

# House Bill 3633

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

## SUMMARY

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

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

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

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to crime victims' rights; creating new provisions; amending ORS 40.015, 131.007, 135.432, 419C.261 and 419C.273; repealing ORS 135.406; and declaring an emergency.

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

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

**SECTION 1.** (1) **The Attorney General may adopt rules to establish a nonjudicial process, independent of any other process established by law, to receive claims of violations of rights granted to victims of crime in the criminal and juvenile justice systems by law, determine whether violations have occurred and make recommendations for achieving full compliance with victims' rights laws in the future.**

(2) **The Attorney General, in consultation with agencies in the executive branch of state government, district attorneys and local law enforcement agencies, may promulgate model rules, procedures or policies effectuating rights granted to victims by law. Model rules, procedures or policies are not enforceable by law, but the Attorney General may condition the provision of crime victim assistance funds or support by the Department of Justice on compliance with such model rules, procedures or policies.**

## PROVISIONS EFFECTIVE IF BOTH HJR 49 AND HJR 50 ARE APPROVED BY THE PEOPLE

### **SECTION 2.** As used in sections 2 to 19 of this 2008 Act:

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

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

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

3 (3) “Crime” has the meaning given that term in ORS 161.515 and includes an act com-  
4 mitted by a person who is under 18 years of age that, if committed by an adult, would con-  
5 stitute a misdemeanor or felony.

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

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

10 (a) Arraignment;

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

12 (c) Preliminary hearings;

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

14 (e) Hearings on motions or petitions:

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

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

17 (C) To suppress or exclude evidence;

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

19 (g) Trial;

20 (h) Restitution hearings;

21 (i) Sentencing;

22 (j) Probation violation or revocation hearings, when the basis for the alleged violation  
23 directly implicates a victim’s rights or well-being;

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

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

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

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

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

31 (7) “Person Class A misdemeanor” has the meaning given that term in the rules of the  
32 Oregon Criminal Justice Commission.

33 (8) “Victim” has the meaning given that term in section 42, Article I of the Oregon  
34 Constitution.

35 (9) “Violent felony” has the meaning given that term in section 42, Article I of the  
36 Oregon Constitution.

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

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

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

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

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

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

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

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

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

15       (2) If the prosecuting attorney has not provided the court with the certification described  
 16 in subsection (1) of this section, at the beginning of each critical stage of the proceeding, if:

17       (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-  
 18 ney shall so inform the court.

19       (b) The prosecuting attorney does not know whether the victim is present, the court  
 20 shall determine whether the victim is present.

21       (c) The victim is not present, the prosecuting attorney shall inform the court, to the  
 22 extent the victim's request is known by the prosecuting attorney, whether the victim re-  
 23 quested advance notice of any critical stage of the proceeding. If the victim requested ad-  
 24 vance notice, the prosecuting attorney shall inform the court, to the extent the victim's  
 25 request is known by the prosecuting attorney, whether the victim:

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

27       (B) Was informed of the victims' 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       (3) If the victim is present, the court may ask the victim for information about any as-  
 31 pect of the rights granted to the victim by sections 42 and 43, Article I of the Oregon Con-  
 32 stitution.

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

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

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

38       **SECTION 5.** (1) At the beginning of a plea hearing or sentencing hearing, if the prose-  
 39 cuting attorney or the juvenile department is aware that the victim is present, the prose-  
 40 cuting attorney or the juvenile department shall so inform the court. If the prosecuting  
 41 attorney or juvenile department does not know whether the victim is present, the court shall  
 42 determine whether the victim is present.

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

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

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

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

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

9 (c) If the court finds that the victim requested consultation about plea negotiations and  
10 that the prosecuting attorney or juvenile department failed to consult with the victim, the  
11 court shall direct the prosecuting attorney or juvenile department to consult with the victim  
12 and may not accept the plea unless the court finds good cause for the failure to consult.

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

15 (4) As used in this section:

16 (a) "Plea hearing" includes a hearing in which the defendant:

17 (A) Enters a plea of guilty or no contest;

18 (B) Admits to being under the jurisdiction of the juvenile court; or

19 (C) If a juvenile petition has been filed, enters a formal accountability agreement under  
20 ORS 419C.230 or an authorized diversion program under ORS 419C.225.

21 (b) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-  
22 ceeding under ORS chapter 419C.

23 **SECTION 6.** (1) A victim who wishes to allege a violation of a right granted by section  
24 42 or 43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall  
25 inform the court within seven days of the date the victim knew or reasonably should have  
26 known of the facts supporting the allegation. The victim shall describe the facts supporting  
27 the allegation and include a proposed remedy.

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

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

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

32 (3) If the victim informs the court of a claim on a form under subsection (2)(a) of this  
33 section, the court shall promptly issue the order to show cause described in section 7 of this  
34 2008 Act.

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

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

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

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

45 **SECTION 7.** (1)(a) Except as provided in subsection (3) of this section, the victim, the

1 prosecuting attorney or the defendant must provide notice of the claim to any person the  
 2 victim, the prosecuting attorney or the defendant wishes to have bound by an order granting  
 3 relief by providing the person with a copy of the order to show cause described in this sec-  
 4 tion.

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

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

12 (a) By which timely objections to the claim must be submitted to the court; and

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

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

16 (a) The victim;

17 (b) The prosecuting attorney; and

18 (c) The defendant.

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

23 **SECTION 8.** (1) If a response to the order to show cause issued under section 7 of this  
 24 2008 Act is not timely filed, the court shall:

25 (a) Make factual findings supported by substantial evidence in the record; and

26 (b) Determine whether the factual findings constitute a violation of the rights granted  
 27 the victim by sections 42 and 43, Article I of the Oregon Constitution.

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

29 (a) Have been violated, the court shall, after giving due consideration to the proposed  
 30 remedy, issue an appropriate remedial order.

