

**Issue 1 - Marsy's Law: Rights for Crime Victims
Constitutional Amendment
Pre-Implementation Explanation**

Effective February 5, 2018.

Introduction

PLEASE NOTE: This explanation addresses the Marsy's Law constitutional amendment only. Implementing legislation will refine and define many of the rights discussed herein. The goal of implementation language associated with Marsy's Law is to ensure that it is easy and practical for crime victims to understand and exercise their rights.

It is important to note that this document includes a list of rights that each provision may encompass, it is not meant to be construed as an exhaustive list or definition of what each provision means. The rights are subject to legislative, judicial, and legal interpretation.

On November 7, 2017, an overwhelming majority of Ohio voters passed Marsy's Law in a record breaking 83% show of support. Marsy's Law grants Ohio's crime victims specific rights in the criminal justice process. Many of these rights already exist in Ohio statutes and evidence rules. However, Ohio's voters have made a clear statement that they want to ensure that Ohio's victims' rights are protected and enforced. In addition, in passing Marsy's Law, Ohio voters have prioritized victims' rights and the idea that these rights should be enforced no less vigorously than the rights of the accused. Consideration of victim dignity, privacy, and safety must be elevated in the criminal justice process. In addition, remedies are now explicitly available should victims' rights be violated.

One major change is that Marsy's Law clarifies that crime victims have standing to enforce their rights via motions and appellate review. Specifically, it states: "The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in the constitution or any other right afforded to the victim by law."

Marsy's Law reinforces the ability for victims to file motions to protect and enforce their rights. It does not give victims the ability to control the criminal case or appeal acquittals. Marsy's Law does not allow victims to sue criminal justice officials for rights violations.

Who is a Victim?

(D) The definition of "victim" is changed from the definition in ORC § 2930.



- a. Victim is now defined as the person against whom the criminal act is committed *or the person directly and proximately harmed by the criminal offense*. Currently, the definition of “victim” only includes victims of certain crimes who are identified as victims in a police report. Numerous Ohio courts have recognized the limitations of this definition, and have applied the more broad definition contained in Black’s Law Dictionary. For example, under Marsy’s Law, adult parents of a child victim could also be considered victims or persons in a vehicle who are injured as the result of a vehicular homicide could also be considered victims.
 - i. Impact on law enforcement
 1. With the expansion of “victim” from the previous ORC 2930 definition, more individuals will be entitled to victims’ rights protections.
 - ii. Impact on prosecutors
 1. With the expansion of “victim” from the previous ORC 2930 definition, more individuals will be entitled to victims’ rights protections.
 - iii. Impact on courts
 1. With the expansion of “victim” from the previous ORC 2930 definition, more individuals will be entitled to victims’ rights protections.
 - iv. Impact on post-conviction entities
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What are the Victim’s Rights?

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

1. The right to be informed, in writing, of Marsy’s Law rights.

- b. Several provisions of the Ohio Revised Code provide that victims have the right to be informed of victims’ rights in Ohio.
 - i. Impact on law enforcement
 1. Law enforcement will be required to inform victims of their rights. Pursuant to ORC 2930.04 and ORC 2930.05, this requirement already exists. However, it is now elevated to the constitution, emphasizing its importance.
 - ii. Impact on prosecutors



1. Prosecutors must inform victims of their rights. Pursuant to ORC 2930.06, this right already exists. It is now elevated to the constitution, emphasizing its importance.
 - iii. Impact on courts
 1. Courts must inform victims of their rights. Pursuant to ORC 2930.06, this right already exists. It is now elevated to the constitution, emphasizing its importance.
 - iv. Impact on post-conviction entities
 1. Post-conviction entities may be required to notify victims of the rights to be notified, present, and heard at post-conviction hearings, such as parole hearings.
2. **The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.**
 - i. Impact on law enforcement
 1. None foreseeable at this time.
 - ii. Impact on prosecutors
 1. Victims' attorneys will have standing to file motions, etc., to address victims' rights issues.
 2. Prosecutors may be asked to file motions, etc., to address victims' rights issues.
 - iii. Impact on courts
 1. Implementation language will provide guidance as to when trial and appellate courts shall hear and respond to victim motions.
 2. Victims' attorneys will have standing to file motions, etc., to address victims' rights issues.
 - iv. Impact on post-conviction entities
 1. Victims' attorneys will have standing to file motions, etc., to address victims' rights issues.
 2. Prosecutors, upon request, will be required to file motions, etc., to address victims' rights issues.
3. **The right to be treated with fairness and respect for the victim's safety, dignity, and privacy.**
 - a. The right to be treated with fairness, dignity, and respect already existed in Ohio's constitution. The right to privacy exists for all U.S. and Ohio citizens.
 - i. Impact on law enforcement



