

**Pending Mandatory Restitution
and Victim Rights Law
Ohio House Bill 526
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**Drafted by the
Ohio Victim Witness Association**

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Pending Law Summary

- Mandatory Restitution for ORC 2930 victims
- Victim Advocate & crime victim service organization
- Victim Advocate may be victim's representative
- Others harmed may submit victim impact statement
- Victim "shall" be notified of possible delays
- Victim notified of hearing to seal or expunge record
- Victim may give oral and written victim impact
- Journal entry sent before release of defendant
- Victim has standing to assert rights and enforcement
- Rights failure can affect sentence and post-release

Mandatory Restitution Summary

“maximize restitution, not guarantee it”

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

Current Ohio law already has:

- Permissive restitution = if prosecutor requests, if judge orders, if collection prioritized, if clerk / probation has victim contact information
- Restitution default payment sequence = court costs paid 1st and restitution 2nd, unless judge orders otherwise or Rules of Court are amended
- Restitution is paid about 8th by Dept. of Corrections
- Criminal restitution orders are automatically civil liens in favor of victims. Victims file a claim but no evidence needs presented. Some new clarifying language has been suggested for 2929.18(D)

Mandatory restitution & priority

Preservation of Assets

- Upon prosecutor's motion, judge may enter
 - Restraining order
 - Injunction
 - Execution of a performance bond
 - Any other action
- to preserve availability of property to satisfy an anticipated (by preponderance) restitution order
- without notice to defendant if necessary, but with prompt notice and hearing in 10 days to defendant
- Preservation Order is valid in 90 day increments₅

Mandatory restitution & priority

Determination of Restitution

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

Mandatory restitution & priority

Payment of Restitution

- Full and timely payment to all parties
- All payments first to restitution in sequence of:
 - Individuals
 - Nonprofit organizations
 - Business entities
 - Government entities
 - Prior cases with victim restitution orders
- Cannot suspend restitution or order community service in lieu of – unless victim requests alternative amount or form of payment

Mandatory restitution & priority

Payment of Restitution

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

Mandatory restitution & priority

Payment of Restitution

- Restitution order not dischargeable in bankruptcy, or any other statutory or common-law proceeding for relief against creditors, except by federal law
- If money or property is received from defendant and victim or estate cannot be found or accept the payment, it goes to Ohio Victim Compensation Fund or crime victim service organization

Current Ohio law already has:

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

Victim Rights Law changes (2930) adding 2 definitions

- Victim Advocate = person from a crime victim service organization who provides support and assistance for a victim of crime during criminal and administrative proceedings and recovery efforts related to the crime
- Crime victim service organization = any [non-profit organization] organized and operated to provide [or contribute to such organizations] services and assistance for victims of crime

Victim Rights Law changes (2930)

- Victim Advocate may be victim's representative
- Others harmed may submit victim impact statement
 - “any other person who was emotionally, physically, or financially harmed by the offense”
 - Intended for co-workers, neighbors, and relatives
- Victim “shall” be notified of delays
 - Deleted “to the extent practicable” and added “shall,” if victim has requested notice and has current contact info
- Victim, not judge, chooses whether to give oral and / or written victim impact

Victim Rights Law changes (2930)

- Court must notify prosecutor at least 10 days prior to a hearing to seal or expunge an adult or juvenile offender record, and prosecutor must provide timely notice to requesting victims with current contact information
- Court must provide prompt notice to prosecutor of decision regarding judicial release from prison or juvenile from Ohio Dept. of Youth Services
- Before ordering release, court shall send custodial agency copy of journal entry of decision

Victim Rights Law changes (2930)

Victim's right to standing, enforcement, & appeal

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

Victim Rights Law changes (2930)

Victim's right to standing, enforcement, & appeal

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

Items We Might Add

- After 1 year since the last restitution was paid, and if the funds remain un-deliverable, then the funds must be sent to the Victim Compensation Fund or local crime victim service organization(s), at the direction of the sentencing or presiding judge.
- Restitution orders may be amended by the court
 - upon a motion of the prosecutor
 - with due process provided the defendant
 - using preponderance of the evidence standard

(Is restitution restorative or punitive? i.e., Can you correct restitution or does that incur double jeopardy?)

Victim Justice

- This is what government can do; what “victim due process” looks like - like hearings and money spent on defendant mental health and competency issues
- 4 core needs of victims:
 - Safety, Healing, Justice, & Restitution (financial recovery)
- Proposed U.S. Constitutional Amendment for Victim Rights -now in federal law- “reverse Miranda rights”
 - To be informed, present, heard, safety considered, and restitution ordered, with standing to enforce
- Victim Rights: can't be ignored & can't have control

“... ..”