

CHAPTER 224

AN ACT

HB 3282

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

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

SECTION 1. ORS 147.515 is amended to read:

147.515. (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, [*Article I*] 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 [*an*] **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. [*; and*]

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

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

SECTION 2. ORS 147.530 is amended to read:

147.530. (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 [*an*] **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 [*an*] **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 [*the court issued an order to show cause under ORS 147.517, if an order to show cause was issued*] **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.

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

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

SECTION 3. ORS 147.535 is amended to read:

147.535. (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 prosecuting attorney]* **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.

SECTION 4. ORS 147.537 is amended to read:

147.537. (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 ex-

cerpt 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 *[issued]* **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.

[(b)] (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.

[(c)] (d) Except as provided in paragraph [(b)] (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 noncompliance, does not promptly cure a deficiency in the materials or if the failure to timely serve a true and complete copy of the accompanying materials substantially prejudices the respondent's ability to respond to the appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 consistent with any applicable rules of appellate procedure.

SECTION 5. ORS 147.545 is amended to read:

147.545. (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, [*Article I*] of the Oregon Constitution, applies, the Attorney General shall determine whether the Department of Justice has taken all reasonably practicable steps to fulfill the rights granted by **Article I**, sections 42 and 43, [*Article I*] of the Oregon Constitution, to the victim of the crime in the appellate courts.

(b) Unless otherwise provided by rule or order of the Chief Justice of the Supreme Court, the Attorney General shall, in the cases described in paragraph (a) of this subsection, certify the results of

that determination to the court simultaneously with the Attorney General's first appearance.

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

SECTION 6. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

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