
COVID-19 Response

Compliance with Crime Victims' Rights Requires Allowing Victims to Use Electronic Signatures on Legal Documents

Crime victims must be allowed to use electronic signatures on all legal documents and court filings during the COVID-19 pandemic. Requiring crime victims to submit documents with original or “wet ink” signatures places victims’ physical, mental and emotional health at risk; conflicts with crime victims’ federal and state rights to be treated with fairness and respect for their dignity; jeopardizes the victim’s and society’s interest in a just resolution of cases; endangers the health of individuals who work within or otherwise use the justice system; and is inconsistent with national, state, and local efforts to stop the spread of COVID-19.

Fortunately, many courts have already recognized the need to provide individuals with relief from original ink signature requirements during the COVID-19 pandemic¹; others must now follow suit.² Such a change in procedure is necessary to:

- **Comply with victims’ rights to be treated with fairness and respect for their dignity.** Crime victims are participants in the justice system because of the unlawful act(s) of another person; continuing to require original ink signatures in the midst of a global pandemic effectively penalizes victims for such participation. This treats victims unfairly and without respect for their dignity, in conflict with their established federal and state rights.³
- **Protect crime victims’ physical, mental and/or emotional health.** Requiring a victim to submit documents with an original ink signature places the victim at risk of becoming infected with COVID-19 when filing the document themselves or when providing the document to a person filing it on their behalf. Even if a victim is allowed to submit documents containing original ink signatures via U.S mail, the victim may risk exposure to the virus when mailing the signed documents. Further, during this time reliance on the mail may be impossible or uncertain given existing court deadlines, unanticipated delays during the pandemic and the numerous shelter in place orders that may impede individual victim’s access to postal services. Forcing victims to choose between their physical, mental and/or emotional health and accessing justice causes victims unnecessary secondary harm.⁴
- **Protect the victim’s and the public’s interest in justice.** Should a victim miss a filing deadline due to an inability to safely meet original ink signature requirements during the COVID-19 pandemic, the victim may lose important rights, benefits or

protections. Additionally, key aspects of criminal case may be jeopardized, resulting in some offenders not being brought to justice.

- **Protect the health of individuals who work within or who otherwise use the justice system.** Procedural and court rules that require original ink signatures place courts, clerks, court personnel, attorneys, parties and other court users at risk of exposure to COVID-19.⁵
- **Meet existing shelter-in-place orders, social distancing requirements, office and courthouse closures, and other efforts to reduce in-person contact.** Given existing national and local efforts to reduce in-person contact, many victims may be unable to provide the court, the prosecution, their attorneys and other relevant individuals with documents containing their original ink signature.⁶

The information in this product is educational and intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. Any information provided is not intended to apply to a specific legal entity, individual or case. NCVLI does not warrant, express or implied, any information it may provide, nor is it creating an attorney-client relationship with the recipient.

¹ See, e.g., N.H. Supreme Court, *Renewed and Amended Order Suspending In-Person Court Proceedings Related to New Hampshire Superior Court and Restricting Public Access to Courthouses* (Mar. 28, 2020), <https://www.courts.state.nh.us/supreme/orders/3-27-20-REVISED-RENEWAL-Superior-Court-order-suspending-in-person-court-proceedings.pdf> (“Effective immediately, all courts will accept electronic signatures on pleadings and will allow litigants’ signatures to be electronically signed by attorneys and/or bail commissioners with a statement that they have communicated with the litigant who has authorized them to do so.”); V.I. Supreme Court Admin Order No. 2020-0004 (Mar. 20, 2020), https://www.vicourts.org/UserFiles/Servers/Server_9784218/File/News/2020/Admin%20Order_COVID-19_%202020-0004.pdf (requiring that all filings in the Supreme Court of the Virgin Islands must be emailed to the court and providing all such filings must adhere to applicable court rules, “except that the emailed document may be signed with an electronic signature” or, “[a]lternatively, a scanned hand-written signature may be used as an electronic signature”); see also Mich. Supreme Court Admin. Order No. 2020-1 (Mar. 15, 2020), https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Administrative%20Orders/2020-08_2020-03-15_FormattedOrder_AO2020-1.pdf (stating that, in response to the serious health risks posed by COVID-19, “trial courts should maximize the use of technology to facilitate electronic filing and to reduce the need for in-person filing and service”); cf. The Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE), S.B. 3533, 116th Congress (2020) (proposed bill to authorize every notary in the United States to perform remote online notarization in response to the COVID-19 pandemic).

