

OREGON CRIME VICTIMS' RIGHTS PRACTITIONERS GUIDE

Oregon Department of Justice Crime Victims' Services Division

A synthesis of rights available to crime victims in the Oregon
Constitution, Oregon statutes and case law

Last updated: July 2019



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This guide presents an overview of rights available to crime victims in the Oregon Constitution, Oregon statutes and other sources of law. Whether or not a right applies may depend on the definition of victim that applies to the right, whether or not a victim requested a right that required such a request. This guide is a work in progress that will be updated over time.

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Foundational Rights

A crime victim has a right to justice, a right to a meaningful role in the criminal and juvenile justice systems, a right to due dignity and respect, and a right to fair and impartial treatment. A crime victim's rights shall be protected at each stage of the criminal justice system. Or Const, Art I, § 42(1). ORS 147.410.

Notable Case Law

State v. Sperou, **365 Or 121 (2019)**. Although the term “victim” conveys a legal status for the purposes of enforcing constitutional protections that Article I, section 42, of the Oregon Constitution provides to crime victims, the use of the term at a criminal trial is error if it “conveys an opinion that the complaining witness is telling the truth.”

Participatory Rights

A. Right to Notice

1. Right to Timely Notice of Rights

A “law enforcement agency” shall notify a crime victim about his or her rights as soon as reasonably practicable. Or Const, Art I, § 42(1)(g); ORS 147.417(1). This requirement also applies in juvenile proceedings. ORS 419C.273(1)(b). The term “law enforcement agency” includes “the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.” ORS 147.417(4)(a). If exercise of any of the rights depends upon a victim making a request, the notice shall include the time period in which a victim is required to make the request. ORS 147.417(1).

2. Right to Notice of Critical-Stage Proceedings

In juvenile and criminal proceedings, a crime victim has, upon specific request, the right 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 present at any such stage of the proceedings. Or Const, Art I, § 42(1)(a); ORS 419C.273(1)(a). At a critical stage proceeding, the state must inform the court as to whether a victim who has requested notice has received notice of hearing. *See* ORS 147.510 (describing duty in criminal proceedings); ORS 419C.273(3) (describing duty in juvenile proceedings).

3. Right to Notice of Court Dates

“When resetting any trial date or setting any court hearing requiring the presence of the victim, the court shall take the victim into consideration. The court shall inquire of the district attorney as to whether the victim has been informed of

the prospective date and whether that date is convenient for the victim.” ORS 136.145.

4. Right to Notice of Appeal

A crime victim has, upon request, “[t]he right to reasonable, accurate and timely notice from the Attorney General when an appeal is taken in the criminal proceeding[.]” ORS 147.433(1)(b).

5. Right to Notice of Post-Conviction Petition

A crime victim has, upon request, “[t]he right to reasonable, accurate and timely notice from the counsel for the state when a conviction in the criminal proceeding is the subject of a petition for post-conviction relief . . . or post-conviction DNA . . . testing[.]” ORS 147.433(1)(c).

6. Right to Notice of Psychiatric Review Board Proceedings

When a defendant is found guilty except for insanity, or is already under the jurisdiction of the Psychiatric Security Review Board, and a victim desires notification, the Board shall make a reasonable effort to notify the victim of Board hearings, conditional release, discharge or escape. ORS 161.326(1).

When a youth is under the jurisdiction of the Psychiatric Security Review Board, the court will make a specific finding on whether there is a victim and, if so, whether the victim wishes to be notified of any board hearing and orders concerning the young person and of any conditional release, discharge or escape of the young person. ORS 419C.529(1); ORS 419C.529(5)(b). If victim desires notification, the panel shall make a reasonable effort to notify the victim of panel hearings and orders, conditional release, discharge or escape. However, ORS 419C.531 does not authorize the panel to release otherwise privileged information. ORS 419C.531(1). If the panel fails to make a reasonable effort to notify the victim of a panel hearing, the victim may request a reconsideration of the panel’s order. ORS 419C.531(3).

7. Right to Notice by Board of Parole and Post-Prison Supervision

The board must make a reasonable effort to notify the victim, if the victim requests to be notified and the board has a current address for the victim, of any hearing conducted by the board. ORS 144.750(2)(a).

The victim may request notification of the release of a convicted person from actual physical custody, and if the victim does so, the board shall notify the victim at least 30 days prior to the release. ORS 144.260(2)-(3). If the person is a sex offender as defined in ORS 181.805, the board shall also inform the victim where the person is going to reside and the conditions of the person’s release. ORS 144.260(1).

New Legislation Alert: SB 1008 (enrolled 2019) provides that offenders who commit crimes while under the age of 18 will receive parole hearings after 15 years and victims have the right to notice of these hearings.

8. Right to Notice of Probation Violation/Revocation Hearings

Upon request, a crime victim has the right “to be notified of any hearing before the court that may result in the revocation of the defendant’s probation for a felony or person Class A misdemeanor.” ORS 137.545(11).

B. Right to Be Present

1. Right to Be Present at Critical-Stage Proceedings

A crime victim has, upon specific request, the right to be present at any critical stage of the proceedings held in open court when the defendant will be present and to be present at any such stage of the proceedings. Or Const, Art I, § 42(1)(a). ORS 40.385(4)(exempting crime victims from the categories of witnesses subject to exclusion at trial at the request of a party); ORS 137.013 (providing for the right of the victim to be present at sentencing).

The juvenile code provides an additional statutory right to be present at critical-stage proceedings. *See* ORS 419C.273(1)(“The victim of any act alleged in a petition filed under this chapter may be present at . . . critical stages of the proceedings held in open court when the youth or youth offender will be present.”)

