

HOUSE AMENDMENTS TO HOUSE BILL 3633

By COMMITTEE ON JUDICIARY

February 15

1 On page 1 of the printed bill, line 2, after “131.007,” delete the rest of the line and insert
2 “135.245, 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004,”.

3 Delete lines 5 through 27 and delete pages 2 through 42 and insert:
4

5 “PROVISIONS EFFECTIVE REGARDLESS OF THE OUTCOME 6 OF THE ELECTION ON HJR 49 AND HJR 50 7

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

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

23 “PROVISIONS EFFECTIVE IF BOTH HJR 49 AND HJR 50 ARE 24 APPROVED BY THE PEOPLE 25

26 “SECTION 2. As used in sections 2 to 19 of this 2008 Act:

27 “(1) ‘Authorized prosecuting attorney’ means a prosecuting attorney who, at the request
28 of a victim, has agreed to assert and enforce a right granted to the victim by section 42 or
29 43, Article I of the Oregon Constitution.

30 “(2) ‘Claim’ means an allegation and the proposed remedy described in section 6 (1) of
31 this 2008 Act.

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

35 “(4) ‘Criminal proceeding’ means an action at law by means of which a person is alleged

1 to have committed a crime for which there is a victim that is conducted in the trial or ju-
2 venile court before or after sentencing or disposition.

3 “(5) ‘Critical stage of the proceeding’ includes:

4 “(a) Arraignment;

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

6 “(c) Preliminary hearings;

7 “(d) Hearings related to the rescheduling of trial;

8 “(e) Hearings on motions or petitions:

9 “(A) Conducted pursuant to ORS 40.210 or 135.139;

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

11 “(C) To suppress or exclude evidence;

12 “(f) Entry of guilty or no contest pleas;

13 “(g) Trial;

14 “(h) Restitution hearings;

15 “(i) Sentencing;

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

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

19 “(L) Hearings related to a deferred sentencing agreement;

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

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

23 “(6) ‘Defendant’ includes persons under 18 years of age alleged to be under the jurisdic-
24 tion of the juvenile court under ORS chapter 419C.

25 “(7) ‘Juvenile court’ has the meaning given that term in ORS 419A.004.

26 “(8) ‘Person Class A misdemeanor’ has the meaning given that term in the rules of the
27 Oregon Criminal Justice Commission.

28 “(9) ‘Trial court’ has the meaning given that term in ORS 131.005. ‘Trial court’ includes
29 the juvenile court.

30 “(10) ‘Victim’ means any person determined by the prosecuting attorney or the court to
31 have suffered direct financial, psychological or physical harm as a result of the crime alleged
32 in the criminal proceeding and, in the case of a victim who is a minor, the legal guardian of
33 the minor.

34 “(11) ‘Violent felony’ means a felony in which there was actual or threatened serious
35 physical injury to a victim or a felony sexual offense.

36 “SECTION 3. (1) A victim may assert a claim under sections 2 to 19 of this 2008 Act
37 personally, through an attorney or through an authorized prosecuting attorney.

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

41 “(3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a
42 proceeding under sections 2 to 19 of this 2008 Act.

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

45 “SECTION 4. (1) As soon as practicable following the filing of a charging instrument, the

1 prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice of
2 the Supreme Court, whether:

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

6 “(b) The charging instrument includes the name or pseudonym of each victim known to
7 the prosecuting attorney. If the charging instrument does not include the name or
8 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
9 identify any victim not included in the charging instrument.

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

12 “(d) The victim requested to be informed in advance of any critical stage of the pro-
13 ceeding.

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

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

18 “(a) The prosecuting attorney is aware that the victim is present, the prosecuting at-
19 torney shall so inform the court. If the prosecuting attorney does not know whether the
20 victim is present, the court shall determine whether the victim is present.

21 “(b) The victim is not present, the prosecuting attorney shall inform the court, based on
22 the prosecuting attorney’s knowledge, whether the victim requested advance notice of any
23 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
24 torney shall inform the court, based on the prosecuting attorney’s knowledge, whether the
25 victim:

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

27 “(B) Was informed of the victim’s rights implicated in the proceeding; and

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

30 “(4) If the victim is present, the court may ask the victim for information about any
31 aspect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon
32 Constitution.

33 “(5)(a) The certification described in subsection (1) of this section may be based on in-
34 formation provided to the prosecuting attorney by a person known to the prosecuting at-
35 torney.

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

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

39 “SECTION 5. (1) At the beginning of any plea hearing and any sentencing hearing, if the
40 prosecuting attorney or the juvenile department is aware that the victim is present, the
41 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
42 attorney or juvenile department does not know whether the victim is present, the court shall
43 determine whether the victim is present.

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

45 “(a) If the victim requests, the prosecuting attorney or juvenile department shall consult

1 the victim about plea discussions before making a final plea agreement.

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

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

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

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

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

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

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

18 “(4) As used in this section:

19 “(a) ‘Plea hearing’ means a hearing in which the defendant enters a plea of guilty or no
20 contest;

21 “(b) ‘Plea of guilty or no contest’ includes:

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

24 “(B) If a juvenile court petition has been filed, entering a formal accountability agree-
25 ment under ORS 419C.230 or an authorized diversion program under ORS 419C.225.

26 “(c) ‘Sentencing hearing’ includes the dispositional phase of a juvenile delinquency pro-
27 ceeding under ORS chapter 419C.

28 “SECTION 6. (1) A victim who wishes to allege a violation of a right granted by section
29 42 or 43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall
30 inform the court within seven days of the date the victim knew or reasonably should have
31 known of the facts supporting the allegation. The victim shall describe the facts supporting
32 the allegation and include a proposed remedy.

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

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

35 “(b) On the record in open court and in the presence of the defendant and the prosecut-
36 ing attorney.

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

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

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

45 “(b) Is not present, the court shall issue the order to show cause described in section 7

1 of this 2008 Act.

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

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

5 “(b) Include the reasons the claim was dismissed; and

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

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

13 “SECTION 7. (1)(a) Except as provided in subsection (3) of this section, the victim, the
14 prosecuting attorney or the defendant must provide notice of the claim to any person the
15 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting
16 relief by providing the person with a copy of the order to show cause described in this sec-
17 tion.

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

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

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

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

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

29 “(a) The victim;

30 “(b) The prosecuting attorney; and

31 “(c) The defendant.

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

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

41 “SECTION 8. (1) If a response to the order to show cause issued under section 7 of this
42 2008 Act is not timely filed, the court shall:

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

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

1 **“(2) If the court determines that the victim’s rights:**

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

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

5 **“(c) Have been violated but that the Constitution of Oregon or the United States pro-**
6 **hibits all appropriate remedies or that the prosecuting attorney has set forth cause to sus-**
7 **pend the victim’s rights under section 7 (4)(b) of this 2008 Act, the court shall issue an order**
8 **denying relief.**

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

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

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

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

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

27 **“(a) The likelihood that the relief requested will be granted;**

28 **“(b) Whether the claim, response or motion is made in good faith and not for the purpose**
29 **of delay;**

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

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

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

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

39 **“(3) A trial or pretrial release decision may not be continued under this section for more**
40 **than 14 days.**

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

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

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

3 “(4) If the court determines that the moving party:

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

6 “(b) Is not entitled to relief or that the Constitution of Oregon or the United States
7 prohibits all appropriate relief, the court shall issue an order denying relief.

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

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

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

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

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

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

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

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

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

24 “(b) By any person after:

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

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

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

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

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

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

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

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

39 “(e) Remedies requested in a subsequent criminal proceeding arising after a state or
40 federal court has granted a new trial or sentencing, provided the claim or motion is timely
41 under subsection (1) of this section in the subsequent criminal proceeding.

42 “SECTION 13. (1) Notwithstanding any other provision of law, appellate review of an or-
43 der issued under section 6, 8 or 11 of this 2008 Act shall be solely as provided in this section
44 and sections 14, 15 and 16 of this 2008 Act.

45 “(2) Jurisdiction for appellate review of an order issued under section 6, 8 or 11 of this

1 2008 Act is vested originally and exclusively in the Supreme Court.

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

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

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

12 “(b) Section 15 of this 2008 Act if the order was issued at any other stage in the criminal
13 proceeding.

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

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

19 “(b) File a response under section 7 (4) of this 2008 Act;

20 “(c) File a motion under section 9 of this 2008 Act; or

21 “(d) Participate in a hearing described in section 11 of this 2008 Act.

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

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

32 “(3) The appellant shall include with the notice of interlocutory appeal the following ma-
33 terials:

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

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

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

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

44 “(c) A memorandum of law containing:

45 “(A) A concise but complete statement of facts material to a determination of the ques-

1 tion presented and the relief sought;

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

3 “(C) Supporting arguments and citations of authority.

4 “(4) The appellant shall serve a copy of the notice of interlocutory appeal and the ac-
5 companying materials described in subsection (3) of this section on the following other per-
6 sons:

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

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

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

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

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

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

17 “(g) The prosecuting attorney; and

18 “(h) The Attorney General.

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

20 “(a) The trial court administrator; and

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

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

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

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

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

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

39 “(8) If the Supreme Court directs a party to provide a transcript of oral proceedings un-
40 der subsection (3) of this section, the party shall provide the transcript to the Supreme Court
41 within seven days after the date of the Supreme Court’s order.

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

43 “(A) The timely filing of the original notice of interlocutory appeal and accompanying
44 materials with the Supreme Court; and

45 “(B) The service of the notice of interlocutory appeal within the time limits described in

1 subsection (6) of this section on all persons identified in subsection (4) of this section whose
2 whereabouts the appellant may reasonably ascertain.

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

6 “(c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss
7 the appeal as to any respondent if the appellant, after receipt of a notice of noncompliance,
8 does not promptly cure a deficiency in the materials or if the failure to timely serve a true
9 and complete copy of the accompanying materials substantially prejudices the respondent’s
10 ability to respond to the appeal.

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

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

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

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

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

26 “(14)(a) The Supreme Court shall issue its decision on appeal under this section within
27 21 days after the date the notice of interlocutory appeal is filed.

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

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

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

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

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

45 “(16) The Supreme Court may affirm, modify, reverse or remand the order. The court

1 may reverse or remand the order only if it finds that the order is unlawful in substance or
2 procedure and that the substantial rights of the appellant were prejudiced as a result.

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

5 **“(1) The Supreme Court’s jurisdiction is discretionary. The court may by rule prescribe**
6 **the criteria the court will use to decide whether to grant review. The initiating document is**
7 **a petition for review, but the petition must be accompanied by the same materials described**
8 **in section 14 (3) of this 2008 Act, and the person seeking review shall be identified as the**
9 **petitioner.**

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

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

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

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

19 **“(a) Upon receipt of a notice of interlocutory appeal under section 14 of this 2008 Act;**
20 **or**

21 **“(b) Upon a grant of review under section 15 of this 2008 Act.**

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

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

27 **“(a) The likelihood that the appellant will prevail on appeal;**

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

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

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

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

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

38 **“SECTION 17. (1)(a) Prior to the Attorney General’s first appearance in an appellate**
39 **court proceeding in which the State of Oregon is a party and to which section 42 or 43, Ar-**
40 **ticle I of the Oregon Constitution, applies, the Attorney General shall determine whether the**
41 **Department of Justice has taken all reasonably practicable steps to fulfill the rights granted**
42 **by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the**
43 **appellate courts.**

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

1 certify the results of that determination to the court simultaneously with the Attorney
2 General's first appearance.

