Enrolled
Senate Bill 233

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CHAPTER .....

AN ACT

Relating to crime victims' rights; creating new provisions; amending ORS 40.015, 131.007, 135.245, 135.432, 136.295, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273; repealing ORS 135.406; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 19 of this 2009 Act:

(1) "Authorized prosecuting attorney" means a prosecuting attorney who, at the request of a victim, has agreed to assert and enforce a right granted to the victim by section 42 or 43, Article I of the Oregon Constitution.

(2) "Claim" means the allegation and proposed remedy described in section 6 (1) of this 2009 Act.

(3) "Crime" includes an act committed by a person who is under 18 years of age that, if committed by an adult, would constitute a misdemeanor or felony.

(4) "Criminal proceeding" means an action at law in which a person is alleged, or has been adjudicated, to have committed a crime for which there is a victim and that is conducted in the trial court before or after sentencing or disposition.

(5) "Critical stage of the proceeding" means:

(a) Release hearings or hearings to modify the conditions of release, except hearings concerning release decisions at arraignment;

(b) Preliminary hearings;

(c) Hearings related to the rescheduling of trial;

(d) Hearings on motions or petitions:

(A) Conducted pursuant to ORS 40.210 or 135.139;

(B) To amend, dismiss or set aside a charge, conviction, order or judgment; or

(C) To suppress or exclude evidence;

(e) Entry of guilty or no contest pleas;

(f) Trial;

(g) Restitution hearings;

(h) Sentencing;

(i) Probation violation or revocation hearings if the crime of conviction is a felony or person Class A misdemeanor and the victim has requested notice of the hearing from the prosecuting attorney or the supervisory authority as defined in ORS 144.087;

(j) Hearings for relief from the requirement to report as a sex offender;

(k) Hearings related to a deferred sentencing agreement;

(L) Hearings designated as a critical stage of the proceeding in ORS 419C.273; and

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

(6) "Defendant" includes a person under 18 years of age alleged to be within the jurisdiction of the juvenile court under ORS chapter 419C.

(7) "Plea hearing" means a hearing in which a defendant enters a plea of guilty or no contest.

(8) "Plea of guilty or no contest" includes:

(a) An admission by a person under 18 years of age that the person is within the jurisdiction of the juvenile court; and

(b) If a juvenile court petition has been filed, entering into a formal accountability agreement under ORS 419C.230 or entering an authorized diversion program under ORS 419C.225.

(9) "Prosecuting attorney" means a district attorney as defined in ORS 131.005. In a criminal proceeding conducted in the juvenile court, "prosecuting attorney" includes the juvenile department.

(10) "Reasonable efforts to inform the victim" includes, but is not limited to, providing information orally, in writing, electronically or by mail to the victim's last known address.

(11) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency proceeding under ORS chapter 419C.

(12) "Trial court" includes the juvenile court.

(13) "Victim" means any person determined by the prosecuting attorney or the court to have suffered direct financial, psychological or physical harm as a result of the crime alleged in the criminal proceeding and, in the case of a victim who is a minor, the legal guardian of the minor.

(14) "Violent felony" means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense.

SECTION 2. (1) A victim may assert a claim under sections 1 to 19 of this 2009 Act personally, through an attorney or through an authorized prosecuting attorney.

(2) If the defendant or victim is represented by counsel, counsel for the defendant or victim shall be served or notified in lieu of service on or notification to a defendant or victim under sections 1 to 19 of this 2009 Act.

(3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a proceeding under sections 1 to 19 of this 2009 Act.

(4) The time within which an act is to be done under sections 1 to 19 of this 2009 Act is determined under ORS 174.120 and 174.125.

(5) ORCP 17 applies to the provision of documents to the court under sections 1 to 19 of this 2009 Act.

SECTION 3. (1) This section does not apply:

(a) In a juvenile delinquency proceeding; or

(b) In a criminal case in which no person has been determined to be the victim of the crime.

(2) At the beginning of each critical stage of the proceeding:

(a) The prosecuting attorney shall inform the court whether the victim is present.

(b) If the victim is not present, the prosecuting attorney shall inform the court, based on the prosecuting attorney's knowledge, whether the victim requested advance notice of any critical stage of the proceeding and, if so, whether the victim:

(A) Was notified of the date, time and place of the proceeding;

(B) Was informed of the victim's rights implicated in the proceeding; and

(C) Indicated an intention to attend the proceeding or requested that the prosecuting attorney assert a particular right associated with the proceeding and, if the victim made such a request, whether the prosecuting attorney agreed to do so.

(3) Subsection (2) of this section does not apply in any criminal proceeding in which the prosecuting attorney provides the court with the notice described in subsection (4) of this section.

(4) In all felony cases, no later than 21 days after the defendant is arraigned on an indictment, waives indictment or is held to answer following a preliminary hearing, the prosecuting attorney shall provide the court with a notice of compliance with victims' rights on a form prescribed by the Chief Justice of the Supreme Court or on a substantially similar form that indicates whether:

(a) The prosecuting attorney, a person known to the prosecuting attorney or a member of the prosecuting attorney's staff made reasonable efforts 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 shall identify any victim not included in the charging instrument, unless it would be impractical to do so;

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

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

(5) If the victim is present at a critical stage of the proceeding, the prosecuting attorney shall inquire of the victim whether the victim intends to assert a right granted to the victim by section 42 or 43, Article I of the Oregon Constitution, and shall report the results of that inquiry to the court. The court may ask the victim for information about any aspect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon Constitution.

(6)(a) Information provided to the court under subsection (2) or (4) of this section may be based on information obtained from a law enforcement agency, a member of the prosecuting attorney's staff, the prosecuting attorney's file or an electronic data system or other record keeping system regularly maintained by the office of the prosecuting attorney.

(b) If the prosecuting attorney discovers that information provided to the court under subsection (2) or (4) of this section is no longer accurate, the prosecuting attorney shall orally provide the court with updated information prior to or during the critical stage of the proceeding that immediately follows the discovery.

SECTION 4. (1) At the request of a victim, the prosecuting attorney may request that the court schedule a hearing to reconsider a release decision if:

(a) The victim did not have notice of, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount; and

(b) The victim's request is made no later than seven days after the victim knew or reasonably should have known of the release decision that is to be reconsidered.

(2) As used in this section, "release decision" includes:

(a) Decisions made at arraignment; and

(b) Decisions made at hearings described in ORS 419C.273 (4)(b)(A) to (C).

SECTION 5. (1) Notwithstanding section 3 of this 2009 Act, at the beginning of any plea hearing and any sentencing hearing, the prosecuting attorney shall inform the court whether the victim is present.

(2) In any case involving a defendant charged with a violent felony:

(a) If the victim requests, the prosecuting attorney shall make reasonable efforts to consult the victim regarding plea discussions before making a final plea agreement.

(b) Before the court accepts a plea of guilty or no contest:

(A) If the victim is present, the court shall ask whether the victim agrees or disagrees with the plea agreement as presented to the court and whether the victim wishes to be heard regarding the plea agreement.

(B) If the victim is not present, the court shall ask the prosecuting attorney whether the victim requested to be notified and consulted regarding plea negotiations. If the victim made such a request, the court shall ask the prosecuting attorney whether the victim agrees or disagrees with the plea agreement.

(c) If the court finds that the victim requested consultation regarding plea negotiations and that the prosecuting attorney failed to make reasonable efforts to consult with the victim, the court shall direct the prosecuting attorney to make reasonable efforts to consult with the victim and may not accept the plea unless the court makes a finding on the record that the interests of justice require the acceptance of the plea.

