

Chapter 147

2015 EDITION

Victims of Crime and Acts of Mass Destruction

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**COMPENSATION OF CRIME VICTIMS
(General Provisions)**

147.005 Definitions. As used in ORS 147.005 to 147.367 unless the context requires otherwise:

(1) "Applicant" means:

(a) Any victim of a compensable crime who applies to the Department of Justice for compensation under ORS 147.005 to 147.367;

(b) Any person who was a dependent of a deceased victim at the time of the death of that victim;

(c) Any person who is a survivor of a deceased victim; or

(d) Any person eligible for compensation under ORS 147.025.

(2) "Board" means the Workers' Compensation Board.

(3) "Child" means an unmarried person who is under 18 years of age and includes a posthumous child, stepchild or an adopted child.

(4) "Compensable crime" means abuse of corpse in any degree or an intentional, knowing, reckless or criminally negligent act that results in injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state.

(5) "Counseling" has the meaning given that term by the department by rule.

(6) "Dependent" means such relatives of a deceased victim who wholly or partially were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

(7) "Department" means the Department of Justice.

(8) "Funeral expenses" means expenses of the funeral, burial, cremation or other chosen method of interment, including plot or tomb and other necessary incidents to the disposition of the remains and also including, in the case of abuse of corpse in any degree, reinterment.

(9) "Injury" means abuse of a corpse or actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock.

(10) "International terrorism" means activities that:

(a) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;

(b) Appear to be intended to:

(A) Intimidate or coerce a civilian population;

(B) Influence the policy of a government by intimidation or coercion; or

(C) Affect the conduct of a government by assassination or kidnapping; and

(c) Occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

(11) "Involved in the hearing" and "involved in the oral argument" have the meaning given those terms by the department by rule.

(12) "Law enforcement official" means a sheriff, constable, marshal, municipal police officer or member of the Oregon State Police and such other persons as may be designated by law as a peace officer.

(13) "Relative" means a person related to the victim within the third degree as determined by the common law, a spouse, or an individual related to the spouse within the third degree as so determined and includes an individual in an adoptive relationship.

(14) "Survivor" means any spouse, parent, grandparent, guardian, sibling, child or other immediate family member or household member of a deceased victim.

(15) "Victim" means:

(a) A person:

(A) Killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person;

(B) Killed or injured in this state while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable person under the circumstances;

(C) Killed or injured in this state while assisting a law enforcement official to apprehend a person who has perpetrated a crime or to prevent the perpetration of any such crime, if that assistance was in response to the express request of the law enforcement official;

(D) Killed or injured in another state as a result of a criminal episode that began in this state;

(E) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated or attempted against the person in a state, within the United States, without a reciprocal crime victims' compensation program; or

(F) Who is an Oregon resident killed or injured by an act of international terrorism committed outside the United States; or

(b) In the case of abuse of corpse in any degree, the corpse or a relative of the corpse. [1977 c.376 §1; 1985 c.552 §4; 1987 c.770 §1; 1989 c.542 §1; 1993 c.294 §7; 1997 c.289 §1; 2003 c.351 §1; 2011 c.125 §5; 2013 c.720 §8]

147.010 [Amended by 1973 c.32 §1; renumbered 133.743]

147.015 Eligibility for compensation; generally. (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

(a) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime that has resulted in or may result in a compensable loss;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the Department of Justice finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant's failure to cooperate was for good cause;

(d) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;

(e) The death or injury to the victim was not substantially attributable to the wrongful act of the victim or substantial provocation of the assailant of the victim; and

(f) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the department:

(A) Within one year of the date of the injury to the victim; or

(B) Within such further extension of time as the department for good cause shown, allows.

(2) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005 is prima facie evidence of good cause for the victim's failure to notify law enforcement in a timely manner under subsection (1)(b) of this section, or for failure to cooperate with law enforcement under subsection (1)(c) of this section. [1977 c.376 §3; 1987 c.770 §2; 1989 c.542 §2; 1991 c.862 §2; 1997 c.288 §1; 2011 c.125 §3; 2013 c.720 §9]

147.020 [Renumbered 133.747]

147.025 Eligibility of person not victim or survivor or dependent of deceased victim. (1) Notwithstanding that a person is not a victim or a dependent of a deceased victim

under ORS 147.015 (1)(a), the person is eligible for compensation for reasonable medical expenses for the victim and for reasonable funeral expenses of the deceased victim if the person:

(a) Paid or incurred such expenses; and

(b) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b) to (f) are met.

(2) Notwithstanding that a person is not a survivor or dependent of a deceased victim under ORS 147.015 (1)(a), the person is eligible for compensation for reasonable counseling expenses up to a maximum amount of \$500 if the person:

(a) Paid or incurred such expenses;

(b) Was a friend or acquaintance of the victim;

(c) Was the first person to discover the corpse of the victim; and

(d) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b) to (f) are met.

(3) Notwithstanding that a person is not a victim or a survivor or dependent of a deceased victim under ORS 147.015 (1)(a), the person is eligible for the compensation described in ORS 147.035 (7) and (8) if:

(a) The person is the personal representative, as defined by the Department of Justice by rule, of a victim or of a survivor or dependent of a deceased victim;

(b) The person is involved in the hearing or oral argument in lieu of the victim, survivor or dependent; and

(c) The person files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b) to (f) are met.

(4) The Department of Justice may pay directly to the provider of the services compensation for medical, funeral or counseling expenses incurred by the person. [1977 c.376 §4; 1987 c.770 §3; 2003 c.353 §1; 2011 c.125 §4; 2013 c.720 §15]

147.030 [Renumbered 133.753]

147.035 Compensable losses; expiration of claim; rules. (1)(a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be awarded under ORS 147.005 to 147.367 only for losses described in this section.

(b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and the survivors and dependents of a deceased victim is \$47,000.

(c) When a compensable crime results in:

(A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are compensable.

(B) Death to a victim, the losses described in subsections (3), (4), (6), (7) and (8) of this section are compensable.

(2) When a claim for compensation is filed in a case of injury, compensation may be awarded for:

(a) The victim's reasonable medical and hospital expenses, including counseling expenses, up to a maximum amount of \$20,000;

(b) Loss of the victim's earnings, at a maximum rate of \$400 per week, up to a maximum amount of \$20,000;

(c) The victim's rehabilitation expenses, up to a maximum amount of \$4,000; and

(d) Expenses related to transportation for the victim's medical care or counseling, at a rate determined by the Department of Justice, up to a maximum amount of \$3,000, when:

(A) The medical care or counseling is compensable under this section;

(B) The medical care or counseling is provided more than 30 miles away from the victim's residence; and

(C) Adequate medical care or counseling is not available in closer proximity to the victim's residence.

(3) When a claim for compensation is filed in a case of death, compensation may be awarded for:

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000;

(b) The victim's reasonable medical and hospital expenses, up to a maximum amount of \$20,000;

(c) Loss of support to the dependents of the victim, at a maximum rate of \$400 per week, up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection (2)(b) of this section;

(d) Reasonable counseling expenses for the survivors of a deceased victim, up to a maximum amount of \$20,000 for each deceased victim; and

(e) Expenses related to transportation for a survivor's or a dependent's counseling, at a rate determined by the department, up to a maximum amount of \$3,000, when:

(A) The counseling is compensable under this section;

(B) The counseling is provided more than 30 miles away from the survivor's or dependent's residence; and

(C) Adequate counseling is not available in closer proximity to the survivor's or dependent's residence.

(4) When a claim for compensation is filed in a case of:

(a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are compensable up to a maximum amount of \$20,000, less any amounts awarded for the victim's medical or hospital expenses under subsection (2)(a) of this section.

(b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who witnessed the domestic violence are compensable up to a maximum amount of \$10,000.

(c) International terrorism, the counseling expenses of a relative of the victim are compensable up to a maximum amount of \$1,000.

(5) Compensation may not be awarded under ORS 147.005 to 147.367 for pain and suffering or property damage.

(6) Notwithstanding subsections (2) to (5) of this section, when a claim for compensation is filed in a case of abuse of corpse in the first degree as defined in ORS 166.087 or abuse of corpse in the second degree as defined in ORS 166.085, compensation may be awarded for one or both of the following:

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000.

(b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000 for each incident.

(7) If the case against the assailant of the victim is under direct or collateral review and the victim, survivor or dependent is involved in the hearing or oral argument, compensation may be awarded for:

(a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of \$5,000; and

(b) Other expenses related to the review, including transportation and lodging necessary for the victim, survivor or dependent to be involved in hearings and oral arguments, up to a maximum amount of \$3,000.

(8) If the assailant of the victim has a hearing scheduled before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board and the victim, survivor or dependent is involved in the hearing, compensation may be awarded for:

(a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of \$5,000; and

(b) Other expenses related to the hearing, including transportation and lodging necessary for the victim, survivor or dependent to be involved in the hearing, up to a maximum amount of \$3,000.

(9) A claim for compensation expires and no further payments may be made with regard to the claim:

(a) When three years have elapsed from the entry of a determination order under ORS 147.135; or

(b) If the victim, survivor or dependent attains 21 years of age after the date described in paragraph (a) of this subsection, when the victim, survivor or dependent attains 21 years of age.

(10) Notwithstanding subsection (9) of this section:

(a) In cases of homicide, a claim for reasonable counseling expenses for survivors may continue until five years have elapsed from the date of the determination order.

(b) Claims described in subsection (7) of this section may be filed each time an assailant's case is under direct or collateral review and expire:

(A) If the assailant is released as a result of the direct or collateral review, when six months have elapsed from the date the assailant is released; or

(B) If the assailant is not released as a result of the direct or collateral review, when six months have elapsed from the completion of the review.

(c) Claims described in subsection (8) of this section may be filed each time an assailant has a hearing before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board and expire:

(A) If the assailant is denied parole, conditional release or discharge, when six months have elapsed from the date of the hearing.

(B) If the assailant is paroled, conditionally released or discharged, when six months have elapsed from the date the assailant is paroled, conditionally released or discharged.

