

RELEASE OF PRE-SENTENCE REPORTS TO VICTIMS PER MARSY'S LAW/VICTIM'S BILL OF RIGHTS

- AUTHORITY:** Victim's Bill of Rights Act 2008/Marsy's Law (Proposition 9)
California Constitution, Article 1, Section 28
Administrative Directive
- RESCINDS:** Procedure Manual Item 2-1-107, dated 02/15/13
- FORMS:** None
- PURPOSE:** To provide guidelines for probation staff to provide copies of pre-sentence reports to victims.

I. GENERAL INFORMATION

- A. On November 4, 2008, the voters of the State of California approved Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law, a measure to provide all victims with rights and due process.
- B. Per the provisions of Marsy's Law, victims are entitled to receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law. [Article 1, Section 28 (b)(11)]
- C. Per the Victims Bill of Rights, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

II. PROCEDURE

Report requests

- A. A victim may obtain a redacted copy of the pre-sentence report by making a request **with the Department's Custodian of Records (COR)** or the Resident Probation Officer (RPO) clerk's office.
- B. The request must be made by a victim as described above, via a signed "REQUEST FOR RELEASE OF SENTENCING REPORTS TO VICTIMS/MARSY'S LAW" form [F057-1343(A)AF] located in the Microsoft Word documents e-forms/templates Adult Supervision section. A written letter may be submitted, however electronic mail (e-mail) requests will not be accepted. A request letter should include the following information:

- The requestor is a crime victim requesting the pre-sentence report per Marsy's Law
- The defendant's/probationer's name
- The Court case number
- The defendant's/probationer's probation number

C. The letter should be addressed to:

Steven J. Sentman, Chief Probation Officer
Orange County Probation Department
P.O. Box 10260
Santa Ana, CA 92711

Attn: **Custodian of Records**

[Note: When the request is made at the RPO office, the RPO clerk will FAX the request form or letter to the **COR and Subpoena Specialist**. **The COR will request a copy of the Pre-Sentence Report from the assigned Deputy Probation Officer (DPO) and process the request.** The SPO will immediately assign the request to the DPO who completed the pre-sentence report to process. If the DPO is not available, another unit member will be assigned the responsibility to process the request. Should the request be made after the case has been assigned to an officer outside of Adult Investigations, the request will be forwarded immediately to the assigned officer to redact the report.]

D. The **COR** will redact a copy of the report and make a copy of the redacted report. The redacted copy is to be marked "Victim Copy." The original redacted copy will then remain in the file with the original report. The following information is to be omitted during the redaction:

- Defendant/probationer address and phone numbers
- Date of birth
- Place of birth
- Department of Motor Vehicles driver's license number
- Social Security number
- Federal Bureau of Investigations number
- Criminal Identification Information number
- Employer Information
- All spouse/previous spouse information
- All family information
- Former residence information
- Current Educational Institutions
- Health Issues (past and present)
- Substance abuse information/history
- Previous treatment programs attended/completed
- Psychological information
- Vehicle Information (license plate number/VIN number only)
- Identifying information for victims/family members
- Prior record/criminal history information (juvenile and adult)

E. If the request is made at the RPO office, on or before the day of the sentencing, and time was not allotted to send the Xeroxed redacted "Victim Copy" to the RPO

office with the original report copy, the **COR or Subpoena Specialist** will FAX the redacted "Victim Copy" to the RPO clerk's office to be provided to the victim. [Note: In the event the victim is unable to be present to obtain a requested copy of the report at the RPO office or **the COR office located at the North County Field Services Office (NCFSO). With approval of the Professional Standards Division (PSD) Assistant Division Director (ADD)**, the redacted "Victim Copy" of the report may be mailed via the U.S. Postal Service. The report should be sent "Certified" with a "return receipt" and marked by the postal service "Restricted Delivery." The postal service will stamp the envelope "Restricted" and the Post Office or postal carrier must check the identification of the individual signing for the letter or package to ensure the victim is the person who obtains the report.]

- F. A Criminal Offender Record Information (CORI) release chrono per PMI 1-1-101 will be completed by the assigned Probation Officer and placed in the probation case records. [Note: The CORI release chrono is located in Microsoft Word, Adult Supervision Templates, and labeled "Chrono-CORI Release."]

REFERENCES:

Procedures:	1-1-101	Access to and Release of Criminal Offender Record Information (CORI)
	1-1-107	Release of Sex Offender Information to the Public
	1-1-109	Confidentiality of California Department of Corrections and Rehabilitation Diagnostic Reports
Policies:	A-1	Policy, Procedure and the Law
	A-2	Upholding Departmental Philosophy and Principles
	A-9	Request for Information and Assistance (Except Media Requests; See A-10)
	B-1	Case Confidentiality – Clients Right to Privacy

Attachment

J. Cisneros

APPROVED BY:

Victims' Bill of Rights

Marsy's Law significantly expands the rights of victims in California. Under Marsy's Law, the California Constitution article I, § 28, section (b) now provides victims with the following enumerated rights:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.
3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
13. To restitution.
 - A. It is unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
14. To the prompt return of property when no longer needed as evidence.
15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender
16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
17. To be informed of the rights enumerated in paragraph (1) through (16).