



OREGON DEPARTMENT OF JUSTICE

Victims' Rights Enforcement Report to the 2013 Legislative Assembly

Attorney General's Task Force on Victims' Rights Enforcement

March 2013

The Attorney General's Task Force on Victims' Rights Enforcement is responsible for preparing a report that "may include recommendations for legislation designed to improve, in a cost-efficient manner, the protection of rights granted to victims of crime by the Oregon Constitution." This report focuses on: Recommendations for action in the current legislative session; Gaps in compliance with, and enforcement of, victims' rights; Recommendations for future legislation; and Progress in victims' rights enforcement and improvements in service delivery.

**Attorney General’s Task Force on Victims’ Rights Enforcement
Legislative Report – January 1, 2013**

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**Attorney General’s Task Force on Victims’ Rights Enforcement
Legislative Report – January 1, 2013**

Introduction

In 2009, the Oregon Legislature passed Senate Bill 233, codified primarily in ORS 147.500 through 147.550. The legislation included the creation of a “Task Force on Victims’ Rights Enforcement”¹ (Task Force) with key members to be appointed by the Attorney General (AG), the Chief Justice of the Supreme Court, and the executive director of the Office of Public Defense Services.² Additional appointed members of the Task Force include others from the AG’s Victims’ Rights Compliance Project - Advisory Committee, actively meeting since 2005. The current statutory language contains a sunset provision which, without legislative action, will result in dissolution of the Task Force on June 30, 2013.

The Task Force is responsible for:

- Reviewing the implementation of ORS 147.500 to ORS 147.550 and
- Preparing a Report to the legislature which may include recommendations for legislation to improve the protection of Constitutional rights granted to victims of crime.

Although SB 233 (2009) included the addition of certain statutory victims’ rights and new procedures for the District Attorneys and the courts, this Report focuses on the:

- Recommendations for action in the current legislative session;
- Gaps in compliance with, and enforcement of, victims’ rights as identified by the Task Force;
- Recommendations for future legislation; and
- Progress in victims’ rights enforcement and improvements in service delivery.

Key recommendations from the Task Force for legislative action in the 2013 legislative session include:

- Extending the sunset for the Department of Justice Restitution Pilot Project to July 1, 2015;
- Increasing funding to prosecutor based District Attorney, Victim Assistance Programs (DA/VAP) to ensure adequate delivery of comprehensive legal rights to crime victims;
- Increasing state funding for Child Abuse Multi-Disciplinary Intervention (CAMI) teams and Oregon Domestic and Sexual Violence Services Fund (ODSVS) program grantees;
- Requiring agents of the defendant’s attorney, including investigators for the defense and agents of Defense Initiated Victim Outreach (DIVO), to fully disclose their identity and affiliation when contacting the victim of a crime;
- Sexual assault protective orders for victims of non-intimate partner sexual assault;
- Clarifying that a victim may request additional time for restitution if there is good cause;
- Filing an appeal – clarifying the process for appealing a trial court order pertaining to victims’ rights (response to court’s decision in State v. Bray); and
- Eliminating the sunset provision for the Attorney General’s Task Force on Victims’ Rights.

This Report covers January 1, 2011 through December 31, 2012 unless otherwise noted.

¹ See Appendix A – Sections 20 and 21, chapter 178, Oregon Laws 2009 (pg. 10).

² See Appendix C – “Task Force on Victims’ Rights Enforcement – Members, Contributors & Staff”. In addition to the statutory requirements, membership includes broad representation from the criminal justice, juvenile justice, and victim services systems (pgs. 11-13).

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Victims' Rights Implementation

The Department of Justice Crime Victims' Services Division (DOJ CVSD) includes the ***Crime Victims' Rights,³ Post-Conviction Advocacy, Crime Victim Compensation, Address Confidentiality, and Restitution Pilot Programs***. These programs provide direct service to victims of crime and are funded primarily through the Criminal Fines Account (CFA) and/or punitive damages.

The Crime Victims' Rights Program assists victims of crime who believe their rights have been violated and coordinates and facilitates training on victims' rights compliance throughout the state. The program works in partnership with stakeholders representing the criminal justice, juvenile justice, and victim services systems. The program also provides staff support for the work of the Task Force and its subcommittees.