² To avoid violating crime victims’ rights and interests, rules requiring original signatures be suspended in their entirety. Altering rules to allow for electronic signatures on certain forms and documents but requiring those to be reproductions of an original signature is inadequate. For instance, in response to the COVID-19 pandemic, United States Citizenship and Immigration Services (USCIS) announced that it would accept “electronically reproduced original signatures” on all documents and benefits. United States Citizenship and Immigration Services, *USCIS Announces Flexibility in Submitting Required Signatures During COVID-10 National Emergency* (Mar. 20, 2020), <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>. While this change protects USCIS employees from COVID-19 exposure, attorneys and advocates must still collect and hold on to the original ink signature, placing the health of the applicant and attorney

at risk. See Rafael Bernal, *Legal Immigrants at Risk of Losing Status During Coronavirus Pandemic*, The Hill (Mar. 26, 2020), <https://thehill.com/homenews/administration/489569-legal-immigrants-at-risk-of-losing-status-during-coronavirus-pandemic> (noting an immigration policy advocate’s observation that USCIS’s change “did little for attorneys and applicants, as the wet signature still has to be collected and filed”).

³ See 18 U.S.C. § 3771(a)(8) (affording crime victims “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy”); *Fundamentals of Victims’ Rights: A Summary of 12 Common Victims’ Rights: A Summary of 12 Common Victims’ Rights* at 1 n.1, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland Or.), November 2011, <https://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12> (compiling a list of state statutes guaranteeing victims rights to fairness, dignity, and respect). These rights generally apply at the outset of government efforts to detect and investigate crime. See, e.g., 18 U.S.C. § 3771(c)(1); D.C. Code Ann. § 23-1901(a).

⁴ See *Polyvictimization: Victims’ Rights Enforcement as a Tool to Mitigate “Secondary Victimization” in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst, Portland, Or.), March 2013, <http://law.lclark.edu/live/files/13798-polyvictimization-victims-rights-enforcement-as-a-tool> (describing how the manner in which victims are treated throughout the criminal justice process effects their trust in the justice system and observing that victims who feel they have been treated unfairly experience more trauma symptoms and system-based victimization).

⁵ See Mass. J. Ct. R., *Supreme Judicial Court Order Concerning Electronic Signatures of Clerks and Judges* (Mar. 26, 2020), <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-order-concerning-electronic-signatures-of> (requiring judges and court clerks in Massachusetts courts to sign documents electronically because, *inter alia*, “the act of obtaining original or ‘wet’ signatures from judges and other authorized court personnel is inconsistent with [] urgent efforts to combat the spread of the coronavirus and may pose a degree of risk of exposure for judges, clerks, and other court personnel, as well as parties, attorneys, and other court users, if any of them have contracted or been exposed to the coronavirus” and noting that such signatures are otherwise authorized by existing state rules regarding electronic filing); see also Mich. Supreme Court Admin. Order No. 2020-1 (“During the state of emergency [due to COVID-19], trial courts should be mindful that taking reasonable steps to protect the public is more important than strict adherence to normal operating procedures or time guidelines standards”).

⁶ See N.Y. Workers’ Comp. Bd., *NYS WCB Response COVID-19 Pandemic: Emergency Relief from Original Signature Requirements on Listed Documents* (Mar. 2020), <http://www.wcb.ny.gov/content/main/TheBoard/COVID-19-signature-requirements.jsp> (suspending the requirement for original handwritten signatures on New York Workers Compensation Board forms on the ground that “[m]any attorneys, other law firm staff, and employees of payers and administrators are working from home during this crisis and are unable in some instances to submit required forms with original handwritten signatures”); cf. *Greenlee v. Rettich*, No. 3:20-cv-023, 2020 WL 1439892, *1 (S.D. Ohio Mar. 24, 2020) (slip copy) (ordering plaintiff to “make service of future filings by mailing or electronically and not to make or attempt to make personal or office service of papers until the Governor has announced an end to the stay-at-home directions presently in force).