1. The rights to privacy and safety may include protections for victim identification information in police reports to ensure victim safety.
 2. Prioritizing service of protection orders.
 - ii. Impact on prosecutors
 1. The rights to privacy and safety may include protection of victim names and identification information during court proceedings.
 - iii. Impact on courts
 1. The rights to privacy and safety may include protection of victim names and identification information during court proceedings.
 - iv. Impact on post-conviction entities
 1. The rights to privacy and safety may include protection of victim names and identification information in post-conviction proceedings.
4. **The right, upon request, to reasonable and timely notice of all public proceedings and the right to be present at those proceedings.**
 - a. This right is triggered by a request from the victim. Upon that request, the victim must be notified of proceedings and must be allowed to attend all on the record proceedings in the case. The current best practice in many prosecutors' offices around the state is to notify victims automatically, regardless of request. It is hoped and expected that this practice will continue.
 - b. ORC § 2930.06, ORC § 2930.09, and Evidence Rule 615 have provided victims with these rights since the 1990s. Eight of Ohio's twelve district courts have upheld victims' rights to be present over defense objections.
 - i. Impact on law enforcement
 1. Under 2930.05, law enforcement must notify victims of arrest of offenders. Per implementing legislation, law enforcement may be required to notify victims of the date of arraignment and of the victim responsibility to call court to confirm, along with notification of arrest.
 - ii. Impact on prosecutors
 1. Prosecutors will be required, upon request, to notify victims of all public proceedings.
 2. Prosecutors may be asked to file motions on behalf of victims to protect victims' rights to be present in the courtroom.
 - iii. Impact on courts
 1. Courts should permit victim presence at all public proceedings, despite separation of witness orders. Courts may be responsible for notifying victims of initial appearances of defendants depending upon local procedures.
 - iv. Impact on post-conviction entities
 1. Post-conviction entities will be required, upon request, to notify victims of public hearings and to allow victims to be present. It is



anticipated that existing automatic notification provisions for F1-F3 offenses will remain in effect.

5. The right to be heard in public proceedings involving release, plea, sentencing, disposition, or parole, or in any proceeding that implicates a Marsy's Law right.

- a. ORC § 2930.13, § ORC 2930.14, and ORC § 2930.17, among others, currently provide victims with the right to give victim impact statements at sentencing and parole hearings. Marsy's Law expands the right to be heard to include other hearings such as release, including arraignment, and plea. The reasoning behind this is that the victim is often in a unique position to explain to the court the risk an offender poses upon release and to help the court understand the true impact of the crime before accepting a plea.
 - i. Impact on law enforcement
 1. Under 2930.05, law enforcement must notify victims of arrest of offenders. Per implementing legislation, law enforcement may be required to notify victims of the date of arraignment and of the victim responsibility to call court to confirm, along with notification of arrest.
 - ii. Impact on prosecutors
 1. Prosecutors may need to advise courts of victim presence and desire to address the court.
 - iii. Impact on courts
 1. Courts must make time to allow victims to be heard at the hearings listed above.
 2. Courts must be prepared to consider victim statements in making determinations about release, pleas, sentencing, or other requests for bond modifications.
 - iv. Impact on post-conviction entities
 1. Post-conviction entities must make time to allow victims to be heard at the hearings listed above.
 2. Post-conviction entities must be prepared to consider victim statements in making determinations about release, pleas, or sentencing.

6. The right to confer with the prosecutor, upon request.

- a. ORC § 2930.06 already provides victims with the right to confer with the prosecutor. However, the right is no longer limited by the statutory language "to the extent practicable."
 - i. Impact on law enforcement
 1. None foreseeable at this time.
 - ii. Impact on prosecutors



1. Prosecutors must inform victims of, and confer with victims regarding, the status of the case and matters that involve victims' rights.
 - iii. Impact on courts
 1. Courts may be required to confirm that prosecutors have kept victims informed and conferred with them, if requested.
 - iv. Impact on post-conviction entities
 1. None foreseeable at this time.
- 7. The right to proceedings free from unreasonable delay and a prompt conclusion of the case.**
 - a. Currently, ORC § 2930.08 provides victims the right to object to substantial delays in prosecution and to have those objections considered by the court. This provision essentially makes that guarantee enforceable.
 - i. Impact on law enforcement
 1. None foreseeable at this time.
 - ii. Impact on prosecutors
 1. Prosecutors may need to advise courts of victim presence and desire to address the court.
 2. Prosecutors may be asked to file motions on behalf of victims to protect victims' rights to object to unreasonable delay.
 3. Prosecutors may be required to inform courts of victims' positions as to delay.
 - iii. Impact on courts
 1. Courts must consider victim objections to delay in cases when determining whether to allow a continuance or delay.
 - iv. Impact on post-conviction entities
 1. None foreseeable at this time.
- 8. The right to refuse an interview, deposition, or other discovery request by an accused, except as provided by Article I, Section 10 of Ohio's constitution.**
 - a. This provision preserves the balance between Criminal Rule 16 and Criminal Rule 17(c). The United States Supreme Court (and the Ohio Supreme Court) have been very clear that criminal discovery and the mechanism to get information from third parties, like victims, in the criminal justice process are distinct. Criminal Rule 17(c) dictates that prosecutors and defendants must use subpoenas to get information from victims and other third parties. This provision prevents the defense from circumventing Rule 17(c) and seeking private information from victims through improper discovery requests.
 - i. Impact on law enforcement
 1. None foreseeable at this time.
 - ii. Impact on prosecutors