Additionally, DOJ CVSD through, its ***Victim Response Section***, administers more than \$15 million annually in federal and state grant awards to other state agencies, local government units, and non-profit organizations that support communities in their efforts to reduce the impact of crime on victims' lives. The primary funding sources for these grants awarded to local communities for victim services include the federal Victim of Crime Act (VOCA) and Violence Against Women Act (VAWA), as well as the state Criminal Fines Account.⁴

Crime victims in Oregon are to be first notified of their rights at the time law enforcement responds to a reported crime. The county District Attorneys (DA) are required by statute to ensure that victims have been notified of their rights and for cases that move to prosecution the DA Victim Assistance Programs (DA/VAP) provide notification and victim assistance services throughout the criminal proceedings.

All 36 county District Attorney Victim Assistance Programs receive a portion of their funding for these victims' rights services through the federal and state grants administered by DOJ CVSD. In 2010-2011, 19 of these offices relied on additional county funding ranging from 12% to 63% of their total budgets to support these services. Regarding the other 17 DA/VAP offices where no additional county funding was made available, many could only fund victim assistance program services on a part time basis. This results in the potential for inadequate or inconsistent services to victims of crime.

In the juvenile justice system, victim notification and assistance may be provided by the DA/VAP but become the responsibility of the county Juvenile Department if the DA/VAP is unable to assume this role. Additionally, the county Juvenile Departments assume all victim assistance for informal juvenile delinquency cases. While the county DA offices receive a portion of their funding for victim services through DOJ CVSD federal and state grants, the Juvenile Departments are entirely county funded. This can result in inadequate or inconsistent services to victims of juvenile crime if juvenile probation officers become responsible for victim services without professional victim assistance training or experience.

³ See Appendix C – "Background of Victims' Rights Compliance, Implementation, and Enforcement" (pgs. 14-15).

⁴ See Appendix D for information on funding (pg. 16)

Victim notification and victim assistance services in both the criminal and juvenile justice systems are required for all crime categories including person crimes, property crimes (which encompasses identity theft and financial fraud), and DUUI offenses. When funds are reduced to the DA/VAP offices, and many juvenile departments remain unfunded for victim assistance, it becomes more difficult to ensure that all victims are receiving these notifications and victim services.

Other significant work in the field of victims' rights enforcement in Oregon has been made possible through Federal VOCA and VAWA grants awarded directly to the National Crime Victim Law Institute (NCVLI) and through their sub-grant process, to the Oregon Crime Victims Law Center (OCVLC). DOJ CVSD currently provides limited funding directly to both these non-profits. NCVLI and OCVLC, located in Portland, are the only non-profits providing legal services solely on behalf of victims. These programs are in jeopardy as Federal funds slowly disappear and the availability of state funds is reduced.

Gaps in Victims' Rights Compliance and Enforcement

While Oregon remains in the forefront of effective and responsive services to victims as this Report reflects, the Task Force also recognizes where gaps exist in honoring victims' rights. Lack of funding remains the most significant barrier to the state delivering the rights guaranteed by the Oregon Constitution⁵ and Oregon Law. In identifying the Gaps below, the Task Force acknowledges fiscal challenges faced by the criminal justice, juvenile justice, and victim services systems in implementing, complying with and enforcing victims' rights. The Legislature must however be made aware of the reality of these fiscal dilemmas. As funding is limited or cut, comprehensive services to victims become more difficult to deliver and constitutional rights of Oregon citizens may be violated and or ignored.

The Task Force has identified the following gaps in Victims' Rights:

1. Funding Gaps

A. County District Attorney and Juvenile Department Victim Service Delivery:

- Many DA/VAP offices and Juvenile Departments do not have adequate resources and struggle to provide even the core victim assistance services required by statute;
- Few Juvenile Departments have dedicated victim assistance personnel on staff. Juvenile probation officers are therefore responsible not only for supervising youth offenders but for providing assistance to the victim of the crime, creating an inherent conflict of interest;
- Slow economic recovery and reduced timber subsidies have resulted in continued reductions in tax revenues for many Oregon counties. This directly impacts victims as DA/VAP offices and Juvenile Departments are forced to cut staff and reduce victim services due to budget shortfalls; and
- With federal grant funds to the states being capped, additional resources are not available.

B. Legal Representation for Victims:

- Offenders without financial means are appointed attorneys to ensure their rights are protected. However, there is no such program available to victims of crime to ensure their rights are enforced, rights which include the right to meaningful participation in their case as it proceeds through the justice system.
- The State's attorney (DA), while tasked with honoring victims' constitutional and statutory rights, represents the State and not the victim of the crime;

⁵ See Appendix E - Oregon Constitution Article 1 Section 42(1) (pgs. 17-19).

