In the Matter of the Out-of-Cycle Adoption of UTCR 4.100, 4.110, 4.120, 4.130, Form 4.120.1, and Form 4.130.1 and the Out-of-Cycle Repeal of UTCR 4.040	)	CHIEF JUSTICE ORDER No. 08-032 ORDER ADOPTING UTCR 4.100, 4.110, 4.120, 4.130, FORM 4.120.1, AND FORM 4.130.1 OUT-OF-CYCLE AND REPEALING UTCR 4.040 OUT-OF-CYCLE

I HEREBY ORDER, pursuant to ORS 1.002 and UTCR 1.020, that:

1. The effective date and time limits established by UTCR 1.020(2), (3), and (4) are waived for the purpose of adopting UTCR 4.100, 4.110, 4.120, 4.130, Form 4.120.1, and Form 4.130.1 out-of-cycle and repealing UTCR 4.040 out-of-cycle.

2. UTCR 4.100, 4.110, 4.120, 4.130, Form 4.120.1, and Form 4.130.1, as shown in Attachment A to this order, are adopted effective June 19, 2008.

3. UTCR 4.040 is repealed, as shown in Attachment B to this order, effective June 19, 2008.

4. Pursuant to UTCR 1.020(5), the adoption of UTCR 4.100, 4.110, 4.120, 4.130, Form 4.120.1, and Form 4.130.1 and the repeal of UTCR 4.040 shall be posted for public comment as soon as is practicable and shall be placed on the agenda of the next UTCR Committee meeting, which is currently scheduled for October 10 and 11, 2008.

This order takes effect immediately.

Dated this 12th day of June, 2008.

Paul J. De Muniz
Chief Justice

ATTACHMENT A

{**4.100 CRIME VICTIMS' RIGHTS – DEFINITIONS FOR UTCR 4.110, 4.120, and 4.130**

(1) "Critical-stage hearings" means those hearings held in open court at which the defendant is present, including:

(a) release hearings;

(b) preliminary hearings;

(c) entry of guilty or no contest pleas;

(d) trial;

(e) restitution and sentencing hearings;

(f) probation or deferred sentencing violation or revocation hearings, when the basis for the alleged violation directly implicates a victim's rights;

(g) hearings for relief from the requirement to report as a sex offender;

(h) hearings in juvenile cases designated as a critical stage of the proceeding in ORS 419C.273; and

(i) any other stage of a criminal proceeding that the court determines is a critical stage of the proceeding for purposes of section 42, Article I of the Oregon Constitution.

(2) "Victim" has the meaning given in section 42(6)(c), and section 43(3)(a), Article I of the Oregon Constitution.

(3) Any reference in UTCR 4.110, 4.120, and 4.130 to "defendant" includes alleged youth offender and youth offender.

(4) Any reference in UTCR 4.110, 4.120, 4.130 to "criminal proceeding" includes juvenile delinquency proceedings.}

{4.110 CRIME VICTIMS' RIGHTS – PRESENCE OF VICTIM; SCHEDULING REPORT; SUSPENSION OF VICTIM'S RIGHTS

(1) At the start of each critical-stage hearing, the prosecuting attorney must tell the court whether the victim is present.

(2) Pursuant to ORS 136.145, the prosecuting attorney must report to the court, in writing or on the record, whether:

(a) the victim has been informed of any proposed rescheduled trial date, or of any court hearing where the presence of that victim is required;

(b) that date is convenient for the victim; and

(c) the prosecuting attorney had a reasonable opportunity to inform the victim of the proposed rescheduled trial date.

(3) In a case involving organized crime or a minor victim, if the prosecuting attorney believes that a victim's rights should be suspended, the prosecuting attorney must promptly do all of the following:

(a) prepare a motion and affidavit setting forth cause why the victim's rights should be suspended;

(b) serve the motion and affidavit on the victim and defense counsel, or on the defendant if the defendant is not represented by counsel; and

(c) submit the affidavit, motion, and an appropriate order to the court.}

{4.120 CRIME VICTIMS' RIGHTS - PROSECUTOR'S CERTIFICATION

(1) As soon as practicable following the filing of a charging instrument but not later than 21 days after arraignment, the prosecuting attorney must file a certification with the court in substantially the form as set out in Form 4.120.1 in the UTCR Appendix of Forms, stating whether:

(a) The prosecuting attorney's file indicates that the prosecuting attorney or a person known to the prosecuting attorney made a reasonable effort to inform the victim of the rights granted to the victim by sections 42(1)(a) to (f) and 43, Article I of the Oregon Constitution.