2. Right to Accompaniment by Personal Representative

The victim of a person crime who was at least 15 years old when the crime is committed, may select a personal representative to accompany the victim to phases of the investigation and prosecution of the crime except for grand jury proceedings and certain child-abuse assessments. ORS 147.425.

3. Right to Be Present at Appellate Proceedings

A crime victim has, upon request, “[t]he right to attend any public hearing related to the criminal proceeding that is conducted by an appellate court[.]” ORS 147.433(1)(d).

4. Right to Have Schedule Taken into Account at Post-Conviction Proceedings

A crime victim has, upon request, “[t]he right to have the victim’s schedule taken into account in scheduling post-conviction proceedings[.]” ORS 138.627(1)(a).

5. Right to Be Present at Probation Violation/Revocation Hearings

Upon request, a crime victim has the right to “appear personally” “at any hearing before the court that may result in the revocation of the defendant’s probation for a felony or person Class A misdemeanor,” “to reasonably express any views relevant to the issues before the court.” ORS 137.545(11)(b).

6. Right to Court Appointed Interpreter

“In any criminal proceeding, the court shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to a victim who is a person with a disability and who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.” ORS 45.285(3). This right also applies in juvenile delinquency proceedings. ORS 419C.285(4).

Furthermore: “The court shall appoint a qualified interpreter in a criminal proceeding whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.” ORS 45.275(1)(b).

C. Right to Be Heard

1. Right to Be Heard at a Pretrial Release Hearings

Under the Oregon Constitution a crime victim has, upon specific request, the right to “be heard at the pretrial release hearing.” Or Const, Art I, § 42(1)(a).

Statutory law provides that if “[t]he victim did not have notice of, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount,” then the victim can request “that the court schedule a hearing to reconsider [the] release decision.” ORS 147.508(1). This applies to release decisions made at arraignment. ORS 147.508(2).

For a juvenile release hearing, a crime victim has the right “to reasonably express any views relevant to the issues before the court.” ORS 419C.273.

2. Right to Be Heard Regarding Joint Trial

“Jointly charged defendants shall be tried jointly unless the court concludes before trial that it is clearly inappropriate to do so and orders that a defendant be tried separately. In reaching its conclusion the court shall strongly consider the victim's interest in a joint trial.” ORS 136.060(1).

3. **Right to Be Heard at Sentencing**

A crime victim has the constitutional right to be heard “at the sentencing.” Or Const, Art I, § 42(1)(a).

Under statute, a crime victim has the right at sentencing “to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim, and the need for restitution and compensatory fine.” ORS 137.013. A trial court shall inquire whether the victim wishes to be heard before imposing sentence. ORS 147.512(3). *See also* ORS 163.150(1) (expressly providing for admission of relevant “victim impact evidence relating to the personal characteristics of the victim or the impact of the crime on the victim's family” at capital sentencing proceedings).

A crime victim has the right to have his or her statement included in a presentence report. ORS 137.530(2).

Notable Case Law

State v. Ball, 362 Or 807 (2018). While a sentencing court has authority to limit a victim impact statement on the same ground that it can limit a defendant’s sentencing allocution statement—*i.e.*, if the statement is not relevant to sentencing matters, unfairly prejudicial, or unduly repetitive—the sentencing court violated the victim’s right to be heard at sentencing when it terminated her victim impact statement after 20 minutes without explanation and when the victim’s statement was relevant to sentencing considerations.

State v. Barrett, 350 Or 390 (2011). Victim’s rights under state constitution to advance notice of defendant’s sentencing and to be present at sentencing were violated when, despite the victim’s timely request for notice, the court sentenced defendant without notice to the victim. Resentencing was a permissible remedy for the violation of the victim’s constitutional right to be present at hearing.

4. **Right to Be Heard at Hearing to Set Aside Conviction**

A crime victim has the right to make a statement at a hearing to set aside a conviction or arrest. ORS 137.225(3).

5. **Right to Be Heard at Diversion Hearing**

If a DUII offense involves damage to property of a person other than the defendant, the victim of the property damage has a right to be present and to be heard at any hearing on a petition for a diversion agreement. ORS 813.222(1).

In diversion hearings involving charges other than DUII, the district attorney shall consider any victim recommendations in determining “whether

diversion of a defendant is in the interests of justice and of benefit to the defendant and the community[.]” ORS 135.886(2)(h).

6. Right to Be Heard at Post-Conviction Hearing

Upon request, a crime victim has the right to be heard, “either orally or in writing,” at a hearing on a post-conviction petition. ORS 138.627(1)(c).

7. Right to Be Heard at Psychiatric Review Board Proceedings

“When the [PSRB] conducts a hearing involving a person found guilty except for insanity of a crime for which there is a victim, the agency shall afford the victim an opportunity to be heard, either orally or in writing, at the hearing.” ORS 161.326(2). This right also applies to the juvenile panel of the PSRB. ORS 419C.531(2).

8. Right to Be Heard at Probation Violation/Revocation Hearings

Upon request, a crime victim has the right, when present at “any hearing before the court that may result in the revocation of the defendant’s probation for a felony or person Class A misdemeanor,” “to reasonably express any views relevant to the issues before the court.” ORS 137.545(11)(c).

9. Right to Be Heard at Specific Juvenile Proceedings

Upon request, a victim has the right to be heard at a detention or shelter hearing, a hearing to review the placement of a youth offender, and a dispositional hearing. ORS 419C.273(2). A victim also has the right a right to be heard at juvenile restitution hearings. ORS 419C.450(2). A victim has the right to be heard “either orally or in writing” when the youth panel of the Psychiatric Security Review board “conducts a hearing involving a young person found responsible except for insanity.” ORS 419C.531(2).

