



Understanding Marsy's Law

*Judicial Guide to Protecting
the Rights of Crime Victims*





Understanding Marsy's Law

Judicial Guide to Protecting the Rights of Crime Victims

January 2024

Sharon L. Kennedy

CHIEF JUSTICE

Patrick F. Fischer

R. Patrick DeWine

Michael P. Donnelly

Melody J. Stewart

Jennifer Brunner

Joseph T. Deters

JUSTICES

Robert W. Horner, III

ADMINISTRATIVE DIRECTOR



Acknowledgments

This guide was developed under the guidance and oversight of the Supreme Court of Ohio Office of Court Services. Many individuals shared ideas and provided input into this resource, including members of the Supreme Court Advisory Committee on Domestic Violence. In particular, the Supreme Court of Ohio wishes to acknowledge Judge Patrick Carroll, Ret., who shared his ideas and provided valuable input for this guide.

Staff:

Stephanie Graubner Nelson
Director
Office of Court Services

Anne Murray
Policy Counsel
Office of Court Services

Kyana Pierson
Policy Counsel
Office of Court Services



Table of Contents

Introduction.....	1
Important Definitions	2
I. Victim Rights.....	3
A. Right to be Informed	3
B. Right to be Present [R.C. 2930.09(A)(1)]	4
C. Right to be Heard [R.C. 2930.09]	5
D. Right to a Victim’s Representative [R.C. 2930.02]	6
E. Right to an Attorney [R.C. 2930.19(B)(1)].	7
F. Right to Effective Communications [R.C. 2930.041]	7
G. Right to Privacy – Redaction of Personal Identifying Information [R.C. 2930.07]	8
H. Right to Court Records [R.C. 2930.063]	9
I. Right to Return of Property [R.C. 2930.11]	9
J. Protections for Victim from the Defendant.....	9
K. Right to Speedy Disposition of Case [R.C. 2930.08]	9
L. Violations of Rights & Appeals [R.C. 2930.19].	10
M. The Election of Rights.....	10
II. Marsy’s Law Specifics: For Courts.....	13
A. Duties Regarding the Victim’s Representative [R.C. 2930.02]	13
B. Notice of Proceedings to the Prosecutor [R.C. 2930.06(D)].....	13
C. Notice of Proceedings to the Victim & Victim’s Representative [R.C. 2930.06(E)]	14
D. Court’s Responsibility to Assist in Ensuring Notice.....	14
E. Considerations for Granting a Continuance [R.C. 2930.08].....	16
F. Pretrial Hearings [R.C. 2930.071(B)].	17
G. Plea Hearings [R.C. 2930.09(C)]	17
H. Discovery.....	17
I. Victim’s Testimony & Subpoenas	22
J. Presentence Investigation (PSI)	25
K. Sentencing.....	26
L. Restitution [R.C. 2929.18, 2929.28, 2929.281, 2929.01(L)]	27

Table of Contents, Continued...

M. Probation & Community Control Hearings [R.C. 2930.161, 2930.09(E), (F)] . . .	30
N. Judicial or Early Release Hearings [R.C. 2930.17]	31
O. Sealing & Expungement Hearings [R.C. 2930.171]	33
P. Victim's Right to Challenge & Appellate Review [R.C. 2930.19]	34
Marsy's Law Courtroom Checklist	37
III. Marsy's Law Specifics: For Juvenile Courts	38
A. Victim's Representative [R.C. 2930.02(D)].	38
B. Victim Injuries [R.C. 2930.062]	38
C. Required Court Notices – No Prosecutor Involved [R.C. 2930.06(E)]	38
D. Required Court Notices – Case Disposed Before Prosecutor Becomes Involved	38
E. Victim Testimony	41
F. Pre-Disposition Investigation	46
G. Disposition	46
H. Restitution [R.C. 2152.203]	47
I. Sealing & Expungement of Records [R.C. 2151.356, 2151.358, R.C. 2930.171]	48
J. Victim's Notification – Post-Disposition	49
IV. Marsy's Law Specifics: For Clerks	51
A. Redaction of Court Records [R.C. 2930.07]	51
B. Victim's Rights Request Form [R.C. 2930.04(C)].	51
C. Victim's Right to Court Records [R.C. 2930.063]	51
D. Notice to Self-Represented Victim & Victim's Attorney [R.C. 2930.191].	52
E. Restitution	52
V. Sample Forms.	53
A. Administrative Order Regarding Implementation of Victim's Notification Rights	54
B. Notice of Receipt: Victim's Rights Request Form	55
C. Motion for Continuance	56
D. Certificate of Judgment.	57

Introduction¹

Marsy's Law is named after a California college student who was stalked and killed by her ex-boyfriend in 1983. A week after Marsy's death, her mother encountered the ex-boyfriend in public after having received no notification from the justice system that he had been released on bail. This prompted the family to establish the Marsy's Law Initiative which sought comprehensive victims' rights laws in California. To date, 17 states have constitutionally guaranteed rights for victims of crimes.²

In 2017, Ohio voters approved a Marsy's Law constitutional amendment guaranteeing rights to victims of criminal offenses and delinquent acts. These rights are found in Article I, Section 10a of the Ohio Constitution. Since then, clarifying language has been added to the Ohio Revised Code, and a comprehensive "codification bill" of Marsy's law, 2022 Sub.H.B. No. 343, became effective April 6, 2023.³

This legislation outlined procedures for criminal justice entities to follow to ensure victims' rights are protected from the time law enforcement makes its initial contact with the victim through the completion of the offender's sentence or disposition.

This resource is designed to help courts understand the rights conferred to crime victims and to describe the processes law enforcement agencies, prosecutors, clerks, and courts must follow to ensure the rights of victims are upheld. The first section outlines the constitutional and statutory rights afforded to victims and discusses how those rights can be exercised. Section two examines the court's responsibilities throughout the life of the case, drawing distinctions for specific juvenile court provisions. Finally, the guide summarizes the clerks of courts' responsibilities regarding notice and redaction and provides sample court documents.

1 The information contained in this resource 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.

2 <https://www.marsyslaw.us/states>

3 Statutory language was subsequently amended in 2023 Sub.S.B. No. 16, effective July 7, 2023.

Important Definitions

Victim: A person against whom the criminal offense or delinquent act is committed *or* someone who has been directly and proximately harmed by the commission of a criminal offense or delinquent act, other than the person who committed the criminal offense or delinquent act. [Ohio Constitution, Article I, Section 10a(D)]

A victim may be identified by the law enforcement officer during the investigation. A person who has not previously been identified as a victim by law enforcement must affirmatively identify himself or herself to law enforcement, the prosecutor, and the court to exercise victim's rights. [R.C. 2930.044]

Criminal Offense: An alleged act or omission that is punishable by incarceration and is not eligible to be disposed of by the Traffic Violations Bureau. [R.C. 2930.01(A)]

Delinquent Act: A violation of any law of this state or the United States or any ordinance of the state's political subdivision that would be an offense if committed by an adult. [R.C. 2930.01(O)]

I. Victim Rights

<p>Automatic Rights Given To The Victim</p>	<p>Victims are <i>automatically</i> entitled to:</p> <ul style="list-style-type: none"> • 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 information, including medical, counseling, school, or employment records, access to their personal devices, online accounts, or other 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; and • Full and timely restitution from the offender.
<p>Rights That Must Be Requested By The Victim</p>	<p>Victims must <i>request</i> the right to:</p> <ul style="list-style-type: none"> • Receive notice of the arrest, escape, or release of the offender; • Have personal identifying information redacted from case documents before public release; • 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; and • Appoint a victim's representative.

A. Right to be Informed

Victims have the right to be informed of their constitutional rights in writing.⁴ The victim, victim's representative, and victim's attorney also have a right to be informed about court proceedings, procedural developments, and other case-related matters. R.C. 2930.06 outlines many of the notices afforded to a victim

⁴ Ohio Constitution, Article I, Section 10a(A)(10)

and victim's representative. Some notifications must be requested; others must be affirmatively opted out of in order for the victim and victim's representative not to receive them.

For example:

- A request must be made to receive notice from the prosecutor of any requests or communications from the defendant that could affect the victim's or victim's representative's privacy or safety. [R.C. 2930.06(B)]
- A request is not necessary for notice by law enforcement of the defendant's arrest or detention. [R.C. 2930.05(A)]
- A request must be made to not receive notice of a hearing to reduce an eligible offender's sentence through judicial release under certain circumstances. [R.C. 2929.20(E)(2)]

How Notice Is Given

When given, notice is to be given by any reasonable method that provides prompt actual notice. [R.C. 2930.03(A)] Notice may be oral or written unless otherwise specifically required. [Id.] The victim and victim's representative have a responsibility to inform law enforcement, prosecutor, court, and/or custodial agency when their contact information changes. They should submit an updated Victim's Rights Request Form to the appropriate agency to ensure that they receive appropriate notifications.

Conferring With the Prosecutor

At various stages of the case, the prosecutor must confer with the victim and victim's representative if requested (e.g., before pretrial diversion is granted; before dismissing an indictment or complaint [R.C. 2930.06(A)(1)]).

B. Right to be Present [R.C. 2930.09(A)(1)]

A victim and victim's representative have the right to be present during any public proceeding, other than a grand jury proceeding.⁵ At any stage of the case at which the victim is present, the court shall permit the victim to be accompanied by an individual to provide support. This right can be exercised independently of whether notice is requested.

⁵ See also *State v. Montgomery*, 2022-Ohio-2211, 202 N.E.3d 616, *Cleveland v. Alrefaei*, 2020-Ohio-5009, 161 N.E.3d 53 (8th Dist.), and Evid.R. 615(B)(4).

REQUEST FOR NOTICE

The victim, victim's representative, or victim's attorney may request to receive notice by making such request directly to the prosecutor or custodial agency required to provide such notice pursuant to R.C. 2930.03(B)(1) or on the Victim's Rights Request Form (VRR).

The VRR may also be used to opt out of notices if the victim has designated a victim's representative who will receive any required and requested notices on the victim's behalf.

There are statutorily required notices that will be given unless the victim/victim's representative specifically requests NOT to be notified. [See R.C. 2930.16(B) and (C)]

C. Right to be Heard [R.C. 2930.09]

Marsy's Law is designed to give victims a voice. The victim, victim's representative, and victim's attorney have the right to be heard orally, in writing, or both, at any public proceeding other than a grand jury proceeding, in which any right of the victim is implicated. The victim or victim's representative do not have to be present in order for the victim's statements to be read. See R.C. 2930.09 for specific provisions.

The Revised Code does not define "public proceeding." For juvenile courts, *In re M.W.* provides some guidance stating that a juvenile "proceeding" begins upon the filing of a complaint. [*In re M.W.*, 8th Dist. Cuyahoga No. 94737, 2010-Ohio-6362.] See also, *State v. Grooms*, 2d Dist. Montgomery No. 16002, 1997 WL 205993 (Apr. 25, 1997), construing the term "in open court" by custom and usage to mean a public proceeding conducted on the record after notice and an opportunity to be heard had been given to all parties and alleged victims whose rights were or might be affected.

D. Right to a Victim's Representative [R.C. 2930.02]

A victim has the right to designate a victim's representative to exercise the rights with or for the victim. This individual can be anyone other than the person who is alleged to have committed the criminal offense or delinquent act.

If the victim is a minor, incapacitated, incompetent, or deceased, the victim's representative can be a member of the victim's family or a victim advocate. If no such person is available to serve as the representative, the court may appoint a victim advocate or other appropriate person. The court-appointed victim's representative cannot be employed by the prosecutor's office unless the prosecuting attorney consents.

A victim may select, change, or remove a victim's representative at any time by notifying law enforcement, the prosecutor, or the court and may also be made on the Victim's Right Request Form. The victim should submit an updated Victim's Rights Request Form to the appropriate agency if changes are made to the victim's representative.

A victim is only permitted to have one victim's representative at a time. If more than one person seeks to act as the victim's representative, the court shall designate one person to serve as the victim's representative. In that case, if the victim instead wishes not to have a victim's representative appointed, the court will order that the victim is the only person who can exercise the victim's rights. [R.C. 2930.02(C)]

If the victim's representative is not acting in the interests of a child victim, a victim with a developmental disability, an incapacitated victim, or an incompetent victim, the court will conduct a hearing to determine if a new victim's representative should be appointed. If the court finds that by a preponderance of the evidence the victim's representative is not acting in the interests of the victim, it must appoint a victim advocate⁶ or other appropriate person not employed by the prosecutor's office unless the prosecuting attorney consents. This applies during the pendency of the case or in any postconviction proceeding or postconviction relief. [R.C. 2930.02(B), (F)]

⁶ A victim advocate is a person employed or authorized by a public or private entity who provides support and assistance for the victim in cases or proceedings and recovery efforts related to the criminal offense or delinquent act. [R.C. 2930.01(X)]

E. Right to an Attorney [R.C. 2930.19(B)(1)]

A victim has the right to be represented by an attorney at the victim's own cost.⁷ The court should notify the victim's attorney in the same manner the parties are notified. Once the notice of appearance is filed, the victim's attorney must be served copies of all notices, motions, and court orders filed thereafter.⁸ [R.C. 2930.191] The court shall also include the victim's attorney in all bench conferences, meetings in chambers, and sidebars that directly involve a decision implicating the victim's rights.

