

A-Engrossed House Bill 3633

Ordered by the House February 15
Including House Amendments dated February 15

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Judiciary for Department of Justice)

SUMMARY

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

Creates procedures for crime victims to assert constitutional rights in pending criminal and juvenile delinquency proceedings, including procedures authorizing expedited appeal, automatic suspension of criminal or juvenile proceeding on appeal and Attorney General intervention on behalf of State of Oregon. **Creates task force to review implementation of procedures.** Repeals certain aspects of procedures based on approval or rejection of proposed constitutional amendments on ballot in May 2008.

Authorizes Attorney General to adopt rules to create nonjudicial process to effectuate crime victims' rights independent of proposed constitutional amendments.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime victims' rights; creating new provisions; amending ORS 40.015, 131.007, 135.245,
3 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273; repealing ORS
4 135.406; and declaring an emergency.

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

PROVISIONS EFFECTIVE REGARDLESS OF THE OUTCOME OF THE ELECTION ON HJR 49 AND HJR 50

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10 **SECTION 1.** (1) **The Attorney General may adopt rules to establish a nonjudicial process,**
11 **independent of any other process established by law and applicable to agencies in the execu-**
12 **tive branch of state government, district attorneys, juvenile departments and local law**
13 **enforcement agencies, to receive claims of violations of rights granted to victims of crime**
14 **in the criminal and juvenile justice systems by law, to determine whether violations have**
15 **occurred and to make nonbinding recommendations for achieving full compliance with vic-**
16 **tims' rights laws in the future.**

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

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

1 the minor.

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

4 **SECTION 3.** (1) A victim may assert a claim under sections 2 to 19 of this 2008 Act per-
5 sonally, through an attorney or through an authorized prosecuting attorney.

6 (2) In lieu of service on or notification to a defendant or victim under sections 2 to 19
7 of this 2008 Act, if the defendant or victim is represented by counsel, counsel for the de-
8 fendant or victim shall be served or notified.

9 (3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a pro-
10 ceeding under sections 2 to 19 of this 2008 Act.

11 (4) The time within which an act is to be done under sections 2 to 19 of this 2008 Act is
12 determined under ORS 174.120 and 174.125.

13 **SECTION 4.** (1) As soon as practicable following the filing of a charging instrument, the
14 prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice of
15 the Supreme Court, whether:

16 (a) The prosecuting attorney or a person known to the prosecuting attorney informed the
17 victim of the rights granted to the victim by sections 42 (1)(a) to (f) and 43, Article I of the
18 Oregon Constitution.

19 (b) The charging instrument includes the name or pseudonym of each victim known to
20 the prosecuting attorney. If the charging instrument does not include the name or
21 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
22 identify any victim not included in the charging instrument.

23 (c) The victim requested that the prosecuting attorney assert and enforce a right granted
24 to the victim by section 42 or 43, Article I of the Oregon Constitution.

25 (d) The victim requested to be informed in advance of any critical stage of the proceed-
26 ing.

27 (2) Subsection (3) of this section does not apply in a criminal proceeding in which a
28 prosecuting attorney has provided the court with the certification described in subsection (1)
29 of this section.

30 (3) At the beginning of each critical stage of the proceeding, if:

31 (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-
32 ney shall so inform the court. If the prosecuting attorney does not know whether the victim
33 is present, the court shall determine whether the victim is present.

34 (b) The victim is not present, the prosecuting attorney shall inform the court, based on
35 the prosecuting attorney's knowledge, whether the victim requested advance notice of any
36 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
37 torney shall inform the court, based on the prosecuting attorney's knowledge, whether the
38 victim:

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

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

41 (C) Indicated an intention to attend the proceeding or requested that the prosecuting
42 attorney assert a particular right associated with the proceeding.

43 (4) If the victim is present, the court may ask the victim for information about any as-
44 pect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon Con-
45 stitution.

1 (5)(a) The certification described in subsection (1) of this section may be based on infor-
2 mation provided to the prosecuting attorney by a person known to the prosecuting attorney.

3 (b) If the prosecuting attorney learns that a previous certification is no longer accurate,
4 the prosecuting attorney shall file an updated certification as soon as practicable.

5 (6) This section does not apply in a juvenile delinquency proceeding.

6 **SECTION 5.** (1) At the beginning of any plea hearing and any sentencing hearing, if the
7 prosecuting attorney or the juvenile department is aware that the victim is present, the
8 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
9 attorney or juvenile department does not know whether the victim is present, the court shall
10 determine whether the victim is present.

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

12 (a) If the victim requests, the prosecuting attorney or juvenile department shall consult
13 the victim about plea discussions before making a final plea agreement.

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

15 (A) If the victim is present, the court shall ask whether the victim agrees or disagrees
16 with the plea agreement as the agreement has been presented to the court and whether the
17 victim wishes to be heard regarding the plea agreement before it is accepted.

18 (B) If the victim is not present, the court shall ask the prosecuting attorney or juvenile
19 department whether the victim requested to be notified and consulted regarding plea nego-
20 tiations. If the victim made such a request, the court shall ask the prosecuting attorney or
21 juvenile department whether the victim agrees or disagrees with the plea agreement.

22 (c) If the court finds that the victim requested consultation about plea negotiations and
23 that the prosecuting attorney or juvenile department failed to consult with the victim, the
24 court shall direct the prosecuting attorney or juvenile department to consult with the victim
25 and may not accept the plea unless the court makes a finding on the record that:

26 (A) Good cause exists for the failure to consult; or

27 (B) The interests of justice require the acceptance of the plea.

28 (3) The requirements of this section are not affected by the certification described in
29 section 4 of this 2008 Act.

30 (4) As used in this section:

31 (a) "Plea hearing" means a hearing in which the defendant enters a plea of guilty or no
32 contest;

33 (b) "Plea of guilty or no contest" includes:

34 (A) An admission that a person under 18 years of age is within the jurisdiction of the
35 juvenile court; or

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

38 (c) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-
39 ceeding under ORS chapter 419C.

40 **SECTION 6.** (1) A victim who wishes to allege a violation of a right granted by section
41 42 or 43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall
42 inform the court within seven days of the date the victim knew or reasonably should have
43 known of the facts supporting the allegation. The victim shall describe the facts supporting
44 the allegation and include a proposed remedy.

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

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

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

4 (3) If the victim informs the court of a facially valid claim on a form under subsection
5 (2)(a) of this section, the court shall promptly issue the order to show cause described in
6 section 7 of this 2008 Act.

7 (4) If the victim informs the court of a facially valid claim orally under subsection (2)(b)
8 of this section and the court determines that each person entitled to notice of the claim and
9 a reasonable opportunity to be heard:

10 (a) Is present, the court shall hold a hearing under section 11 of this 2008 Act as soon
11 as practicable; or

12 (b) Is not present, the court shall issue the order to show cause described in section 7
13 of this 2008 Act.

14 (5) If the court determines that the victim has not alleged a facially valid claim, the court
15 shall enter an order dismissing the claim. The order described in this subsection shall:

16 (a) Be without prejudice to file an amended claim;

17 (b) Include the reasons the claim was dismissed; and

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

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

25 **SECTION 7.** (1)(a) Except as provided in subsection (3) of this section, the victim, the
26 prosecuting attorney or the defendant must provide notice of the claim to any person the
27 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting
28 relief by providing the person with a copy of the order to show cause described in this sec-
29 tion.

30 (b) An order granting relief under section 8 or 11 of this 2008 Act is not enforceable
31 against, and has no legal effect on, any person who did not receive notice or have knowledge
32 of the claim and a reasonable opportunity to be heard regarding the claim.

33 (2) Under the circumstances described in section 6 (3) or (4)(b) of this 2008 Act, the court
34 shall issue an order to show cause why the victim should not be granted relief. The court
35 shall, after considering the requirements of section 11 (5)(a) of this 2008 Act, include in the
36 order to show cause the date:

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

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

39 (3) The court shall provide a copy of the order to show cause and of the form described
40 in section 6 (2)(a) of this 2008 Act, if the form was completed, to:

41 (a) The victim;

42 (b) The prosecuting attorney; and

43 (c) The defendant.

44 (4)(a) If the court issues an order to show cause under this section, the victim, the
45 prosecuting attorney, the defendant or any other person against whom relief is requested

1 may contest the claim by filing a response with the court before the date described in sub-
2 section (2)(a) of this section.

3 (b) In a claim alleging a violation of a right granted to the victim under section 42, Ar-
4 ticle I of the Oregon Constitution, the prosecuting attorney may file a response that includes
5 an affidavit demonstrating that the criminal proceeding involves organized crime or a minor
6 victim and setting forth cause to suspend the rights established in section 42, Article I of the
7 Oregon Constitution.

8 **SECTION 8.** (1) If a response to the order to show cause issued under section 7 of this
9 2008 Act is not timely filed, the court shall:

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

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

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

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

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

17 (c) Have been violated but that the Constitution of Oregon or the United States prohibits
18 all appropriate remedies or that the prosecuting attorney has set forth cause to suspend the
19 victim's rights under section 7 (4)(b) of this 2008 Act, the court shall issue an order denying
20 relief.

21 (3) The order issued under subsection (2) of this section must be in writing and must
22 include the reasons relief was granted or denied.

23 (4) The court shall provide a copy of the order issued under subsection (2) of this section
24 to the victim, the prosecuting attorney, the defendant and any other person against whom
25 relief was requested, if the person's whereabouts can be reasonably ascertained.

26 **SECTION 9.** A victim, prosecuting attorney or defendant who seeks a determination of
27 an issue involving a right granted by section 42 or 43, Article I of the Oregon Constitution,
28 that will impact the conduct of the trial shall file a motion at least 21 days before trial unless
29 the factual basis of the determination becomes known within 21 days before trial and could
30 not reasonably have been discovered earlier, in which case the motion must be filed
31 promptly. The court shall promptly conduct a hearing under section 11 of this 2008 Act and
32 rule on the motion as soon as practicable.

33 **SECTION 10.** (1) Pending the hearing described in section 11 of this 2008 Act, the court
34 may reschedule any matter in the criminal proceeding that may directly impact, or be di-
35 rectly impacted by, the claim, response or motion. All other matters in the criminal pro-
36 ceeding shall continue in the ordinary course.

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

39 (a) The likelihood that the relief requested will be granted;

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

42 (c) Whether there is any support in fact or law for the claim, response or motion;

43 (d) The nature of the harm to the victim, the prosecuting attorney, the defendant, any
44 other person against whom relief is requested and the public that will likely result from re-
45 scheduling the matter;

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

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

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

8 **SECTION 11.** (1) The court shall conduct a hearing on a claim, response or motion under
9 sections 2 to 19 of this 2008 Act in accordance with this section.

10 (2) At the hearing, the court may receive evidence relevant to the allegation and pro-
11 posed remedy from the victim, the prosecuting attorney, the defendant and any person
12 against whom relief is requested.

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

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

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

18 (b) Is not entitled to relief or that the Constitution of Oregon or the United States pro-
19 hibits all appropriate relief, the court shall issue an order denying relief.

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

21 (a) Be issued within seven days from the date the court issued an order to show cause
22 under section 7 of this 2008 Act, if an order to show cause was issued, unless the court finds
23 good cause to issue the order at a later date.

24 (b) Include the reasons relief was granted or denied.

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

28 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,
29 the defendant, any person who filed a response under section 7 (4) of this 2008 Act and any
30 person against whom relief was ordered.

