

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	Supreme Court Case No.
)	2020-1392
Plaintiff/Appellant)	
)	On Appeal from the Colum-
)	biana County Court of
-vs-)	Appeals, Seventh Appel-
)	late District
)	
JOHN D. YERKEY)	
)	Court of Appeals Case No.
Defendant/Appellee)	19 CO 44

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ARGUMENT

APPELLANT'S PROPOSITION OF LAW NO. 1

Victims are constitutionally entitled to full and timely restitution, including restitution for losses victims incur throughout the prosecution of the criminal offense.

The issue before this Court is whether an Ohio victim is entitled to restitution in connection with the prosecution of the offense or only for losses from the actual commission of the criminal conduct.

The Seventh District Court of Appeals correctly determined that a victim was not entitled to lost wages for court appearances during the pendency of the prosecution of the criminal offense. The Appellant's argument in support of Proposition of Law No. 1 must be rejected. First, the proposition of law is broader than the issue before the Trial Court and Court of Appeals. The only issue is dealing with lost wages for court appearances, and not for losses victims allegedly incurred throughout the prosecution of the criminal offense as argued by the Appellant.

Crime victims in Ohio are entitled to restitution for economic loss as authorized pursuant to Ohio Revised Code 2929.18(A)(1) and as defined in R.C. 2929.01(L). This Court, in *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, approved and adopted the statutory analysis which provides that R.C.

2929.18(A)(1) authorizes a Trial Court to impose restitution as part of a sentence in order to compensate the victim for economic loss. The applicable restitution statute, R.C. 2929.18, also provides for procedures for determining the amount of restitution ordered as follows:

If the Court imposes restitution, the Court may base the amount of restitution it orders on the amount recommended by the victim, the offender ... provided that the amount the Court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense ...

R.C. 2929.01(L) defines "Economic Loss" to mean:

" ... Any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense, and includes any loss of income due to lost time at work because of an injury caused to the victim ..."

These statutory provisions and the Appellate Court's interpretation of same resolve the pending matter before this Court. This outcome is true notwithstanding the language relied upon by the State of Ohio in Ohio Constitution, Article I, Section 10a, known as Marsy's Law, for notification and for victim's rights. The State of Ohio relies on language that victims shall have the following rights "to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim". Ohio Constitution,

Article I, Section 10a(A)(7). Marsy's Law, pursuant to Section (E) provides:

All provisions of this section shall be self-executing and severable and shall supersede all conflicting state laws.

It is respectfully submitted that R.C. 2929.18 is not in conflict with Marsy's Law and, therefore, Marsy's Law does not supercede R.C. 2929.18, but, rather, R.C. 2929.18 remains the appropriate statutory framework for a court to determine restitution. Marsy's Law does not define restitution. Marsy's Law did not change the definition of restitution. Therefore, a radical change of what is restitution as proposed by the State was not contemplated by the Constitutional Amendment. Prior to Marsy's Law, victims were already entitled to restitution. Restitution is not a new right afforded by the Constitutional Amendment. An expansion was not contemplated or the Amendment language would have included or reflected same.

Furthermore, Marsy's Law does not provide a procedural mechanism for ordering restitution. After the Ohio Constitution was amended by Marsy's Law, this Court has reviewed a case dealing with the applicability of R.C. 2929.18 and restitution. This Court was confronted with the issue when determining whether a municipality is a "victim" for restitution purposes. This Court initially looked to R.C. 2929.18 for guidance and definitional purposes. If R.C. 2929.18

was in direct conflict with Marsy's Law, this Court would not have considered R.C. 2929.18 and would have ignored it completely. The Court did not do that, but reviewed R.C. 2929.18 with its applicability noting, however, that neither R.C. 2929.18 nor R.C. 2929.01 defined "victim". This Court, in a post-Marsy's Law discussion, impliedly reviewed and approved and upheld R.C. 2929.18 as the procedural mechanism for ordering restitution and further approved of the statutory language where restitution cannot "exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense". *City of Centerville v. Knab*, 2020-Ohio-4686 at ¶19.

This Court had also recently reviewed the issue of restitution in *State v. Lalain, Supra*, prior to Marsy's Law. The case is instructive on this issue. This Honorable Court followed the Statutory language of R.C. 2929.18. This Court ultimately concluded that the Order of Restitution cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense. This is the same holding by the Seventh District Court of Appeals decision. In *Lalain*, this Court considered expenditures, specifically finding that certain claimed expenditures were not the direct and proximate result of the commission of the theft offense. Rather, they were consequential costs incurred

subsequent to the criminal offense. By analogy, these consequential costs, i.e., in this case lost wages for attending court appearances, are not as a direct and proximate result of the commission of the criminal offense in this case, namely posting a digital "Find Friends" request through social media. Marsy's Law does not provide any procedural aspects for the implementation of restitution, but rather only R.C. 2928.18 does. See *City of Centerville v. Knab, Supra*.

The First District Court of Appeals in *State of Ohio v. McNear*, 1st Dist. No. C-190643, 2020-Ohio-4686, held that:

Restitution can be ordered only for those acts that constituted a crime for which the defendant was convicted.

(citing *State v. Simmons*, 2017-Ohio-1348).

The Court went on to cite with approval the following:

The Court must base the amount of restitution on the criminal conduct the defendant was convicted of committing.

The Court, in *McNear, Supra*, held that the Court was only permitted to order restitution for the losses resulting from McNear's forgery conviction, which was based on McNear attempting to pass forged documents at the Clerk's office. The Court went on to state that: "There is no evidence in the record to show McNear's conduct was the cause, in fact, of the

victim's losses". Thus, the Trial Court's Order of restitution was reversed.

Appellant argues that the inclusion of the word "full" in Marsy's Law dictates a different result.

It is further respectfully submitted that the use of the word "full" is consistent with the Seventh District Court of Appeals ruling that a victim is entitled to "full" compensation for economic loss which was incurred as a direct and proximate result of the commission of a criminal act. Full restitution for injuries, damages, or loss incurred as a direct and proximate result of the actual underlying criminal conduct would still be awarded under the appropriate circumstances and is consistent with Marsy's Law. The Seventh District Court of Appeals ruling and interpretation of R.C. 2929.18 is consistent with the rights afforded a victim under the Constitutional Amendment of Marsy's Law. Therefore, Appellee respectfully requests that this Court deny Appellant's appeal and affirm the Seventh District Court of Appeals decision.

APPELLANT'S PROPOSITION OF LAW NO. 2

Victims must be entitled to restitution for losses incurred throughout the prosecution of the criminal offense in order to protect victims' constitutional rights to be present throughout the criminal justice process and heard when their rights are implicated.

Long before Marsy's Law, Ohio victims of crime were afforded comprehensive statutory rights pursuant to R.C. Chapter 2930. Specifically, R.C. 2930. provided as follows:

- R.C. 2930.01 - The right to a representative of the victim under certain circumstances;
- R.C. 2930.03 - Notice to the victim;
- R.C. 2930.04 - Information from law enforcement;
- R.C. 2930.05 - Information pertaining to arrest, etc.;
- R.C. 2930.06 - Information disseminated from Prosecutor to victim;
- R.C. 2930.062 - Notice of victims injuries;
- R.C. 2930.07 - Protection of victims;
- R.C. 2930.08 - Notice of delays;
- R.C. 2930.09 - Right of victim to be present.

And many more additional enumerated rights.

The State argues that unless Marsy's Law is interpreted to expand victim's rights and if a victim is not

compensated for appearance throughout the prosecution, then somehow a victim's participation will be chilled.

Alleged crime victims have an opportunity to be present at any stage of a proceeding. R.C. 2930.09. To appear or not to appear is a voluntary choice unless subpoenaed. Victims have always been represented by the governing body, in this case, the Columbiana County Prosecutor on behalf of the State of Ohio, regardless of whether the victim chooses to appear at every stage in the proceeding. R.C. 2930.19. The State attempts to utilize, in essence, scare tactics by arguing that by participating and not being reimbursed for wages, it may be cost prohibitive for a victim's participation. This argument is speculative at best. The State further argues that victims would be "voiceless". This is simply not true. The State of Ohio, in this case, provides a voice for all people, including the victim. See R.C. 2930.19. Even the prior statutory scheme provided for the victims to be notified and to be heard at various stages of the proceedings. R.C. 2930.09.

