

A-Engrossed
House Bill 2399

Ordered by the House April 17
Including House Amendments dated April 17

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Authorizes court to impose compensatory fine without imposing any other fine as part of criminal sentence.]

[Authorizes state to appeal order made prior to trial determining that defendant's out of court statement constitutes confession requiring corroboration.] Provides that state appeal from *[confession order or]* order allowing demurrer must be decided by appellate court within prescribed time limits.

Provides that, for purposes of naming defendant in post-conviction relief petition, petitioner released on post-prison supervision shall be deemed to be imprisoned in institution from which petitioner was released. Corrects terminology in statute regulating contact with victims during post-conviction relief proceedings. Sets time limits for filing notice of cross-appeal in post-conviction relief proceeding. Specifies that Attorney General represents defendant on appeal from post-conviction relief judgment.

Provides that, for purposes of theft offense, when value of property cannot reasonably be ascertained, value is presumed to be less than \$100.

[Exempts charge of conspiracy or endeavor to commit pattern of racketeering activity from specific pleading requirements.]

Requires financial institution to respond electronically to electronic request from law enforcement agency for information concerning customer account information.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 138.261, 138.560, 138.625, 138.650,
3 164.115 and 192.603.

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

5 **SECTION 1.** ORS 138.261 is amended to read:

6 138.261. (1) When a defendant is charged with a felony and is in custody pending an appeal un-
7 der ORS 138.045 (1)(a), **(b)** or (d), the Court of Appeals and the Supreme Court shall decide the ap-
8 peal within the time limits prescribed by this section.

9 (2)(a) Pursuant to rules adopted by the Court of Appeals, the Court of Appeals shall ensure that
10 the appeal is fully briefed no later than 90 days after the date the transcript is settled under ORS
11 19.370.

12 (b) Notwithstanding paragraph (a) of this subsection, the Court of Appeals may allow more than
13 90 days after the transcript is settled to fully brief the appeal if it determines that the ends of justice
14 served by allowing more time outweigh the best interests of the public, the parties and the victim
15 of the crime.

16 (3) The Court of Appeals shall decide the appeal no later than 180 days after the date of oral
17 argument or, if the appeal is not orally argued, the date that the State Court Administrator delivers
18 the briefs to the Court of Appeals for decision. Any reasonable period of delay incurred by the Court
19 of Appeals on its own motion or at the request of one of the parties is excluded from the 180-day

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 period within which the Court of Appeals is required to issue a decision if the Court of Appeals
2 determines that the ends of justice served by a decision on a later date outweigh the best interests
3 of the public, the parties and the victim of the crime.

4 (4)(a) In determining whether to allow more than 90 days after the transcript is settled to fully
5 brief the appeal or more than 180 days after oral argument or delivery of the briefs to decide the
6 appeal, the Court of Appeals shall consider whether:

7 (A) The appeal is unusually complex or presents novel questions of law so that the prescribed
8 time limit is unreasonable; and

9 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

10 (b) If the Court of Appeals decides to allow additional time to fully brief the appeal or to decide
11 the appeal, the Court of Appeals shall state the reasons for doing so in writing and shall serve a
12 copy of the writing on the parties.

13 (5) If the Supreme Court allows review of a decision of the Court of Appeals on an appeal de-
14 scribed in subsection (1) of this section, the Supreme Court shall issue its decision on review no
15 later than 180 days after the date of oral argument or, if the review is not orally argued, the date
16 the State Court Administrator delivers the briefs to the Supreme Court for decision. Any reasonable
17 period of delay incurred by the Supreme Court on its own motion or at the request of one of the
18 parties is excluded from the 180-day period within which the Supreme Court is required to issue a
19 decision if the Supreme Court determines that the ends of justice served by a decision on a later
20 date outweigh the best interests of the public, the parties and the victim of the crime.