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

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

8 "(2) The Chief Justice of the Supreme Court shall prescribe the forms described in
9 sections 4 (1) and 6 (2)(a) of this 2008 Act. The form described in section 6 (2)(a) of this 2008
10 Act must allow a victim to designate an alternate mailing address or substitute a person to
11 receive notice or service on behalf of the victim for the purposes of sections 2 to 19 of this
12 2008 Act.

13 "SECTION 19. Sections 2 to 19 of this 2008 Act effectuate the provisions of sections 42
14 and 43, Article I of the Oregon Constitution, for violations that occur in criminal proceedings
15 and do not provide a remedy for violations that occur in any other proceeding. A remedy for
16 a violation of sections 42 and 43, Article I of the Oregon Constitution, in any other proceed-
17 ing may be enforced by writ of mandamus under ORS 34.105 to 34.240.

18 "SECTION 19a. (1) There is created the Task Force on Victims' Rights Enforcement
19 consisting of at least seven members appointed as follows:

20 "(a) The Attorney General shall appoint:

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

23 "(B) A member who represents the Oregon Department of Justice Crime Victims' As-
24 sistance Section;

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

27 "(D) A lawyer routinely engaged in prosecuting persons charged with a crime, after
28 consulting with professional organizations serving such lawyers; and

29 "(E) Other persons the Attorney General deems appropriate;

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

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

32 "(B) A judge; and

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

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

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

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

42 "(5) The task force shall prepare reports that may include recommendations for legis-
43 lation designed to improve, in a cost-efficient manner, the protection of rights granted to
44 victims of crime by the Oregon Constitution. The task force shall submit a report to the
45 President of the Senate and the Speaker of the House of Representatives no later than:

1 “(a) January 1, 2009; and

2 “(b) January 1, 2011.

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

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

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

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

11
12 “PROVISIONS EFFECTIVE IF HJR 49 IS APPROVED AND HJR 50
13 IS REJECTED BY THE PEOPLE
14

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

16 “(1) ‘Authorized prosecuting attorney’ means a prosecuting attorney who, at the request
17 of a victim, has agreed to assert and enforce a right granted to the victim by section 42,
18 Article I of the Oregon Constitution.

19 “(2) ‘Claim’ means an allegation and the proposed remedy described in section 24 (1) of
20 this 2008 Act.

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

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

27 “(5) ‘Critical stage of the proceeding’ includes:

28 “(a) Arraignment;

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

30 “(c) Preliminary hearings;

31 “(d) Hearings related to the rescheduling of trial;

32 “(e) Hearings on motions or petitions:

33 “(A) Conducted pursuant to ORS 40.210 or 135.139;

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

35 “(C) To suppress or exclude evidence;

36 “(f) Entry of guilty or no contest pleas;

37 “(g) Trial;

38 “(h) Restitution hearings;

39 “(i) Sentencing;

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

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

43 “(L) Hearings related to a deferred sentencing agreement;

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

45 “(n) Any other stage of a criminal proceeding the court determines is a critical stage of

1 the proceeding for purposes of section 42, Article I of the Oregon Constitution.

2 “(6) ‘Defendant’ includes persons under 18 years of age alleged to be under the jurisdic-
3 tion of the juvenile court under ORS chapter 419C.

4 “(7) ‘Juvenile court’ has the meaning given that term in ORS 419A.004.

5 “(8) ‘Person Class A misdemeanor’ has the meaning given that term in the rules of the
6 Oregon Criminal Justice Commission.

7 “(9) ‘Trial court’ has the meaning given that term in ORS 131.005. ‘Trial court’ includes
8 the juvenile court.

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

13 “(11) ‘Violent felony’ means a felony in which there was actual or threatened serious
14 physical injury to a victim or a felony sexual offense.

15 “SECTION 21. (1) A victim may assert a claim under sections 20 to 37 of this 2008 Act
16 personally, through an attorney or through an authorized prosecuting attorney.

17 “(2) In lieu of service on or notification to a defendant or victim under sections 20 to 37
18 of this 2008 Act, if the defendant or victim is represented by counsel, counsel for the de-
19 fendant or victim shall be served or notified.

20 “(3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a
21 proceeding under sections 20 to 37 of this 2008 Act.

22 “(4) The time within which an act is to be done under sections 20 to 37 of this 2008 Act
23 is determined under ORS 174.120 and 174.125.

24 “SECTION 22. (1) As soon as practicable following the filing of a charging instrument,
25 the prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice
26 of the Supreme Court, whether:

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

30 “(b) The charging instrument includes the name or pseudonym of each victim known to
31 the prosecuting attorney. If the charging instrument does not include the name or
32 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
33 identify any victim not included in the charging instrument.

34 “(c) The victim requested that the prosecuting attorney assert and enforce a right
35 granted to the victim by section 42, Article I of the Oregon Constitution.

36 “(d) The victim requested to be informed in advance of any critical stage of the pro-
37 ceeding.

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

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

42 “(a) The prosecuting attorney is aware that the victim is present, the prosecuting at-
43 torney shall so inform the court. If the prosecuting attorney does not know whether the
44 victim is present, the court shall determine whether the victim is present.

45 “(b) The victim is not present, the prosecuting attorney shall inform the court, based on

1 the prosecuting attorney's knowledge, whether the victim requested advance notice of any
2 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
3 torney shall inform the court, based on the prosecuting attorney's knowledge, whether the
4 victim:

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

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

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

9 "(4) If the victim is present, the court may ask the victim for information about any
10 aspect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon
11 Constitution.

12 "(5)(a) The certification described in subsection (1) of this section may be based on in-
13 formation provided to the prosecuting attorney by a person known to the prosecuting at-
14 torney.

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

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

18 "SECTION 23. (1) At the beginning of any plea hearing and any sentencing hearing, if the
19 prosecuting attorney or the juvenile department is aware that the victim is present, the
20 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
21 attorney or juvenile department does not know whether the victim is present, the court shall
22 determine whether the victim is present.

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

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

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

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

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

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

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

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

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

42 "(4) As used in this section:

43 "(a) 'Plea hearing' means a hearing in which the defendant enters a plea of guilty or no
44 contest;

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

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

3 “(B) If a juvenile court petition has been filed, entering a formal accountability agree-
4 ment under ORS 419C.230 or an authorized diversion program under ORS 419C.225.

5 “(c) ‘Sentencing hearing’ includes the dispositional phase of a juvenile delinquency pro-
6 ceeding under ORS chapter 419C.

7 “SECTION 24. (1) A victim who wishes to allege a violation of a right granted by section
8 42, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform
9 the court within seven days of the date the victim knew or reasonably should have known
10 of the facts supporting the allegation. The victim shall describe the facts supporting the
11 allegation and include a proposed remedy.

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

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

14 “(b) On the record in open court and in the presence of the defendant and the prosecut-
15 ing attorney.

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

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

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

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

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

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

29 “(b) Include the reasons the claim was dismissed; and

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

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

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

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

45 “(2) Under the circumstances described in section 24 (3) or (4)(b) of this 2008 Act, the

1 court shall issue an order to show cause why the victim should not be granted relief. The
2 court shall, after considering the requirements of section 29 (5)(a) of this 2008 Act, include
3 in the order to show cause the date:

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

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

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

8 “(a) The victim;

9 “(b) The prosecuting attorney; and

10 “(c) The defendant.

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

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

20 “SECTION 26. (1) If a response to the order to show cause issued under section 25 of this
21 2008 Act is not timely filed, the court shall:

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

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

25 “(2) If the court determines that the victim’s rights:

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

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

29 “(c) Have been violated but that the Constitution of Oregon or the United States pro-
30 hibits all appropriate remedies or that the prosecuting attorney has set forth cause to sus-
31 pend the victim’s rights under section 25 (4)(b) of this 2008 Act, the court shall issue an order
32 denying relief.

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

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

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

45 “SECTION 28. (1) Pending the hearing described in section 29 of this 2008 Act, the court

1 may reschedule any matter in the criminal proceeding that may directly impact, or be di-
2 rectly impacted by, the claim, response or motion. All other matters in the criminal pro-
3 ceeding shall continue in the ordinary course.

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

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

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

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

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

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

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

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

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

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

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

27 “(4) If the court determines that the moving party:

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

30 “(b) Is not entitled to relief or that the Constitution of Oregon or the United States
31 prohibits all appropriate relief, the court shall issue an order denying relief.

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

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

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

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

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

43 “SECTION 30. (1) A remedy under sections 20 to 37 of this 2008 Act is waived if the
44 remedy is requested:

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

1 “(A) File a response under section 25 (4) of this 2008 Act; or
2 “(B) Participate in a hearing under section 29 of this 2008 Act; or
3 “(b) By any person after:
4 “(A) The period of time determined by the court under section 25 (2)(a) of this 2008 Act
5 if the person is filing a response;
6 “(B) The period of time described in section 27 of this 2008 Act if the person is filing a
7 motion; or
8 “(C) Former jeopardy attaches, unless a motion for new trial or arrest of judgment is
9 granted.
10 “(2) Subsection (1) of this section does not apply to:
11 “(a) Remedies that may be effectuated after the disposition of a criminal proceeding;
12 “(b) The right to obtain information described in section 42 (1)(b), Article I of the Oregon
13 Constitution;
14 “(c) The right to receive prompt restitution described in section 42 (1)(d), Article I of the
15 Oregon Constitution;
16 “(d) The right to have a copy of a transcript described in section 42 (1)(e), Article I of
17 the Oregon Constitution; or
18 “(e) Remedies requested in a subsequent criminal proceeding arising after a state or
19 federal court has granted a new trial or sentencing, provided the claim or motion is timely
20 under subsection (1) of this section in the subsequent criminal proceeding.
21 “SECTION 31. (1) Notwithstanding any other provision of law, appellate review of an or-
22 der issued under section 24, 26 or 29 of this 2008 Act shall be solely as provided in this section
23 and sections 32, 33 and 34 of this 2008 Act.
24 “(2) Jurisdiction for appellate review of an order issued under section 24, 26 or 29 of this
25 2008 Act is vested originally and exclusively in the Supreme Court.
26 “(3) Subject to section 34 of this 2008 Act, the jurisdiction of the Supreme Court is limited
27 to the order for which appellate review is sought and the trial court retains jurisdiction over
28 all other matters in the criminal proceeding.
29 “(4) Appellate review of an order issued under section 24, 26 or 29 of this 2008 Act shall
30 be as provided in:
31 “(a) Section 32 of this 2008 Act if the order was issued in a criminal proceeding in which
32 a defendant is charged with a felony or a person Class A misdemeanor and the order arises
33 from a claim or motion alleging a violation that occurred prior to the pronouncement in open
34 court of the sentence or disposition after a plea, admission or trial in the criminal proceed-
35 ing.
36 “(b) Section 33 of this 2008 Act if the order was issued at any other stage of the criminal
37 proceeding.
38 “(5) The victim, the prosecuting attorney, the defendant or any person against whom
39 relief was ordered has standing to seek appellate review of an order unless, after notice and
40 a reasonable opportunity to be heard on the claim or motion that resulted in the order or a
41 related claim or motion, the person seeking appellate review did not:
42 “(a) Inform the court of an alleged violation under section 24 (1) of this 2008 Act;
43 “(b) File a response under section 25 (4) of this 2008 Act;
44 “(c) File a motion under section 27 of this 2008 Act; or
45 “(d) Participate in a hearing described in section 29 of this 2008 Act.