- If victims want legal representation to enforce their constitutional and statutory rights, they must hire their own attorney, find a pro-bono attorney, or represent themselves; and
- As offenders often prey on society's most vulnerable people, victims generally do not have significant financial means and/or have experienced financial loss associated with the crime, making it unlikely they have the resources available to hire legal counsel to protect their constitutional rights.

C. Interpreter Services for Victims During Criminal and Juvenile Proceedings:

- The court system only provides interpreters to victims when they are testifying.⁶ Without comprehensive interpreter services, a victim who is not fluent in English is denied their Constitutional right to *a meaningful role in the criminal and juvenile justice system*.

D. Legal Services for Immigrant Victims:

- Immigrant victims face many challenges when involved in the criminal or juvenile justice systems, including language barriers, cultural differences, and lack of access to the legal system; and
- An immigrant victim may need the legal services of both a victims' rights attorney as well as an immigration attorney. In these cases, an immigrant victim must hire their own attorney, locate pro-bono counsel, or represent themselves for one or both legal issues.

E. Funding for Circuit Courts:

- Funding for trial court operations has remained stagnant despite an increased need for services. Victims have less access to justice when the courts:
 - Have a shortage of judges;
 - Delays trial and affects a victims' right to a speedy trial⁷ and
 - Increases amount of time a victim has to spend involved in the criminal justice system.
 - Impose full-day court closures and reduce court staff;
 - Limits access to court records, case information and accounts and
 - Increases delay in processing relevant documents, such as restitution orders, which in turn impedes the courts ability to collect on a defendant's financial obligations.

2. Implementation Gaps

A. Inconsistent Implementation of Victims' Rights in Court Proceedings:

- Crime victims' rights are not always honored in criminal and juvenile court proceedings due to errors on the part of the court and the deputy district attorney;
- Errors have occurred when:
 - The victim was not notified of a release or plea hearing or sentencing/disposition;
 - The victim was denied the right to be heard at one of the court proceedings listed above;
 - The court did not inquire whether the victim was notified of a hearing, was present in the courtroom or wished to be heard;
 - The victims' request for restitution was not timely presented by counsel;
 - The victim's request for restitution was not properly calculated prior to counsel presenting it to the court;
 - The court did not order full restitution as required by law⁸.

⁶ See Appendix F - Memorandum from OJD Office of the State Court Administrator dated 5-12-2010 re: CRIMINAL LAW ALERT: Crime Victims' Rights and OJD Policy on Payment for Interpreters for Crime Victims (pgs. 20-21).

⁷ ORS 147.430

These types of procedural errors result from a lack of staffing, resources, and training.

B. Complicated Process for Claiming a Violation of Victims' Rights:

- The majority of the Supreme Court's crime victims' rights cases have not been decided on the merits, but rather on procedural grounds. Thus, there is a lack of case law to aid lower courts in interpreting crime victims' constitutional and statutory rights;
- Parties have had difficulty deciphering and complying with the complex statutory filing and service requirements; and
- Court administrative procedures can make tracking claims of a violation of crime victims' rights difficult, presenting another barrier to enforcement. (Ex: claims often are not coded separately as a victims' rights complaint in the Oregon Judicial Information Network (OJIN)).

C. Fewer Victims' Rights Available in Juvenile Delinquency Appeal Proceedings:

- Victims in the juvenile justice system do not have the same statutory rights that are afforded victims in criminal (adult) post-conviction, appeal, and habeas proceedings.

D. Lack of Protective Orders for Victims of Sexual Assault:

- Currently, there are no civil protective orders available for sexual assault victims who are assaulted by someone other than an intimate partner.

E. Failure to Make Victims' Right to Prompt Restitution a Priority in the Criminal Justice System⁹

- Payment of restitution is rarely enforced as a condition of probation or parole
- The court system is not funded to provide adequate staff to work with victims in compiling their restitution requests;
- District Attorneys' offices often have one FTE (or less) dedicated to their Victim Assistance Programs. This is grossly inadequate if the court system expects the District Attorneys' offices to investigate and compile accurate restitution requests to present to the court on behalf of the victim.
- Judges often do not order the full amount of restitution owed the victim;
- Restitution is seldom ordered in trafficking cases, or in cases where an offender is subject to removal proceedings from the U.S., leaving many victims without any recourse;
- Oregon lacks a comprehensive and funded system for effectively and efficiently collecting restitution statewide.