The defendant has a right to respond and be represented by an attorney for appeals and writs filed by the victim, victim's attorney, or prosecutor. [R.C. 2930.19(B)(2)] Indigent defendants have the right to appointed counsel. The court must notify the defendant and the defendant's attorney in the same manner that the prosecution is notified.

F. Right to Effective Communications [R.C. 2930.041]

A victim who is deaf or hard of hearing has the right to a registered or certified American sign language interpreter on the Registry for Interpreters for the Deaf pursuant to the Americans with Disabilities Act.

A victim who is non-English speaking or has limited English proficiency is entitled to a certified provisional, registered, or language-skilled foreign language interpreter.

The right to effective communication applies to all court proceedings, meetings with the prosecutor, and investigative contacts with law enforcement, probation, and custodial agencies. Interpretation services are to be provided at no cost to the victim and paid by the entity engaged in the contact pursuant to R.C. 2930.041 (B) (2).

Interpretation services may be requested on the Victim's Rights Request Form and are available to the victim and victim's representative.

⁷ Upon request, the court may appoint counsel to an indigent victim in a rape case. [R.C. 2907.02(F)]

⁸ The same is true if the victim files a notice of appearance to be self-represented.

G. Right to Privacy – Redaction of Personal Identifying Information [R.C. 2930.07]

The right to redaction extends, upon request, to the victim and victim's representative. Personal identifying information includes their name, contact information such as address and phone number, and other identifying information. Victims can request redaction on the Victim's Rights Request Form. A victim's release of information or documents to a law enforcement officer or public official's designee does not constitute a waiver of the right to redaction.

Case Documents in General

Upon written request victims have the right to have personal identifying information redacted from all case documents related to the case prior to public release. [R.C. 2930.07(D)] "Case documents" include "information or information in a document, or audio or recording of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor or filed with a clerk of court, including, but not limited to, pleadings, motions, exhibits, transcripts, orders, and judgments, or any documentation...prepared or created by a court, clerk of court, or law enforcement agency or officer, or a prosecutor regarding a case." [R.C. 2930.07(A)(1)(a)]

- The court may maintain unredacted versions of its records, and a public office may allow another public office to access or obtain copies of its unredacted records. [R.C. 2930.07(C)]
- If multiple victims are involved, the court must protect victim information from other victims of the same criminal offense or delinquent act, unless all victims consent to release.

PROCESS FOR REQUESTING REDACTION [R.C. 2930.07(D)]

The victim or victim's representative must make a written request for redaction to law enforcement, prosecutor, or the court.

- If the victim uses the VRR to request redaction, only records related to the specific case(s) that pertain to the VRR are to be redacted.
- If the victim uses some other method for his or her request, redaction applies to the cases or matters specifically included in the request.
- If the offense is a violation of a protection order, offense of violence, or sexually oriented offense and the victim or victim's representative was unable to complete the VRR at the initial contact with law enforcement, all records related to the offense are to be redacted until the victim's initial interaction with the prosecutor.
- A separate written request must be made to the Ohio Department of Public Safety for a redaction of a motor vehicle accident report created by a law enforcement agency pursuant to R.C. 5502.11.

H. Right to Court Records [R.C. 2930.063]

A victim, victim's representative, or victim's attorney has the right to receive copies of the following at no cost:

- Court records available for public access related to the victim's case, including the offender's payment history of any related restitution, fine, or incarceration cost;
- Certificate of judgment and judgment entry related to the restitution order;
- Any proceedings in aid of execution thereof from the clerk.

Certified copies can be requested from the clerk of court at actual cost. A video or audio recording of the proceedings may be obtained by the victim, victim's representative, or victim's attorney for the actual cost. Transcripts are to be provided at the same or reduced cost as charged to parties. Court records and other documents may also be provided electronically.

I. Right to Return of Property [R.C. 2930.11]

The victim has the right to the prompt return of any property taken during the investigation. Law enforcement is permitted to retain the property as evidence if the prosecutor certifies to the court the state's need or upon defendant's motion, the court finds the evidentiary value of the property needed in the defense's case outweighs the victim's need for the property. The victim cannot be compelled to pay any charge as a condition of retrieving his or her property.

J. Protections for Victim from the Defendant

Before, during, and after all court proceedings, the court is to make reasonable efforts to minimize contact between the victim and victim's representative and the defendant (e.g., separate waiting areas). Separation efforts extend to family members of the victim and the defendant, as well as witnesses for the prosecution and defense. [R.C. 2930.10] A victim may also be eligible for a protection order.

K. Right to Speedy Disposition of Case [R.C. 2930.08]

The victim has the right to a speedy disposition of the case and proceedings free from unreasonable delay. The court and all participants shall endeavor to complete the case within the time frame provided by the Rules of Superintendence for the Courts of Ohio. [R.C. 2930.08(A)(2)]

If a victim has requested notice, the prosecutor must inform the victim and victim's representative of any motion, request, or agreement between the prosecutor and the defense attorney that might result in a delay of the prosecution. [R.C. 2930.08(B)]

- If the victim, victim's representative, or victim's attorney objects to the delay, the prosecutor must inform the court. The court must consider the victim's objections and the victim's right to a speedy disposition of the case in ruling on the motion, request, or agreement.

L. Violations of Rights & Appeals [R.C. 2930.19]

The victim, victim's representative, victim's attorney, or the prosecutor upon the victim's request has standing to challenge any order in violation of victim's rights. The court must conduct a hearing on the matter within 10 days of the assertion of the victim's rights.

- The victim has the right to receive notice of hearings and decisions regarding the appeal.
- The victim has the right to be represented by counsel at the victim's own expense.
- The defendant has the right to be represented by court-appointed counsel for appeals and writs regarding victim rights.

Interlocutory Appeal Process

The victim has the right to appeal an interlocutory order within 14 days of receiving notice of the decision as it pertains to decisions impacting the victim's rights. The trial court is divested of jurisdiction of that portion of the case until the interlocutory appeal is resolved.

Extraordinary Writ

The victim, victim's attorney, or prosecutor upon request may petition the court of appeals or Supreme Court of Ohio for an extraordinary writ as it pertains to decisions impacting the victim's rights.

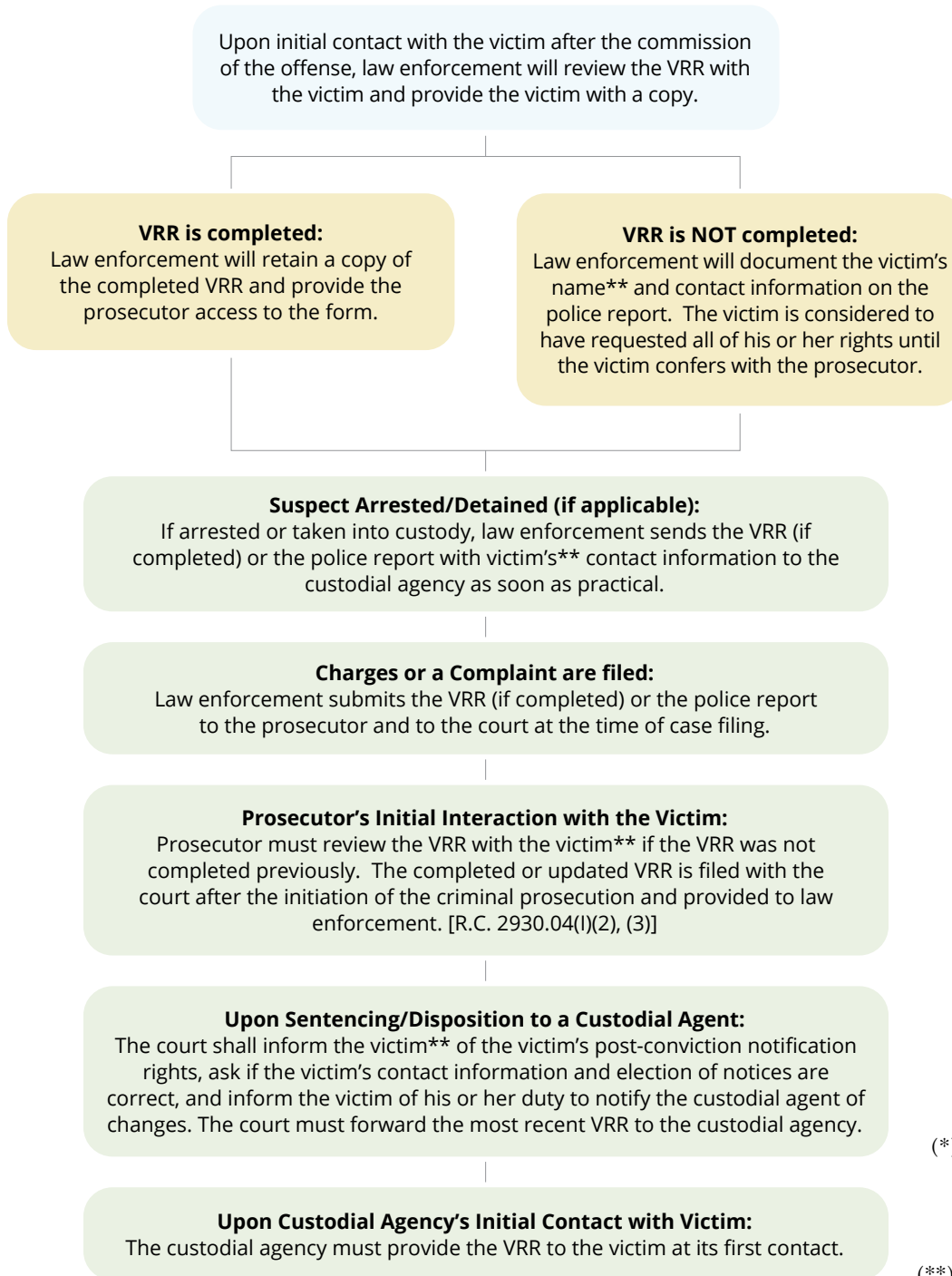
Direct Appeal of Final Order [R.C. 2930.19(A)(2)(b)(iii), (A)(2)(e)]

The victim must file the notice of a direct appeal of the trial court's final order with the court of appeals within 30 days of the entry from the trial court. An appeal to the Supreme Court of Ohio of an appellate court decision must be made within 30 days of the appellate court entry.

M. The Election of Rights

A victim may elect to exercise some, all, or none of his or her rights. These elections may be changed at any time. The Victim's Rights Request Form (VRR) is the primary mechanism for victims to use to elect the rights the victim wishes to exercise. Entities may elect to use a form that is substantially similar as long as the form contains the requirements set forth in R.C. 2930.04.

Using a Victim's Rights Request Form:
Victim of a Protection Order Violation, Offense of Violence,
or Sexually Oriented Offense* [R.C. 2930.04]



(*) Offense of violence:
R.C. 2909.01. Sexually
oriented offense:
R.C. 2950.01.

(**) Includes a victim's
representative if one
has been designated.

Victim's Right Request Form

- The VRR is provided by the Ohio Attorney General's Office in either written or electronic format. R.C. 2930.04 outlines the contents of the form and the process for distribution to victims.
- It is not a public record under R.C. 149.43. The prosecutor, victim, and the victim's representative are to be provided unredacted copies of the VRR.
- The offender or the offender's attorney shall be permitted access to the victim's name and a redacted VRR unless the victim specifically consents, or the court determines that the fundamental demands of due process of law in the fair administration of criminal justice supersede the victim's right to keep the information confidential pursuant to R.C. 2930.07(B). [R.C. 2930.04(C)(2)]
- A businessperson who is the victim of multiple and ongoing criminal offenses or delinquent acts may opt out of notices and rights available to crime victims by providing written notification to the prosecutor by the person with management authority. [R.C. 2930.06(C)(11)(b)]
- The VRR can also be used to designate a victim's representative, request redaction of records, or request an interpreter.
- The VRR can be found on the Office of the Ohio Attorney General's website at www.OhioAttorneyGeneral.gov.

VRR for All Other Offenses

If the criminal offense is NOT a violation of a protection order, an offense of violence, or a sexually oriented offense, the process is slightly different. Upon initial contact with the victim, law enforcement is only required to provide the victim with information on how to access the VRR. Law enforcement may provide the form and review it with the victim. [R.C. 2930.04(E)(2)(c)]

Law enforcement is responsible for submitting the completed VRR to the prosecutor and the court if the victim submits a completed copy to the law enforcement agency. [R.C. 2930.04(I)(1)(b)]

The Victim's Rights Request Form is to be completed any time a victim or victim's representative changes the victim's election of rights or updates their contact information with the appropriate criminal justice entity.

