

House Joint Resolution 50

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 mechanism for enforcing constitutional right regarding pretrial release of defendant.

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 43, Article I of the Constitution of the State of Oregon, is amended to read:

Sec. 43. (1) 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 proceedings, the following rights are hereby granted to victims in all prosecutions for crimes:

(a) The right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process and from the alleged youth offender or youth offender throughout the juvenile delinquency proceedings.

(b) The right to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial. Murder, aggravated murder and treason shall not be bailable when the proof is evident or the presumption strong that the person is guilty. Other violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release.

(2) This section applies to proceedings pending or commenced on or after the effective date of this section. Nothing in this section abridges any right of the criminal defendant guaranteed by the Constitution of the United States, including the rights to be represented by counsel, have counsel appointed if indigent, testify, present witnesses, cross-examine witnesses or present information at the release hearing. Nothing in this section creates any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, [*ruling of a court,*] conviction or adjudication or otherwise [*suspend or*] terminate any criminal or juvenile delinquency proceeding at any point after the case is commenced or on appeal. **Except as otherwise provided in subsections (4) and (5) of this section, nothing in this section may be used to invalidate a ruling of the court or to suspend any criminal or juvenile delinquency proceedings at any point after the case is commenced.** Except as otherwise specifically provided, this section supercedes any conflicting section of this Constitution.

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 (3) As used in this section:

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

7 (b) "Violent felony" means a felony in which there was actual or threatened serious physical
8 injury to a victim or a felony sexual offense.

9 (4) The prosecuting attorney is the party authorized to assert the rights of the victim and the
10 public established by this section. **Upon the victim's request, the prosecuting attorney, in the
11 attorney's discretion, may assert and enforce a right established in this section.**

12 (5)(a) **Every victim shall have remedy by due course of law for violation of a right es-
13 tablished in this section.**

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

16 (c) **To effectuate a right established in this section, the courts shall give expedited con-
17 sideration, including allowing an interlocutory appeal, to claims for rights established in this
18 section.**

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

21 (e) **The Legislative Assembly may pass laws further effectuating the provisions of this
22 subsection.**

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

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