(b) The charging instrument includes the name or pseudonym of each victim known to the prosecuting attorney. If the charging instrument does not include the name or pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney must identify any victim not included in the charging instrument, unless it would cause substantial hardship to the prosecuting attorney to do so.

(c) The victim requested, and whether the prosecuting attorney agreed, that the prosecuting attorney would assert and enforce a right granted to the victim by section 42(1)(a) to (f) or 43, Article I of the Oregon Constitution.

(d) The victim requested to be informed in advance of any critical stage of the proceeding.

(e) The victims' rights information was sent to the victim's last known address, but the letter was returned or the victim did not contact the prosecuting attorney's office.

(2) If the prosecuting attorney learns that the current certification on file with the court is no longer accurate, the prosecuting attorney must file with the court an updated certification as soon as practicable.

(3) At the beginning of each critical-stage hearing when the prosecuting attorney has not filed the certification required under subsections (1) and (2) of this rule or the certification is no longer accurate, and the victim is not present, the prosecuting attorney must state on the record the following information based on the prosecuting attorney's knowledge:

(a) Whether the victim requested advanced notice of any critical-stage hearing.

(b) If the victim did request advanced notice:

(i) whether reasonable efforts were taken to notify the victim of the date, time, and place of the proceeding and the rights implicated in the proceeding;

(ii) whether the victim indicated an intention to attend the proceeding;

(iii) whether the victim requested, and whether the prosecuting attorney agreed, that the prosecuting attorney would assert a particular right associated with the proceeding and, if so, the nature of that right.}

{UTCR 4.130 CRIME VICTIMS' RIGHTS – PROCEDURE FOR ASSERTING A CLAIM IN A PENDING CASE PURSUANT TO SECTIONS 42(1)(a) to (g) AND 43, ARTICLE I OF THE OREGON CONSTITUTION

(1) A victim must assert a claim alleging a violation of a right granted by section 42(1)(a) to (g) or 43, Article I of the Oregon Constitution as soon as practicable, but no later than seven days after the victim knew or reasonably should have known of the violation.

(2) To assert a claim the victim must:

(a) state a claim on the record, in the presence of the defendant and prosecuting attorney, during the criminal proceeding with which the claim is associated; or

(b) file a written claim.

(3) If the victim files a written claim:

(a) The claim must state the facts describing the alleged violation and a proposed remedy and must be:

(i) in substantially the form set out in Form 4.130.1 in the UTCR Appendix of Forms; and

(ii) filed with the court clerk's office in the court in which the criminal case is pending.

(b) The victim must provide copies to the prosecuting attorney, defense counsel, or defendant if the defendant is not represented by counsel, and judge responsible for the judicial action if the claim involves a judicial action.

(4) If the victim files a written claim, the prosecuting attorney, defense attorney, or defendant if the defendant is not represented by counsel, must provide anyone under his or her direction or control who is alleged in the claim to have violated a right with:

(a) a copy of the claim; and

(b) notice of the date and time set for a hearing.

(5) Any victim who makes a claim must keep the court informed of the victim's current contact information until the claim is resolved.}

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR _____ COUNTY

STATE,	)	Case No. _____
	)	
	)	PROSECUTING ATTORNEY'S CERTIFICATION
V.	)	OF COMPLIANCE WITH CRIME VICTIMS'
	)	RIGHTS NOTIFICATION AND CONSULTATION
_____,	)	LAWS IN SECTIONS 42(1)(a) to (g) AND 43,
Defendant.	)	ARTICLE I OF THE OREGON CONSTITUTION