(3) Before the court imposes sentence, the court shall ask whether the victim wishes to express the views described in ORS 137.013.

SECTION 6. (1) A victim who wishes to allege a violation of a right granted to the victim in a criminal proceeding by section 42 or 43, Article I of the Oregon Constitution, shall inform the court within seven days of the date the victim knew or reasonably should have known of the facts supporting the allegation. The victim shall describe the facts supporting the allegation and propose a remedy.

(2) The victim may inform the court of a claim:

(a) On a form prescribed by the Chief Justice of the Supreme Court; or

(b) On the record in open court and in the presence of the defendant and the prosecuting attorney.

(3) If the victim informs the court of a facially valid claim on a form under subsection (2)(a) of this section, the court shall promptly issue the order to show cause described in section 7 of this 2009 Act.

(4) If the victim informs the court of a facially valid claim orally under subsection (2)(b) of this section and the court determines:

(a) That each person entitled to notice of the claim and a reasonable opportunity to be heard is present, the court shall hold a hearing under section 11 of this 2009 Act as soon as practicable; or

(b) That any person entitled to notice of the claim and a reasonable opportunity to be heard is not present, the court shall issue the order to show cause described in section 7 of this 2009 Act.

(5) If the court determines that the victim has not alleged a facially valid claim, the court shall enter an order dismissing the claim. The order must:

(a) Include the reasons the claim was dismissed;

(b) Be without prejudice to file, within seven days from the date the victim receives the order dismissing the claim, a corrected claim for the sole purpose of correcting the deficiency identified by the court; and

(c) Be in writing, unless the order is issued on the record in open court in the presence of the victim, the prosecuting attorney and the defendant. If the court issues the order orally under this paragraph, the court shall issue a written order as soon as practicable.

(6) If a victim informs the court of a claim orally and the court does not immediately hear the matter, the court may require the victim to complete the form described in subsection (2)(a) of this section.

SECTION 7. (1)(a) Except as provided in subsection (3) of this section, the victim or the prosecuting attorney shall provide notice of a claim asserted by the victim to any person the victim wishes to have bound by an order granting relief by providing the person with a copy

of the order to show cause described in this section. The victim or prosecuting attorney shall provide the court with a mailing address for any person the victim or prosecuting attorney provides with a copy of the order to show cause under this paragraph.

(b) An order granting relief under section 8 or 11 of this 2009 Act is not enforceable against, and has no legal effect on, any person who did not receive notice or have knowledge of the claim and did not have a reasonable opportunity to be heard regarding the claim.

(2) Upon receipt of a facially valid claim under section 6 (3) or (4)(b) of this 2009 Act, the court shall issue an order to show cause why the victim should not be granted relief. The court shall, after considering the requirements of section 11 (5)(a) of this 2009 Act, include in the order to show cause the date:

(a) By which responses to the claim must be submitted to the court; and

(b) On which the court will conduct a hearing on timely responses to the claim.

(3) The court shall provide a copy of the order to show cause and of the form described in section 6 (2)(a) of this 2009 Act, if the form was completed, to:

(a) The victim;

(b) The prosecuting attorney; and

(c) The defendant.

(4)(a) If the court issues an order to show cause under this section, a victim, the prosecuting attorney, the defendant or any person against whom relief is requested may contest the claim by filing a response with the court before the date specified in the order under subsection (2)(a) of this section.

(b)(A) When a claim alleges a violation of a right granted to the victim under section 42, Article I of the Oregon Constitution, the prosecuting attorney may file an ex parte response that includes an affidavit setting forth good cause to suspend the rights established in section 42, Article I of the Oregon Constitution.

(B) The court shall review the response and affidavit in camera. If the court finds that the prosecuting attorney has a good faith belief that the criminal proceeding involves a minor victim or organized crime, as that term is defined in ORS 180.600, and the court finds good cause to suspend the rights established in section 42, Article I of the Oregon Constitution, the court shall enter an order suspending those rights. The order may not include the facts that formed the basis of the suspension.

(C) The prosecuting attorney shall make a reasonable effort to provide notice of the suspension to the victim and the defendant.

(D) The response and affidavit described in this paragraph may not be disclosed and must be sealed and made a part of the record for purposes of appellate review.

SECTION 8. (1) If a response to the order to show cause issued under section 7 of this 2009 Act is not timely filed, the court shall:

(a) Make factual findings supported by the record; and

(b) Determine whether the factual findings constitute a violation of a right granted to the victim by section 42 or 43, Article I of the Oregon Constitution.

(2) If the court determines that the victim′s rights:

(a) Have been violated, except as provided in paragraph (c) of this subsection, the court shall issue an order after giving due consideration to the proposed remedy.

(b) Have not been violated, the court shall issue an order denying relief.

(c) Have been violated but that the Oregon Constitution or the United States Constitution prohibits all appropriate remedies or that the court has suspended the rights of the victim under section 7 (4)(b) of this 2009 Act, the court shall issue an order denying relief.

(3) The order issued under subsection (2) of this section must be in writing and, except as provided in section 7 (4)(b)(B) of this 2009 Act, must include the reasons relief was granted or denied.

(4) The court shall provide a copy of the order issued under subsection (2) of this section to the victim, the prosecuting attorney, the defendant and any person against whom relief was ordered at the mailing address provided under section 7 (1)(a) of this 2009 Act.

SECTION 9. (1) A victim or prosecuting attorney who seeks a determination of an issue involving a right granted by section 42 or 43, Article I of the Oregon Constitution, that will impact the conduct of the trial shall file a motion within 35 days of the arraignment, or of the defendant's entry of the initial plea on an accusatory instrument, whichever is sooner, unless the factual basis of the determination becomes known to the movant at a later time and could not reasonably have been discovered earlier, in which case the motion must be filed promptly.

(2) A defendant who seeks to challenge the designation of a person as a victim shall:

(a) File a response to a claim under section 7 (4) of this 2009 Act; or

(b) File a motion within seven days after the date the victim first exercises a right granted by section 42 or 43, Article I of the Oregon Constitution, unless the court finds good cause to allow the motion at a later time.

(3) A defendant who seeks to object to a victim's presence at trial shall file a motion within 35 days of arraignment, or of the defendant's entry of the initial plea on an accusatory instrument, whichever is sooner, unless the factual basis of the objection could not reasonably be discovered earlier, in which case the motion must be filed promptly.

(4) The court shall conduct a hearing on a motion filed under this section and rule on the motion as soon as practicable. The court may not grant relief under subsection (2) or (3) of this section unless the designation of a person as a victim or the victim's presence at trial violates the Oregon Constitution or the United States Constitution.

SECTION 10. (1) Pending the hearing described in section 11 of this 2009 Act, the court may reschedule any matter in the criminal proceeding that may directly impact, or be directly impacted by, the claim, a response filed under section 7 (4) of this 2009 Act or a motion filed under section 9 of this 2009 Act. All other matters in the criminal proceeding shall continue in the ordinary course.