Prosecutors keep victims informed of proceedings. Victims voice their wishes and concerns to the Prosecutor. Victims may appear at various stages and certainly at the trial if needed or required. If a victim is subpoenaed, they are reimbursed or provided a nominal payment for appearance. A victim may appear at sentencing if they so choose. However, it

is respectfully submitted that the statutory procedures provide for the victim to submit an oral or written victim impact statement pursuant to R.C. 2930.13 or to be heard at sentencing pursuant to R.C. 2930.14, either in writing or in person. The victim can always submit such a victim impact statement. To argue that non-payment of wages for court appearances would deter participation does not make any sense in the reality of the current world and technology. Clearly, if a victim is unable to appear due to financial reasons or personal reasons, there are other ways of participating, appearing, conferencing, discussing, etc., in anticipation of any of the upcoming steps/procedures along the process. The victim has many avenues to be heard notwithstanding any claim for reimbursement of attending a court appearance. Restitution has historically been to compensate for actual harm due to criminally injurious conduct. That is what R.C. 2929.18 specifically provides. That is what courts, and this Court in particular, have previously held. To adopt the State's argument is going to open a floodgate of litigation on this issue. The result will clog the Courts with restitution hearings, restitution fights, appeals, etc. In cases where there is non-injury or non-economic loss, every victim could assert a claim for restitution for loss of wages or expenses for appearances. The criminal courts are not a substitute for civil courts. Restitution is for economic loss

directly and proximately caused by the commission of the offense, and not the prosecution of same. These are consequential losses not contemplated within the meaning of the statute, nor contemplated under "full" restitution under Marsy's Law.

The Appellant cites three (3) jurisdictions, California, Arizona, and Minnesota, which arguably allow wages for appearances to be awarded. Obviously, this is a minority approach and there are not any significant reasons to modify Ohio's current procedure for restitution. The cases are distinguishable. California Penal Code 1202.4, Section E, specifically provides for a court to award wages or profits due to time spent as a witness or in assisting the police or prosecution. This is neither the Ohio statutory framework nor the language of Marsy's Law. Arizona Law 13-804 provides for restitution where the court shall consider all losses caused by the criminal offense. Again, the statutory language is different than Ohio's which specifically requires the loss to be as a direct and proximate result of the criminal conduct. In *State v. Palubicki*, 727 N.W.2d 661, 667 (Minn. S. Ct. 2007), the Court held that wages for voluntarily appearing at trial were reimbursable. The language of the statute provided for restitution providing "any out of pocket losses for the crime". Minn. Stat. §611A.04(1)(a). Again, the Ohio Statute has

different language requiring the loss to be direct and proximate to the conduct. The "but for" analysis proposed by the State could potentially result in an expansion of restitution that would become so attenuated from the criminal act. This would place an extraordinary burden on the Court.

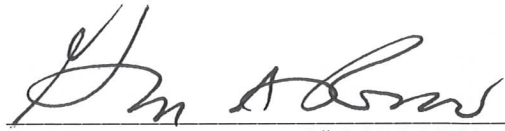
Appellant cites *State v. Shifflet*, 4th Dist. Athens, No. 13 CA 23, 2015-Ohio-4250, 44 N.E.3d 966, ¶50-59, as an Ohio Court which, prior to Marsy's Law, had upheld an award of restitution for lost wages for attending court appearances. This case is not binding on this Court. It is respectfully submitted that the Shifflet decision was incorrectly decided and constituted an abuse of discretion by the Trial Court.

In *State v. Roach*, 6th District Lucas No. L-16-1303, 2013-Ohio-8511, the Court held that restitution cannot include lost wages for time away from work to attend criminal proceedings by a non-party. The Court held that restitution for lost income is limited to lost income due to an injury suffered by a victim that occurred as a direct and proximate result of the commission of the crime and not for court appearances related to the case. *Roach*, ¶12.

CONCLUSION

The Seventh District Court of Appeals correctly applied R.C. 2929.18. The Court correctly held that the rights provided under Marsy's Law do not exist in a vacuum and still must be construed within the valid and unchanged statutory framework set forth by the General assembly. See ¶26. The victim's lost wages were not incurred as a direct and proximate result of the commission of the actual criminal conduct and, therefore, are not recoverable. Marsy's Law does not conflict with R.C. 2929.18 and, therefore, Marsy's Law does not supersede R.C. 2929.18. Even if it is held that Marsy's Law supersedes R.C. 2929.18, Marsy's Law does not define restitution. It was never contemplated to expand "restitution" and certainly not as urged by the Appellant. Lost wages for appearances are consequential costs and not directly and proximately caused by the conduct which serves as the factual basis for the conviction. Therefore, Appellant's appeal should be denied and the Seventh District Court of Appeals' decision should be affirmed.

Respectfully submitted,

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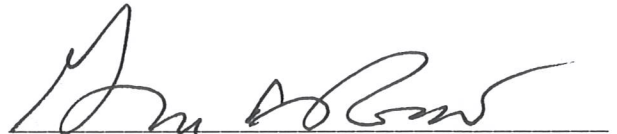
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CERTIFICATE OF SERVICE

Copy of the foregoing Motion was served upon Vito J. Abruzzino, Prosecuting Attorney, and Tammie Riley-Jones, Assistant Prosecuting Attorney, at 105 S. Market Street, Lisbon, Ohio 44432, by Ordinary U.S. Mail, this 7th day of May, 2021.

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GREGG A. ROSSI
Attorney for Appellee



Ohio Revised Code Section 2930.01 Definitions.

Effective: September 8, 2016

Legislation: Senate Bill 293 - 131st General Assembly

As used in this chapter:

(A) "Crime" means any of the following:

(1) A felony;

(2) A violation of section 2903.05, 2903.06, 2903.13, 2903.21, 2903.211, 2903.22, 2907.06, 2919.25, or 2921.04 of the Revised Code, a violation of section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or a violation of a substantially equivalent municipal ordinance;

(3) A violation of division (A) or (B) of section 4511.19, division (A) or (B) of section 1547.11, or division (A)(3) of section 4561.15 of the Revised Code or of a municipal ordinance substantially similar to any of those divisions that is the proximate cause of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident in which 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.

(4) A motor vehicle accident to which both of the following apply:

(a) The 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.

(b) 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.

(B) "Custodial agency" means one of the following:



(1) The entity that has custody of a defendant or an alleged juvenile offender who is incarcerated for a crime, is under detention for the commission of a specified delinquent act, or who is detained after a finding of incompetence to stand trial or not guilty by reason of insanity relative to a crime, including any of the following:

(a) The department of rehabilitation and correction or the adult parole authority;

(b) A county sheriff;

(c) The entity that administers a jail, as defined in section 2929.01 of the Revised Code;

(d) The entity that administers a community-based correctional facility and program or a district community-based correctional facility and program;

(e) The department of mental health and addiction services or other entity to which a defendant found incompetent to stand trial or not guilty by reason of insanity is committed.

(2) The entity that has custody of an alleged juvenile offender pursuant to an order of disposition of a juvenile court, including the department of youth services or a school, camp, institution, or other facility operated for the care of delinquent children.

(C) "Defendant" means a person who is alleged to be the perpetrator of a crime in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution and subsequent proceedings to which this chapter makes reference.

(D) "Member of the victim's family" means a spouse, child, stepchild, sibling, parent, stepparent, grandparent, or other relative of a victim but does not include a person who is charged with, convicted of, or adjudicated to be a delinquent child for the crime or specified delinquent act against the victim or another crime or specified delinquent act arising from the same conduct, criminal episode, or plan.



(E) "Prosecutor" means one of the following:

(1) With respect to a criminal case, it has the same meaning as in section 2935.01 of the Revised Code and also includes the attorney general and, when appropriate, the employees of any person listed in section 2935.01 of the Revised Code or of the attorney general.

(2) With respect to a delinquency proceeding, it includes any person listed in division (C) of section 2935.01 of the Revised Code or an employee of a person listed in that division who prosecutes a delinquency proceeding.

(F) "Public agency" means an office, agency, department, bureau, or other governmental entity of the state or of a political subdivision of the state.

(G) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(H) "Victim" means either of the following:

(1) A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

(2) A person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section, whichever is applicable.

(I) "Victim's representative" means a member of the victim's family or another person who pursuant to the authority of section 2930.02 of the Revised Code exercises the rights of a victim under this chapter.

(J) "Court" means a court of common pleas, juvenile court, municipal court, or county court.