(11) Notwithstanding subsections (2) and (9) of this section, if a victim suffers catastrophic injuries:

(a) A claim for compensation and payments may continue beyond the period described in subsection (9) of this section; and

(b) The department may award compensation for losses in excess of the individual limitations described in subsection (2) of this section, provided that the aggregate award does not exceed the amount described in subsection (1)(b) of this section.

(12) The department shall adopt rules:

(a) Defining catastrophic injuries and establishing the length of time that a claim for

compensation and payments may continue under subsection (11)(a) of this section.

(b) For medical fee schedules. The schedules shall represent at least the 75th percentile of the usual and customary fees charged to the public as determined by the department. An applicant or victim may not be charged for the percentile amount reduced by the department. [1977 c.376 §5; 1987 c.770 §4; 1989 c.542 §3; 1991 c.603 §2; 1991 c.862 §3; 1993 c.294 §8; 1993 c.546 §100; 1993 c.622 §3; 1997 c.549 §1; 1997 c.723 §1; 1997 c.749 §2; 1997 c.873 §31; 1999 c.922 §1; 2001 c.383 §1; 2003 c.349 §1; 2009 c.272 §1; 2011 c.125 §1]

147.040 [Renumbered 133.757]

147.045 Notification of district attorney upon filing of compensation claim; deferral of compensation proceedings. (1) Upon filing of a claim pursuant to ORS 147.005 to 147.367, the Department of Justice shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within 10 days after such notification, the district attorney advises the department that a criminal prosecution is pending upon the same alleged crime and requests that action by the department be deferred, the department shall defer all proceedings under ORS 147.005 to 147.367 until such time as such criminal prosecution has been concluded and shall so notify the district attorney and the applicant. When such criminal prosecution has been concluded, the district attorney shall promptly so notify the department.

(2) Nothing in this section shall limit the authority of the department to grant emergency awards pursuant to ORS 147.055. [1977 c.376 §6; 2012 c.81 §8]

147.050 [Renumbered 133.763]

147.055 Emergency awards; amount; effect on final award. (1) Notwithstanding the provisions of ORS 147.045 (1), the Department of Justice may make an emergency award to the applicant pending a final decision in the claim, if it appears to the department, prior to taking action upon the claim that:

(a) The claim is one with respect to which an award probably will be made; and

(b) Undue hardship will result to the applicant if immediate payment is not made.

(2)(a) The amount of such emergency award shall not exceed \$1,000.

(b) The amount of such emergency award shall be deducted from any final award made as a result of the claim.

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the recipient to the department. [1977 c.376 §7]

147.060 [Renumbered 133.767]

147.065 Limitation on time for commencing action for compensable crime. Notwithstanding ORS 12.110 the victim of any compensable crime as defined in ORS 147.005 or the victim's representative may bring an action at any time within the five-year period after the commission of the compensable crime. [1985 c.552 §5]

Note: 147.065 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.070 [Renumbered 133.773]

147.080 [Renumbered 133.777]

147.090 [Renumbered 133.783]

147.100 [Renumbered 133.787]

(Compensation Procedure)

147.105 Application for compensation; contents; additional information or materials; amended applications; effect of criminal conviction of applicant. (1) An applicant for compensation under ORS 147.005 to 147.367 must file an application under oath on a form furnished by the Department of Justice. The application shall include:

- (a) The name and address of the victim;
- (b) If the victim is deceased, the name and address of the applicant and relationship to the victim, the names and addresses of the victim's dependents and the extent to which each is so dependent;
- (c) The date and nature of the crime or attempted crime on which the application for compensation is based;
- (d) The date and place where, and the law enforcement officials to whom, notification of the crime was given;
- (e) The nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;
- (f) The loss to the applicant and to such other persons as are specified under paragraph (b) of this subsection, resulting from the injury or death;
- (g) The amount of benefits, payments or awards, if any, payable from any source, which the applicant or other person, listed under paragraph (b) of this subsection, has received or for which the applicant or other person is eligible as a result of the injury or death;
- (h) Releases authorizing the surrender to the department of reports, documents and other information relating to the matters specified under this subsection; and

(i) Such other information as the department determines is necessary.

(2) The department may require that the applicants submit with the application materials substantiating the facts stated in the application.

(3) If the department finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that the applicant has 30 days from the date of mailing in which to furnish those items to the department. Unless an applicant requests and is granted an extension of time by the department, the department shall reject with prejudice the claim of the applicant for failure to file the additional information or materials within the specified time.

(4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the department has completed its consideration of the original application.

(5) The filing of additional information or the amendment of the application pursuant to subsection (3) or (4) of this section shall be considered for the purposes of ORS 147.005 to 147.367 to have been filed at the same time as the original application.

(6) Unless the department finds good cause exists for the applicant's failure to satisfy a financial obligation or unless the interest of justice requires otherwise, the department shall not process an application filed by or on behalf of a victim who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the department receives information or materials establishing to the satisfaction of the department that the financial obligation has been satisfied. If the department does not receive the information or materials within one year after the department notifies the applicant of the need to fulfill this requirement, the application is void.

(7)(a) If at the time of application, the applicant is incarcerated as a result of a conviction of a crime, the application shall be refused and returned to the applicant. The applicant is eligible to refile the application within six months after the applicant is released from incarceration.

(b) At the time the application is refused and returned, the department shall notify the applicant of the right to refile the claim within six months of release from incarceration. [1977 c.376 §8; 1991 c.603 §1; 1991 c.862 §5; 1993 c.18 §24; 2012 c.81 §9]

147.110 [Amended by 1973 c.836 §123; renumbered 133.793]

147.115 Confidentiality of application information; board proceedings; use of record; witnesses before board. (1) All information submitted to the Department of Justice by an applicant and all hearings of the Workers' Compensation Board under ORS 147.005 to 147.367 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

(a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either the apprehension or the trial of the alleged assailant;

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

(c) The victim or alleged assailant is a minor; or

(d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

(2)(a) A record shall be kept of the proceedings held before the board and shall include the board's findings of fact and conclusions concerning the amount of compensation, if any, to which the applicant and the dependents of a deceased victim are entitled.

(b) No part of the record of any proceedings before the board may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have committed perjury in testimony before the board.

(c) Where the interests of justice require, the board may refuse to disclose to the public the names of victims or other material in the record by which the identity of the victim could be discovered.

(3) Notwithstanding subsection (2)(b) and (c) of this section, the record of the proceedings held before the board is a public record. However, any record or report obtained by the board, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in ORS 44.415 (2). [1977 c.376 §9; 1989 c.980 §7a; 2012 c.81 §10]

147.120 [Renumbered 133.797]

147.125 Determining amount of compensation; deduction of other benefits. (1) In determining the amount of compensation for which an applicant is eligible, the Department of Justice shall consider the facts stated on the application filed pursuant to ORS 147.105, and:

(a) Need not consider whether or not the alleged assailant has been apprehended or brought to trial or the result of any criminal proceedings against that person;

(b) Shall determine the amount of the loss to the applicant and, in the case of a deceased victim, of the victim's survivors or dependents as determined under ORS 147.035;

(c) Shall determine the degree or extent to which the victim's acts or conduct contributed to the injuries or death of the victim, and may reduce or deny the award of compensation accordingly. However, the department may disregard for this purpose the responsibility of the victim for the injury of the victim where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in the presence of the victim or to apprehend a person who had committed a crime in the presence of the victim;

(d) Except as provided in paragraph (e) of this subsection, shall deduct the amount of benefits, payments or awards that are payable under the Workers' Compensation Law, from local governmental, state or federal funds or from any source, and that the victim or survivors or dependents of the victim have received or to which the victim or survivors or dependents of the victim are entitled as a result of the death or injury of the victim;

(e) Shall not deduct the amount of proceeds from life insurance or contributions from the community that the survivors or dependents of the victim have received or to which the survivors or dependents of the victim are entitled as a result of the death of the victim;

(f) Shall consider the amount of money available for victim compensation awards as provided in the current biennial department budget approved by the Legislative Assembly or the Emergency Board, and the anticipated claims against that money; and

(g) Shall award the resultant amount to the applicant as provided in ORS 147.165.

(2) In determining the amount of an award to be made to an applicant, the department may consider the number and type of claims filed and anticipated to be filed with the department during the current biennial budget period. If the department determines that insufficient funds will be

available during the current biennial budget period to pay all filed and anticipated awards, it may prioritize claims or prorate awards based upon the anticipated available funds. The department's decision to prioritize or prorate claims or awards is not subject to administrative or judicial review, including review under ORS 147.155. [1977 c.376 §10; 1987 c.770 §5; 1989 c.542 §4; 1991 c.862 §6; 1999 c.128 §1; 2001 c.372 §1]

147.130 [Renumbered 133.803]

147.135 Processing compensation application; order; contents. After processing the application filed under ORS 147.105 the Department of Justice shall enter an order stating:

(1) Its findings of fact; and

(2) Its decision as to whether or not compensation is due under ORS 147.005 to 147.367. [1977 c.376 §14; 1999 c.129 §1; 2012 c.81 §11]

147.140 [Renumbered 133.805]

147.145 Review of order; reconsideration; notice to applicant. If the applicant disagrees with the order entered under ORS 147.135, the applicant may request review by the Department of Justice. The department shall reconsider any order for which a request for review is received. The department shall notify the applicant of its decision on review within 30 days of the department's receipt of the request for review. [1977 c.376 §15]

147.150 [Amended by 1963 c.550 §1; 1973 c.836 §124; renumbered 133.807]

147.155 Appeal to Workers' Compensation Board; hearing; record; evidence considered; board determination not subject to further review. (1) Any applicant who requests review by the Department of Justice under ORS 147.145 and who disagrees with the decision of the department on review may appeal to the Workers' Compensation Board.

(2) The request for hearing shall be in writing. The request shall include the applicant's address, shall be signed by the applicant and shall be mailed to the board.

(3) The board shall conduct a hearing upon at least 10 days' notice by mail to all interested persons.

(4) A record of all proceedings at the hearing shall be kept but need not be transcribed.