(2) In determining whether to reschedule a matter under subsection (1) of this section, in addition to other factors the court considers important, the court shall consider:

(a) The likelihood that the requested relief will be granted in light of the support in fact and law for the relief, as shown in the claim, the response filed under section 7 (4) of this 2009 Act or the motion filed under section 9 of this 2009 Act;

(b) Whether the claim, response or motion is made in good faith and not for the purpose of delay;

(c) The nature of the harm to the victim, the prosecuting attorney, the defendant, any person against whom relief is requested and the public that will likely result from rescheduling the matter;

(d) The rights guaranteed to the victim, the prosecuting attorney, the defendant and any person against whom relief is requested under the Oregon Constitution or the United States Constitution and under Oregon statutory and decisional law; and

(e) Whether the defendant is in custody and, if so, whether the defendant has expressly consented to a continuance of the trial under ORS 136.290.

(3) A pretrial release decision may not be continued under this section for more than 14 days.

(4) Unless the court finds good cause to continue the trial to a later date, a trial may not be continued under this section for more than 14 days.

SECTION 11. (1) A hearing on a claim, a response filed under section 7 (4) of this 2009 Act or a motion filed under section 9 of this 2009 Act shall be conducted in accordance with this section.

(2) At the hearing, the court may receive evidence relevant to the claim or motion.

(3) As to a particular fact at issue, the court shall find against the person bearing the burden of persuasion unless the person proves the fact by a preponderance of the evidence.

(4) If the court determines that the moving party:

(a) Is entitled to relief, the court shall, after giving due consideration to the requested relief, issue an order.

(b) Is not entitled to relief or that the Oregon Constitution or the United States Constitution prohibits all appropriate relief, the court shall issue an order denying relief.

(5) An order issued under subsection (4) of this section must:

(a) Be issued within seven days from the date the court issued an order to show cause under section 7 of this 2009 Act, if an order to show cause was issued, unless the court finds good cause to issue the order at a later date.

(b) Except as provided in section 7 (4)(b)(B) of this 2009 Act, include the reasons relief was granted or denied.

(c) Be in writing unless the order is issued on the record in open court. If the court issues the order orally under this paragraph, the court shall issue a written order as soon as practicable indicating whether relief was granted or denied.

(6) The court shall provide a copy of the order issued under subsection (4) of this section to the victim, the prosecuting attorney, the defendant, any person who filed a response under section 7 (4) of this 2009 Act and any person against whom relief was ordered at the mailing address provided under section 7 (1)(a) of this 2009 Act.

SECTION 12. (1) A remedy under sections 1 to 19 of this 2009 Act is waived if the remedy is requested:

(a) By a victim who had notice of a related claim and did neither of the following:

(A) File a response under section 7 (4) of this 2009 Act; or

(B) Participate in a hearing under section 11 of this 2009 Act; or

(b) By any person after:

(A) The date determined by the court under section 7 (2)(a) of this 2009 Act if the person is filing a response;

(B) The period of time described in section 9 of this 2009 Act if the person is filing a motion; or

(C) Former jeopardy attaches, unless a motion for new trial or a motion in arrest of judgment is granted.

(2) Subsection (1) of this section does not apply to:

(a) Remedies that may be effectuated after the disposition of a criminal proceeding;

(b) The right to obtain information described in section 42 (1)(b), Article I of the Oregon Constitution;

(c) The right to receive prompt restitution described in section 42 (1)(d), Article I of the Oregon Constitution;

(d) The right to have a copy of a transcript described in section 42 (1)(e), Article I of the Oregon Constitution; or

(e) Remedies requested in a subsequent criminal proceeding arising after a state or federal court has granted a new trial or sentencing, provided the remedy is not waived pursuant to subsection (1) of this section in the subsequent criminal proceeding.

SECTION 13. (1)(a) Notwithstanding any other provision of law and except as provided in paragraph (b) of this subsection, appellate review of an order issued under section 6, 8 or 11 of this 2009 Act shall be solely as provided in this section and sections 14, 15 and 16 of this 2009 Act.

(b) A defendant who seeks to appeal an order issued under section 6, 8 or 11 of this 2009 Act must do so in the manner provided for appeals in ORS chapter 138. The provisions of this section and sections 14, 15 and 16 of this 2009 Act do not apply to an appeal under ORS chapter 138.

(c) Nothing in sections 1 to 19 of this 2009 Act affects the ability of a defendant to petition for a writ of mandamus.

(2) Jurisdiction for appellate review of an order issued under section 6, 8 or 11 of this 2009 Act is vested originally and exclusively in the Supreme Court.

(3) Subject to section 16 of this 2009 Act, the jurisdiction of the Supreme Court is limited to the order for which appellate review is sought and the trial court retains jurisdiction over all other matters in the criminal proceeding.

(4) Appellate review of an order issued under section 6, 8 or 11 of this 2009 Act shall be as provided in:

(a) Section 14 of this 2009 Act if the order was issued under section 8 or 11 of this 2009 Act in a criminal proceeding in which a defendant is charged with a felony or a person Class A misdemeanor, as that term is defined by rule of the Oregon Criminal Justice Commission, and the order arises from a motion or claim alleging a violation that occurred prior to the pronouncement in open court of the sentence or disposition after a plea, admission or trial in the criminal proceeding.

(b) Section 15 of this 2009 Act in all appeals arising under sections 1 to 19 of this 2009 Act except those described in paragraph (a) of this subsection.

(5) The victim, the prosecuting attorney or any person against whom relief was ordered has standing to seek appellate review of an order unless, after notice and a reasonable opportunity to be heard on the claim or motion that resulted in the order or a related claim or motion, the person seeking appellate review did none of the following:

(a) Inform the court of a claim.

(b) File a response under section 7 (4) of this 2009 Act.

(c) File a motion under section 9 of this 2009 Act.

(d) Participate in a hearing under section 11 of this 2009 Act.

SECTION 14. (1) Appellate review of an order described in section 13 (4)(a) of this 2009 Act must be initiated by filing a notice of interlocutory appeal with the Supreme Court substantially in the form prescribed by rule of the Supreme Court. Review of the order is a matter of right.

(2) The person filing the notice of interlocutory appeal shall be identified as the appellant and the defendant shall be identified as the respondent. Any other person described in subsection (6)(a) to (f) of this section who is a party to the appeal shall be identified as a respondent.

(3) The notice of interlocutory appeal must contain:

(a) A designation of those portions of the trial court record, including oral proceedings, to be included in the record on appeal; and

(b) A statement of why the notice is timely.

(4) The appellant shall include with the notice of interlocutory appeal the following materials:

(a) A copy of the order for which appellate review is sought, which must be attached to the notice.

(b) Excerpts of the record necessary to determine the question presented and the relief sought. An excerpt of record must include a copy of the form described in section 6 (2)(a) of this 2009 Act, if the form was completed and provided to the trial court.

(c) A memorandum of law containing:

(A) A concise but complete statement of facts material to a determination of the question presented and the relief sought; and

(B) Supporting arguments and citations of authority.

(5) The Supreme Court may:

(a) Direct a party to the appeal to supplement the record with a copy of additional parts of the record or a transcript of the parts of the oral proceedings in the trial court necessary to determine the question presented and the relief sought; or

(b) Direct the trial court administrator to forward all or part of the trial court record.

(6) The appellant shall serve a copy of the notice of interlocutory appeal and the accompanying materials described in subsection (4) of this section on the following other persons:

(a) The victim who asserted the claim that resulted in the order being appealed and any victim who asserted a related claim;

(b) Any person who filed a response under section 7 (4) of this 2009 Act to the claim that resulted in the order being appealed or a related claim;

(c) Any person who filed the motion that resulted in the order being appealed or a related motion under section 9 of this 2009 Act;

(d) Any person against whom relief was sought in the hearing that resulted in the order being appealed or a related hearing under section 11 of this 2009 Act;

(e) The prosecuting attorney;

(f) The Attorney General;

(g) The defendant; and

(h) The office of public defense services established under ORS 151.216, if the defendant is represented by appointed counsel.