I, _____, the prosecuting attorney in this case, certify that my file indicates that I or a person known to me made a reasonable effort to give the following victim information about the rights granted to victims by sections 42(1)(a) to (f) and 43, Article I of the Oregon Constitution:

Victim's Name: _____

- ☐ Is ☐ Is not named in the charging instrument.
- ☐ Victims' rights information was sent to the victim's last known address, but
  - ☐ The letter was returned.
  - ☐ The victim did not contact the prosecuting attorney's office.
- ☐ Did not request to be informed in advance of any critical stage of the proceeding.
- ☐ Did request to be informed in advance of the following critical stages of the proceeding:
  - ☐ All
  - ☐ Plea and Sentencing
  - ☐ Sentencing Only
  - ☐ Specific Hearing(s): _____
  _____.
- ☐ Did not request that the prosecuting attorney assert and enforce a right granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution or did make a request, but the prosecuting attorney did not agree to assert or enforce any rights.
- ☐ Did request that the prosecuting attorney assert and enforce the following right(s) granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution, and the prosecuting attorney has agreed to assert and enforce the following right(s): _____
  _____
  _____.
- ☐ The court suspended the victim's constitutional rights listed in sections 42(1)(a) to (g) and 43, Article I of the Oregon Constitution as the prosecuting attorney requested under section 42(5), Article I of the Oregon Constitution.

I further certify that the charging instrument

- ☐ Does include the name or pseudonym of each victim known to the prosecuting attorney;
- ☐ Does not include the name or pseudonym of each victim:
  - ☐ The additional victim(s) name(s) or pseudonym(s) known to this prosecutor is listed on this form or on the attached "supplemental victim information page."
  - ☐ Compliance would cause a substantial hardship to the prosecuting attorney.

Submitted this _____ day of _____, 20____.

_____

Prosecuting Attorney

OSB No. _____

Supplemental Victim Information Page (for use in cases with more than one victim) Case No. _____

I, _____, the prosecuting attorney in this case, certify that my file indicates that I or a person known to me made a reasonable effort to give the following victim(s) information about the rights granted to victims by sections 42(1)(a) to (f) and 43, Article I of the Oregon Constitution:

Victim's Name: _____

- ☐ Is ☐ Is not named in the charging instrument.
- ☐ Victims' rights information was sent to the victim's last known address, but
  - ☐ The letter was returned.
  - ☐ The victim did not contact the prosecuting attorney's office.
- ☐ Did not request to be informed in advance of any critical stage of the proceeding.
- ☐ Did request to be informed in advance of the following critical stages of the proceeding:
  - ☐ All
  - ☐ Plea and Sentencing
  - ☐ Sentencing Only
  - ☐ Specific Hearing(s): _____
  _____.
- ☐ Did not request that the prosecuting attorney assert and enforce a right granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution or did make a request, but the prosecuting attorney did not agree to assert or enforce any rights.
- ☐ Did request that the prosecuting attorney assert and enforce the following right(s) granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution, and the prosecuting attorney has agreed to assert and enforce the following right(s): _____
  _____
  _____.
- ☐ The court suspended the victim's constitutional rights listed in sections 42(1)(a) to (g) and 43, Article I of the Oregon Constitution as the prosecuting attorney requested under section 42(5), Article I of the Oregon Constitution.

Victim's Name: _____

- ☐ Is ☐ Is not named in the charging instrument.
- ☐ Victims' rights information was sent to the victim's last known address, but
  - ☐ The letter was returned.
  - ☐ The victim did not contact the prosecuting attorney's office.
- ☐ Did not request to be informed in advance of any critical stage of the proceeding.
- ☐ Did request to be informed in advance of the following critical stages of the proceeding:
  - ☐ All
  - ☐ Plea and Sentencing
  - ☐ Sentencing Only
  - ☐ Specific Hearing(s): _____
  _____.
- ☐ Did not request that the prosecuting attorney assert and enforce a right granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution or did make a request, but the prosecuting attorney did not agree to assert or enforce any rights.
- ☐ Did request that the prosecuting attorney assert and enforce the following right(s) granted to the victim by sections 42(1)(a) to (f) or 43, Article I of the Oregon Constitution, and the prosecuting attorney has agreed to assert and enforce the following right(s): _____
  _____
  _____.
- ☐ The court suspended the victim's constitutional rights listed in sections 42(1)(a) to (g) and 43, Article I of the Oregon Constitution as the prosecuting attorney requested under section 42(5), Article I of the Oregon Constitution.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR _____ COUNTY