(5) The board is not bound by rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. However, no evidence is admissible at a hearing that has not previously been considered by the department. The decision by the board shall be final and shall not be

subject to further administrative or judicial review. [1977 c.376 §15a]

147.160 [Amended by 1973 c.836 §125; renumbered 133.809]

147.165 Payment of awards; awards to minors and incompetents. (1) The award made under ORS 147.005 to 147.367 shall be paid in a manner determined by the Department of Justice. Payment for medical, hospital and funeral expenses may be made directly to the service providers.

(2) Where a person eligible to receive an award under ORS 147.005 to 147.367 is a person under the age of 18 years or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall:

(a) File an annual accounting of the award with the department; and

(b) Take such other action as the department shall determine is necessary and appropriate for the benefit of the beneficiary of the award.

(3) A person who is incarcerated is not eligible for payments for loss of earnings for the period of incarceration.

(4) Payment of claims is subject to availability of funds for victim compensation awards as provided in the department budget approved by the Legislative Assembly or the Emergency Board. [1977 c.376 §16; 1987 c.770 §6; 1991 c.862 §7; 2012 c.81 §12]

147.170 [Amended by 1973 c.836 §126; renumbered 133.813]

147.180 [Amended by 1973 c.836 §127; renumbered 133.815]

147.190 [Renumbered 133.817]

147.200 [Renumbered 133.823]

(Administrative Provisions)

147.205 Authority of Department of Justice; assistance from other agencies; examination of victims; reports to Governor and Legislative Assembly; rules. (1) To carry out the provisions and purposes of ORS 147.005 to 147.367, the Department of Justice has the power and duty to:

(a) Appoint such employees and agents as it determines are necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(b) Request and obtain from law enforcement agencies, district attorneys, county juvenile departments, the Department of Human Services, the Oregon Youth Authority and the Department of Corrections such assistance and information as will enable the Department of Justice to carry out its functions and duties under ORS 147.005 to 147.367. The Department of Justice may ob-

tain assistance and information under this paragraph, notwithstanding any other law relating to the confidentiality or disclosure of records. The Department of Justice:

(A) Shall maintain the confidentiality of any privileged or confidential information or records obtained under this paragraph;

(B) May use the information or records only for the purposes authorized by ORS 147.005 to 147.367; and

(C) May not disclose the contents of any privileged or confidential records to any other person or entity.

(c) Adopt rules pursuant to ORS chapter 183.

(d) Direct medical examination of victims.

(e) Determine all claims for awards filed with the department pursuant to ORS 147.005 to 147.367, and to reinvestigate or reopen cases as the department deems necessary.

(f) Report biennially to the Governor and to the Legislative Assembly on its activities.

(2) Notwithstanding any other law relating to the confidentiality or disclosure of records, when a crime victim applies for compensation under ORS 147.005 to 147.367, a person that provides medical services or supplies or pays the costs of medical services or supplies provided to the crime victim shall provide to the Department of Justice any individually identifiable health information the person has in the person's possession about the crime victim if:

(a) The department requests the information; and

(b) A release authorizing the surrender has been completed under ORS 147.105 (1)(h).

(3) As used in subsection (2) of this section:

(a) "Pays" includes, but is not limited to, payments made directly or indirectly through settlements, judgments, insurance, Medicaid, other compensation or restitution.

(b) "Person" includes, but is not limited to, health care providers and their agents, insurers and their agents, employers and public bodies as defined in ORS 174.109. [1977 c.376 §12; 1987 c.770 §7; 1997 c.396 §1; 2003 c.351 §2; 2012 c.81 §13]

147.210 [Renumbered 133.825]

147.215 Attorney General as legal adviser to department; assistance by governmental agencies. (1) The Attorney General shall serve as legal adviser to the Department of Justice for all matters arising under ORS 147.005 to 147.367.

(2) Law enforcement officials and other agencies of the state or local governmental

units are authorized to give and shall provide any assistance or information requested by the department under ORS 147.205 (1)(b). [1977 c.376 §13; 2003 c.351 §3; 2012 c.81 §14]

147.220 [Amended by 1961 c.389 §4; renumbered 133.827]

147.225 Criminal Injuries Compensation Account. There is established the Criminal Injuries Compensation Account. All moneys in the account are continuously appropriated for and may be used by the Department of Justice for the purposes authorized in ORS 147.005 to 147.367 and 147.397. [1977 c.376 §22; 2003 c.789 §§4,6; 2007 c.23 §2; 2007 c.268 §4; 2012 c.81 §15]

147.227 Disbursement of moneys to be used for victims' assistance programs; qualifications; rules. (1) The Attorney General shall disburse a portion of the moneys that the Criminal Injuries Compensation Account receives from the Criminal Fine Account to counties and cities where prosecuting attorneys maintain victims' assistance programs approved by the Attorney General. Upon receipt of the moneys, the counties and cities shall provide the moneys to the prosecuting attorney therein to be used exclusively for the approved victims' assistance program.

(2) To qualify for approval by the Attorney General under this section, a victims' assistance program must:

(a) Be administered by the district attorney of the county or city attorney of the city;

(b) Provide services to victims of all crimes;

(c) Give service priority to victims of serious crimes against persons;

(d) Collaborate with community-based and government agencies to benefit victims; and

(e) Provide the following core services to victims of crime:

(A) Inform victims, as soon as practicable, of the rights granted to victims under Oregon law.

(B) Advocate for victims of serious person crimes as they move through the criminal justice system and advocate, when requested, for all other victims of crime.

(C) Involve victims, when practicable or legally required, in the decision-making process in the criminal justice system.

(D) Ensure that victims are informed, upon request, of the status of the criminal case involving the victim.

(E) Assist victims in preparing and submitting crime victims' compensation program claims to the Department of Justice under ORS 147.005 to 147.367.

(F) Assist victims in preparing restitution documentation for purposes of obtaining a restitution order.

(G) Prepare victims for court hearings by informing them of the procedures involved.

(H) Assist victims with the logistics related to court appearances when practicable and requested.

(I) Accompany victims to court hearings when practicable and requested.

(J) Encourage and facilitate victims' testimony.

(K) Inform victims of the processes necessary to request the return of property held as evidence.

(3) If a victims' assistance program substantially complies with subsection (2) of this section and the Attorney General determines that it would be impracticable for the program to achieve full compliance, the Attorney General may approve the program on a temporary basis, subject to conditions the Attorney General deems appropriate.

(4) The Attorney General shall adopt administrative rules:

(a) Establishing criteria for the equitable distribution of moneys disbursed under subsection (1) of this section among participating cities and counties; and

(b) Establishing an advisory committee to provide consultation on the distribution of the moneys. The advisory committee shall consist of at least the following members:

(A) A representative of the Department of Justice;

(B) A representative of the Oregon District Attorneys Association; and

(C) A representative of a prosecuting attorney's victim assistance program.

(5) As used in this section, "Attorney General" includes a designee of the Attorney General. [1987 c.905 §11; 1997 c.872 §30; 2001 c.829 §4; 2005 c.700 §7; 2007 c.24 §1; 2009 c.176 §1; 2011 c.597 §126]

147.230 [Amended by 1973 c.836 §128; renumbered 133.833]

147.231 Disbursement of moneys to agencies that provide services to victims of crimes; rules.

(1) Subject to the availability of sufficient funds in the Criminal Injuries Compensation Account, the Attorney General or the Attorney General's designee may make grants from the Criminal Injuries Compensation Account to eligible public or private nonprofit agencies that provide services to victims of violent crimes, property crimes and crimes involving fraud and deception. The Attorney General may not make grants unless there are sufficient funds in the Criminal Injuries Compensation Account

to satisfy both the projected compensation claims of victims of violent crimes and the anticipated costs of complying with ORS 147.227 and of providing the funds deemed necessary by the Attorney General to comply with ORS 147.397. The grants authorized by this section are in addition to federal Victims of Crime Act grants, federal Violence Against Women Act grants and any other state or federal grants related to serving victims of violent crimes, property crimes and crimes involving fraud or deception, that are administered by the Attorney General or the Attorney General's designee.

(2) Funds distributed under this section may be used only for services to victims of violent crimes, property crimes and crimes involving fraud and deception and may not be used to replace funds otherwise available for services to victims of crime.

(3) As used in this section, "services" includes, but is not limited to:

(a) Crisis intervention services;

(b) Providing, in an emergency, transportation to court, short-term child care, temporary housing and security measures;

(c) Assistance in participating in criminal justice proceedings;

(d) Preparation, publication and distribution of materials that inform victims of violent crimes, property crimes and crimes involving fraud and deception of the services that are available;

(e) Salaries of persons who provide direct services to victims of violent crimes, property crimes and crimes involving fraud and deception to the extent that the persons provide the services; and

(f) Counseling for victims of property crimes and crimes involving fraud and deception.

(4) Applicants for grants under subsection (1) of this section shall:

(a) Certify that priority will be given to providing assistance to victims of violent crimes including, but not limited to, victims of sexual assault, domestic violence and child abuse; and

(b) Provide any information and assurances that the Department of Justice may require.

(5) The Attorney General or the Attorney General's designee may administer the grants authorized by this section concurrently with the administration of the federal Victims of Crime Act grants, federal Violence Against Women Act grants and any other state or federal grants related to serving victims of violent crimes, property crimes and crimes involving fraud or deception.

(6) The department shall adopt rules pursuant to ORS chapter 183 to carry out the provisions of this section. [1997 c.758 §2; 2003 c.349 §2; 2003 c.789 §§5,7; 2007 c.23 §3; 2007 c.268 §5; 2009 c.411 §1]

147.235 [1961 c.389 §3; renumbered 133.837]

147.240 Department of Justice to submit claims to account for payment of awards. After the entry of an award under ORS 147.005 to 147.367, the Department of Justice shall submit the claim for payment from the Criminal Injuries Compensation Account pursuant to ORS 293.295 to 293.460 and 293.465 to 293.510. [1977 c.376 §23; 2012 c.81 §16]

147.245 Disposition of moneys recovered from assailant; disposition of gifts or grants. (1) Any moneys recovered by the Department of Justice under ORS 147.281 to 147.298 and 147.345 shall be credited to the Criminal Injuries Compensation Account.

