



Oregon Constitutional and Statutory Victim Rights for Bias Victims

A Non-Exhaustive Summary

Oregon Department of Justice's

CIVIL RIGHTS UNIT



Disclaimer

Information in this PowerPoint does not constitute legal advice and is not a substitution for consulting with or retaining an attorney.

The Bias Response Hotline is not able to give any legal advice to anyone reporting a bias incident or bias crime.

No attorney-client relationship or privilege is created through a report, information sharing, or review of these materials.

Oregon's Statewide Bias Response Hotline

Bias Response Hotline (non-emergency hotline)

1-844-924-BIAS (2427)

Monday-Friday, 9am-5pm

Interpretation in 240+ languages

We Accept All Relay Calls

Report Online anytime at StandAgainstHate.Oregon.gov

Victim Definition: Constitutional

[OR Const Art I § 42 \(6\)\(c\)](#)

“Victim” means any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor.

Victim Definition: Statutory

[ORS 137.007](#)

...“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.

General Information: Reporting to LE

(these are not technically rights)

- Victims do not have to know if something is a bias crime vs. a bias incident.
- Victims can choose when, where, and how to report.
- Victims can request that it be documented in a police or incident report. Reports may:
 - build evidence of bias motivation in additional/future cases against the same perpetrator, or
 - identify patterns or link cases previously unlinked.
 - Note: police are not required to write a report for a bias incident.
- Victims do not have to have any leads or know who the perpetrator is.

Victim Options: After Reporting to LE

(not rights)

- Can apply to have **crime**-related medical, counseling, and funeral bills not covered by insurance covered by the state's [Crime Victim Compensation Program \(CVCP\)](#). (ORS 147.005)
- Can apply to have *bias incident*-related counseling costs not covered by insurance covered by the state's [Crime Victim Compensation Program \(CVCP\)](#).
- Victims of criminal activity who are non-citizens or without permanent status who are helpful to law enforcement in an investigation or prosecution may be eligible for a temporary stay in the U.S. called U Nonimmigrant Status, or a U Visa. (Victims of Trafficking and Violence Protection Act of 2000, 8 U.S.C. § 1184, 8 U.S.C. § 1101(a)(15)(U))

Victim Options: After Reporting to LE

(not rights)

- Victims who are 65+ or disabled can request the court to issue a civil protective order (aka restraining order), outside of any criminal case, against a perpetrator of bias who has used hate speech, slurs, names, ridicule, threats, cursing, or intimidation against them. (ORS 124.010)
- If the bias constitutes stalking (repeated, unwanted contact that puts them in fear of imminent physical danger) and has occurred in the last 2 years, then a victim can, outside of any criminal case, request the court to issue a civil stalking protective order against a perpetrator of bias.

Victim Options: Ongoing

(not rights)

- If the bias constitutes stalking (repeated, unwanted contact that puts them in fear of imminent physical danger) (or DV or SA) and has occurred in the last 90 days, then a victim can terminate their lease without penalty given 14 days' written notice and verification of the abuse like a police report, protective order, conviction, or letter from a victim service provider. (ORS 90.453)
- If the bias constitutes stalking (repeated, unwanted contact that puts them in fear of imminent physical danger) (or DV, SA, or sex trafficking), and the victim has recently moved and not shared their address yet, then a victim can request to join the Address Confidentiality Program to have a substitute address listed on all public documents and receive and forward all first-class, certified or registered mail. (ORS 192.822)

Victim Options: Ongoing

(not rights)

- Individuals have the right to live/be housed, work, go to school, vote, and access stores and public spaces free from discrimination. (Federal Fair Housing Act, Civil Rights Act of 1964, Rehabilitation Act, Americans with Disabilities Act)
- A landlord can evict the perpetrator of bias crime or bias incident (an act that is “outrageous in the extreme”) with 24 hours’ notice. (ORS 90.396 (1)(f)(d) and (4))
- 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 for DV/SA, harassment, or stalking. (ORS 659A.272)
- To not be disqualified from unemployment benefits if the victim has no reasonable available alternatives to leaving work to protect the individual or minor child from further DV, SA, stalking, or intimidation. (ORS 657.176(12))
- To take leave from employment to attend a criminal proceeding if the victim is an eligible employee and the employer is a covered employer. (ORS 659A.192.)

Victim Rights: Reporting to LE

- To have a **full investigation** of criminal conduct, no matter the victim's race, color, national origin, gender identity, sexual orientation, religion, disability, criminal history, or citizenship/documentation status. (14th Amendment's Equal Protection Clause of the U.S. Constitution)
- To be **notified of their victim rights** "as soon as reasonably practicable." (Or Const, Art I, § 42(1)(g); ORS 147.417(1), ORS 147.417(4)(a))
- If reporting a bias *incident*, to **be referred to the statewide Bias Response Hotline** or Qualifying Local Victim Services (once designated) for support. (ORS 147.380 (2))

Victim Rights: Throughout the CJ Process

- To be **treated with dignity and respect** by LE and everyone else in the CJ process. (Oregon Constitution Article I § 42 (1))
- To have a **free interpreter** and to receive any **materials translated** into a language they request when they are accessing police, hospitals, public schools, and any government program or agency that receives federal funding. (Title VI of the Civil Rights Act, Americans with Disabilities Act)
- To a **free interpreter in court**, whether testifying or simply listening to a hearing. (ORS 45.275, ORS 45.285(3), ORS 419C.285(4))
- If 15 years or older, to have a **personal representative** (friend/ally/support person) with them at every stage of the reporting/LE/CJ process; the rep cannot be a minor or a witness to the crime. (ORS 147.425)

