

Crime Victims' Rights in Ohio Post Marsy's Law

{ The Legal Landscape for Ohio's Victims



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{ For more information about this national rights enforcement initiative, visit the [RISE Project website](#).



RISE is a national project of the National Crime Victim Law Institute made possible with funding from the Office for Victims of Crime, U.S. Department of Justice. RISE aims to provide crime victims with access to no cost legal services to aid enforcement of their rights. Six legal clinics are funded through RISE.

{ For more information about this national rights enforcement initiative, visit the RISE Project website: https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/RISE/overview/.



- ⌘ Please ask questions using the Q&A option. Our team will answer as many of them live as possible.
- ⌘ Feel free to use the chat feature to talk with other participants. Be sure to change the chat option from "All Panelists" to "All Panelists and Attendees"
- ⌘ We cannot answer questions in the chat, so use the Q&A to ensure you get an answer.

Q&A and Chat

- ⌘ CLE: We will submit these for credit if you provided your license number during registration.
- ⌘ CEU: We will provide a certificate to you after the training, if you requested one.
- ⌘ Certificates: All participants who requested a certificate will be provided one after the training.

CLEs and CEUs

OCVJC uses some terms (such as “victim” rather than “survivor”) because these terms are legal terms of art that have specific meaning in both state and federal law.

A Note on Language

Test your victims’ rights skills and be the envy of your friends and neighbors!



Pre-Test

- ⌘ Terminology
- ⌘ Access to Justice
- ⌘ Marsy’s Law History

Introduction

⌘ A lawyer should be mindful of deficiencies in the administration of justice * * *. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel * * *.
⌘ Ohio Rules of Prof. Cond. Preamble ¶ 6

Access to Justice for Crime Victims

⌘ What is Marsy's Law?
⌘ A constitutional amendment passed with 83% voter support
⌘ In honor of Marsy Nicholas

Changes to Victims' Rights in Ohio

Who is a victim?

Definitions: Ohio Const. Art. I, § 10a(D)

Marsy's Law expands the legal definition of victim to protect the person against whom the criminal offense or delinquent act was committed and/or the person directly and proximately harmed by the criminal offense or delinquent act.

Definitions: Ohio Const. Art. I, § 10a(D)

- ⌘ Who is “directly and proximately harmed”?
- ⌘ Parents of child victims
- ⌘ Families of homicide victims
- ⌘ Others?

Definitions: Ohio Const. Art. I, § 10a(D)



Poll: Who is a victim?

- ⌘ How does a victim exercise rights?
- ⌘ Pro se
- ⌘ Through counsel
- ⌘ Through representative (being mindful of prohibition on unauthorized practice of law)
- ⌘ Through the prosecutor, upon request

Right to Enforcement: Ohio Const. Art. I, § 10a(B)

What are victims' rights?

Ohio Const. Art. I, § 10a

- ⌘ Ohio's state and federal crime victims have rights at all phases of the criminal justice process, including:
 - ⌘ Hospital
 - ⌘ Investigation
 - ⌘ Prosecution
 - ⌘ Post-Conviction

Phases of the Process

- ⌘ Constitutions
- ⌘ Statutory Schemes
- ⌘ Case Law
- ⌘ Administrative Regulations
- ⌘ Court Rules
- ⌘ Department of Health Protocols

Select Sources of Legal Rights

- ⌘ The previous 1994 constitutional amendment guaranteed victims the right to be treated with "fairness, dignity, and respect."
 - ⌘ What does this mean?

Previous Ohio Const. Art. I, § 10a

- ⌘ The starting point – a base line understanding of the neurobiology of trauma
 - ⌘ <https://nij.gov/multimedia/presenter/presenter-campbell/Pages/welcome.aspx>

Ohio Const. Art. I, § 10a

The previous constitutional amendment explicitly denied victims the ability to appeal rights violations.