F. Inadequate Protections for Victims of Persons Found Guilty Except for Insanity (GEI):

- No explicit victims' right to request that a GEI offender be restricted from contacting the victim when under the jurisdiction of the Psychiatric Security Review Board (PSRB) or the Oregon Health Authority (OHA);
- No requirement that the PSRB or OHA notify the victims - to assist them in safety planning - when a forensic patients' status changes, e.g. when a patient receives a pass to leave hospital grounds, is granted increased privileges during those passes or is transferred or discharged from the hospital;
- Some patients routinely request hearings every six months regardless of progress in treatment. The PSRB or State Hospital Review Panel (SHRP) should be able to balance a

⁸ ORS 137.106(1)(a)

⁹ Effective August 2, 2011, HB3066 went into effect creating an innovative pilot program to improve restitution collection efforts around the state. The project is expected to result in more crime victims receiving the financial support they are promised and often desperately need, more offenders held accountable for their actions and with these collections, more money returned to the general fund. The pilot project is being conducted in five counties funding collection agents out-stationed in the counties receiving the Restitution Pilot Grants. The grants fund restitution clerks, a DDA, and Parole and Probation to assist with the collection process. The counties include: Jefferson, Crook, Multnomah, Lane and Jackson counties. The restitution pilot project is funded through June 30, 2013 and is scheduled to sunset July 1, 2014.

patient's *right* to have a hearing for review of their case with the *impact* on the victim or victim's family. The PSRB/SHRP should have discretion to deny a review similar to the authority of the Board of Parole & Post-Prison Supervision (BPPPS) to deny an inmate's request for hearing when unnecessary.

G. Inadequate Services and Lack of Accessibility for Immigrant and Trafficking Victims:

- Historic lack of cooperation between federal immigration and local law enforcement;
- Lack of adequate social services; and
- Inadequate shelter programs for male and female victims.

H. Victims' Rights are Limited in Probation, Post-Prison Supervision, and Parole Cases:

- Victims are not notified when an offender is sanctioned for a violation of a condition of supervision;
- Victims are not informed regarding the offender's progress with conditions of supervision including treatment requirements;
- Restitution orders are not uniformly monitored and enforced; and
- Victims are often not informed of offender change of residence or placement.

Recommendations for Future Legislation

- Comprehensive review of current victims' rights statutes to ensure meaningful participation by the victim in the criminal and juvenile justice systems;
- Expansion of the Restitution Pilot Program and/or increase in number of restitution courts;
- Review and restructure of the victims' rights claim process to:
 - Adjust timelines for filings; and
 - Simplify procedural requirements so victims can make better use of the process
- Creation of a program/process for providing interpreters to victims in all court proceedings;
- Extend victims' rights to juvenile appeal proceedings.
- Fund a statewide program to provide legal representation to victims involved in the criminal justice system who cannot afford their own attorneys (a program comparable to legal services provided to indigent offenders).

The Attorney General's Task Force on Victims' Rights Enforcement Recommends Further Study by the Task Force and its Subcommittees on the Following Topics:

- Expanded rights for victims to receive information when offenders are on parole, post-prison supervision, or probation and supervised by a community corrections agency including:
 - Violations of conditions of supervision when sanction imposed;
 - Sanctions imposed for such violations whether custody or technical;
 - Offender compliance with conditions of supervision ; and
 - Notification of dismissal of case (either by completion of supervision period or by court review and order).
- Improved protections and notifications for victims in cases when offender is committed to Oregon State Hospital (OSH) for evaluation to determine if able to "Aid and Assist" in their own defense in a criminal case:
 - OSH does not notify victims if a patient¹⁰ is discharged or escapes;
 - OSH does not generally monitor patient telephone calls or mail, therefore victim contact is not controlled ; and
 - The victim does not have the right to information while the offender is committed as a patient to OSH.
- Expanded rights for victims to remain informed in OSH civil commitment proceedings.