31 (b) Have not been violated or that the Constitution of Oregon or the United States pro-  
 32 hibits all appropriate remedies, the court shall issue an order 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 9.** A victim, prosecuting attorney or defendant who seeks a determination of  
 39 an issue involving a right granted by section 42 or 43, Article I of the Oregon Constitution,  
 40 that will impact the conduct of the trial shall file a motion at least 14 days before trial unless  
 41 the factual basis of the determination becomes known within 14 days before trial and could  
 42 not reasonably have been discovered earlier, in which case the motion must be filed  
 43 promptly.

44 **SECTION 10.** (1) Pending the hearing described in section 11 of this 2008 Act, the court  
 45 may reschedule any matter in the criminal proceeding that may directly impact, or be di-

1 rectly impacted by, the claim, response or motion.

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

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

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

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

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

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

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

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

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

20 (2) At the hearing, the victim, the prosecuting attorney, the defendant and any person  
 21 against whom relief is requested may offer evidence relevant to the allegation and proposed  
 22 remedy.

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

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

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

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

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

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

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

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

38 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,  
 39 the defendant and any person against whom relief was requested who participated in the  
 40 hearing.

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

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

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

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

1 (b) By any person after:

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) Appellate review of an order issued under section 8 or 11 of this 2008 Act shall be as  
28 provided in:

29 (a) Section 14 of this 2008 Act if the order was issued in a criminal proceeding in which  
30 a defendant is charged with a felony or a person Class A misdemeanor and the order arises  
31 from a claim or motion alleging a violation that occurred prior to the disposition of the  
32 criminal proceeding.

33 (b) Section 15 of this 2008 Act in all appeals arising under sections 2 to 19 of this 2008  
34 Act, except those described in paragraph (a) of this subsection.

35 (5) The victim, the prosecuting attorney, the defendant or any person against whom relief  
36 was ordered has standing to seek appellate review of an order unless, after notice and a  
37 reasonable opportunity to be heard on a related claim or motion, the person seeking appel-  
38 late review did not:

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

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

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

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

43 **SECTION 14.** (1) Appellate review of an order described in section 13 (4)(a) of this 2008  
44 Act must be instituted by filing a notice of interlocutory appeal with the Supreme Court  
45 substantially in the form prescribed by rule of the Supreme Court. Review of the order is

1 a matter of right.

2 (2) The person filing the notice shall be identified as the appellant. Any person described  
 3 in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a  
 4 respondent. The notice must contain a designation of record of those portions of the oral  
 5 proceedings in the trial court to be included in the record.

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

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

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

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

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

18 (c) A memorandum of law containing:

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

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

22 (C) Supporting arguments and citations of authority.

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

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

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

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

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

32 (e) The defendant;

33 (f) The prosecuting attorney; and

34 (g) The Attorney General.

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

36 (a) The trial court administrator; and

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

39 (6) The appellant shall serve and file the notice of interlocutory appeal and, where appli-  
 40 cable, accompanying materials within seven days after the date the trial court issued the  
 41 order being appealed.

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

45 (8) If the Supreme Court directs a party to provide a transcript of oral proceedings under



1 subsection (3) of this section, the party shall provide the transcript to the Supreme Court  
 2 within seven days after the date of the Supreme Court's order.

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

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

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

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

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

17 (10) The respondent may file a response, which must be filed within seven days after the  
 18 date the notice of interlocutory appeal is filed with the Supreme Court. Notwithstanding any  
 19 other provision of law, a notice of interlocutory appeal is filed under this subsection when  
 20 it is physically received by the Supreme Court.

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

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

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

29 (13) At any time after submission of the appellant's memorandum, the Supreme Court,  
 30 on its own motion or on the motion of the respondent, may summarily affirm the trial  
 31 court's order, with or without the submission of a response or oral argument, if the Supreme  
 32 Court determines that the appeal does not present a substantial question of law.

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

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

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

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

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

1 (15) Appellate review under this section is confined to the record. The Supreme Court  
 2 may not substitute its judgment for that of the trial court as to any issue of fact. The Su-  
 3 preme Court shall review for errors of law and, where the law delegates discretion to the  
 4 trial court, determine whether the trial court's exercise of discretion was outside the range  
 5 of discretion delegated to the trial court.

6 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may  
 7 reverse or remand the order only if it finds that the order:

8 (a) Is unlawful in substance or procedure and that the substantial rights of the appellant  
 9 were prejudiced as a result;

10 (b) Is unconstitutional; or

11 (c) Is not supported by substantial evidence in the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21       **SECTION 19.** Sections 2 to 19 of this 2008 Act effectuate the provisions of sections 42 and  
 22 43, Article I of the Oregon Constitution, for violations that occur in criminal proceedings and  
 23 do not provide a remedy for violations that occur in any other proceeding. A remedy for a  
 24 violation of sections 42 and 43, Article I of the Oregon Constitution, in any other proceeding  
 25 may be enforced by writ of mandamus under ORS 34.105 to 34.240.

26  
 27                   **PROVISIONS EFFECTIVE IF HJR 49 IS APPROVED AND HJR 50**  
 28                   **IS REJECTED BY THE PEOPLE**  
 29

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

31       (1) “Authorized prosecuting attorney” means a prosecuting attorney who, at the request  
 32 of a victim, has agreed to assert and enforce a right granted to the victim by section 42,  
 33 Article I of the Oregon Constitution.

34       (2) “Claim” means an allegation and the proposed remedy described in section 24 (1) of  
 35 this 2008 Act.

36       (3) “Crime” has the meaning given that term in ORS 161.515 and includes an act com-  
 37 mitted by a person who is under 18 years of age that, if committed by an adult, would con-  
 38 stitute a misdemeanor or felony.