(2) Any gifts, contributions, grants or federal funds specifically given to the department for the benefit of victims of crimes shall be credited to the Criminal Injuries Compensation Account. [1977 c.376 §24; 2005 c.383 §11]

147.250 [Renumbered 133.839]

147.253 [Renumbered 133.843]

147.255 Recovery of moneys paid on fraudulent claims; recovery of fees. The Department of Justice may institute suit:

(1) To recover any awards made because of fraudulent claims.

(2) On behalf of the applicant or recipients, to recover all fees paid to a counsel or agent in violation of ORS 147.315. [1977 c.376 §25]

147.256 [Renumbered 133.845]

147.259 [1983 c.725 §2; 1985 c.16 §448; 1985 c.761 §4; 1989 c.844 §2; repealed by 1987 c.905 §37]

147.260 [Renumbered 133.847]

147.265 [1983 c.725 §3; repealed by 1987 c.905 §37]

147.270 [Renumbered 133.853]

147.275 Proceeds of compensable crime; escrow account for benefit of victims; notice; distribution; hearing; definitions; rules. (1)(a) Before any person or other legal entity pays or delivers the proceeds of a compensable crime to any individual charged with or convicted of committing such a crime in this state or found guilty except for insanity with regard to such a crime, or to a representative or assignee of that individual, the person or legal entity shall promptly notify the Department of Justice and pay or deliver to the department the proceeds that would otherwise be paid to the individual charged, convicted or found guilty except for insanity, or the representative or assignee of the individual.

(b) When any person or other legal entity contracts to pay the proceeds of the compensable crime to any individual charged with or convicted of committing such a crime in this state or found guilty except for insanity with regard to such a crime, or whenever any person or other legal entity contracts with a representative or assignee of that individual to pay the proceeds of the compensable crime committed by that individual, the person or legal entity shall promptly submit a copy of the contract to the Department of Justice and pay to the department any proceeds which otherwise, under the terms of the contract, would be paid to the accused or convicted individual, the person found guilty except for insanity or the representative or assignee of the individual.

(2) The department shall deposit proceeds received under this section in an escrow account established for the benefit of the victims or dependents of the victims of the crime for which the individual whose proceeds are placed in the escrow account is convicted or found guilty except for insanity. Proceeds in the escrow account shall be paid to satisfy judgments as provided in subsection (3) of this section or restitution orders under ORS 137.103 to 137.109.

(3) A person is entitled to payment of proceeds from the escrow account established under this section if:

(a) The person is the victim or a dependent of a deceased victim of a compensable crime for which the individual whose proceeds are placed in the escrow account is convicted or found guilty except for insanity; and

(b) Within five years after the establishment of the escrow account, the person commences a civil action against such individual in a court of competent jurisdiction and receives a money judgment for damages suffered as a result of the crime.

(4) The department, at least once every year for five years from the date it establishes the escrow account, shall cause to have published a legal notice in a newspaper of general circulation in the county in which the crime was committed and in the counties adjoining such county advising victims that the escrow proceeds are available to satisfy judgments pursuant to this section. The department may, in its discretion, provide for such additional notice as it considers necessary.

(5) Upon dismissal of charges or acquittal of any individual whose proceeds are placed in an escrow account under this section, the department shall immediately pay such individual the proceeds in the escrow account.

(6) Upon a showing by any convicted individual or the individual found guilty except for insanity that five years have elapsed from the establishment of the escrow account in which the individual's proceeds have been placed under this section and that no civil actions by victims or dependents of deceased victims of the individual's crime have been commenced, the department shall immediately pay any proceeds in the escrow account to such individual or the legal representative of the individual.

(7) Any action taken by an individual charged with or convicted of committing a compensable crime in this state, including, but not limited to, execution of a power of attorney or creation of a corporate entity, to defeat the purpose of this section is null and void. Any action taken by an individual found guilty except for insanity with regard to a compensable crime in this state is similarly null and void.

(8) When an escrow account has insufficient funds to meet all judgments presented by victims or their representatives, the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. There shall be no payment from the escrow account to a victim or a victim's representative until either the amounts of all unsatisfied judgments are determined, or it is determined that the payment for an unsatisfied judgment will not diminish the escrow account so that other potential victim claims could not be satisfied.

(9)(a) The Department of Justice may notify any person whom the department believes to be in possession of the proceeds of a compensable crime, or to have contracted to pay the proceeds of a compensable crime as described in subsection (1) of this section, of the requirements of this section.

(b) Any person who disputes whether that person either possesses or has contracted to pay the proceeds of a compensable crime may ask for a contested case hearing on the question before the department. The hearing shall be conducted in accordance with the provisions of ORS chapter 183.

(10) Notwithstanding subsection (9) of this section, the Department of Justice may seek provisional remedies, including garnishment or injunctive relief, to prevent the payment of money or property which the department asserts to be the proceeds of a compensable crime to an individual charged with or convicted of committing such a crime in this state or found guilty except for insanity with regard to such a crime, or to the representative or assignee of that individual, until the character of the property or money is determined.

(11) The Department of Justice may adopt rules to carry out the purposes of this section.

(12) As used in this section, "proceeds of a compensable crime" means any property or assets, tangible or intangible:

(a) That are obtained during the commission of the compensable crime; or

(b) That are obtained after commission of the crime primarily because of commission of the compensable crime.

(13) As used in this section, "proceeds of a compensable crime" does not include property or assets that have been forfeited pursuant to law or that constitute contraband. It also does not include property or assets in which the individual charged or convicted of committing a compensable crime has no legal or equitable interest. [1985 c.552 §3; 1987 c.158 §21; 1995 c.344 §1; 1997 c.249 §46]

147.280 [Renumbered 133.855]

(Recovery of Assistance)

147.281 Definitions. As used in ORS 147.281 to 147.298:

(1) "Action" means an action, suit or proceeding.

(2) "Assistance" means compensation paid by the Department of Justice under ORS 147.005 to 147.367 to or on behalf of an applicant or recipient.

(3) "Claim" means a claim of an applicant or recipient for damages for injuries against an assailant or any other person or entity alleged to be liable for the injury constituting the basis for the claim.

(4) "Compromise" means a compromise between an applicant or recipient and an assailant or any other person or entity against whom the applicant or recipient has a claim.

(5) "Judgment" means a judgment in an action brought by an applicant or recipient to enforce the claim of the applicant or recipient.

(6) "Recipient" means a person who has received assistance.

(7) "Settlement" means a settlement between an applicant or recipient and an assailant or any other person or entity against whom the applicant or recipient has a claim. [2005 c.383 §2]

147.283 Notice to Department of Justice of claim or action to enforce claim for injuries. An applicant or recipient shall promptly provide written notice to the Department of Justice when making a claim or bringing an action to enforce a claim for injuries that formed the basis for assistance. The notice must include the name and ad-

dress of the assailant and of any other person or entity against whom the claim is made or action is brought. If the claim is made or the action is brought against a corporation, the notice must contain the address of the corporation's principal place of business. If the applicant or recipient is a minor, the parents, legal guardian or foster parent of the applicant or recipient shall give the notice required by this section. [2005 c.383 §3]

147.285 Creation of lien. The Department of Justice has a lien upon the amount of any judgment in favor of the applicant or recipient and upon any amount payable to the applicant or recipient under a settlement or compromise for all assistance from the date of the injury that forms the basis of the assistance to the date of the satisfaction of the judgment or final payment under the settlement or compromise. [2005 c.383 §4]

147.287 Perfection of lien. (1) In order to perfect a lien under ORS 147.285, the Department of Justice shall do all of the following:

(a) Upon receiving notice under ORS 147.283, record a notice of lien in the County Clerk Lien Record of the county in which the person against whom the claim is made or action is brought resides. If the claim or action is against a corporation, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the corporation has its principal place of business. If the claim or action is against a public body, as defined in ORS 174.109, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the public body has its main office.

(b) Prior to the date of the satisfaction of the judgment or final payment under a settlement or compromise, deliver a copy of the notice of lien by certified mail or personal service to all parties bound by the judgment, settlement or compromise or to an attorney or insurer that represents a party bound by the judgment, settlement or compromise. The department may send the notice by first class mail to any party, attorney or insurer that does not accept the certified mail containing the notice.

(2) Upon the recording of a notice of lien under subsection (1)(a) of this section, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the department as a lienor in the lien docket under ORS 87.575 and shall make an index to the lien docket in the names of the injured person and the department. [2005 c.383 §5; 2014 c.45 §27]

147.289 Notice of lien; form. The form of the notice of lien required by ORS 147.287 shall be substantially as follows:

Notice is given by this form that the Department of Justice has provided assistance to _____, a person who was injured on or about the ____ day of _____ in the city of _____ and State of _____, and the Department of Justice asserts a lien to the extent provided in ORS 147.285 for the amount of the assistance upon any amount due and owing _____ (name of injured person) under a judgment, settlement or compromise from _____ alleged to have caused such injuries and from any other person or entity liable for the injury or obligated to compensate the injured person on account of such injuries.

Department of Justice
by _____,
Attorney General or designee.

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn on oath say: That I am the Attorney General or designee; that I have read the foregoing notice of lien and know the contents of the notice of lien and believe the contents to be true.

Subscribed and sworn to before me this
____ day of _____,
_____, Notary Public.