21 (6) In an appeal by the state under ORS 138.045 (2), the Supreme Court shall issue its decision
22 no later than one year after the date of oral argument or, if the appeal is not orally argued, the date
23 that the State Court Administrator delivers the briefs to the Supreme Court for decision.

24 (7)(a) In determining whether to allow more than 180 days after oral argument or delivery of the
25 briefs to decide the review, the Supreme Court shall consider whether:

26 (A) The review is unusually complex or presents novel questions of law so that the prescribed
27 time limit is unreasonable; and

28 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

29 (b) If the Supreme Court decides to allow additional time to decide the review, the Supreme
30 Court shall state the reasons for doing so in writing and shall serve a copy of the writing on the
31 parties.

32 (8) Failure of the Court of Appeals or the Supreme Court to decide an appeal or review within
33 the time limits prescribed in this section is not a ground for dismissal of the appeal or review.

34 (9) Any delay sought or acquiesced in by the defendant does not count against the state with
35 respect to any statutory or constitutional right of the defendant to a speedy trial.

36 **SECTION 2.** ORS 138.560 is amended to read:

37 138.560. (1) A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be
38 commenced by filing a petition with the clerk of the circuit court for the county in which the
39 petitioner is imprisoned or, if the petitioner is not imprisoned, with the clerk of the circuit court for
40 the county in which the petitioner's conviction and sentence was rendered. Except as otherwise
41 provided in ORS 138.590, the petitioner must pay the filing fee established under ORS 21.135 at the
42 time of filing a petition under this section. If the petitioner prevails, the petitioner shall recover the
43 fee pursuant to the Oregon Rules of Civil Procedure. The clerk of the court in which the petition
44 is filed shall enter and file the petition and bring it promptly to the attention of such court. A copy
45 of the petition need not be served by petitioner on the defendant, but, in lieu thereof, the clerk of

1 the court in which the petition is filed shall immediately forward a copy of the petition to the At-
2 torney General or other attorney for the defendant named in ORS 138.570.

3 (2) For the purposes of ORS 138.510 to 138.680, a person released on parole, **post-prison**
4 **supervision** or conditional pardon shall be deemed to be imprisoned in the institution from which
5 the person [*is so*] **was** released.

6 (3) Except when petitioner's conviction was for a misdemeanor, the release of the petitioner
7 from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680
8 shall not cause the proceedings to become moot. Such release of petitioner shall not change the
9 venue of the proceedings out of the circuit court in which the proceedings were commenced and
10 shall not affect the power of such court to transfer the proceedings as provided in subsection (4)
11 of this section.

12 (4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the
13 circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the
14 petition can be more expeditiously conducted in the county in which the petitioner was convicted
15 and sentenced, the circuit court upon its own motion or the motion of a party may order the
16 petitioner's case to be transferred to the circuit court for the county in which petitioner's conviction
17 and sentence were rendered. The court's order is not reviewable by any court of this state.

18 (5) When a petitioner who is imprisoned in a Department of Corrections institution is trans-
19 ferred to another Department of Corrections institution, the circuit court in which a post-conviction
20 relief proceeding is pending may deny a motion for a change of venue to the county where the
21 petitioner is transferred. The court's order is not reviewable by any court of this state.

22 **SECTION 3.** ORS 138.625 is amended to read:

23 138.625. (1) A petitioner in a post-conviction relief proceeding may not compel a victim to testify,
24 either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court al-
25 lowing a subpoena.

26 (2) A copy of the motion for a subpoena under this section must be served on the counsel for
27 the defendant.

28 (3) The court may not grant an order allowing a subpoena under this section unless the
29 petitioner can demonstrate good cause by showing that:

- 30 (a) The victim's testimony is material to the post-conviction relief proceeding;
- 31 (b) The testimony is favorable to the petitioner; and
- 32 (c) The testimony was not introduced at trial.

33 (4) If the court grants an order allowing a subpoena under this section, upon a request by the
34 victim for no personal contact between the parties, the court may allow the victim to appear by
35 telephone or other communication device approved by the court.

