

Updated Sponsors

House Bill 3634

Sponsored by Representative BARKER; Representative WHISNANT (Presession filed.)

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**.

Provides victims of crime with certain rights in habeas corpus proceedings, direct appeals, post-conviction relief proceedings, proceedings conducted by the Psychiatric Security Review Board and proceedings conducted by the State Board of Parole and Post-Prison Supervision.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to victims' rights; creating new provisions; amending ORS 144.108, 144.120, 144.343, 161.326,
3 161.332, 161.346, 181.601 and 419C.532; and declaring an emergency.

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

5 **SECTION 1. (1) A victim in a criminal proceeding has, upon request, the right to be no-**
6 **tified by the state when:**

7 (a) **A petition for a writ of habeas corpus is filed under ORS 34.310 to 34.730.**

8 (b) **A petition for post-conviction relief is filed under ORS 138.510 to 138.680.**

9 (c) **A notice of appeal is filed in a proceeding in which the defendant is charged with:**

10 (A) **A felony;**

11 (B) **A person Class A misdemeanor; or**

12 (C) **A misdemeanor sex crime.**

13 (2) **As used in this section:**

14 (a) **"Person Class A misdemeanor" has the meaning given that term in the rules of the**
15 **Oregon Criminal Justice Commission.**

16 (b) **"Sex crime" has the meaning given that term in ORS 181.594.**

17 (c) **"Victim" has the meaning given that term in ORS 131.007.**

18 **SECTION 2. Section 3 of this 2010 Act is added to and made a part of ORS 34.310 to 34.730.**

19 **SECTION 3. (1) When a petition for a writ of habeas corpus brought under ORS 34.310**
20 **to 34.730 involves a charge of or conviction for a crime for which there is a victim, the victim**
21 **has the following rights:**

22 (a) **The right to dignity, respect and privacy;**

23 (b) **The right to a meaningful role in the habeas corpus proceedings;**

24 (c) **The right to be reasonably protected from the person charged with or convicted of**
25 **the crime;**

26 (d) **The right to be notified, in advance of the proceedings, of the victims' rights impli-**
27 **cated in the proceedings; and**

28 (e) **The right to exercise, upon request:**

29 (A) **The right to have the victim's schedule taken into account in scheduling the pro-**

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 **ceedings;**

2 **(B) The right to examine, in advance of the proceedings, all information on which the**
3 **disposition of the petition will be based;**

4 **(C) The right to consult with the state regarding the proceedings, including, if applicable,**
5 **notice of and the opportunity to consult regarding a settlement agreement;**

6 **(D) The right to the timely disposition of the petition; and**

7 **(E) The right to be informed by the state of the manner in which the petition was dis-**
8 **posed.**

9 **(2)(a) The rights described in subsection (1) of this section apply to initial proceedings**
10 **conducted in the trial court and to appeals conducted under ORS 34.710.**

11 **(b) In any habeas corpus proceeding brought in federal court to which the State of**
12 **Oregon is a party, the state shall comply with the rights afforded to crime victims under 18**
13 **U.S.C. 3771.**

14 **(3) As used in this section, “victim” has the meaning given that term in ORS 131.007.**

15 **SECTION 4. Section 5 of this 2010 Act is added to and made a part of ORS 138.010 to**
16 **138.310.**

17 **SECTION 5. (1) When an appeal is taken from a criminal proceeding in which a defendant**
18 **is charged with or convicted of a felony for which there is a victim, a person Class A**
19 **misdemeanor or a misdemeanor sex crime, the victim has the following rights:**

20 **(a) The right to dignity, respect and privacy;**

21 **(b) The right to a meaningful role in the appellate proceedings;**

22 **(c) The right to be reasonably protected from the defendant;**

23 **(d) The right to be notified, in advance of the proceedings, of the victims’ rights impli-**
24 **cated in the proceedings; and**

25 **(e) The right to exercise, upon request:**

26 **(A) The right to reasonable, accurate and timely written notice from the state of any**
27 **proceedings conducted by an appellate court; and**