Previous Ohio Const. Art. I, § 10a

⌘ Marsy's Law changed the legal landscape for victims:

- ⌘ The due process rights to fairness and respect for victim safety, dignity, and privacy are preserved
- ⌘ Explicit standing, ability to be represented by counsel, and right to appellate review are created.

Ohio Const. Art. I, § 10a

The Constitution provides victims the right to "petition" the appellate courts for review.

To date, only the 8th District has provided any guidance on the meaning of "petition." The 8th District has instructed victims to seek appellate review through complaints for writs. *See State v. Hughes*, 8th Dist. No. 107697, 2019-Ohio-1000.

Appellate Review: Practice Pointer

Victims' Rights
 { State court rights

- ⌘ Will I be safe in the process?
- ⌘ Will I have to give up my privacy to engage in the process?
- ⌘ Will I lose my job if I try to engage in the process and protect my rights?

Primary Victim Concerns

Hospital

{ Rights of domestic violence and sex crimes victims



- ⌘ Victims of certain crimes have rights and protections as soon as they visit the hospital.

⌘ These crimes include:

- ⌘ Sex crimes
- ⌘ Domestic violence
- ⌘ Felony level assaults

Department of Health Protocols

Sexual Assault

Persons who are Deaf or hard of hearing and persons who are non-English speakers or have limited English proficiency are entitled to interpreters at the hospital.

Interpreters: Ohio Department of Health Sexual Assault Protocols



Poll: Which hospitals must provide SAFE kit collection and exams?

- ⌘ Every hospital that has emergency medical services must provide a medical professional to complete an evidence collection kit (rape kit) upon request of the victim of a sex crime or request of law enforcement with consent of the victim.
 - ⌘ SANE/SAFE nurse or ER doctor

SAFE Exams: RC 2907.29

- ⌘ With victim consent:
 - ⌘ Kits should be collected from children age 15 and younger if the assault was within 72 hours.
 - ⌘ Kits should be collected from adults and adolescents age 16 and older if the assault was within 96 hours.

Timing: Ohio Department of Health Sexual Assault Protocols

Adults (18 years old and older) can submit anonymous rape kits.

Anonymity: Ohio Department of Health Sexual Assault Protocols

- ⊗ Minor sex crimes victims can consent to collection of a kit.
- ⊗ Parents of the minor are notified after the exam unless law enforcement instructs the hospital otherwise.
- ⊗ Parents cannot force minors to submit to collection of kits.

Minors: Ohio Department of Health Sexual Assault Protocols

Victims of sexual assaults can also request and receive testing if they suspect the assault was drug facilitated. A DFSA kit will not automatically be collected and tested in some jurisdictions.

Drug Facilitated Assaults: Ohio Department of Health Sexual Assault Protocols

- ⊗ Victims of sexual assault cannot be charged for the collection of evidence via a rape kit or the administration of STI antibiotics if part of the exam, including the 28 day cycle of HIV PEP.
- ⊗ However, victims may be charged for:
 - ⊗ Some medications
 - ⊗ ER fees
 - ⊗ Treatment for injuries
 - ⊗ Emergency contraception
 - ⊗ Toxicology/drug testing

Financial Costs: RC 2907.28

- ⌘ Reporting the crime to law enforcement is NOT a prerequisite to receiving treatment or having a rape kit collected.
- ⌘ However, hospitals are mandated reporters of child abuse and also of felony level assaults.
- ⌘ Doctor-patient privilege may apply depending on treatment provider.

Reporting Options: Ohio Department of Health Sexual Assault Protocols

Victims of sexual offenses should only be interviewed by crisis intervention trained officers, if reasonably available.

Law Enforcement Intervention: RC 2907.30



Poll: When can a victim be polygraphed?

Law enforcement and prosecutors cannot request or require a victim of a sex crime to undergo a polygraph examination as a condition of beginning or continuing an investigation.

Polygraph: RC 2907.10(A)

Domestic Violence

Hospitals must follow the Department of Health's Domestic Violence Protocol when domestic violence is suspected.

