

Honoring a Victim's Right to Meaningful Participation in Juvenile Waiver Hearings

[ORS 419C.349](#)

Oregon Department of Justice Crime Victim and Survivor Services Division

January 2021

A Product of the Attorney General's Task Force on Victims' Rights Enforcement



HONORING A VICTIM'S RIGHT TO MEANINGFUL PARTICIPATION

Juvenile Waiver Hearings

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 that we create a comprehensive approach to ensuring that crime victims receive notice of rights consistently and effectively throughout the State of Oregon. This document discusses the constitutional and statutory mandates along with common practices focused on proper notification and meaningful participation.

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 Oregon constitution makes it clear that a crime victim's rights shall be protected at each stage of the criminal and juvenile justice systems. In some juvenile cases, some defendants, called youth/youths, can face charges in adult court if they are waived into adult court. Only after a hearing in Juvenile Court where a Judge makes findings related to particular criteria can a youth aged 15, 16 or 17 years old be waived into adult court. Victims must be provided advance notice of waiver hearings, notice of these hearings is most often provided by the District Attorney's Office and victims have the right to attend these hearings.

Select Express Provisions of Law

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.

ORS 419C.349(a)

"The state files a motion requesting a waiver hearing in a case in which a petition has been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that, if committed by an adult, would constitute aggravated murder or an offense listed in ORS 137.707 (Mandatory minimum sentences for certain juvenile offenders waived to adult court)."

ORS 419C.364

"After the juvenile court has entered an order waiving a youth to an adult court under ORS 419C.349 (Grounds for waiving youth to adult court), the court may, if the youth is 16 years of age or older, enter a subsequent order providing that in all future cases involving the same youth, the youth shall be waived to the appropriate court without further proceedings..."

ORS 419C.358 (1)(2)

1) "Except as otherwise provided in subsection (2) of this section and ORS 137.707...(6), when a person is waived for prosecution as an adult, the person shall be waived only on the actual charges justifying the waiver under ORS 419C.349... or 419C.352 (Grounds for waiving youth under 15 years of age), as the case may be.

2) "Any nonwaivable charges arising out of the same act or transaction as the waivable charge shall be consolidated with the waivable charge...."

ORS 419C.361 (1) (b)

“When a trial has been held in the court of waiver upon an accusatory instrument alleging a crime listed in ORS 419C.349....or 419C.352...and the person is found guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence the defendant therein, but the trial court shall order a presentence report to be made in the case, shall set forth in a memorandum such observations as the court may make regarding the case and shall then return the case to the juvenile court in order that the juvenile court make disposition in the case based upon the guilty finding in the court of waiver.....”

Article I Section 42 (1) (b) grants crime victims:

“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.”

ORS 147.421 (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: The conviction and sentence; criminal history; imprisonment and future release from physical custody.”

Frequently Asked Questions

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

- **Who reviews the police report first – juvenile department or DA Office?** That can vary based on current agreements and practices with the juvenile department in each county. If you don’t have current agreements, you will find a helpful interagency agreement guideline on the DOJ website in the Juvenile Department of Community Justice [toolkit](#).
- **When does the decision about whether to file a waiver have to be made?** There is no statutory requirement related to the timing of filing a waiver. Time will vary based on receipt of police reports, ongoing investigations, records requests etc. Make sure to let the victim know this may not be a quick decision.
- **Can victims make a statement at the waiver hearing?** Yes, the victim of the alleged offense has the right to appear at the hearing and to provide the court with any information reasonably related to the courts’ determination of either keeping the youth in the juvenile court’s jurisdiction, or waiving them into adult court. This means the victim can weigh in with an opinion—keep the youth in juvenile court or send the youth to adult court for prosecution. The statement can be similar to a victim impact statement, but ultimately should address the court’s waiver decision.
- **Can crime victims get youth offender criminal history?** The Oregon constitution says that victims are entitled to “equivalent information regarding alleged youth offender or youth offender”. This means information that is equivalent to adult criminal history per ORS 147.421. Again, the same information contained in LEDS e.g. an arrest, a filing of a juvenile court petition or/and a finding that the youth is in the jurisdiction of the court.
- **Which crimes are considered for waivers?** Generally, for youth under 15 the crimes considered for a waiver are Murder, Aggravated Murder, Rape 1, Sodomy 1, Sexual Penetration 1. For youth aged 15, 16 and 17, any Class A or B felony and some additional Class C felonies can be considered for a waiver.

- **Does the DA decide if a waiver is sought?** While the DA has final discretion to seek the waiver or not, victims have a right to a meaningful role in the criminal justice system and therefore, the victim's input should be considered. While this decision is not technically a plea negotiation, which can require consultation with the victim for violent felonies under OR Const. Art. I § 42 (1)(f), it is in the spirit of this type of negotiation, as it ultimately impacts the type of sentence the youth is eligible to receive. Victim participation and input should be an integral part of the decision, and Das or DDAs should consult with victims about this decision before proceeding.

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:

- [Link](#) to best practice on providing culturally responsive and trauma informed notification
- [Link](#) to Juvenile toolkit
- [Link](#) to Interagency agreement guideline
- [Link](#) to Jackson County Community Justice waiver information webpage
- endorsement to use these solutions statewide

Any 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

General Process – All cases for waiver will be reviewed by the District Attorney's (DA) Office to determine whether to move forward with waiver under ORS 419C.349. All waiver hearings will occur in front of the Juvenile Court. DA will consult with the victim regarding the decision to petition the court for the waiver.

BEST PRACTICE – DA Office will schedule a meeting with the victim and advocate (including juvenile advocate) to discuss the potential petition for waiver. *(The victim should receive a victims' rights request form at this meeting).*

Prosecutors/Juvenile Department/Advocates – Develop a practice for providing ongoing and consistent advocacy services regardless of the decision to seek a waiver or the outcome of the waiver, consider the following:

- Have you completed an interagency agreement?
- Does your county juvenile department have an advocate?
- Which advocate will continue with the case or will there be a warm handoff?
- How will you co-advocate?
- How will you keep one-another updated and informed? DDA informing advocates, vice-versa.
- Will a community-based advocate be involved?
- Who will provide the victim with the written waiver findings?
- Referring victim to Oregon Crime Victim Law Center (OCVLC) for a full explanation of rights.

Advocates – Predict and Prepare. This type of hearing has been described as a combination of trial and sentencing before adjudication. Many facts will be presented, disturbing photos may be shown, and victims might be subpoenaed and/or put on the stand and sworn in, and be required to testify, including cross-examination. It is very important to consult with the DDA regarding what information will be shared

so that you can predict and prepare the victim for a variety of possibilities at the hearing. It is also important to discuss the benefits/challenges of attending the hearing or not (e.g. waiver hearings will include information often characterized as sympathetic to the youth, and if victims choose not to attend the hearing they will not otherwise be privy to information that was shared about the youth e.g. mental health assessments, history of substance abuse, history of prior victimization, etc., all of which is often discussed during this type of hearing).

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.

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). Allow time for the victim to make a statement, should they wish to.

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 victim 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.

Juvenile Charged



DAVAP sets mtg with Victim
(include juvenile advocate)



Prosecutor consults with victim
re: seeking waiver
(provide victim rights)

WAIVER REQUESTED
(hrg. held in Juvenile court)
OR
NO WAIVER REQUESTED
(case stays in Juvenile court)

Coordinate with
Advocate/Juvenile
Department

Inform victim of all
hearing
dates/times

Assist with victim
input statement

Victims right to meaningful participation is honored.