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

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

11 **“(3) The appellant shall include with the notice of interlocutory appeal the following ma-**
12 **terials:**

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

15 **“(b) An excerpt of the parts of the record necessary to determine the question presented**
16 **and the relief sought. The excerpt of record must include a copy of the form described in**
17 **section 24 (2)(a) of this 2008 Act, if the form was completed and provided to the trial court.**
18 **The Supreme Court may:**

19 **“(A) Direct a party to the appeal to supplement the record with a copy of additional parts**
20 **of the record or a transcript of the parts of the oral proceedings in the trial court necessary**
21 **to determine the question presented and the relief sought; or**

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

23 **“(c) A memorandum of law containing:**

24 **“(A) A concise but complete statement of facts material to a determination of the ques-**
25 **tion presented and the relief sought;**

26 **“(B) A statement of why the notice of interlocutory appeal is timely; and**

27 **“(C) Supporting arguments and citations of authority.**

28 **“(4) The appellant shall serve a copy of the notice of interlocutory appeal and the ac-**
29 **companying materials described in subsection (3) of this section on the following other per-**
30 **sons:**

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

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

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

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

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

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

41 **“(g) The prosecuting attorney; and**

42 **“(h) The Attorney General.**

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

44 **“(a) The trial court administrator; and**

45 **“(b) The trial court transcript coordinator, if the notice of interlocutory appeal contains**

1 a designation of the oral proceedings before the trial court as part of the record on appeal.

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

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

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

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

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

18 “(8) If the Supreme Court directs a party to provide a transcript of oral proceedings un-
19 der subsection (3) of this section, the party shall provide the transcript to the Supreme Court
20 within seven days after the date of the Supreme Court’s order.

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

22 “(A) The timely filing of the original notice of interlocutory appeal and accompanying
23 materials with the Supreme Court; and

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

27 “(b) Failure to timely serve a true and complete copy of the accompanying materials
28 described in subsection (3) of this section is not jurisdictional, provided that the appellant
29 made a good faith effort to do so and substantially complied with those requirements.

30 “(c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss
31 the appeal as to any respondent if the appellant, after receipt of a notice of noncompliance,
32 does not promptly cure a deficiency in the materials or if the failure to timely serve a true
33 and complete copy of the accompanying materials substantially prejudices the respondent’s
34 ability to respond to the appeal.

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

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

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

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

45 “(13) At any time after submission of the appellant’s memorandum, the Supreme Court,

1 on its own motion or on the motion of the respondent, may summarily affirm the trial
2 court's order, with or without the submission of a response or oral argument, if the Supreme
3 Court determines that the appeal does not present a substantial question of law. A motion
4 for summary affirmance has no effect on the timelines described in this section.

5 “(14)(a) The Supreme Court shall issue its decision on appeal under this section within
6 21 days after the date the notice of interlocutory appeal is filed.

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

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

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

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

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

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

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

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

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

37 “(3) Section 32 (13) of this 2008 Act does not apply to review under this section. The Su-
38 preme Court may dismiss a review improvidently granted.

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

41 “SECTION 34. (1) The trial court shall stay for a period of 21 days all matters that di-
42 rectly impact, or are directly impacted by, the order on appeal:

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

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

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

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

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

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

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

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

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

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

17 “SECTION 35. (1)(a) Prior to the Attorney General’s first appearance in an appellate
18 court proceeding in which the State of Oregon is a party and to which section 42 or 43, Ar-
19 ticle I of the Oregon Constitution, applies, the Attorney General shall determine whether the
20 Department of Justice has taken all reasonably practicable steps to fulfill the rights granted
21 by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the
22 appellate courts.

23 “(b) Unless otherwise provided by rule or order of the Chief Justice of the Supreme
24 Court, the Attorney General shall, in the cases described in paragraph (a) of this subsection,
25 certify the results of that determination to the court simultaneously with the Attorney
26 General’s first appearance.

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

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

32 “(2) The Chief Justice of the Supreme Court shall prescribe the forms described in
33 sections 22 (1) and 24 (2)(a) of this 2008 Act. The form described in section 24 (2)(a) of this
34 2008 Act must allow a victim to designate an alternate mailing address or substitute a person
35 to receive notice or service on behalf of the victim for the purposes of sections 20 to 37 of
36 this 2008 Act.

37 “SECTION 37. Sections 20 to 37 of this 2008 Act effectuate the provisions of section 42,
38 Article I of the Oregon Constitution, for violations that occur in criminal proceedings and
39 do not provide a remedy for violations that occur in any other proceeding. A remedy for a
40 violation of section 42, Article I of the Oregon Constitution, in any other proceeding may be
41 enforced by writ of mandamus under ORS 34.105 to 34.240.

42 “SECTION 37a. (1) There is created the Task Force on Victims’ Rights Enforcement
43 consisting of at least seven members appointed as follows:

44 “(a) The Attorney General shall appoint:

45 “(A) A member employed by or associated with a group advocating for the rights of vic-

1 tims of crime;

2 “(B) A member who represents the Oregon Department of Justice Crime Victims’ As-
3 sistance Section;

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

6 “(D) A lawyer routinely engaged in prosecuting persons charged with a crime, after
7 consulting with professional organizations serving such lawyers; and

8 “(E) Other persons the Attorney General deems appropriate;

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

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

11 “(B) A judge; and

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

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

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

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

21 “(5) The task force shall prepare reports that may include recommendations for legis-
22 lation designed to improve, in a cost-efficient manner, the protection of rights granted to
23 victims of crime by the Oregon Constitution. The task force shall submit a report to the
24 President of the Senate and the Speaker of the House of Representatives no later than:

25 “(a) January 1, 2009; and

26 “(b) January 1, 2011.

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

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

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

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

35
36 “PROVISIONS EFFECTIVE IF HJR 49 IS REJECTED AND
37 HJR 50 IS APPROVED BY THE PEOPLE
38

39 “SECTION 38. As used in sections 38 to 55 of this 2008 Act:

40 “(1) ‘Authorized prosecuting attorney’ means a prosecuting attorney who, at the request
41 of a victim, has agreed to assert and enforce a right granted to the victim by section 43,
42 Article I of the Oregon Constitution.

43 “(2) ‘Claim’ means an allegation and the proposed remedy described in section 42 (1) of
44 this 2008 Act.

45 “(3) ‘Crime’ has the meaning given that term in ORS 161.515. ‘Crime’ includes an act

1 committed by a person who is under 18 years of age that, if committed by an adult, would
2 constitute a misdemeanor or felony.

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

6 “(5) ‘Critical stage of the proceeding’ includes:

7 “(a) Arraignment;

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

9 “(c) Preliminary hearings;

10 “(d) Hearings related to the rescheduling of trial;

11 “(e) Hearings on motions or petitions:

12 “(A) Conducted pursuant to ORS 40.210 or 135.139;

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

14 “(C) To suppress or exclude evidence;

15 “(f) Entry of guilty or no contest pleas;

16 “(g) Trial;

17 “(h) Restitution hearings;

18 “(i) Sentencing;

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

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

22 “(L) Hearings related to a deferred sentencing agreement;

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

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

26 “(6) ‘Defendant’ includes persons under 18 years of age alleged to be under the jurisdic-
27 tion of the juvenile court under ORS chapter 419C.

28 “(7) ‘Juvenile court’ has the meaning given that term in ORS 419A.004.

29 “(8) ‘Person Class A misdemeanor’ has the meaning given that term in the rules of the
30 Oregon Criminal Justice Commission.

31 “(9) ‘Trial court’ has the meaning given that term in ORS 131.005. ‘Trial court’ includes
32 the juvenile court.

33 “(10) ‘Victim’ means any person determined by the prosecuting attorney or the court to
34 have suffered direct financial, psychological or physical harm as a result of the crime alleged
35 in the criminal proceeding and, in the case of a victim who is a minor, the legal guardian of
36 the minor.

37 “(11) ‘Violent felony’ means a felony in which there was actual or threatened serious
38 physical injury to a victim or a felony sexual offense.

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

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

44 “(3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a
45 proceeding under sections 38 to 55 of this 2008 Act.

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

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

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

9 “(b) The charging instrument includes the name or pseudonym of each victim known to
10 the prosecuting attorney. If the charging instrument does not include the name or
11 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
12 identify any victim not included in the charging instrument.

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

15 “(d) The victim requested to be informed in advance of any critical stage of the pro-
16 ceeding.

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

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

21 “(a) The prosecuting attorney is aware that the victim is present, the prosecuting at-
22 torney shall so inform the court. If the prosecuting attorney does not know whether the
23 victim is present, the court shall determine whether the victim is present.

24 “(b) The victim is not present, the prosecuting attorney shall inform the court, based on
25 the prosecuting attorney’s knowledge, whether the victim requested advance notice of any
26 critical stage of the proceeding. If the victim requested advance notice, the prosecuting at-
27 torney shall inform the court, based on the prosecuting attorney’s knowledge, whether the
28 victim:

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

30 “(B) Was informed of the victims’ rights implicated in the proceeding; and

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

33 “(4) If the victim is present, the court may ask the victim for information about any
34 aspect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon
35 Constitution.

36 “(5)(a) The certification described in subsection (1) of this section may be based on in-
37 formation provided to the prosecuting attorney by a person known to the prosecuting at-
38 torney.

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

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

42 “**SECTION 41.** (1) At the beginning of any plea hearing and any sentencing hearing, if the
43 prosecuting attorney or the juvenile department is aware that the victim is present, the
44 prosecuting attorney or the juvenile department shall so inform the court. If the prosecuting
45 attorney or juvenile department does not know whether the victim is present, the court shall

1 **determine whether the victim is present.**

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

3 **“(a) If the victim requests, the prosecuting attorney or juvenile department shall consult**
4 **the victim about plea discussions before making a final plea agreement.**

5 **“(b) Before the court accepts a plea of guilty or no contest:**

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

9 **“(B) If the victim is not present, the court shall ask the prosecuting attorney or juvenile**
10 **department whether the victim requested to be notified and consulted regarding plea nego-**
11 **tiations. If the victim made such a request, the court shall ask the prosecuting attorney or**
12 **juvenile department whether the victim agrees or disagrees with the plea agreement.**

13 **“(c) If the court finds that the victim requested consultation about plea negotiations and**
14 **that the prosecuting attorney or juvenile department failed to consult with the victim, the**
15 **court shall direct the prosecuting attorney or juvenile department to consult with the victim**
16 **and may not accept the plea unless the court makes a finding on the record that:**

17 **“(A) Good cause exists for the failure to consult; or**

18 **“(B) The interests of justice require the acceptance of the plea.**

19 **“(3) The requirements of this section are not affected by the certification described in**
20 **section 40 of this 2008 Act.**

21 **“(4) As used in this section:**

22 **“(a) ‘Plea hearing’ means a hearing in which the defendant enters a plea of guilty or no**
23 **contest;**

24 **“(b) ‘Plea of guilty or no contest’ includes:**

25 **“(A) An admission that a person under 18 years of age is within the jurisdiction of the**
26 **juvenile court; or**

27 **“(B) If a juvenile court petition has been filed, entering a formal accountability agree-**
28 **ment under ORS 419C.230 or an authorized diversion program under ORS 419C.225.**

29 **“(c) ‘Sentencing hearing’ includes the dispositional phase of a juvenile delinquency pro-**
30 **ceeding under ORS chapter 419C.**

31 **“SECTION 42. (1) A victim who wishes to allege a violation of a right granted by section**
32 **43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform**
33 **the court within seven days of the date the victim knew or reasonably should have known**
34 **of the facts supporting the allegation. The victim shall describe the facts supporting the**
35 **allegation and include a proposed remedy.**

36 **“(2) The victim may inform the court of a claim:**

37 **“(a) On a form prescribed by the Chief Justice of the Supreme Court; or**

38 **“(b) On the record in open court and in the presence of the defendant and the prosecut-**
39 **ing attorney.**

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

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

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

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

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

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

8 “(b) Include the reasons the claim was dismissed; and

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

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

16 “SECTION 43. (1)(a) Except as provided in subsection (3) of this section, the victim, the
17 prosecuting attorney or the defendant must provide notice of the claim to any person the
18 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting
19 relief by providing the person with a copy of the order to show cause described in this sec-
20 tion.

