

REVENUE: No revenue impact

FISCAL: May have fiscal impact, statement not yet issued

Action: Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means by prior reference

Vote: 9 - 0 - 0

Yeas: Barker, Bonamici, Cameron, Flores, Komp, Krieger, Shields, Whisnant, Macpherson

Nays: 0

Exc.: 0

Prepared By: Bill Taylor, Counsel

Meeting Dates: 2/5, 2/6, 2/7, 2/11

WHAT THE MEASURE DOES: Creates the statutory framework for the constitutional rights of victims set forth in Section 42 and 43 of Article I of the Constitution of the State of Oregon. States that this bill becomes operative, in whole or in part, depending on whether the voters approve HJR 49 or HJR 50 in the May 2008 primary election. Grants the Attorney General the authority to adopt rules to establish a non-judicial process to determine if violations have occurred and to make nonbinding recommendations for achieving full compliance with victims' rights laws in the future.

ISSUES DISCUSSED:

- Bill will serve as a road map for the implementation of HJR 49 and HJR 50
- Victims will have an independent right to raise a claim

EFFECT OF COMMITTEE AMENDMENT: Replace the original bill.

BACKGROUND: In the November 5, 1996 general election, the voters of Oregon adopted Measure 40, a comprehensive and far-reaching series of amendments to Oregon's Bill of Rights, particularly as it relates to victims and criminal defendants before the courts of Oregon. The Oregon Supreme Court found Measure 40 unconstitutional on the grounds that it contained two or more amendments to the Constitution in violation of Article XVIII, section 1, of the Oregon Constitution. *Armatta v. Kitzhaber*, 327 Or. 250 (1998). After *Armatta*, the Oregon Legislative Assembly referred seven individual amendments to the Oregon Constitution to the voters. The voters approved four of and rejected three.

One of the approved proposals became Section 42, Article I of the Constitution of the State of Oregon. It grants to victims of crime the right to: (1) be present and informed in advance of all critical stages of the proceeding held in open court when the defendant is present; (2) obtain information about the conviction, sentence, imprisonment, criminal history and future release from custody of the defendant; (3) refuse a discovery request by the defendant; (4) receive restitution from the convicted defendant; (5) have a copy of the transcript of any court proceedings; (6) the right to be consulted regarding plea negotiations involving a violent felony; and (7) be informed of these rights.

Another proposal became Section 43, Article I of the Constitution of the State of Oregon. It grants victims the right to: (1) the Reasonably protected from the criminal defendant or convicted criminal throughout the criminal justice process; and (2) have decisions by the court regarding 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.

Although both of these constitutional amendments granted rights to victims, neither specified how a victim, in his or her individual capacity could these rights. To rectify this problem, during the 2007 Legislative Session, the legislature referred to the voters HJR 49 and 50. If the voters adopt these proposals in May of 2008, then victims will have the constitutional authority to seek in their individual capacities redress for rights denied.

2/15/2008 10:19:00 AM

This summary has not been adopted or officially endorsed by action of the committee.