Hospital Intakes: Fairness and Respect for Safety, Dignity, and Privacy

If medical personnel believe victim injuries are the result of domestic violence, this suspicion must be noted in the patient's medical records.

Medical Records: RC 2921.22(F)

Investigation

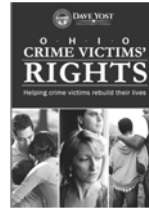
{ Information and Protection



Marsy's Law provides victims with the right to reasonable protection from the accused and those acting on behalf of the accused.

Right to Protection: Ohio Const. Art. I, § 10a(A)(4)

At initial contact with investigating law enforcement agency, victims are entitled to written notice* of:



- ☒ Explanation of rights
- ☒ Info about victim services available
- ☒ Info about the reparations program
- ☒ Info about protection/protective orders
- ☒ As soon as practicable, name/phone number of lead investigator and prosecutor

***Requirements can be met by providing AG's pamphlet.**

Right to be Informed: RC 2930.04

Victims are entitled to written notice of all rights provided by Marsy's Law.

Right to be Informed: Ohio Const. Art. I, § 10a(A)(10)

- Within reasonable time after arrest, a victim has a right to notice of:
- ☒ Arrest and name of the defendant or juvenile offender
 - ☒ Whether offender is eligible for pretrial release
 - ☒ Right to call agency to determine if release is pending

Right to be Informed: RC 2930.05

- ⊗ Marsy's Law provides victims the right to be notified of, present for, and heard at arraignment.
- ⊗ Pending legislation would mandate that police inform victims of arraignment information.

Right to be Informed: Legislation
<https://www.ocvjc.org/marsys-law>

Prosecution

{ Rights to be Protected, Informed, Present, and Heard



- ⊗ Victims cannot be fired or punished at work for (1) participating in the preparation of the case at the prosecutor's request or (2) attending a hearing pursuant to a subpoena to protect the victim's interests.
- ⊗ Employers who violate this provision can be held in contempt.

Right to Participate: RC 2930.18,
2945.451

Pending legislation will provide victims employment protection when they attend court to enforce their rights, even if they are not subpoenaed to attend.

Right to Participate: Legislation



Poll: Who can act as a victim's representative?

- ⌘ Victims can choose a representative to exercise all rights in RC 2930.
- ⌘ Representatives can either:
 - ⌘ Exercise rights instead of victims OR
 - ⌘ Exercise rights along with victims
 - ⌘ Offenders cannot be victim representatives

Right to Representative: RC 2930.02

Victims with advocates filed police reports 59% of the time compared to 41% without advocates.

Law enforcement told victims without advocates that the case was not serious enough to pursue 57% of the time, compared to 29% of the time with advocates.

Victims without advocates reported self-blame, guilt, depression, and general negative feelings toward themselves approximately two times as much as victims with advocates.

Rebecca Campbell (2006), *Rape Survivors' Experiences with the Legal and Medical Systems: Do Rape Victims Advocates Make a Difference?* Violence Against Women, Vol. 12, No. 1, 30-45

Facts About Advocacy

- ⌘ To date in Ohio, information victims share with advocates is not privileged.*
 - ⌘ Social workers or counselors acting in that capacity have privilege (RC 2317.02(G))
- ⌘ In fact, system based advocates must share exculpatory evidence with prosecutors because prosecutors have an ethical duty to turn over exculpatory evidence to the defendant.

Privilege Concerns

- ⊗ The prosecutor must inform the victim of:
 - ⊗ The name of the defendant
 - ⊗ The case number
 - ⊗ Procedural steps in the case
 - ⊗ What to do if the victim is threatened
 - ⊗ Contact information of prosecutor
 - ⊗ Summary of victims' rights
 - ⊗ THE FACT THAT SOME RIGHTS MUST BE REQUESTED IN ORDER TO BE EXERCISED

Right to be Informed: RC 2930.06

"In sum, this victim enjoys the rights granted under the Victims' Bill of Rights. Those rights include the right to have the state use reasonable efforts to inform her that she was constitutionally entitled to request notice of and to participate in post-conviction release proceedings. The state did not meet that obligation. Therefore, it may not use this victim's failure to request notice as an excuse for denying her participation in the hearing held on May 5. Because the victim is entitled to and did not receive the notice, she is entitled to have the release order set aside and to have a new hearing ordered."

