

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

**Proposed Staff Notes (2019 Amendment)**

**Crim.R 37-Victim's Opportunity to be Heard**

Previously reserved, this new rule was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

**RULE 46. Bail Pretrial Release and Detention**

**(A) Pretrial detention.** A prosecutor may file a motion seeking pretrial detention of a defendant pursuant to the standards and procedures set forth in the Revised Code.

**(B) Types and amounts of bail.** Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;
- (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the judgment of the court, will reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders monetary conditions of release, the court shall impose an amount and type which are least costly to the defendant while also sufficient to reasonably ensure the defendant's future appearance in court.

~~(B)~~**(C) Conditions of bail.** The court may impose any of the following conditions of bail:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Place the person under a house arrest, electronic monitoring, or work release program;
- (4) Regulate or prohibit the person's contact with the victim;

(5) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;

~~(6) Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail~~ completion of a drug and/or alcohol assessment and compliance with treatment recommendations, for any person charged with an offense that is alcohol or drug related, or where alcohol or drug influence or addiction appears to be a contributing factor in the offense, and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in need of treatment;

(7) Require compliance with alternatives to pretrial detention, including but not limited to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance at future court proceedings;

(8) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

~~(C)~~**(D) Factors.** In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to:

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;

(2) The weight of the evidence against the defendant;

(3) The confirmation of the defendant's identity;

(4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;

(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order;

(6) An evaluation of the defendant's likelihood of appearance and risk to public safety, as determined by an objective risk-assessment tool recognized as reliable by statute or by the court, when reasonably available to the court. As soon as possible without causing unreasonable delay to the court's bail determination, this risk-assessment tool shall be employed by the court on its own initiative for any defendant not yet released on bail, either before or after the defendant's initial appearance.

~~(D)~~**(E) Appearance pursuant to summons.** When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.

~~(E)~~**(F) Amendments** Continuation of Bail. A court, at any time, may order additional or different types, amounts, or conditions of bail. Unless otherwise ordered by the court pursuant to this subsection, bail shall continue until the return of a verdict or the entry of a guilty plea, and may continue thereafter pending sentence or disposition of the case on review. At any time, a court may eliminate or lessen any condition of bail that the court believes is no longer necessary to reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process.

~~(F)~~**(G) Information need not be admissible.** Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.

~~(G)~~**(H) Bond schedule.**

(1) In order to expedite the prompt release of a defendant prior to initial appearance, ~~Each~~ each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions ~~(B)~~ (C) and ~~(C)~~~~(5)~~ (D)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance.

(2) A bond schedule shall not be considered as "relevant information" under division (D) of this rule.

(3) When a person fails to post a bond established by a bail bond schedule, a judicial officer shall conduct a bail hearing no later than the second court day after that person has been arrested.

(4) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card. No credit card transaction shall be permitted when a service charge is made against the court or clerk unless allowed by law.

(5) Each court shall review its bail bond schedule bi-annually by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.

~~(H)~~ **Continuation of bonds.** Unless otherwise ordered by the court pursuant to division (E) of this rule, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void.

**(I) Failure to appear; breach of conditions.** Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

**(J) Justification of sureties.** Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved unless the surety or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the amount of the bond. No licensed attorney at law shall be a surety.

## **OHIO RULES OF EVIDENCE**

### **RULE 615. Separation and Exclusion of Witnesses.**

(A) Except as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. An order directing the "exclusion" or "separation" of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses.

(B) This rule does not authorize exclusion of any of the following persons from the hearing:

- (1) a party who is a natural person;
- (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney;
- (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause;
- (4) in a criminal proceeding, a victim of the charged offense to the extent that the victim's presence is authorized by the Ohio Constitution or by statute enacted by the General Assembly. As used in this rule, "victim" has the same meaning as in the provisions of the Ohio Constitution providing rights for victims of crimes.

**[Existing language unaffected by the amendments is omitted to conserve space]**

## **RULE 801 Definitions**

**[Existing language unaffected by the amendments is omitted to conserve space]**

**(D) Statements which are not hearsay.** A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at trial or hearing and is subject to ~~cross~~-examination concerning the statement, and the statement is (a) inconsistent with declarant's testimony, and was given under oath subject to ~~cross~~-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