28 **(B) The right to attend any proceedings conducted by an appellate court.**

29 **(2) As used in this section:**

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

32 **(b) “Sex crime” has the meaning given that term in ORS 181.594.**

33 **(c) “Victim” has the meaning given that term in ORS 131.007.**

34 **SECTION 6. Section 7 of this 2010 Act is added to and made a part of ORS 138.510 to**
35 **138.680.**

36 **SECTION 7. (1) When a petition for post-conviction relief involves a conviction for a**
37 **crime for which there is a victim, the victim has the following rights:**

38 **(a) The right to dignity, respect and privacy;**

39 **(b) The right to a meaningful role in the post-conviction relief proceedings;**

40 **(c) The right to be reasonably protected from person convicted of the crime;**

41 **(d) The right to be notified, in advance of the proceedings, of the victims’ rights impli-**
42 **cated in the proceedings; and**

43 **(e) The right to exercise, upon request:**

44 **(A) The right to have the victim’s schedule taken into account in scheduling the pro-**
45 **ceedings;**

1 **(B) The right to examine, in advance of the proceedings, all information on which the**
2 **disposition of the petition will be based;**

3 **(C) The right to consult with the state regarding the proceedings, including, if applicable,**
4 **notice of and the opportunity to consult regarding a settlement agreement;**

5 **(D) The right to the timely disposition of the petition; and**

6 **(E) The right to be informed by the state of the manner in which the petition was dis-**
7 **posed.**

8 **(2) As used in this section, “victim” has the meaning given that term in ORS 131.007.**

9 **SECTION 8.** ORS 161.346 is amended to read:

10 161.346. (1) The Psychiatric Security Review Board shall conduct hearings upon any application
11 for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341
12 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and shall make findings on the is-
13 sues before it which may include:

14 (a) If the board finds that the person is no longer affected by mental disease or defect, or, if so
15 affected, no longer presents a substantial danger to others, the board shall order the person dis-
16 charged from commitment or from conditional release.

17 (b) If the board finds that the person is still affected by a mental disease or defect and is a
18 substantial danger to others, but can be controlled adequately if conditionally released with treat-
19 ment as a condition of release, the board shall order the person conditionally released as provided
20 in ORS 161.336.

21 (c) If the board finds that the person has not recovered from the mental disease or defect and
22 is a substantial danger to others and cannot adequately be controlled if conditionally released on
23 supervision, the board shall order the person committed to, or retained in, a state hospital desig-
24 nated by the Oregon Health Authority if the person is at least 18 years of age, or a secure intensive
25 community inpatient facility designated by the authority if the person is under 18 years of age, for
26 care, custody and treatment.

27 (2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the
28 person and to submit a report to the board. Reports filed with the board pursuant to the examination
29 shall include, but need not be limited to, an opinion as to the mental condition of the person and
30 whether the person presents a substantial danger to others, and whether the person could be ade-
31 quately controlled with treatment as a condition of release. To facilitate the examination of the
32 person, the board may order the person placed in the temporary custody of any state hospital or
33 other suitable facility.

34 (3) The board may make the determination regarding discharge or conditional release based
35 upon the written reports submitted pursuant to this section. If any member of the board desires
36 further information from the examining psychiatrist or licensed psychologist who submitted the re-
37 port, these persons shall be summoned by the board to give testimony. The board shall consider all
38 evidence available to it which is material, relevant and reliable regarding the issues before the
39 board. Such evidence may include but is not limited to the record of trial, the information supplied
40 by the attorney representing the state or by any other interested party, including the person, and
41 information concerning the person’s mental condition and the entire psychiatric and criminal history
42 of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the
43 conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath
44 or affirmation of the witness from whom received. The officer presiding at the hearing shall admin-
45 ister oaths or affirmations to witnesses.