New Legislation Alert: SB 1008 (enrolled 2019) eliminates automatic referrals of juvenile offenders charged with Measure 11 offenses to adult court. Instead, in those cases, prosecutors must request waiver of juveniles into adult court if they choose to do so. If a prosecutor does request such a waiver, then crime victims have a right to appear at the waiver hearing “to provide the court with any information reasonably related to the court’s determination.”

D. Right to Consult

1. Constitutional Right to Consult

A crime victim has the constitutional right “to be consulted, upon request, regarding plea negotiations involving any violent felony.” Or Const, Art I, §

42(1)(f).

Notable Case Law

State v. Acker, 175 Or App 145 (2001). While a prosecutor may not constitutionally allow a victim to prevent a plea agreement that would otherwise be offered, a prosecutor may offer a plea agreement based upon the victim’s input where such offer would not otherwise have been made.

2. Statutory Right to Consult

In prosecutions involving violent felonies, a prosecutor must—if requested by the victim—make “reasonable efforts to consult the victim before making a plea offer and before entering into a final plea agreement.” ORS 147.512(2)(a). “If the court finds that the victim requested consultation regarding plea negotiations and that the prosecuting attorney failed to make reasonable efforts to consult the victim, the court shall direct the prosecuting attorney to make reasonable efforts to consult the victim and may not accept the plea unless the court makes a finding on the record that the interests of justice require the acceptance of the plea.” ORS 147.512(2)(c).

In juvenile delinquency proceedings, upon the victim’s request, the juvenile department is required to consult with the victim “before entering into a formal accountability agreement” if the “agreement involves an alleged act that if committed by an adult would constitute a violent felony.” ORS 419C.230(3).

3. Right to Consult on Settlement of Post-Conviction Petition

Upon request, a crime victim has the right to consult with counsel for the state about regarding “a settlement agreement” in a post-conviction case. ORS 138.627(1)(d).

E. Speedy Disposition

By statute, crime victims have the rights to “have the trial or adjudication, including the imposition and execution of the sentence or disposition, conducted with all practicable speed” and “to the prompt and final conclusion of the criminal or juvenile delinquency proceeding in any related appellate or post-judgment proceeding.” ORS 147.430(a)-(b); *see also* ORS 138.627(1)(a) (victims have the right to have their “schedule taken into account [by the trial court] in scheduling . . . post-conviction proceedings”).

Informational Rights

A. Right to Records of Proceedings

A crime victim has a statutory and constitutional right to a copy of the record of a criminal proceeding. *See* Or Const, Art I, § 42(1)(e) (a crime victim has “[t]he right to

have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared”); ORS 147.419 (a crime victim may obtain a copy of a transcript or audio or videotape of criminal proceeding held in open court at the victim’s expense). Notwithstanding that records of juvenile proceedings are confidential, a crime victim may obtain “a transcript, audio recording, or video recording” prepared in a juvenile delinquency proceeding “by paying the actual cost of preparation.” ORS 419A.256.

B. Right to Information about Offender

Under the Oregon Constitution, in adult criminal proceedings, a crime victim has “[t]he 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[.]” Or Const, Art I, § 42(1)(b). The same right is provided by statute. *See* ORS 147.421(1) (providing that upon the victim’s request, a “public body” that is the custodian of information “about the defendant or convicted criminal” must provide the victim with information about defendant’s “conviction and sentence,” “[c]riminal history,” “[i]mprisonment,” and “[f]uture release from physical custody”).

The Oregon Constitution also provides that crime victims, in juvenile delinquency proceedings, have a right upon request to the “equivalent information” regarding “the alleged youth offender or youth offender” that is available to victims in adult criminal proceedings (*i.e.*, “information about the conviction, sentence, imprisonment, criminal history and future release from physical custody of the criminal defendant”). Or Const, Art I, § 42(1)(b). By statute, victims in juvenile delinquency proceedings have the right to the following information about a youth offender: name and date of birth, dates of release or discharge, type of placement to which the youth offender was released, the specific offense, terms of parole, and other conditions required by the court. ORS 420A.122.

The State Police shall establish a toll-free telephone number to give victims of sex offenses updates on prison status, release information, parole status and any other information authorized for release about the person who committed the crime against the victim. ORS 163A.230.

C. Right to Information about HIV or Other Communicable Diseases

A victim of a crime involving “the transmission of bodily fluids from one person to another” can request that defendant submit to “a test for HIV and any other communicable disease.” The victim’s right to this information attaches at the time that a defendant is charged. ORS 135.139(1). The juvenile code also allows a victim to request that a youth offender submit to such testing. The victim’s right to this information attaches at the time of the youth’s adjudication. ORS 419C.475(1).

D. Right to Information about Emergency Contraception

A sexual assault victim has the right to “unbiased, medically and factually accurate written and oral information about emergency contraception” from the hospital providing the victim care. ORS 435.254(1).

E. Right to Information in DUII Proceedings

In any prosecution arising from an automobile collision in which the defendant is alleged to have been DUII, the prosecuting attorney shall make available to a victim, upon request, reports and information disclosed to the defendant. ORS 135.857. This provision applies to juvenile delinquency proceedings. ORS 419C.270(6).

F. Right to Information in Post-Conviction Proceedings

Upon request, a crime victim has “[t]he right to inspect, in advance of the post-conviction proceedings, any public record on which the disposition of the petition will be based” and “[t]he right to be informed by counsel for the state of the manner in which the petition was disposed.” ORS 138.627(1)(b) & (e).

