

*Victim Law Position Paper**

LEGAL PUBLICATIONS PROJECT OF THE NATIONAL CRIME VICTIM LAW INSTITUTE AT LEWIS & CLARK LAW SCHOOL**

Oregon Victims' Rights Require that Victims Be Afforded Meaningful Notice of Release Hearings, Which Includes Providing Victims with Specific Notice that a Hearing Will Include Consideration of Release

*Position Papers are essays in which NCVLI details its positions on cutting-edge victims' rights issues to help ensure vigorous assertion and enforcement of victims' rights.

** View NCVLI's other legal publications at https://law.lclark.edu/centers/national_crime_victim_law_institute/professional_resources/ncvli_library/

Oregon's crime victims are independent participants with rights in the criminal justice system.¹ Among their rights are a myriad of constitutional and statutory rights implicated at pretrial release hearings, including the state constitutional rights: (1) "to be reasonably protected from the criminal defendant . . . throughout the criminal justice process";² (2) "to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim";³ and (3) "to be present at and . . . to be informed in advance of any critical stage of the proceedings⁴ . . . and to be heard at the pretrial release hearing."⁵ These rights must be interpreted through the lens of due process, which requires that the rights be afforded in a manner that ensures that they are meaningful.⁶ In this context, due process requires that courts schedule, with specificity, the date, time, and place of release hearings so that that victims can receive meaningful notice of such proceedings and can attend and participate if they so choose.⁷ Meaningful notice of proceedings must also include particularized information about what legal matters will be adjudicated at any particular hearing so that victims can understand the full panoply of rights that may be implicated. Only with this information may victims make an informed decision about whether and how they wish to exercise their rights.⁸ In light of this legal analysis, as well as common sense, generalized notice to victims that release decisions may be made at any proceeding (including arraignment) and then adjudicating release at such a proceeding without first providing victims with specific notice that release will in fact be addressed is a violation of victims' rights.⁹

Scheduling release hearings such that prosecutors are able to provide particularized notice to victims that includes content, date, time, and place-specific information is also the only way for prosecuting attorneys and courts to fulfill their legal duties to ensure victims' rights are afforded. These duties include the requirement that courts and prosecutors engage in a colloquy before every critical stage proceeding during which the prosecuting attorney must inform the court—*inter alia*—whether the victim is present and if not, whether the prosecutor provided the victim with notice of the "date, time and place" of the proceeding and what "victim's rights [would be] implicated in the proceeding."¹⁰ The fact that the

prosecutor must report whether he or she provided notice to the victim of the rights implicated at the proceeding makes clear that, at a minimum, notice must include the nature of the proceeding as well as a specific date, time, and place. Notice of a proceeding that fails to provide any of this critical information simply cannot be meaningful notice and therefore conflicts with both the letter and intent of Oregon’s victims’ rights.¹¹

Victims’ rights to receive meaningful notice of hearings, to protection, and to be present and heard are constitutionally protected and are fundamental to fulfilling the purpose of Oregon victims’ rights laws 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 also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants” Only when release hearings are scheduled such that victims can receive adequate advance notice of the content, date, time, and place of the hearings, can victims’ rights be afforded.

¹ See, e.g., Or. Const. art. I, § 42(1) (describing the purposes of Oregon’s victims’ rights laws 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 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”); Or. Const. art. I, § 43(1) (describing purposes of the victims’ constitutional right to protection to include “ensur[ing] 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”); Or. Rev. Stat. Ann. § 147.410 (describing the “[p]urpose” of Oregon’s statutory Crime Victims’ Bill of Rights as ensuring that victims receive “fair and impartial treatment in

our criminal justice system” and “declar[ing] to our legislature and our courts that victims’ rights shall be protected at each stage of the criminal justice system”).

² Or. Const. art. I, § 43(1)(a).

³ Or. Const. art. I, § 43(1)(b).