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

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

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

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

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

32 “(a) The victim;

33 “(b) The prosecuting attorney; and

34 “(c) The defendant.

35 “(4) If the court issues an order to show cause under this section, the victim, the pros-
36 ecuting attorney, the defendant or any other person against whom relief is requested may
37 contest the claim by filing a response with the court before the date described in subsection
38 (2)(a) of this section.

39 “SECTION 44. (1) If a response to the order to show cause issued under section 43 of this
40 2008 Act is not timely filed, the court shall:

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

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

44 “(2) If the court determines that the victim’s rights:

45 “(a) Have been violated, except as provided in paragraph (c) of this subsection, the court

1 shall issue an appropriate order after giving due consideration to the proposed remedy.

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

3 “(c) Have been violated but that the Constitution of Oregon or the United States pro-
4 hibits all appropriate remedies, the court shall issue an order denying relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 “(4) If the court determines that the moving party:

45 “(a) Is entitled to relief, the court shall, after giving due consideration to the requested

1 relief, issue an appropriate remedial order.

2 “(b) Is not entitled to relief or that the Constitution of Oregon or the United States
3 prohibits all appropriate relief, the court shall issue an order denying relief.

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

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

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

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

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

15 “SECTION 48. (1) A remedy under sections 38 to 55 of this 2008 Act is waived if the
16 remedy is requested:

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

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

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

20 “(b) By any person after:

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

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

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

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

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

29 “(b) Remedies requested in a subsequent criminal proceeding arising after a state or
30 federal court has granted a new trial or sentencing, provided the claim or motion is timely
31 under subsection (1) of this section in the subsequent criminal proceeding.

32 “SECTION 49. (1) Notwithstanding any other provision of law, appellate review of an or-
33 der issued under section 42, 44 or 47 of this 2008 Act shall be solely as provided in this section
34 and sections 50, 51 and 52 of this 2008 Act.

35 “(2) Jurisdiction for appellate review of an order issued under section 42, 44 or 47 of this
36 2008 Act is vested originally and exclusively in the Supreme Court.

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

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

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

1 ing.

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

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

8 “(a) Inform the court of an alleged violation under section 42 (1) of this 2008 Act;

9 “(b) File a response under section 43 (4) of this 2008 Act;

10 “(c) File a motion under section 45 of this 2008 Act; or

11 “(d) Participate in a hearing described in section 47 of this 2008 Act.

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

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

22 “(3) The appellant shall include with the notice of interlocutory appeal the following ma-
23 terials:

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

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

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

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

34 “(c) A memorandum of law containing:

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

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

38 “(C) Supporting arguments and citations of authority.

39 “(4) The appellant shall serve a copy of the notice of interlocutory appeal and the ac-
40 companying materials described in subsection (3) of this section on the following other per-
41 sons:

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

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

45 “(c) A person who filed the motion that resulted in the order being appealed or a related

1 motion under section 45 of this 2008 Act;

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

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

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

7 “(g) The prosecuting attorney; and

8 “(h) The Attorney General.

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

10 “(a) The trial court administrator; and

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

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

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

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

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

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

29 “(8) If the Supreme Court directs a party to provide a transcript of oral proceedings un-
30 der subsection (3) of this section, the party shall provide the transcript to the Supreme Court
31 within seven days after the date of the Supreme Court’s order.

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

33 “(A) The timely filing of the original notice of interlocutory appeal and accompanying
34 materials with the Supreme Court; and

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

38 “(b) Failure to timely serve a true and complete copy of the accompanying materials
39 described in subsection (3) of this section is not jurisdictional, provided that the appellant
40 made a good faith effort to do so and substantially complied with those requirements.

41 “(c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss
42 the appeal as to any respondent if the appellant, after receipt of a notice of noncompliance,
43 does not promptly cure a deficiency in the materials or if the failure to timely serve a true
44 and complete copy of the accompanying materials substantially prejudices the respondent’s
45 ability to respond to the appeal.

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

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

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

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

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

16 “(14)(a) The Supreme Court shall issue its decision on appeal under this section within
17 21 days after the date the notice of interlocutory appeal is filed.

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

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

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

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

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

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

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

40 “(1) The Supreme Court’s jurisdiction is discretionary. The court may by rule prescribe
41 the criteria the court will use to decide whether to grant review. The initiating document is
42 a petition for review, but the petition must be accompanied by the same materials described
43 in section 50 (3) of this 2008 Act, and the person seeking review shall be identified as the
44 petitioner.

45 “(2) The respondent may elect not to file a response until after the Supreme Court has

1 decided to accept review, in which case the response must be filed within seven days after
2 the Supreme Court issues an order granting review.

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

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

7 “SECTION 52. (1) The trial court shall stay for a period of 21 days all matters that di-
8 rectly impact, or are directly impacted by, the order on appeal:

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

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

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

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

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

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

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

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

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

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

28 “SECTION 53. (1)(a) Prior to the Attorney General’s first appearance in an appellate
29 court proceeding in which the State of Oregon is a party and to which section 42 or 43, Ar-
30 ticle I of the Oregon Constitution, applies, the Attorney General shall determine whether the
31 Department of Justice has taken all reasonably practicable steps to fulfill the rights granted
32 by sections 42 and 43, Article I of the Oregon Constitution, to the victim of the crime in the
33 appellate courts.

34 “(b) Unless otherwise provided by rule or order of the Chief Justice of the Supreme
35 Court, the Attorney General shall, in the cases described in paragraph (a) of this subsection,
36 certify the results of that determination to the court simultaneously with the Attorney
37 General’s first appearance.

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

40 “SECTION 54. (1) The Chief Justice of the Supreme Court may, by rule or order, establish
41 requirements and procedures necessary to comply with the provisions of sections 38 to 55
42 of this 2008 Act.

43 “(2) The Chief Justice of the Supreme Court shall prescribe the forms described in
44 sections 40 (1) and 42 (2)(a) of this 2008 Act. The form described in section 42 (2)(a) of this
45 2008 Act must allow a victim to designate an alternate mailing address or substitute a person

1 to receive notice or service on behalf of the victim for the purposes of sections 38 to 55 of
2 this 2008 Act.

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

8 **“SECTION 55a. (1) There is created the Task Force on Victims’ Rights Enforcement**
9 **consisting of at least seven members appointed as follows:**

10 **“(a) The Attorney General shall appoint:**

11 **“(A) A member employed by or associated with a group advocating for the rights of vic-**
12 **tims of crime;**

13 **“(B) A member who represents the Oregon Department of Justice Crime Victims’ As-**
14 **sistance Section;**

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

17 **“(D) A lawyer routinely engaged in prosecuting persons charged with a crime, after**
18 **consulting with professional organizations serving such lawyers; and**

19 **“(E) Other persons the Attorney General deems appropriate;**

20 **“(b) The Chief Justice of the Supreme Court shall appoint:**

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

22 **“(B) A judge; and**

23 **“(c) The director of the office of public defense services established under ORS 151.216**
24 **shall appoint a person employed by the office of public defense services.**

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

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

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

32 **“(5) The task force shall prepare reports that may include recommendations for legis-**
33 **lation designed to improve, in a cost-efficient manner, the protection of rights granted to**
34 **victims of crime by the Oregon Constitution. The task force shall submit a report to the**
35 **President of the Senate and the Speaker of the House of Representatives no later than:**

36 **“(a) January 1, 2009; and**

37 **“(b) January 1, 2011.**

38 **“(6) Members of the task force are not entitled to compensation or reimbursement for**
39 **expenses and serve as volunteers on the task force.**

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

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

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

1 “STATUTORY AMENDMENTS AND REPEALS; IMPLEMENTATION
2

3 “**SECTION 56.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50
4 (2007) are approved by the people at the special election held throughout this state on the
5 same date as the next primary election, ORS 135.406 is repealed.

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

9 “131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in
10 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-
11 quires otherwise, ‘victim’ means the person or persons who have suffered financial, social, psycho-
12 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of
13 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor
14 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a
15 victim.

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

19 “135.432. (1)(a) The trial judge [*shall*] **may** not participate in plea discussions, except to:

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

21 “(B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this sec-
22 tion; or

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

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

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

38 “(3) If the trial judge concurs, but later decides that the final disposition of the case should not
39 include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise
40 the defendant and allow the defendant a reasonable period of time in which to either affirm or
41 withdraw a plea of guilty or no contest.

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

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

4 “419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
5 direct that the petition be amended. If the amendment results in a substantial departure from the
6 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
7 quire. When the court directs the amendment of a petition alleging that a youth has committed an
8 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
9 shall make written findings stating the reason for directing the amendment.

10 “(2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance
11 of justice after considering the circumstances of the youth and the interests of the state in the ad-
12 judication of the petition.

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

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

18 “(3) The district attorney or juvenile department must consult the victim regarding plea nego-
19 tiations if:

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

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

23 “[(c) *The negotiations could lead to an amendment of the petition for purposes of obtaining an*
24 *admission from the youth.*]

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

28 “419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be
29 present at and, upon request, must be informed in advance of critical stages of the proceedings held
30 in open court when the youth or youth offender will be present.

31 “(b) The victim must be informed of any constitutional rights of the victim. Except as provided
32 in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed
33 of their constitutional rights. If a victim requests, the district attorney or juvenile department must
34 support the victim in exercising the victim’s constitutional rights.

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

36 “(A) A detention or shelter hearing;

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

38 “(C) A dispositional hearing.

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

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

41 “(B) To appear personally at the hearing; and

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

43 “[(c) *Failure to notify the victim of a hearing under this subsection or failure of the victim to ap-*
44 *pear at the hearing does not affect the validity of the proceeding.*]

45 “(3) If the victim is not present at a critical stage of the proceeding, the court shall ask the

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

8 “(4) As used in this section:

9 “(a) ‘Critical stage of the proceeding’ means a hearing that:

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

11 “(B) Is held in open court; and

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

13 “(b) ‘Critical stage of the proceeding’ includes, but is not limited to:

14 “(A) Detention and shelter hearings;

15 “(B) Hearings to review placements;

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

17 “(D) Hearings to transfer proceedings or to transfer parts of proceedings;

18 “(E) Waiver hearings;

19 “(F) Adjudication and plea hearings;

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

21 “(H) Review or dispositional review hearings;

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

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

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

26 “(L) Expunction hearings.

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

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

34 “40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

35 “(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
36 305.501;

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

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

39 “(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal
40 actions and proceedings and to contempt proceedings except those in which the court may act
41 summarily.

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

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

45 “(a) The determination of questions of fact preliminary to admissibility of evidence when the

1 issue is to be determined by the court under ORS 40.030.

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

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

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

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

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

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

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

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

15 “(j) **Proceedings under section 11 of this 2008 Act relating to victims’ rights, except for**
16 **the provisions of ORS 40.105 and 40.115.**

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

20 “135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
21 security release or to be taken before a magistrate without undue delay. If the person is not released
22 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
23 of the right of the person to a security release as provided in ORS 135.265.