31 **SECTION 12.** (1) A remedy under sections 2 to 19 of this 2008 Act is waived if the remedy
32 is requested:

33 (a) By a victim who had notice of a related claim and failed to:

34 (A) File a response under section 7 (4) of this 2008 Act; or

35 (B) Participate in a hearing under section 11 of this 2008 Act; or

36 (b) By any person after:

37 (A) The period of time determined by the court under section 7 (2)(a) of this 2008 Act if
38 the person is filing a response;

39 (B) The period of time described in section 9 of this 2008 Act if the person is filing a
40 motion; or

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

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

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

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

1 **Constitution;**

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

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

6 (e) **Remedies requested in a subsequent criminal proceeding arising after a state or fed-**
7 **eral court has granted a new trial or sentencing, provided the claim or motion is timely un-**
8 **der subsection (1) of this section in the subsequent criminal proceeding.**

9 **SECTION 13. (1) Notwithstanding any other provision of law, appellate review of an order**
10 **issued under section 6, 8 or 11 of this 2008 Act shall be solely as provided in this section and**
11 **sections 14, 15 and 16 of this 2008 Act.**

12 (2) **Jurisdiction for appellate review of an order issued under section 6, 8 or 11 of this 2008**
13 **Act is vested originally and exclusively in the Supreme Court.**

14 (3) **Subject to section 16 of this 2008 Act, the jurisdiction of the Supreme Court is limited**
15 **to the order for which appellate review is sought and the trial court retains jurisdiction over**
16 **all other matters in the criminal proceeding.**

17 (4) **Appellate review of an order issued under section 6, 8 or 11 of this 2008 Act shall be**
18 **as provided in:**

19 (a) **Section 14 of this 2008 Act if the order was issued in a criminal proceeding in which**
20 **a defendant is charged with a felony or a person Class A misdemeanor and the order arises**
21 **from a claim or motion alleging a violation that occurred prior to the pronouncement in open**
22 **court of the sentence or disposition after a plea, admission or trial in the criminal proceed-**
23 **ing.**

24 (b) **Section 15 of this 2008 Act if the order was issued at any other stage in the criminal**
25 **proceeding.**

26 (5) **The victim, the prosecuting attorney, the defendant or any person against whom relief**
27 **was ordered has standing to seek appellate review of an order unless, after notice and a**
28 **reasonable opportunity to be heard on the claim or motion that resulted in the order or a**
29 **related claim or motion, the person seeking appellate review did not:**

30 (a) **Inform the court of an alleged violation under section 6 (1) of this 2008 Act;**

31 (b) **File a response under section 7 (4) of this 2008 Act;**

32 (c) **File a motion under section 9 of this 2008 Act; or**

33 (d) **Participate in a hearing described in section 11 of this 2008 Act.**

34 **SECTION 14. (1) Appellate review of an order described in section 13 (4)(a) of this 2008**
35 **Act must be initiated by filing a notice of interlocutory appeal with the Supreme Court sub-**
36 **stantially in the form prescribed by rule of the Supreme Court. Review of the order is a**
37 **matter of right.**

38 (2) **The person filing the notice shall be identified as the appellant. Any person described**
39 **in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a**
40 **respondent. If relief has been ordered against the state, a prosecuting attorney or any other**
41 **state officer, the state shall be identified as respondent. The notice must contain a desig-**
42 **nation of record of those portions of the oral proceedings in the trial court to be included in**
43 **the record.**

44 (3) **The appellant shall include with the notice of interlocutory appeal the following ma-**
45 **terials:**

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

3 (b) An excerpt of the parts of the record necessary to determine the question presented
4 and the relief sought. The excerpt of record must include a copy of the form described in
5 section 6 (2)(a) of this 2008 Act, if the form was completed and provided to the trial court.
6 The Supreme Court may:

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

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

11 (c) A memorandum of law containing:

12 (A) A concise but complete statement of facts material to a determination of the ques-
13 tion presented and the relief sought;

14 (B) A statement of why the notice of interlocutory appeal is timely; and

15 (C) Supporting arguments and citations of authority.

16 (4) The appellant shall serve a copy of the notice of interlocutory appeal and the accom-
17 panying materials described in subsection (3) of this section on the following other persons:

18 (a) The victim who asserted the claim that resulted in the order being appealed and a
19 victim who asserted a related claim under section 6 (1) of this 2008 Act;

20 (b) A person who filed a response to the claim under section 7 (4) of this 2008 Act;

21 (c) A person who filed the motion that resulted in the order being appealed or a related
22 motion under section 9 of this 2008 Act;

23 (d) A person against whom relief was sought in the hearing that resulted in the order
24 being appealed or a related hearing under section 11 of this 2008 Act;

25 (e) The defendant, if the defendant is not represented by appointed counsel;

26 (f) The office of public defense services established under ORS 151.216 if the defendant is
27 represented by appointed counsel;

28 (g) The prosecuting attorney; and

29 (h) The Attorney General.

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

31 (a) The trial court administrator; and

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

34 (6)(a) Except as otherwise provided in this subsection, the appellant shall serve and file
35 the notice of interlocutory appeal and, where applicable, accompanying materials within
36 seven days after the date the trial court issued the order being appealed.

37 (b) The appellant shall serve a defendant who is represented by counsel, the office of
38 public defense services established under ORS 151.216, the prosecuting attorney and the At-
39 torney General so that the copy of the notice of interlocutory appeal and accompanying
40 materials are received on the same day the notice is filed with the Supreme Court.

41 (c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all
42 persons described in subsections (4) and (5) of this section so that the copy of the notice of
43 interlocutory appeal and accompanying materials are received no later than one day after
44 the notice is filed.

45 (d) Notwithstanding any other provision of law, a notice of interlocutory appeal is filed

1 under this section when it is physically received by the Supreme Court.

2 (7) Within three days after receipt of a notice of interlocutory appeal that contains a
3 designation of record under subsection (2) of this section, the trial court administrator shall
4 forward to the Supreme Court an audio record of the designated oral proceedings.

5 (8) If the Supreme Court directs a party to provide a transcript of oral proceedings under
6 subsection (3) of this section, the party shall provide the transcript to the Supreme Court
7 within seven days after the date of the Supreme Court's order.

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

9 (A) The timely filing of the original notice of interlocutory appeal and accompanying
10 materials with the Supreme Court; and

11 (B) The service of the notice of interlocutory appeal within the time limits described in
12 subsection (6) of this section on all persons identified in subsection (4) of this section whose
13 whereabouts the appellant may reasonably ascertain.

14 (b) Failure to timely serve a true and complete copy of the accompanying materials de-
15 scribed in subsection (3) of this section is not jurisdictional, provided that the appellant made
16 a good faith effort to do so and substantially complied with those requirements.

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

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

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

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

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

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

37 (14)(a) The Supreme Court shall issue its decision on appeal under this section within 21
38 days after the date the notice of interlocutory appeal is filed.

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

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

45 (A) Whether the case is so unusual or complex, due to the number of persons involved

1 or the existence of novel questions of law, that 21 days is an unreasonable amount of time
2 for the court to issue a decision; and

3 (B) Whether the failure to issue a decision at a later date would be likely to result in a
4 miscarriage of justice.

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

11 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may
12 reverse or remand the order only if it finds that the order is unlawful in substance or pro-
13 cedure and that the substantial rights of the appellant were prejudiced as a result.

14 **SECTION 15.** Appellate review of an order described in section 13 (4)(b) of this 2008 Act
15 shall be as provided in section 14 of this 2008 Act, except that:

16 (1) The Supreme Court's jurisdiction is discretionary. The court may by rule prescribe
17 the criteria the court will use to decide whether to grant review. The initiating document is
18 a petition for review, but the petition must be accompanied by the same materials described
19 in section 14 (3) of this 2008 Act, and the person seeking review shall be identified as the
20 petitioner.

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

24 (3) Section 14 (13) of this 2008 Act does not apply to review under this section. The Su-
25 preme Court may dismiss a review improvidently granted.

26 (4) The Supreme Court shall issue its decision on appeal under this section within 21 days
27 after the date the court issued the order granting review.

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

30 (a) Upon receipt of a notice of interlocutory appeal under section 14 of this 2008 Act; or

31 (b) Upon a grant of review under section 15 of this 2008 Act.

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

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

37 (a) The likelihood that the appellant will prevail on appeal;

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

39 (c) Whether there is any support in fact or law for the appeal;

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

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

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

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

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

13 (2) The Attorney General may intervene at any time on behalf of the State of Oregon in
14 any trial or appellate court proceeding arising under sections 2 to 19 of this 2008 Act.

15 **SECTION 18.** (1) The Chief Justice of the Supreme Court may, by rule or order, establish
16 requirements and procedures necessary to comply with the provisions of sections 2 to 19 of
17 this 2008 Act.

18 (2) The Chief Justice of the Supreme Court shall prescribe the forms described in
19 sections 4 (1) and 6 (2)(a) of this 2008 Act. The form described in section 6 (2)(a) of this 2008
20 Act must allow a victim to designate an alternate mailing address or substitute a person to
21 receive notice or service on behalf of the victim for the purposes of sections 2 to 19 of this
22 2008 Act.

23 **SECTION 19.** Sections 2 to 19 of this 2008 Act effectuate the provisions of sections 42 and
24 43, Article I of the Oregon Constitution, for violations that occur in criminal proceedings and
25 do not provide a remedy for violations that occur in any other proceeding. A remedy for a
26 violation of sections 42 and 43, Article I of the Oregon Constitution, in any other proceeding
27 may be enforced by writ of mandamus under ORS 34.105 to 34.240.

28 **SECTION 19a.** (1) There is created the Task Force on Victims' Rights Enforcement con-
29 sisting of at least seven members appointed as follows:

30 (a) The Attorney General shall appoint:

31 (A) A member employed by or associated with a group advocating for the rights of vic-
32 tims of crime;

33 (B) A member who represents the Oregon Department of Justice Crime Victims' Assist-
34 ance Section;

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

37 (D) A lawyer routinely engaged in prosecuting persons charged with a crime, after con-
38 sulting with professional organizations serving such lawyers; and

39 (E) Other persons the Attorney General deems appropriate;

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

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

42 (B) A judge; and

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

45 (2) The task force shall review the implementation of sections 2 to 19 of this 2008 Act.

1 (3) The Attorney General may establish a term of office for the members and shall ap-
2 point a member of the task force to serve as chairperson. Members serve at the pleasure
3 of the Attorney General. The task force shall meet at times and places specified by the call
4 of the chairperson or of a majority of the members of the task force.

5 (4) If there is a vacancy for any cause, the appointing authority shall make an appoint-
6 ment to become immediately effective.

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

11 (a) January 1, 2009; and

12 (b) January 1, 2011.

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

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

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

20 SECTION 19b. Section 18a of this 2008 Act is repealed on July 1, 2011.

21
22 **PROVISIONS EFFECTIVE IF HJR 49 IS APPROVED AND HJR 50**
23 **IS REJECTED BY THE PEOPLE**
24

25 SECTION 20. As used in sections 20 to 37 of this 2008 Act:

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

29 (2) "Claim" means an allegation and the proposed remedy described in section 24 (1) of
30 this 2008 Act.

31 (3) "Crime" has the meaning given that term in ORS 161.515. "Crime" includes an act
32 committed by a person who is under 18 years of age that, if committed by an adult, would
33 constitute a misdemeanor or felony.

34 (4) "Criminal proceeding" means an action at law by means of which a person is alleged
35 to have committed a crime for which there is a victim that is conducted in the trial or ju-
36 venile court before or after sentencing or disposition.