**[Existing language unaffected by the amendments is omitted to conserve space]**

### **Proposed Staff Notes (2019 Amendment)**

#### **Evid.R. 801(D)(1)**

Since its inception, Evid. R. 801(D)(1)(a) has required that, for a prior sworn statement of a witness that was given at a prior trial, hearing or proceeding to be offered for its truth, the statement must have been subject to cross-examination at the time it was made. Thus, for example, as written, a police officer's grand jury testimony, if inconsistent with the officer's testimony at trial and exculpatory of the criminal defendant, could only be used by the defendant to impeach and not for the truth of the matter asserted – because the prosecution examined the witness in the grand jury but did not *cross-examine* the witness in the grand jury. Similarly, in a civil case, a defendant who desires to impeach a plaintiff's witness with prior testimony from a prior ex parte hearing at which the witness was subject to examination, but not cross-examination, by the plaintiff, is, under the letter of the Rule, not entitled to have that statement offered for its truth. Such a literal reading of the rule defeats its purpose – to allow a party to use a prior inconsistent statement for its truth so long as the opposing party had the opportunity to question that witness during the prior testimony, regardless of whether that opportunity presented itself on cross-, as opposed to direct, examination. The proposed amendment removes the requirement that the prior examination be a *cross-examination*. *Accord, State v. York*, 8<sup>th</sup> Dist. No. 49952, 1985 WL 8502 (allowing prior inconsistent statement of police officer given on direct examination at preliminary hearing, to be offered by defense at trial as substantive evidence).

## **RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial.**

**[Existing language unaffected by the amendments is omitted to conserve space]**

**(18) Learned Treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence ~~but~~ and if the court permits may not be received as exhibits.

[Existing language unaffected by the amendments is omitted to conserve space]

## OHIO RULES OF APPELLATE PROCEDURE

### RULE 3. Appeals as of Right – How Taken

[Existing language unaffected by the amendments is omitted to conserve space]

#### (C) Cross-Appeal

(1) ~~Cross~~ **When notice of cross-appeal required.** ~~A person who~~ Whether or not an appellee intends to defend a judgment or an order on against an appeal taken by an appellant, an appellee and who also seeks to change the judgment or order or, in the event the judgment or order is may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross-appeal with the clerk of the trial court, and may also file a courtesy copy of the notice of cross-appeal with the clerk of the appellate court, within the time allowed by App.R. 4. The clerk of the trial court shall process the notice of cross-appeal in the same manner as the notice of appeal.

(2) ~~Cross~~ **When notice of cross-appeal not required; and cross-assignment of error not never required.** ~~A person who intends to defend a judgment or order appealed by an appellant on a ground other than that relied on by the trial court but who does not seek to change the judgment or order is not required to file a notice of cross-appeal or to raise a cross-assignment of error.~~

[Existing language unaffected by the amendments is omitted to conserve space]

#### (G) Docketing Statement

(1) If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, the appellant shall file a docketing statement with the Clerk of the trial court with the notice of appeal. (See Form 2, Appendix of Forms.)

The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar.

A case may be assigned to the accelerated calendar if any of the following apply:

- (a) No transcript is required (e.g., summary judgment or judgment on the pleadings);
- (b) The length of the transcript is such that its preparation time will not be a source of delay;
- (c) An agreed statement is submitted in lieu of the record;
- (d) The record was made in an administrative hearing and filed with the trial court;

(e) All parties to the appeal approve an assignment of the appeal to the accelerated calendar;  
or

(f) The case has been designated by local rule for the accelerated calendar.

The court of appeals by local rule may assign a case to the accelerated calendar at any stage of the proceeding. The court of appeals may provide by local rule for an oral hearing before a full panel in order to assist it in determining whether the appeal should be assigned to the accelerated calendar.

Upon motion of appellant or appellee for a procedural order pursuant to App.R. 15(B) filed within seven days after ~~the notice of appeal is filed with the clerk of the trial court~~ a case is placed upon the accelerated calendar, a case may be removed for good cause from the accelerated calendar and assigned to the regular calendar. Demonstration of a unique issue of law which will be of substantial precedential value in the determination of similar cases will ordinarily be good cause for transfer to the regular calendar

**[Existing language unaffected by the amendments is omitted to conserve space]**

#### **Proposed Staff Notes (2019 Amendment)**

#### **App.R. 3**

The amendment to App.R. 3(C)(1) makes three clarifications. First, it clarifies that an appellee may file a cross-appeal whether or not that appellee seeks to defend the order the appellant challenges. Second, it clarifies that the cross-appellant must file the notice of cross-appeal in the trial court, not in the appellate court—but is encouraged also to file in the appellate court a courtesy copy of the notice; this change is designed to avoid confusion and the harsh result that can follow when a cross-appellee mistakenly files the notice in the appellate court. *See, e.g., Thompson v. Knobloch*, 10th Dist. Franklin No. 16AP–809, 2017-Ohio-66. Third, the amendment removes the references to “judgment” and leaves only “order”; this change is not substantive but merely recognizes that there is no need to use both terms, since every judgment is also a final order. *See, e.g., Civ.R. 54(A); R.C. 2505.02(B)(1)*. A similar change was made to App.R. 4(A)(1) in 2014.