Victim Rights: Throughout the CJ Process

- To **refuse an interview, deposition or other discovery request** by the criminal defendant or other person acting on behalf of the criminal defendant. (Oregon Constitution Article I § 42 (1)(c))
- To **obtain a transcript** of any hearing held in open court, if one is prepared. (Oregon Constitution Article I § 42 (1)(e), ORS 147.419, ORS 419A.256)

Victim Rights: Throughout the CJ Process

- To **choose to participate** in the criminal justice process by asserting victim rights to give input, be notified of, attend, and speak at certain hearings.
 - Note: Personally served subpoenas are an enforceable court mandate to appear.
- To a **meaningful role** in the criminal justice process. (Oregon Constitution Article I § 42 (1))
- To be **reasonably protected** from the defendant throughout the criminal justice process. (Oregon Constitution Article I § 43 (1)(a))
 - When a defendant is released while a case is pending, to have a no contact order with the victim issued. (ORS 135.970 (4)(a), ORS 419C.276(4))

Victim Rights: Throughout the CJ Process

- Upon request, to **be notified in advance of any critical stage** of the proceedings held in open court when the defendant will be present, and to also be present. (Or Const, Art I, § 42(1)(a); ORS 419C.273(1)(a))
 - Release hearing
 - Preliminary hearing
 - Entry of guilty or no contest plea
 - Trial
 - Hearings related to rescheduling of trial
 - Hearings to suppress or exclude evidence
 - Sentencing
 - Hearings related to a deferred sentencing agreement
 - Restitution hearing
 - Hearings on motions or petitions to amend, dismiss or set aside a charge, conviction, order or judgment
 - Hearing for relief from the requirement to report as a sex offender
 - Hearings on admission of evidence of victim's past behavior or dress in sexual assault cases
 - Probation violation or revocation (for Class A misdemeanor and felony crimes)

Victim Rights: Throughout the CJ Process

- To speak at **bolded** hearings:
 - Release hearing
 - Preliminary hearing
 - **Entry of guilty or no contest plea**
 - Trial
 - Hearings related to rescheduling of trial
 - Hearings to suppress or exclude evidence
 - **Sentencing**
 - Hearings related to a deferred sentencing agreement
 - Restitution hearing
 - Hearings on motions or petitions to amend, dismiss or set aside a charge, conviction, order or judgment
 - Hearing for relief from the requirement to report as a sex offender
 - Hearings on admission of evidence of victim's past behavior or dress in sexual assault cases
 - **Probation violation or revocation**
 - **Post-conviction hearings**
 - **PSRB hearing**
 - **Specific juvenile hearings** (detention, shelter, placement, dispositional, restitution, and waiver hearings)

Victim Rights: Throughout the CJ Process

- Upon request, to be informed of the **defendant's criminal history**, including arrests, charges, convictions, and imprisonment. (Oregon Constitution Article I § 42 (1)(b), ORS 147.421, ORS 420A.122)
- Upon request, to be informed of the defendant's **release from custody**. (ORS 147.421 (1)(d))
 - Remember VINE!
- Upon request, to ask the court to **reconsider a release decision** if they were not notified or given the opportunity to give input in a previous court release decision. (ORS 147.508)
- To speak at a release hearing.

Victim Rights: Sentencing

- To be **notified in advance** of a change of plea *and* sentencing
- To **speak** at a change of plea *and* sentencing
- To request that the defendant be ordered to paid back [**restitution**] for losses, damage to property, or medical costs from the crime. (Oregon Constitution Article I § 42 (1)(d), ORS 137.106(1), ORS 419C.450(1)(a))
- FYI: A court may order compensatory fines 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, ORS 419C.459)
- To obtain information about the conviction, sentence, imprisonment, and future release from physical custody of the criminal defendant or convicted criminal. (Oregon Constitution Article I § 42 (1)(b))

Victim Rights: Post-Conviction

- Upon request, to be notified of and attend an appeal (person crimes and burglars only). (ORS 147.433(1)(b))
- Upon request, to be notified when a conviction is the subject of a petition for post-conviction relief or post-conviction DNA testing. (ORS 147.433(1)(c))
- Upon request, to be notified of Psychiatric Review Board Proceedings for GEI cases including hearings, conditional release, discharge or escape. (ORS 161.326(1))
- Upon request, to be notified of Board of Parole and Post-Prison Supervision hearings. (ORS 144.750(2)(a))

Victim Rights: Remedy

- To a remedy for the violation of a constitutional right. (Oregon Constitution Article I §§ 42(3)(a), 43(5)(a), ORS 147.500-147.533)
- To file a claim of rights violation, contact
 - the [Oregon Crime Victims Law Center](#),
 - Oregon DOJ's [Crime Victims' Rights Program](#),
 - [Check out this form](#) to file with the court

Want to know what the Civil Rights Unit is up to? Follow us on social media!



Oregon Department of Justice's

CIVIL RIGHTS UNIT