II. Marsy's Law Specifics: For Courts

A. Duties Regarding the Victim's Representative [R.C. 2930.02]

The court may appoint a victim's representative if the victim is a minor, incapacitated, incompetent, or deceased. The victim's representative can be a member of the victim's family or a victim advocate. If no such person is available to serve as the representative, the court may appoint a victim advocate or other appropriate person. The court-appointed victim's representative cannot be employed by the prosecutor's office unless the prosecuting attorney consents.⁹

Upon receipt of a motion by the prosecutor setting forth a reasonable basis as to why the current victim's representative is not acting in the interests of a child victim, a victim with a developmental disability, or an incapacitated/incompetent victim, a court may appoint a new victim's representative after a hearing and finding by preponderance of the evidence that a new replacement is warranted. The court-appointed victim's representative cannot be employed by the prosecutor's office unless the prosecuting attorney consents.

If more than one person seeks to act as the victim's representative, the court shall designate one of those persons as the victim's representative. If a victim does not want anyone to act as the victim's representative, the court must order that only the victim may exercise his or her rights.

Upon the designation of a victim's representative, all notices shall be sent and rights granted to **BOTH** the victim and the victim's representative unless the victim informs the notifying authority otherwise. [R.C. 2930.02(D)]

B. Notice of Proceedings to the Prosecutor [R.C. 2930.06(D)]

The court shall notify the prosecutor of all court proceedings not less than 10 days prior unless a shorter notice period is reasonable under the circumstances, or the parties agree that a shorter period is reasonable.

⁹ R.C. 2930.02 is silent on how consent should occur when the court appoints a victim's representative who is an employee of the prosecutor's office. As a best practice, the court should have the prosecutor consent on the record or in writing to be included in the case file.

C. Notice of Proceedings to the Victim & Victim's Representative [R.C. 2930.06(E)]

Upon request of the victim or victim's representative, the prosecutor (or court in a delinquency proceeding with no prosecutor involved) shall notify the victim and victim's representative not less than 7 days before any court proceeding unless otherwise required or the parties agree that a shorter notice period is reasonable. Notice may be accomplished by any means reasonably likely to be effective, including electronic methods such as email, text, and voice.

If the victim or victim's representative requests notice by the court, the court is responsible for notifying the prosecutor of any changes in the victim's or victim's representative's contact information. [R.C. 2930.06(F)] When a required notice is given, the contact information on the most recent VRR is to be used. A record of attempted notifications shall be kept that includes the recipient's name, the date of the attempt, and the name of the person who attempted notice. [R.C. 2930.06(G)]

D. 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.
- Whether the victim and victim's representative were notified of the proceeding.
 - If yes, ask how and when the victim, victim's representative, and victim's attorney were notified.
 - If not, ask when, how, and who attempted notice.
- Whether the prosecutor conferred with the victim and the victim's representative? If not, a recess or continuance may be necessary.
- The matter may proceed if the prosecutor states the victim has been notified.

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

If the victim or victim's representative is not present at a court proceeding in which a right of the victim is at issue:

- The court is not permitted to rule on any substantive issue that implicates a victim's right, accept a plea, or impose a sentence and shall continue the court proceeding for the time necessary to notify the victim and the victim's representative of the time, place, and nature of the court proceeding if the court finds that:
 - Timely notice was not given, or
 - The victim and victim's representative were not adequately informed of the nature of the court proceeding, or
 - The prosecutor failed to confer with the victim or victim's representative.
- The court may proceed with the hearing if the prosecutor informs the court that the victim and the victim's representative were notified of the time, place, and purpose of the proceedings if notice was requested and of any and all attempts to give them notice. The prosecutor shall inform the court of the victim and victim's representative's position on that matter before the court if the position is known to the prosecutor.
[R.C. 2930.09(A)(2)(c)]

If the Prosecutor Failed to Provide Notice or Confer

If the prosecutor failed to confer with the victim and the victim's representative when requested to do so before granting pretrial diversion; amending or dismissing an indictment, information, or complaint (unless it is a procedural defect); or agreeing to a negotiated plea, trial, or an adjudicatory hearing, the court must note on the record the prosecutor's reasons for failure.

[R.C. 2930.06(A)(3)]

Note, the failure to confer with or provide timely notice to the victim and victim's representative does not affect the validity of:

- An agreement between the prosecutor and defendant or alleged juvenile offender
- A pretrial diversion
- An amendment or dismissal of an indictment, information, or complaint
- A plea or admission
- Any disposition

The court may not dismiss a complaint, charge, information, or indictment solely at the request of the victim or victim's representative over the objection of the prosecutor. [R.C. 2930.06(A)(4)] See R.C. 2935.03(B)(3)(e)(ii) for exceptions in an offense of domestic violence or violations of a protection order.

Questions for the Prosecutor in All Court Appearances

- Did the court notify the prosecutor at least 10 days prior to the proceeding?
- Did the victim and victim's representative receive notice if requested?
- Did the prosecutor confer with the victim if requested?
- Was the Victim's Rights Request Form filed with the court?
- Does the victim have an attorney? Has the victim received notices/motions and been included in sidebars, conferences, etc.?
- Does the victim need an interpreter?

E. Considerations for Granting a Continuance [R.C. 2930.08]

The victim has a right to a speedy disposition of the case, free from unreasonable delay. The victim also has the right to object to continuance. Continuances are appropriate where the court makes a record of its findings that the interests of justice require delay. Courts are also encouraged to consider the case time guidelines outlined in the Rules of Superintendence for the Courts of Ohio.

If the court receives a motion, request, or agreement by both parties that may result in a delay, the prosecutor must inform the victim and victim representative if notice has been requested. The prosecutor must inform the court of any objections made by the victim or victim's representative. The court must consider these objections, along with the victim's right to a speedy disposition when ruling on the motion, request, or agreement.

The requesting party must demonstrate that the delay is reasonable under the circumstances or is otherwise in the interest of justice. If the court grants a continuance over a victim's objection, it must state the specific reason on the record or in the judgment entry and continue the proceeding only for the time necessary under the circumstances or to serve the interests of justice. [R.C. 2930.08(C)]

F. Pretrial Hearings [R.C. 2930.071(B)]

Before a victim can be subpoenaed to testify at any pretrial hearing, the defendant must demonstrate good cause at a hearing with the prosecutor, victim, victim's representative, and victim's attorney as to why the court should issue the subpoena.

G. Plea Hearings [R.C. 2930.09(C)]

If the victim or victim's representative is NOT present, the court is not permitted to accept a plea deal unless the prosecutor informs the court that the prosecutor:

- If requested, conferred with the victim and victim's representative prior to requesting and agreeing to the plea agreement;
- Made reasonable efforts to give the victim and victim's representative notice of the proceedings and their right to be present and heard;
- Made efforts to inform the victim and victim's representative of the details of the plea agreement, including the offense/delinquent act being pled guilty to, the date the plea will be presented to the court, and any additional terms;
- Advised the court of any objection to the plea agreement by the victim or victim's representative; and
- Complied with any notice requirements.

If the prosecutor dismisses a count(s) of a complaint, information, or indictment involving the victim as a result of a negotiated plea agreement, the victim and victim's representative, on request, may exercise all of the applicable rights including the right to restitution if restitution is agreed to as part of the negotiated plea agreement. [R.C. 2930.121]

H. Discovery

Victim Interviews [R.C. 2930.072]

The victim may refuse to be interviewed by the defense unless subpoenaed or ordered by the court to be deposed. If the victim agrees to be interviewed, the victim may terminate or refuse to answer any question at any time unless it is a court-ordered deposition. With the consent of the victim, the victim, victim's attorney, or prosecutor may request the deposition be recorded. The victim's attorney or the prosecutor has standing to seek a protection order for the victim to prevent harassment, intimidation, or abuse.

The defense may not comment on the victim's refusal to be interviewed or answer a question during trial. If the defense makes a comment, the court is to instruct the jury that the victim has a right to refuse to be interviewed or answer a question.

Subpoenas of Records [R.C. 2930.071]

A defendant seeking to subpoena a victim's records must serve the prosecutor, victim, and the victim's attorney. The court may quash or modify the subpoena, upon the filing of a motion to quash, if compliance would be unreasonable or oppressive pursuant to Crim.R. 17.

Upon receipt of a motion to quash the subpoena, the court will conduct a hearing where the defendant must demonstrate:

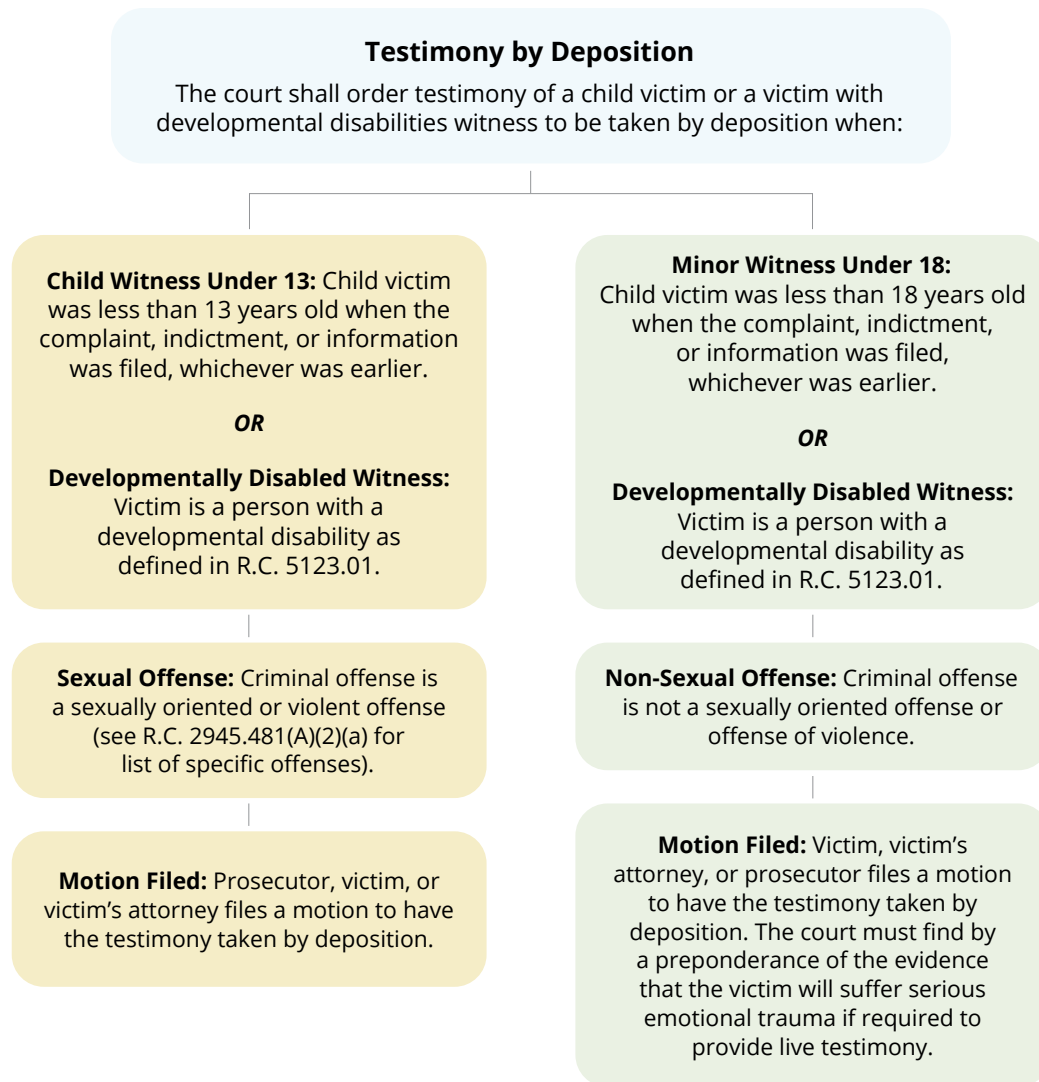
- The documents are evidentiary and relevant;
- The documents are not otherwise reasonably procurable in advance of trial through due diligence;
- The defendant cannot properly prepare for trial without such production and inspection in advance of trial and failure to have the records in advance may unreasonably delay the trial; and
- The application is made in good faith and is not a violation of the Rules of Criminal Procedure.

If the court does not quash the motion, it must review in camera any records to which privilege has been asserted. If the court determines that any of the records are constitutionally protected or privileged, the court must balance the victim's rights and privilege against the defendant's constitutional rights when ruling to disclose those records. The disclosure to the prosecutor does not make the records subject to discovery unless required pursuant to the principles of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Testimony by Deposition: Child Victim or Victim with a Developmental Disability

The court shall order testimony of a child victim or a victim with developmental disabilities witness to be taken by deposition when any apply:

- For a child victim, see R.C. 2945.481 (A)-(B)
- For a victim with a developmental disability, see R.C. 2945.482(A)-(C)



Notice & Procedure [R.C. 2945.481(A)(2)(c), R.C. 2945.482(B)(1)(c)]

- The court must notify the victim, victim’s attorney, prosecutor, and the defense of the date, time, and place for the deposition, and whether a request by the prosecutor to record the deposition has been made.
- The defendant has the right to attend and be represented by counsel.
- The prosecutor and defense attorney have the right to fully examine and cross-examine the victim. The judge shall rule on any objections at that time.
- If the deposition is admitted as evidence at a proceeding, the victim does not have to testify in person at the proceeding.
- If a court makes any determination regarding the admissibility or the recording of a deposition, it must enter the determination and findings on the record in the proceeding.