(7) The appellant shall serve a copy of the notice of interlocutory appeal on:

(a) The trial court administrator; and

(b) The trial court transcript coordinator, if the notice of interlocutory appeal contains a designation of the oral proceedings before the trial court as part of the record on appeal.

(8)(a) Except as otherwise provided in this subsection, the appellant shall serve and file the notice of interlocutory appeal and, if applicable, the accompanying materials described in subsection (4) of this section within seven days after the date the trial court issued the order being appealed.

(b) The appellant shall serve the prosecuting attorney and the Attorney General so that the copy of the notice of interlocutory appeal and accompanying materials are received on the same day the notice is filed with the Supreme Court.

(c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all persons described in subsections (6) and (7) of this section so that the copy of the notice of interlocutory appeal and, if applicable, accompanying materials are received no later than one judicial day after the notice is filed.

(9) Within three days after receipt of a notice of interlocutory appeal that contains a designation of record under subsection (3) of this section, the trial court administrator shall forward to the Supreme Court an audio record of the designated oral proceedings.

(10) If the Supreme Court directs a party to provide a transcript of oral proceedings under subsection (5) of this section, the party shall provide the transcript to the Supreme Court within seven days after the date of the Supreme Court's order.

(11)(a) The following requirements are jurisdictional and may not be waived or extended:

(A) The timely filing of the original notice of interlocutory appeal and accompanying materials described in subsection (4) of this section with the Supreme Court; and

(B) The service of the notice of interlocutory appeal within the time limits described in subsection (8) of this section on all persons identified in subsection (6) of this section.

(b) Failure to timely serve a true and complete copy of the accompanying materials described in subsection (4) of this section is not jurisdictional, provided that the appellant made a good faith effort to do so and substantially complied with those requirements.

(c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss the appeal as to any respondent if the appellant, after receipt of a notice of noncompliance, does not promptly cure a deficiency in the materials or if the failure to timely serve a true and complete copy of the accompanying materials substantially prejudices the respondent's ability to respond to the appeal.

(12) A respondent may file a response, which must be filed within seven days after the date the notice of interlocutory appeal is filed with the Supreme Court.

(13)(a) Except as provided in paragraph (b) of this subsection, the appellant may not file a reply.

(b) If the Supreme Court determines that the case is unusually complex, due to the number of persons involved or the existence of novel questions of law, and the court would benefit from additional briefing, the court may extend the briefing schedule described in this section and allow the appellant to file a reply.

(14) The appellant or respondent may request oral argument. The Supreme Court may grant or deny a request for oral argument or order oral argument on its own motion.

(15) At any time after submission of the appellant's memorandum of law, the Supreme Court, on its own motion or on the motion of the respondent, may summarily affirm the trial court's order, with or without the submission of a response or oral argument, if the Supreme Court determines that the appeal does not present a substantial question of law. A motion for summary affirmance has no effect on the timelines described in this section.

(16)(a) Except as provided in paragraph (b) of this subsection, the Supreme Court shall issue its decision on appeal under this section within 21 days after the date the notice of interlocutory appeal is filed.

(b) The Supreme Court may issue a final decision beyond the 21-day period if the court determines that the ends of justice served by issuing a final decision at a later date outweigh the best interests of the victim, the prosecuting attorney, the defendant, any person against whom relief was ordered and the public.

(c) In making the determination under paragraph (b) of this subsection, the Supreme Court shall consider:

(A) Whether the case is unusually complex, due to the number of persons involved or the existence of novel questions of law, and whether 21 days is an unreasonable amount of time for the court to issue a decision; and

(B) Whether the failure to extend the 21-day period would be likely to result in a miscarriage of justice.

(17) Appellate review under this section is confined to the record. The Supreme Court may not substitute its judgment for that of the trial court as to any issue of fact and shall review challenges to a factual finding for evidence in the record to support the finding. The Supreme Court shall review for errors of law and, when the law delegates discretion to the trial court, determine whether the trial court's exercise of discretion was outside the range of discretion delegated to the trial court.

(18) The Supreme Court may affirm, modify, reverse or remand the trial court's order. The court may reverse or remand the order only if it finds that the order is unlawful in substance or procedure and that the substantial rights of the appellant were prejudiced as a result.

(19) Notwithstanding any other provision of law, a notice of interlocutory appeal and the response described in subsection (12) of this section are filed under this section when those documents are physically received by the Supreme Court or, if the documents are filed electronically, as provided by rule of the Chief Justice of the Supreme Court.

SECTION 15. Appellate review of an order described in section 13 (4)(b) of this 2009 Act shall be as provided in section 14 of this 2009 Act, except that:

(1) The Supreme Court's jurisdiction is discretionary. The court may by rule prescribe the criteria the court will use to decide whether to grant review. The initiating document is a petition for review, but the petition must be accompanied by the same materials described in section 14 (4) of this 2009 Act, and the person seeking review shall be identified as the petitioner.

(2) The respondent may elect not to file a response until after the Supreme Court has decided to accept review, in which case the response must be filed within seven days after the Supreme Court issues an order granting review.

(3) Section 14 (15) of this 2009 Act does not apply to review under this section. The Supreme Court may dismiss a review improvidently granted.

(4)(a) Except as provided in paragraph (b) of this subsection, the Supreme Court shall issue its decision on appeal under this section within 21 days after the date the court issued the order granting review.

(b) The Supreme Court may issue a final decision beyond the 21-day period if the court determines that the ends of justice served by issuing a final decision at a later date outweigh the best interests of the victim, the prosecuting attorney, the defendant, any person against whom relief was ordered and the public.

SECTION 16. (1) The trial court shall stay for a period of 21 days all matters that directly impact, or are directly impacted by, the order on appeal:

(a) Upon receipt of a notice of interlocutory appeal under section 14 of this 2009 Act; or

(b) Upon the issuance of an order granting review under section 15 of this 2009 Act.

(2) The Supreme Court may extend or reduce the length of or vacate the stay on its own motion or on the motion of a victim, prosecuting attorney, defendant or any person against whom relief was ordered.

(3) In making the determination described in subsection (2) of this section, in addition to other factors the Supreme Court considers important, the court shall consider:

(a) The likelihood that the appellant will prevail on appeal in light of the support in fact and law for the appeal;

(b) Whether the appeal is taken in good faith and not for the purpose of delay;

(c) The nature of the harm to the victim, the prosecuting attorney, the defendant, any person against whom relief was ordered and the public that will likely result from the grant or denial of a stay;

(d) The rights guaranteed to the victim, the prosecuting attorney, the defendant and any person against whom relief was ordered under the Oregon Constitution or the United States Constitution and under Oregon statutory and decisional law; and

(e) Whether the defendant is in custody and, if so, whether the defendant has expressly consented to a continuance of the trial under ORS 136.290.

SECTION 17. (1)(a) Prior to the Attorney General's first appearance in an appellate court proceeding in which the State of Oregon is a party and to which section 42 or 43, Article I of the Oregon Constitution, applies, the Attorney General shall determine whether the Department of Justice has taken all reasonably practicable steps to fulfill the rights granted by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the appellate courts.

(b) Unless otherwise provided by rule or order of the Chief Justice of the Supreme Court, the Attorney General shall, in the cases described in paragraph (a) of this subsection, certify the results of that determination to the court simultaneously with the Attorney General's first appearance.

