



Understanding Marsy's Law

*Quick Reference Guide for Judges**

Ohio Constitution Article I, Section 10a(D) guarantees certain rights to victims of criminal offenses and delinquent acts, known as "Marsy's Law." R.C. 2930.01 et seq. codified these rights and establishes procedures for criminal justice entities to ensure victims' rights are protected from the time law enforcement makes its initial contact with the victim through prosecution, sentencing or disposition, and any post-conviction proceedings.

Automatic Rights Given To Crime Victims

Victims are automatically entitled to:

- Be informed of their rights.
- Be treated with fairness and respect for their safety, dignity, and privacy.
- Reasonable protection from the accused or any person acting on behalf of the accused.
- Receive information about the status of the case.
- Refuse a defense interview, deposition, or other discovery request unless ordered by the court.
- Object to defense requests for access to their confidential or personal information.
- Be present at all public proceedings, other than grand jury proceedings.
- Have a support person with them during proceedings.
- Make statements in certain public proceedings involving victims' rights.
- Object to unreasonable delays in the case.
- Full and timely restitution from the offender.

Rights That Must Be Requested By Crime Victims

A victim **MUST REQUEST** the right to:

- Receive notice of the arrest, escape, or release of the offender.
- Have personal identifying information redacted from case documents before public release.
- Receive reasonable and timely notice of all public court proceedings.
- Confer with the prosecutor assigned to the case.
- Be notified of subpoenas, motions, or other requests to access any of their personal information.
- Appoint a victim's representative.

Questions for the Prosecutor in All Court Appearances

- Did the court notify the prosecutor at least 10 days prior to the proceeding (or a shorter time if otherwise required, reasonable under the circumstances, or agreed upon by the parties)?
- Did the victim and victim's representative receive notice, if requested?
- Did the prosecutor confer with the victim, if requested?
- Does the victim or victim's representative have a statement for the court to consider?
- Was the Victim's Rights Request Form filed with the court?
- Does the victim have an attorney? If so, has that attorney received notices/motions and been included in sidebars, conferences, etc.?
- Does the victim need an interpreter?

** The information contained in these bench cards is a compilation of statutes and court decisions in the State of Ohio and it is intended as a summary of the law to assist judges lawyers, and the general public. The information does not represent binding statements of law by the Supreme Court of Ohio.*

Court's Responsibility to Assist in Ensuring Notice

The court must inquire of the prosecutor and make a record regarding:

- Whether the victim, victim's representative, or victim's attorney is present.
- Whether the victim and victim's representative requested notice.
 - If yes, ask how and when the victim, victim's representative, and victim's attorney were notified.
 - If not, ask how and when the prosecutor attempted notice.
- Whether the prosecutor conferred with the victim and the victim's representative. If the prosecutor did not, a recess or continuance may be necessary.

Considerations for Granting a Continuance

The victim has a right to a speedy disposition of the case, free from unreasonable delay. Continuances are appropriate where the court finds the interests of justice require a delay and makes a record. If the court grants a continuance over a victim's objection, it must state the specific reason on the record or in a judgment entry. [R.C. 2930.08(C)]

Considerations When Setting or Modifying Bond

- The victim has a right to be present and heard at post-arrest proceedings and on the conditions of release including arraignment or initial appearance. [R.C. 2930.09(E)]
- If the crime was an offense of violence involving family or household members, the court must consider the factors in R.C. 2919.251.
- Does the victim have safety concerns? The victim has the right to request a protection order, or the court may issue *sua sponte*. [R.C. 2919.26(D), R.C. 2903.213(D)]

Considerations for Pretrial Diversion, Dismissal/Amendment & Plea Hearings

- The court must inquire of the prosecutor if the victim or victim's representative requested to confer and whether the prosecutor conferred and gave timely notice if requested at the following:
 - Before pretrial diversion.
 - Before amending or dismissing an indictment, information, or complaint (unless due to a procedural defect).
 - Before agreeing to a negotiated plea.
 - Before trial or an adjudicatory hearing.
- If the prosecutor failed to confer, the court must note the reasons on the record. [R.C. 2930.06(A)(3)]
- The court cannot rule or impose a sentence if reasonable efforts to give notice or confer were not made, but the defendant's speedy trial rights cannot be infringed. [R.C. 2930.06(A)(3), (5)]
- If a juvenile court disposes of a case prior to the prosecutor's involvement, the court must notify the victim and victim's representative. [R.C. 2930.06(A)(2)]
- Has the prosecutor informed the court of any objections by the victim to the proposed disposition?