1 [(4)] (4)(a) The board shall furnish **reasonable, accurate and timely written notice of any**
 2 **hearing pending under this section to:**

3 (A) The person about whom the hearing is being conducted[,];

4 (B) The attorney representing the person[,];

5 (C) The Attorney General[,];

6 (D) The district attorney and the court or department of the county from which the person was
 7 committed [*written notice of any hearing pending under this section within a reasonable time prior to*
 8 *the hearing. The notice shall include:*]; **and**

9 (E) **The victim, if the court or the board determines that the victim desires notification.**

10 (b) **The board shall include in the notice required by paragraph (a) of this subsection:**

11 [(a)] (A) The time, place and location of the hearing.

12 [(b)] (B) The nature of the hearing and the specific action for which a hearing has been re-
 13 quested, the issues to be considered at the hearing and a reference to the particular sections of the
 14 statutes and rules involved.

15 [(c)] (C) A statement of the authority and jurisdiction under which the hearing is to be held.

16 [(d)] (D) A statement of all rights under subsection (6) of this section.

17 (5) Prior to the commencement of a hearing, the board or presiding officer shall serve personally
 18 or by mail a written notice to each party as provided in ORS 183.413 (2).

19 (6) At the hearing[,]:

20 (a) The person about whom the hearing is being held [*shall have*] **has** the right:

21 [(a)] (A) To appear at all proceedings held pursuant to this section, except board deliberations.

22 [(b)] (B) To cross-examine all witnesses appearing to testify at the hearing.

23 [(c)] (C) To subpoena witnesses and documents as provided in ORS 161.395.

24 [(d)] (D) To be represented by suitable legal counsel possessing skills and experience
 25 commensurate with the nature and complexity of the case, to consult with counsel prior to the
 26 hearing and, if financially eligible, to have suitable counsel appointed at state expense.

27 [(e)] (E) To examine all information, documents and reports [*which*] **that** the board considers[.
 28 *If then available to the board, the information, documents and reports shall be disclosed to the person*
 29 *so as to allow examination prior to the hearing.*] **and, if the information, documents and reports**
 30 **are available to the board before the hearing, to examine the information, documents and**
 31 **reports prior to the hearing.**

32 (b) **The victim has, upon request, the right:**

33 (A) **To be heard at all proceedings held pursuant to this section, except board deliber-**
 34 **ations.**

35 (B) **To examine all information, documents and reports that the board considers and, if**
 36 **the information, documents and reports are available to the board before the hearing, to**
 37 **examine the information, documents and reports prior to the hearing.**

38 (7) A record shall be kept of all hearings before the board, except board deliberations.

39 (8) Upon request of any party before the board, or on its own motion, the board may continue
 40 a hearing for a reasonable period not to exceed 60 days to obtain additional information or testi-
 41 mony or for other good cause shown.

42 (9) Within 15 days following the conclusion of the hearing, the board shall provide **written**
 43 **notice of the board's decision to:**

44 (a) The person[,] **about whom the hearing is held;**

45 (b) The attorney representing the person[,];

1 (c) The Attorney General or other attorney representing the state, if any[, *written notice of the*
2 *board's decision.*]; **and**

3 **(d) The victim, if the court or board determines that the victim desires notification.**

4 (10) The burden of proof on all issues at hearings of the board shall be by a preponderance of
5 the evidence.

6 (11) If the board determines that the person about whom the hearing is being held is financially
7 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall
8 be an attorney who satisfies the professional qualifications established by the Public Defense Ser-
9 vices Commission under ORS 151.216. The public defense services executive director shall determine
10 and allow fair compensation for counsel appointed under this subsection and the reasonable ex-
11 penses of the person in respect to the hearing. Compensation payable to appointed counsel shall not
12 be less than the applicable compensation level established under ORS 151.216. The compensation and
13 expenses so allowed shall be paid by the public defense services executive director from funds
14 available for the purpose.

15 (12) The Attorney General may represent the state at contested hearings before the board unless
16 the district attorney of the county from which the person was committed elects to represent the
17 state. The district attorney of the county from which the person was committed shall cooperate with
18 the Attorney General in securing the material necessary for presenting a contested hearing before
19 the board. If the district attorney elects to represent the state, the district attorney shall give timely
20 written notice of such election to the Attorney General, the board and the attorney representing the
21 person.