(2) The Attorney General may intervene at any time on behalf of the State of Oregon in any trial or appellate court proceeding arising under sections 1 to 19 of this 2009 Act.

SECTION 18. (1) The Chief Justice of the Supreme Court may, by rule or order, establish requirements and procedures necessary to comply with the provisions of sections 1 to 19 of this 2009 Act.

(2) The Chief Justice of the Supreme Court shall prescribe the forms described in sections 3 (4) and 6 (2)(a) of this 2009 Act. The form described in section 6 (2)(a) of this 2009 Act must allow a victim to designate an alternate mailing address or to substitute a person to receive notice or service on behalf of the victim for the purposes of sections 1 to 19 of this 2009 Act.

SECTION 19. (1) Sections 1 to 19 of this 2009 Act effectuate the provisions of sections 42 and 43, Article I of the Oregon Constitution, for violations that occur in criminal proceedings and do not provide a remedy for violations that occur in any other proceeding. A remedy for

a violation of section 42 or 43, Article I of the Oregon Constitution, in any other proceeding may be enforced by writ of mandamus under ORS 34.105 to 34.240.

(2) Nothing in sections 1 to 19 of this 2009 Act:

(a) Affects the authority granted by law to the prosecuting attorney to assert the public's interest, including but not limited to:

(A) Asserting rights granted to victims by law; and

(B) Investigating and presenting to the court evidence relating to restitution.

(b) Authorizes a court to order the dismissal of a criminal proceeding or to grant a motion for judgment of acquittal, in arrest of judgment or for a new trial.

(c) Reduces a defendant's rights under the United States Constitution or authorizes the suspension of a criminal proceeding if the suspension would violate a right of a defendant guaranteed by the Oregon Constitution or the United States Constitution.

SECTION 20. (1) There is created the Task Force on Victims' Rights Enforcement consisting of the Attorney General and at least nine members appointed as follows:

(a) The Attorney General shall appoint:

(A) Two members employed by or associated with a group advocating for the rights of victims of crime;

(B) A member who represents the Department of Justice Crime Victims' Services Division;

(C) A lawyer routinely engaged in the representation of persons charged with a crime, after consulting with professional organizations serving such lawyers;

(D) A lawyer routinely engaged in prosecuting persons charged with person felony crimes, after consulting with professional organizations serving such lawyers;

(E) A lawyer routinely engaged in prosecuting persons charged with a crime, after consulting with professional organizations serving such lawyers; and

(F) Other persons the Attorney General deems appropriate;

(b) The Chief Justice of the Supreme Court shall appoint:

(A) A person employed by the Judicial Department, other than a judge; and

(B) A judge; and

(c) The executive director of the office of public defense services established under ORS 151.216 shall appoint a person employed by the office of public defense services.

(2) The task force shall review the implementation of sections 1 to 19 of this 2009 Act.

(3) The Attorney General shall serve as chair of the task force and may establish a term of office for the members. The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(4) Members serve at the pleasure of the appointing authority. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(5) The task force shall prepare reports that may include recommendations for legislation designed to improve, in a cost-efficient manner, the protection of rights granted to victims of crime by the Oregon Constitution. The task force shall submit a report to the President of the Senate and the Speaker of the House of Representatives no later than:

(a) January 1, 2011; and

(b) January 1, 2013.

(6) Members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(7) The Department of Justice shall provide staff support to the task force.

(8) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 21. Section 20 of this 2009 Act is repealed on June 30, 2013.

SECTION 22. **(1) The Attorney General may adopt rules to establish a nonjudicial process, independent of the process established in sections 1 to 19 of this 2009 Act and applicable to agencies in the executive branch of state government, district attorneys, juvenile departments and local law enforcement agencies, to receive claims of violations of rights granted to victims of crime in the criminal and juvenile justice systems by law, to determine whether violations have occurred and to make nonbinding recommendations for achieving full compliance with victims' rights laws in the future.**

(2) The Attorney General, in consultation with agencies in the executive branch of state government, district attorneys, juvenile departments and local law enforcement agencies, may promulgate model rules, procedures or policies, applicable only to entities outside of the judicial branch of state government, effectuating rights granted to victims by law. Model rules, procedures or policies are not enforceable by law, but the Attorney General may condition the provision of victim assistance funds or support by the Department of Justice on compliance with such model rules, procedures or policies.

SECTION 23. ORS 40.015 is amended to read:

40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS 305.501;

(b) The small claims department of a circuit court as provided by ORS 46.415; and

(c) The small claims department of a justice court as provided by ORS 55.080.

(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal actions and proceedings and to contempt proceedings except those in which the court may act summarily.

(3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and proceedings.

(4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

(a) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under ORS 40.030.

(b) Proceedings before grand juries, except as required by ORS 132.320.

(c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

(d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150, as required by ORS 137.090 or proceedings under ORS 136.765 to 136.785.

(e) Proceedings to revoke probation, except as required by ORS 137.090.

(f) Issuance of warrants of arrest, bench warrants or search warrants.

(g) Proceedings under ORS chapter 135 relating to conditional release, security release, release on personal recognizance, or preliminary hearings, subject to ORS 135.173.

(h) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2) and 419C.400 (4).

(i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine whether a driving while under the influence of intoxicants diversion agreement should be allowed or terminated.

(j) Proceedings under section 11 of this 2009 Act relating to victims' rights, except for the provisions of ORS 40.105 and 40.115.

SECTION 24. ORS 419C.261 is amended to read:

419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time direct that the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require. When the court directs the amendment of a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court shall make written findings stating the reason for directing the amendment.

(2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition.

(b) If the victim requests notice, the district attorney or juvenile department shall notify the victim of a hearing to amend the petition in advance of the hearing.

(c) When the court sets aside or dismisses a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court shall make written findings stating the reason for setting aside or dismissing the petition.

[*(3) The district attorney or juvenile department must consult the victim regarding plea negotiations if:*]

[*(a) The victim has requested to be consulted regarding plea negotiations;*]

[*(b) The petition alleges the youth committed an act that would constitute a violent felony, as defined in ORS 419A.004, if committed by an adult; and*]

[*(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an admission from the youth.*]

SECTION 25. ORS 147.417 is amended to read:

147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be [*verbal*] **oral** or written. If exercise of any of the rights depends upon the victim making a request, the law enforcement agency shall include in the notice the time period in which the victim is required to make the request. A law enforcement agency satisfies the requirements of this section if the law enforcement agency:

(a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or, in a homicide case, the victim's next of kin; and

(b) Presents, if written notice is given, the notice directly to the victim or sends the notice to the last address given to the law enforcement agency by the victim.

(2) Failure by a law enforcement agency to properly notify the victim as required by this section**:**

(a) Is not grounds for setting aside a conviction [*or withdrawing a plea*].

(b) Does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the Oregon Constitution.

(3) [*However,*] Nothing in **subsection (2) of** this section justifies [*such*] a failure[.] **to properly notify the victim.**

[*(3)(a)*] **(4)(a)** As used in this section, "law enforcement agency" means the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.

(b) The district attorney shall determine if the notice required by this section has been given and, if not, shall provide the notice.

SECTION 26. ORS 419C.273 is amended to read:

419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be present at and, upon request, must be informed in advance of critical stages of the proceedings held in open court when the youth or youth offender will be present.

