February 21, 2025

The Honorable Jordan C. Croucher
Noble County Prosecuting Attorney
150 Courthouse
Caldwell, Ohio 43724

SYLLABUS: 2025-003

1. R.C. 2930.11(A) applies when a law enforcement agency returns a victim's property that was taken in the course of an investigation. The statute makes no exception for charges levied by a third party if the victim's property was held for investigatory purposes on behalf of a law enforcement agency.

2. If a law enforcement agency directed a motor vehicle to be towed and stored, and the vehicle remained under the control and custody of law enforcement for the purpose of an investigation, the victim must not be charged the costs associated with towing and storage.

3. A victim is defined by the constitutional amendment known as Marsy's Law, as incorporated in R.C. 2930.01(H), 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 offence or act." Law enforcement officers must apply that standard in determining whether a particular individual is

a victim entitled to the release of property free of any charge.

4. R.C. 2930.11(A) clearly prohibits charging the victim for the return of property taken in the course of an investigation, but it does not specify who else is responsible for costs associated with towing or storage. As the answer depends on the particulars of a criminal case and any contractual arrangements between the law enforcement agency and a third party, the Attorney General cannot resolve this question of fact.

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OPINION NO. 2025-003

The Honorable Jordan C. Croucher
Noble County Prosecuting Attorney
150 Courthouse
Caldwell, Ohio 43724

Dear Prosecutor Croucher:

You have requested an opinion regarding the application of R.C. 2930.11(A), as amended by 2023 Am.Sub. H.B. 33, to vehicle towing costs. That law provides that an investigating law enforcement agency shall promptly return to the victim any property of the victim that was taken in the course of an investigation, and that the victim shall not be compelled to pay any charge as a condition of retrieving the property.

I have framed your questions as follows:

1. Does R.C. 2930.11(A) only apply to charges levied by a law enforcement entity?

2. Does R.C. 2930.11(A) 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?

3. If R.C. 2930.11(A) 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) applies to third-party towing companies, who, if anyone, is responsible for costs associated with those services?

I

Your questions relate to the intersection of the victim's rights and vehicle towing laws. More specifically, we must consider the effect of recent amendments to R.C. 2930.11 and 4513.61. In 2023, the General Assembly amended R.C. 2930.11 to prohibit charging a crime victim for the return of property taken in the course of an investigation. 2023 Am.Sub.H.B. No. 33. At that time, the General Assembly did not also amend R.C. 4513.61, which requires a vehicle owner or lienholder to pay expenses for towing and storage to reclaim the vehicle when a law enforcement agency ordered the towing.

After we received your request for an opinion, the General Assembly enacted legislation that amends R.C. 4513.61(C)(2) to read: "The owner or lienholder of the motor vehicle is responsible for payment of any expenses or charges incurred in its removal and storage and may reclaim the motor vehicle upon payment of those expenses or charges, and presentation of proof of ownership." 2024 Sub.S.B. No. 94 (effective October 24, 2024). This change rewords but does not substantively alter the law as it existed prior to the amendment.

The questions presented concern an apparent conflict between two laws. In the analysis that follows, we must determine whether the statutes can be reconciled to give effect to both or, if they cannot, which one prevails over the other.

II

I will begin with your question whether R.C. 2930.11(A) applies only to charges levied by a law enforcement entity.

"In any case concerning the meaning of a statute," the "focus is on the text." *State v. Bortree,* 2022-Ohio-3890, ¶10. A faithful interpretation of statutory text "must accord significance and effect to every word, phrase, sentence, and part of the statute . . . and abstain from inserting words where words were not placed by the General Assembly." *State ex rel. Carna v. Teays Valley*

Local School Dist. Bd. of Edn., 2012-Ohio-1484, ¶18; *A.S. v. J.W.*, 2019-Ohio-2473, ¶14-15.

R.C. 2930.11(A) states in full:

> 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.

(Emphasis added.)

This statute is unambiguous: the victim "shall not be compelled to pay" for the return of the victim's property that was taken during the investigation of a criminal offense or delinquent act. *See Columbus-Suburban*

Coach Lines v. Pub. Util. Comm., 20 Ohio St.2d 125, 127 (1969) ("it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used"); *accord Cyan, Inc. v. Beaver Cty. Emp. Retirement Fund*, 583 U.S. 416, 426 (2018) ("The statute says what it says – or perhaps better put here, does not say what it does not say"). This statutory prohibition against charging the victim makes no exception for the charges made by a third party if the victim's property was taken and held by that third party on behalf of a law enforcement agency.