Testimony & Hearsay [R.C. 2945.481(B)(1), R.C. 2945.482(C)(1)]

Testimony taken at the deposition is not excluded by hearsay rules and is admissible if:

- The testimony is not hearsay under Evid.R. 801;
- The testimony is within an exception set forth in Evid.R. 803;
- If the victim is unavailable as a witness as defined in Evid.R. 804; or
- The defendant has the opportunity and similar motive at the time of the deposition to develop testimony by direct, cross, or redirect examination and there is reasonable cause to believe that the victim would experience serious emotional trauma as a result of participation at the proceeding in-person.

Additional Depositions [R.C. 2945.481(A)(2)(c), R.C. 2945.482(B)(1)(c)]

The court may order an additional deposition at any time before the conclusion of the proceeding if the defense attorney files a motion with supporting affidavits stating that new evidence has been discovered that could not have been discovered with reasonable diligence before a previous deposition. If the admitted deposition was recorded, the new deposition shall be recorded.

Recorded Depositions [R.C. 2945.481(A)(3), R.C. 2945.482(B)(2)]

- The prosecutor, victim, or victim's attorney can request the deposition be recorded.
- If the court orders the deposition to be recorded, the only persons allowed in the room are:
 - Victim, victim's representative, and victim's attorney,
 - Judge, prosecutors, and defense attorneys,
 - Interpreters, if needed,
 - Any person needed to operate the equipment,¹⁰
 - One person chosen by the victim (who is not a witness), and
 - Any person whose presence the court determines would contribute to the well-being of the victim.
- The defendant may observe the testimony via monitor and shall be provided with an electronic means of immediate communication with his or her attorney during the testimony, but the defendant is not permitted to be seen or heard directly by the victim.
- The victim shall be provided with a monitor on which the victim may observe the defendant.

¹⁰ Those operating the recording equipment shall be restricted to a room adjacent to the proceeding room or behind a screen or mirror in the room so they cannot be seen or heard by the victim.

- The judge may preside over the deposition by electronic means. If this occurs, the judge shall be provided with monitors to see each person in the room and have an electronic means of communication with each person. Similarly, each person must have the ability to see and immediately communicate with the judge.
- To be admitted as evidence, the recording of the deposition must satisfy all the following:
 - It is both aural and visual and is recorded on film or videotape, or by other electronic means;
 - It is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred;
 - It has not been altered other than at the direction and under the supervision of the judge in the proceeding;
 - Each voice on the recording that is material to the testimony on the recording or the making of the recording is identified;
 - Both the prosecutor and defendant have the opportunity to view the recording before it is shown in the proceeding.

***Forensic Interviews: Child Victim or Victim with a Developmental Disability
[R.C. 2930.07(E)]***

Once a case has been closed or is inactive, a child victim, victim with developmental disabilities, or victim's attorney is permitted to view the unredacted recorded forensic interview. The viewing is to occur at the agency responsible for the interview in the presence of an agency employee or the employee's designee. The victim or victim's attorney is not permitted to copy, record, photograph, or remove the forensic interview or any related materials.

On written application under seal to the court, a victim or victim's attorney may also request an unredacted copy of a forensic interview of that victim. While the request is pending, the agency responsible for the interview is not permitted to disclose the interview or related records to the victim or victim's attorney. The court shall conduct an in camera review of the interview and grant the application upon an express finding that receipt of an unredacted copy of the forensic interview is in the interest of the victim under the totality of the circumstances.

Law enforcement or the prosecutor is not prohibited from releasing the victim's preferred contact information to an agency providing victim services or rights notification. [R.C. 2930.07(F)]

I. Victim's Testimony & Subpoenas

Subpoena to Testify: Locating Information [R.C. 2930.07(B)]

A victim and victim's representative may refuse to testify at any court proceeding regarding personal information such as their address, phone number, place of employment that can be used to locate the victim. If consent is not given, the court must conduct an in camera review and determine whether the testimony is necessary for the fair administration of justice. The court must "close the proceeding" during the disclosure of this information by taking measures to ensure the location of the victim and victim's representative remain confidential.

Remote Live or Recorded Testimony:

Child Victim or Victim with a Developmental Disability

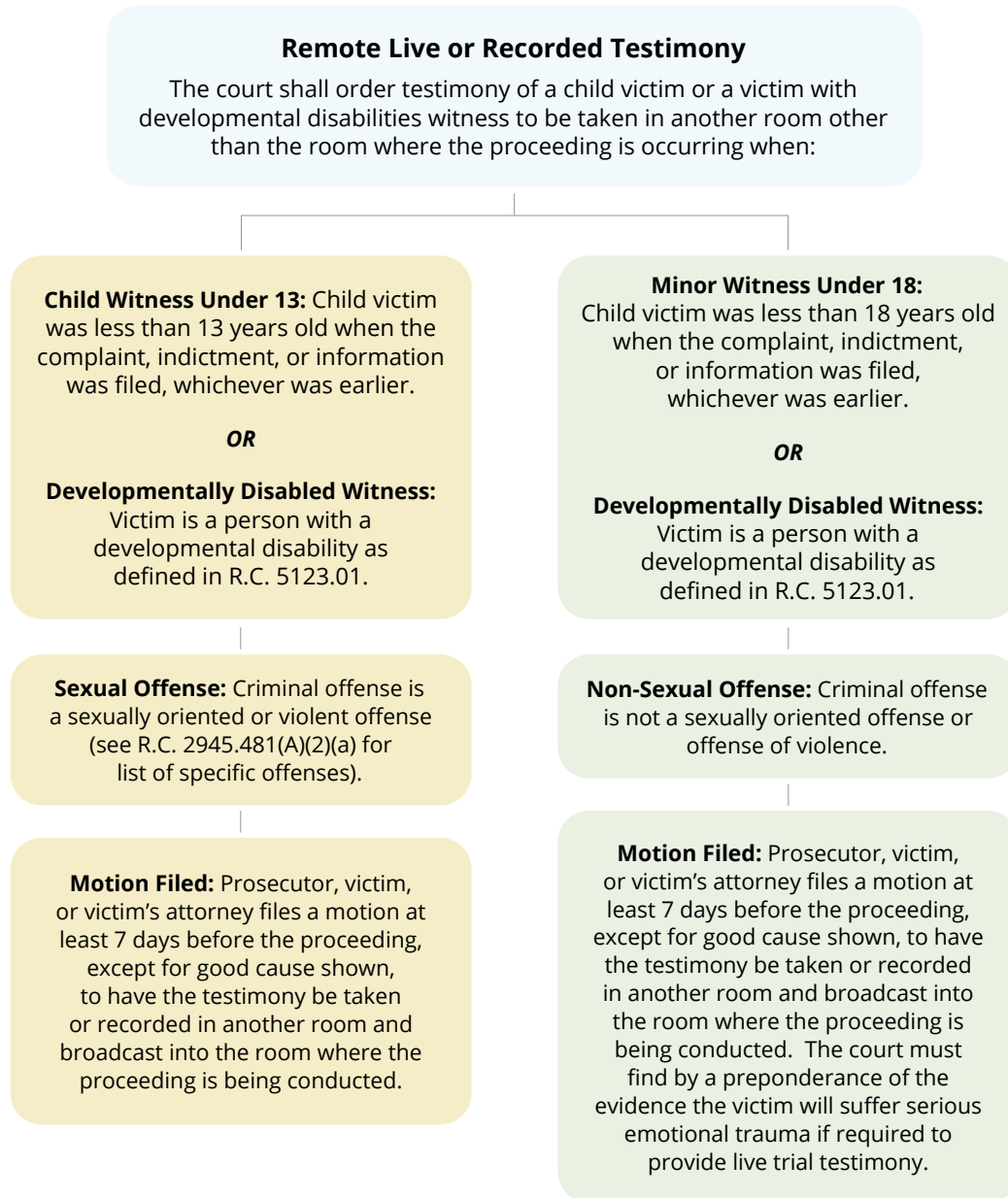
The court shall order the testimony of a child victim or a victim with a developmental disability to be taken in another room other than the room where the proceeding is occurring when any apply:

- For a child victim, see R.C. 2945.481; or
- For a victim with a developmental disability, see R.C. 2945.482.

Procedure

- If a court makes any determination regarding broadcasting or recording testimony outside of the room where the proceeding is being held, it must enter the determination and findings on the record in the proceeding in accordance with R.C. 2945.481/R.C. 2945.482.
- The court must take steps to protect the victim's privacy in accordance with R.C. 2930.07.
- The only persons permitted to be in the room where the testimony will be broadcast or recorded are:
 - Victim, victim's representative, and victim's attorney,
 - Judge, prosecutors, and defense attorneys,
 - Interpreters, if needed,
 - Any person needed to operate the equipment,¹¹
 - One person chosen by the victim (who is not a witness), and
 - Any person whose presence the court determines would contribute to the well-being of the victim.

¹¹ Those operating the recording equipment shall be restricted to a room adjacent to the proceeding room or behind a screen or mirror in the room so they cannot be seen or heard by the victim.



- The judge may preside by electronic means outside of the room where the testimony is being given if the judge has monitors to see each person in the room and has an electronic means of communication with each person. Similarly, each person must have the ability to see and immediately communicate with the judge.
- The defendant may observe the testimony via a monitor and shall be provided with an electronic means of immediate communication with his or her attorney, but the defendant is not permitted to be seen or heard directly by the victim.
- The victim shall be provided with a monitor on which the victim may observe the defendant.

Victim Unavailable

The court must find and enter on the record that the victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the defendant, for one or more of these reasons:

1. The persistent refusal of the victim to testify despite judicial requests to do so; or
2. The inability of the victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or similar reason; or
3. The substantial likelihood that the victim will suffer serious emotional trauma from testifying.

Rights of a Child Victim or Victim with a Developmental Disability Giving Testimony [R.C. 2945.483(B)]

Any time a child victim or a victim with a developmental disability testifies in open court, the victim has the following rights:

- To be asked questions in a manner the child or person with a developmental disability can reasonably understand, including, but not limited to, a child-friendly oath;
- To be free of harassment or intimidation tactics during the proceeding;
- To have an advocate or victim's representative of the victim's choosing present in the courtroom and clearly visible and close to the victim subject to R.C. 2945.483(B)(3)(b);
- To have the courtroom and formalities of the proceedings adjusted to ensure the comfort and protection of the victim;
- To permit the victim to have a comfort item with him or her inside the courtroom;
- To permit the use of a screen that would allow the judge and jury in the courtroom to see the victim but obscures the defendant, public, or both from the victim's view;
- To have a secure and comfortable waiting area provided for the victim and the victim's support person during the court proceedings;
- To have an advocate or victim's representative inform the court about the victim's ability to understand the nature of the proceedings, special accommodations that may be needed for the victim's testimony, and any other information relevant to any of the rights set forth in this section.

These rights are to be enforced by the court on its own or on a motion of any attorney involved in the proceeding.

J. Presentence Investigation (PSI)

During the presentence investigation, the person conducting the investigation must contact the victim, victim's representative, and victim's attorney regarding the victim's economic, physical, psychological, emotional harm, or safety concerns because of the offense. [R.C. 2930.12(B)]

If the PSI is given to the defendant prior to the sentencing hearing, the court must simultaneously provide a copy to the prosecutor. The prosecutor must promptly forward a copy to the victim, victim's representative, or victim's attorney if requested. [R.C. 2930.131(A)] If the court redacts any portion of the PSI, the court shall state the reasons on the record. [R.C. 2930.131(B)]

During the probation department's PSI, it is required to contact the victim, victim's representative, and victim's attorney regarding the victim's economic, physical, psychological, or emotional harm or victim's safety concerns as a result of the offense. [R.C. 2930.12]

Statement by the Victim or Victim's Representative [R.C. 2930.13]

A victim or victim's representative may make a written or oral statement to the person preparing the PSI report or dispositional investigation report regarding the impact of the criminal offense. Among other things, the statement may include the victim and victim's representative's recommendation for a sanction or disposition. [See R.C. 2930.13(C)]

The victim or victim's representative's statement is to be included in the victim impact statement, if one is ordered by the court, and is to be used when preparing the PSI. The victim or victim's representative may request the statement be included in the report. R.C. 2951.03 governs the use, confidentiality, retention, and sealing of the PSI if a statement is included.

