

D R A F T

SUMMARY

Requires trial court to issue written orders in certain victims' rights proceedings. Designates Attorney General as representative of state for appeals of victims' rights claims.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime victims' rights; amending ORS 147.515, 147.530, 147.535,
3 147.537 and 147.545; and declaring an emergency.

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

5 **SECTION 1.** ORS 147.515 is amended to read:

6 147.515. (1) A victim who wishes to allege a violation of a right granted
7 to the victim in a criminal proceeding by **Article I**, section 42 or 43, [*Article*
8 *I*] of the Oregon Constitution, shall inform the court within 30 days of the
9 date the victim knew or reasonably should have known of the facts sup-
10 porting the allegation. The victim shall describe the facts supporting the
11 allegation and propose a remedy.

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

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

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

16 (3) If the victim informs the court of a facially valid claim on a form
17 under subsection (2)(a) of this section, the court shall promptly issue the
18 order to show cause described in ORS 147.517.

19 (4) If the victim informs the court of a facially valid claim orally under

1 subsection (2)(b) of this section and the court determines:

2 (a) That each person entitled to notice of the claim and a reasonable op-
3 portunity to be heard is present, the court shall hold a hearing under ORS
4 147.530 as soon as practicable; or

5 (b) That any person entitled to notice of the claim and a reasonable op-
6 portunity to be heard is not present, the court shall issue the order to show
7 cause described in ORS 147.517.

8 (5) If the court determines that the victim has not alleged a facially valid
9 claim, the court shall enter [*an*] **a written** order dismissing the claim. The
10 order must:

11 (a) Include the reasons the claim was dismissed; **and**

12 (b) Be without prejudice to file, within seven days from the date the vic-
13 tim receives the **written** order dismissing the claim, a corrected claim for
14 the sole purpose of correcting the deficiency identified by the court. [*; and*]

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

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

22 **SECTION 2.** ORS 147.530 is amended to read:

23 147.530. (1) A hearing on a claim, a response filed under ORS 147.517 (4)
24 or a motion filed under ORS 147.522 shall be conducted in accordance with
25 this section.

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

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

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

1 (a) Is entitled to relief, the court shall, after giving due consideration to
2 the requested relief, issue [*an*] **a written** order.

3 (b) Is not entitled to relief or that the Oregon Constitution or the United
4 States Constitution prohibits all appropriate relief, the court shall issue
5 [*an*] **a written** order denying relief.

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

7 (a) Be issued within seven days from the date [*the court issued an order*
8 *to show cause under ORS 147.517, if an order to show cause was issued*] **of**
9 **the hearing held pursuant to this section**, unless the court finds good
10 cause to issue the order at a later date.

11 (b) Except as provided in ORS 147.517 (4)(b)(B), include the reasons relief
12 was granted or denied.

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

17 (6) The court shall provide a copy of the order issued under subsection
18 (4) of this section to the victim, the prosecuting attorney, the defendant, any
19 person who filed a response under ORS 147.517 (4) and any person against
20 whom relief was ordered at the mailing address provided under ORS 147.517
21 (1)(a).

22 **SECTION 3.** ORS 147.535 is amended to read:

23 147.535. (1)(a) Notwithstanding any other provision of law and except as
24 provided in paragraph (b) of this subsection, appellate review of an order
25 issued under ORS 147.515, 147.520 or 147.530 shall be solely as provided in
26 this section and ORS 147.537, 147.539 and 147.542.

27 (b) A defendant who seeks to appeal an order issued under ORS 147.515,
28 147.520 or 147.530 must do so in the manner provided for appeals in ORS
29 chapter 138. The provisions of this section and ORS 147.537, 147.539 and
30 147.542 do not apply to an appeal under ORS chapter 138.

31 (c) Nothing in ORS 147.500 to 147.550 affects the ability of a defendant

1 to petition for a writ of mandamus.

2 (2) Jurisdiction for appellate review of an order issued under ORS 147.515,
3 147.520 or 147.530 is vested originally and exclusively in the Supreme Court.

4 (3) Subject to ORS 147.542, the jurisdiction of the Supreme Court is lim-
5 ited to the order for which appellate review is sought and the trial court
6 retains jurisdiction over all other matters in the criminal proceeding.

7 (4) Appellate review of an order issued under ORS 147.515, 147.520 or
8 147.530 shall be as provided in:

9 (a) ORS 147.537 if the order was issued under ORS 147.520 or 147.530 in
10 a criminal proceeding in which a defendant is charged with a felony or a
11 person Class A misdemeanor, as that term is defined by rule of the Oregon
12 Criminal Justice Commission, and the order arises from a motion or claim
13 alleging a violation that occurred prior to the pronouncement in open court
14 of the sentence or disposition after a plea, admission or trial in the criminal
15 proceeding.