(K) "Delinquency proceeding" means all proceedings in a juvenile court that are related to a case in which a complaint has been filed alleging that a child is a delinquent child.

(L) "Case" means a delinquency proceeding and all related activity or a criminal prosecution and all related activity.

(M) The "defense" means the defense against criminal charges in a criminal prosecution or the defense against a delinquent child complaint in a delinquency proceeding.

(N) The "prosecution" means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

(O) "Specified delinquent act" means any of the following:

(1) An act committed by a child that if committed by an adult would be a felony;

(2) An act committed by a child that is a violation of a section listed in division (A)(1) or (2) of this section or is a violation of a substantially equivalent municipal ordinance;

(3) An act committed by a child that is described in division (A)(3) or (4) of this section.

(P)(1) "Alleged juvenile offender" means a child who is alleged to have committed a specified delinquent act in a police report or in a complaint in juvenile court that charges the commission of a specified delinquent act and that provides the basis for the delinquency proceeding and all subsequent proceedings to which this chapter makes reference.

(2) As used in divisions (O) and (P)(1) of this section, "child" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Motor vehicle accident" means any accident involving a motor vehicle.

(R) "Motor vehicle" has the same meaning as in section 4509.01 of the Revised Code.



(S) "Aircraft" has the same meaning as in section 4561.01 of the Revised Code.

(T) "Aquatic device" means any vessel, or any water skis, aquaplane, or similar device.

(U) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(V) "Vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident" means any accident involving a vehicle, streetcar, trackless trolley, aquatic device, or aircraft.

(W) "Vessel" has the same meaning as in section 1546.01 of the Revised Code.



Ohio Revised Code

Section 2930.02 Victim's representative.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) If a victim is a minor or is incapacitated, incompetent, or deceased, or if the victim chooses to designate another person, a member of a victim's family or another person may exercise the rights of the victim under this chapter as the victim's representative.

If more than one person seeks to act as the victim's representative for a particular victim, the court in which the criminal prosecution or delinquency proceeding is held shall designate one of those persons as the victim's representative. If a victim does not want to have anyone act as the victim's representative, the court shall order that only the victim may exercise the rights of a victim under this chapter.

(B) If pursuant to division (A) of this section a victim's representative is to exercise the rights of a victim, the victim or victim's representative shall notify the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, shall notify the court that the victim's representative is to act for the victim. When a victim or victim's representative has so notified the prosecutor or the court, all notice under this chapter shall be sent only to the victim's representative, all rights under this chapter shall be granted only to the victim's representative, and all references in this chapter to a victim shall be interpreted as being references to the victim's representative unless the victim informs the notifying authority that the victim also wishes to receive the notices or exercise the rights. If division (B) of section 2930.03 of the Revised Code requires a victim to make a request in order to receive any notice of a type described in this division and if a victim's representative is to exercise the rights of the victim, the victim's representative shall make the request.



Ohio Revised Code

Section 2930.03 Methods of giving notice.

Effective: March 22, 2013

Legislation: Senate Bill 160 - 129th General Assembly

(A) A person or entity required or authorized under this chapter to give notice to a victim shall give the notice to the victim by any means reasonably calculated to provide prompt actual notice. Except when a provision requires that notice is to be given in a specific manner, a notice may be oral or written.

(B)(1) Except for receipt of the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code and the notice required to be given to a victim under division (D) of section 2930.16 of the Revised Code, a victim who wishes to receive any notice authorized by this chapter shall make a request for the notice to the prosecutor or the custodial agency that is to provide the notice, as specified in this chapter. If the victim does not make a request as described in this division, the prosecutor or custodial agency is not required to provide any notice described in this chapter other than the initial information and notice required to be given to a victim under divisions (A) and (B) of section 2930.04, section 2930.05, and divisions (A) and (B) of section 2930.06 of the Revised Code and the notice required to be given to a victim under division (D) of section 2930.16 of the Revised Code.

(2) A victim who does not wish to receive any of the notices required to be given to a victim under division (E)(2) or (K) of section 2929.20, division (D) of section 2930.16, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, or division (A)(2) of section 5149.101 of the Revised Code shall make a request to the prosecutor or custodial agency that is to provide the particular notice that the notice not be provided to the victim. Unless the victim makes a request as described in this division, the prosecutor or custodial agency shall provide the notices required to be given to a victim under division (E)(2) or (K) of section 2929.20, division (D) of section 2930.16, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, or division (A)(2) of section 5149.101 of the Revised Code in any manner, and in accordance with the procedures, specified in the particular division. This division



also applies to a victim's representative or a member of a victim's immediate family that is authorized to receive any of the notices specified in this division.

(C) A person or agency that is required to furnish notice under this chapter shall give the notice to the victim at the address or telephone number provided to the person or agency by the victim. A victim who requests to receive notice under this chapter as described in division (B) of this section shall inform the person or agency of the name, address, or telephone number of the victim and of any change to that information.

(D) A person or agency that has furnished information to a victim in accordance with any requirement or authorization under this chapter shall notify the victim promptly of any significant changes to that information.

(E) Divisions (A) to (D) of this section do not apply regarding a notice that a prosecutor is required to provide under section 2930.061 of the Revised Code. A prosecutor required to provide notice under that section shall provide the notice as specified in that section.



Ohio Revised Code

Section 2930.04 Information provided to victim by law enforcement agency.

Effective: July 1, 1996

Legislation: Senate Bill 2 - 121st General Assembly

(A) After its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime promptly shall give to the victim, in writing, all of the following information:

- (1) An explanation of the victim's rights under this chapter;
- (2) Information about medical, counseling, housing, emergency, and any other services that are available to a victim;
- (3) Information about compensation for victims under the reparations program in sections 2743.51 to 2743.72 of the Revised Code and the name, street address, and telephone number of the agency to contact to apply for an award of reparations under those sections;
- (4) Information about protection that is available to the victim, including protective orders issued by a court.

(B) As soon as practicable after its initial contact with a victim of a crime, the law enforcement agency responsible for investigating the crime shall give to the victim all of the following information:

- (1) The business telephone number of the law enforcement officer assigned to investigate the case;
- (2) The office address and business telephone number of the prosecutor in the case;
- (3) A statement that, if the victim is not notified of the arrest of the offender in the case within a reasonable period of time, the victim may contact the law enforcement agency to learn the status of the case.

(C) To the extent that the information required by this section is provided in the pamphlet prepared



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pursuant to section 109.42 of the Revised Code or in the information card or other material prepared pursuant to section 2743.71 of the Revised Code, the law enforcement agency may fulfill that portion of its obligations under this section by giving that pamphlet, information card, or other material to the victim.



Ohio Revised Code

Section 2930.05 Notice of arrest or detention of offender.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) Within a reasonable period of time after the arrest or detention of a defendant or an alleged juvenile offender for a crime or specified delinquent act, the law enforcement agency that investigates the crime or specified delinquent act shall give the victim of the crime or specified delinquent act notice of all of the following:

- (1) The arrest or detention;
- (2) The name of the defendant or alleged juvenile offender;
- (3) Whether the defendant or alleged juvenile offender is eligible for pretrial release or for release from detention;
- (4) The telephone number of the law enforcement agency;
- (5) The victim's right to telephone the agency to ascertain whether the defendant or alleged juvenile offender has been released from custody or from detention.

(B) If a defendant or alleged juvenile offender has been released from custody on a bond or personal recognizance or has been released from detention and the prosecutor in the case has received the affidavit of a victim stating that the defendant or alleged juvenile offender, or someone acting at the defendant's or alleged juvenile offender's direction, has committed or threatened to commit one or more acts of violence or intimidation against the victim, the victim's family, or the victim's representative, the prosecutor may file a motion asking the court to reconsider the conditions of the bond or personal recognizance granted to the defendant or alleged juvenile offender or to consider returning the defendant or alleged juvenile offender to detention.



Ohio Revised Code

Section 2930.06 Prosecutor to confer with victim - court to give notice of proceedings to victim.