[2005 c.383 §6]

147.290 [Amended by 1961 c.389 §1; renumbered 133.857]

147.292 Notice of amount of judgment, settlement or compromise. Immediately after a judgment has been rendered in favor of an applicant or recipient or a settlement or compromise has been agreed upon, all parties bound by the judgment, settlement or compromise shall provide written notice to the Department of Justice of the amount of the judgment, settlement or compromise. After receiving the notice, the department shall send by certified mail a statement of the amount of its lien to all parties bound by the judgment, settlement or compromise or to an attorney or insurer that represents a party bound by the judgment, settlement or compromise. The department may send the statement by first class mail to any party, attorney or insurer that does not accept the certified mail containing the statement. [2005 c.383 §7]

147.294 Liability of person making payment after notice of lien is recorded. After a notice of lien is recorded under ORS 147.287, a person or entity that makes a payment to the applicant or recipient or to the heirs, personal representatives, assigns or attorneys of the applicant or recipient under a judgment, settlement or compromise without first having paid to the Department of Justice the amount of the department's lien is liable to the department for the amount of the payment to the extent that the lien attached to the payment under ORS 147.285. [2005 c.383 §8]

147.296 Action for failure to provide notice. The Department of Justice has a cause of action against an applicant or recipient who fails to give the notice required by ORS 147.283 for amounts received by the applicant or recipient pursuant to a judgment, settlement or compromise to the extent that the department would have had a lien under ORS 147.285 upon the amounts had the notice been given. [2005 c.383 §9]

147.298 Where action may be initiated. The Department of Justice may initiate an action under ORS 147.294 and 147.296 in the circuit court for Marion County, the county where the compensable crime occurred or the county in which any party bound by the judgment, settlement or compromise resides. [2005 c.383 §10]

(Miscellaneous Provisions)

147.305 Effect of criminal conviction on compensation proceedings. If any person is convicted of a crime based on a compensable crime for which application for compensation is made, proof of the conviction shall be conclusive evidence that the crime was committed. [1977 c.376 §11]

147.315 Charging fees to applicants prohibited. No fee may be charged to the applicant in any proceeding under ORS 147.005 to 147.367. [1977 c.376 §17; 2012 c.81 §17]

147.325 Compensation not subject to assignment or legal process prior to receipt by beneficiary. No compensation payable under ORS 147.005 to 147.367 shall, prior to actual receipt thereof by the person or beneficiary eligible therefor, or their legal representatives, be assignable or subject to execution, garnishment, attachment or any other process, including process to satisfy an order or judgment for support or alimony. [1977 c.376 §18; 1991 c.862 §8; 2012 c.81 §18]

147.335 Compensation rights not to survive beneficiary; death of beneficiary after filing of application. The rights to compensation created by ORS 147.005 to 147.367 are personal and shall not survive

the death of the person or beneficiary eligible therefor. However, if such death occurs after an application for compensation has been filed with the Department of Justice, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate. [1977 c.376 §19; 1991 c.862 §9; 2012 c.81 §19]

147.345 State subrogated to rights accruing to beneficiary; suit by state against assailant; disposition of proceeds; settlement. (1) The acceptance of an award made pursuant to ORS 147.005 to 147.367 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient against the assailant or any other person or entity liable for the injury constituting the basis for the award.

(2)(a) On behalf of the state, the Department of Justice may bring suit against an assailant to recover the amount of compensation paid to an applicant or recipient of an award made pursuant to ORS 147.005 to 147.367 as a result of the assailant's commission of a compensable crime. Before initiating a suit under this subsection, the Department of Justice must notify the applicant or recipient that the Department of Justice is going to initiate a suit. A suit under this subsection does not affect any right or right of action accruing to the applicant or recipient against the assailant for the injury constituting the basis for the award, except that the assailant may be able to offset payments made to the Department of Justice against any award to the applicant or recipient for the same damages. The assailant also may offset any payments the assailant has made to the applicant or recipient for the same damages against any recovery by the Department of Justice under this subsection.

(b) In a suit under this subsection, the Department of Justice may recover attorney fees and costs of suit.

(c) Each separate payment of compensation under ORS 147.005 to 147.367 creates a cause of action under this subsection.

(3) Any settlement of a right or right of action against the assailant or any other person or entity by the victim or the dependent of the victim based on the compensable crime must be approved by the Department of Justice if the department has made an award to the victim or the dependent of the victim. If the settlement is not approved by the department, the department may void the settlement. [1977 c.376 §20; 1987 c.770 §8; 2001 c.371 §1; 2012 c.81 §20]

147.355 [1977 c.376 §21; 2003 c.576 §389; repealed by 2005 c.383 §13]

147.365 Law enforcement agencies to inform crime victims of compensation procedure; agencies not civilly liable for failure to comply. (1) All law enforcement agencies in this state shall deliver cards to victims of crime stating the procedure to be followed in applying for compensation under ORS 147.005 to 147.367.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section. [1977 c.376 §27; 2012 c.81 §21]

SERVICES TO VICTIMS OF ACTS OF MASS DESTRUCTION

147.367 Services to victims of acts of mass destruction; Department of Justice.

(1) The Department of Justice may initiate and participate in planning, training and organizational efforts intended to prepare to deliver services to individuals traumatized by an act of war, terrorism or sabotage or a criminal act that results in the death of, or physical injury to, numerous individuals or that results in the massive destruction of property.

(2) The department may assist in delivering services to individuals traumatized by an act of war, terrorism or sabotage or a criminal act that results in the death of, or physical injury to, numerous individuals or that results in the massive destruction of property. [2003 c.770 §11]

147.375 [1987 c.241 §1; repealed by 2003 c.789 §10]

PAYMENT OF COSTS OF MEDICAL ASSESSMENT

(Child Abuse Medical Assessment)

147.390 Payment of expenses by department. (1) Notwithstanding that a child is not a victim under ORS 147.015 (1)(a), in cases of suspected child sexual abuse as described in ORS 419B.005 (1)(a)(C), (D) or (E), or child physical abuse by an adult or caretaker as otherwise described in ORS 419B.005 (1)(a)(A), compensation may be made on behalf of the child for a child abuse medical assessment as defined in ORS 418.782 or a medical examination required by ORS 419B.023, if:

(a) The expenses are actually paid or incurred by the applicant; and

(b) A claim is filed on behalf of the child in the manner provided in ORS 147.015.

(2) The Department of Justice may pay compensation for child abuse medical assessments or medical examinations required by ORS 419B.023 regardless of whether a finding of abuse is made and only if other insurance is unavailable. If the department pays compensation, the department shall pay the

compensation directly to the provider of the services. The medical fee schedules for payment under this section shall be the schedules adopted under ORS 147.035. [1997 c.872 §25; 2009 c.296 §3; 2013 c.720 §16]

Note: 147.390 and 147.391 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.391 Limitation on obligation of Criminal Injuries Compensation Account under ORS 147.390. Notwithstanding ORS 147.390, when the moneys provided from the Criminal Injuries Compensation Account for the purposes of ORS 147.390 are expended for any cumulative time period within any biennium, the Criminal Injuries Compensation Account shall have no further obligations under ORS 147.390 for that time period. However, if the Criminal Injuries Compensation Account has unexpended moneys provided for at the end of any biennium, the balance shall be transferred to the account created by ORS 418.796. [1997 c.872 §26; 2001 c.829 §5]

Note: See note under 147.390.

(Sexual Assault Medical Assessment)

147.395 Definitions. As used in ORS 147.397:

(1) "Complete medical assessment" means an assessment that consists of:

(a) A medical examination;

(b) The collection of forensic evidence using an evidence collection kit approved by the Department of State Police; and

(c) The offering and, if requested, provision of emergency contraception, sexually transmitted disease prevention and, for a victim who is 17 years of age or younger, prescriptions for emergency contraception.

(2) "Medical assessment" means a complete or partial medical assessment.

(3) "Partial medical assessment" means an assessment that consists of:

(a) A medical examination; and

(b) The offering and, if requested, provision of emergency contraception, sexually transmitted disease prevention and, for a victim who is 17 years of age or younger, prescriptions for emergency contraception. [2003 c.789 §1; 2007 c.268 §1]

Note: 147.395 to 147.399 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.397 Payment of costs; form; provider reimbursement; rules. (1) Subject to the availability of funds from gifts, grants and donations in the Sexual Assault Victims'

Emergency Medical Response Fund, the Department of Justice shall pay the costs of:

(a) A complete medical assessment obtained by the victim of a sexual assault if the victim obtains the medical assessment no later than 84 hours after the sexual assault.

(b) A partial medical assessment obtained by the victim of a sexual assault if the victim obtains the medical assessment no later than seven days after the sexual assault.

(2) The department may not deny payment under this section for any of the following reasons:

(a) The victim of a sexual assault has not reported the assault to a law enforcement agency.

(b) The identity of a victim of a sexual assault is not readily available to the department because forensic evidence has been collected from the victim and preserved in a manner intended to protect the victim's identity.

(3) The department shall develop a form that the victim of a sexual assault must complete if the victim wants the department to pay for a medical assessment as provided in subsection (1) of this section. The department shall make copies of the form available to providers of medical assessments. The form must inform the victim that:

(a) A complete or partial medical assessment can be obtained regardless of whether the victim reports the assault to a law enforcement agency; and

(b) A complete or partial medical assessment can be performed and evidence collected in a manner intended to protect the victim's identity.

(4) When the victim of a sexual assault completes the form developed by the department under subsection (3) of this section, the victim shall submit the form to the provider of the medical assessment. The provider shall submit the form with a bill for the medical assessment to the department. A provider who submits a bill under this subsection may not bill the victim or the victim's insurance carrier for the medical assessment except to the extent that the department is unable to pay the bill due to lack of funds or declines to pay the bill.

(5) Providers of medical assessments that seek reimbursement under this section shall:

(a) Maintain records of medical assessments that protect the identity of victims of sexual assault and keep confidential the identity of victims who have not reported the sexual assault to a law enforcement agency;

(b) Store forensic evidence collection kits and transfer custody of the kits to a law enforcement agency having jurisdiction over

the geographic area where the provider is located; and

(c) Cooperate with law enforcement agencies to develop and implement procedures that protect the identities of victims while allowing retrieval and assessment of evidence collection kits and related evidence.

(6) Law enforcement agencies that receive evidence collection kits as provided by subsection (5) of this section shall preserve the kits and any related evidence for at least six months.

(7) A provider may not charge the department more for a complete medical assessment or a partial medical assessment than the maximum amounts established by the department by rule for the assessments.

(8) The victim of a sexual assault may obtain a medical assessment and complete and submit a form under this section regardless of whether the victim reports the sexual assault to a law enforcement agency.

(9) This section does not require the department to pay any costs of treatment for injuries resulting from the sexual assault.

(10) The department may adopt rules necessary to carry out the provisions of this section. [2003 c.789 §2; 2007 c.268 §2]

Note: See note under 147.395.

