

House Joint Resolution 49

Sponsored by COMMITTEE ON JUDICIARY (at the request of Attorney General Hardy Myers for Department of Justice, Steve Doell for Crime Victims United)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Proposes amendment to Oregon Constitution granting crime victims remedy for violation of constitutional rights.

Refers proposed amendment to people for their approval or rejection at next regular general election.

JOINT RESOLUTION

Be It Resolved by the Legislative Assembly of the State of Oregon:

PARAGRAPH 1. Section 42, Article I of the Constitution of the State of Oregon, is amended to read:

Sec. 42. (1) 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, the following rights are hereby granted to victims in all prosecutions for crimes and in juvenile court delinquency proceedings:

(a) The right to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings held in open court when the defendant will be present, and to be heard at the pretrial release hearing and the sentencing or juvenile court delinquency disposition;

(b) 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;

(c) The right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant provided, however, that nothing in this paragraph shall restrict any other constitutional right of the defendant to discovery against the state;

(d) The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury;

(e) The right to have a copy of a transcript of any court proceeding in open court, if one is otherwise prepared;

(f) The right to be consulted, upon request, regarding plea negotiations involving any violent felony; and

(g) The right to be informed of these rights as soon as practicable.

(2) This section applies to all criminal and juvenile court delinquency proceedings pending or commenced on or after the effective date of this section. Nothing in this section reduces a criminal

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 defendant's rights under the Constitution of the United States. Except as otherwise specifically
2 provided, this section supersedes any conflicting section of this Constitution. Nothing in this section
3 is intended to create any cause of action for compensation or damages nor may this section be used
4 to invalidate an accusatory instrument, [*ruling of a court,*] conviction or adjudication or otherwise
5 [*suspend or*] terminate any criminal or juvenile delinquency proceedings at any point after the case
6 is commenced or on appeal. **Except as otherwise provided in subsections (3) and (4) of this**
7 **section, nothing in this section may be used to invalidate a ruling of the court or to suspend**
8 **any criminal or juvenile delinquency proceedings at any point after the case is commenced.**

9 (3)(a) Every victim shall have remedy by due course of law for violation of a right es-
10 tablished in this section.

11 (b) A victim may assert a claim for a right established in this section by motion in a
12 pending case, or by a mandamus proceeding if no case is pending.

13 (c) To effectuate a right established in this section, the courts shall give expedited con-
14 sideration, including allowing interlocutory appeal, to claims for rights established in this
15 section.

16 (d) The remedy for violation of a right established in this section is limited to an in-
17 junction, order or writ effectuating the right.

18 (e) The Legislative Assembly may pass laws further effectuating the provisions of this
19 subsection.

20 (4) Upon the victim's request, the prosecuting attorney, in the attorney's discretion, may
21 assert and enforce a right established in this section.

22 (5) Upon the filing by the prosecuting attorney of an affidavit setting forth cause, a court
23 shall suspend the rights established in this section in any case involving organized crime or
24 victims who are minors.

25 [(3)] (6) As used in this section:

26 (a) "Convicted criminal" includes a youth offender in juvenile court delinquency proceedings.

27 (b) "Criminal defendant" includes an alleged youth offender in juvenile court delinquency pro-
28 ceedings.

29 (c) "Victim" means any person determined by the prosecuting attorney to have suffered direct
30 financial, psychological or physical harm as a result of a crime and, in the case of a victim who is
31 a minor, the legal guardian of the minor. In the event that no person has been determined to be a
32 victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered
33 to be the victims. In no event is it intended that the criminal defendant be considered the victim.

34 (d) "Violent felony" means a felony in which there was actual or threatened serious physical
35 injury to a victim or a felony sexual offense.

36
37 **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the**
38 **people for their approval or rejection at the next regular general election held throughout**
39 **this state.**