

HONORING A VICTIM'S RIGHT TO BE HEARD AT TIME OF SENTENCING (ORS 137.013)

Oregon Department of Justice Crime Victims' Services Division

Victim Impact Statements

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Victim Impact Statements

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 ORS 137.013 and Article I, section 42(1)(a) are applied consistently and efficiently throughout the State of Oregon. This document discusses the constitutional and statutory mandates allowing a victim to be heard at criminal sentencing.

What and How

A victim impact statement (VIS) is the vehicle through which a victim of crime is given the opportunity to be heard before punishment is imposed. This right to be heard gives the victim an opportunity to express how this crime has affected them emotionally, physically or psychologically and provides a way to offer thoughts, suggestions and recommendations on a defendant's sentence. The statement can be made in writing and/or given orally and can be presented personally by the victim, victim's next of kin or through an attorney. It is not uncommon for the statement to be presented by the DDA or Victim Advocate.

Select Express Provisions of Law

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

Upon request, a crime victim has the constitutional right to be heard "at the sentencing or juvenile court delinquency disposition".

Victims' rights under Article I, section 42(1) are designed to ensure "that a fair balance is struck between the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings."

ORS 137.013 provides that:

"At the time of sentencing, the victim or the victim's next of kin has the right to appear personally or by counsel, and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victims, and the need for restitution and compensatory fine."

Further, under ORS 147.512(3), a trial court must inquire whether the victim wishes to be heard before imposing sentence. *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).

For the purposes of a victim's statutory right to be heard at sentencing, ORS 131.007 provides the following definition of victim:

“Victim” means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a victim.

***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.

- **Who has access to the Victim Impact Statement?** If the victim impact statement is given to the DA’s Office prior to conviction, many District Attorneys’ Offices consider this document and the information therein discoverable. It is important to consider timing when discussing with the victims the submission of their statement.

Additionally, a crime victim has the right to have his or her statement included in a presentence report ORS 137.530 (2). This report is not a public record per ORS 137.077; however, if the statement is part of the presentence report it must be made available to the defendant prior to sentencing as required under ORS 137.079. Please refer to this statute for further information regarding the court’s authority to exclude parts from disclosure.

Please note, any oral or written statement presented in court will become part of court record and as such, becomes public record.

- **Does the Victim Impact Statement need to be filed with the Court?** There is no requirement that a victim impact statement be filed with the court when received by the DA’s Office. A victim may wish to have their statement filed with the court so that it remains with the defendant’s file for any future court hearings in this case, but should be informed that in so doing the statement will become public record. If it is the DA’s Office practice to file the statement with the Court, the victim should be notified prior to submission that the document will be submitted to the Court and will become public record. Furthermore, if the victim chooses to submit the document to the DA’s Office, the victim should be notified in advance if the DA’s office considers it discoverable and/or subject to public record laws.
- **Who is responsible for informing the victim about this right?** 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.

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:

- suggested language for informing victim of potential discovery and public record implications
- sample Victim Impact Statement Guidance form
- 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 – There is no requirement that a crime victim submit a victim impact statement in written form. The District Attorney’s Office is not obligated to send a form to the crime victim soliciting a statement.

Best Practice – do not send a form soliciting a response while the case is pending or under investigation.

Best Practice – do not use the VIS for plea negotiation – if; however, any part of the statement is going to be used for this purpose you must notify the victim of your intent in advance.

If the crime victim wishes the prosecutor to read an impact statement on their behalf the District Attorney’s Office may request the victim to provide a written statement. The office may also wish to provide a guide that includes helpful questions for a victim to consider when preparing a statement. In either case a reminder should accompany any such document or request informing crime victim that their impact statement may become part of discovery depending on timing of submission and may become public record.

Best Practice – inform victim that a written statement submitted to the Court will become discovered and will become public record.

A victim may wish to have their statement filed with the court so that it remains with the defendant’s file for any future court hearings in this case, but should be informed that in so doing the statement will become public record. If it is the DA’s Office practice to file the statement with the Court, the victim should be notified prior to submission that the document will be submitted to the Court and will become public record. Furthermore, if the victim chooses to

submit the document to the DA's Office, the victim should be notified in advance if the DA's office considers it discoverable and/or subject to public record laws.

Best Practice – do not file this document with the court unless requested by the victim.

Judges – In every case inquire whether the victim was informed in advance of the sentencing hearing and wishes to be heard before imposing sentence. Engage in the required colloquy about victim rights, notice, etc. as you would in every victim crime case. ORS 147.510 (2), ORS 147.510 (5), ORS 147.512(2).

DDA –Confirm that the victim received notice of a sentencing hearing. If a victim (or a lawful representative appearing on behalf of the victim) is present or wishes to be heard at sentencing, the prosecutor 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. ORS 147.510 (2), ORS 147.510 (5), ORS 147.512(2). If the prosecutor is aware that a victim or victims will seek to be heard at an upcoming sentencing, the prosecutor should provide the court with advance notice in accordance with any local rules of procedure or practice. In the event of a public records request review public records law regarding privacy interests and notify the victim.

Advocates – Notify victims about the scheduled sentencing hearing and inform the victim about his or her right to be heard at the sentencing. Communicate with assigned DDAs to ensure that if a sentencing occurs sooner than expected – for instance after a defendant's guilty plea – that the victim is notified. Provide options for submitting a written statement with discovery and public record warnings. Inform victims that even if they choose not to submit a written VIS their statement may become public record because it is part of the Court record, the FTR (digital recording), and so may be requested by the public in the future. Inform victim that the impact statement must be addressed to the court, not directly to the defendant.

Failure to afford crime victims the right to be heard at sentencing can result in a resentencing - If a victim is denied their constitutional right to be heard at sentencing, the victim will likely be entitled to the remedy of a resentencing under State v. Barrett, 350 Or 390 (2001). Thus, being conscientious about ensuring that victims are able to exercise their right to be heard at sentencing upfront will prevent the need to redo a sentencing hearing.

[Sample Guidance Document](#) included at end of document.

District Attorney's Office Victim Assistance Program for assistance. See the link below for contact information.

<http://www.doj.state.or.us/victims/pages/assistance.aspx>

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.

Victim Requests Right

Advocate offers guidance form

Victim may submit written statement, make a verbal statement or designate a reader

Inform victim that

when and how a statement is received by a prosecutor will impact discovery obligation

a written statement filed with the court becomes public record and follows the defendant throughout the remainder of the case

an oral statement made in court becomes part of court record and as such, becomes a public record

At sentencing victim is given the opportunity to be heard before sentence is imposed

COUNTY DISTRICT ATTORNEY'S OFFICE
Victim Impact Statement – Questions to consider

DA# _____

Defendant: _____

Victim: _____

This information is provided in an effort to assist you in formulating your statement to the court should you wish to make one or wish to have this office make one on your behalf.

Please note: If this office is in possession of any written statement from you, it may become discoverable. If the document becomes discoverable, it must be provided to the defense attorney and will become available to the defendant. You may choose to keep the document until the time of sentencing. If you keep the document you decide who, if anyone, gets a copy. You may choose to have the document filed with the court. This is different than having a document provided to the defense in discovery. If you choose to have the document filed with the court it will become part of public record.

1. In what way has this crime affected you emotionally, physically or psychologically?
2. How has this crime affected your ability to earn a living or attend school?
3. How has this crime altered or changed your daily routines or those of your family?
4. Are there other effects that you or your family is experiencing as a result of this crime?
5. What thoughts, suggestions or recommendations do you have regarding the sentence that the court will impose for this crime?
6. Is there anything else you would like the court to know?

I would like this document filed with the court. ____Yes ____No