⁴ The parameters of what constitutes a “critical stage of the proceedings” for purposes of a victim’s state constitutional rights in Oregon has not been established; nevertheless, it is instructive that the Oregon legislature has defined the term for statutory purposes to include “release hearings or hearings to modify the conditions of release[.]” Or. Rev. Stat. Ann. § 147.500(5)(a), and “[h]earings to set or change conditions of release” for purposes of statutes governing proceedings when the crime is committed by a juvenile, Or. Rev. Stat. Ann. § 419C.273(4)(b)(C).

⁵ Or. Const. art. I, § 42(1)(a). The victims’ rights to receive notice of and to be present and heard at release hearings are also recognized by statute in Oregon. Or. Rev. Stat. Ann. § 135.245(5)(a)-(c) (providing for the right of the victim “to be notified by the district attorney of the release hearing” upon request made within the prescribed time period, “[t]o appear personally at the hearing,” and “if present, to reasonably express any views relevant to the issues before the magistrate”); Or. Rev. Stat. Ann. § 419C.273(2)(b)(A)-(C) (providing for the rights of victims of crimes committed by juveniles, including—in the context of release hearings—the rights: “[u]pon request, to be notified in advance of the hearing”; “[t]o appear personally at the hearing”; and “[i]f present, to reasonably express any views relevant to the issues before the court”). The critical nature of victims’ rights and victims’ participatory status with respect to release hearings is further reflected in numerous statutes, including those providing for mandatory release conditions that prohibit contact with the victim and those implementing additional measures designed to protect victims. See, e.g., Or. Rev. Stat. Ann. § 135.970(4)(a) (providing that “[a]ny

pretrial order must prohibit contact with the victim, either directly or indirectly, unless specifically authorized by the court having jurisdiction over the criminal charge”); Or. Rev. Stat. Ann. § 135.970(4) (b) (providing that if the victim notifies the district attorney that defendant has “threatened or intimidated the victim,” then “the district attorney shall notify the court”; further, if defendant is not in custody and the court finds that the victim has been threatened or intimidated, defendant’s release status “shall be revoked and the defendant held in custody with a security amount set in an amount sufficient to ensure the safety of the victim and the community”).

⁶ See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 123, 168 (1965)) (explaining that “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner’”).

⁷ As the United States Supreme Court has noted, at the heart of due process is the idea that “parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (internal citations omitted). See also *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (internal citations omitted) (“For more than a century the central meaning of procedural due process has been clear: ‘Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.’ It is equally fundamental that the right to notice and an opportunity to be heard ‘must be granted at a meaningful time and in a meaningful manner.’ These essential constitutional promises may not be eroded.”); *State ex rel. Juvenile Dept. of Multnomah Cnty. v. Geist*, 796 P.2d 1193 (Or. 1990) (citing *Mathews*) (recognizing that “[t]he essence of fundamental fairness is the opportunity to be heard at a meaningful time and in a meaningful manner[,]” which “emphasizes fact-finding procedures” such as “notice”).

⁸ The practical constraints that impact victims’

ability to exercise their rights makes it clear that notice must be given sufficiently in advance and include particularized information about the legal matters to be addressed—such as defendants’ release—so that victims are able to adequately prepare for and attend proceedings. As an example, victims who wish to attend and be heard regarding defendants’ release may need to—at a minimum—gather paperwork that supports their intended testimony concerning defendants’ release, notify their employer that they will need to be absent from work to attend the proceeding, and arrange for childcare and transportation to and from the proceeding.

⁹ Pursuant to state constitutional and statutory authority and as interpreted by the Oregon Supreme Court, the failure to afford victims’ rights may entitle the victim to have the court vacate the outcome of the original proceeding and order a new proceeding. See Or. Const. art. I, § 42(3)(a) (“Every victim . . . shall have remedy by due course of law for violation of a right established in this section.”); Or. Const. art. I, § 43(5)(a) (same); *State v. Barrett*, 255 P.3d 472, 475-76, 481-82 (vacating defendant’s sentence and remanding for resentencing on the basis of the victim’s claim under Section 42(3) (a) of the Oregon Constitution that her rights were violated when the state failed to provide her with advance notice of defendant’s sentencing and thereby denied her the rights to be present and heard at sentencing); Or. Rev. Stat. Ann. § 147.508 (1)(a)-(b) (providing that the prosecutor—at the request of a victim—may request that the court schedule a hearing to reconsider a release decision if the victim did not receive adequate notice of or an opportunity to be heard at a release hearing).