37 (5) "Critical stage of the proceeding" includes:

38 (a) Arraignment;

39 (b) Release hearings or hearings to modify the conditions of release;

40 (c) Preliminary hearings;

41 (d) Hearings related to the rescheduling of trial;

42 (e) Hearings on motions or petitions:

43 (A) Conducted pursuant to ORS 40.210 or 135.139;

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

45 (C) To suppress or exclude evidence;

- 1 (f) Entry of guilty or no contest pleas;
2 (g) Trial;
3 (h) Restitution hearings;
4 (i) Sentencing;
5 (j) Probation violation or revocation hearings, when the basis for the alleged violation
6 directly implicates a victim's rights;
7 (k) Hearings for relief from the requirement to report as a sex offender;
8 (L) Hearings related to a deferred sentencing agreement;
9 (m) Hearings designated as a critical stage of the proceeding in ORS 419C.273; and
10 (n) Any other stage of a criminal proceeding the court determines is a critical stage of
11 the proceeding for purposes of section 42, Article I of the Oregon Constitution.
- 12 (6) "Defendant" includes persons under 18 years of age alleged to be under the jurisdic-
13 tion of the juvenile court under ORS chapter 419C.
- 14 (7) "Juvenile court" has the meaning given that term in ORS 419A.004.
- 15 (8) "Person Class A misdemeanor" has the meaning given that term in the rules of the
16 Oregon Criminal Justice Commission.
- 17 (9) "Trial court" has the meaning given that term in ORS 131.005. "Trial court" includes
18 the juvenile court.
- 19 (10) "Victim" means any person determined by the prosecuting attorney or the court to
20 have suffered direct financial, psychological or physical harm as a result of the crime alleged
21 in the criminal proceeding and, in the case of a victim who is a minor, the legal guardian of
22 the minor.
- 23 (11) "Violent felony" means a felony in which there was actual or threatened serious
24 physical injury to a victim or a felony sexual offense.
- 25 **SECTION 21.** (1) A victim may assert a claim under sections 20 to 37 of this 2008 Act
26 personally, through an attorney or through an authorized prosecuting attorney.
- 27 (2) In lieu of service on or notification to a defendant or victim under sections 20 to 37
28 of this 2008 Act, if the defendant or victim is represented by counsel, counsel for the de-
29 fendant or victim shall be served or notified.
- 30 (3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a pro-
31 ceeding under sections 20 to 37 of this 2008 Act.
- 32 (4) The time within which an act is to be done under sections 20 to 37 of this 2008 Act
33 is determined under ORS 174.120 and 174.125.
- 34 **SECTION 22.** (1) As soon as practicable following the filing of a charging instrument, the
35 prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice of
36 the Supreme Court, whether:
- 37 (a) The prosecuting attorney or a person known to the prosecuting attorney informed the
38 victim of the rights granted to the victim by sections 42 (1)(a) to (f) and 43, Article I of the
39 Oregon Constitution.
- 40 (b) The charging instrument includes the name or pseudonym of each victim known to
41 the prosecuting attorney. If the charging instrument does not include the name or
42 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
43 identify any victim not included in the charging instrument.
- 44 (c) The victim requested that the prosecuting attorney assert and enforce a right granted
45 to the victim by section 42, Article I of the Oregon Constitution.

1 (d) The victim requested to be informed in advance of any critical stage of the proceed-
2 ing.

3 (2) Subsection (3) of this section does not apply in a criminal proceeding in which a
4 prosecuting attorney has provided the court with the certification described in subsection (1)
5 of this section.

6 (3) At the beginning of each critical stage of the proceeding, if:

7 (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-
8 ney shall so inform the court. If the prosecuting attorney does not know whether the victim
9 is present, the court shall determine whether the victim is present.

10 (b) The victim is not present, the prosecuting attorney shall inform the court, based on
11 the prosecuting attorney's knowledge, whether the victim requested advance notice of any
12 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
13 torney shall inform the court, based on the prosecuting attorney's knowledge, whether the
14 victim:

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

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

17 (C) Indicated an intention to attend the proceeding or requested that the prosecuting
18 attorney assert a particular right associated with the proceeding.

19 (4) If the victim is present, the court may ask the victim for information about any as-
20 pect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon Con-
21 stitution.

22 (5)(a) The certification described in subsection (1) of this section may be based on infor-
23 mation provided to the prosecuting attorney by a person known to the prosecuting attorney.

24 (b) If the prosecuting attorney learns that a previous certification is no longer accurate,
25 the prosecuting attorney shall file an updated certification as soon as practicable.

26 (6) This section does not apply in a juvenile delinquency proceeding.

27 **SECTION 23.** (1) At the beginning of any plea hearing and any sentencing hearing, if the
28 prosecuting attorney or the juvenile department is aware that the victim is present, the
29 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
30 attorney or juvenile department does not know whether the victim is present, the court shall
31 determine whether the victim is present.

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

33 (a) If the victim requests, the prosecuting attorney or juvenile department shall consult
34 the victim about plea discussions before making a final plea agreement.

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

36 (A) If the victim is present, the court shall ask whether the victim agrees or disagrees
37 with the plea agreement as the agreement has been presented to the court and whether the
38 victim wishes to be heard regarding the plea agreement before it is accepted.

39 (B) If the victim is not present, the court shall ask the prosecuting attorney or juvenile
40 department whether the victim requested to be notified and consulted regarding plea nego-
41 tiations. If the victim made such a request, the court shall ask the prosecuting attorney or
42 juvenile department whether the victim agrees or disagrees with the plea agreement.

43 (c) If the court finds that the victim requested consultation about plea negotiations and
44 that the prosecuting attorney or juvenile department failed to consult with the victim, the
45 court shall direct the prosecuting attorney or juvenile department to consult with the victim

1 and may not accept the plea unless the court makes a finding on the record that:

2 (A) Good cause exists for the failure to consult; or

3 (B) The interests of justice require the acceptance of the plea.

4 (3) The requirements of this section are not affected by the certification described in
5 section 22 of this 2008 Act.

6 (4) As used in this section:

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

9 (b) "Plea of guilty or no contest" includes:

10 (A) An admission that a person under 18 years of age is within the jurisdiction of the
11 juvenile court; or

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

14 (c) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-
15 ceeding under ORS chapter 419C.

16 **SECTION 24.** (1) A victim who wishes to allege a violation of a right granted by section
17 42, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform
18 the court within seven days of the date the victim knew or reasonably should have known
19 of the facts supporting the allegation. The victim shall describe the facts supporting the
20 allegation and include a proposed remedy.

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

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

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

25 (3) If the victim informs the court of a facially valid claim on a form under subsection
26 (2)(a) of this section, the court shall promptly issue the order to show cause described in
27 section 25 of this 2008 Act.

28 (4) If the victim informs the court of a facially valid claim orally under subsection (2)(b)
29 of this section and the court determines that each person entitled to notice of the claim and
30 a reasonable opportunity to be heard:

31 (a) Is present, the court shall hold a hearing under section 29 of this 2008 Act as soon
32 as practicable; or

33 (b) Is not present, the court shall issue the order to show cause described in section 25
34 of this 2008 Act.

35 (5) If the court determines that the victim has not alleged a facially valid claim, the court
36 shall enter an order dismissing the claim. The order described in this subsection shall:

37 (a) Be without prejudice to file an amended claim;

38 (b) Include the reasons the claim was dismissed; and

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

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

1 **SECTION 25.** (1)(a) Except as provided in subsection (3) of this section, the victim, the
2 prosecuting attorney or the defendant must provide notice of the claim to any person the
3 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting
4 relief by providing the person with a copy of the order to show cause described in this sec-
5 tion.

6 (b) An order granting relief under section 26 or 29 of this 2008 Act is not enforceable
7 against, and has no legal effect on, any person who did not receive notice or have knowledge
8 of the claim and a reasonable opportunity to be heard regarding the claim.

9 (2) Under the circumstances described in section 24 (3) or (4)(b) of this 2008 Act, the
10 court shall issue an order to show cause why the victim should not be granted relief. The
11 court shall, after considering the requirements of section 29 (5)(a) of this 2008 Act, include
12 in the order to show cause the date:

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

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

15 (3) The court shall provide a copy of the order to show cause and of the form described
16 in section 24 (2)(a) of this 2008 Act, if the form was completed, to:

17 (a) The victim;

18 (b) The prosecuting attorney; and

19 (c) The defendant.

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

24 (b) In a claim alleging a violation of a right granted to the victim under section 42, Ar-
25 ticle I of the Oregon Constitution, the prosecuting attorney may file a response that includes
26 an affidavit demonstrating that the criminal proceeding involves organized crime or a minor
27 victim and setting forth cause to suspend the rights established in section 42, Article I of the
28 Oregon Constitution.

29 **SECTION 26.** (1) If a response to the order to show cause issued under section 25 of this
30 2008 Act is not timely filed, the court shall:

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

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

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

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

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

38 (c) Have been violated but that the Constitution of Oregon or the United States prohibits
39 all appropriate remedies or that the prosecuting attorney has set forth cause to suspend the
40 victim's rights under section 25 (4)(b) of this 2008 Act, the court shall issue an order denying
41 relief.

42 (3) The order issued under subsection (2) of this section must be in writing and must
43 include the reasons relief was granted or denied.

44 (4) The court shall provide a copy of the order issued under subsection (2) of this section
45 to the victim, the prosecuting attorney, the defendant and any other person against whom

1 relief was requested, if the person's whereabouts can be reasonably ascertained.

2 **SECTION 27.** A victim, prosecuting attorney or defendant who seeks a determination of
3 an issue involving a right granted by section 42, Article I of the Oregon Constitution, that
4 will impact the conduct of the trial shall file a motion at least 21 days before trial unless the
5 factual basis of the determination becomes known within 21 days before trial and could not
6 reasonably have been discovered earlier, in which case the motion must be filed promptly.
7 The court shall promptly conduct a hearing under section 29 of this 2008 Act and rule on the
8 motion as soon as practicable.

9 **SECTION 28.** (1) Pending the hearing described in section 29 of this 2008 Act, the court
10 may reschedule any matter in the criminal proceeding that may directly impact, or be di-
11 rectly impacted by, the claim, response or motion. All other matters in the criminal pro-
12 ceeding shall continue in the ordinary course.

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

15 (a) The likelihood that the relief requested will be granted;

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

18 (c) Whether there is any support in fact or law for the claim, response or motion;

19 (d) The nature of the harm to the victim, the prosecuting attorney, the defendant, any
20 other person against whom relief is requested and the public that will likely result from re-
21 scheduling the matter;

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

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

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

29 **SECTION 29.** (1) The court shall conduct a hearing on a claim, response or motion under
30 sections 20 to 37 of this 2008 Act in accordance with this section.

31 (2) At the hearing, the court may receive evidence relevant to the allegation and pro-
32 posed remedy from the victim, the prosecuting attorney, the defendant and any person
33 against whom relief is requested.

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

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

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

39 (b) Is not entitled to relief or that the Constitution of Oregon or the United States pro-
40 hibits all appropriate relief, the court shall issue an order denying relief.

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

42 (a) Be issued within seven days from the date the court issued an order to show cause
43 under section 25 of this 2008 Act, if an order to show cause was issued, unless the court finds
44 good cause to issue the order at a later date.

45 (b) Include the reasons relief was granted or denied.

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

4 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,
5 the defendant, any person who filed a response under section 25 (4) of this 2008 Act and any
6 person against whom relief was ordered.

7 **SECTION 30.** (1) A remedy under sections 20 to 37 of this 2008 Act is waived if the remedy
8 is requested:

9 (a) By a victim who had notice of a related claim and failed to:

10 (A) File a response under section 25 (4) of this 2008 Act; or

11 (B) Participate in a hearing under section 29 of this 2008 Act; or

12 (b) By any person after:

13 (A) The period of time determined by the court under section 25 (2)(a) of this 2008 Act
14 if the person is filing a response;

15 (B) The period of time described in section 27 of this 2008 Act if the person is filing a
16 motion; or

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

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

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

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

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

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

27 (e) Remedies requested in a subsequent criminal proceeding arising after a state or fed-
28 eral court has granted a new trial or sentencing, provided the claim or motion is timely un-
29 der subsection (1) of this section in the subsequent criminal proceeding.

30 **SECTION 31.** (1) Notwithstanding any other provision of law, appellate review of an order
31 issued under section 24, 26 or 29 of this 2008 Act shall be solely as provided in this section
32 and sections 32, 33 and 34 of this 2008 Act.

33 (2) Jurisdiction for appellate review of an order issued under section 24, 26 or 29 of this
34 2008 Act is vested originally and exclusively in the Supreme Court.

35 (3) Subject to section 34 of this 2008 Act, the jurisdiction of the Supreme Court is limited
36 to the order for which appellate review is sought and the trial court retains jurisdiction over
37 all other matters in the criminal proceeding.

38 (4) Appellate review of an order issued under section 24, 26 or 29 of this 2008 Act shall
39 be as provided in:

40 (a) Section 32 of this 2008 Act if the order was issued in a criminal proceeding in which
41 a defendant is charged with a felony or a person Class A misdemeanor and the order arises
42 from a claim or motion alleging a violation that occurred prior to the pronouncement in open
43 court of the sentence or disposition after a plea, admission or trial in the criminal proceed-
44 ing.

45 (b) Section 33 of this 2008 Act if the order was issued at any other stage of the criminal

1 proceeding.

2 (5) The victim, the prosecuting attorney, the defendant or any person against whom relief
3 was ordered has standing to seek appellate review of an order unless, after notice and a
4 reasonable opportunity to be heard on the claim or motion that resulted in the order or a
5 related claim or motion, the person seeking appellate review did not:

- 6 (a) Inform the court of an alleged violation under section 24 (1) of this 2008 Act;
- 7 (b) File a response under section 25 (4) of this 2008 Act;
- 8 (c) File a motion under section 27 of this 2008 Act; or
- 9 (d) Participate in a hearing described in section 29 of this 2008 Act.