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

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

43       (a) Arraignment;

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

45       (c) Preliminary hearings;

- 1 (d) Hearings related to the rescheduling of trial;
- 2 (e) Hearings on motions or petitions:
- 3 (A) Conducted pursuant to ORS 40.210 or 135.139;
- 4 (B) To amend, dismiss or set aside a charge, conviction, order or judgment; or
- 5 (C) To suppress or exclude evidence;
- 6 (f) Entry of guilty or no contest pleas;
- 7 (g) Trial;
- 8 (h) Restitution hearings;
- 9 (i) Sentencing;
- 10 (j) Probation violation or revocation hearings, when the basis for the alleged violation
- 11 directly implicates a victim's rights or well-being;
- 12 (k) Hearings for relief from the requirement to report as a sex offender;
- 13 (L) Hearings related to a deferred sentencing agreement;
- 14 (m) Hearings designated as a critical stage of the proceeding in ORS 419C.273; and
- 15 (n) Any other stage of a criminal proceeding the court determines is a critical stage of
- 16 the proceeding for purposes of section 42, Article I of the Oregon Constitution.
- 17 (6) "Defendant" includes persons under 18 years of age alleged to be under the jurisdic-
- 18 tion of the juvenile court under ORS chapter 419C.
- 19 (7) "Person Class A misdemeanor" has the meaning given that term in the rules of the
- 20 Oregon Criminal Justice Commission.
- 21 (8) "Victim" has the meaning given that term in section 42, Article I of the Oregon
- 22 Constitution.
- 23 (9) "Violent felony" has the meaning given that term in section 42, Article I of the
- 24 Oregon Constitution.
- 25 **SECTION 21.** (1) A victim may assert a claim under sections 20 to 37 of this 2008 Act
- 26 personally, through an attorney or through an authorized prosecuting attorney.
- 27 (2) In lieu of service on or notification to a defendant or victim under sections 20 to 37
- 28 of this 2008 Act, if the defendant or victim is represented by counsel, counsel for the de-
- 29 fendant or victim shall be served or notified.
- 30 (3) A court may not charge a filing fee, service fee, motion fee or hearing fee for a pro-
- 31 ceeding under sections 20 to 37 of this 2008 Act.
- 32 (4) The time within which an act is to be done under sections 20 to 37 of this 2008 Act
- 33 is determined under ORS 174.120 and 174.125.
- 34 **SECTION 22.** (1) As soon as practicable following the filing of a charging instrument, the
- 35 prosecuting attorney shall certify to the court, on a form prescribed by the Chief Justice of
- 36 the Supreme Court, whether:
- 37 (a) The prosecuting attorney or a person known to the prosecuting attorney informed the
- 38 victim of the rights granted to the victim by section 42 (1)(a) to (f), Article I of the Oregon
- 39 Constitution.
- 40 (b) The charging instrument includes the name or pseudonym of each victim known to
- 41 the prosecuting attorney. If the charging instrument does not include the name or
- 42 pseudonym of each victim known to the prosecuting attorney, the prosecuting attorney shall
- 43 identify any victim not included in the charging instrument.
- 44 (c) The victim requested that the prosecuting attorney assert and enforce a right granted
- 45 to the victim by section 42, Article I of the Oregon Constitution.

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

3 (2) If the prosecuting attorney has not provided the court with the certification described  
 4 in subsection (1) of this section, at the beginning of each critical stage of the proceeding, if:

5 (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-  
 6 ney shall so inform the court.

7 (b) The prosecuting attorney does not know whether the victim is present, the court  
 8 shall determine whether the victim is present.

9 (c) The victim is not present, the prosecuting attorney shall inform the court, to the  
 10 extent the victim's request is known by the prosecuting attorney, whether the victim re-  
 11 quested advance notice of any critical stage of the proceeding. If the victim requested ad-  
 12 vance notice, the prosecuting attorney shall inform the court, to the extent the victim's  
 13 request is known by the prosecuting attorney, whether the victim:

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (c) If the court finds that the victim requested consultation about plea negotiations and  
 43 that the prosecuting attorney or juvenile department failed to consult with the victim, the  
 44 court shall direct the prosecuting attorney or juvenile department to consult with the victim  
 45 and may not accept the plea unless the court finds good cause for the failure to consult.

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

3 (4) As used in this section:

4 (a) "Plea hearing" includes a hearing in which the defendant:

5 (A) Enters a plea of guilty or no contest;

6 (B) Admits to being under the jurisdiction of the juvenile court; or

7 (C) If a juvenile petition has been filed, enters a formal accountability agreement under  
 8 ORS 419C.230 or an authorized diversion program under ORS 419C.225.

9 (b) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-  
 10 ceeding under ORS chapter 419C.

11 **SECTION 24.** (1) A victim who wishes to allege a violation of a right granted by section  
 12 42, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform  
 13 the court within seven days of the date the victim knew or reasonably should have known  
 14 of the facts supporting the allegation. The victim shall describe the facts supporting the  
 15 allegation and include a proposed remedy.

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

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

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

20 (3) If the victim informs the court of a claim on a form under subsection (2)(a) of this  
 21 section, the court shall promptly issue the order to show cause described in section 25 of this  
 22 2008 Act.

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

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

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

30 (5) If a victim informs the court of a claim orally and the court does not immediately  
 31 hear the matter, the court may require the victim to complete the form described in sub-  
 32 section (2)(a) of this section.

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

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

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

45 (a) By which timely objections to the claim must be submitted to the court; and

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

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

4 (a) The victim;

5 (b) The prosecuting attorney; and

6 (c) The defendant.

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

11 **SECTION 26.** (1) If a response to the order to show cause issued under section 25 of this  
12 2008 Act is not timely filed, the court shall:

13 (a) Make factual findings supported by substantial evidence in the record; and

14 (b) Determine whether the factual findings constitute a violation of the rights granted  
15 the victim by section 42, Article I of the Oregon Constitution.

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

17 (a) Have been violated, the court shall, after giving due consideration to the proposed  
18 remedy, issue an appropriate remedial order.

19 (b) Have not been violated or that the Constitution of Oregon or the United States pro-  
20 hibits all appropriate remedies, the court shall issue an order denying relief.