G. Right to Information about DNA Testing

If a defendant files a motion requesting the performance of DNA testing on evidence to prove his or her innocence, and that motion is granted, the DA shall notify the victim if the victim’s name and address are known to the DA, and the DA may notify the victim of the results of the DNA testing ordered. ORS 138.692 (1) & (9) (effective January 1, 2020).

Privacy Rights

A. Right to Refuse Discovery

1. Constitutional Right to Refuse Discovery

Under the Oregon Constitution, crime victims have “[t]he 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.” Or Const, Art I, § 42(1)(c).

Notable Case Law

State v. Bray, 352 Or 809 (2012). Trial court’s order to place rape victim’s computer hard drive under seal for future appellate review was not compelled discovery that violated victim’s constitutional right under Article I, section 42(1)(c) to refuse a defendant’s discovery request.

2. Statutory Right to Refuse Discovery

Under statute, crime victims “may not be required to be interviewed or deposed by or give discovery to the defendant or the defendant’s attorney unless the victim consents.” ORS 135.970(3). A defense attorney must inform victims of the identity and capacity of persons contacting the victim on behalf of the defense and the victim’s right to have “a district attorney, assistant attorney general or other attorney or advocate present during any interview or other contact,” ORS 135.970(2). *See also* ORS 138.625(5) (similar right in post-conviction proceedings); ORS 419C.276(3) (similar right in juvenile delinquency proceedings).

B. Nondisclosure of Victim’s Personal Information

1. Nondisclosure by the Court

A crime victim may request court order “that the victim’s . . . address or phone number not be given to the defendant unless good cause is shown to the court.” ORS 135.970(1).

2. Nondisclosure during Criminal Discovery

Unless authorized by the trial court to disclose the information, a lawyer representing a defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers of a victim or witness obtained under ORS 135.815(1) and ORS 135.815(3). ORS 135.815(5)(a). If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in ORS 135.815(1) and ORS 135.815(3) except for the personal identifiers of the victim and any witnesses. There are circumstances under which a trial court will order the disclosure. ORS 135.815(4). “Personal identifiers” means a person’s address, telephone number, Social Security number, date of birth, any user names or other identifying information associated with the victim’s social media accounts, and the identifying number of a person’s depository account at a financial institution or credit card account. ORS 135.815 (6)(a). *See also* ORS 419C.276(1)(a) & (6)(b) (similar right in juvenile delinquency proceedings).

C. Rape-Shield Law

In a prosecution for rape, sodomy, unlawful sexual penetration, or sexual abuse, or in a prosecution for an attempt to commit one of these crimes, the following evidence is not admissible: Reputation or opinion evidence of the past sexual behavior of an alleged victim; or reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or indicated consent. In a prosecution for these crimes or attempt to commit one of these crimes, evidence of a victim’s past sexual behavior other than reputation or opinion evidence is also inadmissible unless admitted in accordance with the Oregon Evidence Code and is evidence that relates to the motive or bias of the alleged victim, is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state, is necessary to establish the identity

of the victim or is otherwise constitutionally required to be admitted. ORS 40.210. Oregon Evidence Code (OEC) Rule 412.

Notable Case Law

State v. McBale, 353 Or 789 (2013). An in camera hearing under OEC 412(4)(b) does not violate constitutional provisions relating to public access to courts or the accused's rights to a public trial.

State v. Fowler, 225 Or App 187 (2009). The defendant, charged with sexually assaulting his girlfriend's teenage daughter, was not entitled to admit entries in her diary that described her sexual activities with teenage boys to try to show that the victim fabricated the accusations to keep him from interfering with her activities with the boys, and to try to draw the inference from the lack of any mention in the diaries of sexual abuse by the defendant suggested that none occurred.

State v. Martin, 226 Or App 199 (2009). Evidence that the sexual-abuse victim had previously accused other men of abuse was admissible under OEC 412(2)(b)(B) to "rebut or explain scientific or medical evidence offered by the state," because the CARES nurse who testified to her opinion that the victim had been sexually abused knew of the prior accusations and had taken them into account in reaching her diagnosis. Her testimony was "medical evidence" under OEC 412(2)(b).

State v. Cunningham, 164 Or App 680 (2000). Evidence that the victim had a sexually transmitted disease was evidence of "past sexual behavior;" evidentiary exclusion was an appropriate remedy for the defendant's failure to file a 15-day notice under OEC 412.

State v. Thompson, 131 Or App 230 (1994). The trial court properly excluded defense evidence that the rape victim had offered other men sex for drugs, which the defendant offered to corroborate his testimony that she had consented to sex with him in exchange for drugs.

State v. Cervantes, 130 Or App 147 (1994). Evidence of sexual activity between the victim and another man offered by the defendant to explain the state's scientific evidence of recent intercourse, was properly excluded because the defendant could not establish that the activity had occurred within 24 hours before the rape exam.

State v. Lajoie, 316 Or 63 (1993). The principal purpose of OEC 412 is "to protect victims of sexual crimes from degrading and embarrassing disclosure of intimate details about their private lives."

State v. Reiter, 65 Or App 304 (1983). OEC 412 is inapplicable where defendant seeks to impeach the victim as to a statement she made on direct examination.

D. Prohibition of Victim Polygraphs in Certain Criminal Cases

No district attorney or other law enforcement officer or investigator involved in the investigation or prosecution of crimes, or any employee thereof, shall require any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 to 163.575, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading. ORS 163.705.

E. Protective Orders in Sex-Offense Proceedings

In proceedings involving sexual offenses, and equivalent proceedings in juvenile court, a crime victim or the district attorney may request a court order prohibiting copying or distribution of sexually explicit information or a visual or audio recording of the victim describing the victim’s sexual victimization. ORS 135.873(5); ORS 135.873(6); ORS 419C.270(6).