10 **SECTION 32.** (1) Appellate review of an order described in section 31 (4)(a) of this 2008
11 Act must be initiated by filing a notice of interlocutory appeal with the Supreme Court sub-
12 stantially in the form prescribed by rule of the Supreme Court. Review of the order is a
13 matter of right.

14 (2) The person filing the notice shall be identified as the appellant. Any person described
15 in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a
16 respondent. If relief has been ordered against the state, a prosecuting attorney or any other
17 state officer, the state shall be identified as respondent. The notice must contain a desig-
18 nation of record of those portions of the oral proceedings in the trial court to be included in
19 the record.

20 (3) The appellant shall include with the notice of interlocutory appeal the following ma-
21 terials:

- 22 (a) A copy of the order for which appellate review is sought, which must be attached to
23 the notice.
- 24 (b) An excerpt of the parts of the record necessary to determine the question presented
25 and the relief sought. The excerpt of record must include a copy of the form described in
26 section 24 (2)(a) of this 2008 Act, if the form was completed and provided to the trial court.
27 The Supreme Court may:

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

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

32 (c) A memorandum of law containing:

33 (A) A concise but complete statement of facts material to a determination of the ques-
34 tion presented and the relief sought;

35 (B) A statement of why the notice of interlocutory appeal is timely; and

36 (C) Supporting arguments and citations of authority.

37 (4) The appellant shall serve a copy of the notice of interlocutory appeal and the accom-
38 panying materials described in subsection (3) of this section on the following other persons:

39 (a) The victim who asserted the claim that resulted in the order being appealed and a
40 victim who asserted a related claim under section 24 (1) of this 2008 Act;

41 (b) A person who filed a response to the claim under section 25 (4) of this 2008 Act;

42 (c) A person who filed the motion that resulted in the order being appealed or a related
43 motion under section 27 of this 2008 Act;

44 (d) A person against whom relief was sought in the hearing that resulted in the order
45 being appealed or a related hearing under section 29 of this 2008 Act;

1 (e) The defendant, if the defendant is not represented by appointed counsel;

2 (f) The office of public defense services established under ORS 151.216 if the defendant is
3 represented by appointed counsel;

4 (g) The prosecuting attorney; and

5 (h) The Attorney General.

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

7 (a) The trial court administrator; and

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

10 (6)(a) Except as otherwise provided in this subsection, the appellant shall serve and file
11 the notice of interlocutory appeal and, where applicable, accompanying materials within
12 seven days after the date the trial court issued the order being appealed.

13 (b) The appellant shall serve a defendant who is represented by counsel, the office of
14 public defense services established under ORS 151.216, the prosecuting attorney and the At-
15 torney General so that the copy of the notice of interlocutory appeal and accompanying
16 materials are received on the same day the notice is filed with the Supreme Court.

17 (c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all
18 persons described in subsections (4) and (5) of this section so that the copy of the notice of
19 interlocutory appeal and accompanying materials are received no later than one day after
20 the notice is filed.

21 (d) Notwithstanding any other provision of law, a notice of interlocutory appeal is filed
22 under this section when it is physically received by the Supreme Court.

23 (7) Within three days after receipt of a notice of interlocutory appeal that contains a
24 designation of record under subsection (2) of this section, the trial court administrator shall
25 forward to the Supreme Court an audio record of the designated oral proceedings.

26 (8) If the Supreme Court directs a party to provide a transcript of oral proceedings under
27 subsection (3) of this section, the party shall provide the transcript to the Supreme Court
28 within seven days after the date of the Supreme Court's order.

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

30 (A) The timely filing of the original notice of interlocutory appeal and accompanying
31 materials with the Supreme Court; and

32 (B) The service of the notice of interlocutory appeal within the time limits described in
33 subsection (6) of this section on all persons identified in subsection (4) of this section whose
34 whereabouts the appellant may reasonably ascertain.

35 (b) Failure to timely serve a true and complete copy of the accompanying materials de-
36 scribed in subsection (3) of this section is not jurisdictional, provided that the appellant made
37 a good faith effort to do so and substantially complied with those requirements.

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

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

45 (11)(a) Except as provided in paragraph (b) of this subsection, the appellant may not file

1 a reply.

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

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

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

13 (14)(a) The Supreme Court shall issue its decision on appeal under this section within 21
14 days after the date the notice of interlocutory appeal is filed.

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

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

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

24 (B) Whether the failure to issue a decision at a later date would be likely to result in a
25 miscarriage of justice.

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

32 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may
33 reverse or remand the order only if it finds that the order is unlawful in substance or pro-
34 cedure and that the substantial rights of the appellant were prejudiced as a result.

35 **SECTION 33.** Appellate review of an order described in section 31 (4)(b) of this 2008 Act
36 shall be as provided in section 32 of this 2008 Act, except that:

37 (1) The Supreme Court's jurisdiction is discretionary. The court may by rule prescribe
38 the criteria the court will use to decide whether to grant review. The initiating document is
39 a petition for review, but the petition must be accompanied by the same materials described
40 in section 32 (3) of this 2008 Act, and the person seeking review shall be identified as the
41 petitioner.

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

45 (3) Section 32 (13) of this 2008 Act does not apply to review under this section. The Su-

1 preme Court may dismiss a review improvidently granted.

2 (4) The Supreme Court shall issue its decision on appeal under this section within 21 days
3 after the date the court issued the order granting review.

4 **SECTION 34.** (1) The trial court shall stay for a period of 21 days all matters that directly
5 impact, or are directly impacted by, the order on appeal:

6 (a) Upon receipt of a notice of interlocutory appeal under section 32 of this 2008 Act; or

7 (b) Upon a grant of review under section 33 of this 2008 Act.

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

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

13 (a) The likelihood that the appellant will prevail on appeal;

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

15 (c) Whether there is any support in fact or law for the appeal;

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

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

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

24 **SECTION 35.** (1)(a) Prior to the Attorney General's first appearance in an appellate court
25 proceeding in which the State of Oregon is a party and to which section 42 or 43, Article I
26 of the Oregon Constitution, applies, the Attorney General shall determine whether the De-
27 partment of Justice has taken all reasonably practicable steps to fulfill the rights granted
28 by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the
29 appellate courts.

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

34 (2) The Attorney General may intervene at any time on behalf of the State of Oregon in
35 any trial or appellate court proceeding arising under sections 20 to 37 of this 2008 Act.

36 **SECTION 36.** (1) The Chief Justice of the Supreme Court may, by rule or order, establish
37 requirements and procedures necessary to comply with the provisions of sections 20 to 37
38 of this 2008 Act.

39 (2) The Chief Justice of the Supreme Court shall prescribe the forms described in
40 sections 22 (1) and 24 (2)(a) of this 2008 Act. The form described in section 24 (2)(a) of this
41 2008 Act must allow a victim to designate an alternate mailing address or substitute a person
42 to receive notice or service on behalf of the victim for the purposes of sections 20 to 37 of
43 this 2008 Act.

44 **SECTION 37.** Sections 20 to 37 of this 2008 Act effectuate the provisions of section 42,
45 Article I of the Oregon Constitution, for violations that occur in criminal proceedings and

1 do not provide a remedy for violations that occur in any other proceeding. A remedy for a
2 violation of section 42, Article I of the Oregon Constitution, in any other proceeding may be
3 enforced by writ of mandamus under ORS 34.105 to 34.240.

4 **SECTION 37a.** (1) There is created the Task Force on Victims' Rights Enforcement con-
5 sisting of at least seven members appointed as follows:

6 (a) The Attorney General shall appoint:

7 (A) A member employed by or associated with a group advocating for the rights of vic-
8 tims of crime;

9 (B) A member who represents the Oregon Department of Justice Crime Victims' Assist-
10 ance Section;

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

13 (D) A lawyer routinely engaged in prosecuting persons charged with a crime, after con-
14 sulting with professional organizations serving such lawyers; and

15 (E) Other persons the Attorney General deems appropriate;

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

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

18 (B) A judge; and

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

21 (2) The task force shall review the implementation of sections 20 to 37 of this 2008 Act.

22 (3) The Attorney General may establish a term of office for the members and shall ap-
23 point a member of the task force to serve as chairperson. Members serve at the pleasure
24 of the Attorney General. The task force shall meet at times and places specified by the call
25 of the chairperson or of a majority of the members of the task force.

26 (4) If there is a vacancy for any cause, the appointing authority shall make an appoint-
27 ment to become immediately effective.

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

32 (a) January 1, 2009; and

33 (b) January 1, 2011.

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

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

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

41 **SECTION 37b.** Section 36a of this 2008 Act is repealed on July 1, 2011.

42
43 **PROVISIONS EFFECTIVE IF HJR 49 IS REJECTED AND**
44 **HJR 50 IS APPROVED BY THE PEOPLE**
45

1 **SECTION 38.** As used in sections 38 to 55 of this 2008 Act:

2 (1) “Authorized prosecuting attorney” means a prosecuting attorney who, at the request
3 of a victim, has agreed to assert and enforce a right granted to the victim by section 43,
4 Article I of the Oregon Constitution.

5 (2) “Claim” means an allegation and the proposed remedy described in section 42 (1) of
6 this 2008 Act.

7 (3) “Crime” has the meaning given that term in ORS 161.515. “Crime” includes an act
8 committed by a person who is under 18 years of age that, if committed by an adult, would
9 constitute a misdemeanor or felony.

10 (4) “Criminal proceeding” means an action at law by means of which a person is alleged
11 to have committed a crime for which there is a victim that is conducted in the trial or ju-
12 venile court before or after sentencing or disposition.

13 (5) “Critical stage of the proceeding” includes:

14 (a) Arraignment;

15 (b) Release hearings or hearings to modify the conditions of release;

16 (c) Preliminary hearings;

17 (d) Hearings related to the rescheduling of trial;

18 (e) Hearings on motions or petitions:

19 (A) Conducted pursuant to ORS 40.210 or 135.139;

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

21 (C) To suppress or exclude evidence;

22 (f) Entry of guilty or no contest pleas;

23 (g) Trial;

24 (h) Restitution hearings;

25 (i) Sentencing;

26 (j) Probation violation or revocation hearings, when the basis for the alleged violation
27 directly implicates a victim’s rights;

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

29 (L) Hearings related to a deferred sentencing agreement;

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

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

33 (6) “Defendant” includes persons under 18 years of age alleged to be under the jurisdic-
34 tion of the juvenile court under ORS chapter 419C.

35 (7) “Juvenile court” has the meaning given that term in ORS 419A.004.

36 (8) “Person Class A misdemeanor” has the meaning given that term in the rules of the
37 Oregon Criminal Justice Commission.

38 (9) “Trial court” has the meaning given that term in ORS 131.005. “Trial court” includes
39 the juvenile court.

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

44 (11) “Violent felony” means a felony in which there was actual or threatened serious
45 physical injury to a victim or a felony sexual offense.

1 **SECTION 39.** (1) A victim may assert a claim under sections 38 to 55 of this 2008 Act
2 personally, through an attorney or through an authorized prosecuting attorney.

3 (2) In lieu of service on or notification to a defendant or victim under sections 38 to 55
4 of this 2008 Act, if the defendant or victim is represented by counsel, counsel for the de-
5 fendant or victim shall be served or notified.

6 (3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a pro-
7 ceeding under sections 38 to 55 of this 2008 Act.

8 (4) The time within which an act is to be done under sections 38 to 55 of this 2008 Act
9 is determined under ORS 174.120 and 174.125.

10 **SECTION 40.** (1) As soon as practicable following the filing of a charging instrument, the
11 prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice of
12 the Supreme Court, whether:

13 (a) The prosecuting attorney or a person known to the prosecuting attorney informed the
14 victim of the rights granted to the victim by sections 42 (1)(a) to (f) and 43, Article I of the
15 Oregon Constitution.

16 (b) The charging instrument includes the name or pseudonym of each victim known to
17 the prosecuting attorney. If the charging instrument does not include the name or
18 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
19 identify any victim not included in the charging instrument.