Effective: March 22, 2013

Legislation: Senate Bill 160 - 129th General Assembly

(A) The prosecutor in a case, to the extent practicable, shall confer with the victim in the case before pretrial diversion is granted to the defendant or alleged juvenile offender in the case, before amending or dismissing an indictment, information, or complaint against that defendant or alleged juvenile offender, before agreeing to a negotiated plea for that defendant or alleged juvenile offender, before a trial of that defendant by judge or jury, or before the juvenile court conducts an adjudicatory hearing for that alleged juvenile offender. If the juvenile court disposes of a case prior to the prosecutor's involvement in the case, the court or a court employee shall notify the victim in the case that the alleged juvenile offender will be granted pretrial diversion, the complaint against that alleged juvenile offender will be amended or dismissed, or the court will conduct an adjudicatory hearing for that alleged juvenile offender. If the prosecutor fails to confer with the victim at any of those times, the court, if informed of the failure, shall note on the record the failure and the prosecutor's reasons for the failure. A prosecutor's failure to confer with a victim as required by this division and a court's failure to provide the notice as required by this division do not affect the validity of an agreement between the prosecutor and the defendant or alleged juvenile offender in the case, a pretrial diversion of the defendant or alleged juvenile offender, an amendment or dismissal of an indictment, information, or complaint filed against the defendant or alleged juvenile offender, a plea entered by the defendant or alleged juvenile defender, an admission entered by the defendant or alleged juvenile offender, or any other disposition in the case. A court shall not dismiss a criminal complaint, charge, information, or indictment or a delinquent child complaint solely at the request of the victim and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer responsible for the prosecution of the case.

(B) After a prosecution in a case has been commenced, the prosecutor or a designee of the prosecutor other than a court or court employee, to the extent practicable, promptly shall give the victim all of the following information, except that, if the juvenile court disposes of a case prior to the prosecutor's involvement in the case, the court or a court employee, to the extent practicable,



promptly shall give the victim all of the following information:

- (1) The name of the crime or specified delinquent act with which the defendant or alleged juvenile offender in the case has been charged and the name of the defendant or alleged juvenile offender;
 - (2) The file number of the case;
 - (3) A brief statement regarding the procedural steps in a criminal prosecution or delinquency proceeding involving a crime or specified delinquent act similar to the crime or specified delinquent act with which the defendant or alleged juvenile offender has been charged and the right of the victim to be present during all proceedings held throughout the prosecution of the case;
 - (4) A summary of the rights of a victim under this chapter;
 - (5) Procedures the victim or the prosecutor may follow if the victim becomes subject to threats or intimidation by the defendant, alleged juvenile offender, or any other person;
 - (6) The name and business telephone number of a person to contact for further information with respect to the case;
 - (7) The right of the victim to have a victim's representative exercise the victim's rights under this chapter in accordance with section 2930.02 of the Revised Code and the procedure by which a victim's representative may be designated;
 - (8) Notice that any notification under division (C) of this section, sections 2930.07 to 2930.15, division (A), (B), or (C) of section 2930.16, sections 2930.17 to 2930.19, and section 5139.56 of the Revised Code will be given to the victim only if the victim asks to receive the notification and that notice under division (E)(2) or (K) of section 2929.20, division (D) of section 2930.16, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, or division (A)(2) of section 5149.101 of the Revised Code will be given unless the victim asks that the notification not be provided.
- (C) Upon the request of the victim, the prosecutor or, if it is a delinquency proceeding and a



prosecutor is not involved in the case, the court shall give the victim notice of the date, time, and place of any scheduled criminal or juvenile proceedings in the case and notice of any changes in those proceedings or in the schedule in the case.

(D) A victim who requests notice under division (C) of this section and who elects pursuant to division (B) of section 2930.03 of the Revised Code to receive any further notice from the prosecutor or, if it is a delinquency proceeding and a prosecutor is not involved in the case, the court under this chapter shall keep the prosecutor or the court informed of the victim's current address and telephone number until the case is dismissed or terminated, the defendant is acquitted or sentenced, the delinquent child complaint is dismissed, the defendant is adjudicated a delinquent child, or the appellate process is completed, whichever is the final disposition in the case.

(E) If a defendant is charged with the commission of a misdemeanor offense that is not identified in division (A)(2) of section 2930.01 of the Revised Code and if a police report or a complaint, indictment, or information that charges the commission of that offense and provides the basis for a criminal prosecution of that defendant identifies one or more individuals as individuals against whom that offense was committed, after a prosecution in the case has been commenced, the prosecutor or a designee of the prosecutor other than a court or court employee, to the extent practicable, promptly shall notify each of the individuals so identified in the report, complaint, indictment, or information that, if the defendant is convicted of or pleads guilty to the offense, the individual may make an oral or written statement to the court hearing the case regarding the sentence to be imposed upon the defendant and that the court must consider any statement so made that is relevant. Before imposing sentence in the case, the court shall permit the individuals so identified in the report, complaint, indictment, or information to make an oral or written statement. Division (A) of section 2930.14 of the Revised Code applies regarding any statement so made. The court shall consider a statement so made, in accordance with division (B) of that section and division (D) of section 2929.22 of the Revised Code.



Ohio Revised Code

Section 2930.061 Notice of charges to department of developmental disabilities.

Effective: October 12, 2016

Legislation: House Bill 158 - 131st General Assembly

(A) If a person is charged in a complaint, indictment, or information with any crime or specified delinquent act or with any other violation of law, and if the case involves a victim that the prosecutor in the case knows is a person with a developmental disability, in addition to any other notices required under this chapter or under any other provision of law, the prosecutor in the case shall send written notice of the charges to the department of developmental disabilities. The written notice shall specifically identify the person so charged.

(B) As used in this section, "developmental disability" has the same meaning as in section 5123.01 of the Revised Code.



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Ohio Revised Code

Section 2930.062 Notification of victim's injuries.

Effective: May 17, 2006

Legislation: House Bill 108 - 126th General Assembly

A victim described in division (H)(2) of section 2930.01 of the Revised Code may provide the prosecutor, or if it is a delinquency proceeding and a prosecutor is not involved in the case may provide the court, in the victim's case with written notification of the victim's injuries at any time. Upon receipt of the written notification, the prosecutor or court shall give the victim all of the information specified in division (B) of section 2930.06 if the prosecutor has not already done so.



Ohio Revised Code

Section 2930.07 Protection of victim's identification information.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) If the prosecutor in a case determines that there are reasonable grounds for the victim in a case to be apprehensive regarding acts or threats of violence or intimidation by the defendant or alleged juvenile offender in the case or at the defendant's or alleged juvenile offender's direction against the victim, the victim's family, or the victim's representative, the prosecutor may file a motion with the court requesting that the court issue an order specifying that the victim and other witnesses in the case not be compelled in any phase of the criminal or delinquency proceeding to give testimony that would disclose the victim's or victim's representative's address, place of employment, or similar identifying fact without the victim's or victim's representative's consent. The court shall hold a hearing on the motion in chambers, and a court reporter shall make a record of the proceeding.

(B) If the court, pursuant to division (A) of this section, orders that the victim's or victim's representative's address, telephone number, place of employment, or other identifying fact shall be confidential, the court files or documents shall not contain that information unless it is used to identify the location of the crime or specified delinquent act. The hearing shall be recorded, and the court shall order the transcript sealed.



Ohio Revised Code

Section 2930.08 Notification of substantial delay in prosecution.

Effective: July 1, 1996

Legislation: Senate Bill 2 - 121st General Assembly

If a motion, request, or agreement between counsel is made in a case and the motion, request, or agreement might result in a substantial delay in the prosecution of the case, the prosecutor in the case, to the extent practicable and if the victim has requested notice pursuant to division (B) of section 2930.03 of the Revised Code, shall inform the victim that the motion, request, or agreement has been made and that it might result in a delay. If the victim objects to the delay, the prosecutor shall inform the court of the victim's objections, and the court shall consider the victim's objections in ruling on the motion, request, or agreement.



Ohio Revised Code

Section 2930.09 Victim's presence at trial.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

A victim in a case may be present whenever the defendant or alleged juvenile offender in the case is present during any stage of the case against the defendant or alleged juvenile offender that is conducted on the record, other than a grand jury proceeding, unless the court determines that exclusion of the victim is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or to a fair delinquency proceeding. At any stage of the case at which the victim is present, the court, at the victim's request, shall permit the victim to be accompanied by an individual to provide support to the victim unless the court determines that exclusion of the individual is necessary to protect the defendant's or alleged juvenile offender's right to a fair trial or to a fair delinquency proceeding.



Ohio Revised Code

Section 2930.10 Minimizing contact between victim and defendant - separate waiting areas.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) The court in which a criminal prosecution or delinquency proceeding is held shall make a reasonable effort to minimize any contact between the victim in the case, members of the victim's family, the victim's representative, or witnesses for the prosecution and the defendant or alleged juvenile offender in the case, members of the defendant's or alleged juvenile offender's family, or witnesses for the defense before, during, and immediately after all court proceedings.

