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## Criminal Justice

### The Oregon Constitution:

In addition to the federal Bill of Rights, the Oregon Constitution specifies protections guaranteed to people in the criminal processes.

**Section 9. Unreasonable searches or seizures.** No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.—

**Section 10. Administration of justice.** No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.—

**Section 11. Rights of Accused in Criminal Prosecution.** In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment. [Constitution of 1859; Amendment proposed by S.J.R. 4, 1931, and adopted by the people Nov. 8, 1932; Amendment proposed by S.J.R.4, 1931 (2d s.s.), and adopted by the people May 18, 1934] Note: The leadline to section 11 was a part of the measure submitted to the people by S.J.R. 4, 1931.

**Section 12. Double jeopardy; compulsory self-incrimination.** No person shall be put in jeopardy twice for the same offence [sic], nor be compelled in any criminal prosecution to testify against himself.—

**Section 13. Treatment of arrested or confined persons.** No person arrested, or confined in jail, shall be treated with unnecessary rigor.—

**Section 14. Bailable offenses.** Offences [sic], except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong.—

**Section 15. Foundation principles of criminal law.** Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation. [Constitution of 1859; Amendment proposed by S.J.R. 32, 1995, and adopted by the people Nov. 5, 1996]



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**Section 16. Excessive bail and fines; cruel and unusual punishments; power of jury in criminal case.** Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense.—In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.

**Section 19. Imprisonment for debt.** There shall be no imprisonment for debt, except in case of fraud or absconding debtors.—

**Section 23. Habeas corpus.** The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, or invasion the public safety require it.—

**Section 40. Penalty for aggravated murder.** Notwithstanding sections 15 and 16 of this Article, the penalty for aggravated murder as defined by law shall be death upon unanimous affirmative jury findings as provided by law and otherwise shall be life imprisonment with minimum sentence as provided by law. [Created through initiative petition filed July 6, 1983, and adopted by the people Nov. 6, 1984]

**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, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal or juvenile delinquency proceedings at any point after the case is commenced or on appeal.

- (3) 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 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. In the event that no person has been determined to be a victim of the crime, the people of Oregon,



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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.

(d) “Violent felony” means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense. [Created through H.J.R. 87, 1999, and adopted by the people Nov. 2, 1999]

**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, 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 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 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. In the event 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.

(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) The prosecuting attorney is the party authorized to assert the rights of the victim and the public established by this section. [Created through H.J.R. 90, 1999, and adopted by the people Nov. 2, 1999]

**Note:** See notes under section 42 of this Article.

**Section 44. Term of imprisonment imposed by court to be fully served; exceptions.** (1)(a) A term of imprisonment imposed by a judge in open court may not be set aside or otherwise not carried out, except as authorized by the sentencing court or through the subsequent exercise of:



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(A) The power of the Governor to grant reprieves, commutations and pardons; or

(B) Judicial authority to grant appellate or post-conviction relief.

(b) No law shall limit a court's authority to sentence a criminal defendant consecutively for crimes against different victims.

(2) This section applies to all offenses committed 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 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 proceedings at any point after the case is commenced or on appeal.

(3) As used in this section, "victim" means any person determined by the prosecuting attorney 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. In the event 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. 94, 1999, and adopted by the people Nov. 2, 1999]

**Note:** See notes under section 42 of this Article.

**Section 45. Person convicted of certain crimes not eligible to serve as juror on grand jury or trial jury in criminal case.** (1) In all grand juries and in all prosecutions for crimes tried to a jury, the jury shall be composed of persons who have not been convicted:

(a) Of a felony or served a felony sentence within the 15 years immediately preceding the date the persons are required to report for jury duty; or

(b) Of a misdemeanor involving violence or dishonesty or served a sentence for a misdemeanor involving violence or dishonesty within the five years immediately preceding the date the persons are required to report for jury duty.

(2) This section applies to all criminal proceedings pending or commenced on or after the effective date of this section, except a criminal proceeding in which a jury has been impaneled and sworn on 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 disqualify a jury, invalidate an accusatory instrument, ruling of a court, conviction or adjudication or otherwise suspend or terminate any criminal proceeding at any point after a jury is impaneled and sworn or on appeal. [Created through H.J.R. 89, 1999, and adopted by the people Nov. 2, 1999]