Right to be Informed: State ex rel. Hance v. Arizona Bd. of Pardons & Paroles, 875 P2d 824, 832 (Ariz. Ct. App. 1993)

Marsy's Law provides victims the right to reasonable and timely notice of all public proceedings, upon request.

Right to Notice: Ohio Const. Art. I, § 10a(A)(2) & RC 2930.06

⊗ Per RC 2930.06:

⊗ If the victim requests notice, prosecutors must provide notice of:



- ⊗ Date, time, and place of proceedings
- ⊗ Changes in date, time, and place of proceedings

Right to Notice: Ohio Const. Art. I, § 10a(A)(2) & RC 2930.06

If a victim is not receiving notifications of hearings, a victim, victim's advocate, or victim's attorney should send a letter to the prosecutor formally requesting notice.

Right to Notice: Practice Pointer

Per Marsy's Law, victims have the right to confer with the prosecutor, upon request.

Right to Confer: Ohio Const. Art. I, § 10a(A)(9) & RC 2930.06

- ⌘ Per RC 2930.06, prosecutors must confer:
 - ⌘ Before dismissing or amending the indictment
 - ⌘ Before agreeing to a plea
 - ⌘ Before trial or adjudicatory hearing
 - ⌘ Before pre-trial diversion is granted
- ⌘ If the court is notified that the prosecutor failed to confer, the court will note the failure to confer on the record and the reasons for it.

Right to Confer: Ohio Const. Art. I, § 10a(A)(9) & RC 2930.06

Pending legislation would mandate that courts inquire whether prosecutors have informed victims of the nature of proceedings and conferred appropriately.

Right to Confer: Legislation

Marsy's Law provides that victims have the right to be present at any public proceeding.

Right to be Present: Ohio Const. Art. I, § 10a(A)(2)

Victims have the right to be present at any stage of the criminal proceeding conducted on the record (except grand jury) when defendants have the right to be present unless the victim's presence interferes with the defendant's right to a fair trial.

Right to be Present: RC 2930.09

⊗ Evidence Rule 615:

⊗ Makes an exception to Separation of Witnesses for victims as authorized by statute and defined by constitution.

Right to be Present: Evid. R. 615(b)(4)

"We hold that for a defendant to show that a victim's presence would result in an unfair trial, she must present particularized evidence that the victim's testimony will be so affected by the victim's presence during the testimony of other witnesses that her right to a fair trial would be violated. General assertions that it is possible are insufficient." *State v. Malcy*, 1st Dist. Hamilton No. C-120599, 2013-Ohio-3452, ¶ 1.

Right to be Present: Case Law

⌘ Appellate court cases on right to be present:

⌘ *State v. Maley*, 1st Dist. Hamilton No. C-120599, 2013-Ohio-3452, ¶ 1; *State v. Hines*, 3d Dist. Marion No. 9-05-13, 2005-Ohio-6696, ¶ 20; *State v. Pickett*, 4th Dist. Athens No. 15CA13, 2016-Ohio-4593, ¶ 19; *State v. Klusty*, 5th Dist. Delaware No. 14 CAA 07 0040, 2015-Ohio-2843, ¶ 32; *State v. Zientek*, 6th Dist. Sandusky No. S-12-032, 2013-Ohio-4836, ¶ 16; *State v. Board*, 8th Dist. Cuyahoga No. 83832, 2004-Ohio-5215, ¶ 10; *State v. Ricco*, 11th Dist. Lake No. 2008-L-169, 2009-Ohio-5894, ¶ 27; *State v. Marshall*, 12th Dist. Butler No. CA2008-03-093, 2009-Ohio-2197, ¶ 44.