(B) The court shall provide a waiting area for the victim, members of the victim's family, the victim's representative, or witnesses for the prosecution that is separate from the waiting area provided for the defendant or alleged juvenile offender, members of the defendant's or alleged juvenile offender's family, and defense witnesses if a separate waiting area is available and the use of the area is practical.



Ohio Revised Code

Section 2930.11 Returning or retaining victim's property.

Effective: July 1, 2007

Legislation: House Bill 241 - 126th General Assembly

(A) Except as otherwise provided in this section or in Chapter 2981. of the Revised Code, the law enforcement agency responsible for investigating a crime or specified delinquent act shall promptly return to the victim of the crime or specified delinquent act any property of the victim that was taken in the course of the investigation. In accordance with Criminal Rule 26 or an applicable Juvenile Rule, the law enforcement agency may take photographs of the property for use as evidence. If the ownership of the property is in dispute, the agency shall not return the property until the dispute is resolved.

(B) The law enforcement agency responsible for investigating a crime or specified delinquent act shall retain any property of the victim of the crime or specified delinquent act that is needed as evidence in the case, including any weapon used in the commission of the crime or specified delinquent act, if the prosecutor certifies to the court a need to retain the property in lieu of a photograph of the property or of another evidentiary substitute for the property itself.

(C) If the defendant or alleged juvenile offender in a case files a motion requesting the court to order the law enforcement agency to retain property of the victim because the property is needed for the defense in the case, the agency shall retain the property until the court rules on the motion. The court, in making a determination on the motion, shall weigh the victim's need for the property against the defendant's or alleged juvenile offender's assertion that the property has evidentiary value for the defense. The court shall rule on the motion in a timely fashion.



Ohio Revised Code

Section 2930.12 Notice of the defendant's acquittal or conviction.

Effective: September 30, 2011

Legislation: House Bill 86 - 129th General Assembly

At the request of the victim in a criminal prosecution, the prosecutor shall give the victim notice of the defendant's acquittal or conviction. At the request of the victim in a delinquency proceeding, the prosecutor shall give the victim notice of the dismissal of the complaint against the alleged juvenile offender or of the adjudication of the alleged juvenile offender as a delinquent child, except that, if the juvenile court dismisses the complaint against the alleged juvenile offender or adjudicates the alleged juvenile offender a delinquent child prior to the prosecutor's involvement in the case, at the request of the victim, the court or a court employee shall give the victim notice of the dismissal or of the adjudication. If the defendant or alleged juvenile offender is convicted or is adjudicated a delinquent child, the notice shall include all of the following:

(A) The crimes or specified delinquent acts of which the defendant was convicted or for which the alleged juvenile offender was adjudicated a delinquent child;

(B) The address and telephone number of the probation office or other person, if any, that is to prepare a presentence investigation report pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, the address and telephone number of the person, if any, who is to prepare a disposition investigation report pursuant to division (C)(1) of section 2152.18 of the Revised Code, and the address and telephone number of the person, if any, who is to prepare a victim impact statement pursuant to division (D)(1) of section 2152.19 or section 2947.051 of the Revised Code;

(C) Notice that the victim may make a statement about the impact of the crime or specified delinquent act to the probation officer or other person, if any, who prepares the presentence investigation report or to the person, if any, who prepares a victim impact statement, that a statement of the victim included in the report will be made available to the defendant or alleged juvenile offender unless the court exempts it from disclosure, and that the court may make the victim impact statement available to the defendant or alleged juvenile offender;

(D) Notice of the victim's right under section 2930.14 of the Revised Code to make a statement



about the impact of the crime or specified delinquent act before sentencing or disposition;

(E) The date, time, and place of the sentencing hearing or dispositional hearing;

(F) One of the following:

(1) Any sentence imposed upon the defendant and any subsequent modification of that sentence, including modification under section 2929.20 or 5120.036 of the Revised Code or as a result of the defendant's appeal of the sentence pursuant to section 2953.08 of the Revised Code;

(2) Any disposition ordered for the defendant and any subsequent modification of that disposition, including judicial release or early release in accordance with section 2151.38 of the Revised Code.



Ohio Revised Code

Section 2930.13 Victim impact statement.

Effective: October 9, 2006

Legislation: House Bill 137 - 126th General Assembly

(A) If the court orders the preparation of a victim impact statement pursuant to division (D)(1) of section 2152.19 or section 2947.051 of the Revised Code, the victim in the case may make a written or oral statement regarding the impact of the crime or specified delinquent act to the person whom the court orders to prepare the victim impact statement. A statement made by the victim under this section shall be included in the victim impact statement.

(B) If a probation officer or other person is preparing a presentence investigation report pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2, or a disposition investigation report pursuant to section 2152.18 of the Revised Code, concerning the defendant or alleged juvenile offender in the case, the victim may make a written or oral statement regarding the impact of the crime or specified delinquent act to the probation officer or other person. The probation officer or other person shall use the statement in preparing the presentence investigation report or disposition investigation report and, upon the victim's request, shall include a written statement submitted by the victim in the presentence investigation report or disposition investigation report.

(C) A statement made by the victim under division (A) or (B) of this section may include the following:

(1) An explanation of the nature and extent of any physical, psychological, or emotional harm suffered by the victim as a result of the crime or specified delinquent act that is the basis of the case;

(2) An explanation of the extent of any property damage or other economic loss suffered by the victim as a result of that crime or specified delinquent act;

(3) An opinion regarding the extent to which, if any, the victim needs restitution for harm caused by the defendant or alleged juvenile offender as a result of that crime or specified delinquent act and information about whether the victim has applied for or received any compensation for loss or damage caused by that crime or specified delinquent act;



(4) The victim's recommendation for an appropriate sanction or disposition for the defendant or alleged juvenile offender regarding that crime or specified delinquent act.

(D) If a statement made by a victim under division (A) of this section is included in a victim impact statement, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of the victim impact statement is governed by division (B)(2) of section 2152.20 or by division (C) of section 2947.051 of the Revised Code, as appropriate. If a statement made by a victim under division (B) of this section is included in a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 or in a disposition investigation report pursuant to division (C)(1) of section 2152.18 of the Revised Code, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of the presentence investigation report or disposition investigation report that contains the victim's statement is governed by section 2951.03 of the Revised Code.



Ohio Revised Code

Section 2930.14 Victim's statement.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) Before imposing sentence upon, or entering an order of disposition for, a defendant or alleged juvenile offender for the commission of a crime or specified delinquent act, the court shall permit the victim of the crime or specified delinquent act to make a statement. The court may give copies of any written statement made by a victim to the defendant or alleged juvenile offender and defendant's or alleged juvenile offender's counsel and may give any written statement made by the defendant or alleged juvenile offender to the victim and the prosecutor. The court may redact any information contained in a written statement that the court determines is not relevant to and will not be relied upon in the sentencing or disposition decision. The written statement of the victim or of the defendant or alleged juvenile offender is confidential and is not a public record as used in section 149.43 of the Revised Code. Any person to whom a copy of a written statement was released by the court shall return it to the court immediately following sentencing or disposition.

(B) The court shall consider a victim's statement made under division (A) of this section along with other factors that the court is required to consider in imposing sentence or in determining the order of disposition. If the statement includes new material facts, the court shall not rely on the new material facts unless it continues the sentencing or dispositional proceeding or takes other appropriate action to allow the defendant or alleged juvenile offender an adequate opportunity to respond to the new material facts.



Ohio Revised Code

Section 2930.15 Notice of appeal.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) If a defendant is convicted of committing a crime against a victim or an alleged juvenile offender is adjudicated a delinquent child for committing a specified delinquent act against a victim, if the victim requests notice of the filing of an appeal, and if the defendant or alleged juvenile offender files an appeal, the prosecutor in the case promptly shall notify the victim of the appeal. The prosecutor also shall give the victim all of the following information:

- (1) A brief explanation of the appellate process, including the possible disposition of the case;
- (2) Whether the defendant or alleged juvenile offender has been released on bail or other recognizance or under conditions imposed by the juvenile court pending the disposition of the appeal;
- (3) The time, place, and location of appellate court proceedings and any subsequent changes in the time, place, or location of those proceedings;
- (4) The result of the appeal.

(B) If the appellate court returns the defendant's or alleged juvenile offender's case to the trial court or juvenile court for further proceedings, the victim may exercise all the rights that previously were available to the victim in the trial court or the juvenile court.