The amendment to App.R. 3(G) is designed to ensure that a party who wishes to challenge the assignment of an appeal to the accelerated calendar has adequate notice of the assignment before the seven-day deadline for moving to transfer to the regular calendar begins to run. Also, as with App.R. 3(C)(1), the amendment removes the word “judgment.”

#### **RULE 5. Appeals by Leave of Court in Criminal Cases**

**[Existing language unaffected by the amendments is omitted to conserve space]**

**(C) Motion by prosecution for leave to appeal.** When leave is sought by the prosecution from the court of appeals to appeal ~~a judgment or an~~ an order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the ~~judgment and order~~ order sought to be appealed (or, if that order is not a final order, within thirty days of the final order into which it merges) and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of

the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

**(D)(1) Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C).** When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the ~~judgment and~~ order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the ~~judgment and~~ order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

[Existing language unaffected by the amendments is omitted to conserve space]

## OHIO RULES OF JUVENILE PROCEDURE

### **RULE 22. Pleadings and Motions; Defenses and Objections**

[Existing language unaffected by the amendments is omitted to conserve space]

**(G) Motions by Alleged Victim.** To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of a crime to file pretrial motions in accordance with the time parameters in subsection (E).

[Existing language unaffected by the amendments is omitted to conserve space]

### **RULE 24. Discovery**

[Existing language unaffected by the amendments is omitted to conserve space]

**(D) Rights of Alleged Victims.** To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of a crime, who has so requested, to be heard regarding objections to pretrial disclosure.

[Existing language unaffected by the amendments is omitted to conserve space]

**RULE 26. Rights of Alleged Victims of Crime**

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall ensure that the alleged victim of a crime, upon request, be given notice of all public proceedings involving the alleged criminal offense against the victim and the opportunity to be present at all such proceedings. In this regard, the trial court may direct the prosecuting attorney to provide such notice to the alleged victim.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim of a crime the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

**RULE 29. Adjudicatory Hearing**

**[Existing language unaffected by the amendments is omitted to conserve space]**

**(F) Procedure upon determination of the issues.** Upon the determination of the issues, the court shall do one of the following:

- (1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;
- (2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:
  - (a) Enter an adjudication and proceed forthwith to disposition;
  - (b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;
  - (c) Postpone entry of adjudication for not more than six months;
  - (d) Dismiss the complaint if dismissal is in the best interest of the child and the community.
- (3) Upon request make written findings of fact and conclusions of law pursuant to Civ. R. 52.
- (4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in Juv. R. 27(B)(1) and to relative placement in accordance with Juv. R. 7(F)(3).
- (5) To the extent required by Article I, Section 10a of the Ohio Constitution or by the

Revised Code, before disposition, the trial court shall allow an alleged victim of a crime to be heard.

**[Existing language unaffected by the amendments is omitted to conserve space]**

**RULE 34. Dispositional Hearing**

**[Existing language unaffected by the amendments is omitted to conserve space]**

**(B) Hearing procedure.** The hearing shall be conducted in the following manner:

(1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;

(2) Except as provided in division (I) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(4) To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, before disposition, the trial court shall allow an alleged victim of a crime to be heard.

**[Existing language unaffected by the amendments is omitted to conserve space]**

[Proposed Form 4.7(A)]

**RULE 4.7 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.**

(Caption)

To *(name the defendant or — if the defendant is a corporation, partnership, or association — name an officer or agent authorized to receive service)*:

**WHY ARE YOU GETTING THIS?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 28 days or at least 60 days if the defendant is outside the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

**WHAT HAPPENS NEXT?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses. I certify that this request is being sent to you on the date below.

Date: \_\_\_\_\_

(Signature of the attorney or unrepresented party)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(E-mail address)

\_\_\_\_\_  
(Telephone number)



(Attach the following)

**DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS**

Rule 4.7 of the Ohio Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is subject to the court's personal jurisdiction and who fails to return a signed waiver of service requested by a plaintiff will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

**[Proposed Form 4.7(B)]**

**RULE 4.7 WAIVER OF THE SERVICE OF SUMMONS.**

(Caption)

To *(name the plaintiff's attorney or the unrepresented plaintiff)*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: \_\_\_\_\_ (Signature of the attorney or unrepresented party)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(E-mail address)

\_\_\_\_\_  
(Telephone number)