



NATIONAL CRIME VICTIM LAW INSTITUTE

Oregon's Victims' Rights Must Be Afforded in Connection with Deferred Sentencing Proceedings

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Oregon Law Provides Victims with Constitutional and Statutory Protections

Victims of crime in Oregon are independent participants who are guaranteed rights in connection with criminal justice proceedings. These rights were granted, *inter alia*, to “ensure crime victims a meaningful role” in the criminal justice system and to “accord crime victims due dignity and respect.” Or. Const. art. I, § 42(1). Victims’ rights, which are enshrined in both Oregon’s constitution and Oregon’s statutes, include the rights: (1) “to be reasonably protected from the criminal defendant . . . throughout the criminal justice process;” (2) “to be present at and, upon specific request, to be informed in advance of any critical stage of the proceedings” and “to be heard at . . . the sentencing;” and (3) “to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.” Or. Const. art. I, §§ 42(1)(a), (c); 43(1)(a).

Some victims’ rights in Oregon require victims to specifically request them, while others apply automatically, without the need for victims to take any specific actions in order to activate the rights. *See, e.g.*, Or. Const. art I, § 42(1)(a) (guaranteeing all crime victims the right to be present at “any critical stage of the proceeding”, without requiring a request, while guaranteeing crime victims, “upon specific request” the right “to be informed in advance” of those proceedings).

All of victims’ rights are interpreted through the lens of due process, which requires that rights be afforded in a way that is meaningful. *See, e.g.*, *Mathews v. Eldridge*, 242 U.S. 319, 333 (1976) (explaining that “[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner’” (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965))); *State v. Martin*, 522 P.3d 841, 850 (Or. 2022) (En Banc) (reiterating, in a case involving the revocation of a defendant’s probation following prohibited contact with the victim, that the “touchstone of due process’ is ‘fundamental fairness’” and affirming that due process requires a meaningful opportunity to be heard (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 780 (1973) and citing *Armstrong*, 380 U.S. at 552)).

Victims' Rights Apply in Deferred Sentencing Proceedings

Although no Oregon case law explicitly analyzes victims' rights in the context of deferred sentencing, Oregon's victims' rights protections apply as evidenced by a number of provisions.

First, deferred sentencing agreements are part of the criminal justice process, and hearings related to these agreements have explicitly been included within Oregon's definition of "critical stage" proceedings. *See* Or. Rev. Stat. Ann. § 147.500(5)(k) ¹.

Second, certain rights explicitly apply to all critical state proceedings, including deferred sentencing proceedings; for instance, Oregon's constitution provides that victims' constitutional rights to notice and to be present apply in connection with "any critical stage of the proceedings." Or. Const. art. I, § 42(1)(a). Under the plain language of the law, victims must be afforded their rights to be informed and to be present in connection with any hearing relating to a deferred sentencing agreement.²

Third, the right to protection is often implicated in connection with deferred sentencing proceedings. Under Oregon law, victims' constitutional right to protection applies "throughout the criminal justice process." Or. Const. art. I, § 43(1)(a). Consequently, victims' rights must be afforded whenever issues of their safety are implicated. This includes at hearings involving determination of conditions of release and hearings addressing violations of those conditions,

¹ "Status check" proceedings that are conducted as part of a deferred sentencing agreement would likely constitute a deferred sentencing "hearing" within the meaning of the victims' rights provisions, as a number of Oregon court decisions refer to a "status check" as a "status check hearing" in the context of status checks that occur in the pretrial context of a criminal case. *See, e.g., State v. Mannix*, 326 P.3d 1236, 1238 (Or. Ct. App. 2014) (referencing a pretrial "status check hearing"); *State v. Cupp*, 307 P.3d 531, 534-35 (Or. Ct. App. 2013) (referencing multiple "status check hearing[s]" in its recitation of facts, in the pretrial context); *State v. Myers*, 202 P.3d 238, 241 (Or. Ct. App. 2009) (referencing a "status check hearing" in the pretrial context).

² In order to help ensure compliance with victims' rights, Oregon has specified procedural protections in connection with critical stages of criminal justice proceedings. *See* Or. Rev. Stat. Ann. § 147.510 (mandating, *inter alia*, that, with the exception of juvenile proceedings and in cases where there is no victim, at the beginning of each critical stage proceeding, the prosecuting attorney must inform the court whether the victim is present and, if the victim is not present, whether the victim requested advance notice of the proceeding and, if so, whether the victim was provided with the date, time and place of the proceeding, was informed of the victims' rights implicated in the proceeding, and whether the victim indicated an intent to attend the proceeding or requested that the prosecuting attorney assert any right on their behalf, along with whether the prosecutor agreed to do so).

regardless of whether those proceedings are held in connection with a deferred sentencing agreement.

Fourth, if the substance of what occurs during any proceeding relating to a deferred sentencing agreement substantively falls within any of the other categories defined as critical stage proceedings under Oregon law, victims must be guaranteed their rights to notice and to be present in connection with those proceedings. Substantively, this would mean that any status check or other proceeding that includes, at a minimum, any of the following should be considered to be part of a “critical stage of the proceeding” for purposes of victims’ rights to notice and to be present: (1) release or modification of the “conditions of release,” Or. Rev. Stat. Ann. § 147.500(5)(a); (2) any motions or petitions relating to HIV testing, Or. Rev. Stat. Ann. § 147.500(5)(d)(A); (3) any motions or petitions to “amend, dismiss or set aside a charge, conviction, order or judgment,” Or. Rev. Stat. Ann. § 147.500(5)(d)(B); and (4) any probation violation or revocation hearings, if the crime at issue is a felony or person Class A misdemeanor and the victim has requested notice, as required by law, Or. Rev. Stat. Ann. § 147.500(5)(j). A court may further determine that other proceedings qualify as critical stage proceedings and that victims must be afforded their rights to notice and to be present. Or. Rev. Stat. Ann. § 147.500(5)(m) (including in the definition of critical stage proceeding “[a]ny other stage of a criminal proceeding the court determines is a critical stage of the proceeding for purposes of Article 42, Article I of the Oregon Constitution”).

Finally, victims’ constitutional rights to be heard at sentencing and to receive prompt restitution apply in connection with proceedings that relate to these rights, Or. Const. art. I, §§ 42(1)(a), (d).

Conclusion

To “ensure crime victims a meaningful role” in the criminal justice system and to “accord crime victims due dignity and respect,” Or. Const. art. I, § 42(1), victims’ rights must be afforded and honored in connection with deferred sentencing agreements.³ Indeed, victims’ rights to

³ Oregon’s constitutional protections, as interpreted and affirmed by the Oregon Supreme Court, provide that 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. Ball*, 416 P.3d 301, 308-310 (Or. 2018) (finding that when a trial court terminates a victim’s impact statement and the statement itself is addressing a relevant topic, this violates the victim’s constitutional right to be heard at sentencing, requiring a new sentencing proceeding); *State v. Barrett*, 255 P.3d 472, 475-76, 481-82 (Or. 2011) (vacating defendant’s sentencing and remanding for resentencing based on violation of the victim’s right to advance

protection, to be heard at sentencing, to be present at critical stages of the proceedings, to receive prompt restitution, and, upon request, to be informed of critical stages of the proceedings are integral to ensuring that victims of crime are able to safeguard their safety and are treated with the respect and dignity intended by Oregon's constitutional guarantees. Victims must be afforded a meaningful opportunity to assert and seek enforcement of their rights whenever they are implicated by actions relating to deferred sentencing.

notice of defendant's sentencing and the consequent denial of the corresponding rights to be present and heard at sentencing).