The significance of the phrase "taken in the course of an investigation" is supported by reading R.C. 2930.11(A) in context with the remainder of R.C. 2930.11. *See* R.C. 2930.11(B) and (C); *Dana Corp. v. Testa*, 2018-Ohio-1561, ¶28 (relying on structural parallelism of two divisions of the same section to interpret a statute). Each provision of R.C. 2930.11 relates to property that an investigating law enforcement agency takes for evidentiary purposes. If the property was not taken for an investigative purpose, then its return is not subject to the provisions of R.C. 2930.11.

Also, R.C. 2930.11 presupposes that the subject property is within the law enforcement agency's custody until returned to the victim. "Custody" may be generally defined as "[t]he care and control of a thing or person for inspection, preservation, or security." Black's Law Dictionary (12th Ed. 2024); *see also* 2004 Ohio

Atty.Gen.Ops. No. 2004-024, at 2-209. In the circumstances referenced here, it would not be unusual for a victim's property to be in the possession of a third party for storage or safekeeping on behalf of the law enforcement agency while it remains under the law enforcement agency's ultimate control. In such a case, R.C. 2930.11(A) could apply. However, determining who holds custody of a victim's property is a question of fact that cannot be definitively answered by an Attorney General opinion. 2014 Ohio Atty.Gen.Ops. No. 2014-007, Slip Op. at 15; 2-66 ("An opinion of the Attorney General cannot resolve questions of fact").

III

I next address your question whether R.C. 2930.11(A) applies to charges from a towing company in possession of a motor vehicle because of a law enforcement entity ordering the removal and storage of a motor vehicle in accordance with R.C. 4513.60, 4513.61, or 4513.66.

A

Law enforcement officers are authorized to order the removal of vehicles in certain situations specified in R.C. 4513.60, 4513.61, and 4513.66, namely, when a vehicle is left on private property without the owner's consent, abandoned on the road, obstructing traffic after an accident, or taken into a law enforcement

agency's possession. A law enforcement official may take possession of a vehicle for a variety of reasons. "A vehicle may be impounded when 'it is evidence in a criminal case, used to commit a crime, obtained with funds derived from criminal activities, or unlawfully parked or obstructing traffic; or if the occupant of the vehicle is arrested; or when impoundment is otherwise authorized by statute or municipal ordinance.'" *Emery v. City of Ashland Police Dept.*, 2019-Ohio-1206, ¶27 (5th Dist.), quoting *State v. Huddleston*, 2007-Ohio-4455, ¶14 (10th Dist.), quoting *State v. Taylor*, 114 Ohio App.3d 416, 422 (2d Dist. 1996).

A private, for-hire motor carrier may provide the towing service, and the storage facility can be privately owned or government-owned. *See, e.g.,* R.C. 505.85 (authorizing township trustees to contract for the storage or impoundment of motor vehicles); *see also* 1991 Ohio Atty.Gen.Ops. No. 91-051, paragraph two of the syllabus (advising that a county dispatch center may use a rotational list for the dispatch of towing services). However, both the removal and storage of the vehicle must occur at the direction of a law enforcement agency. R.C. 4513.60(A), 4513.61(B), and 4513.66(A).

The relevant passage specifies that, in order to reclaim a motor vehicle after the law enforcement-ordered towing, the owner or lienholder must pay any expenses or charges incurred in its removal and storage and present proof of ownership. R.C. 4513.61(C)(2). After

presenting proof of ownership, the owner of a motor vehicle also may retrieve any personal items from the vehicle without retrieving the vehicle or paying any fee (unless an after-hours retrieval fee applies). However, the owner cannot retrieve any personal item that (1) has been determined to be necessary to a criminal investigation; or (2) would endanger the safety of the owner, unless the owner agrees to sign a waiver of liability. If a motor vehicle remains unclaimed after the sheriff or chief of a law enforcement agency provides necessary notice of the towing and storage, the agency may dispose of the motor vehicle either by public auction, to a motor vehicle salvage dealer or similar facility, or to the towing service or storage facility. *See* R.C. 4513.61(C) and (D), and R.C. 4513.62.