Right to be Present: Case Law

Pro se victims, victims' attorneys, or prosecutors can, and should, assert victims' rights to be present in pre-trial proceedings so as to avoid delaying trial. The right to be present can be asserted via request or motion to the court.

Right to be Present: Practice Pointer



Poll: When can a victim be heard?

Marsy's Law provides victims with the right to be heard in any public proceeding involving release, plea, sentencing, disposition, parole, OR any time a victim's right is implicated.

Right to be Heard: Ohio Const. Art. I, § 10a(A)(3)

Pro se victims, victims' attorneys, or prosecutors should assert victims' rights to be heard in a pre-trial motion to make the court aware of the victim's desire to exercise this right.

Right to be Heard: Practice Pointer

Many victims may be eligible for a criminal protection order for the duration of the criminal case.

Right to Safety: Criminal Protection Orders (TPOs)



Marsy's Law provides victims with the right to proceedings free from unreasonable delay and a prompt conclusion of the case.

Delay: Ohio Const. Art. I, § 10a(A)(8) & RC 2930.08

⌘ Per RC 2930.08:

- ⌘ Victims who have requested notice of scheduled proceedings may object to substantial delays in the case.
- ⌘ Victims should be notified of the delay and given the opportunity to object and have this objection considered by the court.

Delay: Ohio Const. Art. I, § 10a(A)(8) & RC 2930.08

Pending legislation would require courts to consider victim objections to delay when deciding whether to grant continuances.

Delay: Legislation

If a trial court allows excessive and unreasonable delays over a victim's objection, pro se victims, victims' attorneys, or prosecutors can file an appellate action called a complaint for an extraordinary writ asking the appeals court to instruct the trial court to proceed.

Delay: Practice Pointer

⌘ Except as authorized by Article I, Section 10 of Ohio's Constitution, Marsy's Law allows victims to refuse:

- ⌘ Defense interview requests
- ⌘ Defense deposition requests, and
- ⌘ Defense discovery requests

Right to Privacy: Ohio Const. Art. I, § 10a(A)(6)

If a defendant impermissibly seeks a court order forcing a victim to participate in an interview or deposition, pro se victims, victims' attorneys, or prosecutors should file a memorandum in opposition.

If a defendant seeks private, confidential, or privileged victim information through a R. 16 motion or R. 17 subpoena, pro se victims, victims' attorneys, or prosecutors should file a brief in opposition or motion to quash any subpoena seeking this information.

Right to Privacy: Practice Pointer

- ⊗ If a prosecutor reasonably believes that a victim may be subjected to threats or violence, the prosecutor can file a motion requesting that the victim, victim's family, and victim's representative home and work addresses not be disclosed.
- ⊗ Once the motion is filed, the judge must conduct an in-chambers hearing, the transcript of which is sealed. The judge can order that no address information of victim be disclosed.

Right to Privacy: RC 2930.07

Pro se victims, victims' attorneys, or prosecutors can request bond reconsideration for offenders who have been released and are threatening, harassing, or intimidating victims.

Right to Safety: Ohio Const. Art. I, 10a;
RC 2930.05

- ⊗ The Revised Code provides special protections to:
 - ⊗ certain child-victims under the age of 13
 - ⊗ human trafficking victims under the age of 16*
 - ⊗ developmentally disabled victims
- ⊗ Prosecutors can file motions to allow these victims to testify via videotaped deposition or closed circuit testimony.
 - ⊗ RC 2937.11; 2945.481, 2945.482, 2945.49, 2945.491, 2152.81, 2152.811
 - ⊗ * Applies for preliminary hearings only

Rights to Privacy and Safety

Pro se victims, victims' attorneys, or prosecutors can file motions asking the court to allow the previously discussed victims to testify via closed circuit TV or videotaped deposition.

Rights to Privacy and Safety: Practice
Pointer

Victims and offenders should be given separate waiting areas in the courthouse.

