

Certification of Compliance with Crime Victims' Rights (Prosecutor Certification Form)

[OR Const. Art I, section 42, ORS 147.510](#)

Oregon Department of Justice Crime Victim and Survivor Services Division

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



HONORING A VICTIM'S REQUEST OF RIGHTS

Prosecutor's Notice of Compliance with Crime Victim's Constitutional Rights Certification Form

The justice system is best served by full implementation of all crime victims' rights as embodied in Oregon Constitution and statutes. This document identifies issues that should be considered when completing and filing a Prosecutor Certification (Cert).

What and How

Protecting and honoring a victim's rights request is an integral part of treating victims with dignity and respect and affording them meaningful participation. It is in the best interest of all that we consider how a victim's rights request is accurately and consistently recorded and filed with the court.

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."

Article I Section 42 (1) states that:

"To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role in the criminal and juvenile justice systems, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant's innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings, ..."

ORS 147.510 (4)

"(4) In all felony cases, no later than 21 days after the defendant is arraigned on an indictment, waives indictment or is held to answer following a preliminary hearing, the prosecuting attorney shall provide the court with a notice of compliance with victims' rights on a form prescribed by the Chief Justice of the Supreme Court or on a substantially similar form that indicates whether:

(a) The prosecuting attorney, a person known to the prosecuting attorney, or a member of the prosecuting attorney's staff made reasonable efforts to inform the victim of the rights granted to the victim by sections 42 (1)(a) to (f) and 43, Article I of the Oregon Constitution;

(b) The charging instrument includes the name or pseudonym of each victim known to the prosecuting attorney. If the charging instrument does not include the name or pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall identify any victim not included in the charging instrument, unless it would be impractical to do so;

(c) The victim requested that the prosecuting attorney assert and enforce a right granted to the victim by section 42 or 43, Article I of the Oregon Constitution, and whether the prosecuting attorney agreed to do so; and

(d) The victim requested to be informed in advance of any critical stage of the proceeding."

Frequently Asked Questions

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

- **Why file the Cert?**

- It's the law.
- It's the right thing to do.
- It can help protect a victim's rights and reflect their wishes.
- It puts the court, defense, and prosecutor on written notice regarding the rights the victim has asserted.
- It puts the court and defense on written notice regarding the rights the prosecutor is willing to assert on the victim's behalf.
- It serves as a reminder to the parties regarding the rights the victim has asserted.
- It identifies victims who may be unknown to the defense and court, for example landlords whose property was damaged in a burglary, or insurance companies that will be requesting restitution in a hit and run.
- It affords a victim of crime meaningful participation and dignity and respect.

- **What is the purpose of the Cert?**

To provide notice to the court and the defense that a particular person or business has been identified as a victim and either is asserting or could assert rights.

- **How can it help a crime victim?**

If a victim's right is violated, this form may serve as proof that they are identified as a victim and that the violating party was on notice that the right had been asserted. A victim whose rights have been violated can use this form to help them assert a claim of violation of rights and request a remedy.

The form may be especially important in homicide or other fatality cases, where the prosecutor's office may identify a fiancé or son-in-law or second cousin as a victim -- people who may otherwise be excluded from the constitutional and statutory definitions of victim in homicide cases because they are not an immediate family member of the deceased.

- **What kinds of cases should I be filing a Cert on?**

The law requires a Cert to be filed on felony victim crime cases. However, the law is the minimum, and best practice says the Cert form should be filed in all victim crime cases within 21 days of filing the final charging instrument, including on felony and misdemeanor victim crime cases. Violation of a protective order cases are not included in this because they are technically contempt and not criminal cases. Courts and judges will often allow victims to speak at sentencing and assert other rights as a courtesy rather than as a right; these cases should not have a Cert filed so as not to mislead the victim or anyone else that the victim has constitutional rights in the case.

- **What Cert form should I be using?**

The law requires the prosecutor's office to use "...a form prescribed by the Chief Justice of the Supreme Court or on a substantially similar form...". Currently, this form is available on OJD's website at <https://www.courts.oregon.gov/forms/Documents/ProsecutorsNotice-Compliance.pdf> .

Where Do We Go from Here?

Although filing this form has been required by law for almost 15 years, successfully updating and incorporating a process into current procedures takes time and resources. This document offers guidance on best practice in asserting and enforcing victims' rights in the context of completing the correct Cert form. Included:

- Step-by-Step Process on completion of a Cert including considerations.
- 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 secondary victimization and victim rights violations. We encourage you to share this information with others in your agency who complete this form.

Guidance

BEST PRACTICE – Accurately complete the correct Cert form found on OJD's website, and update and refile the Cert as needed if new victims are discovered or charged, or if the victim asserts new rights.

Prosecutors

While rights' requests can change throughout the course of a prosecution, the Cert is filed with the court early on in a prosecution and is a good place to look to review what rights a victim may have requested. Prosecutors may consider using the Cert to help with the colloquy to the court at every critical stage hearing, as well as to assist in asserting victim rights to the defense. The Cert document may need to be updated during the case to provide an accurate reflection of the victim's wishes.

Advocates or staff completing this form – consider the following:

- Are you including the name of every victim on the Cert form, even those who may not appear on the indictment/information?
- Are you careful **not** to include information that is not specifically requested? Extra information could endanger the victim by indicating the victim's level of cooperation, whereabouts, etc.
- Are you being specific about which critical stages the victim has requested notice on?
- Is your office declining or agreeing to assert and enforce the victim's rights? Why?
- Is your office asking the court to suspend a victim's rights? If so, does this fall within the constitutional allowance under Article 1 Section 42(5) involving organized crime or victims who are minors? Did your office file the constitutionally required affidavit explaining why?
- Are you including critical stage rights and additional constitutionally guaranteed victim rights?



[Step-by-step guide to filling out the Cert form correctly.](#)

Training

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's right(s) has been violated

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

Prosecutor Certification



Did you provide victims rights information?

(Did the victim request any rights?)

(Is your office agreeing to assert those rights?)

Record the victim's choices

Use the correct
cert form

Do not share any
additional
information

Be accurate in
reflecting
victim choices

File the form with the court

(accuracy may protect a victim's rights in future proceedings)



Victim's rights are formally asserted.