F. Address Confidentiality Program for Certain Victims

A victim of domestic violence, sexual assault, stalking, or human trafficking may seek the designation of a substitute address when disclosure of the victim’s actual address may threaten the safety of the victim or the victim’s child. *See generally* ORS 192.820 to ORS 192.868 (explaining designation requirements and procedures).

G. Prohibition on Electronic Recording

Under UTCR 3.180, at a victim’s request, there shall be no electronic recording of a sex offense proceeding in court by any person at any time. “Electronic Recording” means video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, tape recorder or any other means UTCR 3.180(9)(d); UTCR 3.180(1)(a). Electronic recording of juvenile proceedings are prohibited. UTCR 3.180(9)(c).

H. Victim Subpoena in Post-Conviction Proceedings

“A petitioner in a post-conviction relief proceeding may not compel a victim to testify, either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court allowing a subpoena.” ORS 138.625(1). The post-conviction court may not issue a victim subpoena in a post-conviction proceeding unless the petitioner can establish that the victim’s testimony is “material” to the proceeding, “favorable to the petitioner,” and was not introduced at the underlying criminal trial. ORS 138.625(3)(a)-(c).

Protection Rights

A. Constitutional Right to Protection

Under the Oregon Constitution, a crime victim has “[t]he right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process” and “[t]he 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.” Or. Const. art I, § 43(1).

B. Pre-Trial Release No-Contact Orders and Conditions:

When a defendant is released pretrial, the trial court or releasing authority must include a condition that defendant have no contact with the victim. *See* ORS 135.970 (4)(a) (“Any pretrial release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court having jurisdiction over the criminal charge.”); ORS 135.250(2)(a) (“[I]f the defendant is charged with an offense that also constitutes domestic violence, the court shall include as a condition of the release agreement that the defendant not contact the victim of the violence.”). If a defendant is charged with a sex crime or domestic violence offense, the trial court or release officer or deputy must order that defendant have no contact with the victim while the defendant is in custody. ORS 135.247.

For a youth offender, “[a]ny preadjudication release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court.” ORS 419C.276(4).

C. Post-Prison/Probation Conditions

If a person is on post-prison supervision or parole following conviction of a sex crime or an assault and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person’s post-prison supervision that the person not reside within three miles of the victim unless certain exceptions apply. ORS 144.270(4)(c)(A). A victim may request imposition of this special condition of post-prison supervision at sentencing in person or through the prosecuting attorney. A victim’s request may be included in the judgment document. ORS 144.270(4)(c)(B).

Notable Case Law

Martin v. Board of Parole, 327 Or App 147 (1998). Parole board properly ordered petitioner, as a condition of his post-prison supervision, to stay out of most of Lane County, where his rape victim resided.

D. Protection Rights at Appellate and Post-Conviction Proceedings:

Victims of person felonies, Class A misdemeanors, and certain other specified offenses have “[t]he right to reasonably protected from the offender, if the offender is present, at any related appellate or post-conviction relief proceeding.” ORS 147.433. A victim must request this right from the district attorney “before a judgment of conviction is entered[.]” *Id.*

E. Protection Rights at Board of Parole and Post-Prison Supervision Proceedings:

Crime victims have “[t]he right to be reasonably protected from the offender during [State Board of Parole and Post-Prison Supervision] proceeding[s].” ORS 144.750(1)(a).

Restitution Rights and Other Compensation Available to Crime Victims

A. Constitutional Right to Restitution

Under the Oregon Constitution, a crime victim has “[t]he right to receive prompt restitution from the criminal convicted criminal who caused the victim’s loss or injury.” Or Const, Art I, § 42(1)(d).

Notable Case Law

State v. Algeo, 354 Or 236 (2013). A victim’s constitutional right to restitution does not include the right to receive restitution in the “full amount” of the victim’s damages as guaranteed by ORS 137.106.

B. Statutory Right to Restitution

1. Full Restitution for Economic Damages

Upon proof of “nature and amount of damages,” a victim is entitled to full restitution for “economic damages” caused by a defendant’s criminal conduct unless the victim consents to a lesser amount. ORS 137.106(1). Economic damages are:

objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past * * * impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

ORS 137.103(2); ORS 31.710(2)(a).

2. Definition of Victim under Restitution Statutes

The restitution statutes broadly define the term “victim” as “any person [who] . . . has suffered economic damages as a result of the defendant’s criminal activities” who is not a “coparticipant in the defendant’s criminal activities.” ORS 137.103(4)(a); ORS 137.103(5). The definition of “victim” in the restitution statutes expressly includes “[t]he Criminal Injuries Compensation Account” and “[a]n insurance carrier” “if [they] have expended moneys on behalf of a victim.” ORS 137.103(c-d).

3. Restitution in Juvenile Delinquency Proceedings

When the “youth offender caused another person any physical, emotional or psychological injury or any loss of or damage to property, the victim has the right to receive prompt restitution.” ORS 419C.450(1)(a). “The district attorney shall investigate and present to the court, prior to or at the time of adjudication, evidence of the nature and amount of the injury, loss or damage.” If the court finds from the evidence presented that a victim suffered injury, loss or damage, in addition to any other sanction it may impose, the court shall order restitution in a specific amount in the judgement or supplemental judgement. ORS 419C.450(1)(a)(A)-(B).

The court may order restitution, including counseling and treatment expenses, only when the act committed by the youth offender would constitute aggravated murder, murder, or a sex crime if committed by an adult, and for an injury suffered by the victim or victim’s family member who observed the act. *See* ORS 419C.450(1)(d)(A)-(B).