20 (c) The victim requested that the prosecuting attorney assert and enforce a right granted
21 to the victim by section 43, Article I of the Oregon Constitution.

22 (d) The victim requested to be informed in advance of any critical stage of the proceed-
23 ing.

24 (2) Subsection (3) of this section does not apply in a criminal proceeding in which a
25 prosecuting attorney has provided the court with the certification described in subsection (1)
26 of this section.

27 (3) At the beginning of each critical stage of the proceeding, if:

28 (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-
29 ney shall so inform the court. If the prosecuting attorney does not know whether the victim
30 is present, the court shall determine whether the victim is present.

31 (b) The victim is not present, the prosecuting attorney shall inform the court, based on
32 the prosecuting attorney's knowledge, whether the victim requested advance notice of any
33 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
34 torney shall inform the court, based on the prosecuting attorney's knowledge, whether the
35 victim:

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

37 (B) Was informed of the victims' rights implicated in the proceeding; and

38 (C) Indicated an intention to attend the proceeding or requested that the prosecuting
39 attorney assert a particular right associated with the proceeding.

40 (4) If the victim is present, the court may ask the victim for information about any as-
41 pect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon Con-
42 stitution.

43 (5)(a) The certification described in subsection (1) of this section may be based on infor-
44 mation provided to the prosecuting attorney by a person known to the prosecuting attorney.

45 (b) If the prosecuting attorney learns that a previous certification is no longer accurate,

1 the prosecuting attorney shall file an updated certification as soon as practicable.

2 (6) This section does not apply in a juvenile delinquency proceeding.

3 **SECTION 41.** (1) At the beginning of any plea hearing and any sentencing hearing, if the
4 prosecuting attorney or the juvenile department is aware that the victim is present, the
5 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
6 attorney or juvenile department does not know whether the victim is present, the court shall
7 determine whether the victim is present.

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

9 (a) If the victim requests, the prosecuting attorney or juvenile department shall consult
10 the victim about plea discussions before making a final plea agreement.

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

12 (A) If the victim is present, the court shall ask whether the victim agrees or disagrees
13 with the plea agreement as the agreement has been presented to the court and whether the
14 victim wishes to be heard regarding the plea agreement before it is accepted.

15 (B) If the victim is not present, the court shall ask the prosecuting attorney or juvenile
16 department whether the victim requested to be notified and consulted regarding plea nego-
17 tiations. If the victim made such a request, the court shall ask the prosecuting attorney or
18 juvenile department whether the victim agrees or disagrees with the plea agreement.

19 (c) If the court finds that the victim requested consultation about plea negotiations and
20 that the prosecuting attorney or juvenile department failed to consult with the victim, the
21 court shall direct the prosecuting attorney or juvenile department to consult with the victim
22 and may not accept the plea unless the court makes a finding on the record that:

23 (A) Good cause exists for the failure to consult; or

24 (B) The interests of justice require the acceptance of the plea.

25 (3) The requirements of this section are not affected by the certification described in
26 section 40 of this 2008 Act.

27 (4) As used in this section:

28 (a) "Plea hearing" means a hearing in which the defendant enters a plea of guilty or no
29 contest;

30 (b) "Plea of guilty or no contest" includes:

31 (A) An admission that a person under 18 years of age is within the jurisdiction of the
32 juvenile court; or

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

35 (c) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-
36 ceeding under ORS chapter 419C.

37 **SECTION 42.** (1) A victim who wishes to allege a violation of a right granted by section
38 43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform
39 the court within seven days of the date the victim knew or reasonably should have known
40 of the facts supporting the allegation. The victim shall describe the facts supporting the
41 allegation and include a proposed remedy.

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

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

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

1 (3) If the victim informs the court of a facially valid claim on a form under subsection
2 (2)(a) of this section, the court shall promptly issue the order to show cause described in
3 section 43 of this 2008 Act.

4 (4) If the victim informs the court of a facially valid claim orally under subsection (2)(b)
5 of this section and the court determines that each person entitled to notice of the claim and
6 a reasonable opportunity to be heard:

7 (a) Is present, the court shall hold a hearing under section 47 of this 2008 Act as soon
8 as practicable; or

9 (b) Is not present, the court shall issue the order to show cause described in section 43
10 of this 2008 Act.

11 (5) If the court determines that the victim has not alleged a facially valid claim, the court
12 shall enter an order dismissing the claim. The order described in this subsection shall:

13 (a) Be without prejudice to file an amended claim;

14 (b) Include the reasons the claim was dismissed; and

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

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

22 **SECTION 43.** (1)(a) Except as provided in subsection (3) of this section, the victim, the
23 prosecuting attorney or the defendant must provide notice of the claim to any person the
24 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting
25 relief by providing the person with a copy of the order to show cause described in this sec-
26 tion.

27 (b) An order granting relief under section 44 or 47 of this 2008 Act is not enforceable
28 against, and has no legal effect on, any person who did not receive notice or have knowledge
29 of the claim and a reasonable opportunity to be heard regarding the claim.

30 (2) Under the circumstances described in section 42 (3) or (4)(b) of this 2008 Act, the
31 court shall issue an order to show cause why the victim should not be granted relief. The
32 court shall, after considering the requirements of section 47 (5)(a) of this 2008 Act, include
33 in the order to show cause the date:

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

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

36 (3) The court shall provide a copy of the order to show cause and of the form described
37 in section 42 (2)(a) of this 2008 Act, if the form was completed, to:

38 (a) The victim;

39 (b) The prosecuting attorney; and

40 (c) The defendant.

41 (4) If the court issues an order to show cause under this section, the victim, the prose-
42 cuting attorney, the defendant or any other person against whom relief is requested may
43 contest the claim by filing a response with the court before the date described in subsection
44 (2)(a) of this section.

45 **SECTION 44.** (1) If a response to the order to show cause issued under section 43 of this

1 2008 Act is not timely filed, the court shall:

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

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

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

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

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

9 (c) Have been violated but that the Constitution of Oregon or the United States prohibits
10 all appropriate remedies, the court shall issue an order denying relief.

11 (3) The order issued under subsection (2) of this section must be in writing and must
12 include the reasons relief was granted or denied.

13 (4) The court shall provide a copy of the order issued under subsection (2) of this section
14 to the victim, the prosecuting attorney, the defendant and any other person against whom
15 relief was requested, if the person's whereabouts can be reasonably ascertained.

16 **SECTION 45.** A victim, prosecuting attorney or defendant who seeks a determination of
17 an issue involving a right granted by section 43, Article I of the Oregon Constitution, that
18 will impact the conduct of the trial shall file a motion at least 21 days before trial unless the
19 factual basis of the determination becomes known within 21 days before trial and could not
20 reasonably have been discovered earlier, in which case the motion must be filed promptly.
21 The court shall promptly conduct a hearing under section 47 of this 2008 Act and rule on the
22 motion as soon as practicable.

23 **SECTION 46.** (1) Pending the hearing described in section 47 of this 2008 Act, the court
24 may reschedule any matter in the criminal proceeding that may directly impact, or be di-
25 rectly impacted by, the claim, response or motion. All other matters in the criminal pro-
26 ceeding shall continue in the ordinary course.

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

29 (a) The likelihood that the relief requested will be granted;

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

32 (c) Whether there is any support in fact or law for the claim, response or motion;

33 (d) The nature of the harm to the victim, the prosecuting attorney, the defendant, any
34 other person against whom relief is requested and the public that will likely result from re-
35 scheduling the matter;

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

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

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

43 **SECTION 47.** (1) The court shall conduct a hearing on a claim, response or motion under
44 sections 38 to 55 of this 2008 Act in accordance with this section.

45 (2) At the hearing, the court may receive evidence relevant to the allegation and pro-

1 posed remedy from the victim, the prosecuting attorney, the defendant and any person
2 against whom relief is requested.

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

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

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

8 (b) Is not entitled to relief or that the Constitution of Oregon or the United States pro-
9 hibits all appropriate relief, the court shall issue an order denying relief.

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

11 (a) Be issued within seven days from the date the court issued an order to show cause
12 under section 43 of this 2008 Act, if an order to show cause was issued, unless the court finds
13 good cause to issue the order at a later date.

14 (b) Include the reasons relief was granted or denied.

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

18 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,
19 the defendant, any person who filed a response under section 43 (4) of this 2008 Act and any
20 person against whom relief was ordered.

21 **SECTION 48.** (1) A remedy under sections 38 to 55 of this 2008 Act is waived if the remedy
22 is requested:

23 (a) By a victim who had notice of a related claim and failed to:

24 (A) File a response under section 43 (4) of this 2008 Act; or

25 (B) Participate in a hearing under section 47 of this 2008 Act; or

26 (b) By any person after:

27 (A) The period of time determined by the court under section 43 (2)(a) of this 2008 Act
28 if the person is filing a response;

29 (B) The period of time described in section 45 of this 2008 Act if the person is filing a
30 motion; or

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

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

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

35 (b) Remedies requested in a subsequent criminal proceeding arising after a state or fed-
36 eral court has granted a new trial or sentencing, provided the claim or motion is timely un-
37 der subsection (1) of this section in the subsequent criminal proceeding.

38 **SECTION 49.** (1) Notwithstanding any other provision of law, appellate review of an order
39 issued under section 42, 44 or 47 of this 2008 Act shall be solely as provided in this section
40 and sections 50, 51 and 52 of this 2008 Act.

41 (2) Jurisdiction for appellate review of an order issued under section 42, 44 or 47 of this
42 2008 Act is vested originally and exclusively in the Supreme Court.

43 (3) Subject to section 52 of this 2008 Act, the jurisdiction of the Supreme Court is limited
44 to the order for which appellate review is sought and the trial court retains jurisdiction over
45 all other matters in the criminal proceeding.

1 (4) Appellate review of an order issued under section 42, 44 or 47 of this 2008 Act shall
2 be as provided in:

3 (a) Section 50 of this 2008 Act if the order was issued in a criminal proceeding in which
4 a defendant is charged with a felony or a person Class A misdemeanor and the order arises
5 from a claim or motion alleging a violation that occurred prior to the pronouncement in open
6 court of the sentence or disposition after a plea, admission or trial in the criminal proceed-
7 ing.

8 (b) Section 51 of this 2008 Act if the order was issued at any other stage of the criminal
9 proceeding.

10 (5) The victim, the prosecuting attorney, the defendant or any person against whom relief
11 was ordered has standing to seek appellate review of an order unless, after notice and a
12 reasonable opportunity to be heard on the claim or motion that resulted in the order or a
13 related claim or motion, the person seeking appellate review did not:

- 14 (a) Inform the court of an alleged violation under section 42 (1) of this 2008 Act;
- 15 (b) File a response under section 43 (4) of this 2008 Act;
- 16 (c) File a motion under section 45 of this 2008 Act; or
- 17 (d) Participate in a hearing described in section 47 of this 2008 Act.

18 **SECTION 50.** (1) Appellate review of an order described in section 49 (4)(a) of this 2008
19 Act must be initiated by filing a notice of interlocutory appeal with the Supreme Court sub-
20 stantially in the form prescribed by rule of the Supreme Court. Review of the order is a
21 matter of right.

22 (2) The person filing the notice shall be identified as the appellant. Any person described
23 in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a
24 respondent. If relief has been ordered against the state, a prosecuting attorney or any other
25 state officer, the state shall be identified as respondent. The notice must contain a desig-
26 nation of record of those portions of the oral proceedings in the trial court to be included in
27 the record.

28 (3) The appellant shall include with the notice of interlocutory appeal the following ma-
29 terials:

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

32 (b) An excerpt of the parts of the record necessary to determine the question presented
33 and the relief sought. The excerpt of record must include a copy of the form described in
34 section 42 (2)(a) of this 2008 Act, if the form was completed and provided to the trial court.
35 The Supreme Court may:

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

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

40 (c) A memorandum of law containing:

41 (A) A concise but complete statement of facts material to a determination of the ques-
42 tion presented and the relief sought;

43 (B) A statement of why the notice of interlocutory appeal is timely; and

44 (C) Supporting arguments and citations of authority.