Ensuring Notice

When the Victim Is Not Present [R.C. 2930.09(A)(2)]

If, for a court proceeding where a victim's right is at issue, the court determines that timely notice was not given, the prosecutor failed to confer with the victim, or the victim was not adequately informed of the nature of the proceedings, the court cannot rule on any substantive issue including, accepting a plea, and must continue the hearing. The matter may proceed if the prosecutor states that the victim has been notified.

Victim's Right to be Heard [R.C. 2930.09, R.C. 2930.161]

The victim, victim's representative, and victim's attorney have the right to be heard at any public proceeding, other than a grand jury proceeding, in which any right of the victim is implicated.

This includes:

- Plea hearings;
- Hearings on post-arrest release of the person or the conditions of that release;
- Proceedings involving probation or community control revocation disposition; and
- Proceedings to terminate or modify the terms of probation or community control of a person if the change would affect the defendant's contact with or the safety of the victim, restitution, or incarceration status.

Considerations When Discovery Directly Involves the Victim

- Was the victim notified if discovery pertains to his or her personal information?
- A subpoena for the victim's personal records may be quashed if unreasonable or oppressive.
- Before balancing the victim's and defendant's constitutional rights regarding discovery, the defendant must articulate the specific purpose for the discovery request and how the personal records will lead to relevant evidence. Relevance must pertain to a material issue. [*State v. Counts*, 2022-Ohio-3666, 201 N.E.3d 942 (8th Dist.).]
- The victim has a right to interlocutory appeal of a decision regarding discovery the victim feels violates his or her rights.

Considerations for Evidentiary Hearings & Trials

- Consider how to handle the order of witnesses in light of the victim's right to be present and any request for separation of witnesses. [*State v. Montgomery*, 169 Ohio St.3d 84, 2022-Ohio-2211, 202 N.E.3d 616.]
- Personal identifiers of the victim and victim's representative are inadmissible unless the court finds it necessary for the administration of justice. [R.C. 2930.07(B)]

Considerations Regarding Sentencing & Judicial Release

- Was the victim contacted to provide input?
- Did the victim, victim's representative, and victim's attorney have the opportunity to review the presentence investigation?
- Was the victim or victim's representative given the opportunity to be heard orally, in writing, or both?
- If requested, the court shall provide the victim and victim's representative with community control violations, pleadings, hearing notices, etc.
- If the defendant is ordered to the custody of a custodial agency, did the court confirm with the victim, victim's representative, or the prosecutor that the victim's contact information and notification requests are current? [R.C. 2930.04(J)(4)]

Considerations if Victim Alleges a Violation of Rights

- Within 10 days, the court must hear requests to reconsider decisions impairing victim rights.
- The victim has a right to an interlocutory and direct appeal. [*State v. Brasher*, Slip Opinion No. 2022-Ohio-4703.]

Additional Considerations

- The victim may not be charged for copies of public records. Costs may be imposed for transcripts and recordings of criminal and delinquency proceedings. [R.C. 2930.063]
- Opportunities for the victim, victim's representative, and victim's attorney to attend or testify by remote methods should be considered.

Considerations Regarding Restitution

Did the victim suffer physical harm or economic loss?

- Did the victim request restitution?
- Is the economic loss documented? Are there future economic losses?
- Is the restitution amount disputed? If so, a hearing is necessary.
- Did counsel have the opportunity to review documents?
- Is redaction of confidential information necessary?

Considerations for Sealing & Expungement Hearings

- The court must notify the prosecutor of the hearing on an application at least 60 days prior for an adult record and at least 30 days prior for a juvenile record.
- The victim, victim's representative, or victim's attorney may make a statement regarding the effects of the offense and whether the record should be sealed or expunged.