

## OREGON VICTIMS' RIGHTS LAWS<sup>1</sup>

### Constitution

(2008 amendment revisions indicated by {+} for additions or {-} for deletions)

#### Article I, § 42 – Rights of Victims in Criminal Prosecutions and Delinquency Proceedings

(1) To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile justice systems, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant's innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings, the following rights are hereby granted to victims in all prosecutions for crimes and in juvenile court delinquency proceedings:

- (a) The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present, and to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition;
- (b) The right, upon request, to obtain information about the conviction, sentence, imprisonment, criminal history and future release from physical custody of the criminal defendant or convicted criminal and equivalent information regarding the alleged youth offender or youth offender;
- (c) The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state;
- (d) The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury;
- (e) The right to have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared;

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<sup>1</sup> Not intended to be exhaustive.

(f) The right to be consulted, upon request, regarding plea negotiations involving any violent felony; and

(g) The right to be informed of these rights as soon as practicable.

(2) This section applies to all criminal and juvenile court delinquency proceedings pending or commenced on or after the effective date of this section. Nothing in this section reduces a criminal defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section is intended to create any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, { - ruling of a court, - } conviction or adjudication or otherwise { - suspend or - } terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal. { + Except as otherwise provided in subsections (3) and (4) of this section, nothing in this section may be used to invalidate a ruling of a court or to suspend any criminal or juvenile delinquency proceedings at any point after the case is commenced.

(3) (a) Every victim described in paragraph (c) of subsection (6) of this section shall have remedy by due course of law for violation of a right established in this section.

(b) A victim may assert a claim for a right established in this section in a pending case, by a mandamus proceeding if no case is pending or as otherwise provided by law.

(c) The Legislative Assembly may provide by law for further effectuation of the provisions of this subsection, including authorization for expedited and interlocutory consideration of claims for relief and the establishment of reasonable limitations on the time allowed for bringing such claims.

(d) No claim for a right established in this section shall suspend a criminal or juvenile delinquency proceeding if such a suspension would violate a right of a criminal defendant guaranteed by this Constitution or the Constitution of the United States.

(4) Upon the victim's request, the prosecuting attorney, in the attorney's discretion, may assert and enforce a right established in this section.

(5) Upon the filing by the prosecuting attorney of an affidavit setting forth cause, a court shall suspend the rights established in this section in any case involving organized crime or victims who are minors. + }

{ - (3) - } { + (6) + } As used in this section:

(a) 'Convicted criminal' includes a youth offender in juvenile court delinquency proceedings.

(b) 'Criminal defendant' includes an alleged youth offender in juvenile court delinquency proceedings.

(c) 'Victim' means any person determined by the prosecuting attorney { + or the court + }

to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. { - In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. - }

(d) 'Violent felony' means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense.

{ + (7) In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. + }

PARAGRAPH 2. { + The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election. + }

Enrolled House Joint Resolution 49 (HJR 49-B)

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Adopted by House May 8, 2007

Readopted by House June 11, 2007

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Chief Clerk of House

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Speaker of House

Adopted by Senate June 6, 2007

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President of Senate

## **Article 1, § 43 – Right to Protection from Criminal Defendant**

(1) To ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal proceedings, the following rights are hereby granted to victims in all prosecutions for crimes:

(a) The right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process and from the alleged youth offender or youth offender throughout the juvenile delinquency proceedings.

(b) The right to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public,

as well as the likelihood that the criminal defendant will appear for trial. Murder, aggravated murder and treason shall not be bailable when the proof is evident or the presumption strong that the person is guilty. Other violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release.

(2) This section applies to proceedings pending or commenced on or after the effective date of this section. Nothing in this section abridges any right of the criminal defendant guaranteed by the Constitution of the United States, including the rights to be represented by counsel, have counsel appointed if indigent, testify, present witnesses, cross-examine witnesses or present information at the release hearing. Nothing in this section creates any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, { - ruling of a court, - } conviction or adjudication or otherwise { - suspend or - } terminate any criminal or juvenile delinquency proceeding at any point after the case is commenced or on appeal. { + Except as otherwise provided in paragraph (b) of subsection (4) of this section and in subsection (5) of this section, nothing in this section may be used to invalidate a ruling of a court or to suspend any criminal or juvenile delinquency proceedings at any point after the case is commenced. + } Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution.

