

Rule of Judicial Administration Amendment concerning Marsy's Law

A Joint Subcommittee, in compliance with Florida Rule of Judicial Administration 2.140(a)(7), invites comments on proposed Rule 2.423 anticipated to be filed on or before July 31, 2020. A summary and the full text of the proposal is set out below. Interested persons have until April 30, 2020, to submit any comments, electronically, to Judge Josephine Gagliardi, Chair of the Rules of Judicial Administration Committee, at jgagliardi@ca.cjis20.org, and to Bar attorney liaison, Krys Godwin, at kgodwin@floridabar.org.

Rule Number	Explanation
<u>Rule 2.423 (“Marsy’s Law” Crime Victim Information Within Court Filing)</u>	This new rule defines the scope and purpose, the terminology of this rule, and confidential and exempt record. It details the procedure for identifying confidential crime victim information in criminal and juvenile case records. The rule clarifies the duration of confidentiality in compliance with the Florida Constitution. A sample form is included.

RULE 2.423. “MARSY’S LAW” CRIME VICTIM INFORMATION WITHIN COURT FILING

(a) Scope and Purpose. As provided by article I, section 16 of the Florida Constitution, known as “Marsy’s Law,” the following rule shall govern public access to and the protection of the records of the judicial branch of government in criminal and juvenile justice cases as it pertains to confidential crime victim information. This rule shall be interpreted to be consistent with the scope and purpose of rule 2.420.

(b) Definitions.

(1) “Confidential crime victim information” means any information contained within a court record that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.

(2) “Crime” and “criminal” include delinquent acts and conduct.

(3) 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 or against whom the crime or delinquent act is committed. The term “victim” includes the victim’s lawful representative, the parent or guardian of a minor victim, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term “victim” does not include the accused.

(c) **Confidential and Exempt Records.** In accordance with rule 2.420(c)(9), confidential crime victim information is determined to be confidential on the grounds that confidentiality is required to comply with the Florida Constitution.

(d) **Procedure for Identifying Confidential Crime Victim Information in Criminal and Juvenile Court Records.**

(1) The filer of an initial charging document shall indicate the existence of confidential crime victim information pursuant to article I, section 16 of the Florida Constitution. If the filer indicates the existence of confidential crime victim information, the clerk of the court shall designate and maintain the confidentiality of any such information contained within the initial charging document.

(2) Except as provided under subparagraph (d)(1), the filer of any document with the court under this paragraph shall ascertain whether it contains any confidential crime victim information. If the filer believes in good faith that information is confidential, the filer shall request that the information be maintained as confidential by contemporaneously filing a “Notice of Confidential Crime Victim Information within Court Filing.”

(3) A crime victim, the filer, a party, or any affected nonparty may file a Notice of Confidential Crime Victim Information within Court Filing at any time.

(4) Filers of subsequent court filings shall limit the presence of crime victim identifying information in accordance with rule 2.425(a)(3) or file a Notice of Crime Victim Information within Court Filing with each subsequent court filing that contains confidential crime victim information.

(5) A Notice of Confidential Crime Victim Information within Court Filing:

(A) Shall identify the precise location of the confidential information within the document being filed.

(B) Shall be confidential to the extent it contains crime victim information pursuant to article I, section 16.

(C) Shall not be required when an entire case file is maintained as confidential.

(D) A form shall accompany this rule.

(6) If a Notice of Crime Victim Information within Court Filing is filed, the clerk of court shall review the filing identified as containing confidential crime victim information to determine whether the purported confidential information is facially subject to confidentiality under article I, section 16(b)(5) of the Florida Constitution.

(A) The clerk of the court shall designate and maintain the confidentiality of any such information contained within a court record.

(B) If the clerk determines that the information is not confidential, the clerk shall notify the filer in writing within 5 days of filing the notice and thereafter shall maintain the information as confidential for 10 days from the date such notification by the clerk is served. The information shall not be held as confidential for more than that 10-day period, unless a motion has been filed pursuant to rule 2.420(d)(3).

(e) **Duration of Confidentiality.** In accordance with article 1, section 16(b)(3) of the Florida Constitution, a crime victim is entitled to be reasonably protected from the accused and any person acting on behalf of the accused within the judicial process. Therefore, once the court has made a final determination that it is no longer reasonable for the information to be maintained as confidential, the provisions of this rule no longer apply.

APPENDIX A

NOTICE OF CONFIDENTIAL CRIME VICTIM INFORMATION

WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.423, I hereby certify:

() (1) I am filing a document containing confidential crime victim information as described in rule 2.423(b)(1) and that:

(a) The title/type of the document is _____,

and;

(b) () the entire document is confidential, or

() the confidential information within the document is precisely located at: _____.

or

() (2) A document was previously filed in this case that contains confidential crime victim information as described in rule 2.423(b)(1), but a Notice of Confidential Crime Victim Information within Court Filing was not filed with the document and the confidential information was not maintained as confidential by the clerk of the court. I hereby notify the clerk that this information is located as follows:

(a) Title/type of document: _____;

(b) Date of filing (if known): _____;

(c) Date of document: _____;

(d) Docket entry number: _____;

and either:

() Entire document is confidential, or

() The precise location of the confidential crime victim information is: _____.

Filer's Signature

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to (here insert names or names, addresses used for service, and mailing addresses) by (portal) (e-mail) (delivery) (mail) on(date).... [See Note 1].

Name: _____
Address: _____
Phone: _____
Florida Bar No. (if applicable) _____
E-mail address: _____

Note 1: If the name or address of a Party or Affected Nonparty is confidential DO NOT include such information in the Certificate of Service. Instead, serve the State Attorney or request Court Service as described under rule 2.420(k).

Note 2: The clerk of the court shall review filings identified as containing confidential crime victim information to determine whether the information is facially subject to confidentiality under rule 2.423(d)(6). As provided under rule 2.423(d)(6)(B), the clerk shall notify the filer in writing within 5 days if the clerk determines that the information is not subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to rule 2.420(d)(3).