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

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

26 **SECTION 27.** A victim, prosecuting attorney or defendant who seeks a determination of  
27 an issue involving a right granted by section 42, Article I of the Oregon Constitution, that  
28 will impact the conduct of the trial shall file a motion at least 14 days before trial unless the  
29 factual basis of the determination becomes known within 14 days before trial and could not  
30 reasonably have been discovered earlier, in which case the motion must be filed promptly.

31 **SECTION 28.** (1) Pending the hearing described in section 29 of this 2008 Act, the court  
32 may reschedule any matter in the criminal proceeding that may directly impact, or be di-  
33 rectly impacted by, the claim, response or motion.

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

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

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

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

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

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

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

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

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

7 (2) At the hearing, the victim, the prosecuting attorney, the defendant and any person  
 8 against whom relief is requested may offer evidence relevant to the allegation and proposed  
 9 remedy.

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

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

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

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

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

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

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

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

25 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,  
 26 the defendant and any person against whom relief was requested who participated in the  
 27 hearing.

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

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

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

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

33 (b) By any person after:

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

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

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

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

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

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

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



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

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

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

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

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

14 (4) Appellate review of an order issued under section 26 or 29 of this 2008 Act shall be  
 15 as provided in:

16 (a) Section 32 of this 2008 Act if the order was issued in a criminal proceeding in which  
 17 a defendant is charged with a felony or a person Class A misdemeanor and the order arises  
 18 from a claim or motion alleging a violation that occurred prior to the disposition of the  
 19 criminal proceeding.

20 (b) Section 33 of this 2008 Act in all appeals arising under sections 20 to 37 of this 2008  
 21 Act, except those described in paragraph (a) of this subsection.

22 (5) The victim, the prosecuting attorney, the defendant or any person against whom relief  
 23 was ordered has standing to seek appellate review of an order unless, after notice and a  
 24 reasonable opportunity to be heard on a related claim or motion, the person seeking appel-  
 25 late review did not:

26 (a) Inform the court of an alleged violation under section 24 (1) of this 2008 Act;

27 (b) File a response under section 25 (4) of this 2008 Act;

28 (c) File a motion under section 27 of this 2008 Act; or

29 (d) Participate in a hearing described in section 29 of this 2008 Act.

30 **SECTION 32.** (1) Appellate review of an order described in section 31 (4)(a) of this 2008  
 31 Act shall be instituted by filing a notice of interlocutory appeal with the Supreme Court  
 32 substantially in the form prescribed by rule of the Supreme Court. Review of the order is  
 33 a matter of right.

34 (2) The person filing the notice shall be identified as the appellant. Any person described  
 35 in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a  
 36 respondent. The notice must contain a designation of record of those portions of the oral  
 37 proceedings in the trial court to be included in the record.

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

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

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

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

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

5 (c) A memorandum of law containing:

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

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

9 (C) Supporting arguments and citations of authority.

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

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

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

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

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

19 (e) The defendant;

20 (f) The prosecuting attorney; and

21 (g) The Attorney General.

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

23 (a) The trial court administrator; and

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

26 (6) The appellant shall serve and file the notice of interlocutory appeal and, where appli-  
 27 cable, accompanying materials within seven days after the date the trial court issued the  
 28 order being appealed.

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

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

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

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

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

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

44 (c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss the  
 45 appeal as to any respondent if the appellant, after receipt of a notice of noncompliance, does

1 not promptly cure a deficiency in the materials or if the failure to timely serve a true and  
 2 complete copy of the accompanying materials substantially prejudices the respondent's abil-  
 3 ity to respond to the appeal.

4 (10) The respondent may file a response, which must be filed within seven days after the  
 5 date the notice of interlocutory appeal is filed with the Supreme Court. Notwithstanding any  
 6 other provision of law, a notice of interlocutory appeal is filed under this subsection when  
 7 it is physically received by the Supreme Court.

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

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

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

16 (13) At any time after submission of the appellant's memorandum, the Supreme Court,  
 17 on its own motion or on the motion of the respondent, may summarily affirm the trial  
 18 court's order, with or without the submission of a response or oral argument, if the Supreme  
 19 Court determines that the appeal does not present a substantial question of law.

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

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

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

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

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

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

38 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may  
 39 reverse or remand the order only if it finds that the order:

40 (a) Is unlawful in substance or procedure and that the substantial rights of the appellant  
 41 were prejudiced as a result;

42 (b) Is unconstitutional; or

43 (c) Is not supported by substantial evidence in the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 36.** (1) The Chief Justice of the Supreme Court may, by rule or order, establish

1 requirements and procedures necessary to comply with the provisions of sections 20 to 37  
2 of this 2008 Act.

3 (2) The Chief Justice of the Supreme Court shall prescribe the forms described in  
4 sections 22 (1) and 24 (2)(a) of this 2008 Act. The form described in section 24 (2)(a) of this  
5 2008 Act must allow a victim to designate an alternate mailing address or substitute a person  
6 to receive notice or service on behalf of the victim for the purposes of sections 20 to 37 of  
7 this 2008 Act.

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

13  
14 **PROVISIONS EFFECTIVE IF HJR 49 IS REJECTED**  
15 **AND HJR 50 IS APPROVED**  
16 **BY THE PEOPLE**  
17

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

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

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

24 (3) “Crime” has the meaning given that term in ORS 161.515 and includes an act com-  
25 mitted by a person who is under 18 years of age that, if committed by an adult, would con-  
26 stitute a misdemeanor or felony.

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

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

31 (a) Arraignment;

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

33 (c) Preliminary hearings;

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

35 (e) Hearings on motions or petitions:

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

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

38 (C) To suppress or exclude evidence;

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

40 (g) Trial;

41 (h) Restitution hearings;

42 (i) Sentencing;

43 (j) Probation violation or revocation hearings, when the basis for the alleged violation  
44 directly implicates a victim’s rights or well-being;

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

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

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

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

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

7 (7) "Person Class A misdemeanor" has the meaning given that term in the rules of the  
8 Oregon Criminal Justice Commission.

9 (8) "Victim" has the meaning given that term in section 43, Article I of the Oregon  
10 Constitution.