B

If the motor vehicle owner is a victim of a criminal offense involving the vehicle, and the victim's vehicle was taken into storage during an investigation, the payment obligation to reclaim the vehicle would come into conflict with R.C. 2930.11(A). R.C. 4513.61(C)(2) makes no exception for a crime victim, and R.C. 2930.11 makes no exception to allow for charging towing or storage costs to a victim. The statutes appear irreconcilable.

Under R.C. 1.51, when statutes cannot be reconciled, "the special or local provision prevails as an exception

to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." In applying this rule, we must consider whether each statutory provision is special or general in character. "The determination as to whether a statute is general or special in character must be made in light of the statute with which it is to be compared." 1989 Ohio Atty.Gen.Ops. No. 89-103, at 2-500, fn.7 (*modified on other grounds by* 1990 Ohio Atty.Gen.Ops. No. 90-022).

R.C. 4513.61(C)(2) presents a general rule for cases involving a motor vehicle towed and stored at the direction of a law enforcement official. R.C. 2930.11(A) provides specifically that a victim cannot be compelled to pay for the return of any property taken in the course of an investigation. The special provision in R.C. 2930.11(A) would prevail as an exception to the general provision in R.C. 4513.61(C)(2), unless the latter was enacted later and the General Assembly's manifest intent is that the general provision prevail.

The "no charge to the victim" provision was enacted on October 3, 2023; the payment obligation in R.C. 4513.61 has existed since the statute was enacted in 1971. *See* 2023 Am.Sub.H.B. No. 33 and Am.H.B. No. 24, 1971 Ohio Laws 1135. However, the General Assembly recently amended R.C. 4513.61(C)(2) to read: "The owner or lienholder of the motor vehicle is responsible for payment of any expenses or charges incurred

in its removal and storage and may reclaim the motor vehicle upon payment of those expenses or charges, and presentation of proof of ownership." 2024 Sub.S.B. No. 94 (effective October 24, 2024). As this amendment to the general provision is the most recent enactment, we must consider whether it was the General Assembly's "manifest intent . . . that the general provision prevail." R.C. 1.51.

We cannot simply presume legislative intent for the general law to prevail over the special provision. *State ex rel. Ehmann v. Schneider*, 78 Ohio App. 27, 32 (1st Dist. 1946) ("The special statute, in many cases, remains wholly unaffected by the later general act. Indeed, the presumption is that the special is intended to remain in force as an exception to the general act"), quoting 37 Ohio Jur. §408. And, courts generally disfavor arguments for repeal by implication. *See State v. Belton*, 2016-Ohio-1581, ¶41; *Lucas Cty. Bd. of Commrs. v. Toledo*, 28 Ohio St.2d 214, 217 (1971).

The latest amendment to R.C. 4513.61(C)(2) merely rephrases a vehicle owner's payment obligation to pay for towing and storage. 2024 Sub.S.B. No. 94, p. 48. The law previously stated that "[t]he owner or lienholder of the motor vehicle may reclaim the motor vehicle upon payment of any expenses or charges incurred in its removal and storage, and presentation of proof of ownership." R.C. 4513.61(C)(2) (prior to October 24, 2024). In Sub. S.B. 94, the General Assembly could have

amended R.C. 2930.11 to make its intent clear, simply by adding an "except as provided in section 4513.61" clause, but it failed to do so. "[I]t may properly be assumed that the General Assembly had knowledge of the prior legislation when the subsequent legislation was enacted, and had the General Assembly intended to nullify such prior legislation it would have done so, by means of an express repeal thereof." *Cincinnati v. Thomas Soft Ice Cream, Inc.*, 52 Ohio St.2d 76, 79 (1977).

Thus, the latest amendment to R.C. 4513.61 does not show a clear legislative intent for the general provision in towing law to prevail over the victim's rights provision. Rather, we conclude that R.C. 2930.11(A) presents a narrow exception to the general rule: a victim cannot be charged when a victim's vehicle was towed and stored in the course of an investigation and remains in the custody and control of law enforcement.

C

In determining whether to apply R.C. 2930.11(A) to towing costs in a particular case, there are at least three factors to consider. First, whether the law enforcement agency maintained control and custody of the vehicle. *See, e.g.*, 2023 Ohio Atty.Gen.Ops. No. 2023-007 (application of certain Revised Code provisions depends on the custodial law enforcement entity). Second, whether the property was "taken in the course

of an investigation" or for other purposes. R.C. 2930.11(A). And third, whether the incident that resulted in removal and storage of a motor vehicle involved an offender and victim, as defined in Chapter 2930 of the Revised Code.