36 (5) If contacted by the [*defense*] **petitioner** or any agent of the [*defense*] **petitioner**, the victim
37 must be clearly informed by the [*defense*] **petitioner** or other contacting agent, either in person or
38 in writing, of the identity and capacity of the person contacting the victim, that the victim does not
39 have to talk to the [*defendant's*] **petitioner's** attorney, or other agents of the [*defendant*]
40 **petitioner**, or provide other discovery unless the victim wishes, and that the victim may have a
41 district attorney, assistant attorney general or other attorney or advocate present during any
42 interview or other contact.

43 (6) As used in this section, "victim" has the meaning given that term in ORS 135.970.

44 **SECTION 4.** ORS 138.650 is amended to read:

45 138.650. (1) Either the petitioner or the defendant may appeal to the Court of Appeals within

1 30 days after the entry of a judgment on a petition pursuant to ORS 138.510 to 138.680. The manner
2 of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall
3 be the same as that provided by law for appeals in criminal actions, except that:

4 (a) The trial court may provide that the transcript contain only such evidence as may be mate-
5 rial to the decision of the appeal; and

6 (b) With respect to ORS 138.081 (1), if petitioner appeals, petitioner shall cause the notice of
7 appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause
8 the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of
9 record, on petitioner.

10 (2)(a) Upon motion of the petitioner, the Court of Appeals shall grant the petitioner leave to file
11 a notice of appeal after the time limit described in subsection (1) of this section if:

12 (A) The petitioner, by clear and convincing evidence, shows that the failure to file a timely no-
13 tice of appeal is not attributable to the petitioner personally; and

14 (B) The petitioner shows a colorable claim of error in the proceeding from which the appeal is
15 taken.

16 (b) The request for leave to file a notice of appeal after the time limit described in subsection
17 (1) of this section shall be filed no later than 90 days after entry of the judgment from which the
18 petitioner seeks to appeal and shall be accompanied by the notice of appeal sought to be filed. A
19 request for leave under this subsection may be filed by mail. The date of filing shall be the date of
20 mailing if the request is mailed as provided in ORS 19.260.

21 (c) The Court of Appeals may not grant relief under this subsection unless the defendant has
22 received notice of and an opportunity to respond to the petitioner's request for relief.

23 **(3) A party cross-appealing shall serve and file the notice of cross-appeal:**

24 **(a) Within 10 days of the expiration of the time allowed in subsection (1) of this section;**
25 **or**

26 **(b) If the petitioner's notice of appeal is filed pursuant to subsection (2) of this section,**
27 **within 10 days of the expiration of the time allowed in subsection (2) of this section.**

28 [(3)] (4) An appeal under this section taken by the defendant stays the effect of the judgment.
29 If the petitioner is incarcerated, the trial court may stay the petitioner's sentence pending the
30 defendant's appeal and order conditional release or security release, in accordance with ORS 135.230
31 to 135.290, only if:

32 (a) The post-conviction court's judgment vacates the judgment of conviction or reduces the
33 sentence or sentences imposed upon conviction;

34 (b) The petitioner has completed any other sentence of incarceration to which the petitioner is
35 subject; and

36 (c) The petitioner otherwise would be entitled to immediate release from incarceration under the
37 court's judgment.

38 **(5) In an appeal under this section or to the United States Supreme Court, the Attorney**
39 **General shall represent the defendant.**

40 **SECTION 5.** ORS 164.115 is amended to read:

41 164.115. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be as-
42 certained as follows:

43 (1) Except as otherwise specified in this section, value means the market value of the property
44 at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of re-
45 placement of the property within a reasonable time after the crime.

1 (2) Whether or not they have been issued or delivered, certain written instruments, not including
2 those having a readily ascertainable market value, shall be evaluated as follows:

3 (a) The value of an instrument constituting an evidence of debt, including, but not limited to, a
4 check, draft or promissory note, shall be considered the amount due or collectible thereon or
5 thereby.

