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February 5, 2024

Ohio Attorney General Dave Yost
c/o Opinions Section
30 East Broad Street
15th Floor
Columbus, Ohio 43215

RE: Request for Attorney General's Opinion

Dear Attorney General Yost:

Pursuant to R.C. 109.14, I am respectfully requesting a formal written opinion regarding the applicability of R.C. 2930.11 (A) as recently amended by House Bill 33.

Specifically, I am requesting an opinion regarding the following questions:

1. R.C. 2930.11 (A) as amended on October 3, 2023, provides that an investigating law enforcement agency shall promptly return any property that was taken in the course of an investigation to the victim, and that the victim shall not be compelled to pay any charge as a condition of retrieving their property. Does this section only apply to charges levied by a law enforcement entity?
2. If it does not, does R.C. 2930.11 (A) as amended on October 3, 2023, apply to charges from a towing company in possession of a motor vehicle as a result of a law enforcement entity ordering the removal and storage of a motor vehicle in accordance with R.C. 4513.60, R.C. 4513.61, and/or R.C. 4513.66?
3. If R.C. 2930.11 (A) as amended on October 3, 2023, applies to third party towing companies, what person or persons would qualify as a victim for purposes of this section and what process is required to prove that status to obtain the release of property free of any charge?
4. If R.C. 2930.11 (A) as amended on October 3, 2023, applies to third party towing companies, who, if anyone, is responsible for the costs associated with those services?

As amended, R.C. 2930.11 (A) now reads as follows: Except as otherwise provided in this section or in Chapter 2981. of the Revised Code, the law enforcement agency responsible for investigating a criminal offense or delinquent act shall promptly return to the victim of the criminal offense or delinquent act any property of the victim that was taken in the course of the investigation, **and the victim shall not be compelled to pay any charge as a condition of retrieving that property.** In accordance with Criminal Rule 26 or an applicable Juvenile Rule, the law enforcement agency may take photographs of the property for use as evidence. If the ownership of the property is in dispute, the agency shall not return the property until the dispute is resolved.

The uncertainty regarding the Section's application stems from a question as to whether or not the new language that victims shall not be compelled to pay any charge as a condition of retrieving their property applies

exclusively to law enforcement agencies investigating criminal offenses and delinquent acts, or if it also applies to third parties.

To provide a brief background, R.C. 2930.11 (A) was amended to its current form after its inclusion in the State Budget Bill (H.B. 33). The amended language appears to have been submitted to prevent police departments from charging crime victims to retrieve their own property from law enforcement impound lots. However, many law enforcement agencies do not have their own impound lots and rely upon third party towing companies to tow vehicles for clearing highway obstructions, processing, and storage.

While reading the section as a whole appears to indicate that it is limited to costs from law enforcement agencies investigating criminal offenses and delinquent acts, the broad language of "shall not be compelled to pay any charge as a condition of retrieving that property" calls into question whether or not costs levied by third parties would be included among the costs that a victim shall not be compelled to pay.

This also creates interplay between R.C. 2930.11 and the towing provisions contained in R.C. 4513.60 (towing and storage of vehicles on private property), R.C. 4513.61 (towing and storage of vehicles that have come into the possession of the law enforcement officer in the performance of their duties, left on a public street for 48 hours or more, or the vehicle was involved in an accident), and R.C. 4513.66 (removal of highway obstructions). R.C. 4513.60 (D) and R.C. 4513.61 (C) also specifically contain provisions that require the payment of fees before retrieval of a motor vehicle that would directly contradict R.C. 2930.11 (A) if it applied to towing companies, calling into question issues of statutory construction.

Given that motor vehicle related offenses often result in damage to collateral parties (ex. OVI accidents, innocent parties involved in accidents stemming from a violation of R.C. 2921.331 (Failure to Comply), property damaged and recovered as a result of an investigation into a stolen motor vehicle), this recent amendment creates confusion as to who would qualify as a victim, and what would be required to prove that someone is a victim entitled to recovery of property free of charge.

This also calls into question who, if anyone, would be responsible for the costs associated with towing and storage of vehicles, and creates additional confusion with regard to questions of restitution or applications to the crime victim's compensation fund in a criminal proceeding.

The application of this newly amended statute will bear heavily on the execution of the duties of prosecutors and law enforcement officers. As such, I respectfully request clarification on the applicability of R.C. 2930.11. Thank you for your attention to this matter. If you require any additional information from my office, please feel free to contact me at any time.

Respectfully,



Jordan C. Croucher,
Noble County Prosecutor