

OREGON CRIME VICTIMS LAW CENTER NEWSLETTER

January 2016



MESSAGE FROM ROSEMARY BREWER, EXECUTIVE DIRECTOR

2015 has been a memorable year for the Oregon Crime Victims Law Center! First, we've opened more than 90 cases, and we still have a few weeks to go. We've assisted more than 140 victims throughout the state, giving some a voice in the criminal justice system, helping others regain a sense of safety, and working with others to assert the rights granted by the Oregon Constitution and statutes. 2015 has also been a year of tremendous growth and opportunity for our organization. OCVLC began in 2009 with one part-time legal director. As 2016 opens we will have three full time attorneys, an administrative specialist/victim advocate, and an executive director, all committed to assisting victims, training others in asserting victims' rights, and continuing to ensure that victims are heard throughout the criminal justice process. This expansion will allow us to assist more crime victims as they recover from their victimization. We will also increase the amount of training and outreach that we do, raising awareness of victims' rights throughout the state and strengthening the commitment to ensuring that all victims are treated with dignity and respect. OCVLC is looking forward to another exciting year in 2016!

NEW LEGISLATION

VICTORIES FOR CRIME VICTIMS IN THE 2015 SESSION

BY MELANIE KEBLER, SENIOR STAFF ATTORNEY

Oregon's latest legislative session saw several successes in passing new laws or amending existing laws in order to help victims of crime. The following bills are some of the notable new laws that support crime victims and their rights in the criminal justice system:

HOUSE BILL 2317 - Extends statute of limitations on certain sex crimes

<https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB2317>

Sexual assault survivors came together with a powerful voice this session: Oregon's scant 6 year statute of limitations on sex crimes like Rape 1 must be increased in order to allow more victims the chance to have their abusers prosecuted, even if the case was not immediately solved or a suspect immediately apprehended. HB 2317 doubled the statute of limitations to 12 years, and a work group is now in place to consider increasing the time period again in the future. 25 other states have NO statute of limitations for the criminal charge of rape.

In effect: January 1, 2016

House Bill 2226 - Expands definition of "victim" to include estate, successor in interest, trust, etc for purpose of ordering restitution in a criminal case

[https://olis.leg.state.or.us/liz/2015R1/Measures/ Overview/HB2226](https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB2226)

HB 2226 amends Oregon's existing statute that defines who is a "victim" in the criminal justice system. This amendment was made in order to allow restitution to be ordered even when the victim is deceased at the time of entry of the order. Restitution can now be ordered to be paid to the victim's estate or successor in interest, not just in homicide cases but in other cases where the victim has died before the defendant is sentenced.

In effect: January 1, 2016



NEW LEGISLATION, CONTINUED:

House Bill 2339 - Requires court to appoint an interpreter for victims who seek to assert rights in open court

<https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB2339>

OCVLC and other victim advocacy groups had been notified over the past few years that victims who needed interpretation at court hearings, such as sentencing and trial, were unable to obtain a court interpreter to assist them in understanding what was being said in court. Some courts refused to order an interpreter be appointed to help the victim, other courts did ask for an interpreter but were informed that the Oregon Judicial Department (OJD) would not pay to provide the interpreter. OJD and other groups came together in 2015 to ask the legislature to pass a law requiring that interpreters be appointed to victims who sought to assert any of their rights in an open court hearing. HB 2339 also mandates that OJD will pay for the interpretation services.

In effect: May 26, 2015

House Bill 3476 - Advocate privilege and confidentiality

<https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB3476>

This new law has two prongs - it requires that non-governmental and campus victim service advocates establish a policy on confidentiality to protect the victims of domestic violence and sexual assault that access their services, and it also establishes a legal privilege in communications between a victim and his or her advocate. This legal privilege protects against third parties, such as a criminal defendant, who seek to force the advocate or the advocacy agency to disclose information given to them by the victim. For the privilege to apply, advocates must be certified by completing required training established by Oregon Department of Justice. NOTE: this law does NOT apply to governmental advocates working in a district attorney's office. A webinar explaining the details of this law is available on the Oregon Coalition Against Domestic & Sexual Violence website: www.ocasdv.org.

