary among the 88 counties in the state and thus the potential for any additional costs incurred for victim notification under Issue 1 will depend upon how much each local entity's current notification procedures vary from those proposed. While this variation in procedure presents limitations on the ability of OBM to estimate local costs, it is reasonable to assume that there may be some potential additional local operating costs related to local court and public defender services.

It is reasonable to anticipate some additional court costs related to the additional restitution requirements of State Issue 1 as well as operating costs in the administration of the law. Currently, the victim's right to restitution can be pursued in several ways including small claims court, mediation, and civil (claims) court. This analysis assumes that these local avenues to pursue restitution will continue, however, the inclusion of the right to full and timely restitution in the State Constitution under the amendment in State Issue 1 and the victim's knowledge of this right, could prompt more victims to take advantage of these services or mechanisms. Therefore, if there is increased demand, that increase would likely lead to additional costs for provision of services or mechanisms for victims seeking such restitution. In addition to the potential increased demand for services, the right to full and prompt restitution might also result in adjustments to the assessment and collection of court costs if courts are required to prioritize victim rights to restitution over their own costs which may adversely affect court revenue. In addition, if State Issue 1 is successful, there is also the potential for a nominal increase in local court costs related to the promulgation of rules and procedures to ensure adherence with the requirements of the amendment. Therefore, based on the foregoing, it is reasonable to assume that if successful, additional costs may be incurred by local courts related to increased caseload and staffing requirements to comply with State Issue 1.

The potential for increased caseloads may also affect counties' costs related to the provision of public defender services for the defendant or juvenile offender. Due to the potential expansion of victim participation under the constitutional amendment in State Issue 1, case resolution may take more time to achieve in the court system, which will in turn affect the time devoted by public defenders to these cases. Counties receive partial reimbursement from the Office of the State Public Defender, however, the rate at which reimbursement is received is dependent upon the availability of funds for reimbursement and not on an increased need. This will mean that any potential increase in cases or time devoted to cases has the potential to increase the county's costs to provide public defender services to indigent defendants and juvenile offenders.