Notable Case Law

State v. Moreno-Hernandez, 365 Or 175, __ P3d __ (2019). A minor victim’s guardian, not the minor, suffers economic damages for medical expenses that result from a defendant’s criminal activity.

State v. White, 296 Or App 445, __ P3d __ (2019). Sentencing court erred in awarding restitution to CARES for the costs of providing a child-abuse evaluation because CARES would not have a civil remedy for “economic damages” based on those costs and thus is not a victim for purposes of the restitution statute.

State v. Campbell, 296 Or App 22 (2019). Testimony from CareOregon’s “subrogation coordinator” was sufficient to prove that the specific medical charges were “reasonable” for purposes of determining the amount of restitution.

State v. Herfurth, 283 Or App 149 (2016). In sexual-abuse prosecution, sentencing court properly imposed restitution to victim for attorney fees expended by her parents in advising them during prosecution, but erred when it imposed costs incurred by Criminal Injuries Compensation Account for CARES evaluation absent evidence that the Account would have a civil cause of action for the evaluation costs.

State v. Gerhardt, 360 Or 629 (2016). The Oregon Supreme Court held, in a case in which the defendant was convicted of strangulation, that the trial court properly ordered defendant to pay restitution for attorney fees that the victim incurred to obtain a FAPA order after defendant repeatedly contacted her from jail, in violation of a no-contact order.

State v. Thomas, 281 Or App 685 (2016). When a defendant pleads guilty, restitution is not available for the convictions resulting from the guilty plea unless it is an express term in the plea agreement. The Court of Appeals specifically did not address whether a crime

victim could obtain restitution under the Oregon Constitution where the prosecutor failed to include restitution as a term of a plea.

State v. McClelland, 276 Or App 138 (2016). A hospital bill alone is insufficient proof for a criminal restitution award of “reasonable” hospital or medical services; additional testimony or evidence is required to establish the reasonableness of such services.

State v. Ramos, 358 Or 581 (2016). The Oregon Supreme Court held that because the legislature adopted the term “economic damages” from the civil code to describe the damages available as criminal restitution, civil-law concepts related to the recovery of “economic damages” may apply in restitution proceedings. One such civil concept is that damages are recoverable unless they are a foreseeable result of a defendant’s criminal conduct.

State v. Kirschner, 358 Or 605 (2016). The trial court properly imposed as restitution for a burglary victim’s lost wages and expenses in complying with a subpoena to appear for trial and to appear for a restitution hearing.

State v. Pumphrey, 266 Or App 729 (2015). The trial court properly ordered restitution to compensate stalking victim for costs the victim incurred for changing her phone number, and locks and the costs of a temporary residence and lost time from work that the victim incurred in the process of taking protective measure, because defendant’s violations of the stalking protective order were the “but for” cause of those costs.

State v. Thompson, 257 Or App 336 (2013). The 90-day statutory deadline for the imposition of restitution ORS 137.106(1) (2011), “by its plain language, does not constrain the time in which a trial court may resentence a defendant as a means of remedying a violation of a victim’s constitutional rights” to restitution.

State v. Patton, 237 Or App 46 (2011). A deceased victim’s estate is not a “victim” under the restitution statutes. ORS 137.106 authorizes restitution to a “victim,” but a “victim” must be a “person” who has suffered pecuniary damage as a result of a defendant’s criminal activities. A “person” is defined in ORS 161.015(5) to include only one of four entities: (1) a human being; (2) a corporation; (3) an unincorporated association; and (4) a government or government instrumentality. An estate of a decedent does not qualify as any of those four.

State v. Ceballos, 235 Or App 208 (2010). Homicide victim’s brother was entitled to restitution for money that the brother spent on the direct victim’s funeral. “The funeral expenses were economic damages under ORS 31.710,” which expressly includes “burial and memorial expenses,” because the brother incurred them as a result of the death, even though he did so voluntarily and was not legally obligated to do so.

State v. Romero-Navarro, 224 Or App 25 (2010). Defendant, convicted of murder, was liable for the amounts expended by the Criminal Injuries Compensation Account (CICA) to reimburse the victim’s family for a portion of the burial expenses because the CICA is a “victim” under ORS 137.103(4)(c) if it “has expended moneys on behalf of a victim.”

State v. Biscotti, 219 Or App 296 (2008). The state's carelessness in losing track of defendant's case file did not amount to "good cause" under ORS 137.106(1)(b) (2004) that would allow imposition of restitution past the 90-day statutory deadline.

State v. Thorpe, 217 Or App 301 (2007). Although, at sentencing, defendant did state that he had delivered a check (one that was not part of the guilty plea) to another person, he did not admit to acts that would constitute *criminal* possession of a forged instrument because he did not admit that he knew it was forged. ORS 137.103(1) requires that the record *clearly reflect* that defendant admitted engaging in criminal activities. Because defendant's admission did not meet that standard, the restitution order was error.

State v. Thomas, 187 Or App 762 (2003) (*per curiam*). The sentencing court erred in imposing restitution on defendant's conviction, except for insanity, for assault in the second degree. Restitution may not be imposed pursuant to ORS 137.106 on a defendant found guilty except for insanity.

State v. Howett, 184 Or App 352 (2002). Because defendant was charged with, and pleaded guilty to, committing theft from her employer during a specific 5-day period and the evidence at the sentencing hearing established that she stole only \$843 during that period, the court erred by imposing \$3,250 in restitution based on losses that occurred during other periods.

State v. Stephens, 183 Or App 392 (2002). The sentencing court properly ordered defendant, based on his convictions for UUV and possession of a stolen vehicle, to pay \$4,000 in restitution for loss of the vehicles wheels, which occurred after defendant parked the vehicle. Defendant's acts of possession and his exercise of control over the car, and leaving it parked unprotected, facilitated the theft of the wheels.