In effect: October 1, 2015

Senate Bill 525 - State implementation of Federal firearms prohibitions for domestic violence offenders

<https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/SB525>

Federal law already prohibits gun possession by certain persons who have been convicted of a qualifying misdemeanor crime of domestic violence or who are subject to a valid qualifying restraining order. SB 525 creates a new, state-level crime that mirrors the federal statute. It is now a crime in Oregon to

possess firearms if the person has been convicted of certain misdemeanor crimes of domestic violence - and this is a life time ban. It is also a state crime to possess firearms if the person is subject to a qualifying restraining order, which in some cases could include a no-contact order placed in a criminal case to protect the victim. Because these are state crimes, local police departments will have more authority to investigate and make arrests in cases where abusers possess firearms. The law applies to persons in specifically defined types of relationships and also requires that the person had actual notice and a chance to object to the restraining order or no contact order. Contact OCVLC for more information about this law.

In effect: January 1, 2016

House Bill 2776 - Establishes temporary emergency protective order

<https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB2776>

This law creates a short-term emergency protective order that can be sought, with the victim's permission, by law enforcement who have responded to a domestic violence call at any time of day or night. The court may issue the order if the officer has enough information for a mandatory arrest for domestic violence, or if the victim is in immediate danger of abuse and the officer believes an emergency protective order is necessary to prevent the person from suffering further abuse. The order expires on the seventh judicial business day after it is granted, and must be served on the suspect by the police officer. A violation of this order can result in a charge of contempt of court. This new law will give law enforcement another tool to offer victims who need protection in a domestic violence situation.

In effect: January 1, 2016

Many other bills were passed that will affect Oregon crime victims and the criminal justice system, including new crimes and amendments to existing crimes, as well as maintained or increased funding for housing and justice reinvestment. Further funding increases to DHS co-located domestic violence advocates and for emergency assistance funds for sexual assault survivors were not approved in 2015, but are sure to be brought forward again in the next session.

Thank you to all who advocated for the legislative changes that will help crime victims in the coming year.



WHAT OUR CLIENTS ARE SAYING ABOUT OCVLC'S SERVICES:

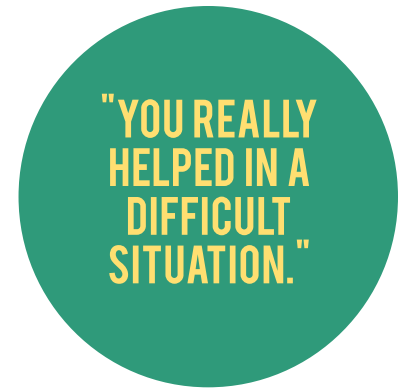
"Goal was met and exceeded. I was very pleased and assured with the outcome."

"[My attorney] was very prompt and knowledgeable, answered my many questions, and was easily accessible."

"I will forever be grateful for your support and guidance through what is undoubtedly the greatest struggle of my life."

"My case was handled quickly and efficiently. I felt heard, and encouraged."

"I can't tell you how much I appreciate you! I feel like I can breathe a little better now."



"The work you do is so vitally important and has a profound impact."



SPOTLIGHT ON COMMUNITY PARTNER: PWCL

Portland Women's Crisis Line provides crisis line and social support services in the Tri-County area of Multnomah, Washington, and Clackamas counties. PWCL is a grant partner with OCVLC on our Office on Violence Against Women Legal Assistance for Victims grant project. Through this grant, OCVLC helps victims of domestic violence, sexual assault, and stalking with both criminal and related civil matters, such as protective orders. PWCL has been in operation since 1973 and provides a toll-free crisis line that is accessible 24 hours a day, seven days a week, from anywhere in the state. You can learn more about PWCL at <http://www.pwcl.org/>.

CASE STUDY

DEFENSE SUBPOENAS FOR VICTIM RECORDS

In the last two years, OCVLC has seen an increase in our referrals for cases in which the defense is requesting victim records prior to trial. The documents we have seen defendants issuing pretrial subpoenas for are wide-ranging.