A towing service that removes a motor vehicle pursuant to R.C. 4513.60, 4513.61, or 4513.66 acts at the direction of a law enforcement or public safety officer, and the vehicle is stored in a location designated by the law enforcement agency. *See* R.C. 4513.60(A) and 4513.61(B). If the law enforcement agency maintains control and custody of the motor vehicle, the law enforcement agency has constructive, if not actual, possession of the property. "Custody" is generally defined as "[t]he care and control of a thing or person for inspection, preservation, or security." Black's Law Dictionary (12th Ed. 2024); *see also* 2004 Ohio Atty.Gen.Ops. No. 2004-024, at 2-209. "Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Kendall*, 2012-Ohio-1172, ¶14 (9th Dist.). For example, a law enforcement agency could exercise control by placing an evidentiary hold on a vehicle in storage. *See, e.g.,* Columbus Police Division Directive 6.01, https://www.columbus.gov/files/sharedassets/city/v/2/public-safety/police/directives/divisiondirective6.01.pdf (accessed February 20, 2025) [https://perma.cc/6ZLF-C6AR]. Which entity is in

possession or control of a towed vehicle will ultimately be a question of fact that cannot be definitively answered by an Attorney General opinion. *See* 2014 Ohio Atty.Gen.Ops. No. 2014-007, Slip Op. at 15; 2-66.

When a motor vehicle is not taken into storage for an investigative purpose, its return is not subject to the restrictions in R.C. 2930.11. Under R.C. 4513.66, for example, a public safety official (including a law enforcement officer) may order the removal and storage of a vehicle after an accident on a highway or other public street. The vehicle might be removed from the street solely to avoid blocking traffic and would not be inspected or retained for criminal investigative purposes. On the other hand, if a law enforcement officer finds a stolen vehicle and has it towed for storage, the law enforcement agency is more likely to take an inventory of items in the vehicle, inspect it for evidence to identify the offender, and retain the vehicle for investigative purposes.

If a victim's vehicle is removed from the scene of an accident for reasons other than investigative purposes, the victim could still be required to pay to retrieve the vehicle. *See* R.C. 4513.61(C)(2). Possibly, the victim could later recover expenses as an economic loss if a sentencing court orders the offender to pay restitution. *See* R.C. 2152.20, 2152.203, 2929.18, 2929.28, and 2929.281.

IV

Next, you ask who would qualify as a crime victim for purposes of R.C. 2930.11(A) if the law applies to third party towing companies. You also ask what process is required to prove one's status as a crime victim to obtain the release of property free of any charge. To answer this, I must begin with a brief overview of the legislative history underlying the legal definition of "crime victim."

A

For purposes of R.C. 2930.11, the meaning of "crime victim" is found in Article I, Section 10a of the Ohio Constitution, known as Marsy's Law. As background, the "Marsy's Law Amendment" to the Ohio Constitution was adopted by ballot initiative in 2017. The Amendment enshrines certain rights for crime victims and ensures that victims are "treated with fairness and respect for the victim's safety, dignity, and privacy." Ohio Const., art. I, §10a. The General Assembly codified Marsy's Law in 2023, primarily through revisions to Chapter 2930 of the Revised Code (the Victim's Rights Law). *See* 2022 Sub.H.B. No. 343 and 2023 Am.Sub.S.B. No. 16.

With the codification of Marsy's Law, the method of defining a "victim" has changed over time but not

necessarily in substance. Until April 6, 2023, "victim" was defined in R.C. 2930.01 as:

> (H) "Victim" means either of the following:
>
> (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 to which this chapter makes reference.
>
> (2) A person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section, whichever is applicable.

Former R.C. 2930.01(H) (effective until April 6, 2023).

At the time, this reference to R.C. 2930.01(A)(3)-(4) — a subset of the definition of "crime"—in R.C. 2930.01(H)(2) included operating a vehicle (motor vehicle, aquatic vessel, or airplane) under the influence of an intoxicating substance (OVI) or a vehicle-involved offense resulting in injury (*e.g.*, vehicular assault).

The General Assembly made additional changes to the Victim's Rights Law in Sub. S.B. 16 of the 135th General Assembly (eff. July 7, 2023). Now, under Marsy's Law, a victim is "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. The term '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." Ohio Const., art. I, §10a; R.C. 2930.01(H).