Right to Safety: RC 2930.10



Poll: Does the evidence come in?

- ⌘ Rape shield dictates that evidence of the previous sexual history of the victim is only admissible if it relates to:
 - ⌘ Sexual history with the defendant
 - ⌘ Origin of semen, pregnancy, or disease
 - ⌘ AND evidence is material to a fact at issue and more probative than prejudicial

Right to Privacy: RC 2907.02, 2907.05

Pro se victims, prosecutors, or victims' attorneys can file pre-trial motions to preempt any defense attempt to introduce rape shield materials, but should also be prepared to argue the issue if it is originally raised by the defense.

Rape Shield: Practice Pointer



Poll: What about juvenile courts?

Juvenile courts must comply with Marsy's Law and RC 2930.

Applicability to Juvenile Court: RC 2151.35

- ⊗ Upon request, victims must be notified of:
 - ⊗ Acquittal or conviction
 - ⊗ Contact info for probation officer conducting pre-sentence investigation (PSI)
 - ⊗ Sentence imposed and subsequent modifications
 - ⊗ Right to make victim impact statement (VIS)
 - ⊗ VIS may be disclosed to defendant

Right to Notice: RC 2930.12

- ⊗ Victims may submit a written impact statement as part of a pre-sentence investigation.
 - ⊗ VIS should contain information about the physical, psychological, and financial impact on the victim.
 - ⊗ VIS can contain the restitution request with supporting documentation and victim's sentencing recommendation.

Right to be Heard: Pre-Sentence Investigations



- ⌘ Victims have the right to make an oral or written (or both) impact statement prior to sentencing.
- ⌘ VIS are confidential, but defendants can view copies of written VIS.
- ⌘ If a victim brings up new material info, the court must continue the hearing to give the defendant the chance to respond.
- ⌘ Courts may allow a victim's family members to give impact statements as well.

Right to be Heard: Ohio Const. Art. I, § 10a(A)(3) & RC 2930.14

- ⌘ Marsy's Law makes restitution mandatory so long as the victim can prove their losses.
- ⌘ In order for restitution to be awarded, losses must be proven.
 - ⌘ Alert victims to save receipts, invoices, estimates, medical bills, etc.
 - ⌘ Losses may also be proven by testimony

Right to Restitution: Ohio Const. Art. I, § 10a(A)(7)

- ⌘ Pending legislation provides:
 - ⌘ Restitution can be prospective as well as retrospective.
 - ⌘ Victims can enforce orders with garnishments, liens, and other options.
 - ⌘ Victims can recover economic losses in various categories.

Right to Restitution: Legislation

Pro se victims, victims' attorneys, or prosecutors should consider filing sentencing memorandums prior to sentencing that contain competent, credible evidence to support a restitution order. Competent, credible evidence can include receipts, invoices, estimates, and testimony.

Right to Restitution: Practice Pointer

- ⊗ Losses not covered by restitution may be eligible for reimbursement through victims' compensation from the Attorney General's Office.
- ⊗ Saving receipts, etc. is also crucial to obtain comp.
 - ⌘ Comp can be awarded to victims of violent felony crimes and sex crimes who report the crime and cooperate with law enforcement.
 - ⌘ Other requirements apply.

Victims' Compensation

Victims should be encouraged to apply for compensation (if eligible) early on. Compensation applications only require a police report being filed, and do not require a criminal conviction.

If victims receive subsequent restitution, they may be required to repay the compensation fund.

Victims' Compensation: Practice Pointer

- ⊗ Victim property must be promptly returned.
 - ⌘ Police can photograph property to facilitate this.
 - ⌘ Police may retain property if prosecutors certify it is needed or if the defense wins a motion to retain it.



Right to Return of Property: RC 2930.11

Pro se victims, victims' attorneys, or prosecutors should file motions seeking return of victim property if the victim's attempts to obtain return of their property is unsuccessful.

