

REVENUE: No revenue impact
FISCAL: Fiscal statement issued

Action:	Be Adopted as Amended and Be Printed Engrossed
Vote:	9 - 0 - 0
Yeas:	Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
Nays:	0
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	4/9, 4/26

WHAT THE MEASURE DOES: Amends Section 42, Article I of the Oregon Constitution. Grants a victim the right to assert a claim in a pending case or seek a writ of mandamus if no case is pending. Allows the victim to request the assistance of the prosecuting attorney to assert the victim's rights. Allows the prosecuting attorney the discretion to assert or not assert the rights of the victim. Defines "victim" as any person determined by the court as well as the prosecuting attorney to have suffered direct financial, psychological or physical harm. Establishes that this measure does not suspend a criminal or juvenile delinquency proceeding if the suspension would violate a right of a defendant guaranteed by the Oregon Constitution as well as the Constitution of the United States. Allows the Legislative Assembly to enact laws further effectuating victims' right to seek redress under Section 42. Refers HJR 49 to the voters at the next general election.

ISSUES DISCUSSED:

- Rights without remedies
- Further legislative action

EFFECT OF COMMITTEE AMENDMENT: Defines "victim" as any person determined by the court as well as the prosecuting attorney to have suffered direct financial, psychological or physical harm. Grants to the Legislative Assembly the ability to effectuate the rights of a victim to assert a claim that may include establishing a reasonable limitation on the time allowed for bringing claims for relief. Limits the rights granted under this constitutional provision by providing that this provision does not suspend the a criminal or juvenile delinquency proceeding if the suspension would violate a right of a defendant guaranteed by the Oregon Constitution as well as the Constitution of the United States. Removes the expedited appeal proceedings.

BACKGROUND: In the November 5, 1996 general election, the voters of Oregon adopted Measure 40, a comprehensive and far-reaching series of amendments to Oregon's Bill of Rights, particularly as it relates to victims and criminal defendants before the courts of Oregon. The Oregon Supreme Court found Measure 40 unconstitutional on the grounds that it contained two or more amendments to the Constitution in violation of Article XVIII, section 1, of the Oregon Constitution. *Armatta v. Kitzhaber*, 327 Or. 250 (1998),

After *Armatta*, the House Judiciary Committee, during the 1999 session, introduced the following:

1. HJR 87, creating the right for victims to be present and heard at, and informed in advance of any critical state of the proceedings.
2. HJR 88, creating right of the district attorney to request a jury trial.
3. HJR 89, excluding felons from serving as jurors.
4. HJR 90, requiring that the safety of the victim be considered when setting bail for a defendant awaiting trial.
5. HJR 91, allowing into evidence material that was otherwise illegally obtained.

6. HJR 92, allowing conviction for murder by an 11-1 jury vote when the death penalty is not being sought.
7. HJR 93, requiring a person to testify about an offense the person committed so long as the testimony was not used against the person.
8. HJR 94, prohibiting the setting of a sentence made in open court except for appeal or pardon.

These eight measures were Measure 40 divided eight ways. Separately, they met different fates: HJR 91 did not pass on the Senate floor; HJR 88, HJR 92 and HJR 93 were defeated at the polls. HJR 87, HJR 89, HJR 90 and HJR 94 were approved and became part of the Oregon Constitution.

HJR 87 became Section 42, Article I of the Constitution of the State of Oregon. Among other things, it grants to victims of crime the following rights: (1) The right to be present and informed in advance of all critical stages of the proceeding held in open court when the defendant is present; (2) The right to obtain information about the conviction, sentence, imprisonment, criminal history and future release from custody of the defendant; (3) The right to refuse an interview, deposition or discovery request by the defendant; (4) The right to receive restitution from the convicted defendant; (5) The right to have a copy of the transcript of any court proceedings; (6) The right to be consulted regarding plea negotiations involving a violent felony; and (7) The right to be informed of these rights. However, Section 42 explicitly states that it “does not create any cause of action for compensation or damages nor may it be used to invalidate an accusatory instrument, ruling of the court, conviction or adjudication or otherwise suspend or terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal.”