¹⁰ "Aid and Assist" patients have not been found "guilty" and are therefore viewed as *patients* needing evaluation and treatment. See also ORS 161.370

Tracking the Enforcement of Victims' Rights

- 1. Right to File a Claim of Violation of Victims' Rights:** In a criminal or delinquency proceeding victims have the right to assert their rights verbally, or in writing, at any time and to allege a violation of rights granted by the Oregon Constitution. The claim must be made within 30 days from when the victim knew or reasonably should have known the violation occurred. The victim, the victim's attorney, or the prosecuting attorney can file the claim. In the claim, the victim must propose a remedy to the violation.¹¹
 - Legal assistance for victims is provided in part by the OCVLC, a non-profit organization established in Portland in 2009 to help victims assert their rights and to assist victims whose rights are violated by providing no-cost legal services.
 - NCVLI provides legal assistance for victims by pairing them with pro bono or no cost counsel (including OCVLC) and providing no cost technical assistance to victims' attorneys when representing victims in criminal cases and when filing claims of violations of victims' rights; and
 - A number of Oregon District Attorneys' offices support crime victims both in asserting their rights and in filing formal claims of violation of rights; and
 - Claims of violation are also filed by victims' rights attorneys on behalf of victims and victims do so, on their own behalf, yet data is not readily available from the Oregon Judicial Information system Network (OJIN) to track these cases.
- 2. Right to Make an Informal Claim of Violation of Victims' Rights:** NCVLI, OCVLC, and DOJ CVSD accept victims' rights complaints when an informal non-judicial response is indicated. All three work with victims and agencies to remedy violations that can be handled through policy or procedural changes rather than court action.

Highlights of Improvements in Provision of Victims' Rights

- 1. Honoring Victims' Rights:**
 - District Attorney Victim Assistance Program Directors have increased their understanding of victims' rights and work in partnership with their DA/DDAs to ensure victims' rights are honored; and
 - District Attorneys and their Victim Assistance Programs have a resource through DOJ CVSD and the AG's Task Force on Victims' Rights Enforcement to discuss victims' rights and issues related to victims' rights implementation.
- 2. Board of Parole and Post -Prison Supervision (BPPPS)**
 - Adopted policy changes to allow more time for victims to speak at Board hearings; and
 - Adopted policy changes to expand the definition of "victim" to include individuals harmed by the offender but not named in the final charging document (due to plea negotiations or other reasons, but recognized as victims by the trial court).
- 3. Oregon Youth Authority:**
 - Adopted policy and practice changes that include notifying victims when youth offenders run away from a community placement.
- 4. Immigrant Victims of Crime:**
 - In 2010 DOJ CVSD convened an Immigrant Crime Victims' Rights sub-committee to address victims' rights for immigrant and trafficked victims of crime. The mission of the group is to

¹¹ ORS 147.515

“promote crime victims’ rights for immigrant populations through outreach and information to legal and service providers throughout the state of Oregon.”

- The sub-committee members have:
 - Contributed to improved relationships between state and local governmental agencies, non-profits, victims’ attorneys and USDOJ;
 - Provided numerous trainings to providers and members of the justice system about immigrant and victims’ rights; and
 - Created a protocol and resource guide for practitioners when working with immigrant victims.

CONCLUSION

Implementation and enforcement of victims’ rights in Oregon is relatively new. Through leadership from DOJ CVSD, in partnership with stakeholders from the criminal justice, juvenile justice, and victim services systems, efforts to create a statewide process to ensure victims are notified of their rights and afforded their rights at any contact point continues to be well -supported. A victim’s ability to file a claim of violation of crime victims’ rights has enhanced enforcement of these rights, yet as a relatively new law, has challenges that can make the process complex.

Because of the long standing collaborative relationships among the Task Force members and their constituent groups, identifying gaps in victims’ rights laws and service delivery is a shared process. Comprehensive review of victims’ rights over the next biennium and beyond depends upon these established relationships. Continued support for the work of the Task Force will allow its members to put forth meaningful and well supported recommendations for legislation to broadly strengthen victims’ rights in Oregon.

APPENDIX A Oregon Revised Statutes

Note: Sections 20 and 21, chapter 178, Oregon Laws 2009, provide:

Sec. 20. (1) There is created the Task Force on Victims' Rights Enforcement consisting of the Attorney General and at least nine members appointed as follows:

(a) The Attorney General shall appoint:

(A) Two members employed by or associated with a group advocating for the rights of victims of crime;

(B) A member who represents the Department of Justice Crime Victims' Services Division;

(C) A lawyer routinely engaged in the representation of persons charged with a crime, after consulting with professional organizations serving such lawyers;

(D) A lawyer routinely engaged in prosecuting persons charged with person felony crimes, after consulting with professional organizations serving such lawyers;

(E) A lawyer routinely engaged in prosecuting persons charged with a crime, after consulting with professional organizations serving such lawyers; and

(F) Other persons the Attorney General deems appropriate;

(b) The Chief Justice of the Supreme Court shall appoint:

(A) A person employed by the Judicial Department, other than a judge; and

(B) A judge; and

(c) The executive director of the office of public defense services established under ORS 151.216 shall appoint a person employed by the office of public defense services.

