

HONORING A VICTIM'S RIGHT TO NOTICE

(Or Const. Art I 42(1)(a)&(g))

Oregon Department of Justice Crime Victim and Survivor Services Division

Proper Notice of Rights and Critical Stage Proceedings

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The justice system is best served by full implementation of all of crime victims' rights as embodied in Oregon Constitution and statute. Therefore, it is in the best interest of all to create a comprehensive approach to ensuring that crime victims receive notice consistently and effectively throughout the State of Oregon. This document discusses the constitutional and statutory mandates along with common practices focused on proper notification.

What and How

Timely notice of rights and proper notification of critical stage hearings are at the root of a crime victims' right to justice and a meaningful role in the criminal and juvenile justice systems. The constitution makes it clear that a crime victim's rights shall be protected at each stage of the criminal justice system. Notice is most often provided by Law Enforcement or the District Attorney's Office.

Select Express Provisions of Law

Article I Section 42 (1)(g) provides:

A "law enforcement agency" shall notify a crime victim about their rights as soon as reasonably practicable.

ORS 147.417 (4)(a) defines:

"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.

Article I Section 42 (1)(a) provides:

Upon specific request, the crime victim has the right to be informed in advance of any critical stage of the proceedings held in open court when the defendant or alleged youth offender will be present and to be present at each such stage of the proceedings.

ORS 147.510 provides:

At a critical stage proceeding, the state must inform the court as to whether a victim who has requested notice has received notice of the hearing.

Further, under ORS 136.145 "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 the date is convenient for the victim".

The Oregon Constitution defines a victim as:

"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.

***Please note for information on the right of a victim to be present at juvenile court proceedings refer to ORS 419C.273

Frequently Asked Questions

Below we highlight a few questions that arose during the writing of this paper.

- **What are critical stage hearings?** A proceeding held in open court when the defendant or alleged youth offender will be present. Critical stage of the proceeding is defined in ORS 147.500(5). While this statute provides an extensive list of hearings considered to be critical stage hearings, ORS 147.500(5)(m) also defines a critical stage hearing as “any other stage of a criminal proceeding the court determines is a critical stage of the proceeding for purposes of section 42, Article I of the Oregon Constitution”. Of note, this term is not defined in the Oregon Constitution so for purposes of constitutional rights could be defined even more broadly.
- **What if the victim completes and returns the Victim Rights Request Form and does not request the right to be notified?** A victim-centered approach dictates that we respect victim’s choices. If a victim has made a proactive, informed, and knowing decision not to exercise the right to notice of critical stage hearings, the DA Victim Assistance Program is not obligated to provide notice. That being said, this is one of the most commonly-requested victims’ rights, so advocates should proceed cautiously if a victim has elected to exercise other rights to the exclusion of the right to notice of critical stage hearings. Additionally, advocates should remember that the Victim Rights Request Form is just one way in which a victim can assert rights. If a victim has verbally indicated an assertion of this, or any other, right that assertion is valid and should be honored. Advocates and systems should have processes in place to document all assertions of rights regardless of form.

In evaluating this choice, VAPs may want to consider the following:

- Did the victim have a conversation with an advocate who explained their rights and the meanings of their rights? If not, best practice might prescribe an advocate reaching out to the victim to ensure they understood their rights and the potential ramifications of no notice of critical stage hearings.
- Did the victim ask for any/exercise other notice rights? If so, it might indicate that the victim may not have completely understood the implications of this right. This might warrant reaching out to the victim to clarify and confirm their choice to not elect notice of critical stage hearings.
- Has the victim verbally indicated (to the prosecutor or advocate) a desire to have notice but didn’t mark it on a subsequent Victim Rights Request Form? Because the form is only one way to assert rights, any rights asserted on the form should be considered an addition to any rights asserted in some other manner. Advocates should not assume this is a change in position. If an advocate is unsure, they should reach out to the victim to confirm all of their choices.
- When a victim verbally informs you of the rights they wish to assert and/or the advocate completes a VRRF on the victims’ behalf, it is best practice to also provide a victims’ rights brochure and written copy of the VRRF indicating what rights are being requested.

Ultimately, if a victim confirms they want no notice of critical stage hearings, advocates should respect their right to make that choice. As part of that conversation, the advocate should inform the victim of their ability to change their mind and how they would communicate to effectively exercise the right.

- **Is silence a waiver?** When a victim does not return the Victims Rights Request Form to the DA's office, this may be interpreted as the victim choosing not to assert their rights. However, silence should not be considered an affirmative waiver of victims' rights. A more victim-centered

approach is to ensure that the victim truly understands their rights and how to assert and/or waive them. Some good questions for a prosecutor to consider are did an advocate have a conversation with the victim about their rights and the meaning of those rights? If a letter was sent to the victim advising them of their rights, was a follow-up phone call made to ensure the victim received the letter and understood it? Did an advocate explain the potential ramifications of not asserting rights? If after speaking with an advocate a victim chooses not to assert their rights, than that choice should be respected. But making sure that's truly what the victim wants should be the first step in determining whether there has been a waiver of rights.