45 (4) The appellant shall serve a copy of the notice of interlocutory appeal and the accom-

1 **panying materials described in subsection (3) of this section on the following other persons:**

2 **(a) The victim who asserted the claim that resulted in the order being appealed and a**
3 **victim who asserted a related claim under section 42 (1) of this 2008 Act;**

4 **(b) A person who filed a response to the claim under section 43 (4) of this 2008 Act;**

5 **(c) A person who filed the motion that resulted in the order being appealed or a related**
6 **motion under section 45 of this 2008 Act;**

7 **(d) A person against whom relief was sought in the hearing that resulted in the order**
8 **being appealed or a related hearing under section 47 of this 2008 Act;**

9 **(e) The defendant, if the defendant is not represented by appointed counsel;**

10 **(f) The office of public defense services established under ORS 151.216 if the defendant is**
11 **represented by appointed counsel;**

12 **(g) The prosecuting attorney; and**

13 **(h) The Attorney General.**

14 **(5) The appellant shall serve a copy of the notice of interlocutory appeal on:**

15 **(a) The trial court administrator; and**

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

18 **(6)(a) Except as otherwise provided in this subsection, the appellant shall serve and file**
19 **the notice of interlocutory appeal and, where applicable, accompanying materials within**
20 **seven days after the date the trial court issued the order being appealed.**

21 **(b) The appellant shall serve a defendant who is represented by counsel, the office of**
22 **public defense services established under ORS 151.216, the prosecuting attorney and the At-**
23 **torney General so that the copy of the notice of interlocutory appeal and accompanying**
24 **materials are received on the same day the notice is filed with the Supreme Court.**

25 **(c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all**
26 **persons described in subsections (4) and (5) of this section so that the copy of the notice of**
27 **interlocutory appeal and accompanying materials are received no later than one day after**
28 **the notice is filed.**

29 **(d) Notwithstanding any other provision of law, a notice of interlocutory appeal is filed**
30 **under this section when it is physically received by the Supreme Court.**

31 **(7) Within three days after receipt of a notice of interlocutory appeal that contains a**
32 **designation of record under subsection (2) of this section, the trial court administrator shall**
33 **forward to the Supreme Court an audio record of the designated oral proceedings.**

34 **(8) If the Supreme Court directs a party to provide a transcript of oral proceedings under**
35 **subsection (3) of this section, the party shall provide the transcript to the Supreme Court**
36 **within seven days after the date of the Supreme Court's order.**

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

38 **(A) The timely filing of the original notice of interlocutory appeal and accompanying**
39 **materials with the Supreme Court; and**

40 **(B) The service of the notice of interlocutory appeal within the time limits described in**
41 **subsection (6) of this section on all persons identified in subsection (4) of this section whose**
42 **whereabouts the appellant may reasonably ascertain.**

43 **(b) Failure to timely serve a true and complete copy of the accompanying materials de-**
44 **scribed in subsection (3) of this section is not jurisdictional, provided that the appellant made**
45 **a good faith effort to do so and substantially complied with those requirements.**

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

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

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

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

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

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

21 (14)(a) The Supreme Court shall issue its decision on appeal under this section within 21
22 days after the date the notice of interlocutory appeal is filed.

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

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

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

32 (B) Whether the failure to issue a decision at a later date would be likely to result in a
33 miscarriage of justice.

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

40 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may
41 reverse or remand the order only if it finds that the order is unlawful in substance or pro-
42 cedure and that the substantial rights of the appellant were prejudiced as a result.

43 **SECTION 51.** Appellate review of an order described in section 49 (4)(b) of this 2008 Act
44 shall be as provided in section 50 of this 2008 Act, except that:

45 (1) The Supreme Court's jurisdiction is discretionary. The court may by rule prescribe

1 the criteria the court will use to decide whether to grant review. The initiating document is
2 a petition for review, but the petition must be accompanied by the same materials described
3 in section 50 (3) of this 2008 Act, and the person seeking review shall be identified as the
4 petitioner.

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

8 (3) Section 50 (13) of this 2008 Act does not apply to review under this section. The Su-
9 preme Court may dismiss a review improvidently granted.

10 (4) The Supreme Court shall issue its decision on appeal under this section within 21 days
11 after the date the court issued the order granting review.

12 **SECTION 52.** (1) The trial court shall stay for a period of 21 days all matters that directly
13 impact, or are directly impacted by, the order on appeal:

14 (a) Upon receipt of a notice of interlocutory appeal under section 50 of this 2008 Act; or

15 (b) Upon a grant of review under section 51 of this 2008 Act.

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

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

21 (a) The likelihood that the appellant will prevail on appeal;

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

23 (c) Whether there is any support in fact or law for the appeal;

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

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

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

32 **SECTION 53.** (1)(a) Prior to the Attorney General's first appearance in an appellate court
33 proceeding in which the State of Oregon is a party and to which section 42 or 43, Article I
34 of the Oregon Constitution, applies, the Attorney General shall determine whether the De-
35 partment of Justice has taken all reasonably practicable steps to fulfill the rights granted
36 by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the
37 appellate courts.

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

42 (2) The Attorney General may intervene at any time on behalf of the State of Oregon in
43 any trial or appellate court proceeding arising under sections 38 to 55 of this 2008 Act.

44 **SECTION 54.** (1) The Chief Justice of the Supreme Court may, by rule or order, establish
45 requirements and procedures necessary to comply with the provisions of sections 38 to 55

1 of this 2008 Act.

2 (2) The Chief Justice of the Supreme Court shall prescribe the forms described in
3 sections 40 (1) and 42 (2)(a) of this 2008 Act. The form described in section 42 (2)(a) of this
4 2008 Act must allow a victim to designate an alternate mailing address or substitute a person
5 to receive notice or service on behalf of the victim for the purposes of sections 38 to 55 of
6 this 2008 Act.

7 **SECTION 55.** Sections 38 to 55 of this 2008 Act effectuate the provisions of section 43,
8 Article I of the Oregon Constitution, for violations that occur in criminal proceedings and
9 do not provide a remedy for violations that occur in any other proceeding. A remedy for a
10 violation of section 43, Article I of the Oregon Constitution, in any other proceeding may be
11 enforced by writ of mandamus under ORS 34.105 to 34.240.

12 **SECTION 55a.** (1) There is created the Task Force on Victims' Rights Enforcement con-
13 sisting of at least seven members appointed as follows:

14 (a) The Attorney General shall appoint:

15 (A) A member employed by or associated with a group advocating for the rights of vic-
16 tims of crime;

17 (B) A member who represents the Oregon Department of Justice Crime Victims' Assist-
18 ance Section;

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

21 (D) A lawyer routinely engaged in prosecuting persons charged with a crime, after con-
22 sulting with professional organizations serving such lawyers; and

23 (E) Other persons the Attorney General deems appropriate;

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

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

26 (B) A judge; and

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

29 (2) The task force shall review the implementation of sections 38 to 55 of this 2008 Act.

30 (3) The Attorney General may establish a term of office for the members and shall ap-
31 point a member of the task force to serve as chairperson. Members serve at the pleasure
32 of the Attorney General. The task force shall meet at times and places specified by the call
33 of the chairperson or of a majority of the members of the task force.

34 (4) If there is a vacancy for any cause, the appointing authority shall make an appoint-
35 ment to become immediately effective.

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

40 (a) January 1, 2009; and

41 (b) January 1, 2011.

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

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

45 (8) All agencies of state government, as defined in ORS 174.111, are directed to assist the

1 **task force in the performance of its duties and, to the extent permitted by laws relating to**
2 **confidentiality, to furnish such information and advice as the members of the task force**
3 **consider necessary to perform their duties.**

4 **SECTION 55b. Section 54a of this 2008 Act is repealed on July 1, 2011.**

5
6 **STATUTORY AMENDMENTS AND REPEALS; IMPLEMENTATION**
7

8 **SECTION 56. If both House Joint Resolution 49 (2007) and House Joint Resolution 50**
9 **(2007) are approved by the people at the special election held throughout this state on the**
10 **same date as the next primary election, ORS 135.406 is repealed.**

11 **SECTION 57. If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are**
12 **approved by the people at the special election held throughout this state on the same date as the**
13 **next primary election, ORS 131.007 is amended to read:**

14 131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in
15 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-
16 quires otherwise, "victim" means the person or persons who have suffered financial, social, psycho-
17 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of
18 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor
19 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a
20 victim.

21 **SECTION 58. If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are**
22 **approved by the people at the special election held throughout this state on the same date as the**
23 **next primary election, ORS 135.432 is amended to read:**

24 135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

25 (A) Inquire of the parties about the status of any discussions;

26 (B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this section;

27 or

28 (C) Make the inquiry required by [ORS 135.406] **section 5 (2) of this 2008 Act.**

29 (b) Any other judge, at the request of both the prosecution and the defense, or at the direction
30 of the presiding judge, may participate in plea discussions. Participation by a judge in the plea dis-
31 cussion process shall be advisory, and shall in no way bind the parties. If no plea is entered pursu-
32 ant to these discussions, the advice of the participating judge shall not be reported to the trial
33 judge. If the discussion results in a plea of guilty or no contest, the parties, if they both agree to
34 do so, may proceed with the plea before a judge involved in the discussion. This plea may be entered
35 pursuant to a tentative plea agreement as provided in subsections (2) to (4) of this section.

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

43 (3) If the trial judge concurs, but later decides that the final disposition of the case should not
44 include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise
45 the defendant and allow the defendant a reasonable period of time in which to either affirm or

1 withdraw a plea of guilty or no contest.

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

6 **SECTION 59.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
7 approved by the people at the special election held throughout this state on the same date as the
8 next primary election, ORS 419C.261 is amended to read:

9 419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
10 direct that the petition be amended. If the amendment results in a substantial departure from the
11 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
12 quire. When the court directs the amendment of a petition alleging that a youth has committed an
13 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
14 shall make written findings stating the reason for directing the amendment.

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

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

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

23 (3) The district attorney or juvenile department must consult the victim regarding plea negoti-
24 ations if:

25 (a) The victim has requested to be consulted regarding plea negotiations; **and**

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

28 *[(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an ad-*
29 *mission from the youth.]*

30 **SECTION 60.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
31 approved by the people at the special election held throughout this state on the same date as the
32 next primary election, ORS 419C.273 is amended to read:

33 419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be
34 present at and, upon request, must be informed in advance of critical stages of the proceedings held
35 in open court when the youth or youth offender will be present.

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

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

41 (A) A detention or shelter hearing;

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

43 (C) A dispositional hearing.

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

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

1 (B) To appear personally at the hearing; and

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

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

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

13 (4) As used in this section:

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

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

16 (B) Is held in open court; and

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

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

19 (A) Detention and shelter hearings;

20 (B) Hearings to review placements;

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

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

23 (E) Waiver hearings;

24 (F) Adjudication and plea hearings;

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

26 (H) Review or dispositional review hearings;

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

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

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

31 (L) Expunction hearings.

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

36 **SECTION 61.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
37 approved by the people at the special election held throughout this state on the same date as the
38 next primary election, ORS 40.015 is amended to read:

39 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

40 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
41 305.501;

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

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

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

1 summarily.

2 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-
3 ceedings.

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

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

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

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

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

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

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

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

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

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

20 **(j) Proceedings under section 11 of this 2008 Act relating to victims' rights, except for the**
21 **provisions of ORS 40.105 and 40.115.**

22 **SECTION 62.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
23 approved by the people at the special election held throughout this state on the same date as the
24 next primary election, ORS 135.245 is amended to read:

25 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
26 security release or to be taken before a magistrate without undue delay. If the person is not released
27 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
28 of the right of the person to a security release as provided in ORS 135.265.

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

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

37 (a) Release criteria show to the satisfaction of the magistrate that such a release is unwar-
38 ranted; or

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

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

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

43 [(A)] (a) The district attorney has a right to be heard in relation to issues relevant to the re-
44 lease decision; and

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

1 [(i)] (A) Upon request made within the time period prescribed in the notice required by ORS
2 147.417, to be notified by the district attorney of the release hearing;

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

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

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

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

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

14 **SECTION 63.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
15 approved by the people at the special election held throughout this state on the same date as the
16 next primary election, ORS 137.545 is amended to read:

17 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
18 Commission for felonies committed on or after November 1, 1989:

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

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

22 (2) At any time during the probation period, the court may issue a warrant and cause a de-
23 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
24 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
25 rant for violating any condition of probation, and a statement by the parole and probation officer
26 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
27 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
28 detention of the probationer in the county jail until the probationer can be brought before the court
29 or until the parole and probation officer or supervisory personnel impose and the offender agrees
30 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
31 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
32 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
33 personnel, the disposition shall take place in no more than five judicial days. If the offender does
34 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
35 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
36 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
37 tention to the court that imposed the probation. The parole and probation officer shall promptly
38 submit to the court a report showing in what manner the probationer has violated the conditions
39 of probation.