(2) The task force shall review the implementation of sections 1 to 19 of this 2009 Act [147.500 to 147.550].

(3) The Attorney General shall serve as chair of the task force and may establish a term of office for the members. The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(4) Members serve at the pleasure of the appointing authority. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(5) The task force shall prepare reports that may include recommendations for legislation designed to improve, in a cost-efficient manner, the protection of rights granted to victims of crime by the Oregon Constitution. The task force shall submit a report to the President of the Senate and the Speaker of the House of Representatives no later than:

(a) January 1, 2011; and

(b) January 1, 2013.

(6) Members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(7) The Department of Justice shall provide staff support to the task force.

(8) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2009 c.178 §20]

Sec. 21. Section 20 of this 2009 Act is repealed on June 30, 2013. [2009 c.178 §21]

APPENDIX B

OREGON DEPARTMENT OF JUSTICE • CRIME VICTIMS' SERVICES DIVISION • CRIME VICTIMS' RIGHTS SECTION

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APPENDIX C

Background on Oregon Victims' Rights Compliance, Implementation, and Enforcement

Crime victims' rights became a part of the Oregon Revised Statutes in 1987 following a voter initiative in 1986. Known as the Crime Victims' Bill of Rights, these statutes were included in revisions of criminal law. In 1999 Oregon voters approved ballot measures to amend the Oregon Constitution¹² to include victims' rights.

In 2002, the Oregon Department of Justice (DOJ) through its Crime Victims' Assistance Section - now Crime Victims' Services Division (CVSD) commissioned the Regional Research Institute for Human Services at Portland State University to conduct an Oregon Crime Victims' Needs Assessment. The final report included:

- Service Use and Availability
- Barriers Crime Victims Encounter
- Unmet Service Needs of Crime Victims
- Underserved Populations of Crime Victims
- Oregon Crime Victims' Rights

In 2005, DOJ CVSD was awarded a 3 year federal grant for a Crime Victims' Rights Compliance Project. A coordinator was contracted through grant funds to manage the project. Information from the 2002 Needs Assessment informed the project which was guided by a Victims' Rights Advisory Committee composed of representatives of all areas of the criminal justice, juvenile justice, and victim services systems. Many of these same individuals continue as members of the current Task Force.

The compliance project addressed gaps identified through the needs assessment and developed responses that included:

- Victims' rights informational "pocket cards" in six languages for law enforcement use when responding to crimes,
- Victims' rights guides in six languages for use by victim assistance agencies to further inform victims of their rights,
- A practitioners' guide to crime victims' rights providing case law to support victims' rights,
- A best practices document to guide agencies in implementing and honoring victims' rights,
- Broad based crime victims' rights training provided to all entities in the criminal justice, juvenile justice and victim services systems, and
- Evaluation of the effectiveness of these tools.

In 2008 voters again approved ballot measures to further amend the constitution to allow for enforcement of victims' rights. This was followed by legislation in 2009 (SB 233) granting statutory rights for victims to claim violations of crime victims' rights through a judicial process. At that time, the Crime Victims' Rights Section of DOJ CVSD (now a unit of the Crime Victim Compensation Section) was created and a permanent position established to coordinate crime victims' rights efforts in Oregon.

¹² See Appendix G – Oregon Constitution Article 1 Sections 42 and 43.

Legislation in 2010 (HB 3634) expanded victims' rights to post-conviction, appeal, and habeus proceedings as well as expanding rights for victims when offenders are found Guilty Except for Insanity (GEI) and placed in the custody of the Psychiatric Security Review Board (PSRB). DOJ provides victim advocacy services for these cases through its Post-Conviction Advocacy Services Program.

HB 3066 in 2011 brought legislation that approved the implementation of a Restitution Collection Pilot Program administered by DOJ CVSD to increase restitution collection for victims. Grants were awarded by a competitive process to Oregon counties with collection agents employed by DOJ CVSD to provide staff support to the individual projects.

APPENDIX D

Overview of Funding for Victim Services through DOJ CVSD

CVSD administers 11 major statewide programs with 37 staff members on behalf of victims of crime. Total CVSD funding supports 125 governmental and non-profit victim service providers in every county in Oregon to promote victims' rights and provide victims access to critical intervention services.