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

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

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

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

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

37 “(5)[(a)] At the release hearing:

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

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

41 “[(i)] (A) Upon request made within the time period prescribed in the notice required by ORS
42 147.417, to be notified by the district attorney of the release hearing;

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

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

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

3 “(6) If a person refuses to provide a true name under the circumstances described in ORS
4 135.060 and 135.065, the magistrate may not release the person on personal recognizance or on
5 conditional release. The magistrate may release the person on security release under ORS 135.265
6 except that the magistrate shall require the person to deposit the full security amount set by the
7 magistrate.

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

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

13 “137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Jus-
14 tice Commission for felonies committed on or after November 1, 1989:

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

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

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

36 “(3) Except for good cause shown or at the request of the probationer, the probationer shall be
37 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
38 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
39 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
40 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
41 the probationer upon the condition that the probationer appear in court at a later date for a pro-
42 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
43 the magistrate may order the probationer released subject to an additional order to the probationer
44 that the probationer report within seven calendar days to the court that imposed the probation.

45 “(4) When a probationer has been sentenced to probation in more than one county and the

1 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
2 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
3 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

4 “(a) Upon the motion of the district attorney or defense counsel in the county in which the
5 probationer is held; or

6 “(b) Upon the court’s own motion.

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

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

12 “(B) If no other sentence has been imposed, the court may impose any other sentence which
13 originally could have been imposed.

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

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

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

24 “(8) In the case of any defendant whose sentence has been suspended but who has not been
25 sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and
26 brought before the court at any time within the maximum period for which the defendant might or-
27 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
28 pension of sentence and cause the sentence imposed to be executed.

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

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

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

35 “[*(A)*] (a) Upon request made within the time period prescribed in the notice required by ORS
36 147.417, to be notified by the district attorney of any hearing before the court that may result in the
37 revocation of the defendant’s probation;

38 “[*(B)*] (b) To appear personally at the hearing; and

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

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

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

45 “147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,

1 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
2 of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be
3 verbal or written. If exercise of any of the rights depends upon the victim making a request, the
4 law enforcement agency shall include in the notice the time period in which the victim is required
5 to make the request. A law enforcement agency satisfies the requirements of this section if the law
6 enforcement agency:

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

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

11 "(2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
12 tion:

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

14 "(b) **Does not affect the validity of a plea, except as provided in sections 2 to 19 of this**
15 **2008 Act.**

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

18 "[*(3)(a)*] (4)(a) As used in this section, 'law enforcement agency' means the police agency that
19 initially responds in the case, the police agency that investigates the case or the district attorney
20 who prosecutes the case.

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

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

26 "144.108. (1) If the violation of post-prison supervision is new criminal activity or if the super-
27 visory authority finds that the continuum of sanctions is insufficient punishment for a violation of
28 the conditions of post-prison supervision, the supervisory authority may:

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

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

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

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

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

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

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

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

45 "(4) A person who is ordered to serve a term of incarceration in a state correctional facility as

1 a sanction for a post-prison supervision violation shall receive credit for time served on the post-
2 prison supervision violation prior to the board's imposition of the term of incarceration.

3 “(5)[(a)] The victim has the right:

4 “[A] (a) Upon request made within the time period prescribed in the notice required by ORS
5 147.417, to be notified by the board of any hearing before the board that may result in a revocation
6 sanction for a post-prison supervision violation;

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

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

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

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

14 “144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-
15 resentative has been informed and has reasonable grounds to believe that a person under its juris-
16 diction has violated a condition of parole and that revocation of parole may be warranted, the board
17 or its designated representative shall conduct a hearing as promptly as convenient to determine
18 whether there is probable cause to believe a violation of one or more of the conditions of parole
19 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the
20 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board
21 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing
22 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing
23 shall be reasonably near the place of the alleged violation or the place of confinement.

24 “(2) The board may:

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

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

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

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

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

34 “(a) A concise written statement of the suspected violations and the evidence which forms the
35 basis of the alleged violations.

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

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

41 “(d) The parolee's right to present letters, documents, affidavits or persons with relevant infor-
42 mation at the hearing unless it has been determined that informants would be subject to risk of
43 harm if their identity were disclosed.

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

45 “(f) The parolee's right to be represented by counsel and, if indigent, to have counsel appointed

1 at board expense if the board or its designated representative determines, after request, that the
2 request is based on a timely and colorable claim that:

3 “(A) The parolee has not committed the alleged violation of the conditions upon which the
4 parolee is at liberty;

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

8 “(C) The parolee, in doubtful cases, appears to be incapable of speaking effectively on the
9 parolee’s own behalf.

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

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

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

15 “(i) Whether to reinstate parole;

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

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

20 “(4) At the hearing the parolee shall have the right:

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

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

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

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

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

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

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

45 “(7) If the board or its designated representative has determined that there is probable cause

1 to believe that a violation of one or more of the conditions of parole has occurred, the hearing shall
2 proceed to receive evidence from which the board may determine whether to reinstate or continue
3 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke
4 parole and require that the parole violator serve a term of imprisonment as provided by ORS
5 144.346.

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

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

15 “[A)] (a) Upon request made within the time period prescribed in the notice required by ORS
16 147.417, to be notified by the board of any hearing before the board that may result in the revoca-
17 tion of the parolee’s parole;

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

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

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

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

25 “419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
26 otherwise:

27 “(1) ‘CASA Volunteer Program’ means a program approved or sanctioned by the juvenile court
28 to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

29 “(2) ‘Child care center’ means a residential facility for wards or youth offenders that is licensed
30 under the provisions of ORS 418.240.

31 “(3) ‘Community service’ has the meaning given that term in ORS 137.126.

32 “(4) ‘Conflict of interest’ means a person appointed to a local citizen review board who has a
33 personal or pecuniary interest in a case being reviewed by that board.

34 “(5) ‘Counselor’ means a juvenile department counselor or a county juvenile probation officer.

35 “(6) ‘Court’ means the juvenile court.

36 “(7) ‘Court appointed special advocate’ or ‘CASA’ means a person appointed by the court pur-
37 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

38 “(8) ‘Court facility’ has the meaning given that term in ORS 166.360.

39 “(9) ‘Department’ means the Department of Human Services.

40 “(10) ‘Detention’ or ‘detention facility’ means a facility established under ORS 419A.010 to
41 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
42 pursuant to a judicial commitment or order.

43 “(11) ‘Director’ means the director of a juvenile department established under ORS 419A.010 to
44 419A.020 and 419A.050 to 419A.063.

45 “(12) ‘Guardian’ means guardian of the person and not guardian of the estate.

1 “(13) ‘Indian child’ means any unmarried person less than 18 years of age who is:
2 “(a) A member of an Indian tribe; or
3 “(b) Eligible for membership in an Indian tribe and is the biological child of a member of an
4 Indian tribe.
5 “(14) ‘Juvenile court’ means the court having jurisdiction of juvenile matters in the several
6 counties of this state.
7 “(15) ‘Local citizen review board’ means the board specified by ORS 419A.090 and 419A.092.
8 “(16) ‘Parent’ means the biological or adoptive mother and the legal father of the child, ward,
9 youth or youth offender. As used in this subsection, ‘legal father’ means:
10 “(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has
11 been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and
12 “(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under ap-
13 plicable tribal law.
14 “(17) ‘Permanent foster care’ means an out-of-home placement in which there is a long-term
15 contractual foster care agreement between the foster parents and the department that is approved
16 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
17 youth offender until the age of majority.
18 “(18) ‘Planned permanent living arrangement’ means an out-of-home placement other than by
19 adoption, placement with a relative or placement with a legal guardian that is consistent with the
20 case plan and in the best interests of the ward.
21 “(19) ‘Public building’ has the meaning given that term in ORS 166.360.
22 “(20) ‘Reasonable time’ means a period of time that is reasonable given a child or ward’s emo-
23 tional and developmental needs and ability to form and maintain lasting attachments.
24 “(21) ‘Records’ means any information in written form, pictures, photographs, charts, graphs,
25 recordings or documents pertaining to a case.
26 “(22) ‘Resides’ or ‘residence,’ when used in reference to the residence of a child, ward, youth or
27 youth offender, means the place where the child, ward, youth or youth offender is actually living
28 or the jurisdiction in which wardship or jurisdiction has been established.
29 “(23) ‘Restitution’ has the meaning given that term in ORS 137.103.
30 “(24) ‘Serious physical injury’ means:
31 “(a) A serious physical injury as defined in ORS 161.015; or
32 “(b) A physical injury that:
33 “(A) Has a permanent or protracted significant effect on a child’s daily activities;
34 “(B) Results in substantial and recurring pain; or
35 “(C) In the case of a child under 10 years of age, is a broken bone.
36 “(25) ‘Shelter care’ means a home or other facility suitable for the safekeeping of a child, ward,
37 youth or youth offender who is taken into temporary custody pending investigation and disposition.
38 “(26) ‘Short-term detention facility’ means a facility established under ORS 419A.050 (3) for
39 holding children, youths and youth offenders pending further placement.
40 “(27) ‘Sibling’ means one of two or more children or wards related:
41 “(a) By blood or adoption through a common legal parent; or
42 “(b) Through the marriage of the children’s or wards’ legal or biological parents.
43 “(28) ‘Substitute care’ means an out-of-home placement directly supervised by the department
44 or other agency, including placement in a foster family home, group home or other child caring in-
45 stitution or facility. ‘Substitute care’ does not include care in:

1 “(a) A detention facility, forestry camp or youth correction facility;

2 “(b) A family home that the court has approved as a ward’s permanent placement, when a pri-

3 vate child caring agency has been appointed guardian of the ward and when the ward’s care is en-

4 tirely privately financed; or

5 “(c) In-home placement subject to conditions or limitations.

6 “(29) ‘Surrogate’ means a person appointed by the court to protect the right of the child, ward,

7 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-

8 propriate public education.

9 “(30) ‘Tribal court’ means a court with jurisdiction over child custody proceedings and that is

10 either a Court of Indian Offenses, a court established and operated under the code of custom of an

11 Indian tribe or any other administrative body of a tribe that is vested with authority over child

12 custody proceedings.

13 “(31) ‘Victim’ means any person determined by the district attorney, [or] juvenile department

14 **or the court** to have suffered direct financial, psychological or physical harm as a result of [an]

15 **the** act that has brought the youth or youth offender before the juvenile court. When the victim is

16 a minor, ‘victim’ includes the legal guardian of the minor. The youth or youth offender may not be

17 considered the victim. When the victim of the crime cannot be determined, the people of Oregon,

18 as represented by the district attorney, are considered the victims.

19 “(32) ‘Violent felony’ means any offense that, if committed by an adult, would constitute a felony

20 and:

21 “(a) Involves actual or threatened serious physical injury to a victim; or

22 “(b) Is a sexual offense. As used in this paragraph, ‘sexual offense’ has the meaning given the

23 term ‘sex crime’ in ORS 181.594.

24 “(33) ‘Ward’ means a person within the jurisdiction of the juvenile court under ORS 419B.100.

25 “(34) ‘Young person’ means a person who has been found responsible except for insanity under

26 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

27 “(35) ‘Youth’ means a person under 18 years of age who is alleged to have committed an act that

28 is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the

29 United States or a state, county or city.

30 “(36) ‘Youth care center’ has the meaning given that term in ORS 420.855.