(b) The victim must be informed of any constitutional rights of the victim. Except as provided in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed of their constitutional rights. [*If a victim requests, the district attorney or juvenile department must support the victim in exercising the victim's constitutional rights.*]

(2)(a) The victim has the right, upon request, to be notified in advance of or to be heard at:

(A) A detention or shelter hearing;

(B) A hearing to review the placement of the youth or youth offender; or

(C) A dispositional hearing.

(b) For a release hearing, the victim has the right:

(A) Upon request, to be notified in advance of the hearing;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the court.

[*(c) Failure to notify the victim of a hearing under this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.*]

(3) If the victim is not present at a critical stage of the proceeding, the court shall ask the district attorney or juvenile department whether the victim requested to be notified of critical stages of the proceedings. If the victim requested to be notified, the court shall ask the district attorney or juvenile department whether the victim was notified of the date, time and place of the hearing. [*The validity of the proceeding is not affected by the failure to notify the victim of a hearing or failure of the victim to appear at a hearing that is a critical stage of the proceeding, including but not limited to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261, 419C.450 or 419C.653.*]

(4) As used in this section:

(a) "Critical stage of the proceeding" means a hearing that:

(A) Affects the legal interests of the youth or youth offender;

(B) Is held in open court; and

(C) Is conducted in the presence of the youth or youth offender.

(b) "Critical stage of the proceeding" includes, but is not limited to:

(A) Detention and shelter hearings;

(B) Hearings to review placements;

(C) Hearings to set or change conditions of release;

(D) Hearings to transfer proceedings or to transfer parts of proceedings;

(E) Waiver hearings;

(F) Adjudication and plea hearings;

(G) Dispositional hearings, including but not limited to restitution hearings;

(H) Review or dispositional review hearings;

(I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;

(J) Probation violation hearings, including probation revocation hearings, when the basis for the alleged violation directly implicates a victim's rights [*or well-being*];

(K) Hearings for relief from the duty to report under ORS 181.823; and

(L) Expunction hearings.

(5) Nothing in this section creates a cause of action for compensation or damages. This section may not be used to invalidate an accusatory instrument[*, ruling of the court*] **or adjudication** or otherwise [*suspend or*] terminate any proceeding at any point after the case is commenced or on appeal.

SECTION 27. ORS 135.245 is amended to read:

135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate security release or to be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) If the magistrate, having given priority to the primary release criteria, decides to release a defendant or to set security, the magistrate shall impose the least onerous condition reasonably likely to ensure the safety of the public and the victim and the person's later appearance and, if the person is charged with an offense involving domestic violence, ensure that the person does not engage in domestic violence while on release. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless:

(a) Release criteria show to the satisfaction of the magistrate that such a release is unwarranted; or

(b) Subsection (6) of this section applies to the person.

(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5)[*(a)*] At the release hearing:

[*(A)*] **(a)** The district attorney has a right to be heard in relation to issues relevant to the release decision; and

[*(B)*] **(b)** The victim has the right:

[*(i)*] **(A)** Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified by the district attorney of the release hearing;

[*(ii)*] **(B)** To appear personally at the hearing; and

[*(iii)*] **(C)** If present, to reasonably express any views relevant to the issues before the magistrate.

[*(b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.*]

(6) If a person refuses to provide a true name under the circumstances described in ORS 135.060 and 135.065, the magistrate may not release the person on personal recognizance or on conditional release. The magistrate may release the person on security release under ORS 135.265 except that the magistrate shall require the person to deposit the full security amount set by the magistrate.

(7) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant.

SECTION 28. ORS 137.545 is amended to read:

137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice Commission for felonies committed on or after November 1, 1989:

(a) The period of probation shall be as the court determines and may, in the discretion of the court, be continued or extended.

(b) The court may at any time discharge a person from probation.

(2) At any time during the probation period, the court may issue a warrant and cause a defendant to be arrested for violating any of the conditions of probation. Any parole and probation officer, police officer or other officer with power of arrest may arrest a probationer without a warrant for violating any condition of probation, and a statement by the parole and probation officer or arresting officer setting forth that the probationer has, in the judgment of the parole and probation officer or arresting officer, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail until the probationer can be brought before the court or until the parole and probation officer or supervisory personnel impose and the offender agrees to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Disposition shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by supervisory personnel. If authorized by supervisory personnel, the disposition shall take place in no more than five judicial days. If the offender does not consent to structured, intermediate sanctions imposed by the parole and probation officer or supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and probation officer, as soon as practicable, but within one judicial day, shall report the arrest or detention to the court that imposed the probation. The parole and probation officer shall promptly submit to the court a report showing in what manner the probationer has violated the conditions of probation.

(3) Except for good cause shown or at the request of the probationer, the probationer shall be brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a violation or revocation hearing or pending transfer to the jurisdiction of another court where the probation was imposed. In lieu of an order that the probationer be held, the magistrate may release the probationer upon the condition that the probationer appear in court at a later date for a probation violation or revocation hearing. If the probationer is being held on an out-of-county warrant, the magistrate may order the probationer released subject to an additional order to the probationer that the probationer report within seven calendar days to the court that imposed the probation.

(4) When a probationer has been sentenced to probation in more than one county and the probationer is being held on an out-of-county warrant for a probation violation, the court may consider consolidation of some or all pending probation violation proceedings pursuant to rules made and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

(a) Upon the motion of the district attorney or defense counsel in the county in which the probationer is held; or

(b) Upon the court's own motion.

(5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any misdemeanor, the court that imposed the probation, after summary hearing, may revoke the probation and:

(A) If the execution of some other part of the sentence has been suspended, the court shall cause the rest of the sentence imposed to be executed.

(B) If no other sentence has been imposed, the court may impose any other sentence which originally could have been imposed.

(b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that imposed the probationary sentence may revoke probation supervision and impose a sanction as provided by rules of the Oregon Criminal Justice Commission.

(6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar days following the arrest or detention of the probationer, the probationer shall be released from custody.

(7) A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon Criminal Justice Commission may be given credit for all time thus served in any order or judgment of confinement resulting from revocation of probation.

(8) In the case of any defendant whose sentence has been suspended but who has not been sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and brought before the court at any time within the maximum period for which the defendant might originally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

(9) If a probationer fails to appear or report to a court for further proceedings as required by an order under subsection (3) of this section, the failure to appear may be prosecuted in the county to which the probationer was ordered to appear or report.

(10) The probationer may admit or deny the violation by being physically present at the hearing or by means of simultaneous electronic transmission as described in ORS 131.045.

(11)[*(a)*] The victim has the right:

[*(A)*] **(a)** Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified [*by the district attorney of any hearing before the court that may result in the revocation of the defendant's probation;*] **of any hearing before the court that may result in the revocation of the defendant's probation for a felony or person Class A misdemeanor. The notification shall be provided by:**

(A) The district attorney if the defendant is not supervised by the supervisory authority or if the defendant is supervised by the supervisory authority and the district attorney initiates a request with the court for a probation violation or revocation hearing.

(B) The supervisory authority if the defendant is supervised by the supervisory authority and the supervisory authority initiates a request with the court for a probation violation or revocation hearing.

[*(B)*] **(b)** To appear personally at the hearing[*; and*]**.**

[*(C)*] **(c)** If present, to reasonably express any views relevant to the issues before the court.

[*(b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.*]

(12) As used in this section:

(a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(b) "Supervisory authority" has the meaning given that term in ORS 144.087.