147.399 Sexual Assault Victims' Emergency Medical Response Fund. (1) The Sexual Assault Victims' Emergency Medical Response Fund is established, separate and distinct from the General Fund. All moneys in the Sexual Assault Victims' Emergency Medical Response Fund are continuously appropriated to the Department of Justice to be used for the purpose of carrying out the provisions of ORS 147.397.

(2) The Department of Justice may accept moneys from any source for the purpose of carrying out the provisions of ORS 147.397. The department shall deposit moneys accepted under this subsection in the Sexual Assault Victims' Emergency Medical Response Fund. [2003 c.789 §3]

Note: See note under 147.395.

SEXUAL ASSAULT RESPONSE

147.401 Sexual assault response teams.

(1) The district attorney in each county shall organize a sexual assault response team to consist of:

(a) A representative of the district attorney's office;

(b) A representative of a prosecution-based victim assistance program or unit;

(c) A sexual assault forensic examiner;

(d) At the discretion of the district attorney, a representative of the county sheriff's

office or a representative of local law enforcement agencies or both;

(e) A representative of a nonprofit agency or program that receives moneys administered by the Department of Human Services or the Department of Justice and that offers safety planning, counseling, support or advocacy to victims of sexual assault; and

(f) Other persons the district attorney considers necessary for the operation of the team or as recommended by the team.

(2) Each team must meet:

(a) At least quarterly at a time appointed by the district attorney of the county; and

(b) Independently of the county's multidisciplinary child abuse team.

(3)(a) Each team shall develop and adopt protocols addressing the response to adult and adolescent sexual assault victims in the county.

(b) Protocols adopted pursuant to paragraph (a) of this subsection may incorporate by reference, in part or in whole, protocols relating to child sexual abuse developed pursuant to ORS 418.747. [2011 c.511 §1]

Note: 147.401 and 147.403 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.403 Policies, guidelines and training requirements for providers of medical care to sexual assault patients. (1) Each hospital, emergency medical service provider, intermediate care facility, skilled nursing facility, long term care facility and residential care facility in this state shall adopt policies for the treatment or referral of acute sexual assault patients, if such policies are not otherwise provided for by statute or administrative rule.

(2)(a) Each hospital, emergency medical service provider, intermediate care facility, skilled nursing facility, long term care facility and residential care facility in this state that performs forensic medical examinations of sexual assault patients shall:

(A) Adopt, in addition to the facility's own guidelines, if any, the State of Oregon Medical Guideline for Sexual Assault Evaluation of Adolescent and Adult Patients developed and published by the Attorney General's Sexual Assault Task Force.

(B) Except as provided in paragraph (b) of this subsection, employ or contract with at least one sexual assault forensic examiner who has completed didactic training sufficient to satisfy the training requirement for certification by the Oregon SAE/SANE Certification Commission established by the Attorney General.

(b) Paragraph (a)(B) of this subsection does not apply to a hospital that performs forensic medical examinations only of sexual assault patients who are minors. Such a hospital may use physicians, physician assistants licensed under ORS 677.505 to 677.525 and nurses to conduct the examinations in consultation with a social worker trained in assisting sexual assault victims who are minors. [2011 c.511 §2; 2014 c.45 §28]

Note: See note under 147.401.

CRIME VICTIMS' RIGHTS

147.405 Short title. Chapter 2, Oregon Laws 1987, shall be known as the "CRIME VICTIMS' BILL OF RIGHTS." [1987 c.2 §1]

Note: Legislative Counsel has substituted "chapter 2, Oregon Laws 1987," for the words "this Act" in sections 1, 2 and 18, chapter 2, Oregon Laws 1987, compiled as 147.405, 147.410 and 147.415. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1987 Comparative Section Table located in Volume 20 of ORS.

147.410 Purpose. We, the people of the State of Oregon, declare that victims of crime are entitled to fair and impartial treatment in our criminal justice system. The purpose of chapter 2, Oregon Laws 1987, is to declare to our legislature and our courts that victims' rights shall be protected at each stage of the criminal justice system. We reject the notion that a criminal defendant's rights must be superior to all others. By chapter 2, Oregon Laws 1987, we seek to secure balanced justice by eliminating unbalanced rules. [1987 c.2 §2]

Note: See note under 147.405.

147.415 Severability. If any section, portion, clause or phrase of chapter 2, Oregon Laws 1987, is for any reason held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force in effect. [1987 c.2 §18]

Note: See note under 147.405.

147.417 Victim to be notified of constitutional rights. (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 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.

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

(3) Nothing in subsection (2) of this section justifies a failure to properly notify the victim.

(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. [1997 c.313 §5; 2009 c.178 §25]

Note: 147.417, 147.419 and 147.421 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.419 Authority of victim to obtain copy of transcript or tape of criminal proceeding. In any criminal proceeding in which a transcript, audiotape or videotape of the proceedings held in open court is prepared, the victim may obtain a copy of the transcript or tape by paying the court or the person who prepared the transcript or tape the actual cost of copying it. [1997 c.313 §2]

Note: See note under 147.417.

147.421 Information about defendant that public body is required to provide to victim. (1) If a public body is the custodian of any of the following information, upon the request of the victim, the public body shall provide to the victim any of the following information of which it is the custodian and that is about the defendant or convicted criminal:

- (a) The conviction and sentence;
- (b) Criminal history;
- (c) Imprisonment; and
- (d) Future release from physical custody.

(2) A public body, in its discretion, may provide the requested information by furnishing the victim with copies of public re-

cords. The public body may charge the victim its actual cost for making public records available as provided in ORS 192.440 (4).

(3) As used in this section:

(a) "Criminal history" means a description of the prior arrests, convictions and sentences of the person.

(b) "Future release" means the projected or scheduled date of release of the person from confinement, the name and location of the correctional facility from which the person is to be released and the community where the person is scheduled to reside upon release.

(c) "Imprisonment" means the name and location of the correctional facility in which the person is confined.

(d) "Public body" has the meaning given that term in ORS 192.410. [1997 c.313 §6; 2007 c.467 §2]

Note: See note under 147.417.

147.425 Personal representative. (1) As used in this section:

(a) "Health care provider" has the meaning given that term in ORS 192.556.

(b) "Law enforcement agency" means:

(A) A city or municipal police department.

(B) A county sheriff's office.

(C) The Oregon State Police.

(D) A district attorney.

(E) A police department established by a university under ORS 352.121 or 353.125.

(F) A special campus security officer commissioned under ORS 352.118.

(G) An authorized tribal police officer as defined in ORS 181A.680.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(d) "Personal representative" means a person selected under subsection (2) of this section to accompany the victim of a crime to certain phases of an investigation and prosecution.

(e) "Protective service worker" means an employee or contractor of a local or state agency whose role it is to protect children or vulnerable adults from abuse or neglect.

(2) A victim of a person crime, who is at least 15 years of age at the time the crime is committed, may select a person who is at least 18 years of age as the victim's personal representative for purposes of this section. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative.

(3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.

(4) A health care provider, law enforcement agency, protective service worker or court may not prohibit a personal representative from accompanying a victim as authorized by subsection (3) of this section unless the health care provider, law enforcement agency, protective service worker or court believes that the personal representative would compromise the process.

(5) A health care provider, law enforcement agency, protective service worker or court is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to a decision under subsection (4) of this section to prohibit a personal representative from accompanying a victim.

(6) The fact that a personal representative was allowed or was not allowed to accompany a victim may not be used as a basis for excluding otherwise admissible evidence.

(7) The fact that a victim has or has not selected a personal representative under this section may not be used as evidence in the criminal case. [2005 c.490 §1; 2011 c.506 §19; 2011 c.644 §§21,44; 2013 c.180 §§19,20; 2015 c.174 §9; 2015 c.767 §§48,49]

Note: 147.425 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.430 Speedy trial. (1) A victim in a criminal or juvenile delinquency proceeding has the following rights:

(a) The right to have the trial or adjudication, including the imposition and execution of the sentence or disposition, conducted with all practicable speed.

(b) The right to the prompt and final conclusion of the criminal or juvenile delinquency proceeding in any related appellate or post-judgment proceeding.

(2) The sole remedy for a violation of the rights described in subsection (1) of this section is for the trial or proceeding to promptly occur or for the sentence to be promptly imposed or executed. This remedy may not be imposed if the remedy would:

(a) Affect the defendant's due process right to adequately prepare and present a defense;

(b) Impair the right of the defendant to a fair and impartial hearing in accordance with the Oregon and United States Constitutions; or

(c) Impair the ability of the state to prepare and locate witnesses.

(3) Nothing in this section authorizes:

(a) The dismissal of a criminal or juvenile delinquency proceeding;

(b) The imposition of sanctions against the state or the defendant; or

(c) A court to sever into separate trials or proceedings a single charging instrument alleging criminal acts committed against multiple victims.

(4) Upon the victim's request, the state may assert the rights of the victim on behalf of the victim.

(5) A victim who intends to assert a right described in this section must assert the right:

(a) Orally, at any critical stage of the proceedings as described in section 42, Article I of the Oregon Constitution; or

(b) In writing, after providing a copy to the parties.

(6) When a victim asserts a right described in this section, the court may hold a hearing or resolve the issue based on the record of the case.

(7) As used in this section, "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 a crime and, in the case of a victim who is a minor, the legal guardian of the minor. [2009 c.563 §1]

Note: 147.430 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.433 Rights afforded upon request; notice; attendance; protection. (1) To accord crime victims due dignity and respect, a victim in a criminal proceeding described in subsection (2) of this section has, upon request to the district attorney before a judgment of conviction is entered, the following rights:

(a) The right to be notified by the district attorney of the victims' rights described in this section and ORS 138.627 and 144.750;

(b) The right to reasonable, accurate and timely notice from the Attorney General when an appeal is taken in the criminal proceeding;

(c) The right to reasonable, accurate and timely notice from the counsel for the state when a conviction in the criminal proceeding

is the subject of a petition for post-conviction relief filed under ORS 138.510 to 138.680;

(d) The right to attend any public hearing related to the criminal proceeding that is conducted by an appellate court; and

(e) The right to be reasonably protected from the offender, if the offender is present, at any related appellate or post-conviction relief proceeding.