Right to Return of Property: Practice Pointer

- ⌘ Upon request, a victim is entitled to notice of appeal, including:
 - ⌘ Explanation of appellate process
 - ⌘ Whether defendant will be released on bail
 - ⌘ Time and place of appellate proceedings
 - ⌘ Result of appeal

Right to Notice: Ohio Const. Art. I, § 10a(A)(2) & RC 2930.15

Post-Conviction

{ Rights to be Informed and Heard



Under Marsy's Law, upon request, victims are entitled to notice of any release or escape of the offender.

Right to Notice: Ohio Const. Art. I, § 10a(A)(5)

- ⌘ Upon request, prosecutors must notify victims of:
 - ⌘ Incarceration and release date of offenders
 - ⌘ Information on Ohio Department of Rehabilitation and Correction (DRC) Victims' Services
 - ⌘ Hearings on judicial release

Right to Notice: RC 2930.16

- ⌘ Victims of violent felony offenses of the 1st, 2nd, or 3rd degree will automatically receive the following notifications from DRC*:
 - ⌘ Notification of pardon or commutation
 - ⌘ Parole, **including an opportunity to attend parole board hearing and make a statement prior to parole**
 - ⌘ Transfer to transitional control
 - ⌘ Escape, Recapture, and Death
 - ⌘ *Other victims MUST REQUEST these

Right to Notice: RC 2930.16

Advocates or prosecutors should talk to victims about VINE (Victim Information and Notification Everyday—vinelink.com) as a means to track incarcerated offenders.



Right to Safety: VINE

- ⌘ Prosecutors represent the State of Ohio (or City of Columbus, for example).
- ⌘ However, many victims believe that prosecutors are victims' attorneys who owe them ethical obligations.

Issues in Professional Conduct

In the course of representing a client a lawyer shall not *knowingly* do either of the following:

- (a) make a false statement of material fact or law to a third person;
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an *illegal* or *fraudulent* act by a client.

Prof. Cond. Rule 4.1

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer *knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Prof. Cond. Rule 4.2

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer *knows* or *reasonably should know* that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make *reasonable* efforts to correct the misunderstanding.

Prof. Cond. Rule 4.3

(a) In representing a client, a lawyer shall not use means that have no *substantial* purpose other than to embarrass, harass, delay, or burden a third person, or * * * that violate the legal rights of such a person.

Prof. Cond. Rule 4.4

Victims' Rights
 { Federal court rights

Federal Rights (CVRA, MVRA, TVPA)

- ⌘ Protection
- ⌘ Information
- ⌘ Be present
- ⌘ Be heard
- ⌘ Confer
- ⌘ Proceedings free from unreasonable delay
- ⌘ Fairness, dignity, respect, privacy
- ⌘ Full and timely restitution as provided by law

CVRA and Beyond

- ⌘ Victims have the right to retained counsel.
- ⌘ Rights under the CVRA are enforceable by the filing of a complaint for a writ of mandamus.
- ⌘ Failure to confer on pleas may result in a motion to reopen the plea or sentence.

CVRA

- ⌘ Federal law also provides victims with supportive services to encourage them to exercise their rights, such as:
 - ⌘ Assistance with child care
 - ⌘ Assistance with parking and transportation
 - ⌘ Consideration of convenience to victim when selecting forum

US Attorney General Guidelines; Crim.
R. 18

Special Topics in Victims' Rights

{ Provide a Continuity of Care

- ⌘ The Colorado Supreme Court used the 4th Amendment to hold that a trial court does not have the ability to order that a criminal defendant may gain access to a victim's house, even if it is the scene of a crime.

⌘ *People ex rel. E.G.*, 2016 CO 19

4th Amendment



Poll: Protection orders: which is better?