11 (9) "Violent felony" has the meaning given that term in section 43, Article I of the  
12 Oregon Constitution.

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

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

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

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

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

25 (a) The prosecuting attorney or a person known to the prosecuting attorney informed the  
26 victim of the rights granted to the victim by section 42 (1)(a) to (f), Article I of the Oregon  
27 Constitution.

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

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

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

36 (2) If the prosecuting attorney has not provided the court with the certification described  
37 in subsection (1) of this section, at the beginning of each critical stage of the proceeding, if:

38 (a) The prosecuting attorney is aware that the victim is present, the prosecuting attor-  
39 ney shall so inform the court.

40 (b) The prosecuting attorney does not know whether the victim is present, the court  
41 shall determine whether the victim is present.

42 (c) The victim is not present, the prosecuting attorney shall inform the court, to the  
43 extent the victim's request is known by the prosecuting attorney, whether the victim re-  
44 quested advance notice of any critical stage of the proceeding. If the victim requested ad-  
45 vance notice, the prosecuting attorney shall inform the court, to the extent the victim's

1 request is known by the prosecuting attorney, whether the victim:

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

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

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

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

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

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

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

14 (6) Failure to comply with this section does not affect the validity of a plea.

15 **SECTION 41.** (1) At the beginning of a plea hearing or sentencing hearing, if the prose-  
16 cuting attorney or the juvenile department is aware that the victim is present, the prose-  
17 cuting attorney or the juvenile department shall so inform the court. If the prosecuting  
18 attorney or juvenile department does not know whether the victim is present, the court shall  
19 determine whether the victim is present.

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

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

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

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

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

31 (c) If the court finds that the victim requested consultation about plea negotiations and  
32 that the prosecuting attorney or juvenile department failed to consult with the victim, the  
33 court shall direct the prosecuting attorney or juvenile department to consult with the victim  
34 and may not accept the plea unless the court finds good cause for the failure to consult.

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

37 (4) As used in this section:

38 (a) "Plea hearing" includes a hearing in which the defendant:

39 (A) Enters a plea of guilty or no contest;

40 (B) Admits to being under the jurisdiction of the juvenile court; or

41 (C) If a juvenile petition has been filed, enters a formal accountability agreement under  
42 ORS 419C.230 or an authorized diversion program under ORS 419C.225.

43 (b) "Sentencing hearing" includes the dispositional phase of a juvenile delinquency pro-  
44 ceeding under ORS chapter 419C.

45 **SECTION 42.** (1) A victim who wishes to allege a violation of a right granted by section

1 43, Article I of the Oregon Constitution, to the victim in a criminal proceeding shall inform  
 2 the court within seven days of the date the victim knew or reasonably should have known  
 3 of the facts supporting the allegation. The victim shall describe the facts supporting the  
 4 allegation and include a proposed remedy.

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

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

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

9 (3) If the victim informs the court of a claim on a form under subsection (2)(a) of this  
 10 section, the court shall promptly issue the order to show cause described in section 43 of this  
 11 2008 Act.

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

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

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

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

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

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

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

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

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

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

38 (a) The victim;

39 (b) The prosecuting attorney; and

40 (c) The defendant.

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

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



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

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

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

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

6 (a) Have been violated, the court shall, after giving due consideration to the proposed  
7 remedy, issue an appropriate remedial order.

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

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

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

15 **SECTION 45.** A victim, prosecuting attorney or defendant who seeks a determination of  
16 an issue involving a right granted by section 43, Article I of the Oregon Constitution, that  
17 will impact the conduct of the trial shall file a motion at least 14 days before trial unless the  
18 factual basis of the determination becomes known within 14 days before trial and could not  
19 reasonably have been discovered earlier, in which case the motion must be filed promptly.

20 **SECTION 46.** (1) Pending the hearing described in section 47 of this 2008 Act, the court  
21 may reschedule any matter in the criminal proceeding that may directly impact, or be di-  
22 rectly impacted by, the claim, response or motion.

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

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

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

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

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

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

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

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

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

41 (2) At the hearing, the victim, the prosecuting attorney, the defendant and any person  
42 against whom relief is requested may offer evidence relevant to the allegation and proposed  
43 remedy.

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

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

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

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

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

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

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

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

14 (6) The court shall provide a copy of the order to the victim, the prosecuting attorney,  
15 the defendant and any person against whom relief was requested who participated in the  
16 hearing.

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

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

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

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

22 (b) By any person after:

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

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

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

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

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

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

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

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

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

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

44 (a) Section 50 of this 2008 Act if the order was issued in a criminal proceeding in which  
45 a defendant is charged with a felony or a person Class A misdemeanor and the order arises

1 from a claim or motion alleging a violation that occurred prior to the disposition of the  
 2 criminal proceeding.

3 (b) Section 51 of this 2008 Act in all appeals arising under sections 38 to 55 of this 2008  
 4 Act, except those described in paragraph (a) of this subsection.

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

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

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

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

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

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

17 (2) The person filing the notice shall be identified as the appellant. Any person described  
 18 in subsection (4)(a) to (e) of this section who is a party to the appeal shall be identified as a  
 19 respondent. The notice must contain a designation of record of those portions of the oral  
 20 proceedings in the trial court to be included in the record.

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

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

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

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

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

33 (c) A memorandum of law containing:

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

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

37 (C) Supporting arguments and citations of authority.

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

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

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

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

45 (d) A person against whom relief was sought in the hearing that resulted in the order

1 being appealed or a related hearing under section 47 of this 2008 Act;

2 (e) The defendant;

3 (f) The prosecuting attorney; and

4 (g) The Attorney General.

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

6 (a) The trial court administrator; and

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

9 (6) The appellant shall serve and file the notice of interlocutory appeal and, where appli-  
10 cable, accompanying materials within seven days after the date the trial court issued the  
11 order being appealed.