- Victims of Crime Act of 1984 (VOCA) is the only federal grant program supporting direct assistance services to victims of all types of crimes. VOCA funds are allocated annually to Oregon and are sub-granted to victim service organizations throughout the state to extend and enhance services to victims of crime. These organizations provide essential, often life-saving, services, such as emergency shelter and safety, crisis intervention, assistance in obtaining protective orders and filing compensation applications, counseling, advocacy, helping crime victims navigate the criminal justice system and more. DOJ-CVSD is the State Administrative Agency for the VOCA Grants as authorized by ORS 147.231.
- VAWA – (Federal) Violence Against Women Act – The Violence Against Women and U.S. Department of Justice Reauthorization Act of 2005 resulted in the continuation of assistance to states through the Services, Training, Officers and Prosecutors (STOP) VAWA Formula Grants Program. The STOP VAWA Formula Grant Program funds are issued to the State of Oregon by the U.S. Department of Justice, Office on Violence Against Women (OVW) for the purpose of funding programs that encourage the development and strengthening of effective law enforcement, prosecution and judicial strategies to combat violent crimes against women and the development and strengthening of victim services in cases involving violent crimes against women. DOJ-CVSD is the State Administrative Agency for the STOP VAWA Formula Grant Program as authorized by ORS 147.231.
- CFA - (State) Criminal Fines Account – As a result of the 1983 Oregon legislature, (ORS 147.227) DOJ-CVSD was given authority to disburse a portion of the monies received from what was then known as the Criminal Fines and Assessment Account (CFAA) to prosecutor-based victim assistance programs to fund services that help victims navigate the criminal justice system and provide support to them through court proceedings. Victim assistance program services include:
 - Informing victims of their rights,
 - Advocate for victims of serious person crimes as they move through the criminal justice system and advocate, when requested, for all other victims of crime,
 - Involving victims in the decision making process,
 - Ensuring that victims are informed of the status of their case,
 - Helping victims to apply for compensation benefits and take the necessary steps to receive restitution,
 - Assist victims in preparing restitution documentation for purposes of obtaining a restitution,
 - Familiarizing victims with court procedures,
 - Assisting victims with the logistics of appearing in court and accompanying them to court hearings,
 - Accompany victims to court hearings when practicable and requested ,
 - Encouraging victims to testify, and
 - Helping victims request the return of property held as evidence.

APPENDIX E
OREGON CONSTITUTION
Article I

Section 42. Rights of victim in criminal prosecutions and juvenile court delinquency proceedings. (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 defendant's rights under the Constitution of the United States. Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution. Nothing in this section is intended to create any cause of action for compensation or damages nor may this section be used to invalidate an accusatory instrument, conviction or adjudication or otherwise terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal. Except as otherwise provided in subsections (3) and (4) of this section, nothing in this section may be used to invalidate a ruling of a court or to suspend any criminal or juvenile delinquency proceedings at any point after the case is commenced.

(3)(a) Every victim described in paragraph (c) of subsection (6) of this section shall have remedy by due course of law for violation of a right established in this section.

(b) A victim may assert a claim for a right established in this section in a pending case, by a mandamus proceeding if no case is pending or as otherwise provided by law.

(c) The Legislative Assembly may provide by law for further effectuation of the provisions of this subsection, including authorization for expedited and interlocutory consideration of claims for relief and the establishment of reasonable limitations on the time allowed for bringing such claims.

(d) No claim for a right established in this section shall suspend a criminal or juvenile delinquency proceeding if such a suspension would violate a right of a criminal defendant guaranteed by this Constitution or the Constitution of the United States.

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

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

(6) As used in this section:

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

(b) "Criminal defendant" includes an alleged youth offender in juvenile court delinquency proceedings.

(c) "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.

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

(7) In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. [Created through H.J.R. 87, 1999, and adopted by the people Nov. 2, 1999; Amendment proposed by H.J.R. 49, 2007, and adopted by the people May 20, 2008]

Note: The effective date of House Joint Resolutions 87, 89, 90 and 94, compiled as sections 42, 43, 44 and 45, Article I, is Dec. 2, 1999.

Note: Sections 42, 43, 44 and 45, were added to Article I as unnumbered sections by the amendments proposed by House Joint Resolutions 87, 89, 90 and 94, 1999, and adopted by the people Nov. 2, 1999.

Section 43. Rights of victim and public to protection from accused person during criminal proceedings; denial of pretrial release. (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, conviction or adjudication or otherwise terminate any criminal or juvenile delinquency proceeding at any point after the case is commenced or on appeal. Except as otherwise provided in paragraph (b) of subsection (4) of this section and in subsection (5) of this section, nothing in this section may be used to invalidate a ruling of a 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 supersedes any conflicting section of this Constitution.