State v. Spino, 143 Or App 619 (1996). Reference in the restitution statutes to a "victim" as a "person" incorporates statutory definition of "person" from ORS 161.015(5), which includes "a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality."

C. Compensatory Fines

A court may order compensatory fines payable to a crime victim, which may be imposed in addition to statutory restitution, "as penalty for the commission of a crime resulting in an injury for which the person injured by the act constituting the crime has a remedy by civil action[.]" ORS 137.101. Youth offenders within the jurisdiction of the juvenile court "by reason of committing an offense or by reason of committing an act that would constitute an offense if committed by an adult" are subject to the same fines, including compensatory fines, "that are applicable to adults who commit the offense." ORS 419C.459.

Notable Case Law

State v. Adams, 286 Or App 376 (2017). Where the defendant was convicted of encouraging child sexual abuse for possessing videos containing child pornography, the trial court properly awarded a \$5,000 compensatory fine to the child depicted in one of the videos because defendant’s possession of the video contributed to the victim’s ongoing injury.

State v. Alonso, 284 Or App 512 (2017). The trial court erred by imposing a compensatory fine payable to a third-degree rape victim, because her damages—the cost of removing a tattoo of defendant’s name from her neck—were not a foreseeable consequence of the rape.

State v. Grismore, 283 Or App 71 (2016). The trial court properly imposed a compensatory fine payable to the victim for his future medical expenses where it was undisputed that he had suffered some amount of economic damages. Unlike restitution—which requires the state to prove the specific amount of the economic damages that a victim has suffered—a compensatory fine is authorized, up to the statutory maximum, based on proof that the victim suffered *some* amount of damages.

State v. Donahue, 165 Or App 143 (2000). The trial court erred by imposing a \$5,000 compensatory fine to child-sex abuse victim for counseling costs where the evidence established that the victim had a counseling appointment in the future but had not incurred any counseling expenses by the time of sentencing.

State v. Barkley, 315 Or 420 (1993). Although the mother of a child-sex abuse victim was herself a “victim” for the purposes of the compensatory-fine statute, the lost wages that she incurred when she accompanied her daughter to court were not damages for the purposes of the compensatory-fine statute because they were not recoverable against defendant in a civil action.

D. Payment and Collection of Monetary Obligations

Monetary obligations incurred by a criminal defendant, including “[a]ll fines, costs, restitution, [and] compensatory fines,” “constitute a single obligation” that defendant must pay to the court clerk. ORS 137.143. The clerk must then apply the payments first to those obligations “having the highest priority” as classified by statute. ORS 137.146. Obligations payable to victims have a higher priority ranking than other fines and fees. Compensatory fines are first in line. *See* ORS 137.149 (“Compensatory fines . . . are Level I obligations.”). Restitution awards are second in line. *See* ORS 137.153 (explaining that “Level II” “Type 1 obligations include awards of restitution”).

E. Other Crime-Victim Compensation

A crime victim may be eligible for compensation through the Criminal Injuries Compensation Account administered by the Department of Justice. *See* ORS 147.035 (discussing compensable losses). An emergency award granted “pending a final decision in [a compensation] claim” may be available. ORS 147.055. Oregon law specifically provides for compensation for HIV testing and counseling when a crime involves the transmission of bodily fluids, ORS 135.139(8), and for a sexual-assault medical

assessment. ORS 147.397.

Right to Remedy for Constitutional Violations

A. Right to a Remedy by Due Course of Law

A crime victim has the right to a remedy by “due course of law” for the violation of a constitutional right. *See* Or Const, Art I, §§ 42(3)(a), 43(5)(a) (“Every victim * * * shall have remedy by due course of law for violation of a right established in [Article I, sections 42 and 43 of the Oregon Constitution].”).

Notable Case Law

State v. Barrett, 350 Or 390 (2011). Victim’s rights under state constitution to advance notice of defendant’s sentencing and to be present at sentencing were violated when, despite the victim’s timely request for notice, the court sentenced defendant without notice to the victim. Resentencing was a permissible remedy for the violation of the victim’s constitutional right to be present at hearing.

B. Statutory Procedures for Enforcement of a Claim of Constitutional Violation

1. Statutory Procedures for Enforcing Constitutional Rights

The Oregon Legislature has created an explicit procedure through which a crime victim can pursue a remedy for the violation of a constitutional right provided in Sections 42 and 43 of the Oregon Constitution in the trial court, *see generally* ORS 147.500-147.533, as well as specific appellate-review scheme for the denial of a requested remedy. *See generally* ORS 147.535-147.550.

The Article I, section 42 rights that are enforceable through the statutory procedures are as follows:

- “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 Const, Art I, § 42(1)(a).
- “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[.]” Or Const, Art I, § 42(1)(b).
- “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[.]” Or Const, Art I, § 42(1)(c).

- “The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury[.]” Or Const, Art I, § 42(1)(d).
- “The right to have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared[.]” Or Const, Art I, § 42(1)(e).
- “The right to be consulted, upon request, regarding plea negotiations involving any violent felony[.]” Or Const, Art I, § 42(1)(f).
- “The right to be informed of [Article I, section 42] rights as soon as practicable.” Or Const, Art I, § 42(1)(g).

The Article I, section 43 rights that are enforceable through the statutory procedures are as follows:

- “The right to be protected from the criminal defendant or the convicted criminal throughout the criminal justice process[.]” Or Const, Art I, § 43(1)(a).
- “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[.]” Or Const, Art I, § 43(1)(b).