- **Is it enough to inform a victim that a plea can happen at any time – i.e. is this proper notice?** Oregon crime victims have the constitutional right to be treated with due dignity and respect and to have a meaningful role in the criminal justice system. That role cannot truly be "meaningful" without knowing why a hearing is being held and without the opportunity to prepare for that hearing. It is not enough to tell a victim that any hearing could be a plea hearing. A plea hearing is considered a "critical stage" of the criminal justice process at which the victim has a constitutional right to be present. If the victim has requested notice of critical stage hearings but is not specifically aware that this hearing is taking place, it is a violation of that constitutional right. Additionally, not informing victims of a plea and sentencing hearing denies victims the opportunity to properly prepare a victim impact statement if they wish to be heard at sentencing. Proper notice would include informing the victim of date, time, place and content of the hearing.
- **Is there an obligation to disclose a victim's requested rights information?**
ORS 147.510 (4) states that in all felony cases, no later than 21 days after indictment, the prosecuting attorney shall provide the court with a notice of compliance with victims' rights. The prosecuting attorney must file a notification of compliance "cert" with the crime victims' constitutional rights as provided in ORS 147.510 in substantially the form set out in Form 4.100.1a or 4.100.1b in the UTCR Appendix of Forms <https://www.courts.oregon.gov/programs/utcr/Pages/forms.aspx>. In this respect, the prosecuting attorney is required to inform the Court.
Please Note: The "cert" is not discoverable.

Where Do We Go From Here?

Successfully crafting and incorporating a new process into current procedures takes time and resources to accomplish. This document offers guidance on best practice in asserting and enforcing victim rights. Included:

- Victim Rights Request form; pocket card; brochure and initial victim contact letter
- current contact information for District Attorney Victim Assistance Programs
- endorsement to use these solutions statewide

The guidance and sample documents supplied here will allow agencies to follow the law, respond with speed and consistency and minimize the potential for re-victimization and exposure to violating the rights of a crime victim. We encourage you to share this information with others who may benefit.

Guidance and Sample Forms

General Process – Once a victim is identified law enforcement will notify the victim of their rights. When the District Attorney’s Office issues charges they will notify crime victims of their rights.

While developing your process to notify victims of their rights and of critical stage hearings consider unique situations. For example: Do you have a process to determine the scope of victims you will communicate with in a homicide case? Does your process allow for inclusion of anyone who meets the constitutional definition? Do you have a standard practice for informing a juvenile victim? If the victim is a teen will you provide notice to both parent/guardian and youth?

Best Practice – DA Office should send a written victims’ rights request form (VRRF), along with a victims’ rights guide to all identified victims, even when you have discussed rights over the phone or by using other electronic means.

Law Enforcement – Under ORS 147.417, “a law enforcement agency” (which includes police agencies and prosecutors) must provide victims with notice of their constitutional rights “as soon as reasonably practicable.” Ideally, police will provide victims with notice of their rights through an informational card early on in the investigation but often crime victims will receive notice of their rights from the DA’s office after a charging decision is made (usually from a DA Victim Assistance Program). Please refer to Article 1 Section 42 (1)(g) and ORS 147.417 for further detail.

Judges – In every case inquire whether the victim was informed in advance of the critical stage hearing and wishes to be present/heard. Engage in the required colloquy about victim rights, notice, etc. as you would in every victim crime case unless the prosecutor’s office has alternatively filed the required notice of compliance with the court. ORS 147.510 (2-6), ORS 147.512(2).

DDA – Confirm that the victim received notice of the hearing. If a victim (or a lawful representative appearing on behalf of the victim) is present, and if appropriate, wishes to be heard, you should advise the court of this fact at an appropriate point in the proceeding. Engage in the required colloquy about victim rights, notice, etc. as you would in every victim crime case, or in the alternative, file the required notice of compliance with the court. ORS 147.510 (2-6), ORS 147.512(2). If you are aware that a victim or victims will seek to be heard at an upcoming hearing, you should provide the court with advance notice in accordance with any local rules of procedure or practice.

Advocates –

- Develop a standard practice of notification efforts e.g. one letter one phone call, system to communicate those wishes to the prosecutor and documentation of notification provided or efforts made to provide notification.
- Inform and engage the victim in making choices about what hearings they wish to attend and identify any they don’t wish to attend. Discuss rights with victims to ensure understanding.
- Communicate with assigned prosecutor to ensure that if a hearing the victim has requested to attend occurs sooner than expected – e.g. a defendant decides to plead guilty during a settlement conference – the victim is notified.
- Provide options for attending a hearing, e.g. by phone rather than in person.
- Consider referring to the Oregon Crime Victim Law Center (OCVLC) for a full explanation of rights.

Current Victims’ Rights Request Forms can be found here.

<https://www.doj.state.or.us/crime-victims/for-grantees/victim-assistance-toolkit/>

PLEASE NOTE: Pocket Cards and Victims' Rights Guides can be requested via DOJ by calling 503-378-4301.

Training

In order to provide the best services to victims and to manage cases most effectively, it is incumbent upon agencies to ensure personnel are regularly and appropriately trained in Crime Victims' Rights.

If you think a victims' right has been violated

Be sure to follow your office procedure, which should include referring to a victim's rights lawyer or agency for consultation and/or to the Oregon Department of Justice crime victims' rights enforcement page for further information.

Victim is Identified

LE provides pocket card

Prosecutor's office issues charges

Victims Assistance Program

provides a copy of the
Crime Victims Rights
Guide & victim rights
request form (VRRF)

provides a copy of the
requested rights to the
prosecutor

maintains a consistent
process of timely
notification

Victim is provided with adequate notice for all
critical stage hearings