K. Sentencing

Before imposing a sentence, the court must allow the victim and victim's representative to be heard orally, in writing, or both during the proceeding. The defendant is also permitted to make a statement. Any person who received a copy of a written statement must return it to the court immediately following sentencing.

Victim's & Victim's Representative's Statement [R.C. 2930.14]

- Any statement that is made orally is not subject to cross-examination.
- Any written statement:
 - May be given to the defendant and defense counsel.
 - May be redacted by the court if it determines something is not relevant and will not be relied upon in the sentencing decision.
 - Is confidential and not a public record under R.C. 149.43.
- The court is to consider these statements when determining the sentence or disposition in addition to other required factors.
- If the statement includes new material facts, the court must either not rely on the new material facts or continue the proceeding to allow the defendant an adequate opportunity to respond to the new material facts. The court should state on the record that it is not going to rely on these statements.

Defendant's Statement [R.C. 2930.14]

Any written statement made by the defendant:

- May be given to the victim, victim's representative, and the victim's attorney.
- May be redacted by the court if it determines something is not relevant and will not be relied upon in the sentencing decision.
- Is confidential and not a public record under R.C. 149.43.
- Is to be considered by the court when determining the sentence in addition to other required factors.

**VICTIM'S NOTIFICATION: INITIAL SENTENCING [R.C. 2930.16(A)]:
ADULT DEFENDANT**

Court: Must promptly notify the prosecutor.

Prosecutor: If requested, the prosecutor must notify the victim and victim's representative of:

- The date on which the defendant:
 - » Will be released;
 - » Will be eligible for initial release from confinement; or
 - » The prosecutor's reasonable estimate of that date.
- The name of the custodial agency and how to contact it.
- If the custodial agency is the Ohio Department of Rehabilitation & Correction, the notice should also include the services offered by the Office of Victims' Services pursuant to R.C. 5120.60.

L. Restitution [R.C. 2929.18, 2929.28, 2929.281, 2929.01(L)]¹²

Victims have a constitutional right to receive full and timely restitution from the person who committed the criminal offense against them. [Ohio Constitution, Article I, Section 10a(A)(7)] Restitution may be awarded to the victim's estate if the victim is deceased. Victims retain the ability to seek damages from the offender in a civil action if necessary.

Restitution is compensation for "economic loss" due to the criminal offense. Economic loss includes, but is not limited to:

- Full or partial payment for the value of stolen or damaged property (the replacement cost of the property or the actual cost of repairing the property if repairs are possible);
- Medical expenses;
- Mental health counseling expenses;
- Wages or profits lost due to injury or harm, including lost commission income and base wages;
- Expenses related to making a vehicle or residence accessible if the victim is permanently disabled as a result of the offense; and
- Funeral expenses.

¹² See next section for juvenile-specific provisions.

Determining the Restitution Amount

The court does not consider the defendant's ability to pay when imposing restitution. The victim is entitled to recover the full amount of the economic losses suffered. The term "full" has been defined as the amount the victim would be entitled to recover without regard to the defendant's ability to pay. [See, *State v. Oliver*, 2021-Ohio-2543, 176 N.E.3d 1054 (12th Dist.) and *Cleveland v. Rudolph*, 8th Dist. Cuyahoga No. 111128, 2022-Ohio-2363.]

The amount of restitution imposed may not exceed the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense. [See, also *Cleveland v. Fuller*, 8th Dist. Cuyahoga No. 111790, 2023-Ohio-1669, where the Eighth District Court of Appeals held that there cannot be ceilings placed on the amount of restitution ordered.¹³]

- The restitution amount is offset by any payments due to the victim or amounts paid for by insurance or a governmental program.
- Victims are not permitted to claim lost wages for time voluntarily attending criminal court proceedings. [*State v. Yerkey*, Slip Opinion No. 2022-Ohio-4298.]

The victim, victim's representative, victim's attorney, prosecutor, and the defendant may provide information, supported by credible evidence, that is relevant to the determination of the restitution amount. If the amount of restitution is disputed by the victim, victim's representative, victim's attorney, or defendant, the court must hold an evidentiary hearing. The amount shall be determined by a preponderance of the evidence.

The final judgment entry must contain the restitution amount. ["A judgment entry ordering restitution is not final and appealable if the entry fails to provide either the amount of restitution or the method of payment." (*City of Toledo v. Kakissis*, 6th Dist. Lucas No. L-07-1215, 2008-Ohio-1299.)]

¹³ The Eighth District Court of Appeals struck down a municipal ordinance capping the amount of restitution that could be ordered. "The limitations placed on... restitution...unambiguously conflict with Marsy's Law, which contains no restrictive language and permits a victim to recover the full amount of economic loss so long as the award is established by the preponderance of evidence under R.C. 2929.28(A)(1) or R.C. 2929.18(A)(1)." *Cleveland v. Fuller*, 8th Dist. Cuyahoga, No. 111790, 2023-Ohio-1669, at paragraph 20.

Paying Restitution

Restitution payments are to be credited against any civil recovery of economic loss brought by the victim or the victim's estate against the offender.

- The court may modify the payment terms upon motion made by the offender or the prosecutor if requested by the victim or victim's attorney.
- The court is permitted to suspend the payment of restitution if the victim or victim's attorney consents. [R.C. 2929.281(D)]
- The court may not revoke community control supervision or probation and incarcerate an offender for failure to pay restitution without making a finding that the offender has the ability to make the restitution payments but has willfully refused to do so. [*Bearden v. Georgia*, 461 U.S. 660, 672-673, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983).]

If the offender is ordered to pay more than one victim, the payments are to be made in the following order: [R.C. 2929.281(C)]

- Individuals
- Nonprofit organizations
- Business entities
- Governmental entities

A businessperson who is the victim of multiple and ongoing criminal offenses or delinquent acts may choose to only seek notice of restitution issues. This is done by written notification to the prosecutor by the person with management authority. [R.C. 2930.06(C)(11)(b)]

Discharge of Restitution Orders

Restitution orders do not expire.

- The five-year maximum found in R.C. 2929.28(G)(2) has been repealed. See also, *State of Ohio v. P.J.F.*, 170 Ohio St.3d 332, 2022-Ohio-4152.
- Fulfilling the conditions of a community control sanction does not relieve the offender's restitution obligations. [R.C. 2929.25(E)]
- Upon a victim's request, he or she may accept a settlement that is less than the full restitution amount if the judge determines that it is appropriate, and the victim has not been coerced.

A restitution order may be reduced to a certificate of judgment issued for restitution in favor of the victim. [R.C. 2929.281(E)] The lien may be enforced through statutory collection procedures including garnishment of wages and attachment of property.

M. Probation & Community Control Hearings [R.C. 2930.161, 2930.09(E), (F)]

If requested, the court must notify the victim or victim's representative of any of the following:

- A proceeding where the court is asked to modify the conditions of or terminate probation or community control;
- If the offender is on supervised probation or community control;
- The defendant's failure to successfully complete a diversion or similar program.

If requested, the probation department shall notify the victim and victim's representative of the following as soon as it becomes known to the probation department:

- Any proposed modification of probation terms or community control that affects restitution, incarceration, detention status, defendant's contact with the victim, or victim safety;
- Any violation of a probation term or community control that results in the filing of a petition to revoke probation or community control;
- The victim's and victim's representative's right to be heard at a hearing to consider modifying probation or community control;
- Following a risk assessment of probation terms or community control, any restricted locations or other conditions that impact victim safety.

It is the responsibility of the victim and victim's representative to keep their contact information current with the court and/or probation department for effective notice to be given. [R.C. 2930.161]

N. Judicial or Early Release Hearings [R.C. 2930.17]

The court shall permit the victim and victim's representative to be heard orally, in writing, or both concerning the effects of the offense or delinquent act, the circumstances and the manner in which the offense was perpetrated, and an opinion on whether the offender should be released. A copy of any written statement made by the victim or victim's representative is to be given to the offender and either the Adult Parole Authority or the Ohio Department of Youth Services.

The court is to consider any statement made by the victim and victim's representative when deciding to release the offender. The court must promptly notify the prosecutor of its decision and send the custodial agent a copy of its journal entry.

Victim Notification (<i>Adult Defendants</i>): Requests for Judicial Release [R.C. 2930.16(B)(1)]	
<p>Court: Must promptly notify the prosecutor.</p> <p>If the victim and victim's representative do not attend the hearing or the court does not conduct a hearing, the court must notify them of its rulings.</p>	<p>Prosecutor: Must notify the victim and the victim's representative no later than 7 days after the hearing is scheduled or application is filed about the request for release and of the right to make a statement.</p>
<p>If the defendant committed aggravated murder, murder, an offense of violence that is a Felony 1, Felony 2, or Felony 3, or has been sentenced to life in prison, these notices ARE GIVEN UNLESS the victim or victim's representative requested NOT to be notified.</p>	

**Victim Notification (*Adult Defendants*):
Parole, Pardon, Commutation of Sentence, Release [R.C. 2930.16(C)]**

Custodial Agency:

Upon request, the custodial agency shall notify the victim and victim's representative at least 60 days prior to a hearing to grant **parole** by the Adult Parole Authority.

- The notice shall inform the victim and victim's representative of the victim's right to submit a victim impact statement and if applicable, the right to appear at the hearing to give testimony. The victim, victim's immediate family member, or victim's representative may also request a victim conference.

Upon request, the custodial agency shall notify the victim and victim's representative at least 60 days prior to a recommendation of **a pardon or commutation of a sentence** by the Adult Parole Authority.

- The notice shall inform the victim and victim's representative of the victim's right to submit a victim impact statement and if applicable, the right to appear at the hearing to give testimony.

Upon request, the custodial agency shall notify the victim and victim's representative at least 60 days prior to a hearing to grant **release** of a defendant serving a non-life felony indefinite prison term under R.C. 2967.271.

- The notice shall inform the victim and victim's representative of the victim's right to submit a written statement regarding the potential release.

Upon request, the custodial agency shall notify the victim and victim's representative at least 60 days before the defendant is transferred to **transitional control** under R.C. 2967.26.

- The notice shall inform the victim and victim's representative of the pendency of the transfer and of the victim's right to submit a statement regarding the impact of the transfer.

Upon request, the custodial agency shall notify the victim and victim's representative within 30 days of the filing of a petition requesting **early release** by the Ohio Department of Rehabilitation & Correction.

Upon request, the custodial agency shall notify the victim and victim's representative as soon as it becomes aware of the defendant's **postconviction release** from confinement, jail, or local custody and the terms and conditions of release.

If the defendant committed aggravated murder, murder, an offense of violence that is a Felony 1, Felony 2, or Felony 3, or has been sentenced to life in prison, these notices ARE GIVEN UNLESS the victim or victim's representative requested NOT to be notified.

Victim Notification (<i>Adult Defendants</i>): Requests for Modification Of Prison Term – Sexually Violent Offender [R.C. 2930.16(B)(2)]	
<p>Court: Court must notify the prosecutor.</p> <p>If the victim and victim's representative do not attend the hearing or the court does not conduct a hearing, the court must notify them of any order issued.</p>	<p>Prosecutor: The prosecutor must promptly notify the victim and victim's representative of any hearing to modify the prison term.</p>
Escape or Death While Incarcerated [R.C. 2930.16(C)]	
<p>Custodial Agency:</p> <p>Upon request, the custodial agent must notify the victim and victim's representative no later than 3 days after a defendant's:</p> <ul style="list-style-type: none"> • Escape from a custodial agent facility; • Absence without leave from a mental health or developmental disability; • Absence without leave from other custody; or • Capture. 	
<p>Upon request, the custodial agent must notify the victim and victim's representative no later than 30 days of the defendant's death while in confinement.</p>	

O. Sealing & Expungement Hearings [R.C. 2930.171]¹⁴

R.C. 2953.32(C) sets forth the requirement for a court to conduct a hearing on an application to seal or expunge not less than 45, but no more than 90 days of the application filing. When a victim is involved, the court must notify the prosecutor within 60 days of a hearing unless a shorter time is agreed to by the prosecutor and the court when there is a victim in the case.¹⁵

The victim, victim's representative, and victim's attorney may be heard orally, in writing, or both concerning the effects of the offense, the circumstances and the manner in which the offense was perpetrated, and their opinion on whether the record should be sealed or expunged.

¹⁴ See next section for juvenile-specific provisions.

¹⁵ The court must be mindful of the notice requirements when scheduling the hearing. [R.C. 2953.32(C)]

The failure to provide a right, privilege, or notice under R.C. Chapter 2930 does not constitute grounds for declaring a mistrial or new trial, for setting aside a conviction, sentence, adjudication, or disposition, or for granting postconviction release to a defendant. [R.C. 2930.19]

The failure of a public official, agency, or their designee to comply with the requirements of R.C. Chapter 2930 also does not give rise to a claim for damages against that public official, agency, or their designee, except that a public agency as an employer may be held responsible for a violation of R.C. 2930.18.

The court must consider the victim's position in deciding whether to grant the application. A copy of any written statement made by the victim, victim's representative, or victim's attorney is to be given to the offender and the Adult Parole Authority.