1. Prosecutors may be asked to file motions on behalf of victims to protect victims' right to privacy.
- iii. Impact on courts
 1. Courts will have to consider this new constitutional right when determining whether to allow a defendant access to victim information or records pursuant to subpoena.
- iv. Impact on post-conviction entities
 1. None foreseeable at this time.

9. The right to full and timely restitution from the offender.

- a. This provision makes restitution, which is currently discretionary, mandatory. Implementation language should include, but is not limited to: determination by preponderance of evidence standard, preservation of offender's assets, civil judgements, and prioritized order in which restitution is paid.
 - i. Impact on law enforcement
 1. Law enforcement should advise victims of the possibility of restitution and the types of evidence that supports an order of restitution.
 - ii. Impact on prosecutors
 1. Prosecutors must ensure that victims are aware of their right to restitution and should provide victims with the tools to seek restitution, such as guidance forms. Prosecutors should discuss the types of documentation needed to support a restitution order. Prosecutors may be required to advise courts when victims are seeking restitution, and should address restitution in plea agreements. Prosecutors should request the court to order restitution.
 2. Prosecutors may be asked to file motions on behalf of victims to protect victims' rights to restitution.
 - iii. Impact on courts
 1. Courts no longer have discretion regarding whether or not to order restitution. If proven, restitution orders are mandatory, but payment may still depend on the offender's ability to pay. See *Bearden v. Georgia*, 461 US 660 (1983).
 - iv. Impact on post-conviction entities
 1. Probation officers will be required to incorporate restitution information into pre-sentence investigations.

10. The right to reasonable protection from the accused or any person acting on behalf of the accused.

- a. There are many ORC sections that provide victims with protections from the accused, such as the sections on protection orders, witness intimidation, protection of identification information, etc. This provision is essentially a



summary of those pre-existing rights. It is a right to *reasonable* protection, so it will not pose a new and undue burden.

- i. Impact on law enforcement
 1. Law enforcement may be required to provide reasonable protections for victims who are threatened, harassed, or intimidated.
- ii. Impact on prosecutors
 1. Prosecutors should consider filing motions to revoke bond, additional charges, or motions to protect victim names or identification information when warranted by the facts of the case.
- iii. Impact on courts
 1. Courts should consider victim safety in arranging waiting areas to keep victims and offenders separate (including offender's friends, family, or supporters).
 2. Courts should be prepared to consider motions sanctioning defendants for threats to victim safety.
- iv. Impact on post-conviction entities
 1. Post-conviction entities must consider victim safety by keeping victims informed of the transfer, escape, or release of an inmate.

11. The right, upon request, to reasonable notice of escape or release of the accused.

- a. Victims of felony crimes in Ohio already have this right, and the Department of Rehabilitation and Correction and Department of Youth Services have an effective system and policies for complying with it. Marsy's Law does expand the definition of victim to include victims of misdemeanors. This means that jails who do not participate in the VINE service will be required to provide these notifications. While many jails already participate, some do not. All jails and prisons will now be required to provide notice, upon request of the victim.
 - i. Impact on law enforcement
 1. Local jails must notify victims of escape or release of locally incarcerated offenders.
 - ii. Impact on prosecutors
 1. For judicial release, prosecutors may be required to notify victims of upcoming hearings, upon request. Which entity will be responsible for this notification (court or prosecutor) may depend on implementing legislation.
 - iii. Impact on courts
 1. For judicial release, courts may be required to notify victims of upcoming hearings, upon request. Which entity will be responsible for this notification (court or prosecutor) may depend on implementing legislation.
 - iv. Impact on post-conviction entities



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1. Post-conviction entities will be required to provide notification, upon request, for any escape or release of an incarcerated offender.

Sections (C), (E), and (F) have no practical effect on criminal justice system officials, other than (C)'s guarantee that violations of Marsy's Law do not create a civil cause of action for damages, which is not a change from the previous constitutional mandate.