- ⌘ Juvenile CPO
 - ⌘ Offender is juvenile and crime is DV, sexually oriented offense, menacing by stalking
- ⌘ CSSOOPO
 - ⌘ Victims of menacing by stalking or sexually oriented offenses
- ⌘ CPO
 - ⌘ Victims of domestic violence or dating violence

Civil Protection Orders

- ⌘ Protection order caveat
 - ⌘ Criminal protection orders are "cancelled out" by civil protection orders.
 - ⌘ Some jurisdictions interpret this provision to mean that once a crime victim gets an ex parte order, the criminal protection order no longer applies.

Civil Protection Orders

- ⌘ In addition to criminal investigations and prosecutions, sexual assaults that occurred on campus* (primary, secondary, college) may be subject to Title IX investigations.
- ⌘ Title IX has many requirements and is independent of the criminal investigation.
- ⌘ OCVJC can represent victims in Title IX matters.
- ⌘ New guidance potentially makes it more important than ever to assist victims.
- ⌘ *Off campus assaults may also implicate Title IX if victim and offender are both students.

Campus Sexual Assault: Title IX

- ⌘ The Americans with Disabilities Act applies to courthouses, prosecutors' offices, and police departments.

Victims with Disabilities

- ⌘ The T-Visa was designed to protect victims of human trafficking and assist law enforcement in investigations.
- ⌘ Requirements:
 - ⌘ Victim of severe form of human trafficking
 - ⌘ Inside the United States (or certain territories) due to trafficking
 - ⌘ Comply with reasonable law enforcement request to assist in investigation/prosecution
 - ⌘ Show extreme hardship if forced to leave U.S.
 - ⌘ Be admissible or file a waiver for admissibility (no legal barrier to entering U.S.)
- ⌘ Derivatives:
 - ⌘ May apply for spouse and children if over 21
 - ⌘ May apply for spouse, children, parents, and unmarried siblings if under 21

Immigrant Victims: T-Visa

- ⌘ The U-Visa protects victims of certain crimes who have suffered mental or physical abuse.
- ⌘ Requirements:
 - ⌘ Victim of a qualifying criminal activity
 - ⌘ Suffered significant mental or physical abuse as a result of the victimization
 - ⌘ Have information about the crime to communicate to law enforcement
 - ⌘ Help law enforcement in the investigation or prosecution of the crime
 - ⌘ Crime occurred in the U.S. or violated U.S. laws
 - ⌘ Admissible or eligible for a waiver (no legal barrier to entering the U.S.)

Immigrant Victims: U-Visa

- ⌘ Allows battered spouses to petition for legal status without their U.S. Citizen or Lawful Permanent Resident abuser.
- ⌘ Requirements:
 - ⌘ Spouse or child of LPR or USC
 - ⌘ Eligible for adjustment based on relationship
 - ⌘ Current or past residence in the U.S. with the abuser
 - ⌘ Have been battered or suffered extreme cruelty
 - ⌘ Entered relationship with abuser in good faith
 - ⌘ Have good moral character
 - ⌘ Would suffer extreme hardship if deported

Immigrant Victims: VAWA Self-Petition

OCVJC Services

{ We're here to help you help victims

- ⌘ Ohio Crime Victim Justice Center is a statewide 501(c)(3) nonprofit organization founded to help ensure that the constitutional and statutory rights of Ohio's state and federal victims of crime are upheld throughout the criminal justice process.
 - ⌘ Direct representation
 - ⌘ Training
 - ⌘ Legal advice and assistance to advocates and others in the criminal justice process
 - ⌘ Victims' Rights Toolkit
 - ⌘ Referrals

What We Do



victimsrightstoolkit.org

- ✎ OCVJC works with advocates and other victims' service organizations to provide a continuum of care to victims.
- ✎ Victims can seek help from OCVJC by submitting a Request for Assistance ("RFA") on OCVJC's website (ocvjc.org).
- ✎ The RFA is privileged and any victim who submits one becomes a potential client.
- ✎ OCVJC prefers that victims fill out the RFA directly to maintain privilege and protect victims from attorneys who would seek to challenge it.

OCVJC Intake Process



Post-Test and Anonymous Evaluation



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