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

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

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

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

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

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

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

32 (10) The respondent may file a response, which must be filed within seven days after the  
33 date the notice of interlocutory appeal is filed with the Supreme Court. Notwithstanding any  
34 other provision of law, a notice of interlocutory appeal is filed under this subsection when  
35 it is physically received by the Supreme Court.

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

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

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

44 (13) At any time after submission of the appellant's memorandum, the Supreme Court,  
45 on its own motion or on the motion of the respondent, may summarily affirm the trial

1 court's order, with or without the submission of a response or oral argument, if the Supreme  
 2 Court determines that the appeal does not present a substantial question of law.

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

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

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

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

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

16 (15) Appellate review under this section is confined to the record. The Supreme Court  
 17 may not substitute its judgment for that of the trial court as to any issue of fact. The Su-  
 18 preme Court shall review for errors of law and, where the law delegates discretion to the  
 19 trial court, determine whether the trial court's exercise of discretion was outside the range  
 20 of discretion delegated to the trial court.

21 (16) The Supreme Court may affirm, modify, reverse or remand the order. The court may  
 22 reverse or remand the order only if it finds that the order:

23 (a) Is unlawful in substance or procedure and that the substantial rights of the appellant  
 24 were prejudiced as a result;

25 (b) Is unconstitutional; or

26 (c) Is not supported by substantial evidence in the record.

27 **SECTION 51.** Appellate review of an order described in section 49 (4)(b) of this 2008 Act  
 28 shall be as provided in section 50 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 50 (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 50 (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 days  
 40 after the date the court issued the order granting review.

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

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

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

45 (2) The Supreme Court may extend or reduce the length of or vacate the stay on its own

1 motion or on the motion of a victim, prosecuting attorney, defendant or other person against  
 2 whom relief was ordered.

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

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

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

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

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

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

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

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

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

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

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

31 (2) The Chief Justice of the Supreme Court shall prescribe the forms described in  
 32 sections 40 (1) and 42 (2)(a) of this 2008 Act. The form described in section 42 (2)(a) of this  
 33 2008 Act must allow a victim to designate an alternate mailing address or substitute a person  
 34 to receive notice or service on behalf of the victim for the purposes of sections 38 to 55 of  
 35 this 2008 Act.

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

41  
 42 **STATUTORY AMENDMENTS AND REPEALS; IMPLEMENTATION**  
 43

44 **SECTION 56.** 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, ORS 135.406 is repealed.**

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

5 131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in  
6 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-  
7 quires otherwise, "victim" means the person or persons who have suffered financial, social, psycho-  
8 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of  
9 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor  
10 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a  
11 victim.

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

15 135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

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

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

18 or

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

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

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

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

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

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

45 419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time

1 direct that the petition be amended. If the amendment results in a substantial departure from the  
 2 facts originally alleged, the court shall grant such continuance as the interests of justice may re-  
 3 quire. When the court directs the amendment of a petition alleging that a youth has committed an  
 4 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court  
 5 shall make written findings stating the reason for directing the amendment.

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

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

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

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

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

17 (b) The petition alleges the youth committed an act that would constitute a violent felony, as  
 18 defined in ORS 419A.004, if committed by an adult.[: and]

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

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

24 419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be  
 25 present at and, upon request, must be informed in advance of critical stages of the proceedings held  
 26 in open court when the youth or youth offender will be present.

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

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

32 (A) A detention or shelter hearing;

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

34 (C) A dispositional hearing.

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

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

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

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

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

41 (3) If the victim is not present at a critical stage of the proceeding, the court shall ask the  
 42 district attorney or juvenile department whether the victim requested to be notified of critical stages  
 43 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney  
 44 or juvenile department whether the victim was notified of the date, time and place of the hearing.  
 45 [*The validity of the proceeding is not affected by the failure to notify the victim of a hearing or failure*



1 of the victim to appear at a hearing that is a critical stage of the proceeding, including but not limited  
 2 to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261, 419C.450  
 3 or 419C.653.]

4 (4) As used in this section:

5 (a) “Critical stage of the proceeding” means a hearing that:

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

7 (B) Is held in open court; and

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

9 (b) “Critical stage of the proceeding” includes, but is not limited to:

10 (A) Detention and shelter hearings;

11 (B) Hearings to review placements;

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

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

14 (E) Waiver hearings;

15 (F) Adjudication and plea hearings;

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

17 (H) Review or dispositional review hearings;

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

19 (J) Probation violation hearings, including probation revocation hearings, when the basis for the  
 20 alleged violation directly implicates a victim’s rights or well-being;

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

22 (L) Expunction hearings.

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

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

30 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

31 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS  
 32 305.501;

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

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

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

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

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

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

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

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

45 (d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150, as required by

1 ORS 137.090 or proceedings under ORS 136.765 to 136.785.

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

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

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

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

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

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

13 **SECTION 62. If House Joint Resolution 49 (2007) is approved and House Joint Resolution**  
14 **50 (2007) is rejected by the people at the special election held throughout this state on the**  
15 **same date as the next primary election, ORS 135.406 is repealed.**

16 **SECTION 63.** 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 131.007 is amended to read:

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

26 **SECTION 64.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50  
27 (2007) is rejected by the people at the special election held throughout this state on the same date  
28 as the next primary election, ORS 135.432 is amended to read:

29 135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

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

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

32 or

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

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

41 (2) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty  
42 or no contest in the expectation that charge or sentence concessions will be granted, the trial judge,  
43 upon request of the parties, may permit the disclosure to the trial judge of the tentative agreement  
44 and the reasons therefor in advance of the time for tender of the plea. The trial judge may then  
45 advise the district attorney and defense counsel whether the trial judge will concur in the proposed

1 disposition if the information in the presentence report or other information available at the time  
 2 for sentencing is consistent with the representations made to the trial judge.