The court is to consider any statement made by the victim, victim's representative, and victim's attorney when deciding to seal or expunge the record. The court must promptly notify the prosecutor of its decision.

P. Victim's Right to Challenge & Appellate Review [R.C. 2930.19]

If the victim, victim's representative, victim's attorney, or the prosecutor challenges an order in violation of victim's rights, the court must conduct a hearing within 10 days of the assertion of the victim's rights.

- The victim has the right to be represented by counsel at the victim's own expense.
- The defendant has the right to be represented by court-appointed counsel for appeals and writs regarding victim rights.
- A defendant may not raise the failure to afford a right to a victim in a legal argument to gain an advantage in a motion, petition for postconviction relief, or any assignment of error on appeal.
- If the victim is incarcerated in a state or local correctional facility or in the custody of the Ohio Department of Youth Services, the court may modify the victim's rights by court order to prevent any security risk, hardship, or undue burden on a public official or public agency performing a duty under R.C. Chapter 2930.

If relief is denied, the court must:

- State its reasons for denial on the record or in the judgment entry;
- Provide to the victim, victim's representative, and victim's attorney notice

of the decision, a copy of the judgment entry, and a statement describing the right to appeal with the language prescribed in R.C. 2930.19(A)(2)(a)(ii).

Interlocutory Appeal Process

The victim has the right to appeal an interlocutory order within 14 days of receiving notice of the decision as it pertains to decisions impacting the victim's rights. The trial court is divested of jurisdiction of that portion of the case until the interlocutory appeal is resolved.

Court of Appeals [R.C. 2930.19(A)(2)(b)(ii)]

- The trial court must send the pertinent portions of the transcript to the appellate court within 5 business days.
- The appellant has 8 days to file a merit brief, and the appellee has 8 days to file a response brief.
- The court of appeals must decide the case within 35 days after the appeal is filed unless the court approves the parties' stipulation to a different time period.
- If the court of appeals fails to issue a decision within the appropriate timeframe, the victim, victim's attorney, prosecutor, or defendant may notify the Supreme Court of Ohio.

Supreme Court of Ohio [R.C. 2930.19(A)(2)(d)]

- The Supreme Court of Ohio must enter an order for an expedited schedule and place the case on its accelerated calendar.
- It must immediately notify the trial court of the appeal, and the trial court must send the pertinent portions of the record to the court of appeals or the Supreme Court of Ohio within 5 business days of the filing of the appeal.
- The Supreme Court of Ohio must decide the case within 60 days after the appeal is filed unless the Court approves the parties' stipulation to a different time period.

Extraordinary Writ [R.C. 2930.19]

The victim, victim's attorney, or prosecutor upon request may petition the court of appeals or Supreme Court of Ohio for an extraordinary writ as it pertains to decisions impacting the victim's rights.

The appellate court or Supreme Court of Ohio shall enter an order for an expedited schedule and place on its accelerated calendar. [R.C. 2930.19(A)(2)(c)]The appellate court or Supreme Court of Ohio must immediately notify the trial court of the petition. The trial court must send the pertinent portions of the record to the applicable appellate court within 5 business days of filing.

The court must decide the case within 45 days after the petition is filed unless it approves the parties' stipulation to a different time period. If the court of appeals fails to issue a decision within the appropriate timeframe, the victim, victim's attorney, prosecutor, or defendant may notify the Supreme Court of Ohio.

Direct Appeal of Final Order [R.C. 2930.19(A)(2)(b)(iii), (A)(2)(e)]

The victim must file the notice of a direct appeal of the trial court's final order with the court of appeals within 30 days of the entry from the trial court. An appeal to the Supreme Court of Ohio of an appellate court decision must be made within 30 days of the appellate court entry.

If requested, the prosecutor must notify the victim and victim's representative of an appeal made by the defendant. The notice must contain an explanation of the appeals process, whether the defendant has been released, information about appellate court proceedings, and the result of the appeal. [R.C. 2930.15(A)]

If the appellate court returns the case to the trial or juvenile court for further proceedings, the victim and victim's representative may exercise all the rights that previously were available to the victim at the lower court level. [R.C. 2930.15(B)]

Marsy's Law Courtroom Checklist

Victims have the following rights in court:

- Right to have retained counsel present.
- Right to have a victim's representative present.
- Right to an interpreter at no cost to the victim.
 - *Courts must appoint interpreters and determine a reasonable cost for such services under R.C. 2311.14. To satisfy these obligations, courts should inquire early in the case about whether the victim or victim representative needs an interpreter and make the court's Language Access Plan available, with sample forms to request interpreter services.*
 - *For more information on court interpreter appointment requirements and resources, see the Supreme Court's Language Services Section and Sup.R. 80-89.*
- Right to be present and heard orally, in writing, or both at any public proceedings other than grand jury in which any rights of the victim are implicated.
 - *If the victim or victim's representative is not present, was notice requested? Was notice appropriately given? Can the court proceed?*
 - *If the victim and victim's representative are present, did they make a statement?*
- The court shall inquire and make a record as to whether the victim or victim's representative has requested to confer with the prosecution before granting pretrial diversion; amending or dismissing a complaint; agreeing to a negotiated plea; or a trial or adjudicatory hearing.
- If the victim or victim's representative requested to confer, the court shall inquire as to whether the prosecutor did in fact confer.
 - *If the court determines that reasonable efforts have not been made to confer with the victim, the court shall not rule on any substantive issues that will implicate a victim's rights, accept a plea, or impose a sentence, and must continue the proceeding for such time as is necessary for the conference to occur.*
- Right to not testify regarding any personal locating information unless the victim consents or the court determines after in-camera review that due process prevails over the victim's rights.
- Rights of a child victim or victim with a developmental disability while testifying:
 - *To be asked questions in a manner that is easily understandable*
 - *To be free of harassment or intimidation tactics*
 - *To have a support person of the victim's choosing present*
 - *To have the courtroom or hearing room adjusted to ensure comfort and protection*
 - *To permit the use of a screen to obscure the victim's view of the defendant, public, or both*
 - *To have a secure and comfortable waiting area*
- Right to full restitution for economic losses suffered as a result of the offense or delinquent act.

III. Marsy's Law Specifics: For Juvenile Courts

A. Victim's Representative [R.C. 2930.02(D)]

If a victim has designated a victim's representative to exercise the victim's rights and if no prosecutor is involved in the delinquency proceeding, the victim must inform law enforcement and the court.

B. Victim Injuries [R.C. 2930.062]

A victim may notify the court with written notification of his or her injuries if no prosecutor is involved in the case. Upon receipt of such notifications, the court shall provide the victim with the information specified in R.C. 2930.06(C). See Section D below.

C. Required Court Notices – No Prosecutor Involved [R.C. 2930.06(E)]

If requested, the court shall provide the victim or victim's representative with notice of the date, time, and place of any delinquency proceedings in the case or any changes in those proceedings or in the schedule not less than 7 days prior to the court proceeding, unless the parties agree that a shorter notice period is reasonable under the circumstances.

In re M.W., 8th Dist. Cuyahoga No. 94737, 2010-Ohio-6362 provides that a juvenile "proceeding" begins upon the filing of a complaint.

D. Required Court Notices – Case Disposed Before Prosecutor Becomes Involved

If a case is disposed of prior to the involvement of a prosecutor, the court must notify the victim and victim's representative that: [R.C. 2930.06(A)(2)]

- The juvenile will be granted pretrial diversion;
- The complaint against the juvenile will be amended or dismissed; or
- The court will conduct an adjudicatory hearing for the juvenile.

After the prosecution has commenced, the court must promptly provide the victim and victim's representative notice of the following if the case is disposed of before the prosecutor becomes involved: [R.C. 2930.06(C)]

- The file number of the case, name of the delinquent act the juvenile has been charged, and the juvenile's name;
- An explanation regarding the procedural steps in the delinquency proceedings;
- Their right to be present during all proceedings held throughout the prosecution of the case;
- A summary of the victim's rights;
- The safety procedures to follow if they become subject to threats of violence, harassment, or intimidation by the juvenile or any other persons;
- The name and business phone number to contact for further information on the case;
- The Victim's Rights Request Form or a similar form allows the victim to request applicable rights and that failure to affirmatively request these rights will be considered a waiver of these rights, but the victim may request these rights at a later date; and
- A person who, by reason of the person's regular business activities, is the subject of multiple and continuing criminal offenses or delinquent acts as a potential victim may choose to opt out of the notices and rights available and any other provision that provides a victim with rights for future offenses by giving a written notification form to the prosecutor.

Dismissal of Complaint [R.C. 2930.12(A)]

If the court dismisses the complaint prior to the involvement of the prosecutor, if requested, the court must notify the victim and victim's representative notice of the dismissal.

Adjudication of a Delinquent Child [R.C. 2930.12(A)]

If the court adjudicates the juvenile as a delinquent child prior to the involvement of the prosecutor, if requested, the court must notify the victim and victim's representative of the following:

- The delinquent acts for which the juvenile was adjudicated a delinquent child;
- The purpose of the dispositional investigation report, if ordered, and that the victim and victim's representative have the right to review, on request to the prosecutor;
- Address and telephone number of the person, if any, who is to prepare a dispositional investigation report and any person who is to prepare a victim impact statement;
- Their right to make a statement about the impact of the delinquent act to the probation officer or any other persons who prepare the dispositional investigation report or to the person who prepares a victim impact statement; that a statement of the victim and victim's representative included in the report, if applicable, will be made available to the juvenile unless the court exempts it from disclosure; and that the court may make the victim impact statement available to the juvenile;
- Their right to make a victim impact statement about the delinquent act before disposition;
- The date, time, and place of the disposition hearing;
- Notice that, if the court orders restitution, the victim or victim's attorney has the right to file a lien; and
- Any disposition ordered for the juvenile and any subsequent modification of that disposition if known to the prosecutor, including judicial release or early release. If the court did not timely notify the prosecutor of a modification of the disposition, then the court shall promptly notify the victim and the victim's representative.

E. Victim Testimony

Testimony by Deposition: Child Victim or Victim with a Developmental Disability

The juvenile court shall order testimony of child victim or victim with a developmental disability witness be taken by deposition when any apply:

- For a child victim, see R.C. 2152.81(A)-(B); or
- For a victim with a developmental disability, see R.C. 2152.811(A)-(C).

Notice & Procedure [R.C. 2152.81(A)(2)(c), R.C. 2152.811(B)(1)(c)]

- The court must notify the victim, victim's attorney, prosecutor, and the defense of the date, time, and place for the deposition, and whether a request by the prosecutor to record the deposition has been made.
- The juvenile has the right to attend and be represented by counsel.
- The prosecutor and defense attorney have the right to fully examine and cross-examine the victim. The judge shall rule on any objections at the time.
- If the deposition is admitted as evidence at a proceeding, the victim does not have to testify in person at the proceeding.
- If a court makes any determination regarding the admissibility or the recording of a deposition, it must enter the determination and findings on the record in the proceeding.

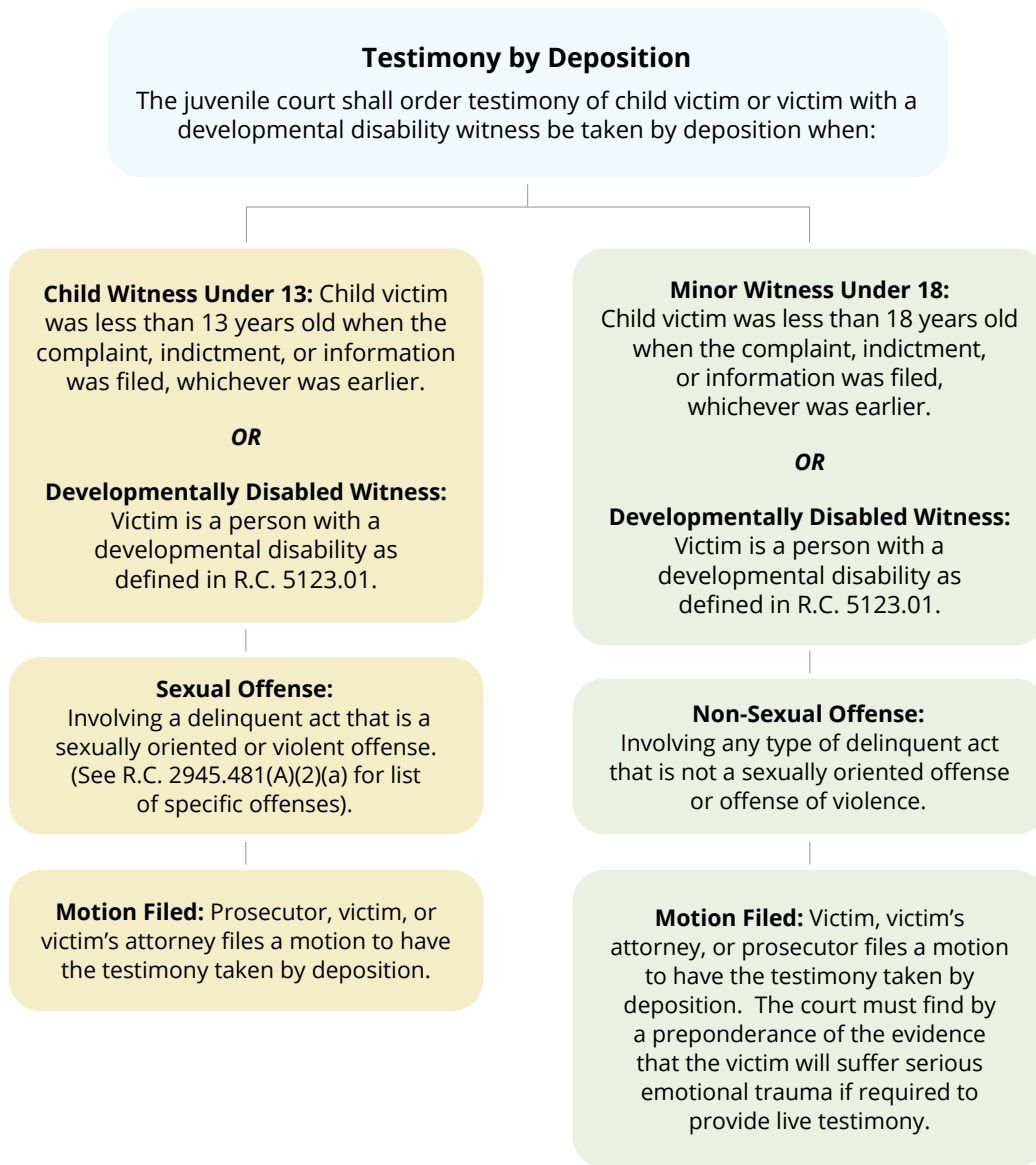
Testimony & Hearsay [R.C. 2152.81(B), R.C. 2152.811(C)(1)]

