

HONORING A VICTIM'S RIGHT TO AN INTERPRETER OR ASSISTIVE COMMUNICATION DEVICE

(Article I, sec 42 and 43 of the Oregon Constitution)
Oregon Department of Justice Crime Victims' Services Division

Participatory Right

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Participatory Right

The justice system is best served by full implementation of all crime victims' rights as embodied in the Oregon Constitution and statute. Therefore, it is in the best interest of all to create a comprehensive approach to ensuring that Article I, section 42 or 43, are applied consistently and efficiently throughout the State of Oregon. This document discusses the constitutional and statutory mandates allowing a victim to participate fully and meaningfully.

What and How

A court appointed interpreter or an assistive device may be needed to provide a victim of crime with limited English proficiency or who is D/deaf or hard of hearing with the opportunity to fully participate in the justice system. The right for a victim to be present at any critical stage of the proceedings held in open court when the defendant is present and to be heard at some hearings depends on providing the means to make participation possible.

Relevant Legal Provisions

ORS 45.285

"In any criminal proceeding, the court shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to a victim who is a person with a disability and who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding." ORS 45.285(3). This right also applies in juvenile delinquency proceedings. ORS 419C.285(4)

45.275(1)(b) "The court shall appoint a qualified interpreter in a criminal proceeding whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding." ORS 45.275(1)(b).

45.275(8)(c) "Qualified interpreter" means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party, victim or witness.

Or Const, Art I, § 42(1)(a)

"A crime victim has, upon specific request, the right to be present at any critical stage of the proceedings held in open court when the defendant will be present and to be present at any such stage of the proceedings."

ORS 40.385(4) crime victims are exempt from statute allowing a court to exclude witnesses from trial at the request of a party.

ORS 137.013 (providing for the right of the victim to be present at sentencing). The juvenile code provides an additional statutory right to be present at critical-stage proceedings. See ORS 419C.273(2)(a) (“The victim of any act alleged in a petition filed under this chapter may be present at . . . critical stages of the proceedings held in open court when the youth or adjudicated youth will be present.”)

Frequently Asked Questions

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

- **What is an assistive communication device?** A listening device provided by the court. ORS 45.285; “Assistive communication device” means any equipment designed to facilitate communication by a person with a disability.” It could also mean something to help facilitate speech.
- **Who orders the interpreter or assistive device?** For victim testimony for a hearing held in open court the court will order an interpreter or make available an assistive device; however, they may not know this is necessary unless you inform them. Interpreters are often needed for other reasons such as in-person or phone meetings, grand jury and updates about a case. The advocate or other office staff may be assigned to find and provide an interpreter. Follow your office guidelines.
- **Who pays for an interpreter for court proceedings?** In any criminal proceeding, the court shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English-speaking victim who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.” ORS 45.275(1)(b). Additionally, the court must provide appropriate assistive communication devices whenever necessary to interpret the proceedings to a victim who is a person with a disability and who seeks to exercise in open court a right that is granted by Article I, section 42 or 43, of the Oregon Constitution, including the right to be present at a critical stage of the proceeding.” ORS 45.285(3). This right also applies in juvenile delinquency proceedings. ORS 419C.285(4).
- **Who pays for an interpreter for Psychiatric Security Review Board (PSRB) and Board of Parole and Post Prison Supervision (BOPPPS) Board Hearings?**
Under ORS 45.275, victims in any court or administrative adjudicatory proceeding - including PSRB and BOPPPS hearings - who require language interpretation will have a qualified interpreter appointed at no cost to them.
 - If ordered by a circuit court, interpreter costs are covered by the county, city, or state, depending on the venue.
 - If ordered for a PSRB or BOPPPS hearing, the responsible board (PSRB or BOPPPS Board) pays the interpreter fees.

Additionally, in PSRB cases, victims of a crime adjudicated as guilty except for insanity have a statutory right under ORS 161.326 to receive notice of hearings and to be heard, either in person or in writing. Similarly, under ORS 144.750, victims in parole or post-prison supervision hearings have the right to attend and present their views.

In both PSRB and BOPPPS proceedings, if a victim needs interpretation services, the appropriate Board will appoint a qualified interpreter and pay the associated costs.