31 “(37) ‘Youth offender’ means a person who has been found to be within the jurisdiction of the

32 juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

33 “**SECTION 68. If House Joint Resolution 49 (2007) is approved and House Joint Resolution**

34 **50 (2007) is rejected by the people at the special election held throughout this state on the**

35 **same date as the next primary election, ORS 135.406 is repealed.**

36 “**SECTION 69.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50

37 (2007) is rejected by the people at the special election held throughout this state on the same date

38 as the next primary election, ORS 131.007 is amended to read:

39 “131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in

40 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-

41 quires otherwise, ‘victim’ means the person or persons who have suffered financial, social, psycho-

42 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of

43 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor

44 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a

45 victim.

1 “**SECTION 70.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
2 (2007) is rejected by the people at the special election held throughout this state on the same date
3 as the next primary election, ORS 135.432 is amended to read:

4 “135.432. (1)(a) The trial judge [*shall*] **may** not participate in plea discussions, except to:

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

6 “(B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this sec-
7 tion; or

8 “(C) Make the inquiry required by [*ORS 135.406*] **section 23 (2) of this 2008 Act.**

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

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

23 “(3) If the trial judge concurs, but later decides that the final disposition of the case should not
24 include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise
25 the defendant and allow the defendant a reasonable period of time in which to either affirm or
26 withdraw a plea of guilty or no contest.

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

31 “**SECTION 71.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
32 (2007) is rejected by the people at the special election held throughout this state on the same date
33 as the next primary election, ORS 419C.261 is amended to read:

34 “419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
35 direct that the petition be amended. If the amendment results in a substantial departure from the
36 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
37 quire. When the court directs the amendment of a petition alleging that a youth has committed an
38 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
39 shall make written findings stating the reason for directing the amendment.

40 “(2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance
41 of justice after considering the circumstances of the youth and the interests of the state in the ad-
42 judication of the petition.

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

45 “(c) When the court sets aside or dismisses a petition alleging that a youth has committed an

1 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
2 shall make written findings stating the reason for setting aside or dismissing the petition.

3 “(3) The district attorney or juvenile department must consult the victim regarding plea nego-
4 tiations if:

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

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

8 “[*c*) *The negotiations could lead to an amendment of the petition for purposes of obtaining an*
9 *admission from the youth.*]

10 “**SECTION 72.** 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 419C.273 is amended to read:

13 “419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be
14 present at and, upon request, must be informed in advance of critical stages of the proceedings held
15 in open court when the youth or youth offender will be present.

16 “(b) The victim must be informed of any constitutional rights of the victim. Except as provided
17 in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed
18 of their constitutional rights. If a victim requests, the district attorney or juvenile department must
19 support the victim in exercising the victim’s constitutional rights.

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

21 “(A) A detention or shelter hearing;

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

23 “(C) A dispositional hearing.

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

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

26 “(B) To appear personally at the hearing; and

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

28 “[*c*) *Failure to notify the victim of a hearing under this subsection or failure of the victim to ap-*
29 *pear at the hearing does not affect the validity of the proceeding.*]

30 “(3) If the victim is not present at a critical stage of the proceeding, the court shall ask the
31 district attorney or juvenile department whether the victim requested to be notified of critical stages
32 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney
33 or juvenile department whether the victim was notified of the date, time and place of the hearing.
34 [*The validity of the proceeding is not affected by the failure to notify the victim of a hearing or failure*
35 *of the victim to appear at a hearing that is a critical stage of the proceeding, including but not limited*
36 *to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261, 419C.450*
37 *or 419C.653.*]

38 “(4) As used in this section:

39 “(a) ‘Critical stage of the proceeding’ means a hearing that:

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

41 “(B) Is held in open court; and

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

43 “(b) ‘Critical stage of the proceeding’ includes, but is not limited to:

44 “(A) Detention and shelter hearings;

45 “(B) Hearings to review placements;

- 1 “(C) Hearings to set or change conditions of release;
- 2 “(D) Hearings to transfer proceedings or to transfer parts of proceedings;
- 3 “(E) Waiver hearings;
- 4 “(F) Adjudication and plea hearings;
- 5 “(G) Dispositional hearings, including but not limited to restitution hearings;
- 6 “(H) Review or dispositional review hearings;
- 7 “(I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;
- 8 “(J) Probation violation hearings, including probation revocation hearings, when the basis for
- 9 the alleged violation directly implicates a victim’s rights [*or well-being*];
- 10 “(K) Hearings for relief from the duty to report under ORS 181.823; and
- 11 “(L) Expunction hearings.

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

16 “**SECTION 73.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
17 (2007) is rejected by the people at the special election held throughout this state on the same date
18 as the next primary election, ORS 40.015 is amended to read:

19 “40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

20 “(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
21 305.501;

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

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

24 “(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal
25 actions and proceedings and to contempt proceedings except those in which the court may act
26 summarily.

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

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

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

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

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

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

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

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

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

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

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

45 “(j) **Proceedings under section 29 of this 2008 Act relating to victims’ rights, except for**

1 **the provisions of ORS 40.105 and 40.115.**

2 **“SECTION 74.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
3 (2007) is rejected by the people at the special election held throughout this state on the same date
4 as the next primary election, ORS 135.245 is amended to read:

5 “135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
6 security release or to be taken before a magistrate without undue delay. If the person is not released
7 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
8 of the right of the person to a security release as provided in ORS 135.265.

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

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

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

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

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

22 “(5)[(a)] At the release hearing:

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

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

26 “[i)] (A) Upon request made within the time period prescribed in the notice required by ORS
27 147.417, to be notified by the district attorney of the release hearing;

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

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

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

33 “(6) If a person refuses to provide a true name under the circumstances described in ORS
34 135.060 and 135.065, the magistrate may not release the person on personal recognizance or on
35 conditional release. The magistrate may release the person on security release under ORS 135.265
36 except that the magistrate shall require the person to deposit the full security amount set by the
37 magistrate.

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

40 **“SECTION 75.** 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 137.545 is amended to read:

43 “137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Jus-
44 tice Commission for felonies committed on or after November 1, 1989:

45 “(a) The period of probation shall be as the court determines and may, in the discretion of the

1 court, be continued or extended.

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

3 “(2) At any time during the probation period, the court may issue a warrant and cause a de-
4 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
5 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
6 rant for violating any condition of probation, and a statement by the parole and probation officer
7 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
8 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
9 detention of the probationer in the county jail until the probationer can be brought before the court
10 or until the parole and probation officer or supervisory personnel impose and the offender agrees
11 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-
12 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
13 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
14 personnel, the disposition shall take place in no more than five judicial days. If the offender does
15 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
16 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
17 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
18 tention to the court that imposed the probation. The parole and probation officer shall promptly
19 submit to the court a report showing in what manner the probationer has violated the conditions
20 of probation.

21 “(3) Except for good cause shown or at the request of the probationer, the probationer shall be
22 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
23 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
24 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
25 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
26 the probationer upon the condition that the probationer appear in court at a later date for a pro-
27 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
28 the magistrate may order the probationer released subject to an additional order to the probationer
29 that the probationer report within seven calendar days to the court that imposed the probation.

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

34 “(a) Upon the motion of the district attorney or defense counsel in the county in which the
35 probationer is held; or

36 “(b) Upon the court’s own motion.

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

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

42 “(B) If no other sentence has been imposed, the court may impose any other sentence which
43 originally could have been imposed.

44 “(b) For defendants sentenced for felonies committed on or after November 1, 1989, the court
45 that imposed the probationary sentence may revoke probation supervision and impose a sanction as

1 provided by rules of the Oregon Criminal Justice Commission.

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

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

9 “(8) In the case of any defendant whose sentence has been suspended but who has not been
10 sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and
11 brought before the court at any time within the maximum period for which the defendant might or-
12 iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
13 pension of sentence and cause the sentence imposed to be executed.

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

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

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

20 “[A] (a) Upon request made within the time period prescribed in the notice required by ORS
21 147.417, to be notified by the district attorney of any hearing before the court that may result in the
22 revocation of the defendant’s probation;

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

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

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

27 “**SECTION 76.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
28 (2007) is rejected by the people at the special election held throughout this state on the same date
29 as the next primary election, ORS 147.417 is amended to read:

30 “147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
31 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
32 of the person’s rights under section 42, Article I of the Oregon Constitution. The notice may be
33 verbal or written. If exercise of any of the rights depends upon the victim making a request, the
34 law enforcement agency shall include in the notice the time period in which the victim is required
35 to make the request. A law enforcement agency satisfies the requirements of this section if the law
36 enforcement agency:

37 “(a) Provides notice to the victim named in the accusatory instrument, the victim’s guardian or,
38 in a homicide case, the victim’s next of kin; and

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

41 “(2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
42 tion:

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

44 “(b) **Does not affect the validity of a plea, except as provided in sections 20 to 37 of this**
45 **2008 Act.**

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

3 “[(3)(a)] (4)(a) As used in this section, ‘law enforcement agency’ means the police agency that
4 initially responds in the case, the police agency that investigates the case or the district attorney
5 who prosecutes the case.

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

8 “**SECTION 77.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
9 (2007) is rejected by the people at the special election held throughout this state on the same date
10 as the next primary election, ORS 144.108 is amended to read:

11 “144.108. (1) If the violation of post-prison supervision is new criminal activity or if the super-
12 visory authority finds that the continuum of sanctions is insufficient punishment for a violation of
13 the conditions of post-prison supervision, the supervisory authority may:

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

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

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

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

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

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

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

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

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

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

34 “[(A)] (a) Upon request made within the time period prescribed in the notice required by ORS
35 147.417, to be notified by the board of any hearing before the board that may result in a revocation
36 sanction for a post-prison supervision violation;

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

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

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

41 “**SECTION 78.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
42 (2007) is rejected by the people at the special election held throughout this state on the same date
43 as the next primary election, ORS 144.343 is amended to read:

44 “144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-
45 resentative has been informed and has reasonable grounds to believe that a person under its juris-

1 diction has violated a condition of parole and that revocation of parole may be warranted, the board
2 or its designated representative shall conduct a hearing as promptly as convenient to determine
3 whether there is probable cause to believe a violation of one or more of the conditions of parole
4 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the
5 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board
6 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing
7 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing
8 shall be reasonably near the place of the alleged violation or the place of confinement.

9 “(2) The board may:

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

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

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

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

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

19 “(a) A concise written statement of the suspected violations and the evidence which forms the
20 basis of the alleged violations.

21 “(b) The parolee’s right to a hearing and the time, place and purpose of the hearing.

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

26 “(d) The parolee’s right to present letters, documents, affidavits or persons with relevant infor-
27 mation at the hearing unless it has been determined that informants would be subject to risk of
28 harm if their identity were disclosed.

29 “(e) The parolee’s right to subpoena witnesses under ORS 144.347.

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

33 “(A) The parolee has not committed the alleged violation of the conditions upon which the
34 parolee is at liberty;

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

38 “(C) The parolee, in doubtful cases, appears to be incapable of speaking effectively on the
39 parolee’s own behalf.

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

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

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

45 “(i) Whether to reinstate parole;

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

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

5 “(4) At the hearing the parolee shall have the right:

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

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

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

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

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

22 “(6)(a) The parolee may admit or deny the violation without being physically present at the
23 hearing if the parolee appears before the board or its designee by means of simultaneous television
24 transmission allowing the board to observe and communicate with the parolee and the parolee to
25 observe and communicate with the board or by telephonic communication allowing the board to
26 communicate with the parolee and the parolee to communicate with the board.