SECTION 29. ORS 144.108 is amended to read:

144.108. (1) If the violation of post-prison supervision is new criminal activity or if the supervisory authority finds that the continuum of sanctions is insufficient punishment for a violation of the conditions of post-prison supervision, the supervisory authority may:

(a) Impose the most restrictive sanction available, including incarceration in jail;

(b) Request the State Board of Parole and Post-Prison Supervision to impose a sanction under subsection (2) of this section; or

(c) Request the board to impose a sanction under ORS 144.107.

(2) If so requested, the board or its designated representative shall hold a hearing to determine whether incarceration in a jail or state correctional facility is appropriate. Except as otherwise provided by rules of the board and the Department of Corrections concerning parole and post-prison supervision violators, the board may impose a sanction up to the maximum provided by rules of the Oregon Criminal Justice Commission. In conducting a hearing pursuant to this subsection, the board or its designated representative shall follow the procedures and the offender shall have all the rights described in ORS 144.343 and 144.347 relating to revocation of parole.

(3) A person who is ordered to serve a term of incarceration in a jail or state correctional facility as a sanction for a post-prison supervision violation is not eligible for:

(a) Earned credit time as described in ORS 169.110 or 421.121;

(b) Transitional leave as defined in ORS 421.168; or

(c) Temporary leave as described in ORS 169.115 or 421.165 (1987 Replacement Part).

(4) A person who is ordered to serve a term of incarceration in a state correctional facility as a sanction for a post-prison supervision violation shall receive credit for time served on the post-prison supervision violation prior to the board's imposition of the term of incarceration.

(5)(a) The victim has the right:

(A) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified by the board of any hearing before the board that may result in a revocation sanction for a post-prison supervision violation;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the board.

(b) **Except to the extent section 42 or 43, Article I of the Oregon Constitution, grants rights to, and is enforceable by, a victim in a proceeding conducted by the board, the** failure of the board to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

SECTION 30. ORS 144.343 is amended to read:

144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated representative has been informed and has reasonable grounds to believe that a person under its jurisdiction has violated a condition of parole and that revocation of parole may be warranted, the board or its designated representative shall conduct a hearing as promptly as convenient to determine whether there is probable cause to believe a violation of one or more of the conditions of parole has occurred and also conduct a parole violation hearing if necessary. Evidence received and the order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing shall also constitute a waiver of probable cause hearing by the board. The location of the hearing shall be reasonably near the place of the alleged violation or the place of confinement.

(2) The board may:

(a) Reinstate or continue the alleged violator on parole subject to the same or modified conditions of parole;

(b) Revoke parole and require that the parole violator serve the remaining balance of the sentence as provided by law;

(c) Impose sanctions as provided in ORS 144.106; or

(d) Delegate the authority, in whole or in part, granted by this subsection to its designated representative as provided by rule.

(3) Within a reasonable time prior to the hearing, the board or its designated representative shall provide the parolee with written notice which shall contain the following information:

(a) A concise written statement of the suspected violations and the evidence which forms the basis of the alleged violations.

(b) The parolee′s right to a hearing and the time, place and purpose of the hearing.

(c) The names of persons who have given adverse information upon which the alleged violations are based and the right of the parolee to have such persons present at the hearing for the purposes of confrontation and cross-examination unless it has been determined that there is good cause for not allowing confrontation.

(d) The parolee′s right to present letters, documents, affidavits or persons with relevant information at the hearing unless it has been determined that informants would be subject to risk of harm if their identity were disclosed.

(e) The parolee′s right to subpoena witnesses under ORS 144.347.

(f) The parolee′s right to be represented by counsel and, if indigent, to have counsel appointed at board expense if the board or its designated representative determines, after request, that the request is based on a timely and colorable claim that:

(A) The parolee has not committed the alleged violation of the conditions upon which the parolee is at liberty;

(B) Even if the violation is a matter of public record or is uncontested, there are substantial reasons which justify or mitigate the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present; or

(C) The parolee, in doubtful cases, appears to be incapable of speaking effectively on the parolee′s own behalf.

(g) That the hearing is being held to determine:

(A) Whether there is probable cause to believe a violation of one or more of the conditions of parole has occurred; and

(B) If there is probable cause to believe a violation of one or more of the conditions of parole has occurred:

(i) Whether to reinstate parole;

(ii) Whether to continue the alleged violator on parole subject to the same or modified conditions of parole; or

(iii) Whether to revoke parole and require that the parole violator serve a term of imprisonment consistent with ORS 144.346.

(4) At the hearing the parolee shall have the right:

(a) To present evidence on the parolee′s behalf, which shall include the right to present letters, documents, affidavits or persons with relevant information regarding the alleged violations;

(b) To confront witnesses against the parolee unless it has been determined that there is good cause not to allow confrontation;

(c) To examine information or documents which form the basis of the alleged violation unless it has been determined that informants would be subject to risk of harm if their identity is disclosed; and

(d) To be represented by counsel and, if indigent, to have counsel provided at board expense if the request and determination provided in subsection (3)(f) of this section have been made. If an indigent′s request is refused, the grounds for the refusal shall be succinctly stated in the record.

(5) Within a reasonable time after the preliminary hearing, the parolee shall be given a written summary of what transpired at the hearing, including the board′s or its designated representative′s decision or recommendation and reasons for the decision or recommendation and the evidence upon which the decision or recommendation was based. If an indigent parolee′s request for counsel at

board expense has been made in the manner provided in subsection (3)(f) of this section and refused, the grounds for the refusal shall be succinctly stated in the summary.

(6)(a) The parolee may admit or deny the violation without being physically present at the hearing if the parolee appears before the board or its designee by means of simultaneous television transmission allowing the board to observe and communicate with the parolee and the parolee to observe and communicate with the board or by telephonic communication allowing the board to communicate with the parolee and the parolee to communicate with the board.

(b) Notwithstanding paragraph (a) of this subsection, appearance by simultaneous television transmission or telephonic communication shall not be permitted unless the facilities used enable the parolee to consult privately with counsel during the proceedings.

(7) If the board or its designated representative has determined that there is probable cause to believe that a violation of one or more of the conditions of parole has occurred, the hearing shall proceed to receive evidence from which the board may determine whether to reinstate or continue the alleged parole violator on parole subject to the same or modified conditions of parole or revoke parole and require that the parole violator serve a term of imprisonment as provided by ORS 144.346.

(8) At the conclusion of the hearing if probable cause has been determined and the hearing has been held by a member of the board or by a designated representative of the board, the person conducting the hearing shall transmit the record of the hearing, together with a proposed order including findings of fact, recommendation and reasons for the recommendation to the board. The parolee or the parolee's representative shall have the right to file exceptions and written arguments with the board. The right to file exceptions and written arguments may be waived. After consideration of the record, recommendations, exceptions and arguments a quorum of the board shall enter a final order including findings of fact, its decision and reasons for the decision.

(9)(a) The victim has the right:

(A) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified by the board of any hearing before the board that may result in the revocation of the parolee's parole;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the board.

(b) **Except to the extent section 42 or 43, Article I of the Oregon Constitution, grants rights to, and is enforceable by, a victim in a proceeding conducted by the board, the** failure of the board to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

SECTION 31. ORS 419A.004 is amended to read:

419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

(1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

(2) "Child care center" means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.

(3) "Community service" has the meaning given that term in ORS 137.126.

(4) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(5) "Counselor" means a juvenile department counselor or a county juvenile probation officer.

(6) "Court" means the juvenile court.