40 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
41 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
42 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
43 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
44 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
45 the probationer upon the condition that the probationer appear in court at a later date for a pro-

1 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
 2 the magistrate may order the probationer released subject to an additional order to the probationer
 3 that the probationer report within seven calendar days to the court that imposed the probation.

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

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

10 (b) Upon the court's own motion.

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

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

16 (B) If no other sentence has been imposed, the court may impose any other sentence which ori-
 17 ginally could have been imposed.

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

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

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

28 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
 29 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
 30 brought before the court at any time within the maximum period for which the defendant might ori-
 31 ginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
 32 pension of sentence and cause the sentence imposed to be executed.

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

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

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

39 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
 40 147.417, to be notified by the district attorney of any hearing before the court that may result in the
 41 revocation of the defendant's probation;

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

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

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

1 **SECTION 64.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
2 approved by the people at the special election held throughout this state on the same date as the
3 next primary election, ORS 147.417 is amended to read:

4 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
5 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
6 of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be
7 verbal or written. If exercise of any of the rights depends upon the victim making a request, the
8 law enforcement agency shall include in the notice the time period in which the victim is required
9 to make the request. A law enforcement agency satisfies the requirements of this section if the law
10 enforcement agency:

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

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

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

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

18 (b) **Does not affect the validity of a plea, except as provided in sections 2 to 19 of this 2008**
19 **Act.**

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

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

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

27 **SECTION 65.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
28 approved by the people at the special election held throughout this state on the same date as the
29 next primary election, ORS 144.108 is amended to read:

30 144.108. (1) If the violation of post-prison supervision is new criminal activity or if the supervi-
31 sory authority finds that the continuum of sanctions is insufficient punishment for a violation of the
32 conditions of post-prison supervision, the supervisory authority may:

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

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

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

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

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

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

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

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

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

7 (5)[(a)] The victim has the right:

8 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
9 147.417, to be notified by the board of any hearing before the board that may result in a revocation
10 sanction for a post-prison supervision violation;

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

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

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

15 **SECTION 66.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
16 approved by the people at the special election held throughout this state on the same date as the
17 next primary election, ORS 144.343 is amended to read:

18 144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-
19 resentative has been informed and has reasonable grounds to believe that a person under its juris-
20 diction has violated a condition of parole and that revocation of parole may be warranted, the board
21 or its designated representative shall conduct a hearing as promptly as convenient to determine
22 whether there is probable cause to believe a violation of one or more of the conditions of parole
23 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the
24 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board
25 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing
26 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing
27 shall be reasonably near the place of the alleged violation or the place of confinement.

28 (2) The board may:

29 (a) Reinstate or continue the alleged violator on parole subject to the same or modified condi-
30 tions of parole;

31 (b) Revoke parole and require that the parole violator serve the remaining balance of the sen-
32 tence as provided by law;

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

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

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

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

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

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

45 (d) The parolee's right to present letters, documents, affidavits or persons with relevant infor-

1 mation at the hearing unless it has been determined that informants would be subject to risk of
2 harm if their identity were disclosed.

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

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

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

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

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

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

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

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

19 (i) Whether to reinstate parole;

20 (ii) Whether to continue the alleged violator on parole subject to the same or modified condi-
21 tions of parole; or

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

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

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

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

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

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

35 (5) Within a reasonable time after the preliminary hearing, the parolee shall be given a written
36 summary of what transpired at the hearing, including the board's or its designated representative's
37 decision or recommendation and reasons for the decision or recommendation and the evidence upon
38 which the decision or recommendation was based. If an indigent parolee's request for counsel at
39 board expense has been made in the manner provided in subsection (3)(f) of this section and refused,
40 the grounds for the refusal shall be succinctly stated in the summary.

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

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

4 (7) If the board or its designated representative has determined that there is probable cause to
5 believe that a violation of one or more of the conditions of parole has occurred, the hearing shall
6 proceed to receive evidence from which the board may determine whether to reinstate or continue
7 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke
8 parole and require that the parole violator serve a term of imprisonment as provided by ORS
9 144.346.

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

18 (9)[(a)] The victim has the right:

19 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
20 147.417, to be notified by the board of any hearing before the board that may result in the revoca-
21 tion of the parolee's parole;

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

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

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

26 **SECTION 67.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50 (2007) are
27 approved by the people at the special election held throughout this state on the same date as the
28 next primary election, ORS 419A.004 is amended to read:

29 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
30 otherwise:

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

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

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

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

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

39 (6) "Court" means the juvenile court.

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

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

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

44 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to
45 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders

1 pursuant to a judicial commitment or order.

2 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to
3 419A.020 and 419A.050 to 419A.063.

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

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

6 (a) A member of an Indian tribe; or

7 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-
8 dian tribe.

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

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

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

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

16 (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under appli-
17 cable tribal law.

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

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

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

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

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

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

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

34 (24) "Serious physical injury" means:

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

36 (b) A physical injury that:

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

38 (B) Results in substantial and recurring pain; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 **SECTION 68. If House Joint Resolution 49 (2007) is approved and House Joint Resolution**
38 **50 (2007) is rejected by the people at the special election held throughout this state on the**
39 **same date as the next primary election, ORS 135.406 is repealed.**

40 **SECTION 69.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
41 (2007) is rejected by the people at the special election held throughout this state on the same date
42 as the next primary election, ORS 131.007 is amended to read:

43 131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in
44 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-
45 quires otherwise, "victim" means the person or persons who have suffered financial, social, psycho-

1 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of
2 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor
3 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a
4 victim.

5 **SECTION 70.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
6 (2007) is rejected by the people at the special election held throughout this state on the same date
7 as the next primary election, ORS 135.432 is amended to read:

8 135.432. (1)(a) The trial judge [*shall*] **may** not participate in plea discussions, except to:

9 (A) Inquire of the parties about the status of any discussions;

10 (B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this section;

11 or

12 (C) Make the inquiry required by [*ORS 135.406*] **section 23 (2) of this 2008 Act.**

13 (b) Any other judge, at the request of both the prosecution and the defense, or at the direction
14 of the presiding judge, may participate in plea discussions. Participation by a judge in the plea dis-
15 cussion process shall be advisory, and shall in no way bind the parties. If no plea is entered pursu-
16 ant to these discussions, the advice of the participating judge shall not be reported to the trial
17 judge. If the discussion results in a plea of guilty or no contest, the parties, if they both agree to
18 do so, may proceed with the plea before a judge involved in the discussion. This plea may be entered
19 pursuant to a tentative plea agreement as provided in subsections (2) to (4) of this section.

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

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

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

35 **SECTION 71.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
36 (2007) is rejected by the people at the special election held throughout this state on the same date
37 as the next primary election, ORS 419C.261 is amended to read:

38 419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
39 direct that the petition be amended. If the amendment results in a substantial departure from the
40 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
41 quire. When the court directs the amendment of a petition alleging that a youth has committed an
42 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
43 shall make written findings stating the reason for directing the amendment.

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

1 dication of the petition.

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

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

7 (3) The district attorney or juvenile department must consult the victim regarding plea negoti-
8 ations if:

9 (a) The victim has requested to be consulted regarding plea negotiations; **and**

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

12 *[(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an ad-
13 mission from the youth.]*

14 **SECTION 72.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
15 (2007) is rejected by the people at the special election held throughout this state on the same date
16 as the next primary election, ORS 419C.273 is amended to read:

17 419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be
18 present at and, upon request, must be informed in advance of critical stages of the proceedings held
19 in open court when the youth or youth offender will be present.

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

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

25 (A) A detention or shelter hearing;

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

27 (C) A dispositional hearing.

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

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

30 (B) To appear personally at the hearing; and

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

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

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

42 (4) As used in this section:

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

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

45 (B) Is held in open court; and

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

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

3 (A) Detention and shelter hearings;

4 (B) Hearings to review placements;

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

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

7 (E) Waiver hearings;

8 (F) Adjudication and plea hearings;

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

10 (H) Review or dispositional review hearings;

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

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

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

15 (L) Expunction hearings.

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

20 **SECTION 73.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
21 (2007) is rejected by the people at the special election held throughout this state on the same date
22 as the next primary election, ORS 40.015 is amended to read:

23 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

24 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
25 305.501;

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

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

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

31 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-
32 ceedings.

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

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

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

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

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

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

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

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

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

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

4 (j) **Proceedings under section 29 of this 2008 Act relating to victims' rights, except for the**
5 **provisions of ORS 40.105 and 40.115.**

6 **SECTION 74.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
7 (2007) is rejected by the people at the special election held throughout this state on the same date
8 as the next primary election, ORS 135.245 is amended to read:

9 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
10 security release or to be taken before a magistrate without undue delay. If the person is not released
11 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
12 of the right of the person to a security release as provided in ORS 135.265.

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

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

21 (a) Release criteria show to the satisfaction of the magistrate that such a release is unwar-
22 ranted; or

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

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

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

27 [(A)] (a) The district attorney has a right to be heard in relation to issues relevant to the re-
28 lease decision; and

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

30 [(i)] (A) Upon request made within the time period prescribed in the notice required by ORS
31 147.417, to be notified by the district attorney of the release hearing;

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

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

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

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

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

43 **SECTION 75.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
44 (2007) is rejected by the people at the special election held throughout this state on the same date
45 as the next primary election, ORS 137.545 is amended to read:

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

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

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

6 (2) At any time during the probation period, the court may issue a warrant and cause a de-
7 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
8 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
9 rant for violating any condition of probation, and a statement by the parole and probation officer
10 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
11 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
12 detention of the probationer in the county jail until the probationer can be brought before the court
13 or until the parole and probation officer or supervisory personnel impose and the offender agrees
14 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
15 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
16 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
17 personnel, the disposition shall take place in no more than five judicial days. If the offender does
18 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
19 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
20 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
21 tention to the court that imposed the probation. The parole and probation officer shall promptly
22 submit to the court a report showing in what manner the probationer has violated the conditions
23 of probation.

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

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

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

39 (b) Upon the court's own motion.

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

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

45 (B) If no other sentence has been imposed, the court may impose any other sentence which or-

1 originally could have been imposed.

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

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

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

12 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
13 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
14 brought before the court at any time within the maximum period for which the defendant might or-
15 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
16 pension of sentence and cause the sentence imposed to be executed.

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

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

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

23 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
24 147.417, to be notified by the district attorney of any hearing before the court that may result in the
25 revocation of the defendant's probation;

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

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

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

30 **SECTION 76.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
31 (2007) is rejected by the people at the special election held throughout this state on the same date
32 as the next primary election, ORS 147.417 is amended to read:

33 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
34 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
35 of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be
36 verbal or written. If exercise of any of the rights depends upon the victim making a request, the
37 law enforcement agency shall include in the notice the time period in which the victim is required
38 to make the request. A law enforcement agency satisfies the requirements of this section if the law
39 enforcement agency:

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

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

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

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

2 (b) **Does not affect the validity of a plea, except as provided in sections 20 to 37 of this**
3 **2008 Act.**

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

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

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

11 **SECTION 77.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
12 (2007) is rejected by the people at the special election held throughout this state on the same date
13 as the next primary election, ORS 144.108 is amended to read:

14 144.108. (1) If the violation of post-prison supervision is new criminal activity or if the supervi-
15 sory authority finds that the continuum of sanctions is insufficient punishment for a violation of the
16 conditions of post-prison supervision, the supervisory authority may:

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

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

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

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

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

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

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

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

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

36 (5)[(a)] The victim has the right:

37 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
38 147.417, to be notified by the board of any hearing before the board that may result in a revocation
39 sanction for a post-prison supervision violation;

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

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

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

44 **SECTION 78.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
45 (2007) is rejected by the people at the special election held throughout this state on the same date

1 as the next primary election, ORS 144.343 is amended to read:

2 144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-
3 resentative has been informed and has reasonable grounds to believe that a person under its juris-
4 diction has violated a condition of parole and that revocation of parole may be warranted, the board
5 or its designated representative shall conduct a hearing as promptly as convenient to determine
6 whether there is probable cause to believe a violation of one or more of the conditions of parole
7 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the
8 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board
9 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing
10 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing
11 shall be reasonably near the place of the alleged violation or the place of confinement.