Ohio Revised Code

Section 2930.16 Notice of incarceration and release date.

Effective: March 22, 2019

Legislation: Senate Bill 201 - 132nd General Assembly

(A) If a defendant is incarcerated, a victim in a case who has requested to receive notice under this section shall be given notice of the incarceration of the defendant. If an alleged juvenile offender is committed to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children or to the legal custody of the department of youth services, a victim in a case who has requested to receive notice under this section shall be given notice of the commitment. Promptly after sentence is imposed upon the defendant or the commitment of the alleged juvenile offender is ordered, the prosecutor in the case shall notify the victim of the date on which the defendant will be released, or initially will be eligible for release, from confinement or the prosecutor's reasonable estimate of that date or the date on which the alleged juvenile offender will have served the minimum period of commitment or the prosecutor's reasonable estimate of that date. The prosecutor also shall notify the victim of the name of the custodial agency of the defendant or alleged juvenile offender and tell the victim how to contact that custodial agency. If the custodial agency is the department of rehabilitation and correction, the prosecutor shall notify the victim of the services offered by the office of victims' services pursuant to section 5120.60 of the Revised Code. If the custodial agency is the department of youth services, the prosecutor shall notify the victim of the services provided by the office of victims' services within the release authority of the department pursuant to section 5139.55 of the Revised Code and the victim's right pursuant to section 5139.56 of the Revised Code to submit a written request to the release authority to be notified of actions the release authority takes with respect to the alleged juvenile offender. The victim shall keep the custodial agency informed of the victim's current address and telephone number.

(B)(1) Upon the victim's request or in accordance with division (D) of this section, the prosecutor promptly shall notify the victim of any hearing for judicial release of the defendant pursuant to section 2929.20 of the Revised Code, of any hearing for release of the defendant pursuant to section 2967.19 of the Revised Code, or of any hearing for judicial release or early release of the alleged juvenile offender pursuant to section 2151.38 of the Revised Code and of the victim's right to make a statement under those sections. The court shall notify the victim of its ruling in each of those hearings and on each of those applications.



(2) If an offender is sentenced to a prison term pursuant to division (A)(3) or (B) of section 2971.03 of the Revised Code, upon the request of the victim of the crime or in accordance with division (D) of this section, the prosecutor promptly shall notify the victim of any hearing to be conducted pursuant to section 2971.05 of the Revised Code to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility in accordance with division (C) of that section, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term in accordance with division (D) of that section. The court shall notify the victim of any order issued at the conclusion of the hearing.

(C) Upon the victim's request made at any time before the particular notice would be due or in accordance with division (D) of this section, the custodial agency of a defendant or alleged juvenile offender shall give the victim any of the following notices that is applicable:

(1) At least sixty days before the adult parole authority recommends a pardon or commutation of sentence for the defendant or at least sixty days prior to a hearing before the adult parole authority regarding a grant of parole to the defendant, notice of the victim's right to submit a statement regarding the impact of the defendant's release in accordance with section 2967.12 of the Revised Code and, if applicable, of the victim's right to appear at a full board hearing of the parole board to give testimony as authorized by section 5149.101 of the Revised Code; and at least sixty days prior to a hearing before the department regarding a determination of whether the inmate must be released under division (C) or (D)(2) of section 2967.271 of the Revised Code if the inmate is serving a non-life felony indefinite prison term, notice of the fact that the inmate will be having a hearing regarding a possible grant of release, the date of any hearing regarding a possible grant of release, and the right of any person to submit a written statement regarding the pending action;

(2) At least sixty days before the defendant is transferred to transitional control under section 2967.26 of the Revised Code, notice of the pendency of the transfer and of the victim's right under that section to submit a statement regarding the impact of the transfer;

(3) At least sixty days before the release authority of the department of youth services holds a release review, release hearing, or discharge review for the alleged juvenile offender, notice of the pendency of the review or hearing, of the victim's right to make an oral or written statement regarding the



impact of the crime upon the victim or regarding the possible release or discharge, and, if the notice pertains to a hearing, of the victim's right to attend and make statements or comments at the hearing as authorized by section 5139.56 of the Revised Code;

(4) Prompt notice of the defendant's or alleged juvenile offender's escape from a facility of the custodial agency in which the defendant was incarcerated or in which the alleged juvenile offender was placed after commitment, of the defendant's or alleged juvenile offender's absence without leave from a mental health or developmental disabilities facility or from other custody, and of the capture of the defendant or alleged juvenile offender after an escape or absence;

(5) Notice of the defendant's or alleged juvenile offender's death while in confinement or custody;

(6) Notice of the filing of a petition by the director of rehabilitation and correction pursuant to section 2967.19 of the Revised Code requesting the early release under that section of the defendant;

(7) Notice of the defendant's or alleged juvenile offender's release from confinement or custody and the terms and conditions of the release.

(D)(1) If a defendant is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment or if an alleged juvenile offender has been charged with the commission of an act that would be aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or be subject to a sentence of life imprisonment if committed by an adult, except as otherwise provided in this division, the notices described in divisions (B) and (C) of this section shall be given regardless of whether the victim has requested the notification. The notices described in divisions (B) and (C) of this section shall not be given under this division to a victim if the victim has requested pursuant to division (B)(2) of section 2930.03 of the Revised Code that the victim not be provided the notice. Regardless of whether the victim has requested that the notices described in division (C) of this section be provided or not be provided, the custodial agency shall give notice similar to those notices to the prosecutor in the case, to the sentencing court, to the law enforcement agency that arrested the defendant or alleged juvenile offender if any officer of that agency was a victim of the offense, and to any member of the victim's immediate family who requests notification. If the notice given under this division to the victim is based on an offense committed prior to March



22, 2013, and if the prosecutor or custodial agency has not previously successfully provided any notice to the victim under this division or division (B) or (C) of this section with respect to that offense and the offender who committed it, the notice also shall inform the victim that the victim may request that the victim not be provided any further notices with respect to that offense and the offender who committed it and shall describe the procedure for making that request. If the notice given under this division to the victim pertains to a hearing regarding a grant of a parole to the defendant, the notice also shall inform the victim that the victim, a member of the victim's immediate family, or the victim's representative may request a victim conference, as described in division (E) of this section, and shall provide an explanation of a victim conference.

The prosecutor or custodial agency may give the notices to which this division applies by any reasonable means, including regular mail, telephone, and electronic mail. If the prosecutor or custodial agency attempts to provide notice to a victim under this division but the attempt is unsuccessful because the prosecutor or custodial agency is unable to locate the victim, is unable to provide the notice by its chosen method because it cannot determine the mailing address, telephone number, or electronic mail address at which to provide the notice, or, if the notice is sent by mail, the notice is returned, the prosecutor or custodial agency shall make another attempt to provide the notice to the victim. If the second attempt is unsuccessful, the prosecutor or custodial agency shall make at least one more attempt to provide the notice. If the notice is based on an offense committed prior to March 22, 2013, in each attempt to provide the notice to the victim, the notice shall include the opt-out information described in the preceding paragraph. The prosecutor or custodial agency, in accordance with division (D)(2) of this section, shall keep a record of all attempts to provide the notice, and of all notices provided, under this division.

Division (D)(1) of this section, and the notice-related provisions of divisions (E)(2) and (K) of section 2929.20, division (H) of section 2967.12, division (E)(1)(b) of section 2967.19, division (A)(3)(b) of section 2967.26, division (D)(1) of section 2967.28, and division (A)(2) of section 5149.101 of the Revised Code enacted in the act in which division (D)(1) of this section was enacted, shall be known as "Roberta's Law."

(2) Each prosecutor and custodial agency that attempts to give any notice to which division (D)(1) of this section applies shall keep a record of all attempts to give the notice. The record shall indicate the person who was to be the recipient of the notice, the date on which the attempt was made, the



manner in which the attempt was made, and the person who made the attempt. If the attempt is successful and the notice is given, the record shall indicate that fact. The record shall be kept in a manner that allows public inspection of attempts and notices given to persons other than victims without revealing the names, addresses, or other identifying information relating to victims. The record of attempts and notices given to victims is not a public record, but the prosecutor or custodial agency shall provide upon request a copy of that record to a prosecuting attorney, judge, law enforcement agency, or member of the general assembly. The record of attempts and notices given to persons other than victims is a public record. A record kept under this division may be indexed by offender name, or in any other manner determined by the prosecutor or the custodial agency. Each prosecutor or custodial agency that is required to keep a record under this division shall determine the procedures for keeping the record and the manner in which it is to be kept, subject to the requirements of this division.