(2) The provisions of this section apply only to criminal proceedings involving a defendant charged with or convicted of:

(a) A person felony, as that term is defined in the rules of the Oregon Criminal Justice Commission;

(b) A person Class A misdemeanor, as that term is defined in the rules of the Oregon Criminal Justice Commission;

(c) Burglary in the first degree under ORS 164.225;

(d) A sex crime as defined in ORS 163A.005; or

(e) An attempt, conspiracy or solicitation to commit a crime described in paragraph (a) or (b) of this subsection.

(3) As used in this section, “victim” has the meaning given that term in ORS 131.007. [2010 c.89 §1]

Note: 147.433 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.438 Habeas corpus proceedings in federal court. In any habeas corpus proceeding brought in federal court to which the State of Oregon is a party, the state shall comply with the rights afforded to crime victims under 18 U.S.C. 3771. Remedies for violations of 18 U.S.C. 3771 are as provided under federal law. [2010 c.89 §5]

Note: 147.438 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OREGON DOMESTIC AND SEXUAL VIOLENCE SERVICES FUND

147.450 Definitions. As used in ORS 147.450 to 147.471:

(1) “Domestic violence” has the meaning given that term in ORS 135.230 and includes teen dating violence.

(2) “Sexual assault” means any unwanted sexual contact as defined in ORS 163.305.

(3) “Teen dating violence” means:

(a) A pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the per-

son, where one or both persons are 13 to 19 years of age; or

(b) Behavior by which a person uses or threatens to use sexual violence against another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age. [2001 c.870 §23; 2007 c.71 §40; 2012 c.69 §2]

Note: 147.450 to 147.471 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.453 Oregon Domestic and Sexual Violence Services Fund. There is established in the State Treasury, separate and distinct from the General Fund, the Oregon Domestic and Sexual Violence Services Fund. All moneys in the fund are continuously appropriated to the Department of Justice and shall be used by the department to carry out a program of domestic and sexual violence services that:

(1) Provides safety for and assists victims of domestic violence and sexual assault, promotes effective intervention and reduces the incidence of domestic violence and sexual assault;

(2) Advocates for victims and for domestic violence and sexual assault services;

(3) Promotes and facilitates interagency and interdepartmental cooperation among state agencies, including the Department of Human Services, and among different levels of government in this state in the delivery and funding of services; and

(4) Encourages and supports services, programs and curricula to educate and inform students in grades 7 through 12 about teen dating violence and domestic violence, to provide assistance to victims of teen dating violence and domestic violence, and to prevent and reduce the incidence of teen dating violence and domestic violence. [2001 c.870 §24; 2009 c.411 §2; 2012 c.69 §3; 2015 c.400 §1]

Note: See note under 147.450.

147.456 Plan for allocation of funds; Department of Justice. (1) Prior to January 1, 2002, the Department of Justice shall develop a plan for the allocation of funds that are appropriated under section 32, chapter 870, Oregon Laws 2001, in collaboration with:

(a) The Department of Human Services;

(b) The Department of State Police;

(c) The Oregon Coalition Against Domestic and Sexual Violence;

(d) The Governor’s Council on Domestic Violence;

(e) The Attorney General’s Sexual Assault Task Force;

(f) Victims of domestic and sexual violence;

(g) Representatives of county governments and county human services departments;

(h) Representatives of local domestic violence councils;

(i) Representatives of domestic violence victim services providers or advocacy organizations; and

(j) Other interested organizations.

(2) The plan developed under subsection (1) of this section shall:

(a) Set the criteria, procedures and timelines for allocation of funds;

(b) Establish uniform systems for reporting requirements, collecting statistical data and reporting measurable outcomes for programs that receive funding;

(c) Set guidelines for the planning, coordination and delivery of services by programs that receive funding;

(d) Provide a process whereby the Department of Justice may review all findings from data collected from programs that receive funding. If the department conducts a review, the department shall use the information to develop future economic resources and services and to coordinate services; and

(e) Further the purposes set forth in ORS 147.453. [2001 c.870 §26]

Note: See note under 147.450.

147.459 Considerations in developing plan. The Department of Justice, in developing the plan under ORS 147.456, shall consider ways to:

(1) Balance funding for intervention, infrastructure and prevention services;

(2) Prioritize services;

(3) Utilize local community plans reflecting local program service needs;

(4) Establish programs and services for victims of both domestic violence and sexual assault;

(5) Establish programs that are culturally specific; and

(6) Ensure that there is a coordinated community response to domestic violence and sexual assault and, to the extent practicable, ensure that domestic violence and sexual assault services are coordinated with other community services. [2001 c.870 §29]

Note: See note under 147.450.

147.462 Limits on expenditures from fund. In administering the Oregon Domestic and Sexual Violence Services Fund, the Department of Justice shall:

(1) Expend no less than 15 percent of moneys distributed under the plan developed under ORS 147.456 on sexual assault services; and

(2) Expend no more than 10 percent of the moneys distributed under the plan on administrative costs. [2001 c.870 §28; 2007 c.299 §1]

Note: See note under 147.450.

147.465 Grantmaking; rules. (1) If sufficient funds are available in the Oregon Domestic and Sexual Violence Services Fund, the Attorney General or the Attorney General's designee may make grants from the fund to carry out the plan developed under ORS 147.456.

(2) The Attorney General may hire staff necessary to accomplish the purposes of the plan developed under ORS 147.456.

(3) In accordance with ORS chapter 183, the Attorney General shall adopt rules necessary to carry out the provisions of ORS 147.450 to 147.471. [2001 c.870 §25; 2007 c.71 §41]

Note: See note under 147.450.

147.468 Authority of Department of Justice. To the extent that funds are available, the Department of Justice may:

(1) Pursue centralized training, technical assistance, policy development and implementation;

(2) Conduct statewide community outreach and public education;

(3) Develop innovative projects based on demonstrated effectiveness that address domestic and sexual violence;

(4) Provide information and policy advice based on current research and demonstrated effectiveness in Oregon and other states, including successful local strategies; and

(5) Compile, analyze and distribute materials to inform and support statewide coordinated planning. [2001 c.870 §27]

Note: See note under 147.450.

147.471 Advisory council. (1) There is created an advisory council that shall consist of at least 15, but not more than 20, members. The council shall advise the Department of Justice on the administration of the policies and practices of the domestic and sexual violence services program. Members shall be appointed by and serve at the pleasure of the Attorney General. Membership in the council shall:

(a) Accurately reflect the diversity of the population in Oregon as well as the diversity of individuals needing services;

(b) Be composed of both lay and professionally trained individuals with expertise in domestic violence and sexual assault services;

(c) Include representatives of other state agencies providing services;

(d) Include representatives of professional, civil or other public or private organizations;

(e) Include private citizens interested in service programs; and

(f) Include recipients of assistance or services or their representatives.

(2) Members of the advisory council may not receive compensation for their services. Members of the advisory council other than members employed in full-time public service shall be reimbursed by the Department of Justice for their actual and necessary expenses incurred in the performance of their duties. The reimbursement shall be subject to the provisions of ORS 292.210 to 292.288. Members of the advisory council who are employed in full-time public service may be reimbursed by their employing agencies for their actual and necessary expenses incurred in the performance of their duties. [2001 c.870 §30; 2007 c.71 §42]

Note: See note under 147.450.

FUND TO END COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

147.480 Fund established; allocation of moneys; application; advisory committee; rules. (1) The Fund to End Commercial Sexual Exploitation of Children is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Fund to End Commercial Sexual Exploitation of Children shall be credited to the fund. All moneys deposited in the fund are continuously appropriated to the Department of Justice for the purposes of this section.

(2) The Department of Justice, with the advice of the advisory committee appointed under subsection (5) of this section, shall allocate moneys from the Fund to End Commercial Sexual Exploitation of Children to provide financial assistance to fund one or more of the following:

(a) Services, interventions and treatment for children who have been or may become the victims of commercial sexual exploitation;

(b) Efforts to provide outreach to, and to educate, the public, professionals and service providers about the commercial sexual exploitation of children;

(c) Efforts to prevent and reduce the incidence of commercial sexual exploitation of children;

(d) Training of investigators, service providers and others regarding the identification and treatment of children who have experienced commercial sexual exploitation;

(e) Advocacy for children who have been victims of commercial sexual exploitation;

(f) Promotion and facilitation of interagency and interdepartmental cooperation among state agencies and among different levels of government in this state in the delivery and funding of services for children who have been or may become victims of commercial sexual exploitation; and

(g) Any other activity, project or program that will encourage and support the provision of preventative and therapeutic assistance to child victims or potential child victims of commercial sexual exploitation.

(3) An individual or entity wishing to apply for funding from the Fund to End Commercial Sexual Exploitation of Children shall submit an application to the department. The application shall be in the form and contain the information required by the department by rule.

(4) The department may solicit and accept contributions of funds and assistance from the United States or its agencies, or from other sources, public or private, and agree to conditions not inconsistent with the purposes of this section. All funds received shall be deposited into the Fund to End Commercial Sexual Exploitation of Children and are continuously appropriated to the department for the purposes of this section.

(5) The department shall appoint an advisory committee to advise the department with respect to policies and procedures to coordinate statewide planning for delivery of services to child victims of commercial sexual exploitation. The advisory committee shall meet with and advise the department, provide the department with information regarding the status of existing services and make recommendations for the making of awards of financial assistance pursuant to this section. The department shall include as members of the advisory committee stakeholders with expertise in child welfare, mental health and addiction, sex trafficking and law enforcement.

(6) The department may adopt rules to carry out the provisions of this section, including but not limited to the role of the advisory committee. [2015 c.703 §1]

Note: 147.480 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EFFECTUATION OF CRIME VICTIMS' CONSTITUTIONAL RIGHTS

147.500 Definitions. As used in ORS 147.500 to 147.550:

(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 ORS 147.515 (1).

(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 or for the reclassification of 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. [2009 c.178 §1; 2013 c.708 §15a]

Note: 147.500 to 147.550 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.502 General provisions. (1) A victim may assert a claim under ORS 147.500 to 147.550 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 ORS 147.500 to 147.550.