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

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

11 **SECTION 65.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50  
 12 (2007) is rejected by the people at the special election held throughout this state on the same date  
 13 as the next primary election, ORS 419C.261 is amended to read:

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

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

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

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

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

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

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

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

35 **SECTION 66.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution 50  
 36 (2007) is rejected by the people at the special election held throughout this state on the same date  
 37 as the next primary election, ORS 419C.273 is amended to read:

38 419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be  
 39 present at and, upon request, must be informed in advance of critical stages of the proceedings held  
 40 in open court when the youth or youth offender will be present.

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

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

- 1 (A) A detention or shelter hearing;
- 2 (B) A hearing to review the placement of the youth or youth offender; or
- 3 (C) A dispositional hearing.
- 4 (b) For a release hearing, the victim has the right:
  - 5 (A) Upon request, to be notified in advance of the hearing;
  - 6 (B) To appear personally at the hearing; and
  - 7 (C) If present, to reasonably express any views relevant to the issues before the court.
- 8 [(c) *Failure to notify the victim of a hearing under this subsection or failure of the victim to appear*
- 9 *at the hearing does not affect the validity of the proceeding.*]
- 10 (3) If the victim is not present at a critical stage of the proceeding, the court shall ask the
- 11 district attorney or juvenile department whether the victim requested to be notified of critical stages
- 12 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney
- 13 or juvenile department whether the victim was notified of the date, time and place of the hearing.
- 14 [*The validity of the proceeding is not affected by the failure to notify the victim of a hearing or failure*
- 15 *of the victim to appear at a hearing that is a critical stage of the proceeding, including but not limited*
- 16 *to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261, 419C.450*
- 17 *or 419C.653.*]
- 18 (4) As used in this section:
  - 19 (a) “Critical stage of the proceeding” means a hearing that:
    - 20 (A) Affects the legal interests of the youth or youth offender;
    - 21 (B) Is held in open court; and
    - 22 (C) Is conducted in the presence of the youth or youth offender.
  - 23 (b) “Critical stage of the proceeding” includes, but is not limited to:
    - 24 (A) Detention and shelter hearings;
    - 25 (B) Hearings to review placements;
    - 26 (C) Hearings to set or change conditions of release;
    - 27 (D) Hearings to transfer proceedings or to transfer parts of proceedings;
    - 28 (E) Waiver hearings;
    - 29 (F) Adjudication and plea hearings;
    - 30 (G) Dispositional hearings, including but not limited to restitution hearings;
    - 31 (H) Review or dispositional review hearings;
    - 32 (I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;
    - 33 (J) Probation violation hearings, including probation revocation hearings, when the basis for the
    - 34 alleged violation directly implicates a victim’s rights or well-being;
    - 35 (K) Hearings for relief from the duty to report under ORS 181.823; and
    - 36 (L) Expunction hearings.
- 37 (5) Nothing in this section creates a cause of action for compensation or damages. This section
- 38 may not be used to invalidate an accusatory instrument[, *ruling of the court*] **or adjudication** or
- 39 otherwise [*suspend or*] terminate any proceeding at any point after the case is commenced or on
- 40 appeal.
- 41 **SECTION 67.** 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 40.015 is amended to read:
- 44 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:
  - 45 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS

1 305.501;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **(j) Proceedings under section 29 of this 2008 Act relating to victims' rights, except for the**  
26 **provisions of ORS 40.105 and 40.115.**

27 **SECTION 68. If House Joint Resolution 49 (2007) is rejected and House Joint Resolution**  
28 **50 (2007) is approved by the people at the special election held throughout this state on the**  
29 **same date as the next primary election, ORS 135.406 is repealed.**

30 **SECTION 69. If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50**  
31 **(2007) is approved by the people at the special election held throughout this state on the same date**  
32 **as the next primary election, ORS 131.007 is amended to read:**

33 131.007. As used in ORS 40.385, 135.230, [135.406,] 135.970, 147.417, 147.419 and 147.421 and in  
34 ORS chapters 136, 137 and 144, except as otherwise specifically provided or unless the context re-  
35 quires otherwise, "victim" means the person or persons who have suffered financial, social, psycho-  
36 logical or physical harm as a result of a crime and includes, in the case of a homicide or abuse of  
37 corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor  
38 victim, the legal guardian of the minor. In no event shall the criminal defendant be considered a  
39 victim.

40 **SECTION 70. 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 135.432 is amended to read:**

43 135.432. (1)(a) The trial judge [shall] **may** not participate in plea discussions, except to:

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

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

1 or

2 (C) Make the inquiry required by [ORS 135.406] **section 41 (2) of this 2008 Act.**

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

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

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

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

25 **SECTION 71.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50  
 26 (2007) is approved by the people at the special election held throughout this state on the same date  
 27 as the next primary election, ORS 419C.261 is amended to read:

28 419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time  
 29 direct that the petition be amended. If the amendment results in a substantial departure from the  
 30 facts originally alleged, the court shall grant such continuance as the interests of justice may re-  
 31 quire. When the court directs the amendment of a petition alleging that a youth has committed an  
 32 act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court  
 33 shall make written findings stating the reason for directing the amendment.

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

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

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

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

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

45 (b) The petition alleges the youth committed an act that would constitute a violent felony, as

1 defined in ORS 419A.004, if committed by an adult.]; and]

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

4 **SECTION 72.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50  
 5 (2007) is approved by the people at the special election held throughout this state on the same date  
 6 as the next primary election, ORS 419C.273 is amended to read:

7 419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be  
 8 present at and, upon request, must be informed in advance of critical stages of the proceedings held  
 9 in open court when the youth or youth offender will be present.

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

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

15 (A) A detention or shelter hearing;

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

17 (C) A dispositional hearing.

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

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

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

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

22 (c) Failure to notify the victim of a hearing under this subsection or failure of the victim to  
 23 appear at the hearing does not affect the validity of the proceeding.

