

## CHAPTER 4—Proceedings in Criminal Cases

NOTE: Rules specifically relating to contempt proceedings are located in UTCR Chapter 19.

### 4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

Motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later, unless a different time is permitted by the court for good cause shown.

### 4.030 PROCEDURE FOR ORDER OF TRANSPORTATION

- (1) Any motion that a person held in custody be transported from the place of confinement to a designated place must be accompanied by a separate proposed court order directing the sheriff to transport the person to and from the designated place at the appointed time.
- (2) All proposed orders of transportation must contain the dates and times on which the person in custody is to appear at the designated place and is to be returned to the place of confinement, the exact location of the designated place and, if the person in custody is to appear as a witness in a court proceeding, the caption and number of the case. A person in custody appearing as a witness must be returned to the place of confinement only after execution of an order of release signed by the judge presiding over the court proceeding.

### 4.050 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

- (1) There must be oral argument if requested by the moving party in the caption of the motion or by a responding party in the caption of a response, except that the court is not required to grant oral argument on a motion to postpone trial. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested.
- (2) Counsel for either the state or the defense may request that a motion not requiring testimony be heard by telecommunication. The following apply to a request for oral argument by telecommunication:
  - (a) A request must be in the caption of the motion or response. If oral argument by telecommunication is requested, the first paragraph of the motion or response must include the names and telephone numbers of all parties served with the request, a statement whether the office of the requesting person is more than 25 miles from the courthouse, the position of opposing counsel, and if the defendant has waived in writing the right to appear at the hearing.
  - (b) A request by counsel for defense must be granted if counsel for defense represents that the defendant agrees to the procedure and provides a signed waiver of personal appearance, and if counsel for the defendant is located more than 25 miles from the courthouse.
  - (c) A request by the state must be granted if both parties agree and counsel for the defense provides a written waiver from the defendant.
  - (d) In the event telecommunication is allowed, all parties must appear by telecommunications with no party personally appearing.

- (e) The party requesting telecommunication must initiate the conference call at its expense unless the court directs otherwise.
- (3) "Telecommunication" must be by telephone or other electronic device that permits all participants to hear and speak with each other.

#### 4.060 MOTION TO SUPPRESS EVIDENCE

- (1) All motions to suppress evidence:
  - (a) must make specific reference to any constitutional provision, statute, rule, case, or other authority upon which it is based; and
  - (b) must be accompanied by the moving party's brief which must be adequate reasonably to apprise the court and the adverse party of the arguments and authorities relied upon.
- (2) Any response to a motion to suppress:
  - (a) together with opposing affidavits, if any, upon which it is based must be in writing and must be served and filed not more than 7 days after the motion to suppress has been filed;
  - (b) must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and
  - (c) must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.
- (3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.
- (4) Failure to file a written response shall not preclude a hearing on the merits.

#### 1991 Commentary:

The Committee proposes these amendments to clarify its intent in originally adopting this rule that a written response not be required.

#### 4.070 DISMISSAL OF CHARGES FOLLOWING SUCCESSFUL COMPLETION OF DIVERSION

For any charge dismissed based upon successful completion of diversion for driving under the influence of intoxicants, marijuana diversion, or other diversion program, the dismissing instrument must state the basis for the dismissal.

#### 4.080 APPEARANCE AT CRIMINAL PROCEEDINGS BY MEANS OF SIMULTANEOUS ELECTRONIC TRANSMISSION

- (1) A court may conduct an appearance in a criminal proceeding at any circuit court location by the following types of simultaneous electronic transmission, as defined in ORS

131.045, if the transmission complies with the requirements of ORS 131.045, 135.030, 135.360, 135.767, 137.040, and 137.545:

- (a) telephone;
  - (b) television;
  - (c) video conference; and
  - (d) internet.
- (2) SLR 4.081 is reserved for judicial districts to adopt a local rule regarding appearance at criminal proceedings by means of simultaneous electronic transmission.

#### 4.090 ELECTRONIC FILING OF VIOLATION COMPLAINTS AND CRIMINAL CITATIONS (E-CITATIONS)

- (1) A judicial district, with approval of the Chief Justice of the Oregon Supreme Court (Chief Justice), may authorize electronic filing of violation complaints and criminal citations (referred to collectively in this rule as “e-citations”) in its court(s) as allowed by ORS 153.770 and section 15, chapter 566, Oregon Laws 2005, (Enrolled 2005 HB 2282).
- (2) The State Court Administrator may establish appropriate conditions and procedures to be followed by a court and its partners in an e-citation program to assure that the process for e-citations can be accommodated by Oregon Judicial Department systems and computer technology.
- (3) A judicial district’s request to the Chief Justice for approval of the use of e-citations shall:
- (a) Describe the understanding reached with the law enforcement agency seeking to use e-citations;
  - (b) Describe the understanding reached with the State Court Administrator concerning accommodation of e-citations by Oregon Judicial Department systems and computer technology and the maximum number of offenses that may be filed with the court as cited on a single citation; and
  - (c) Include the proposed SLR authorizing e-citations.
- (4) An SLR authorizing e-citations under this rule shall:
- (a) Describe the applicable e-citation procedures required by section 15(2), chapter 566, Oregon Laws 2005, and ORS 153.770(2); and
  - (b) Set the maximum number of offenses that may be filed with the court as cited on a single citation. Nothing in this rule or SLR authorizes the mixing of offenses as prohibited by ORS 133.066(4).
- (5) An e-citation authorized under this rule is deemed filed at the time the digital information for the citation is entered in the register of the court.
- (6) SLR 4.091 is reserved for judicial districts to adopt a local rule regarding e-citations.

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.

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.