For purposes of this definition, an "offense" is an alleged act or omission committed by a person that is punishable by incarceration and is not eligible to be disposed of by the traffic violations bureau. A traffic violations bureau is established by a court pursuant to Traffic Rule 13 and has jurisdiction over minor traffic offenses that occur within the territory of the court, except for civil parking infractions that occur within the jurisdiction of a parking violations bureau established in a municipality or township under R.C. 4521.04. The definition of "delinquent act" similarly excludes

conduct disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 and minor misdemeanor juvenile traffic offenses. *See* R.C. 2930.01(A) and (O). Notably, this definition of an "offense" does not require a conviction, charge, or indictment for a person to be considered a victim; it requires only the occurrence of the criminal or delinquent act. However, the definition does not include a person involved only in a civil matter. *See* 2024 Ohio Atty.Gen.Ops. 2024-007, Slip Op. at 2-3.

The law no longer references specific offenses in the definition of a "victim," but the Marsy's Law definition of "victim" still encompasses, for example, a person injured by another driver operating a vehicle under the influence of an intoxicating substance (OVI), a person injured by aggravated vehicular assault, car theft, and similar matters. *See State v. Morales*, 2023-Ohio-2459 (1st Dist.) (finding that the driver of the car that defendant crashed into satisfied the definition of "victim" in Marsy's Law and was entitled to restitution). Determining whether a particular person is a victim under Marsy's Law is a question of fact and beyond the scope of an opinion rendered by the Attorney General. 2014 Ohio Atty.Gen.Ops. No. 2014-007, Slip Op. at 15; 2-66; 1986 Ohio Atty.Gen.Ops. No. 86-076, at 2-422.

It might be questioned whether a motor vehicle insurance company could claim the status of "victim" for purposes of R.C. 2930.11(A). A substantial line of cases

rejects "the notion that an *insurance company* becomes a victim simply because, pursuant to a contract, the company agreed to and in fact reimbursed its insured for losses caused by criminal conduct." (Emphasis added). *State v. Johnson*, 2014-Ohio-4826 (10th Dist.), ¶7; *see also, e.g., State v. Johnson*, 2011-Ohio-5913 (1st Dist.), ¶5; *State v. Perkins*, 2010-Ohio-5058 (3d Dist.), ¶16. While some entities besides the victim may be designated by the court to receive restitution (*e.g.*, the clerk of courts or probation department), an insurance company is not an "agency designated by the court." *State v. Colon*, 2010-Ohio-492 (2d Dist.), ¶5-6. This same analysis was used in a 2023 case to deny an insurance company restitution as a victim under Marsy's Law, since "[a]bsent its insurance contract with the victim," the insurer would not be impacted. *State v. Hensley*, 2023-Ohio-119, ¶26 (12th Dist.). And, if impacted at all, it would only be proximate harm, not direct harm, thus excluding the insurance company from the definition of "victim," which requires that "[t]he resulting harm must not only be the 'proximate' result of the criminal act but must also be the 'direct' result of the criminal act." *Id.* at ¶25 ("it is not enough that there be merely a causal connection between the criminal act and the harm ultimately sustained by a third-party such as an insurer"). *Id.* at ¶25.

B

The second part of your question is "what process is required to prove [a victim's] status to obtain the release of property free of any charge?" In the absence of a constitutional or statutory directive, a public officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 11-12 (1915); *see also State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19 (1918) ("every officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty"); 2004 Ohio Atty.Gen.Op. No. 36, at 2-326**.**

R.C. 2930.11 does not direct how law enforcement agencies determine an individual's status as a crime victim. A law enforcement agency must exercise fair and impartial discretion based on the standard contained in Marsy's Law. As in any criminal case, a victim may be identified by the law enforcement officer during the investigation. *See* R.C. 2930.04(E)(1) (requiring a law enforcement officer to "use reasonable efforts to identify a victim" in order to provide information about the victim's rights). Otherwise, as directed in R.C. 2930.044, in order to exercise the rights available under the Victim's Rights Law (R.C. Chapter 2930), a person who has not previously been identified

as a victim by law enforcement must affirmatively identify the person's self to law enforcement, the prosecutor, and the courts.

V

And now I turn to your last question. R.C. 2930.11(A) prohibits compelling a victim to pay for the return of property taken in the course of an investigation. Then who does pay? The statute does not say who is responsible for the legitimate charges of a third party, such as a towing service or storage facility. The statute provides no insight into whether the law enforcement agency, or a criminal offender may be charged the cost, or whether some other arrangement must be made for payment.

