

Proposed Ohio Victim Rights and Restitution Act (version 6-27-13)

Drafted by the
Ohio Victim Witness Association
With amendments from the Ohio Crime Victim Rights
Collaboration

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Current Ohio law provides:

- Section 10a of the Ohio Constitution – all victims of crime have the right to “fairness, dignity, and respect,” and, as defined by law, “shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process.”
- Ohio Revised Code Section 2930 – rights to be informed, present, and heard, and other rights
- Evidence Rule 615 – right for victims to be present in court proceedings, even if a subpoenaed witness

Proposed Law Summary

- 1) Clarifications
 - a) Victim may give oral and written victim impact statement
 - b) Others harmed may submit victim impact statement
 - c) Victim Advocate & crime victim service organization
 - d) Victim Advocate may be victim’s representative
 - e) Victim shall be notified of possible delays
- 2) New Rights
 - a) Victim notified of hearing to seal or expunge record
 - b) Journal entry before release of defendant
- 3) Mandatory Restitution for ORC 2930 victims
 - a) Preservation of Assets
 - b) Determination of Restitution
 - c) Payment of Restitution
- 4) Victim standing to assert rights

#1: Clarifications (1)

- 1.a) Victim, not judge, chooses whether to give oral and/or written victim impact
- 1.b) Others harmed may submit victim impact statement
 - “any other person who was emotionally, physically, or financially harmed by the offense”
 - Intended for co-workers, neighbors, and relatives

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#1: Clarifications (2)

- 1.c) – amend and move from 2305.236 to 2930.01
- Victim Advocate = a person from a crime victim service organization who provides support and assistance for victims of crime during criminal and administrative proceedings and recovery efforts related to the crime
- Crime victim service organization = any non-profit organization organized and operated to provide services and assistance to victims of crime and / or non-profit organizations which directly contribute to such organizations

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#1: Clarifications (3)

- 1.d) Add clarification that “Victim Advocate may be victim’s representative” (2930.01 & .02)
- 1.e) Victim “shall” be notified of delays
 - Delete “to the extent practicable” and add “shall,” if victim has requested notice and has provided current contact info
 - Unless declined by the victim, victim shall receive notices even if victim appoints a representative

#2: New Rights

- 2.a) Court must notify prosecutor at least 60 days prior to a hearing to seal or expunge an adult or juvenile offender record, prosecutor must provide timely notice to requesting victims with current contact information, and victims have right to be heard at hearings and be notified of results.
- 2.b) Court must provide prompt notice prior to release to prosecutor of decision regarding judicial release from prison, jail, or juvenile from Ohio Dept. of Youth Services, and victims must be notified prior to release.
- 2.c) As part of ordering release, court shall send custodial agency copy of journal entry of decision

#3: Mandatory Restitution "maximize repayment, not guarantee it"

- 3.a) Preservation of Assets
 - Offender may be restrained from selling or giving away property to avoid restitution
- 3.b) Determination of Restitution
 - By preponderance of the evidence
 - Without regard to offenders ability to pay
 - Including any related economic losses
- 3.c) Payment of Restitution
 - Mandatory order of full amount to all parties
 - Restitution paid first, including prior orders
 - Paid immediately or shortest payment schedule

#3.a: Preservation of Assets

- Upon prosecutor's motion, judge may enter
 - Restraining order
 - Injunction
 - Execution of a performance bond
 - Any other action
- to preserve availability of property to satisfy an anticipated (by preponderance) restitution order
- without notice to defendant if necessary, but with prompt notice and hearing in 10 days to defendant
- Preservation Order is valid in 90 day increments

#3.b: Determination of Restitution

- By preponderance of the evidence standard
- For victims in ORC 2930 – violent misdemeanors, property and violent felonies, and equivalent juvenile violations
- Without regard to offenders ability to pay
- Includes any economic losses of victim by direct and proximate result of the crime

#3.c: Payment of Restitution (1)

- Full and timely payment to all parties
- All offender payments first to restitution, and in the following sequence:
 - Individuals
 - Nonprofit organizations
 - Business entities
 - Government entities
 - Prior cases with victim restitution orders
- Cannot suspend restitution or order community service in lieu of – unless victim requests alternative amount or form of payment (but judge does not have to follow victim requests)

#3.c: Payment of Restitution (2)

- Restitution evidence hearing if amount disputed
- Restitution to victim reduced by amount received from insurance or government, and paid to entity
- Order may be in lump sum, partial payments at specified intervals (in shortest time possible), or in-kind by return or replacement of property
- Court may use restraining order, performance bond, injunction, or other action to ensure payment
- Money owed by government entity, including tax refund, first to restitution

#3.c: Payment of Restitution (3)

- Restitution order not dischargeable in bankruptcy, or any other statutory or common-law proceeding for relief against creditors, except by federal law
- Notice of unclaimed restitution funds held by Clerk of Courts, Probation, or other entity must be provided to crime victim services program 60 days prior to release of funds so contact attempt can be made to victims with unclaimed funds
- Annually, court shall order unclaimed or unaccepted restitution money or property shall be transferred to Ohio Victim Compensation Fund or to a crime victim service organization

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#4:Victim Standing (1)

Victim's right to standing, enforcement, & appeal

- Victim, attorney, or other lawful representative, or prosecutor at victim's request, "has standing as a matter of right to assert the rights of the victim" ... "in any proceeding in any judicial or administrative tribunal having jurisdiction. The tribunal shall act promptly on a request to enforce the rights of the victim."

#4: Victim Standing (2)

Victim's right to standing, enforcement, & appeal

- Failure to provide a right "does not constitute grounds for declaring a mistrial or new trial or for setting aside a conviction."
- Failure to provide a victim's right can constitute grounds for setting aside a "sentence, adjudication, or disposition, or for granting post-conviction release to a defendant or an alleged juvenile offender."