(3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a proceeding under ORS 147.500 to 147.550.

(4) The time within which an act is to be done under ORS 147.500 to 147.550 is determined under ORS 174.120 and 174.125.

(5) ORCP 17 applies to the provision of documents to the court under ORS 147.500 to 147.550. [2009 c.178 §2]

Note: See note under 147.500.

147.504 Scope. (1) ORS 147.500 to 147.550 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 ORS 147.500 to 147.550:

(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. [2009 c.178 §19]

Note: See note under 147.500.

147.508 Reconsideration of release decision. (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 30 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). [2009 c.178 §4; 2011 c.659 §2]

Note: See note under 147.500.

147.510 Critical stage of criminal proceeding; notice to court. (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. [2009 c.178 §3]

Note: See note under 147.500.

147.512 Plea hearings, sentencing hearings and settlement conferences. (1) Notwithstanding ORS 147.510, at the beginning of each judicial settlement conference, plea hearing or sentencing hearing, the prosecuting attorney shall inform the court whether the victim is present. If the victim is not present and the case involves a defendant charged with a violent felony, the prosecuting attorney shall inform the court whether the victim was informed of the conference or hearing.

(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 before making a plea offer and before entering into 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 was consulted

regarding plea negotiations, if 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 informed and consulted regarding plea negotiations. If the victim made such a request, the court shall ask the prosecuting attorney what reasonable efforts to inform and consult the victim concerning plea negotiations were made and 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 the victim, the court shall direct the prosecuting attorney to make reasonable efforts to consult 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. [2009 c.178 §5; 2011 c.659 §1]

Note: See note under 147.500.

147.515 Claims. (1) A victim who wishes to allege a violation of a right granted to the victim in a criminal proceeding by Article I, section 42 or 43, of the Oregon Constitution, shall inform the court within 30 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 ORS 147.517.

(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 ORS 147.530 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 ORS 147.517.

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

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

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

(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. [2009 c.178 §6; 2011 c.659 §3; 2013 c.224 §1]

Note: See note under 147.500.

147.517 Notice; order to show cause; response. (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 ORS 147.520 or 147.530 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 ORS 147.515 (3) or (4)(b), 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 ORS 147.530 (5)(a), 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 ORS 147.515 (2)(a), 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. [2009 c.178 §7]

Note: See note under 147.500.

147.520 Resolution of claim when response not filed. (1) If a response to the order to show cause issued under ORS 147.517 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 ORS 147.517 (4)(b), 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 ORS 147.517 (4)(b)(B), 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 ORS 147.517 (1)(a). [2009 c.178 §8]

Note: See note under 147.500.

147.522 Issue that will have impact on trial; challenge to designation as victim or victim's presence at trial. (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 ORS 147.517 (4); 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. [2009 c.178 §9]

Note: See note under 147.500.

147.525 Rescheduling matters affected by claim, response or motion. (1) Pending the hearing described in ORS 147.530, the court may reschedule any matter in the criminal proceeding that may directly im-

pact, or be directly impacted by, the claim, a response filed under ORS 147.517 (4) or a motion filed under ORS 147.522. 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 ORS 147.517 (4) or the motion filed under ORS 147.522;

(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. [2009 c.178 §10]

Note: See note under 147.500.

147.530 Hearing on claim, response or motion; order. (1) A hearing on a claim, a response filed under ORS 147.517 (4) or a motion filed under ORS 147.522 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 a written 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 a written order denying relief.

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

(a) Be issued within seven days from the date of the hearing held pursuant to this section, unless the court finds good cause to issue the order at a later date.

(b) Except as provided in ORS 147.517 (4)(b)(B), include the reasons 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 ORS 147.517 (4) and any person against whom relief was ordered at the mailing address provided under ORS 147.517 (1)(a). [2009 c.178 §11; 2013 c.224 §2]

Note: See note under 147.500.

147.533 Waiver of remedy. (1) A remedy under ORS 147.500 to 147.550 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 ORS 147.517 (4); or

(B) Participate in a hearing under ORS 147.530; or

(b) By any person after:

(A) The date determined by the court under ORS 147.517 (2)(a) if the person is filing a response;

(B) The period of time described in ORS 147.522 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. [2009 c.178 §12]

Note: See note under 147.500.

147.535 Appeals generally. (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 ORS 147.515, 147.520 or 147.530 shall be solely as provided in this section and ORS 147.537, 147.539 and 147.542.

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

(c) Nothing in ORS 147.500 to 147.550 affects the ability of a defendant to petition for a writ of mandamus.

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

(3) Subject to ORS 147.542, 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 ORS 147.515, 147.520 or 147.530 shall be as provided in:

(a) ORS 147.537 if the order was issued under ORS 147.520 or 147.530 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) ORS 147.539 in all appeals arising under ORS 147.500 to 147.550 except those described in paragraph (a) of this subsection.

(5) The victim, the state 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 or party seeking appellate review did none of the following:

(a) Inform the court of a claim.

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

(c) File a motion under ORS 147.522.

(d) Participate in a hearing under ORS 147.530.

(6) Pursuant to ORS 180.060, the Attorney General shall appear for the state in all appeals under this section and ORS 147.537, 147.539 and 147.542. [2009 c.178 §13; 2013 c.224 §3]

Note: See note under 147.500.

147.537 Appellate review as matter of right; notice of interlocutory appeal; service; response. (1) Appellate review of an order described in ORS 147.535 (4)(a) 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 or party 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 ORS 147.515 (2)(a), 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 ORS 147.517 (4) 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 ORS 147.522;

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

(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 entered the order being appealed.

(b) An appellant who seeks to appeal an order issued under ORS 147.530 and who was not provided with a copy of the order as required by ORS 147.530 (6) may 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 of receiving a copy of the order.

(c) 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.

(d) Except as provided in paragraph (c) 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 non-compliance, 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 sub-

mission 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.

(20) In addition to any other method authorized by law, service under this section may be accomplished by electronic mail or facsimile transmission, in a manner consist-

ent with any applicable rules of appellate procedure. [2009 c.178 §14; 2011 c.659 §4; 2013 c.224 §4]

Note: See note under 147.500.

147.539 Discretionary review. Appellate review of an order described in ORS 147.535 (4)(b) shall be as provided in ORS 147.537, 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 ORS 147.537 (4), 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) ORS 147.537 (15) 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. [2009 c.178 §15]

Note: See note under 147.500.

147.542 Stay pending appeal. (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 ORS 147.537; or

(b) Upon the issuance of an order granting review under ORS 147.539.

(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. [2009 c.178 §16]

Note: See note under 147.500.

147.545 Attorney General certification; intervention. (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 Article I, section 42 or 43, 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 Article I, sections 42 and 43, 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 court proceeding arising under ORS 147.500 to 147.550. [2009 c.178 §17; 2013 c.224 §5]

Note: See note under 147.500.

147.550 Establishment of requirements and procedures by Chief Justice by rule or order. (1) The Chief Justice of the Supreme Court may, by rule or order, establish requirements and procedures necessary to comply with the provisions of ORS 147.500 to 147.550.

(2) The Chief Justice of the Supreme Court shall prescribe the forms described in ORS 147.510 (4) and 147.515 (2)(a). The form described in ORS 147.515 (2)(a) 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 ORS 147.500 to 147.550. [2009 c.178 §18]

Note: See note under 147.500.

147.560 Task Force on Victims' Rights Enforcement; duties; reports. (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 ORS 147.500 to 147.550.

(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 may prepare reports that 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 may submit a report prepared

under this subsection to the Legislative Assembly in the manner provided in ORS 192.245.

(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. [2009 c.178 §20; repealed by 2009 c.178 §21; amendments by 2013 c.582 §2 treated as reenactment; status of statute reaffirmed by 2015 c.27 §13]

Note: 147.560 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.575 Recommendations for achieving full compliance with victims' rights laws; model rules, procedures or policies.

(1) The Attorney General may adopt rules to establish a nonjudicial process, independent of the process established in ORS 147.500 to 147.550 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 non-binding 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. [2009 c.178 §22]

Note: 147.575 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CONFIDENTIALITY OF COMMUNICATIONS AND RECORDS

147.600 Confidentiality of certain victim communications and records; exception. (1) As used in this section:

(a) “Certified advocate” means a person who:

(A) Has completed at least 40 hours of training in advocacy for victims of domestic violence, sexual assault or stalking, approved by the Attorney General by rule; and

(B) Is an employee or a volunteer of a qualified victim services program.

(b) “Confidential communication” means a written or oral communication that is not intended for further disclosure to third persons except to:

(A) Persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support or advocacy services;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Other persons, in the context of group counseling.

(c) “Qualified victim services program” means:

(A) A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or

(B) A sexual assault center, victim advocacy office, women’s center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two-year or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

(d) “Victim” means a person seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a qualified victims services program.

(2) Except as provided in ORS 40.252 and 40.264, without the written, informed consent of the victim that is reasonably limited in duration, a certified advocate or a qualified victim services program may not disclose:

(a) Confidential communications between a victim and the certified advocate or qualified victim services program made in course of safety planning, counseling, support or advocacy services.

(b) Records that are created or maintained in the course of providing services regarding the victim.

(3) Notwithstanding subsection (2) of this section, a certified advocate or a qualified victim services program may disclose confidential communications or records without the victim’s consent only:

(a) To the extent necessary for defense in any civil, criminal or administrative action that is brought against the certified advocate, or against the qualified victim services program, by or on behalf of the victim; and

(b) As otherwise required by law.

(4) This section does not prohibit the disclosure of aggregate, non-personally identifying data. [2015 c.265 §4]

Note: Section 5 (4), chapter 265, Oregon Laws 2015, provides:

Sec. 5. (4) Sections 2 [40.264] and 4 [147.600] of this 2015 Act and the amendments to ORS 40.252 by section 3 of this 2015 Act apply to communications and records made before, on or after the operative date specified in subsection (1) of this section [October 1, 2015], unless the communications were disclosed to a third party before the operative date specified in subsection (1) of this section. [2015 c.265 §5(4)]

Note: 147.600 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.