When a matter involves towing or storage costs incurred under Ohio's forfeiture law, there is precedent for a trial court to order a police department to pay storage fees when the state requested forfeiture of a vehicle belonging to an innocent third-party who was not the criminal defendant. *See Dayton Police Dept. v. Grigsby*, 2010-Ohio-2504 (2d Dist.); *Dayton Police Dept. v. Thomas*, 2010-Ohio-1506 (2d Dist.); *State v. Britton*, 135 Ohio App.3d 151 (6th Dist. 1999). In *Grigsby*, the court explained that "there [are] sound legal reasons for holding the police department, rather than the innocent, non-defendant owner of the impounded vehicle, responsible for the towing and

storage fees." *Grigsby* at ¶18. However, criminal forfeiture law (R.C. Ch. 2981) will not apply to every case involving the towing of a victim's vehicle.

The Third District Court of Appeals has held that a towing company or law enforcement agency cannot recover towing or storage costs as restitution because neither entity was the crime victim. *See State v. Christy*, 2004-Ohio-6963 (3d Dist.). That said, we cannot predict with certainty how a court would rule if a law enforcement agency were to pay such costs to a third party on behalf of the victim as a consequence of R.C. 2930.11(A).

In cases involving theft of a motor vehicle, R.C. 2913.82 provides an avenue for recovering costs. If a person is convicted of a theft offense involving a motor vehicle, and if a local authority, the owner of the vehicle, or a person, acting on behalf of the owner, was required to pay any towing or storage fees prior to recovering possession, the court that sentences the offender must require the offender to repay the fees to the local authority, the owner, or the person who paid the fees on behalf of the owner. A "local authority" includes every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state. R.C. 4511.01(AA). Thus, in motor vehicle theft cases where the victim may not be compelled to pay towing or storage fees because of the proscription in R.C. 2930.11(A), the local

authority may still be able to recover the cost of fees paid to the towing or storage company if the offender has assets from which the reimbursement can be made.

Ultimately, the answer to this question depends on the particulars of a criminal case, contractual arrangements between the law enforcement agency and a third party, or an agreement with other political subdivisions to share services. The Attorney General is unable to resolve this question of fact. *See, e.g., D & B Immobilization Corp. v. Dues,* 122 Ohio App.3d 50, 55 (8th Dist. 1997); *State v. Estep*, 1995 Ohio App. LEXIS 2859 (4th Dist. June 26, 1995).

If it was not the intent of the General Assembly to be silent on who pays the third party's costs for towing or storing a victim's vehicle, then it is solely within the legislature's power to "modify the existing statutory provisions . . . through appropriate legislation." 1999 Ohio Atty.Gen.Ops. No. 99-044, at 2-278; *accord* 2009 Ohio Atty.Gen.Ops. No. 2009-006, at 2-47 ("The General Assembly is empowered to take cognizance of the consequences of existing law and, within constitutional limits, to change the law to achieve the desired results").

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

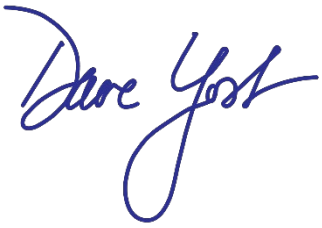
1. R.C. 2930.11(A) applies when a law enforcement agency returns a victim's property that was taken in the course of an investigation. The statute makes no exception for charges levied by a third party if the victim's property was held for investigatory purposes on behalf of a law enforcement agency.

2. If a law enforcement agency directed a motor vehicle to be towed and stored, and the vehicle remained under the control and custody of law enforcement for the purpose of an investigation, the victim must not be charged the costs associated with towing and storage.

3. A victim is defined by the constitutional amendment known as Marsy's Law, as incorporated in R.C. 2930.01(H), 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 offence or act." Law enforcement officers must apply that standard in determining whether a particular individual is a victim entitled to the release of property free of any charge.

4. R.C. 2930.11(A) clearly prohibits charging the victim for the return of property taken in the course of an investigation, but it does not specify who else is responsible for costs associated with towing or storage. As the answer depends on the particulars of a criminal case and any contractual arrangements between the law enforcement agency and a third party, the Attorney General cannot resolve this question of fact.

Respectfully,



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