Testimony taken at the deposition is not excluded by hearsay rules and is admissible if:

- The testimony is not hearsay under Evid.R. 801;
- The testimony is within an exception set forth in Evid.R. 803;
- If the victim is unavailable as a witness as defined in Evid.R. 804; or
- The juvenile has the opportunity and similar motive at the time of the deposition to develop testimony by direct, cross, or redirect examination and there is reasonable cause to believe that the victim would experience serious emotional trauma as a result of participation at the proceeding in-person.

Additional Depositions [R.C. 2152.81(A)(2)(c), R.C. 2152.811(B)(1)(c)]

The court may order an additional deposition at any time before the conclusion of the proceeding if the defense attorney files a motion with supporting affidavits stating that new evidence has been discovered that could not have been discovered with reasonable diligence before a previous deposition. If the admitted deposition was recorded, the new deposition shall be recorded.



Recorded Depositions [R.C. 2152.81(A)(3), R.C. 2152.811(B)(2)]

- The prosecutor, victim, or victim's attorney can request the deposition be recorded.
- If the court orders the deposition to be recorded, the only persons allowed in the room are:
 - Victim, victim's representative, and victim's attorney;
 - Judge, prosecutors, and defense attorneys;
 - Interpreters, if needed;

- Any person needed to operate the equipment;¹⁶
- One person chosen by the victim (who is not a witness); and
- Any person whose presence the court determines would contribute to the well-being of the victim.
- The juvenile may observe the testimony via monitor and shall be provided with an electronic means of immediate communication with his or her attorney during the testimony, but the juvenile is not permitted to be seen or heard directly by the victim.
- The victim shall be provided with a monitor on which the victim may observe the juvenile.
- The judge may preside over the deposition by electronic means. If this occurs, the judge shall be provided with monitors to see each person in the room and have an electronic means of communication with each person. Similarly, each person must have the ability to see and immediately communicate with the judge.
- To be admitted as evidence, the recording of the deposition must satisfy all the following:
 - It is both aural and visual and is recorded on film or videotape, or by other electronic means;
 - It is authenticated under the Rules of Evidence and the Rules of Criminal Procedure as a fair and accurate representation of what occurred;
 - It has not been altered other than at the direction and under the supervision of the judge in the proceeding;
 - Each voice on the recording that is material to the testimony on the recording or the making of the recording is identified;
 - Both the prosecutor and juvenile have the opportunity to view the recording before it is shown in the proceeding.

¹⁶ Those operating the recording equipment shall be restricted to a room adjacent to the deposition room, or behind a screen or mirror in the room so they cannot be seen or heard by the victim during the deposition.

Remote Live or Recorded Testimony:

Child Victim or Victim with a Developmental Disability

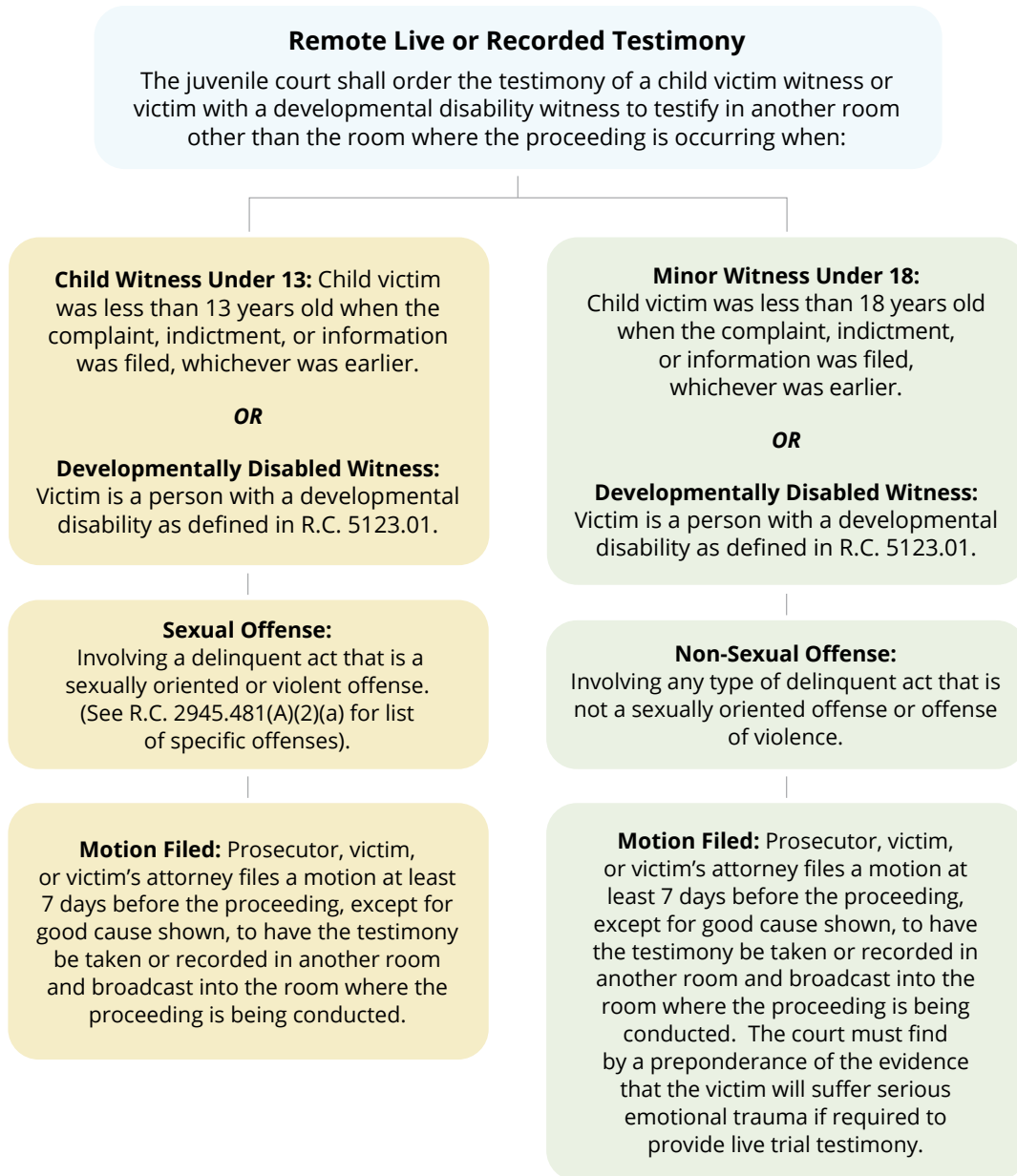
The juvenile court shall order the testimony of a child victim witness or victim with a developmental disability witness to testify in another room other than the room where the proceeding is occurring when any apply:

- For a child victim, see R.C. 2152.81; or
- For a victim with a developmental disability, see R.C. 2152.811.

Procedure

- If a court makes any determination regarding recording or broadcasting testimony outside of the room where the proceeding is being held, it must enter the determination and findings on the record in the proceeding in accordance with R.C. 2152.81/R.C. 2152.811.
- The court must take steps to protect the victim's privacy in accordance with R.C. 2930.07.
- The only persons permitted to be in the room where the testimony will be broadcast or recorded are:
 - Victim, victim's representative, and victim's attorney;
 - Judge, prosecutors, and defense attorneys;
 - Interpreters, if needed;
 - Any person needed to operate the equipment;¹⁷
 - One person chosen by the victim (who is not a witness); and
 - Any person whose presence the court determines would contribute to the well-being of the victim.
- The judge may preside by electronic means outside of the room where the testimony is being given if the judge has monitors to see each person in the room and has an electronic means of communication with each person. Similarly, each person must have the ability to see and immediately communicate with the judge.
- The juvenile may observe the testimony via a monitor and shall be provided with an electronic means of immediate communication with his or her attorney, but the juvenile is not permitted to be seen or heard directly by the victim.
- The victim shall be provided with a monitor on which the victim may observe the juvenile.

¹⁷ Those operating the broadcasting equipment shall be restricted to a room adjacent to the proceeding room or behind a screen or mirror in the room so they cannot be seen or heard by the victim.



Victim Unavailable

The court must find and enter on the record that the victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the juvenile, for one or more of these reasons:

1. The persistent refusal of the victim to testify despite judicial requests to do so; or
2. The inability of the victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or similar reason; or
3. The substantial likelihood that the victim will suffer serious emotional trauma from testifying.

F. Pre-Disposition Investigation

During the pre-disposition investigation, the person conducting the investigation must contact the victim, victim's representative, and victim's attorney regarding the victim's economic, physical, psychological, emotional harm, or safety concerns because of the offense. [R.C. 2930.12(B)]

Statement by the Victim or Victim's Representative [R.C. 2930.13]

A victim or victim's representative may make a written or oral statement to the person preparing the pre-dispositional investigation report regarding the impact of the delinquent act. Among other things, the statement may include the victim and victim's representative's recommendation for a sanction or disposition. [See R.C. 2930.13(C)]

The victim or victim's representative's statement is to be included in the victim impact statement, if one is ordered by the court, and is to be used when preparing the dispositional investigation report. The victim or victim's representative may request the statement be included in the report. R.C. 2951.03 governs the use, confidentiality, retention, and sealing of the dispositional investigation report if a statement is included.

G. Disposition

Before entering an order of disposition, the court must allow the victim and victim's representative to be heard orally, in writing, or both during the proceeding. The juvenile is also permitted to make a statement. Any person who received a copy of a written statement must return it to the court immediately following disposition.

Victim's & Victim's Representative's Statement [R.C. 2930.14]

- Any statement that is made orally is not subject to cross-examination.
- Any written statement:
 - May be given to the juvenile and defense counsel.
 - May be redacted by the court if it determines something is not relevant and will not be relied upon in the disposition decision.
 - Is confidential and not a public record under R.C. 149.43.
- The court is to consider these statements when determining the disposition in addition to other required factors.
- If the statement includes new material facts, the court must either not rely on the new material facts or continue the proceeding to allow the juvenile an adequate opportunity to respond to the new material facts.

Juvenile Statement [R.C. 2930.14]

Any written statement made by the juvenile:

- May be given to the victim, victim's representative, and the victim's attorney.
- May be redacted by the court if it determines something is not relevant and will not be relied upon in the disposition decision.
- Is confidential and not a public record under R.C. 149.43.
- Is to be considered by the court when determining the disposition in addition to other required factors.

Victim Notification (<i>Alleged Juvenile Offender</i>): Initial Disposition [R.C. 2930.16(A)]	
<p>Court: Court must promptly notify the prosecutor.</p>	<p>Prosecutor: If requested, the prosecutor must notify the victim and the victim's representative of:</p> <ul style="list-style-type: none"> • The date on which the alleged juvenile offender: <ul style="list-style-type: none"> – Will have served the minimum period of commitment; or – The prosecutor's reasonable estimate of that date. • The name of the custodial agency and how to contact it. • If the custodial agency is the Ohio Department of Youth Services, the notice should also include: <ul style="list-style-type: none"> – The services provided by the Office of Victims' Services pursuant to R.C. 5139.55, and – The victim's right to submit a written request to the Release Authority to be notified of actions the release authority takes.