STATE,	)	Case No. _____
	)	
V.	)	MOTION REGARDING
	)	CLAIM OF VIOLATION OF CRIME
	)	VICTIM'S RIGHT(S) UNDER SECTIONS
_____,	)	42(1)(a) – (g) AND 43, ARTICLE I
Defendant.	)	OF THE OREGON CONSTITUTION

1. I, _____, am

   - ☐ A victim in the above-listed criminal case.
   - ☐ The district attorney acting at the request of a victim, _____, in the above-listed criminal case.
   - ☐ A private attorney representing a victim, _____, in the above-listed criminal case.
   - ☐ A person who wishes to be, but has not been, recognized as a victim, in the above-listed criminal case.

2. ☐ I am acting on behalf of the victim and have included service information with this claim form.
   ☐ I am the victim and I have provided my contact information on a separate form. I request that my contact information be sealed and not made part of the public record in this case.

3. The violation occurred on approximately the _____ day of _____, 20____, when (describe events – attach a separate sheet if you need more space):

_____
_____
_____
_____
_____
_____
_____
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_____
_____
_____
_____
_____

I believe this conduct violated the following right(s) granted by sections 42(1)(a) – (g) and 43, Article I of the Oregon Constitution:

- ☐ 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 is present, and to be heard at the pretrial release hearing and the sentencing.
- ☐ To, upon request, obtain information about the conviction, sentence, imprisonment, criminal history, and future release from physical custody of the criminal defendant or convicted criminal.
- ☐ To refuse an interview, deposition, or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant.
- ☐ To receive prompt restitution from the convicted criminal who caused the victim's loss or injury.
- ☐ To have a copy of a transcript of any court proceeding held in open court, if one is otherwise prepared.
- ☐ To, upon request, be consulted regarding plea negotiations involving any violent felony.
- ☐ To be informed of the above-listed rights as soon as practicable.
- ☐ To be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process.
- ☐ 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.

4. In accordance with the rights provided in sections 42 and 43, Article I of the Oregon Constitution, I request the following remedy:

_____
_____
_____
_____
_____
_____
_____

5. I hereby request that the court grant an appropriate remedy or schedule a hearing to determine whether the victim's right(s) was violated.

Submitted this _____ day of _____, 20____.

_____
Victim/Prosecuting Attorney/Private Attorney
OSB No. _____

Note: You must file this claim with the court clerk's office. You must also provide a copy of these forms to the prosecuting attorney and the defense attorney, or to the defendant if the defendant is not represented by counsel, and if the claim is regarding a judicial action, to the judge responsible for the judicial action.

Supplemental Form - Victim Contact Information

Case Name: _____

Case No. _____

Please list your residential address or an alternate address at which you would like to receive information from the court regarding court hearings and court decisions. Until your claim is resolved, you must provide updated contact information to the court if your contact information changes. If you fail to keep the court informed, the court may dismiss your claim.

Name: _____

Street Address or PO Box: _____

City: _____ State: _____ Zip Code: _____

Telephone number: _____

Note: You must provide this page to the court and the prosecuting attorney; you do not need to provide this page to the defendant.

THIS INFORMATION MUST BE KEPT UNDER SEAL.

ATTACHMENT B

[*4.040 COMMUNICATIONS WITH VICTIMS AND WITNESSES IN CRIMINAL CASES*

(1) When a victim or a witness requests that his or her address and telephone number not be disclosed to the defendant, the district attorney must promptly prepare, serve on the opposing party and submit to the court for signature an appropriate order.

(2) The district attorney must report to the court, in writing or on the record, that the victim has been informed of any rescheduled trial date, or court hearing date where the presence of that victim is required, and whether that date is convenient to the victim.]