

# Marsy's Law

## Crime Victim Rights

# Marsy's Law

- Constitutional Amendment effective February 5, 2018
- Creates expansions of victim's rights through an enforcement of those rights
- Most rights already were contained in Ohio Law
- Ohio Constitution Article I Sec. 10(a) enacted November 1994, amended by Marsy's Law
- R.C. Chapter 2930 enacted in 1994, amended in 1996 and 1999

Protects rights of crime victims, so must first look at definition of “crime” and “victim”

# Definition of “Crime”

## R.C. 2930.01

- **Felony**
- **Misdemeanors**
  - Negligent homicide**
  - Vehicular homicide**
  - Vehicular manslaughter**
  - Assault**
  - Aggravated menacing**
  - Menacing by stalking**
  - Menacing**
  - Sexual imposition**
  - Domestic violence**
  - OVI**
  - OVI Watercraft**

# Definition of “Crime”

## R.C. 2930.01

A motor vehicle accident to which **both** of the following apply:

- Motor vehicle accident is caused by a violation of a provision of the Revised Code that is a **misdemeanor of the first degree or higher.**
- As a result of the motor vehicle accident, the victim receives injuries for which the victim receives medical treatment either at the scene of the accident by emergency medical services personnel or at a hospital, ambulatory care facility, physician's office, specialist's office, or other medical care facility.

# Definition of “Victim” Expanded

- Person who is identified as a “victim” of a crime in a police report or complaint R.C. 2930.01
- Person who receives injuries as a result of a vehicle crash proximately caused by OVI, Watercraft OVI R.C. 2930.01
- Person “against whom a criminal act was committed or the person directly and proximately harmed by the criminal offense” Art. I Sec. 10a(D) – Marsy’s Law

# Victim's Right to be Informed in Writing of Rights

- Requirement to provide **written information** concerning victim rights
- Prior law allowed notice to be either oral or written R.C. 2930.06
- Requirement is directed to law enforcement and prosecutor
- Court only intervenes if prosecutor fails to properly inform

# Victim May Assert Rights through Filings with The Court

- Motions may be filed on behalf of victims by
  1. Victim or victim's attorney
  2. Victim Representative
  3. Prosecutor
- Victim may appeal any denial for relief – Appeal must be “promptly” decided

NOTE: Implementation statutes to be enacted at a future date will be providing guidance regarding procedures for these motions

# **Right To Be Treated With Fairness And Respect For Victim's Safety, Dignity And Privacy**

- R.C. 2930.06 sets forth a procedure for the prosecutor to move for removal of certain identifiers from court files
- If ordered by the court, the following must be removed from the court file:
  1. Victim's address, telephone number, place of employment
  2. Other identifying information
- Other enacting legislation may create additional procedures

# **Right Upon Reasonable Request to Timely Notice of All Public Proceedings**

R.C. 2930.06 already requires prosecutor to notify

# Right to be Heard at Public Proceedings

## Expands right to be heard to include arraignment, plea, release

- R.C. 2929.21 requires a sentencing court to permit victim presence at proceedings and to the sentencing court shall consider
  - 1.the impact of the offense upon the victim and
  - 2.whether restitution to the victim of the offense, the public, or the victim and the public is warranted.
- R.C. 2929.22 (D)
  - (1)A sentencing court shall consider any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. This division does not create any rights to notice other than those rights authorized by Chapter 2930. of the Revised Code.
  - (2) At the time of sentencing for a misdemeanor or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code

# Right to Prompt Conclusion of the Case

- R.C. 2930.08 provides victims the right to object to “substantial” delays and to have their objections considered by the court
- Courts must consider victim’s position when determining whether to grant a continuance
- Prosecutor should inform court regarding any victim position on a request for delay

# Right to Refuse to Provide Discovery

- Prevents defense counsel from obtaining victim information through discovery requests that do not conform with Criminal Rule 17(C).
- May require additional court hearings on discovery issues

# Right to Full and Timely Restitution

- Request for restitution must be considered by the court
- If Defendant objects to the amount of restitution sought by victim, court is to conduct a hearing as set forth in R.C. 2929.28(A)...

“the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution.

If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.”

# **Restitution is A Civil Judgment**

## **R.C. 2929.28(E)**

- A financial sanction of restitution imposed pursuant to division (A)(1) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (E)(1) of this section, through execution as described in division (E)(2) of this section, or through an order as described in division (E)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor.

# Collection of Restitution- Civil Proceedings

## R.C. 2929.28(E)

- Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do **any** of the following:
- (1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;
- (2) Obtain execution of the judgment or order through any available procedure, including any of the procedures identified in divisions (E) (1) and (2) of section 2929.18 of the Revised Code.
- (3) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

# **Failure to Pay Restitution Criminal Sanctions**

- Civil remedies do not preclude enforcement of criminal sentence  
R.C. 2929.28(F)
- All payments of restitution must be credited
- Criminal enforcement must include a hearing and finding of ability to pay and willful failure to pay