(E) The adult parole authority shall adopt rules under Chapter 119. of the Revised Code providing for a victim conference, upon request of the victim, a member of the victim's immediate family, or the victim's representative, prior to a parole hearing in the case of a prisoner who is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a felony of the first, second, or third degree or is under a sentence of life imprisonment. The rules shall provide for, but not be limited to, all of the following:

(1) Subject to division (E)(3) of this section, attendance by the victim, members of the victim's immediate family, the victim's representative, and, if practicable, other individuals;

(2) Allotment of up to one hour for the conference;

(3) A specification of the number of persons specified in division (E)(1) of this section who may be present at any single victim conference, if limited by the department pursuant to division (F) of this section.

(F) The department may limit the number of persons specified in division (E)(1) of this section who may be present at any single victim conference, provided that the department shall not limit the number of persons who may be present at any single conference to fewer than three. If the department limits the number of persons who may be present at any single victim conference, the



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department shall permit and schedule, upon request of the victim, a member of the victim's immediate family, or the victim's representative, multiple victim conferences for the persons specified in division (E)(1) of this section.

(G) As used in this section, "victim's immediate family" has the same meaning as in section 2967.12 of the Revised Code.



Ohio Revised Code

Section 2930.17 Statement of victim prior to judicial release or early release.

Effective: September 30, 2011

Legislation: House Bill 86 - 129th General Assembly

(A) In determining whether to grant a judicial release to a defendant from a prison term pursuant to section 2929.20 of the Revised Code at a time before the defendant's stated prison term expires, in determining whether to grant a release to an offender from a prison term pursuant to section 2967.19 of the Revised Code at a time before the offender's stated prison term expires, or in determining whether to grant a judicial release or early release to an alleged juvenile offender from a commitment to the department of youth services pursuant to section 2151.38 of the Revised Code, the court shall permit a victim of a crime or specified delinquent act for which the defendant or alleged juvenile offender was incarcerated or committed to make a statement, in addition to any other statement made under this chapter, concerning the effects of that crime or specified delinquent act on the victim, the circumstances surrounding the crime or specified delinquent act, the manner in which the crime or specified delinquent act was perpetrated, and the victim's opinion whether the defendant or alleged juvenile offender should be released. The victim may make the statement in writing or orally, at the court's discretion. The court shall give the defendant or alleged juvenile offender and either the adult parole authority or the department of youth services, whichever is applicable, a copy of any written impact statement made by the victim under this division.

(B) In deciding whether to grant a judicial release or early release to the defendant or alleged juvenile offender, the court shall consider a statement made by the victim under division (A) of this section or section 2930.14 or 2947.051 of the Revised Code.



Ohio Revised Code

Section 2930.18 No employee discipline for court attendance necessary to protect rights of victim.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

No employer of a victim shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim's family, or a victim's representative for participating, at the prosecutor's request, in preparation for a criminal or delinquency proceeding or for attendance, pursuant to a subpoena, at a criminal or delinquency proceeding if the attendance is reasonably necessary to protect the interests of the victim. This section generally does not require an employer to pay an employee for time lost as a result of attendance at a criminal or delinquency proceeding. An employer who knowingly violates this section is in contempt of court. This section does not limit or affect the application to any person of section 2151.211, 2939.121, or 2945.451 of the Revised Code.



Ohio Revised Code

Section 2930.19 Prosecutor to protect rights of victims.

Effective: November 22, 1999

Legislation: House Bill 3 - 123rd General Assembly

(A) In a manner consistent with the duty of a prosecutor to represent the interests of the public as a whole, a prosecutor shall seek compliance with this chapter on behalf of a victim, a member of the victim's family, or the victim's representative.

(B) The failure of a public official or public agency to comply with the requirements of this chapter does not give rise to a claim for damages against that public official or public agency, except that a public agency as an employer may be held responsible for a violation of section 2930.18 of the Revised Code.

(C) The failure of any person or entity to provide a right, privilege, or notice to a victim under this chapter 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 or alleged juvenile offender.

(D) If there is a conflict between a provision in this chapter and a specific statute governing the procedure in a case involving a capital offense, the specific statute supersedes the provision in this chapter.

(E) If the victim of a crime is incarcerated in a state or local correctional facility or is in the legal custody of the department of youth services, the victim's rights under this chapter may be modified by court order to prevent any security risk, hardship, or undue burden upon a public official or public agency with a duty under this chapter.



PENAL CODE - PEN

PART 2. OF CRIMINAL PROCEDURE [681 - 1620] (Part 2 enacted 1872.)

TITLE 8. OF JUDGMENT AND EXECUTION [1191 - 1233.10] (Title 8 enacted 1872.)

CHAPTER 1. The Judgment [1191 - 1210.6] (Chapter 1 enacted 1872.)

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.

(2) Upon a person being convicted of a crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than three hundred dollars (\$300) and not more than ten thousand dollars (\$10,000). If the person is convicted of a misdemeanor, the fine shall not be less than one hundred fifty dollars (\$150) and not more than one thousand dollars (\$1,000).

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section

1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion. A victim at a restitution hearing or modification hearing described in this paragraph may testify by live, two-way audio and video transmission, if testimony by live, two-way audio and video transmission is available at the court.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of a third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited in the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the California Victim Compensation Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288, 288.5, or 288.7.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a violation of Section 273.5, or a violent felony as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) A report submitted pursuant to subparagraph (D) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) A stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) A report by the probation officer, or information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(12) In cases where an employer is convicted of a crime against an employee, a payment to the employee or the employee's dependent that is made by the employer's workers' compensation insurance carrier shall not be used to offset the amount of the restitution order unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage.

(g) A defendant's inability to pay shall not be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) A person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) A governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7.

(l) At its discretion, the board of supervisors of a county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that a restitution fine should not be required. Upon revocation of probation, the court shall impose the restitution fine pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or email.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

(r) (1) In addition to any other penalty or fine, the court shall order a person who has been convicted of a violation of Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are derived corresponding to the number of nonconforming devices or articles involved in the offense, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. For purposes of this subdivision, possession of nonconforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases. The order of restitution shall also include reasonable costs incurred as a result of an investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

(2) As used in this subdivision, "audiovisual work" and "recording" shall have the same meaning as in Section 653w.

(Amended by Stats. 2018, Ch. 142, Sec. 1. (AB 2226) Effective January 1, 2019.)

611A.04 ORDER OF RESTITUTION.

Subdivision 1. **Request; decision.** (a) A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. The court, or a person or agency designated by the court, shall request information from the victim to determine the amount of restitution owed. The court or its designee shall obtain the information from the victim in affidavit form or by other competent evidence. Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property. A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section [609.26](#) to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. In order to be considered at the sentencing or dispositional hearing, all information regarding restitution must be received by the court administrator of the appropriate court at least three business days before the sentencing or dispositional hearing. The court administrator shall provide copies of this request to the prosecutor and the offender or the offender's attorney at least 24 hours before the sentencing or dispositional hearing. The issue of restitution is reserved or the sentencing or dispositional hearing or hearing on the restitution request may be continued if the victim's affidavit or other competent evidence submitted by the victim is not received in time. At the sentencing or dispositional hearing, the court shall give the offender an opportunity to respond to specific items of restitution and their dollar amounts in accordance with the procedures established in section [611A.045, subdivision 3](#).

(b) The court may amend or issue an order of restitution after the sentencing or dispositional hearing if:

(1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;

(2) sufficient evidence of a right to restitution has been submitted; and

(3) the true extent of the victim's loss or the loss of the Crime Victims Reparations Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request.

If the court holds a hearing on the restitution request, the court must notify the offender, the offender's attorney, the victim, the prosecutor, and the Crime Victims Reparations Board at least five business days before the hearing. The court's restitution decision is governed by this section and section [611A.045](#).

(c) The court shall grant or deny restitution or partial restitution and shall state on the record its reasons for its decision on restitution if information relating to restitution has been presented. If the court grants partial restitution it shall also specify the full amount of restitution that may be docketed as a civil judgment under subdivision 3. The court may not require that the victim waive or otherwise forfeit any rights or causes of action as a condition of granting restitution or partial restitution. In the case of a defendant who is on probation, the court may not refuse to enforce an order for restitution solely on the grounds that the order has been docketed as a civil judgment.