24 (3) If the victim is not present at a critical stage of the proceeding, the court shall ask the  
 25 district attorney or juvenile department whether the victim requested to be notified of critical stages  
 26 of the proceedings. If the victim requested to be notified, the court shall ask the district attorney  
 27 or juvenile department whether the victim was notified of the date, time and place of the hearing.  
 28 The validity of the proceeding is not affected by the failure to notify the victim of a hearing or  
 29 failure of the victim to appear at a hearing that is a critical stage of the proceeding, including but  
 30 not limited to hearings under ORS 135.953, 181.823, 419A.262, 419C.097, 419C.142, 419C.173, 419C.261,  
 31 419C.450 or 419C.653.

32 (4) As used in this section:

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

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

35 (B) Is held in open court; and

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

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

38 (A) Detention and shelter hearings;

39 (B) Hearings to review placements;

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

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

42 (E) Waiver hearings;

43 (F) Adjudication and plea hearings;

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

45 (H) Review or dispositional review hearings;

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

2 (J) Probation violation hearings, including probation revocation hearings, when the basis for the  
3 alleged violation directly implicates a victim's rights or well-being;

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

5 (L) Expunction hearings.

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

10 **SECTION 73.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution 50  
11 (2007) is approved by the people at the special election held throughout this state on the same date  
12 as the next primary election, ORS 40.015 is amended to read:

13 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

14 (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS  
15 305.501;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 **(j) Proceedings under section 47 of this 2008 Act relating to victims' rights, except for the**  
40 **provisions of ORS 40.105 and 40.115.**

41 **SECTION 74.** Section 1 of this 2008 Act becomes operative on April 1, 2008.

42 **SECTION 75.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50  
43 (2007) are approved by the people at the special election held throughout this state on the  
44 same date as the next primary election:

45 (1) Sections 20 to 55 of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,



1 419C.261 and 419C.273 by sections 63, 64, 65, 66, 67, 69, 70, 71, 72 and 73 of this 2008 Act and  
 2 the repeal of ORS 135.406 by sections 62 and 68 of this 2008 Act are repealed; and

3 (2) Sections 2 to 19 of this 2008 Act and the amendments to ORS 40.015, 131.007, 135.432,  
 4 419C.261 and 419C.273 by sections 57, 58, 59, 60 and 61 of this 2008 Act and the repeal of ORS  
 5 135.406 by section 56 of this 2008 Act:

6 (a) Become operative on the effective date of the amendments to sections 42 and 43, Ar-  
 7 ticle I of the Oregon Constitution, by House Joint Resolution 49 (2007) and House Joint Re-  
 8 solution 50 (2007); and

9 (b) Apply to criminal proceedings, as defined in section 2 of this 2008 Act, pending in any  
 10 court on, or commenced on or after, the operative date specified in paragraph (a) of this  
 11 subsection.

12 **SECTION 76.** If House Joint Resolution 49 (2007) is approved and House Joint Resolution  
 13 50 (2007) is rejected by the people at the special election held throughout this state on the  
 14 same date as the next primary election:

15 (1) Sections 2 to 19 and 38 to 55 of this 2008 Act, the amendments to ORS 40.015, 131.007,  
 16 135.432, 419C.261 and 419C.273 by sections 57, 58, 59, 60, 61, 69, 70, 71, 72 and 73 of this 2008  
 17 Act and the repeal of ORS 135.406 by sections 56 and 68 of this 2008 Act are repealed; and

18 (2) Sections 20 to 37 of this 2008 Act and the amendments to ORS 40.015, 131.007, 135.432,  
 19 419C.261 and 419C.273 by sections 63, 64, 65, 66 and 67 of this 2008 Act and the repeal of ORS  
 20 135.406 by section 62 of this 2008 Act:

21 (a) Become operative on the effective date of the amendments to section 42, Article I of  
 22 the Oregon Constitution, by House Joint Resolution 49 (2007); and

23 (b) Apply to criminal proceedings, as defined in section 20 of this 2008 Act, pending in any  
 24 court on, or commenced on or after, the operative date specified in paragraph (a) of this  
 25 subsection.

26 **SECTION 77.** If House Joint Resolution 49 (2007) is rejected and House Joint Resolution  
 27 50 (2007) is approved by the people at the special election held throughout this state on the  
 28 same date as the next primary election:

29 (1) Sections 2 to 37 of this 2008 Act, the amendments to ORS 40.015, 131.007, 135.432,  
 30 419C.261 and 419C.273 by sections 57, 58, 59, 60, 61, 63, 64, 65, 66 and 67 of this 2008 Act and  
 31 the repeal of ORS 135.406 by sections 56 and 62 of this 2008 Act are repealed; and

32 (2) Sections 38 to 55 of this 2008 Act and the amendments to ORS 40.015, 131.007, 135.432,  
 33 419C.261 and 419C.273 by sections 69, 70, 71, 72 and 73 of this 2008 Act and the repeal of ORS  
 34 135.406 by section 68 of this 2008 Act:

35 (a) Become operative on the effective date of the amendments to section 43, Article I of  
 36 the Oregon Constitution, by House Joint Resolution 50 (2007); and

37 (b) Apply to criminal proceedings, as defined in section 38 of this 2008 Act, pending in any  
 38 court on, or commenced on or after, the operative date specified in paragraph (a) of this  
 39 subsection.

40 **SECTION 78.** If both House Joint Resolution 49 (2007) and House Joint Resolution 50  
 41 (2007) are rejected by the people at the special election held throughout this state on the  
 42 same date as the next primary election, sections 2 to 55 of this 2008 Act, the amendments  
 43 to ORS 40.015, 131.007, 135.432, 419C.261 and 419C.273 by sections 57, 58, 59, 60, 61, 63, 64, 65,  
 44 66, 67, 69, 70, 71, 72 and 73 of this 2008 Act and the repeal of ORS 135.406 by sections 56, 62  
 45 and 68 of this 2008 Act are repealed.

1        **SECTION 79.** The unit captions used in this 2008 Act are provided only for the conven-  
2        ience of the reader and do not become part of the statutory law of this state or express any  
3        legislative intent in the enactment of this 2008 Act.

4        **SECTION 80.** This 2008 Act being necessary for the immediate preservation of the public  
5        peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect  
6        on its passage.

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