(7) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

(8) "Court facility" has the meaning given that term in ORS 166.360.

(9) "Department" means the Department of Human Services.

(10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.

(11) "Director" means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

(12) "Guardian" means guardian of the person and not guardian of the estate.

(13) "Indian child" means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.

(15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

(16) "Parent" means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, "legal father" means:

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) "Permanent foster care" means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) "Planned permanent living arrangement" means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) "Public building" has the meaning given that term in ORS 166.360.

(20) "Reasonable time" means a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.

(21) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

(23) "Restitution" has the meaning given that term in ORS 137.103.

(24) "Serious physical injury" means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child's daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

(27) "Sibling" means one of two or more children or wards related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or wards' legal or biological parents.

(28) "Substitute care" means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home or other child caring institution or facility. "Substitute care" does not include care in:

(a) A detention facility, forestry camp or youth correction facility;

(b) A family home that the court has approved as a ward's permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward's care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

(29) "Surrogate" means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

(30) "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

(31) "Victim" means any person determined by the district attorney**, the** [*or*] juvenile department **or the court** to have suffered direct financial, psychological or physical harm as a result of [*an*] **the** act that has brought the youth or youth offender before the juvenile court. When the victim is a minor, "victim" includes the legal guardian of the minor. The youth or youth offender may not be considered the victim. When the victim of the crime cannot be determined, the people of Oregon, as represented by the district attorney, are considered the victims.

(32) "Violent felony" means any offense that, if committed by an adult, would constitute a felony and:

(a) Involves actual or threatened serious physical injury to a victim; or

(b) Is a sexual offense. As used in this paragraph, "sexual offense" has the meaning given the term "sex crime" in ORS 181.594.

(33) "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

(34) "Young person" means a person who has been found responsible except for insanity under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

(35) "Youth" means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

(36) "Youth care center" has the meaning given that term in ORS 420.855.

(37) "Youth offender" means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

SECTION 32. ORS 131.007 is amended to read:

131.007. As used in ORS 40.385, 135.230, [*135.406,*] 135.970, 147.417, 147.419 and 147.421 and in ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context requires otherwise, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a victim.

SECTION 33. ORS 135.432 is amended to read:

135.432. (1)(a) The trial judge [*shall*] **may** not participate in plea discussions, except [*to*]:

(A) **To** inquire of the parties about the status of any discussions;

(B) **To** participate in a tentative plea agreement as provided in subsections (2) to (4) of this section; [*or*]

(C) **To** make the [*inquiry*] **inquiries** required by [*ORS 135.406*] **section 5 of this 2009 Act; or**

(D) As provided in subsection (5) of this section.

(b) Any other judge, at the request of both the prosecution and the defense, or at the direction of the presiding judge, may participate in plea discussions. Participation by a judge in the plea discussion process shall be advisory, and shall in no way bind the parties. If no plea is entered pursuant to these discussions, the advice of the participating judge shall not be reported to the trial judge. If the discussion results in a plea of guilty or no contest, the parties, if they both agree to

do so, may proceed with the plea before a judge involved in the discussion. This plea may be entered pursuant to a tentative plea agreement as provided in subsections (2) to (4) of this section.

(2) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or no contest in the expectation that charge or sentence concessions will be granted, the trial judge, upon request of the parties, may permit the disclosure to the trial judge of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. The trial judge may then advise the district attorney and defense counsel whether the trial judge will concur in the proposed disposition if the information in the presentence report or other information available at the time for sentencing is consistent with the representations made to the trial judge.

(3) If the trial judge concurs, but later decides that the final disposition of the case should not include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise the defendant and allow the defendant a reasonable period of time in which to either affirm or withdraw a plea of guilty or no contest.

(4) When a plea of guilty or no contest is tendered or received as a result of a prior plea agreement, the trial judge shall give the agreement due consideration, but notwithstanding its existence, the trial judge is not bound by it, and may reach an independent decision on whether to grant sentence concessions under the criteria set forth in ORS 135.415.

(5) With the consent of the parties and upon receipt of a written waiver executed by the defendant, the trial judge may participate in plea discussions.

SECTION 34. ORS 136.295 is amended to read:

136.295. (1) ORS 136.290 does not apply to persons charged with crimes which are not releasable offenses under ORS 135.240 or to persons charged with conspiracy to commit murder, or charged with attempted murder, or to prisoners serving sentences resulting from prior convictions.

(2) If the defendant is extradited from another jurisdiction, the 60-day period shall not commence until the defendant enters the State of Oregon, provided that law enforcement authorities from the other jurisdiction and this state have conducted the extradition with all practicable speed. The original 60-day period shall not be extended more than an additional 60 days, except where delay has been caused by the defendant in opposing the extradition.

(3) Any reasonable delay resulting from examination or hearing regarding the defendant's mental condition or competency to stand trial, or resulting from other motion or appeal by the defendant, shall not be included in the 60-day period.

(4)(a) If a victim or witness to the crime in question is unable to testify within the original 60-day period because of injuries received at the time the alleged crime was committed or upon a showing of good cause, the court may order an extension of custody and postponement of the date of the trial of not more than 60 additional days. The court, for the same reason, may order a second extension of custody and postponement of the date of the trial of not more than 60 days, but in no event shall the defendant be held in custody before trial for more than a total of 180 days. A court may grant an extension based upon good cause as described in paragraph (b)(C), (D) or (E) of this subsection only if requested by the defendant or defense counsel or by the court on its own motion.

(b) As used in this subsection, "good cause" means situations in which:

(A) The court failed to comply with ORS 136.145 and the victim is unable to attend the trial;

(B) The victim or an essential witness for either the state or the defense is unable to testify at the trial because of circumstances beyond the control of the victim or witness;

(C) The attorney for the defendant cannot reasonably be expected to try the case within the 60-day period;

(D) The attorney for the defendant has recently been appointed and cannot be ready to try the case within the 60-day period;

(E) The attorney for the defendant is unable to try the case within the 60-day period because of conflicting schedules;

(F) Scientific evidence is necessary and because of the complexity of the procedures it would be unreasonable to have the procedures completed within the 60-day period;

(G) The defendant has filed notice under ORS 161.309 of the defendant's intention to rely upon a defense of insanity, partial responsibility or diminished capacity; [*or*]

(H) The defendant has filed any notice of an affirmative defense within the last 20 days of the 60-day period**; or**

(I) A claim under section 6 of this 2009 Act, or a motion under section 9 of this 2009 Act, relating to victims' rights is pending, the court has considered the factors described in section 10 of this 2009 Act and the court has determined that the trial date should be rescheduled subject to the time limit provided in section 10 of this 2009 Act.

(5) Any period following defendant's arrest in which the defendant is not actually in custody shall not be included in the 60-day computation.

SECTION 35. ORS 135.406 is repealed.

SECTION 36. (1) Sections 1 to 19 of this 2009 Act, the amendments to ORS 40.015, 131.007, 135.245, 135.432, 136.295, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 23 to 34 of this 2009 Act and the repeal of ORS 135.406 by section 35 of this 2009 Act apply to criminal proceedings, as defined in section 1 of this 2009 Act, pending in any court on, or commenced on or after, the effective date of this 2009 Act.

(2) Subsection (1) of this section does not affect the application of section 6 (1) of this 2009 Act to any criminal proceeding, whether commenced before, on or after the effective date of this 2009 Act.

SECTION 37. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate March 4, 2009

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Secretary of Senate

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President of Senate

Passed by House May 14, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State