Defendants are becoming more creative when issuing subpoenas *duces tecum*. The requests are often quite broad, asking for the entire file on the victim without date or subject matter restriction. Many times the defense attorney does not provide proper notice to either the State or the victim about the subpoenas they have sent to these records holders. Sometimes a defense attorney will subpoena these records directly to their own office, which is not allowed under Oregon law. If you have a case in which the defense has issued subpoenas for a victim's records, you may want to refer that victim to us for consultation and possible representation. We can also assist prosecutors who want to handle the issue themselves by providing motions to quash, relevant case law, and orders for the court.

A typical records request case at OCVLC usually happens like this:

OCVLC receives a call from the mother of a child sex abuse victim in a criminal case. Defendant, a family friend, has been charged with multiple Measure 11 sex abuse charges.

The mother of the victim has been referred to call us by the DDA handling the case because the defense is requesting a number of records, including counseling records, DHS files, school and medical records. A hearing is scheduled to occur later in the month. *Note: It is helpful for the person referring the victim to call us first to let us know about the case, but it is not necessary. We do require that victims call us directly to request services before we can start working on a case.*

OCVLC speaks with the mother by phone and obtains a signed representation agreement. We gather court documents, mostly from ecourt, including the defense motions at issue. We also consult with the DDA on the case and, if appropriate, speak to the defense attorney. We will notify the record holders that we are objecting to the release of the records and request that they wait until the court has ruled before sending any records out.

OCVLC then drafts and files a motion to quash based on relevant case law and statutes. We appear at the hearing, by phone if needed, to argue the issue. We point out procedural defects in the subpoena process initiated by the defense, as well as argue from well-established Oregon case law regarding the standards that must be met before records can be subpoenaed and produced before trial.

The judge may quash the subpoena, narrow the scope of the subpoena, and/or order an *in camera* review of the requested records. OCVLC will draft an order after the hearing to submit to the court, and will follow up on any other remaining issues such as

reviewing revised subpoenas from the defense. We will also follow up with our client to explain the result of the hearing.

OCVLC remains a resource for the victim(s) after the pretrial hearing, and if further subpoenas are issued we may step in, at the victim's request, to oppose them. We are also available to address any other victims' rights issues, such as helping a victim make a statement at sentencing or helping them assert their right to be present in the courtroom at critical stages, such as trial.

DEFENDANTS HAVE ISSUED PRETRIAL SUBPOENAS FOR RECORDS FROM:

- ▶ Facebook and other social media accounts
- ▶ Gmail/other email providers
- ▶ Text messages and phone history
- ▶ Medical providers (complete history of victim)
- ▶ Planned Parenthood
- ▶ Counselors (before and after the criminal incident date)
- ▶ Schools (K-12 and college)
- ▶ Past juvenile delinquency adjudications
- ▶ DHS /Child Welfare
- ▶ Crime Victims Compensation and DOJ
- ▶ OCVLC's client file
- ▶ Child abuse assessment centers
- ▶ DV shelters
- ▶ Victim's employers

LOOKING FORWARD TO 2016

OCVLC IS GROWING AND SETTING NEW GOALS

2015 was an exciting year for OCVLC. We continued our work with crime victims across the state, continued to grow and support our OVW-funded project in Multnomah and Marion Counties, and hired three new staff to help us meet the needs of our growing base of clients.

In 2016, we will be expanding our ability to assist victims who are seeking protective orders against their abusers. Our OVW-funded project will be expanding into Washington County, and we have also obtained Justice Reinvestment Project funds to place an attorney at the Gateway Center for Domestic Violence in Portland. In the coming year, we look forward to helping as many crime victims as possible and working to helping those in Multnomah, Marion, and Washington counties with both the criminal and civil protective order aspects of their case.

OCVLC will also be continuing to reach out and offer training to our partners across the state. Please feel free to contact us for information about how we can connect and train law enforcement, prosecutors, advocates, or other community partners in your county.

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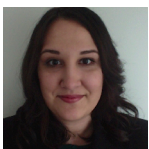
MELANIE KEBLER

Senior Staff Attorney



NELLY WRIGHT

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Staff Attorney



AMANDA BURNETT

Victim Advocate and Administrative Specialist



OREGON MAP

We serve clients across the state and we are looking for more referrals from outside of the greater Portland area. Please contact us to refer a crime victim who may benefit from our services, or if you or someone you know is interested in volunteering as a pro bono attorney!