- **Who pays for an interpreter for non-court or conversational needs?**
Grand jury, or other meetings with the district attorney, are paid for out of the DA budget; victim service grant funds cannot be used for costs of prosecution.
If you are providing a direct victim service (e.g. safety planning, explaining rights, or assisting with a crime victim compensation application your victim service funds may be available to pay for interpretation. Always check with your CVSSD fund coordinator.
- **What about written translation?** Documents submitted to the court must be written in English. If you must submit documents to the court that the victim has written in their primary language, allow enough time to have the document translated into English. Consider what the document is – remember victim service grant funds cannot be used for costs of prosecution; however, if the victim wishes to submit a victim impact statement to the court, which is not always necessary, your victim service funds may be available to pay for the translation. Again, always check with your CVSSD fund coordinator.
- **What is the correct language need?** Always use the victim's primary language. At times, a person may speak an alternate language in addition to their primary language, and an interpreter for the alternate language may be easier to obtain. However, testimony involves complex scenarios and often traumatic events, which the victim may not be able to express using an alternate language.
- **When can DAVAP advocates, or staff interpret?**
Advocates and staff should not be used as interpreters -EVEN IF they have the skills to do so. If an advocate or staff person is used as an interpreter in any process, it then changes their role and ability to advocate because they could be called to testify about what they interpreted. They can advocate and have one-on-one contact with the victim in the language they are qualified to use (e.g. safety planning, explaining rights, or assisting with a crime victim compensation application). If a victim is reporting something to law enforcement, talking with the DA, talking in court, etc., there should be formal interpreters being used.
- **How is Privilege and Confidentiality affected?** The use of an interpreter does not break or alter confidentiality. Your confidentiality level also extends to the interpreter. If a conversation were privileged without an interpreter, it is still privileged if one is used. ORS 40.273, ORS 40.272. Make sure you know your level of confidentiality.
- **How shall you notify the court when a problem with the interpreter is identified?** The advocate should notify the prosecutor of a concern as soon as practicable. The prosecutor will address the court.

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 victims' rights. Included:

- current contact information for District Attorney Victim Assistance Programs
- endorsement to use these solutions statewide
- resources

The guidance and sample documents supplied here will allow agencies to follow the law, respond with speed and consistency, minimize re-victimization and avoid 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 - Determine what service is needed and allow enough time to make the necessary arrangements. Many offices have already established a process to obtain an interpreter or other assistance through the court. Continuing to use that process is the best approach, providing the courts and the DA Office understand and agree on how it works.

If you don't have a current process, consider the following:

You may wish to establish a process to assist victims needing an interpreter to exercise in open court a right that is granted by Article 1, section 42 or 43, of the Oregon Constitution, by requesting one using an online form, available through [OJD's webpage on language access services](#) on their behalf. The form is the best way to request an interpreter for a court proceeding as there is centralized coordination of interpreters for proceedings.

For proceedings not held in open court, e.g. grand jury, OJD maintains a [list of interpreters](#) that may be helpful to the DA Office advocate/staff who is tasked with finding an appropriate interpreter.

OJD's webpage has additional information on [ADA accommodations](#), including a [list of coordinators for each court](#).

Advocates/Staff – Determining whether a person needs language assistance can be accomplished in several ways: voluntary self-identification by the person with limited English proficiency or their companion; affirmative inquiry about the person's primary language if they have self-identified as needing language assistance services; inquiry by a qualified multilingual staff or qualified interpreter to verify an individual's primary language; or use of an "I Speak" language identification card or poster [Point2YourLanguage.pdf](#)

- **Determine what is the best language for interpretation:** The best practice is to use the victim's primary language. Do not assume that because a person can speak English that English is the appropriate language for testimony.

- **Make sure interpreter can effectively serve the victim:** To help assure that the interpreter can effectively serve the victim, consider asking questions to determine if the victim and the interpreter have a good working rapport. Conflicts between an interpreter and a victim can become a concern when the language is rare or the community is small. Using a family member, particularly a child, or an acquaintance of the victim for interpretation is not best practice and should be avoided.

DDA – Alert the judge when you are notified about the potential inadequacy of an interpreter. Ask for a pause to address the situation.

Judges – When you notice or are informed that an interpreter is needed or the current interpreter is inadequate, pause the hearing to address the issue on the record.

Law Enforcement – Make a notation in the police report about primary language or other need for accommodation.

Failure to afford crime victims the right to participate fully or meaningfully – If a trial court denies a victim access to an interpreter or assistive device, the victim may have a basis to assert a denial of their right to participate in critical stage proceedings under Article I, section 42(1)(a). And if the violation is established, the potential remedy could be holding a new proceeding where the victim would have the assistance of an interpreter or assistive device. *See State v. Barrett* 350 Or 390 (2011) (ordering resentencing as a remedy for violation of victim's right to notice of the original sentencing). Therefore, being conscientious about ensuring that victims can exercise this participatory right up front could prevent the need to redo a sentencing hearing.

Other Resources

[Victims' Rights Guides in multiple languages](#)

[Victims' Rights Request Forms in multiple languages](#)

[Oregon Judicial Department Request for ADA Accommodations and Response](#)

[Crime Survivors' Right to Accommodation to Access Courts — DRO](#)

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 consistently trained on this right and the related processes and procedures.