¹⁰ See Or. Rev. Stat. Ann. § 147.510 (requiring that the court and prosecuting attorney engage in a colloquy at the beginning of each “critical stage of the proceeding”—including release hearings—as part of which “[t]he prosecuting attorney shall inform the court whether the victim is present” and if the victim is not present, whether “the victim requested advance notice of any critical stage of the proceeding” and if so, whether the victim was:

(1) provided notice “of the date, time and place of the proceeding”; and (2) “informed of the victim’s rights implicated in the proceeding”).

¹¹ Although Oregon courts have some statutorily imposed timelines with respect to addressing defendants’ release, under most circumstances these timelines would not prevent courts from scheduling release hearings such that adequate advance notice could be given to victims. *See* Or. Rev. Stat. Ann § 135.240(4)(b) (if defendant is charged with a violent felony, the court must hold release hearing within five days of defendant’s request for such a hearing); Or. Rev. Stat. Ann § 135.245(1)-(2) (except in the case of defendants charged with murder, aggravated murder, treason, or violent felonies, “a person in custody has the right to immediate security release or to be taken before a magistrate without undue delay” and “[i]f a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after arraignment”). Under circumstances where there is a conflict between the courts’ duty to afford victims’ constitutional rights to meaningful notice and adhering to the statutory timelines, the victims’ constitutional rights to notice, protection, and to be present and heard must take precedence. *See* Or. Const. art. I, § 42(1) (describing the purposes of Oregon’s victims’ rights laws 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”); Or. Const. art. I, § 43(1) (describing purposes of the victims’ constitutional right to protection to include “ensur[ing] 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 National Crime Victim Law Institute (NCVLI) makes no warranty, express or implied, regarding any information it may provide via this publication. This publication is intended for educational purposes only. It does not constitute legal advice; nor does it substitute for legal advice. No attorney-client relationship is created with any person who uses this publication or any of the information contained here.

For additional resources relating to the protection, enforcement, and advancement of crime victims’ rights, please visit NCVLI’s website at www.ncvli.org.

LEGAL ADVOCACY. We fight for victims' rights by filing amicus curiae (friend of the court) briefs in victims' rights cases nationwide. Through our National Alliance of Victims' Rights Attorneys (NAVRA), we also work to pair crime victims with free attorneys and work to ensure that those attorneys can make the best arguments possible. We do this by providing the attorneys with legal technical assistance in the form of legal research, writing, and strategic consultation.

TRAINING & EDUCATION. We train nationwide on the meaning, scope, and enforceability of victims' rights through practical skills courses, online webinars, and teleconferences. We also host the only conference in the country focused on victim law.

PUBLIC POLICY. We work with partners nationwide to secure the next wave of victims' rights legislation — legislation that guarantees victims substantive rights and the procedural mechanisms to secure those rights.

GET INFORMED & GET INVOLVED

ACCESS RESOURCES

Visit our online Victim Law Library, containing victims' rights laws from across the country, summaries of the latest court cases, and a variety of victims' rights articles and resources.

ATTEND A TRAINING

Join us at one of our online or in - person trainings on topics ranging from introduction to victims' rights to advanced litigation practice. We host trainings across the country and around the world.

STAY INFORMED & SPREAD THE WORD

Sign up to receive our updates and follow us on social media.



GIVE

Sponsor one of our victims' rights events or publications; give through your workplace

campaign (CFC # 48652); or donate by mail or online.

VOLUNTEER

Fill out our online volunteer form for notifications regarding upcoming volunteer opportunities ranging from legal work to event organizing to outreach.

JOIN US

Become a member of our National Alliance of Victims' Rights Attorneys (NAVRA) - a membership alliance of attorneys, advocates, law students, and others committed to protecting and advancing victims' rights. Visit www.navra.org to learn more.