(3) As used in this section:

(a) 'Victim' means any person determined by the prosecuting attorney { + or the court + } to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. { - In the event no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. - }

(b) 'Violent felony' means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense.

(4) { + (a) + } The prosecuting attorney is the party authorized to assert the rights of the { - victim and the - } public established by this section.

{ + (b) Upon the victim's request, the prosecuting attorney, in the attorney's discretion, may assert and enforce a right established in this section.

(5) (a) Every victim described in paragraph (a) of subsection (3) of this section shall have remedy by due course of law for violation of a right established in this section.

(b) A victim may assert a claim for a right established in this section in a pending case, by a mandamus proceeding if no case is pending or as otherwise provided by law.

(c) The Legislative Assembly may provide by law for further effectuation of the provisions of this subsection, including authorization for expedited and interlocutory

consideration of claims for relief and the establishment of reasonable limitations on the time allowed for bringing such claims.

(d) No claim for a right established in this section shall suspend a criminal or juvenile delinquency proceeding if such a suspension would violate a right of a criminal defendant or alleged youth offender guaranteed by this Constitution or the Constitution of the United States.

(6) In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. + }

PARAGRAPH 2. { + The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election. + }

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Enrolled House Joint Resolution 50 (HJR 50-B)

Adopted by House May 8, 2007

Readopted by House June 11, 2007

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Chief Clerk of House

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Speaker of House

Adopted by Senate June 6, 2007

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President of Senate

## **Statutes**

### **Title 14, Procedure in Criminal Matters Generally; Chapter 147, Crime Victims; Crime Victims' Rights**

#### **§ 147.405 – Short title**

Chapter 2, Oregon Laws 1987, shall be known as the "CRIME VICTIMS' BILL OF RIGHTS."

#### **§ 147.410 – Purpose**

We, the people of the State of Oregon, declare that victims of crime are entitled to fair and impartial treatment in our criminal justice system. The purpose of chapter 2, Oregon Laws 1987, is to declare to our legislature and our courts that victims' rights shall be protected at each stage of the criminal justice system. We reject the notion that a criminal defendant's rights must be superior to all others. By chapter 2, Oregon Laws 1987, we seek to secure balanced justice by eliminating unbalanced rules.

### **§ 147.415 – Severability**

If any section, portion, clause or phrase of chapter 2, Oregon Laws 1987, is for any reason held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force in effect.

### **§ 147.417 – Constitutional rights of victim**

(1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be verbal or written. If exercise of any of the rights depends upon the victim making a request, the law enforcement agency shall include in the notice the time period in which the victim is required to make the request. A law enforcement agency satisfies the requirements of this section if the law enforcement agency:

- (a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or, in a homicide case, the victim's next of kin; and
- (b) Presents, if written notice is given, the notice directly to the victim or sends the notice to the last address given to the law enforcement agency by the victim.

(2) Failure by a law enforcement agency to properly notify the victim as required by this section is not grounds for setting aside a conviction or withdrawing a plea. However, nothing in this section justifies such a failure.

- (3)
  - (a) As used in this section, "law enforcement agency" means the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.
  - (b) The district attorney shall determine if the notice required by this section has been given and, if not, shall provide the notice.

### **§ 147.419 – Transcript of criminal proceeding**

In any criminal proceeding in which a transcript, audiotape or videotape of the proceedings held in open court is prepared, the victim may obtain a copy of the transcript or tape by paying the court or the person who prepared the transcript or tape the actual cost of copying it.

**§ 147.421 – Providing information about defendant to victim**

(1) If a public body is the custodian of any of the following information, upon the request of the victim, the public body shall provide to the victim any of the following information of which it is the custodian and that is about the defendant or convicted criminal:

- (a) The conviction and sentence;
- (b) Criminal history;
- (c) Imprisonment; and
- (d) Future release from physical custody.

(2) A public body, in its discretion, may provide the requested information by furnishing the victim with copies of public records. The public body may charge the victim its actual cost for making public records available as provided in ORS 192.440 (3).

(3) As used in this section:

- (a) "Criminal history" means a description of the prior arrests, convictions and sentences of the person.
- (b) "Future release" means the projected or scheduled date of release of the person from confinement, the name and location of the correctional facility from which the person is to be released and the community where the person is scheduled to reside upon release.
- (c) "Imprisonment" means the name and location of the correctional facility in which the person is confined.
- (d) "Public body" has the meaning given that term in ORS 192.410.