



OFFICE OF THE OHIO PUBLIC DEFENDER

# Marsy's Law & Violent Offender Registry

Legal Update

6/14/19





# Violent Offender Registry

Effective March 20, 2019

(Retroactive for anyone incarcerated on same date)

Code Sections - 2903.41-44

Database maintained w/ BCI&I





# Convictions Impacted

- Agg. Murder
- Murder
- Voluntary Manslaughter
- Kidnapping
- Abduction (2<sup>nd</sup> Degree only)
  
- Comparable Out-of-State Crimes





# Duties

- 10-Life Annual In-Person Registration w/ County Sheriff
  - (rebuttable presumption)
- Update changes within 3 business days
  - Residential Address
  - Employment Address
  - School Address





# Rebuttal

- Rebuttal Eligibility Criteria
  - ≠ principal offender
    - AND
  - Judge agree you shouldn't be on it
- Process
  - New/Pending charges
    - Motion filed at of prior to sentencing \*
  - Incarcerated on old charges
    - Motion filed prior to release
  - Out-of-State
    - Motion filed before enrollment
    - With court in county of residence





# Rebuttal Con't

- After motion
  - 1<sup>st</sup> Hearing
    - is D ≠ principal offender
    - Preponderance Standard
  - 2<sup>nd</sup> Hearing
    - Should D have a duty to register anyway
    - Factors
      - Prior offense of violence convictions
      - Result of DRC's validated risk assessment tool
      - Current offense involvement showing D is a violent offender
      - Public Interest & Safety





# Timing & Failure to Register

Registration Timeframes		
<u>Triggering Event</u>	<u>Days After Event</u>	<u>Duty</u>
Release *sentencing if no incarceration	10	In-Person Enrollment
Become aware of duty ** (out-of-state only)	10	In-Person Enrollment
Enrollment Anniversary	10	In-Person Re-Enrollment
Address Change (home, work, school)	3 (business days)	Written Change of Address

- **Punishment** (2903.43)
  - Recklessly failing to enroll/re-enroll or change address
  - 5<sup>th</sup> Degree Felony
    - ALSO violates parole, community control, PRC, or other supervised release





# Extension & Termination

- Registration Extension to Lifetime Requires both:
  - New criminal conviction, OR
  - New registry offense-based sanction or condition violation
- P's extension motion
- Motion to terminate
  - 1 per 5 years
  - Must include: (2903.44(B))
    - Statement of no convictions within 10 year initial OR extension period
    - Evidence of payment of ALL financial sanctions
  - Probation shall investigate & write a report
  - Options
    - Deny w/o hearing
    - Grant w/o hearing\*
    - Full hearing\*







# Litigation Issue & Privacy

- Retroactivity/Ex Post Facto
  - Previously sentenced
  - Mandatory registrant (principal)
  - Comparable to the Adam-Walsh sex offender registration case law
- Database ≠ Public
  - BUT – info collected by sheriff & in their possession is
    - Exceptions – SSN, DL#, CDL#, State Id#
- Motion to Restrict Access
  - If D fears for their safety
  - Restrict sheriff held info from public records request





# Marsy's Law Update

Victim's Rights Constitutional Amendment  
Effective February 5<sup>th</sup>, 2018

Enabling Legislation has not yet passed  
(or even been introduced)





# Definition & Application

- Victim Definition
  - “A person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.”
    - Not including the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.
- Expands category of victims
  - Now can include:
    - Family members, guardians, and others w/ a relationship to a victim
      - Potentially corporations, insurance companies & other entities
- All provisions **SHALL SUPERSEDE** all conflicting state laws





# Present & Heard Right

- At any public proceeding involving:
  - Release
  - Plea
  - Sentencing
  - Disposition
  - Parole
  - OR implicating the victim's rights

Trial Level Impacts		
Bond Hearing Delay	Arraignment Delay	Reagan Tokes Releases
Continuance Issues	Dismissal Contests	Drug/MH/Vets Ct impacts





# Discovery Rights

- To “refuse and interview, deposition, or other discovery request made by the accused”
  - Potential 6<sup>th</sup> Amendment issues
    - Informed of nature & cause of accusation
    - Confronted by witnesses against
  - Exception for rights the Ohio Constitution Art 1, Sec 10
    - Covers prior two issues
- Likely not a major issue





# Victim's Attorney

- “victim's other lawful representative . . . may assert the [victim's] rights”
- Who pays – unclear
  - Some Ohio courts have appointed victim's counsel
  - Has been passed along in court costs to D
  - OCVJC suggests that court bears costs





# Presence at Public Proceeding

- Right “to be present at [all public proceedings involving the criminal offense against the victim]”
- No sequestration
  - Solution
    - motion to require the victim to be called first
  - Problem
    - interference with State’s discretion in presenting its case





# Corporate Victims

- Corporate Opposition
  - Unless full restitution has been paid
  - Records sealing
  - Dismissals
- Medical & Life Insurance Companies
  - Full repayment of claims paid
    - North Dakota Supreme Court (May 2019)
      - Ordered \$27,500 to Blue Cross Blue Shield for crime victim injuries
        - (under Marsy's Law)
  - Counter argument
    - Injury and death rates have always included crime sources
    - Companies already charge to cover this, so are not harmed







# Entity Victims

- Police Departments
  - Have seen Ohio police seek restitution for costs of investigation
    - “directly and proximately harmed by the commission of the offense”
    - Granted at trial level
    - Overturned on appeal
  - Right to refuse D’s interview, deposition, & discovery requests
    - If officer victim
    - Assault on an officer, Police involved shootings, any officer injury or property damage





# “Free from Unreasonable Delay”

- Victim-based Speedy Trial Requests
  - Also by P, if requested/authorized by V
- Potential Right to Terminate Collateral Litigation
  - FL see the same section meaning:
    - All state collateral attacks must timely end

FL State Collateral Attack End Dates	
<u>Case Type</u>	<u>Length</u>
Non-Capital	2 yrs
Capital	5 yrs

- Escape valve – Ct order explaining why timeframe can't be met





# Closing

## Violent Offender Registry

Start counseling & filing motions

## Marsy's Law

??????

Be on the lookout

[Spencer.Cahoon@opd.ohio.gov](mailto:Spencer.Cahoon@opd.ohio.gov) - 614-644-1556