(3) As used in this section:

(a) "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.

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

(4)(a) The prosecuting attorney is the party authorized to assert the rights of the public established by this section.

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

(5)(a) Every victim described in paragraph (a) of subsection (3) of this section shall have remedy by due course of law for violation of a right established in this section.

(b) A victim may assert a claim for a right established in this section in a pending case, by a mandamus proceeding if no case is pending or as otherwise provided by law.

(c) The Legislative Assembly may provide by law for further effectuation of the provisions of this subsection, including authorization for expedited and interlocutory consideration of claims for relief and the establishment of reasonable limitations on the time allowed for bringing such claims.

(d) No claim for a right established in this section shall suspend a criminal or juvenile delinquency proceeding if such a suspension would violate a right of a criminal defendant or alleged youth offender guaranteed by this Constitution or the Constitution of the United States.

(6) In the event that no person has been determined to be a victim of the crime, the people of Oregon, represented by the prosecuting attorney, are considered to be the victims. In no event is it intended that the criminal defendant be considered the victim. [Created through H.J.R. 90, 1999, and adopted by the people Nov. 2, 1999; Amendment proposed by H.J.R. 50, 2007, and adopted by the people May 20, 2008]

Note: See notes under section 42 of this Article.



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

May 12, 2010
(SENT BY EMAIL)

MEMORANDUM

TO: Presiding Judges
Trial Court Administrators

FROM: Kimberly Dailey, Criminal Law Analyst
Executive Services Division

RE: CRIMINAL LAW ALERT: Crime Victims' Rights and OJD Policy on Payment for Interpreters for Crime Victims

Circuit courts are receiving some requests from district attorneys or attorneys for victims to provide a foreign language interpreter for crime victims who wish to attend a court proceeding as an observer but have no or limited spoken English language skills and, therefore, request an interpreter. This memorandum is intended to provide courts with information about the Oregon Judicial Department's (OJD) current court interpreter payment policy and funding. Currently, OJD is neither charged by statute nor budgeted to pay for services in these circumstances.

While constitutional provisions allow for a victim to have a meaningful role in the criminal justice system, it also provides for the legislature to "effectuate" how the new victims' rights provisions should be codified.

OJD's statewide payment policy, based on state law, requires express statutory authorization for payment for an interpreter by OJD from the general funds in the mandated payments account. That framework currently provides OJD-paid interpretation for a victim while actually appearing in a court proceeding as a witness, or being present to provide testimony or colloquy with the court or as authorized otherwise under ORS 45.275(1)(c) to assist the court in performing its official hearing duties and responsibilities. For example, a recent payment out of mandated payments for an interpreter for a victim at a sentencing hearing was made because the statute charges the court with the duty to communicate with the victim at sentencing.

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A court's role in ensuring victims' rights are protected does not equate with OJD having a duty to pay for a service ordered. While crime victims have a constitutionally protected right to attend any court proceeding as an observer, and to have a meaningful role, the legislature, in exercising its authority to effectuate the crime victim's constitutional rights in state law, left unanswered (and unfunded) the question of who has responsibility to pay for an interpreter when the victim, who is not a party by law, wishes to attend a proceeding as an observer. Because the law does not specify who (e.g., at a state, county, or other entity) is responsible, OJD does not have the payment authority to provide OJD-paid interpreting services. The legislature did not fund OJD's budget for interpreter services in this situation, nor do the enabling statutes so direct.

In other circumstances, a district attorney's office or defense counsel (depending upon who is responsible for the "client" or whose "client" benefits from the use of the interpreter) is responsible for the cost of interpreting services outside the confines of what the court must provide by statute or requires to conduct its proceedings. This is a similar approach as when the statute provides or authorizes a court to appoint an interpreter, attorney, or other expert for a matter or event but the payment responsibility resides with another.

At this time, courts that order an interpreter outside of the current payment policy risk nonauthorization of bill payment from mandated payments, and payment would instead come from a court's operating funds. OJD's Court Interpreter Services could extend an appointed interpreter as a courtesy, and at no additional cost, to the victim in cases where both the victim and another participant in the proceeding (e.g., defendant or witness) already require an interpreter for the same language for the court. OJD plans to raise the statutory and budget concerns in the 2011 legislative session.

Please feel free to contact me (503-986-6416 or Kimberly.Dailey@ojd.state.or.us) if you have any questions.

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