16 (b) ORS 147.539 in all appeals arising under ORS 147.500 to 147.550 except
17 those described in paragraph (a) of this subsection.

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

23 (a) Inform the court of a claim.

24 (b) File a response under ORS 147.517 (4).

25 (c) File a motion under ORS 147.522.

26 (d) Participate in a hearing under ORS 147.530.

27 **(6) Pursuant to ORS 180.060, the Attorney General shall appear for**
28 **the state in all appeals under this section and ORS 147.537, 147.539 and**
29 **147.542.**

30 **SECTION 4.** ORS 147.537 is amended to read:

31 147.537. (1) Appellate review of an order described in ORS 147.535 (4)(a)

1 must be initiated by filing a notice of interlocutory appeal with the Supreme
2 Court substantially in the form prescribed by rule of the Supreme Court.
3 Review of the order is a matter of right.

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

8 (3) The notice of interlocutory appeal must contain:

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

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

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

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

16 (b) Excerpts of the record necessary to determine the question presented
17 and the relief sought. An excerpt of record must include a copy of the form
18 described in ORS 147.515 (2)(a), if the form was completed and provided to
19 the trial court.

20 (c) A memorandum of law containing:

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

23 (B) Supporting arguments and citations of authority.

24 (5) The Supreme Court may:

25 (a) Direct a party to the appeal to supplement the record with a copy of
26 additional parts of the record or a transcript of the parts of the oral pro-
27 ceedings in the trial court necessary to determine the question presented and
28 the relief sought; or

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

31 (6) The appellant shall serve a copy of the notice of interlocutory appeal

1 and the accompanying materials described in subsection (4) of this section
2 on the following other persons:

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

5 (b) Any person who filed a response under ORS 147.517 (4) to the claim
6 that resulted in the order being appealed or a related claim;

7 (c) Any person who filed the motion that resulted in the order being ap-
8 pealed or a related motion under ORS 147.522;

9 (d) Any person against whom relief was sought in the hearing that re-
10 sulted in the order being appealed or a related hearing under ORS 147.530;

11 (e) The prosecuting attorney;

12 (f) The Attorney General;

13 (g) The defendant; and

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

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

18 (a) The trial court administrator; and

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

22 (8)(a) Except as otherwise provided in this subsection, the appellant shall
23 serve and file the notice of interlocutory appeal and, if applicable, the ac-
24 companying materials described in subsection (4) of this section within seven
25 days after the date the trial court [*issued*] **entered** the order being appealed.

26 **(b) An appellant who seeks to appeal an order issued under ORS**
27 **147.530 and who was not provided with a copy of the order as required**
28 **by ORS 147.530 (6) may serve and file the notice of interlocutory appeal**
29 **and, if applicable, the accompanying materials described in subsection**
30 **(4) of this section within seven days after the date of receiving a copy**
31 **of the order.**

1 [(b)] (c) The appellant shall serve the prosecuting attorney and the At-
2 torney General so that the copy of the notice of interlocutory appeal and
3 accompanying materials are received on the same day the notice is filed with
4 the Supreme Court.

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

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

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

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

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

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

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

30 (c) Notwithstanding paragraph (b) of this subsection, the Supreme Court
31 may dismiss the appeal as to any respondent if the appellant, after receipt

1 of a notice of noncompliance, does not promptly cure a deficiency in the
2 materials or if the failure to timely serve a true and complete copy of the
3 accompanying materials substantially prejudices the respondent's ability to
4 respond to the appeal.

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

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

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

15 (14) The appellant or respondent may request oral argument. The Su-
16 preme Court may grant or deny a request for oral argument or order oral
17 argument on its own motion.

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

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

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

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

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

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

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

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

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

24 (20) In addition to any other method authorized by law, service under this
25 section may be accomplished by electronic mail or facsimile transmission, in
26 a manner consistent with any applicable rules of appellate procedure.

27 **SECTION 5.** ORS 147.545 is amended to read:

28 147.545. (1)(a) Prior to the Attorney General's first appearance in an ap-
29 pellate court proceeding in which the State of Oregon is a party and to
30 which **Article I**, section 42 or 43, [*Article I*] of the Oregon Constitution,
31 applies, the Attorney General shall determine whether the Department of

1 Justice has taken all reasonably practicable steps to fulfill the rights granted
2 by **Article I**, sections 42 and 43, [*Article I*] of the Oregon Constitution, to
3 the victim of the crime in the appellate courts.

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

8 (2) The Attorney General may intervene at any time on behalf of the State
9 of Oregon in any trial [*or appellate*] court proceeding arising under ORS
10 147.500 to 147.550.

11 **SECTION 6. This 2013 Act being necessary for the immediate pres-**
12 **ervation of the public peace, health and safety, an emergency is de-**
13 **clared to exist, and this 2013 Act takes effect on its passage.**

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