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

30 “(7) If the board or its designated representative has determined that there is probable cause
31 to believe that a violation of one or more of the conditions of parole has occurred, the hearing shall
32 proceed to receive evidence from which the board may determine whether to reinstate or continue
33 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke
34 parole and require that the parole violator serve a term of imprisonment as provided by ORS
35 144.346.

36 “(8) At the conclusion of the hearing if probable cause has been determined and the hearing has
37 been held by a member of the board or by a designated representative of the board, the person
38 conducting the hearing shall transmit the record of the hearing, together with a proposed order in-
39 cluding findings of fact, recommendation and reasons for the recommendation to the board. The
40 parolee or the parolee’s representative shall have the right to file exceptions and written arguments
41 with the board. The right to file exceptions and written arguments may be waived. After consider-
42 ation of the record, recommendations, exceptions and arguments a quorum of the board shall enter
43 a final order including findings of fact, its decision and reasons for the decision.

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

45 “[(A)] (a) Upon request made within the time period prescribed in the notice required by ORS

1 147.417, to be notified by the board of any hearing before the board that may result in the revoca-
2 tion of the parolee's parole;

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

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

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

7 “**SECTION 79.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50
8 (2007) is rejected by the people at the special election held throughout this state on the same date
9 as the next primary election, ORS 419A.004 is amended to read:

10 “419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
11 otherwise:

12 “(1) ‘CASA Volunteer Program’ means a program approved or sanctioned by the juvenile court
13 to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

14 “(2) ‘Child care center’ means a residential facility for wards or youth offenders that is licensed
15 under the provisions of ORS 418.240.

16 “(3) ‘Community service’ has the meaning given that term in ORS 137.126.

17 “(4) ‘Conflict of interest’ means a person appointed to a local citizen review board who has a
18 personal or pecuniary interest in a case being reviewed by that board.

19 “(5) ‘Counselor’ means a juvenile department counselor or a county juvenile probation officer.

20 “(6) ‘Court’ means the juvenile court.

21 “(7) ‘Court appointed special advocate’ or ‘CASA’ means a person appointed by the court pur-
22 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

23 “(8) ‘Court facility’ has the meaning given that term in ORS 166.360.

24 “(9) ‘Department’ means the Department of Human Services.

25 “(10) ‘Detention’ or ‘detention facility’ means a facility established under ORS 419A.010 to
26 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
27 pursuant to a judicial commitment or order.

28 “(11) ‘Director’ means the director of a juvenile department established under ORS 419A.010 to
29 419A.020 and 419A.050 to 419A.063.

30 “(12) ‘Guardian’ means guardian of the person and not guardian of the estate.

31 “(13) ‘Indian child’ means any unmarried person less than 18 years of age who is:

32 “(a) A member of an Indian tribe; or

33 “(b) Eligible for membership in an Indian tribe and is the biological child of a member of an
34 Indian tribe.

35 “(14) ‘Juvenile court’ means the court having jurisdiction of juvenile matters in the several
36 counties of this state.

37 “(15) ‘Local citizen review board’ means the board specified by ORS 419A.090 and 419A.092.

38 “(16) ‘Parent’ means the biological or adoptive mother and the legal father of the child, ward,
39 youth or youth offender. As used in this subsection, ‘legal father’ means:

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

42 “(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under ap-
43 plicable tribal law.

44 “(17) ‘Permanent foster care’ means an out-of-home placement in which there is a long-term
45 contractual foster care agreement between the foster parents and the department that is approved

1 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
2 youth offender until the age of majority.

3 “(18) ‘Planned permanent living arrangement’ means an out-of-home placement other than by
4 adoption, placement with a relative or placement with a legal guardian that is consistent with the
5 case plan and in the best interests of the ward.

6 “(19) ‘Public building’ has the meaning given that term in ORS 166.360.

7 “(20) ‘Reasonable time’ means a period of time that is reasonable given a child or ward’s emo-
8 tional and developmental needs and ability to form and maintain lasting attachments.

9 “(21) ‘Records’ means any information in written form, pictures, photographs, charts, graphs,
10 recordings or documents pertaining to a case.

11 “(22) ‘Resides’ or ‘residence,’ when used in reference to the residence of a child, ward, youth or
12 youth offender, means the place where the child, ward, youth or youth offender is actually living
13 or the jurisdiction in which wardship or jurisdiction has been established.

14 “(23) ‘Restitution’ has the meaning given that term in ORS 137.103.

15 “(24) ‘Serious physical injury’ means:

16 “(a) A serious physical injury as defined in ORS 161.015; or

17 “(b) A physical injury that:

18 “(A) Has a permanent or protracted significant effect on a child’s daily activities;

19 “(B) Results in substantial and recurring pain; or

20 “(C) In the case of a child under 10 years of age, is a broken bone.

21 “(25) ‘Shelter care’ means a home or other facility suitable for the safekeeping of a child, ward,
22 youth or youth offender who is taken into temporary custody pending investigation and disposition.

23 “(26) ‘Short-term detention facility’ means a facility established under ORS 419A.050 (3) for
24 holding children, youths and youth offenders pending further placement.

25 “(27) ‘Sibling’ means one of two or more children or wards related:

26 “(a) By blood or adoption through a common legal parent; or

27 “(b) Through the marriage of the children’s or wards’ legal or biological parents.

28 “(28) ‘Substitute care’ means an out-of-home placement directly supervised by the department
29 or other agency, including placement in a foster family home, group home or other child caring in-
30 stitution or facility. ‘Substitute care’ does not include care in:

31 “(a) A detention facility, forestry camp or youth correction facility;

32 “(b) A family home that the court has approved as a ward’s permanent placement, when a pri-
33 vate child caring agency has been appointed guardian of the ward and when the ward’s care is en-
34 tirely privately financed; or

35 “(c) In-home placement subject to conditions or limitations.

36 “(29) ‘Surrogate’ means a person appointed by the court to protect the right of the child, ward,
37 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-
38 propriate public education.

39 “(30) ‘Tribal court’ means a court with jurisdiction over child custody proceedings and that is
40 either a Court of Indian Offenses, a court established and operated under the code of custom of an
41 Indian tribe or any other administrative body of a tribe that is vested with authority over child
42 custody proceedings.

43 “(31) ‘Victim’ means any person determined by the district attorney, [or] juvenile department
44 **or the court** to have suffered direct financial, psychological or physical harm as a result of [an]
45 **the** act that has brought the youth or youth offender before the juvenile court. When the victim is

1 a minor, 'victim' includes the legal guardian of the minor. The youth or youth offender may not be
2 considered the victim. When the victim of the crime cannot be determined, the people of Oregon,
3 as represented by the district attorney, are considered the victims.

4 "(32) 'Violent felony' means any offense that, if committed by an adult, would constitute a felony
5 and:

6 "(a) Involves actual or threatened serious physical injury to a victim; or

7 "(b) Is a sexual offense. As used in this paragraph, 'sexual offense' has the meaning given the
8 term 'sex crime' in ORS 181.594.

9 "(33) 'Ward' means a person within the jurisdiction of the juvenile court under ORS 419B.100.

10 "(34) 'Young person' means a person who has been found responsible except for insanity under
11 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

12 "(35) 'Youth' means a person under 18 years of age who is alleged to have committed an act that
13 is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the
14 United States or a state, county or city.

15 "(36) 'Youth care center' has the meaning given that term in ORS 420.855.

16 "(37) 'Youth offender' means a person who has been found to be within the jurisdiction of the
17 juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

18 "**SECTION 80. If House Joint Resolution 49 (2007) is rejected and House Joint Resolution**
19 **50 (2007) is approved by the people at the special election held throughout this state on the**
20 **same date as the next primary election, ORS 135.406 is repealed.**

21 "**SECTION 81.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
22 (2007) is approved by the people at the special election held throughout this state on the same date
23 as the next primary election, ORS 131.007 is amended to read:

24 "131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in
25 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-
26 quires otherwise, 'victim' means the person or persons who have suffered financial, social, psycho-
27 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of
28 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor
29 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a
30 victim.

31 "**SECTION 82.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
32 (2007) is approved by the people at the special election held throughout this state on the same date
33 as the next primary election, ORS 135.432 is amended to read:

34 "135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

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

36 "(B) Participate in a tentative plea agreement as provided in subsections (2) to (4) of this sec-
37 tion; or

38 "(C) Make the inquiry required by [ORS 135.406] **section 41 (2) of this 2008 Act.**

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

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

8 “(3) If the trial judge concurs, but later decides that the final disposition of the case should not
9 include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise
10 the defendant and allow the defendant a reasonable period of time in which to either affirm or
11 withdraw a plea of guilty or no contest.

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

16 “**SECTION 83.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
17 (2007) is approved by the people at the special election held throughout this state on the same date
18 as the next primary election, ORS 419C.261 is amended to read:

19 “419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time
20 direct that the petition be amended. If the amendment results in a substantial departure from the
21 facts originally alleged, the court shall grant such continuance as the interests of justice may re-
22 quire. When the court directs the amendment of a petition alleging that a youth has committed an
23 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court
24 shall make written findings stating the reason for directing the amendment.

25 “(2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance
26 of justice after considering the circumstances of the youth and the interests of the state in the ad-
27 judication of the petition.

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

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

33 “(3) The district attorney or juvenile department must consult the victim regarding plea nego-
34 tiations if:

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

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

38 “[*(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an*
39 *admission from the youth.*]

40 “**SECTION 84.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
41 (2007) is approved by the people at the special election held throughout this state on the same date
42 as the next primary election, ORS 419C.273 is amended to read:

43 “419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be
44 present at and, upon request, must be informed in advance of critical stages of the proceedings held
45 in open court when the youth or youth offender will be present.

1 “(b) The victim must be informed of any constitutional rights of the victim. Except as provided
2 in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed
3 of their constitutional rights. If a victim requests, the district attorney or juvenile department must
4 support the victim in exercising the victim’s constitutional rights.

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

6 “(A) A detention or shelter hearing;

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

8 “(C) A dispositional hearing.

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

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

11 “(B) To appear personally at the hearing; and

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

13 “(c) Failure to notify the victim of a hearing under this subsection or failure of the victim to
14 appear at the hearing does not affect the validity of the proceeding.

15 “(3) If the victim is not present at a critical stage of the proceeding, the court shall ask the
16 district attorney or juvenile department whether the victim requested to be notified of critical stages
17 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney
18 or juvenile department whether the victim was notified of the date, time and place of the hearing.
19 The validity of the proceeding is not affected by the failure to notify the victim of a hearing or
20 failure of the victim to appear at a hearing that is a critical stage of the proceeding, including but
21 not limited to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261,
22 419C.450 or 419C.653.

23 “(4) As used in this section:

24 “(a) ‘Critical stage of the proceeding’ means a hearing that:

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

26 “(B) Is held in open court; and

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

28 “(b) ‘Critical stage of the proceeding’ includes, but is not limited to:

29 “(A) Detention and shelter hearings;

30 “(B) Hearings to review placements;

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

32 “(D) Hearings to transfer proceedings or to transfer parts of proceedings;

33 “(E) Waiver hearings;

34 “(F) Adjudication and plea hearings;

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

36 “(H) Review or dispositional review hearings;

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

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

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

41 “(L) Expunction hearings.

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

1 “**SECTION 85.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
2 (2007) is approved by the people at the special election held throughout this state on the same date
3 as the next primary election, ORS 40.015 is amended to read:

4 “40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

5 “(a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS
6 305.501;

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

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

9 “(2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal
10 actions and proceedings and to contempt proceedings except those in which the court may act
11 summarily.

