



## Ohio Revised Code

### Section 2937.11 Conduct of preliminary hearing.

Effective: June 20, 2014

Legislation: House Bill 130 - 130th General Assembly

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(A)(1) As used in divisions (B) and (C) of this section, "victim" includes any person who was a victim of a felony violation identified in division (B) of this section or a felony offense of violence or against whom was directed any conduct that constitutes, or that is an element of, a felony violation identified in division (B) of this section or a felony offense of violence.

(2) As used in division (D) of this section, "victim" means any person who is less than sixteen years of age and who was a victim of a violation of section 2905.32 of the Revised Code or against whom was directed any conduct that constitutes, or is an element of, a violation of section 2905.32 of the Revised Code.

(3) At the preliminary hearing set pursuant to section 2937.10 of the Revised Code and the Criminal Rules, the prosecutor may state, but is not required to state, orally the case for the state and shall then proceed to examine witnesses and introduce exhibits for the state. The accused and the magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally. On motion of either the state or the accused, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(B) In a case involving an alleged felony violation of section 2905.05, 2905.32, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2907.24, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, or 2919.22 of the Revised Code or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, upon motion of the prosecution, the testimony of the child victim at the preliminary hearing may be taken in a room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, in accordance with division (C) of section 2945.481 of the Revised Code.



(C) In a case involving an alleged felony violation listed in division (B) of this section or an alleged felony offense of violence and in which an alleged victim of the alleged violation or offense was less than thirteen years of age when the complaint or information was filed, whichever occurred earlier, the court, on written motion of the prosecutor in the case filed at least three days prior to the hearing, shall order that all testimony of the child victim be recorded and preserved on videotape, in addition to being recorded for purposes of the transcript of the proceeding. If such an order is issued, it shall specifically identify the child victim concerning whose testimony it pertains, apply only during the testimony of the child victim it specifically identifies, and apply to all testimony of the child victim presented at the hearing, regardless of whether the child victim is called as a witness by the prosecution or by the defense.

(D)(1)(a) In a case involving an alleged violation of section 2905.32 of the Revised Code, upon motion of the prosecution, the testimony of the victim at the preliminary hearing may be taken in a place or room other than the room in which the preliminary hearing is being conducted and be televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted, to be viewed by the accused and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the victim had it been given in the room in which the preliminary hearing is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the preliminary hearing.

(b) Upon the motion of the prosecution filed under division (D)(1)(a) of this section and if the judge or magistrate determines that the victim is unavailable to testify in the room in which the preliminary hearing is being conducted in the physical presence of the accused for one or more of the reasons set forth in division (D)(2) of this section, the judge or magistrate may issue an order for the testimony of the victim to be taken in a place or room other than the room in which the preliminary hearing is being conducted and televised, by closed circuit equipment, into the room in which the preliminary hearing is being conducted. If a judge or magistrate issues an order of that nature, the judge or magistrate shall exclude from the room in which the testimony of the victim is to be taken every person except the following:

(i) The victim giving the testimony;



- (ii) The judge or magistrate;
  - (iii) One or more interpreters if needed;
  - (iv) The attorneys for the prosecution and the defense;
  - (v) Any person needed to operate the equipment to be used;
  - (vi) One person chosen by the victim giving the testimony;
  - (vii) Any person whose presence the judge or magistrate determines would contribute to the welfare and well-being of the victim giving the testimony.
- (c) The person chosen by the victim under division (D)(1)(b)(vi) of this section shall not be a witness in the preliminary hearing and, both before and during the testimony, shall not discuss the testimony of the victim with any other witness in the preliminary hearing.
- (d) The judge or magistrate, at the judge's or magistrate's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to the limitations set forth in this division. If the judge or magistrate presides by electronic means, the judge or magistrate shall be provided with monitors on which the judge or magistrate can see each person in the room in which the testimony is to be taken and with an electronic means of communication with each person, and each person in the room shall be provided with a monitor on which that person can see the judge or magistrate and with an electronic means of communication with the judge or magistrate. To the extent feasible, any person operating the televising equipment shall be restricted to a room adjacent to the room in which the testimony is being taken, or to a location in the room in which the testimony is being taken that is behind a screen or mirror, so that the person operating the televising equipment can see and hear, but cannot be seen or heard by, the victim giving the testimony during the testimony. The accused shall be permitted to observe and hear the testimony of the victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the attorney of the accused during the testimony, and shall be restricted to a location from which the accused cannot be seen or heard by the victim giving the testimony, except on a monitor provided for that purpose. The accused and the



judge or magistrate have full right of cross examination, and the accused has the right of inspection of exhibits prior to their introduction. The victim giving the testimony shall be provided with a monitor on which the victim can observe the accused during the testimony.

(2) For purposes of division (D)(1) of this section, a judge or magistrate may order the testimony of a victim to be taken at a place or room outside the room in which the preliminary hearing is being conducted if the judge or magistrate determines that the victim is unavailable to testify in the room in the physical presence of the accused due to one or more of the following:

- (a) The inability of the victim to communicate about the alleged offense because of extreme fear, severe trauma, or another similar reason;
- (b) The substantial likelihood that the victim will suffer serious emotional trauma from so testifying;
- (c) The victim is at a hospital for care and treatment for any physical, mental, or emotional injury suffered by reason of the alleged offense.