Subd. 1a. **Crime board request.** The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the court administrator or with the person or agency the court has designated to obtain information relating to restitution. The board shall submit the payment order not less than three business days after it is issued by the board. The court administrator shall provide copies of the payment order to the prosecutor and the offender or the offender's attorney within 48 hours of receiving it from the board or at least 24 hours before the sentencing or dispositional hearing, whichever is earlier. By operation of law, the issue of restitution is reserved if the payment order is not received at least three days before the sentencing or dispositional hearing. The filing of a payment order for reparations with the court administrator shall also serve as a request for restitution by the victim. The restitution requested by the board may be considered to be both on its own behalf and on behalf of the victim. If the board has not paid reparations to the victim or on the victim's behalf, restitution may be made directly to the victim. If the board has paid reparations to the victim or on the victim's behalf, the court shall order restitution payments to be made directly to the board.

Subd. 1b. **Affidavit of disclosure.** An offender who has been ordered by the court to make restitution in an amount of \$500 or more shall file an affidavit of financial disclosure with the correctional agency responsible for investigating the financial resources of the offender on request of the agency. The commissioner of corrections shall prescribe what financial information the affidavit must contain.

Subd. 2. **Procedures.** The offender shall make restitution payments to the court administrator of the county, municipal, or district court of the county in which the restitution is to be paid. The court administrator shall disburse restitution in incremental payments and may not keep a restitution payment for longer than 30 days; except that the court administrator is not required to disburse a restitution payment that is under \$10 unless the payment would fulfill the offender's restitution obligation. The court administrator shall keep records of the amount of restitution ordered in each case, any change made to the restitution order, and the

amount of restitution actually paid by the offender. The court administrator shall forward the data collected to the state court administrator who shall compile the data and make it available to the supreme court and the legislature upon request.

Subd. 3. **Effect of order for restitution.** An order of restitution may be enforced by any person named in the order to receive the restitution, or by the Crime Victims Reparations Board in the same manner as a judgment in a civil action. Any order for restitution in favor of a victim shall also operate as an order for restitution in favor of the Crime Victims Reparations Board, if the board has paid reparations to the victim or on the victim's behalf. Filing fees for docketing an order of restitution as a civil judgment are waived for any victim named in the restitution order. An order of restitution shall be docketed as a civil judgment, in the name of any person named in the order and in the name of the crime victims reparations board, by the court administrator of the district court in the county in which the order of restitution was entered. The court administrator also shall notify the commissioner of revenue of the restitution debt in the manner provided in chapter 270A, the Revenue Recapture Act. A juvenile court is not required to appoint a guardian ad litem for a juvenile offender before docketing a restitution order. Interest shall accrue on the unpaid balance of the judgment as provided in section 549.09. Whether the order of restitution has been docketed or not, it is a debt that is not dischargeable in bankruptcy. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 611A.61 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Subd. 4. **Payment of restitution.** When the court orders the payment of restitution and the payment of a fine, fees, surcharges, or other financial obligations, the court administrator shall apply any payments to the restitution obligation before applying payments to the fine, fees, surcharges, or other financial obligations, unless otherwise ordered by the court.

Subd. 5. **Unclaimed restitution payments.** Restitution payments held by the court for a victim that remain unclaimed by the victim for more than three years shall be deposited in the crime victims account created in section 611A.612.

At the time the deposit is made, the court shall record the name and last known address of the victim and the amount being deposited, and shall forward the data to the Crime Victims Reparations Board.

Subd. 6. **Estate of victim.** If a victim dies before or after a request for restitution is made or an order for restitution is issued, the personal representative of the victim's estate may request or enforce an order for restitution on behalf of the victim. If a personal representative is not appointed and no application is pending, an heir of the victim may file an affidavit to request or enforce an order for restitution pursuant to this subdivision. Appointment of a personal representative does not affect the right of other victims, as defined in section 611A.01, to request an order for restitution on their behalf.

History: 1983 c 262 art 1 s 4,6; 1985 c 110 s 1; 1986 c 463 s 10; 1Sp1986 c 3 art 1 s 82; 1987 c 244 s 2; 1987 c 254 s 11; 1989 c 21 s 4-6; 1990 c 579 s 8; 1991 c 211 s 1; 1992 c 571 art 5 s 6,7; 1993 c 326 art 6 s 8-10; 1994 c 636 art 7 s 3; 1995 c 226 art 7 s 9; 1996 c 408 art 7 s 6-8; 1997 c 239 art 7 s 24; 1999 c 136 s 1; 2013 c 39 s 1; 2014 c 204 s 11

13-804. Restitution for offense causing economic loss; fine for reimbursement of public monies; notification of arrearage; review hearing

- A. On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.
- B. In ordering restitution for economic loss pursuant to section 13-603, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.
- C. The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.
- D. Restitution payments that are ordered pursuant to section 13-603 and this section shall not be stayed if the defendant files a notice of appeal, and the payments may be held by the court pending the outcome of an appeal.
- E. After the court determines the amount of restitution, the court or a staff member designated by the court, including a probation officer, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer, shall make reasonable efforts to contact any victim who has requested notice pursuant to sections 13-4415 and 13-4417, shall take into account the views of the victim and shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits. The court shall make all reasonable efforts to ensure that all persons who are entitled to restitution pursuant to a court order promptly receive full restitution. The court may enter any reasonable order necessary to accomplish this. If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to section 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim's economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim. If a probation, parole or community supervision officer has reason to believe that court ordered restitution is not being made, the officer shall report to the court supervising the probationer or the board of executive clemency that the defendant has failed to make restitution in a timely manner and the court or the board of executive clemency may revoke the defendant's probation, parole or community supervision.
- F. If more than one defendant is convicted of the offense that caused the loss, the defendants are jointly and severally liable for the restitution.
- G. If the court does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, it may conduct a hearing on the issue according to procedures established by court rule. The court may call the defendant to testify and to produce information or evidence. The state does not represent persons who have suffered economic loss at the hearing but may present evidence or information relevant to the issue of restitution.
- H. After making the determinations in subsection B of this section the trial court shall enter a restitution order for each defendant that sets forth all of the following:
1. The total amount of restitution the defendant owes all persons.
 2. The total amount of restitution owed to each person.
 3. The manner in which the restitution is to be paid.

I. The restitution order under subsection H of this section may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings.

J. A restitution lien shall be created in favor of the state for the total amount of the restitution.

K. A restitution lien shall be created in favor of the state for the total amount of the fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any, except that a lien may not be perfected against a titled motor vehicle.

L. Notwithstanding any other law, a restitution lien is created in favor of a victim of the defendant ordered to make restitution. Monies received monthly from the defendant shall be applied first to satisfy the restitution order entered by the court and the payment of any restitution in arrears. Any monies that are owed by this state to a person who is under a restitution order shall be assigned first to discharge the restitution order, including any tax refund that is owed to the defendant.

M. If the defendant, the state or persons entitled to restitution pursuant to a court order disagree with the manner of payment established in subsection E of this section, the defendant, court or person entitled to restitution may petition the court at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the court shall give notice and an opportunity to be heard to the defendant, the state and, on request, persons entitled to restitution pursuant to a court order.

N. The adult probation department that is supervising a probationer shall notify the court having jurisdiction over the case when the probationer becomes in arrears in an amount that totals four full court-ordered monthly payments of victim restitution. The notification must include the reason for the arrearage as independently confirmed by the supervising probation officer, the expected duration of the arrearage and a recommendation to the court that either further action is not warranted at this time or that a review hearing should be held pursuant to this section. If the adult probation department recommends that no further action is warranted, the adult probation department shall include specific reasons for the recommendation. A copy of the notification shall be provided to the state and to the victim if the victim has requested notice pursuant to section 13-4415. The prosecutor or the victim may file a written objection to the recommendation that includes the reasons for the objection. Any objection must be filed with the court within ten days after the notification was provided to the party.

O. The court shall hold a review hearing if requested by the state or the victim or, after considering the notification from the adult probation department and any objection filed, may hold a review hearing on its own motion. If requested by the state or victim, the hearing must be held within forty-five days after the court received the request. A review hearing is not required if a petition to revoke probation or an order to show cause is filed. At the review hearing, the court may take any action that is permitted by law.

P. Subsections N and O of this section do not preclude the filing of a petition to revoke or modify probation or an order to show cause pursuant to section 13-810.