12 (2) The board may:

13 (a) Reinstate or continue the alleged violator on parole subject to the same or modified condi-
14 tions of parole;

15 (b) Revoke parole and require that the parole violator serve the remaining balance of the sen-
16 tence as provided by law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (i) Whether to reinstate parole;

4 (ii) Whether to continue the alleged violator on parole subject to the same or modified condi-
5 tions of parole; or

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

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

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

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

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

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

19 (5) Within a reasonable time after the preliminary hearing, the parolee shall be given a written
20 summary of what transpired at the hearing, including the board's or its designated representative's
21 decision or recommendation and reasons for the decision or recommendation and the evidence upon
22 which the decision or recommendation was based. If an indigent parolee's request for counsel at
23 board expense has been made in the manner provided in subsection (3)(f) of this section and refused,
24 the grounds for the refusal shall be succinctly stated in the summary.

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

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

33 (7) If the board or its designated representative has determined that there is probable cause to
34 believe that a violation of one or more of the conditions of parole has occurred, the hearing shall
35 proceed to receive evidence from which the board may determine whether to reinstate or continue
36 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke
37 parole and require that the parole violator serve a term of imprisonment as provided by ORS
38 144.346.

39 (8) At the conclusion of the hearing if probable cause has been determined and the hearing has
40 been held by a member of the board or by a designated representative of the board, the person
41 conducting the hearing shall transmit the record of the hearing, together with a proposed order in-
42 cluding findings of fact, recommendation and reasons for the recommendation to the board. The
43 parolee or the parolee's representative shall have the right to file exceptions and written arguments
44 with the board. The right to file exceptions and written arguments may be waived. After consider-
45 ation of the record, recommendations, exceptions and arguments a quorum of the board shall enter

1 a final order including findings of fact, its decision and reasons for the decision.

2 (9)[(a)] The victim has the right:

3 [(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
4 147.417, to be notified by the board of any hearing before the board that may result in the revoca-
5 tion of the parolee's parole;

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

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

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

10 **SECTION 79.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
11 (2007) is rejected by the people at the special election held throughout this state on the same date
12 as the next primary election, ORS 419A.004 is amended to read:

13 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
14 otherwise:

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

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

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

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

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

23 (6) "Court" means the juvenile court.

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

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

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

28 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to
29 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
30 pursuant to a judicial commitment or order.

31 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to
32 419A.020 and 419A.050 to 419A.063.

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

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

35 (a) A member of an Indian tribe; or

36 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-
37 dian tribe.

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

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

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

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

45 (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under appli-

1 cable tribal law.

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

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

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

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

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

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

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

18 (24) "Serious physical injury" means:

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

20 (b) A physical injury that:

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

22 (B) Results in substantial and recurring pain; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **SECTION 80. If House Joint Resolution 49 (2007) is rejected and House Joint Resolution**
22 **50 (2007) is approved by the people at the special election held throughout this state on the**
23 **same date as the next primary election, ORS 135.406 is repealed.**

24 **SECTION 81.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
25 (2007) is approved by the people at the special election held throughout this state on the same date
26 as the next primary election, ORS 131.007 is amended to read:

27 131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in
28 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-
29 quires otherwise, "victim" means the person or persons who have suffered financial, social, psycho-
30 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of
31 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor
32 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a
33 victim.

34 **SECTION 82.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
35 (2007) is approved by the people at the special election held throughout this state on the same date
36 as the next primary election, ORS 135.432 is amended to read:

37 135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

38 (A) Inquire of the parties about the status of any discussions;

39 (B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this section;

40 or

41 (C) Make the inquiry required by [ORS 135.406] **section 41 (2) of this 2008 Act.**

42 (b) Any other judge, at the request of both the prosecution and the defense, or at the direction
43 of the presiding judge, may participate in plea discussions. Participation by a judge in the plea dis-
44 cussion process shall be advisory, and shall in no way bind the parties. If no plea is entered pursu-
45 ant to these discussions, the advice of the participating judge shall not be reported to the trial

1 judge. If the discussion results in a plea of guilty or no contest, the parties, if they both agree to
 2 do so, may proceed with the plea before a judge involved in the discussion. This plea may be entered
 3 pursuant to a tentative plea agreement as provided in subsections (2) to (4) of this section.

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

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

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

19 **SECTION 83.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
 20 (2007) is approved by the people at the special election held throughout this state on the same date
 21 as the next primary election, ORS 419C.261 is amended to read:

22 419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
 23 direct that the petition be amended. If the amendment results in a substantial departure from the
 24 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
 25 quire. When the court directs the amendment of a petition alleging that a youth has committed an
 26 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
 27 shall make written findings stating the reason for directing the amendment.

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

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

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

36 (3) The district attorney or juvenile department must consult the victim regarding plea negoti-
 37 ations if:

38 (a) The victim has requested to be consulted regarding plea negotiations; **and**

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

41 [*(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an ad-*
 42 *mission from the youth.*]

43 **SECTION 84.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
 44 (2007) is approved by the people at the special election held throughout this state on the same date
 45 as the next primary election, ORS 419C.273 is amended to read:

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

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

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

9 (A) A detention or shelter hearing;

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

11 (C) A dispositional hearing.

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

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

14 (B) To appear personally at the hearing; and

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

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

18 (3) If the victim is not present at a critical stage of the proceeding, the court shall ask the
19 district attorney or juvenile department whether the victim requested to be notified of critical stages
20 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney
21 or juvenile department whether the victim was notified of the date, time and place of the hearing.
22 The validity of the proceeding is not affected by the failure to notify the victim of a hearing or
23 failure of the victim to appear at a hearing that is a critical stage of the proceeding, including but
24 not limited to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261,
25 419C.450 or 419C.653.

26 (4) As used in this section:

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

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

29 (B) Is held in open court; and

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

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

32 (A) Detention and shelter hearings;

33 (B) Hearings to review placements;

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

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

36 (E) Waiver hearings;

37 (F) Adjudication and plea hearings;

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

39 (H) Review or dispositional review hearings;

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

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

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

44 (L) Expunction hearings.

45 (5) Nothing in this section creates a cause of action for compensation or damages. This section

1 may not be used to invalidate an accusatory instrument[, *ruling of the court*] **or adjudication** or
2 otherwise [*suspend or*] terminate any proceeding at any point after the case is commenced or on
3 appeal.

4 **SECTION 85.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
5 (2007) is approved by the people at the special election held throughout this state on the same date
6 as the next primary election, ORS 40.015 is amended to read:

7 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

8 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
9 305.501;

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

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

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

15 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-
16 ceedings.

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

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

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

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

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

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

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

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

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

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

33 **(j) Proceedings under section 47 of this 2008 Act relating to victims' rights, except for the**
34 **provisions of ORS 40.105 and 40.115.**

35 **SECTION 86.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
36 (2007) is approved by the people at the special election held throughout this state on the same date
37 as the next primary election, ORS 419A.004 is amended to read:

38 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
39 otherwise:

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

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

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

45 (4) "Conflict of interest" means a person appointed to a local citizen review board who has a

1 personal or pecuniary interest in a case being reviewed by that board.

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

3 (6) "Court" means the juvenile court.

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

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

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

8 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to
9 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
10 pursuant to a judicial commitment or order.

11 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to
12 419A.020 and 419A.050 to 419A.063.

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

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

15 (a) A member of an Indian tribe; or

16 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-
17 dian tribe.

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

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

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

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

25 (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under appli-
26 cable tribal law.

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

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

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

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

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

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

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

43 (24) "Serious physical injury" means:

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

45 (b) A physical injury that:

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

2 (B) Results in substantial and recurring pain; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SECTION 87.** Section 1 of this 2008 Act becomes operative on April 1, 2008.

2 **SECTION 88.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50
3 (2007) are approved by the people at the special election held throughout this state on the
4 same date as the next primary election:

5 (1) Sections 20 to 55b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.245,
6 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 69, 70, 71,
7 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85 and 86 of this 2008 Act and the repeal of ORS
8 135.406 by sections 68 and 80 of this 2008 Act are repealed; and

9 (2) Sections 2 to 19b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.245,
10 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 57, 58, 59,
11 60, 61, 62, 63, 64, 65, 66 and 67 of this 2008 Act and the repeal of ORS 135.406 by section 56
12 of this 2008 Act:

13 (a) Become operative on the effective date of the amendments to sections 42 and 43, Ar-
14 ticle I of the Oregon Constitution, by House Joint Resolution 49 (2007) and House Joint Re-
15 solution 50 (2007); and

16 (b) Apply to criminal proceedings, as defined in section 2 of this 2008 Act, pending in any
17 court on, or commenced on or after, the operative date specified in paragraph (a) of this
18 subsection.

19 (3) Subsection (2) of this section does not affect the application of section 6 (1) of this
20 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
21 date specified in subsection (2) of this section.

22 **SECTION 89.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution
23 50 (2007) is rejected by the people at the special election held throughout this state on the
24 same date as the next primary election:

25 (1) Sections 2 to 19b and 38 to 55b of this 2008 Act, the amendments to ORS 40.015,
26 131.007, 135.245, 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by
27 sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 81, 82, 83, 84, 85 and 86 of this 2008 Act and
28 the repeal of ORS 135.406 by sections 56 and 80 of this 2008 Act are repealed; and

29 (2) Sections 20 to 37b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.245,
30 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 69, 70, 71,
31 72, 73, 74, 75, 76, 77, 78 and 79 of this 2008 Act and the repeal of ORS 135.406 by section 68
32 of this 2008 Act:

33 (a) Become operative on the effective date of the amendments to section 42, Article I of
34 the Oregon Constitution, by House Joint Resolution 49 (2007); and

35 (b) Apply to criminal proceedings, as defined in section 20 of this 2008 Act, pending in any
36 court on, or commenced on or after, the operative date specified in paragraph (a) of this
37 subsection.

38 (3) Subsection (2) of this section does not affect the application of section 24 (1) of this
39 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
40 date specified in subsection (2) of this section.

41 **SECTION 90.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution
42 50 (2007) is approved by the people at the special election held throughout this state on the
43 same date as the next primary election:

44 (1) Sections 2 to 37b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,
45 419A.004, 419C.261 and 419C.273 by sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71,

1 72, 73, 74, 75, 76, 77, 78 and 79 of this 2008 Act and the repeal of ORS 135.406 by sections 56
2 and 68 of this 2008 Act are repealed; and

3 (2) Sections 38 to 55b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,
4 419A.004, 419C.261 and 419C.273 by sections 81, 82, 83, 84, 85 and 86 of this 2008 Act and the
5 repeal of ORS 135.406 by section 80 of this 2008 Act:

6 (a) Become operative on the effective date of the amendments to section 43, Article I of
7 the Oregon Constitution, by House Joint Resolution 50 (2007); and

8 (b) Apply to criminal proceedings, as defined in section 38 of this 2008 Act, pending in any
9 court on, or commenced on or after, the operative date specified in paragraph (a) of this
10 subsection.

11 (3) Subsection (2) of this section does not affect the application of section 42 (1) of this
12 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
13 date specified in subsection (2) of this section.

14 SECTION 91. If both House Joint Resolution 49 (2007) and House Joint Resolution 50
15 (2007) are rejected by the people at the special election held throughout this state on the
16 same date as the next primary election, sections 2 to 55b of this 2008 Act, the amendments
17 to ORS 40.015, 131.007, 135.245, 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and
18 419C.273 by sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78,
19 79, 81, 82, 83, 84, 85 and 86 of this 2008 Act and the repeal of ORS 135.406 by sections 56, 68
20 and 80 of this 2008 Act are repealed.

21 SECTION 92. The unit captions used in this 2008 Act are provided only for the conven-
22 ience of the reader and do not become part of the statutory law of this state or express any
23 legislative intent in the enactment of this 2008 Act.

24 SECTION 93. This 2008 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
26 on its passage.