A crime victim can assert a claim of violation personally, through counsel, or a through “prosecuting attorney who, at the request of a victim, has agreed to assert and enforce a [constitutional] right granted to the victim.” ORS 147.500(1); ORS 147.502; *see also* Or Const, Art I, §§ 42(4), 43(4)(b) (“Upon the victim’s request, the prosecuting attorney, in the attorney’s discretion, may assert and enforce a right established in this section.”).

2. Trial-Level Claim Procedure

Under the enforcement statutes (ORS 147.500 through 147.550), a victim who alleging a violation of a right granted by Article I, section 42, must inform the court within 30 days of the date the victim knew, or reasonably should have known, of the facts supporting the allegation. ORS 147.515(1). The victim then must describe those facts and propose a remedy. ORS 147.515(1). The victim can make the claim on an approved form or orally in open court. ORS 147.515(2). If the trial court deems the victim's claim to be facially valid, it must issue an order to “show cause why the victim should not be granted relief,” ORS 147.517(2), and may hold

a hearing on the victim's claim, ORS 147.530(1). At the close of the hearing, the trial court must issue an order granting or denying the relief requested. ORS 147.530(4).

3. Appellate Review of a Rights Violation Claim

a. Interlocutory Review

To appeal the denial of relief of a pre-judgment claim in a case involving a felony or person Class A misdemeanor, a victim must file a notice of interlocutory appeal to the Oregon Supreme Court within seven days after the trial court issued the order being appealed. ORS 147.535(4)(a); ORS 147.537(8)(a). The Oregon Supreme Court must issue decision within 21 days after the victim files the notice of interlocutory review, subject to exceptions. ORS 147.537(16).

b. Discretionary Review

To appeal the denial of relief of a post-judgment claim and cases involving misdemeanors other than person Class A misdemeanors, a victim must file a “petition for review” Court within seven days after the trial court issued the order being appealed, and the Oregon Supreme Court has discretion whether to provide review. ORS 147.535(4)(a); ORS 147.537(8)(a); ORS 147.539(1).

C. Mandamus as an Alternative Remedy

The legislature’s creation of explicit enforcement procedures at the trial and appellate levels, in Chapter 147, do not prevent crime victims from pursuing the remedy of mandamus for a rights violation. *See also* Or Const, Art I, §§ 42(3)(b), 43(5)(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.”); ORS 147.504 (“A remedy for a violation of section 42 or 43, Article I of the Oregon Constitution, in any [non-criminal] proceeding may be enforced by writ of mandamus under ORS34.105-34.240”).

Miscellaneous Civil Rights

A. Leave from Employment

A victim of domestic violence, sexual assault or stalking may not be disqualified from receiving unemployment benefits if the individual has no reasonable available alternatives to leaving work to protect the individual or minor child from further domestic violence, stalking, sexual assault or intimidation. ORS 657.176(12). A covered employer shall allow an eligible employee who is a victim of domestic violence, sexual assault, or stalking, or the parent of such a victim, to take reasonable leave from employment to get

law enforcement or legal help, to get medical treatment or counseling, to access victim services, to move, or to make a home safer. ORS 659A.272.

A covered employer shall allow an eligible employee to take leave from employment to attend a criminal proceeding. ORS 659A.192.

B. Unemployment Benefits

A victim of domestic violence, stalking, sexual assault or intimidation may not be disqualified from receiving unemployment benefits if the individual has no reasonable available alternatives to leaving work to protect the individual or minor child from further domestic violence, sexual assault or stalking at a workplace or elsewhere. ORS 657.176(12).

C. Rights of Tenants who are Victims

A victim of domestic violence, sexual assault, or stalking, may terminate a rental agreement with a 14 day notice within 90 days of the crime, and has the right to have locks changed by the owner of rental property. ORS 90.453. ORS 90.459.

“A tenant is not responsible for damage that results from * * * [c]onduct by a perpetrator relating to domestic violence, sexual assault or stalking.” “[A] landlord may require a tenant to provide verification that the tenant or a member of the tenant’s household is a victim of domestic violence, sexual assault or stalking as provided by ORS 90.453.” ORS 90.325.

The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified public housing and Section 8 tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking from being evicted or terminated from housing assistance based on acts of such violence against them. 42 USC § 1437d (2005); 42 USC § 1437f (2006).

D. Temporary Assistance to Domestic Violence Survivors

Oregon residents who are victims of domestic violence or are at risk of becoming victims may be eligible for Temporary Assistance to Domestic Violence Survivors (TA/DVS) emergency monetary grants through the Oregon Department of Human Services. Applicants must have children or be pregnant to qualify. *See* OAR 461-135-1200.

E. Immigrant Crime Victims

A “U nonimmigrant visa” is a visa for alien victims (and certain family members) of qualifying criminal activity (e.g. abduction, involuntary servitude, trafficking, etc., that occurred in the United States) who have information about that criminal activity, and are, have been, or will be helpful to law enforcement’s investigation or prosecution of that

criminal activity. *See* 8 USCA § 1101(U)(i); CFR 214.14 (definitions of terms including: “qualifying crimes”; “qualifying family members”; “victim of qualifying criminal activity”; “U nonimmigration status certification”; “U interim relief”; “substantial physical or mental abuse”); 8 USCA § 1367 (penalties for disclosure of information).

New Legislation Alert: SB 962 (enrolled 2019; effective 1/1/2020) sets out the procedures for certifying agencies (e.g. state or local law enforcement agencies, prosecutor’s or DA’s offices, judges) to certify victim helpfulness to US Citizenship Immigration Services. S.B. 962 also provides that beginning 6/1/2020, and annually thereafter, all certifying agencies that received certification requests shall report to the interim committees of the Legislative Assembly.