6 (b) The value of any other instrument which creates, releases, discharges or otherwise affects
7 any valuable legal right, privilege or obligation shall be considered the greatest amount of economic
8 loss which the owner might reasonably suffer because of the loss of the instrument.

9 (3) The value of a gambling chip, token, imitation currency or similar device is its face value.

10 (4) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS
11 496.705.

12 (5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an
13 amount less than [\$50] **\$100** in a case of theft, and less than \$500 in any other case.

14 (6) The value of single theft transactions may be added together if the thefts were committed:

15 (a) Against multiple victims by similar means within a 30-day period; or

16 (b) Against the same victim, or two or more persons who are joint owners, within a 180-day
17 period.

18 **SECTION 6.** ORS 192.603 is amended to read:

19 192.603. (1) **As used in this section:**

20 (a) **“Account information” means, whether or not the financial institution has an account**
21 **under a particular customer’s name, the number of customer account items dishonored or**
22 **that created overdrafts, dollar volume of dishonored items and items that when paid created**
23 **overdrafts, a statement explaining any credit arrangement between the financial institution**
24 **and the customer to pay overdrafts, dates and amounts of deposits and debits to a**
25 **customer’s account, copies of deposit slips and deposited items, the account balance on such**
26 **dates, a copy of the customer’s signature card and the dates the account opened or closed.**

27 (b) **“Secure electronic message” means an electronic message that is encrypted or oth-**
28 **erwise transmitted in a manner that is reasonably calculated to prevent accidental, unlawful**
29 **or unauthorized disclosure or access to parties not authorized to receive or access the elec-**
30 **tronic message.**

31 [(1)] (2) When a police or sheriff’s department or district attorney’s office in this state requests
32 account information from a financial institution to assist in a criminal investigation, the financial
33 institution shall supply a statement setting forth the requested account information with respect to
34 a customer **or a customer** account specified by the police or sheriff’s department or district
35 attorney’s office, for a period of up to three months prior to and three months following the date
36 of occurrence of the account transaction giving rise to the criminal investigation. The disclosure
37 statement required under this subsection may include only account information as defined in sub-
38 section [(2)] (1) of this section. **If the police or sheriff’s department or district attorney’s office**
39 **makes the request by sending a secure electronic message to the financial institution, the**
40 **financial institution shall respond to the request in a secure electronic message.** The police
41 or sheriff’s department or district attorney’s office requesting the information shall, within 24 hours
42 of making the request, confirm the request in a written or **secure** electronic message delivered or
43 mailed to the financial institution, setting forth the nature of the account information sought, the
44 time period for which account information is sought, and that the information has been requested
45 pursuant to a criminal investigation.

1 *[(2) As used in this section, “account information” means, whether or not the financial institution*
2 *has an account under a particular customer’s name, the number of customer account items dishonored*
3 *or which created overdrafts, dollar volume of dishonored items and items which when paid created*
4 *overdrafts, a statement explaining any credit arrangement between the financial institution and the*
5 *customer to pay overdrafts, dates and amounts of deposits and debits to a customer’s account, copies*
6 *of deposit slips and deposited items, the account balance on such dates, a copy of the customer’s sig-*
7 *nature card and the dates the account opened or closed.]*

8 **SECTION 7. (1) The amendments to ORS 164.115 by section 5 of this 2019 Act apply to**
9 **crimes committed on or after the effective date of this 2019 Act.**

10 **(2) The amendments to ORS 138.261 by section 1 of this 2019 Act apply to appeals taken**
11 **on or after the effective date of this 2019 Act for which the time limit in ORS 138.071 has**
12 **not expired.**

13 **(3) The amendments to ORS 138.650 by section 4 of this 2019 Act apply to proceedings in**
14 **which the notice of appeal is filed on or after the effective date of this 2019 Act.**

15