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

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

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

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

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

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

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

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

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

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

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

30 “**(j) Proceedings under section 47 of this 2008 Act relating to victims’ rights, except for**
31 **the provisions of ORS 40.105 and 40.115.**

32 “**SECTION 86.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50
33 (2007) is approved by the people at the special election held throughout this state on the same date
34 as the next primary election, ORS 419A.004 is amended to read:

35 “419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
36 otherwise:

37 “(1) ‘CASA Volunteer Program’ means a program approved or sanctioned by the juvenile court
38 to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

39 “(2) ‘Child care center’ means a residential facility for wards or youth offenders that is licensed
40 under the provisions of ORS 418.240.

41 “(3) ‘Community service’ has the meaning given that term in ORS 137.126.

42 “(4) ‘Conflict of interest’ means a person appointed to a local citizen review board who has a
43 personal or pecuniary interest in a case being reviewed by that board.

44 “(5) ‘Counselor’ means a juvenile department counselor or a county juvenile probation officer.

45 “(6) ‘Court’ means the juvenile court.

1 “(7) ‘Court appointed special advocate’ or ‘CASA’ means a person appointed by the court pur-
2 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

3 “(8) ‘Court facility’ has the meaning given that term in ORS 166.360.

4 “(9) ‘Department’ means the Department of Human Services.

5 “(10) ‘Detention’ or ‘detention facility’ means a facility established under ORS 419A.010 to
6 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
7 pursuant to a judicial commitment or order.

8 “(11) ‘Director’ means the director of a juvenile department established under ORS 419A.010 to
9 419A.020 and 419A.050 to 419A.063.

10 “(12) ‘Guardian’ means guardian of the person and not guardian of the estate.

11 “(13) ‘Indian child’ means any unmarried person less than 18 years of age who is:

12 “(a) A member of an Indian tribe; or

13 “(b) Eligible for membership in an Indian tribe and is the biological child of a member of an
14 Indian tribe.

15 “(14) ‘Juvenile court’ means the court having jurisdiction of juvenile matters in the several
16 counties of this state.

17 “(15) ‘Local citizen review board’ means the board specified by ORS 419A.090 and 419A.092.

18 “(16) ‘Parent’ means the biological or adoptive mother and the legal father of the child, ward,
19 youth or youth offender. As used in this subsection, ‘legal father’ means:

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

22 “(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under ap-
23 plicable tribal law.

24 “(17) ‘Permanent foster care’ means an out-of-home placement in which there is a long-term
25 contractual foster care agreement between the foster parents and the department that is approved
26 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
27 youth offender until the age of majority.

28 “(18) ‘Planned permanent living arrangement’ means an out-of-home placement other than by
29 adoption, placement with a relative or placement with a legal guardian that is consistent with the
30 case plan and in the best interests of the ward.

31 “(19) ‘Public building’ has the meaning given that term in ORS 166.360.

32 “(20) ‘Reasonable time’ means a period of time that is reasonable given a child or ward’s emo-
33 tional and developmental needs and ability to form and maintain lasting attachments.

34 “(21) ‘Records’ means any information in written form, pictures, photographs, charts, graphs,
35 recordings or documents pertaining to a case.

36 “(22) ‘Resides’ or ‘residence,’ when used in reference to the residence of a child, ward, youth or
37 youth offender, means the place where the child, ward, youth or youth offender is actually living
38 or the jurisdiction in which wardship or jurisdiction has been established.

39 “(23) ‘Restitution’ has the meaning given that term in ORS 137.103.

40 “(24) ‘Serious physical injury’ means:

41 “(a) A serious physical injury as defined in ORS 161.015; or

42 “(b) A physical injury that:

43 “(A) Has a permanent or protracted significant effect on a child’s daily activities;

44 “(B) Results in substantial and recurring pain; or

45 “(C) In the case of a child under 10 years of age, is a broken bone.

1 “(25) ‘Shelter care’ means a home or other facility suitable for the safekeeping of a child, ward,
2 youth or youth offender who is taken into temporary custody pending investigation and disposition.

3 “(26) ‘Short-term detention facility’ means a facility established under ORS 419A.050 (3) for
4 holding children, youths and youth offenders pending further placement.

5 “(27) ‘Sibling’ means one of two or more children or wards related:

6 “(a) By blood or adoption through a common legal parent; or

7 “(b) Through the marriage of the children’s or wards’ legal or biological parents.

8 “(28) ‘Substitute care’ means an out-of-home placement directly supervised by the department
9 or other agency, including placement in a foster family home, group home or other child caring in-
10 stitution or facility. ‘Substitute care’ does not include care in:

11 “(a) A detention facility, forestry camp or youth correction facility;

12 “(b) A family home that the court has approved as a ward’s permanent placement, when a pri-
13 vate child caring agency has been appointed guardian of the ward and when the ward’s care is en-
14 tirely privately financed; or

15 “(c) In-home placement subject to conditions or limitations.

16 “(29) ‘Surrogate’ means a person appointed by the court to protect the right of the child, ward,
17 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-
18 propriate public education.

19 “(30) ‘Tribal court’ means a court with jurisdiction over child custody proceedings and that is
20 either a Court of Indian Offenses, a court established and operated under the code of custom of an
21 Indian tribe or any other administrative body of a tribe that is vested with authority over child
22 custody proceedings.

23 “(31) ‘Victim’ means any person determined by the district attorney, [or] juvenile department
24 **or the court** to have suffered direct financial, psychological or physical harm as a result of [an]
25 **the** act that has brought the youth or youth offender before the juvenile court. When the victim is
26 a minor, ‘victim’ includes the legal guardian of the minor. The youth or youth offender may not be
27 considered the victim. When the victim of the crime cannot be determined, the people of Oregon,
28 as represented by the district attorney, are considered the victims.

29 “(32) ‘Violent felony’ means any offense that, if committed by an adult, would constitute a felony
30 and:

31 “(a) Involves actual or threatened serious physical injury to a victim; or

32 “(b) Is a sexual offense. As used in this paragraph, ‘sexual offense’ has the meaning given the
33 term ‘sex crime’ in ORS 181.594.

34 “(33) ‘Ward’ means a person within the jurisdiction of the juvenile court under ORS 419B.100.

35 “(34) ‘Young person’ means a person who has been found responsible except for insanity under
36 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

37 “(35) ‘Youth’ means a person under 18 years of age who is alleged to have committed an act that
38 is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the
39 United States or a state, county or city.

40 “(36) ‘Youth care center’ has the meaning given that term in ORS 420.855.

41 “(37) ‘Youth offender’ means a person who has been found to be within the jurisdiction of the
42 juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

43 **“SECTION 87. Section 1 of this 2008 Act becomes operative on April 1, 2008.**

44 **“SECTION 88. If both House Joint Resolution 49 (2007) and House Joint Resolution 50**
45 **(2007) are approved by the people at the special election held throughout this state on the**

1 same date as the next primary election:

2 “(1) Sections 20 to 55b of this 2008 Act, the amendments to 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 by sections 69, 70, 71,
4 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85 and 86 of this 2008 Act and the repeal of ORS
5 135.406 by sections 68 and 80 of this 2008 Act are repealed; and

6 “(2) Sections 2 to 19b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.245,
7 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 57, 58, 59,
8 60, 61, 62, 63, 64, 65, 66 and 67 of this 2008 Act and the repeal of ORS 135.406 by section 56
9 of this 2008 Act:

10 “(a) Become operative on the effective date of the amendments to sections 42 and 43,
11 Article I of the Oregon Constitution, by House Joint Resolution 49 (2007) and House Joint
12 Resolution 50 (2007); and

13 “(b) Apply to criminal proceedings, as defined in section 2 of this 2008 Act, pending in any
14 court on, or commenced on or after, the operative date specified in paragraph (a) of this
15 subsection.

16 “(3) Subsection (2) of this section does not affect the application of section 6 (1) of this
17 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
18 date specified in subsection (2) of this section.

19 “SECTION 89. If House Joint Resolution 49 (2007) is approved and House Joint Resolution
20 50 (2007) is rejected by the people at the special election held throughout this state on the
21 same date as the next primary election:

22 “(1) Sections 2 to 19b and 38 to 55b of this 2008 Act, the amendments to ORS 40.015,
23 131.007, 135.245, 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by
24 sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 81, 82, 83, 84, 85 and 86 of this 2008 Act and
25 the repeal of ORS 135.406 by sections 56 and 80 of this 2008 Act are repealed; and

26 “(2) Sections 20 to 37b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.245,
27 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and 419C.273 by sections 69, 70, 71,
28 72, 73, 74, 75, 76, 77, 78 and 79 of this 2008 Act and the repeal of ORS 135.406 by section 68
29 of this 2008 Act:

30 “(a) Become operative on the effective date of the amendments to section 42, Article I
31 of the Oregon Constitution, by House Joint Resolution 49 (2007); and

32 “(b) Apply to criminal proceedings, as defined in section 20 of this 2008 Act, pending in
33 any court on, or commenced on or after, the operative date specified in paragraph (a) of this
34 subsection.

35 “(3) Subsection (2) of this section does not affect the application of section 24 (1) of this
36 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
37 date specified in subsection (2) of this section.

38 “SECTION 90. If House Joint Resolution 49 (2007) is rejected and House Joint Resolution
39 50 (2007) is approved by the people at the special election held throughout this state on the
40 same date as the next primary election:

41 “(1) Sections 2 to 37b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,
42 419A.004, 419C.261 and 419C.273 by sections 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71,
43 72, 73, 74, 75, 76, 77, 78 and 79 of this 2008 Act and the repeal of ORS 135.406 by sections 56
44 and 68 of this 2008 Act are repealed; and

45 “(2) Sections 38 to 55b of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,

1 419A.004, 419C.261 and 419C.273 by sections 81, 82, 83, 84, 85 and 86 of this 2008 Act and the
2 repeal of ORS 135.406 by section 80 of this 2008 Act:

3 “(a) Become operative on the effective date of the amendments to section 43, Article I
4 of the Oregon Constitution, by House Joint Resolution 50 (2007); and

5 “(b) Apply to criminal proceedings, as defined in section 38 of this 2008 Act, pending in
6 any court on, or commenced on or after, the operative date specified in paragraph (a) of this
7 subsection.

8 “(3) Subsection (2) of this section does not affect the application of section 42 (1) of this
9 2008 Act to any criminal proceeding, whether commenced before, on or after the operative
10 date specified in subsection (2) of this section.

11 “SECTION 91. If both House Joint Resolution 49 (2007) and House Joint Resolution 50
12 (2007) are rejected by the people at the special election held throughout this state on the
13 same date as the next primary election, sections 2 to 55b of this 2008 Act, the amendments
14 to ORS 40.015, 131.007, 135.245, 135.432, 137.545, 144.108, 144.343, 147.417, 419A.004, 419C.261 and
15 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,
16 79, 81, 82, 83, 84, 85 and 86 of this 2008 Act and the repeal of ORS 135.406 by sections 56, 68
17 and 80 of this 2008 Act are repealed.

18 “SECTION 92. The unit captions used in this 2008 Act are provided only for the conven-
19 ience of the reader and do not become part of the statutory law of this state or express any
20 legislative intent in the enactment of this 2008 Act.

21 “SECTION 93. This 2008 Act being necessary for the immediate preservation of the public
22 peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect
23 on its passage.”.

24