H. Restitution [R.C. 2152.203]

Victims have a constitutional right to receive full and timely restitution from the person who committed a delinquent act against them. [Ohio Constitution, Article I, Section 10a(A)(7)] R.C. 2152.20(A)(3) authorizes the juvenile court to order restitution to the victim or the victim's estate if the victim is deceased unless it is a traffic offense that would be a minor misdemeanor if committed by an adult or could be disposed of by the Juvenile Traffic Violations Bureau.

Paying Restitution

- A court is not permitted to suspend the payment of restitution if the victim or victim's attorney objects.
- Restitution payments are to be credited against any civil recovery of economic loss brought by the victim or the victim's estate against the offender.
- The court may order the juvenile to perform community service to generate funds for restitution. [R.C. 2152.20(D)]
- The court may modify the restitution payment terms upon motion made by the juvenile or the prosecutor as requested by the victim or victim's attorney.

The restitution order does not expire until it is fully paid. Any outstanding amount owed at the time the juvenile turns 21 transfers to a certificate of judgment to be filed in the county or municipal court where the juvenile or victim resides. The civil judgment is enforceable by the victim, victim's representative, or victim's attorney until satisfied. [R.C. 2152.203(F)]

I. Sealing & Expungement of Records [R.C. 2151.356, 2151.358, R.C. 2930.171]

The court must notify the prosecutor within 30 days prior to the hearing to seal or expunge a juvenile record unless a shorter time is agreed to by the prosecutor and the court. If requested, the prosecutor must provide timely notice to the victim and victim's representative. The victim, victim's representative, and victim's attorney may be heard orally, in writing, or both concerning the effects of the delinquent act, the circumstances and the manner in which the act was perpetrated, and their opinion on whether the record should be sealed or expunged.

The court must consider the victim's position in deciding whether to grant the application. A copy of any written statement made by the victim, victim's representative, or victim's attorney is to be given to the juvenile and the Ohio Department of Youth Services.

The court is to consider any statement made by the victim, victim's representative, and victim's attorney when deciding to seal or expunge the record. The court must promptly notify the prosecutor of its decision.

J. Victim's Notification – Post-Disposition

Victim Notification (<i>Alleged Juvenile Offender</i>): Requests For Judicial Release [R.C. 2930.16(B)(1)]	
<p>Court: Must promptly notify the prosecutor.</p> <p>If the victim and victim's representative do not attend the hearing or the court does not conduct a hearing, the court must notify them of its rulings.</p>	<p>Prosecutor: Must notify the victim and the victim's representative no later than 7 days after the hearing is scheduled or application is filed about the request for release and of their right to make a statement.</p>
<p>If the alleged juvenile offender committed an offense that would be aggravated murder, murder, an offense of violence that is a Felony 1, Felony 2, or Felony 3, or has been sentenced to life in prison, these notices are given unless the victim or victim's representative requested NOT to be notified.</p>	
Release from Custodial Agent [R.C. 2930.16(C)]	
<p>Upon request, the Ohio Department of Youth Services shall notify the victim and victim's representative at least 60 days prior to a:</p> <ul style="list-style-type: none"> • Release review; • Release hearing; and • Discharge review. <p>The notice shall inform the victim and victim's representative of the pendency of the review or hearing and their right to make an oral or written statement regarding the impact of the crime.</p> <p>If it is a hearing, the victim and victim's representative have the right to attend and make statements or comments.</p>	
<p>Upon request, the custodial agency shall notify the victim and victim's representative as soon as it becomes aware of the alleged juvenile offender's post-disposition release from custody and the terms and conditions of the release.</p>	
<p>If the alleged juvenile offender committed an offense that would be aggravated murder, murder, an offense of violence that is a Felony 1, Felony 2, or Felony 3, or has been sentenced to life in prison, these notices ARE GIVEN UNLESS the victim or victim's representative requested not to be notified.</p>	

Victim Notification (<i>Alleged Juvenile Offender</i>): Requests for Modification of Prison Term – Sexually Violent Offender [R.C. 2930.16(B)(2)]	
Court: Must notify the prosecutor. If the victim and victim's representative do not attend the hearing or the court does not conduct a hearing, the court must notify them of any order issued.	Prosecutor: Must promptly notify the victim and victim's representative of any hearing to modify the prison term.
Escape or Death While in Custody [R.C. 2930.16(C)(2)(d), (e)]	
Upon request, the custodial agent must notify the victim and victim's representative no later than 3 days after an alleged juvenile offender's: <ul style="list-style-type: none">• Escape from a custodial agent facility;• Absence without leave from a mental health or developmental disability;• Absence without leave from other custody; or• Capture.	
Upon request, the custodial agent must notify the victim and victim's representative no later than 30 days of the alleged juvenile offender's death while in custody.	

IV. Marsy's Law Specifics: For Clerks

A. Redaction of Court Records [R.C. 2930.07]

The victim and victim's representative have a right to keep their personal or identifying information confidential. They must request redaction on the Victim's Rights Request (VRR) Form or through another written method. All "case documents" as defined in R.C. 2930.07(A) related to the cases or matters specified by the victim are to be redacted.

- If the victim uses the VRR to request redaction, only records related to the specific case(s) that pertain to the VRR are to be redacted.
- If the victim uses some other method for the request, redaction applies to the cases or matters specifically included in the request.
- The victim may request redaction of civil case records that contain personal information that has a nexus to the criminal offense such as divorce records containing the victim's address.
- The clerk should be mindful to redact records posted online.

The clerk shall allow any public office or public official charged with the responsibility of knowing the name, address, or other identifying information of a victim or victim's representative as part of their official duties to have full and complete access to that information. The clerk may maintain unredacted records of a victim's or victim's representative's personal information for its own records and use.

B. Victim's Rights Request Form [R.C. 2930.04(C)]

The VRR is not a public record under R.C. 149.43. Unredacted copies of the VRR shall be provided to the prosecutor, the victim, and the victim's representative. The defendant or defense counsel may receive copies of the VRR with the victim's and victim's representative's address, phone number, electronic mail address, or other identifying information redacted. The court may allow access to the unredacted form if the victim consents or it determines due process demands disclosure after an in camera review of the information pursuant to R.C. 2930.07(B). No one else is permitted a copy of the VRR without a court order.

C. Victim's Right to Court Records [R.C. 2930.063]

A victim, victim's representative, or victim's attorney has the right to receive copies of the following at no cost:

- Court records available for public access related to the victim's case, including the offender's payment history of any related restitution, fine, or incarceration cost;

- Certificate of judgment and judgment entry related to the restitution order;
- Any proceedings in aid of execution thereof from the clerk.

The clerk may charge the actual cost to provide certified copies of records and video and audio recordings of proceedings that had been previously prepared. Transcripts are to be provided at the same or reduced cost as parties are charged. Court records and other documents may also be provided electronically.

D. Notice to Self-Represented Victim & Victim's Attorney [R.C. 2930.191]

A victim has the right to represent himself or herself, or retain an attorney. Upon the filing of a notice of appearance in the case, the victim shall be served copies of all notices, motions, and orders. The clerk shall only be required to serve notices and orders. The prosecutor and defense counsel must serve their motions on the victim or victim's attorney.

E. Restitution

R.C. 2949.111(B) sets forth the order of payment when restitution and other financial sanctions are imposed in misdemeanor cases. Court costs are to be satisfied before restitution is to be paid unless the court specifies a different order. The court may modify the order of distribution by local rule or court order for a specific case. In light of the victim's constitutional right to "full and timely" restitution, courts should consider prioritizing restitution to victims.¹⁸

If restitution is imposed, the clerk of the sentencing court shall provide the offender's payment history at no cost when requested by the prosecutor, victim, victim's representative, victim's attorney, probation department, and the court.
[R.C. 2929.18(J), R.C. 2929.28(J)]

¹⁸ Ohio Constitution Article I, Section 10a(A)(7)

V. Sample Forms

- A. Administrative Order Regarding Implementation of Victim's Notification Rights
- B. Notice of Receipt: Victim's Rights Request Form
- C. Motion for Continuance
- D. Certificate of Judgment

V. Sample Forms

A. Administrative Order Regarding Implementation of Victim's Notification Rights

IN THE COURT OF COMMON PLEAS _____ COUNTY, OHIO	
IN RE: _____	: CASE NO. _____
ADMINISTRATIVE ORDER REGARDING IMPLEMENTATION OF VICTIM'S NOTIFICATION RIGHTS	
<p>Pursuant to Crim.R. 37, the Court hereby orders that the Prosecuting Attorney of _____ County provide notices of all public court proceedings to those persons who are alleged victims who have, where applicable, requested to be notified of such proceedings and of their opportunity to be present at such proceedings.</p>	
<p>For purposes of providing notice for notification of arraignments upon indictments, the Court will provide advance notice of _____ (INSERT TIME PERIOD) of the arraignment dates for defendants who are not in custody. For defendants who are in custody, the Court will provide notice of the anticipated arraignment date at least ten days prior to the arraignment.</p>	
<p>The Court will also provide notice to the Prosecuting Attorney of the bond review dates for any defendant that is arraigned without counsel and is incarcerated in lieu of bond within _____ (INSERT TIME PERIOD) of the arraignment as required by R.C. 2937.011(J)(1).</p>	
<p>Pre-trial dates will be set forth in the arraignment entries so that notice may be given to the victims. Upon the filing of motions for continuances or other motions regarding the case, the Court will hear said motions at pre-trial hearings when possible. When that is not possible, the Court will schedule a hearing and provide notice to the Prosecuting Attorney to allow notification of alleged victims as required by law.</p>	
IT IS SO ORDERED.	
	_____ Judge's Name
Service to: Prosecutor's Office Public Defender's Office	

B. Notice of Receipt: Victim's Rights Request Form

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

State of Ohio, Case No. _____
Plaintiff

vs. **NOTICE OF RECEIPT:**
VICTIM'S RIGHTS REQUEST FORM

_____ Defendant

Notice is hereby given that on the _____ day of _____, 20____, a Victim's Rights Request Form was filed which shall be maintained in the Non-Public File.

Pursuant to R.C. 2930.04, the Prosecutor, Victim, and Victim's Representative are entitled to receive an unredacted copy of the Victim's Rights Request Form upon request. The Defendant or Alleged Juvenile Offender, and Defense Counsel shall be provided a copy of the Victim's Rights Request Form upon request once the victim's and victim's representative's address, phone number, email address or other identifying information are redacted.

_____ County Common Pleas Court

Clerk

cc: Prosecutor
Defense Counsel
Probation Department
Victim Advocate

C. Motion for Continuance

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

State of Ohio, _____ Case No. _____
Plaintiff
vs.
_____ Defendant

MOTION FOR CONTINUANCE

Instructions: All applicable fields must be completed. Submission of this motion and payment of any fees does not ensure approval of the request for a continuance. Parties must appear as scheduled unless the continuance is granted.

Prosecutor Plaintiff/Attorney Defendant/Attorney moves the court to reschedule the following proceeding: _____ scheduled for _____, at _____ a.m./p.m. The undersigned DID DID NOT confer with opposing party/counsel before filing this motion. The basis for this motion is _____.

Certificate of Service. I delivered a copy of this motion to opposing counsel part(ies) on _____, 20_____, at the address of record in this case by hand delivery ordinary mail facsimile email.

Signature of Filing Party (Atty Reg No if applicable) Printed Name Date

Address Email Address

OPPOSING PARTY/COUNSEL RESPONSE: Opposing party/counsel CONSENTS OBJECTS to this continuance.
Opposition signature: _____

For prosecutor only - Victim Notification
VICTIM'S RESPONSE: The victim does NOT OBJECT OBJECTS to a continuance.
 Notice attempted - no response Victim did not request notice Not applicable
Prosecutors signature: _____

Journal Entry/Magistrate's Order

The motion for continuance is:

Granted. This matter is continued to _____, at _____ a.m./p.m. in Courtroom _____. Prosecutor failed to provide information regarding victim notification and/or victim objection.

Denied. The matter shall proceed as scheduled.

Judge/Magistrate

D. Certificate of Judgment

IN THE COURT OF COMMON PLEAS/MUNICIPAL
_____ COUNTY, OHIO

_____ Case No. _____
Victim in Criminal Case

vs.

Order from Judgment from
Case No. _____

_____ Defendant in Criminal Case

In accordance with R.C. 2929.18(D) (felony)/R.C. 2929.28(E) (misdemeanor) (SELECT ONE), the Order of Restitution in Case No. _____ against _____ (INSERT NAME OF DEFENDANT IN CRIMINAL CASE) is certified as a civil judgment in favor of _____ (INSERT NAME OF VICTIM IN CRIMINAL CASE).

The Clerk of Court shall issue a certificate of judgment in favor of _____ and against the defendant in the amount of \$_____.

_____ Date _____ Judge





THE SUPREME COURT *of* OHIO

Published: January 2024