22 **SECTION 9. ORS 161.326 is added to and made a part of ORS 161.336 to 161.351.**

23 **SECTION 10.** ORS 161.326 is amended to read:

24 161.326. [(1) *Whenever a person already under the board's jurisdiction commits a new crime, the*
25 *court or the board shall make the findings described in ORS 161.325 (2).*]

26 **(1) When a person is placed under the jurisdiction of the Psychiatric Security Review**
27 **Board after being found guilty except for insanity of a crime for which there is a victim, the**
28 **victim has the following rights:**

29 **(a) The right to dignity, respect and privacy;**

30 **(b) The right to a meaningful role in the proceedings conducted by the board;**

31 **(c) The right to be reasonably protected from the person found guilty except for insanity**
32 **of the crime; and**

33 **(d) The right to be notified, in advance of the proceedings, of the victims' rights impli-**
34 **cated in the proceedings.**

35 (2) If the trial court or the board determines that [a] **the** victim desires notification [*as described*
36 *in ORS 161.325 (2), the board shall make a reasonable effort to notify the victim of board hearings,*
37 *conditional release, discharge or escape.*], **the board shall:**

38 **(a) Provide reasonable, accurate and timely written notice to the victim of the condi-**
39 **tional release or discharge of the person under the jurisdiction of the board; and**

40 **(b) Immediately notify the victim of an escape of the person under the jurisdiction of the**
41 **board.**

42 **(3) If the identity of the victim is unknown and the communities in which the victim**
43 **resides, works, attends classes, has substantial connections to or was harmed in are known,**
44 **the board shall provide notice by publication in each known community. The notice must**
45 **include the time, date and location of the hearing and indicate that the victim has a right**

1 **to be heard at the hearing.**

2 **(4) Whenever a person already under the jurisdiction of the board commits a new crime,**
3 **the court or the board shall make the findings described in ORS 161.325 (2).**

4 **SECTION 11.** ORS 161.332 is amended to read:

5 161.332. As used in ORS 161.315 to 161.351 and 161.385 to 161.395[,]:

6 (1) "Conditional release" includes, but is not limited to, the monitoring of mental and physical
7 health treatment.

8 (2) "Victim" means the person or persons who have suffered financial, social, psycho-
9 logical or physical harm as a result of the crime for which the defendant was found guilty
10 except for insanity and includes, in the case of a homicide or abuse of corpse in any degree,
11 a member of the immediate family of the decedent and, in the case of a minor victim, the
12 legal guardian of the minor. In no event shall the person found guilty except for insanity be
13 considered a victim.

14 **SECTION 12.** ORS 419C.532 is amended to read:

15 419C.532. (1) The juvenile panel of the Psychiatric Security Review Board shall conduct hearings
16 on an application for discharge, conditional release, commitment or modification filed under or re-
17 quired by ORS 419C.538, 419C.540 and 419C.542, and shall make findings on the issues before the
18 juvenile panel.

19 (2) In every hearing before the juvenile panel, the juvenile panel shall determine whether the
20 young person:

21 (a) Has a serious mental condition; or

22 (b) Has a mental disease or defect other than a serious mental condition and presents a sub-
23 stantial danger to others.

24 (3) The juvenile panel shall order a young person discharged from commitment or conditional
25 release if the juvenile panel finds that the young person:

26 (a) No longer has a mental disease or defect; or

27 (b) Has a mental disease or defect other than a serious mental condition but no longer presents
28 a substantial danger to others.

29 (4) The juvenile panel shall order a young person conditionally released subject to ORS 419C.538
30 if the juvenile panel finds that:

31 (a) The young person:

32 (A) Has a serious mental condition; or

33 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
34 stantial danger to others;

35 (b) The young person can be adequately controlled with treatment services as a condition of
36 release; and

37 (c) Necessary supervision and treatment services are available.

38 (5) The juvenile panel shall order a young person committed to, or retained in, a hospital or
39 facility designated by the Department of Human Services or the Oregon Health Authority for cus-
40 tody, supervision and treatment subject to ORS 419C.540 if the juvenile panel finds that the young
41 person:

42 (a)(A) Has a serious mental condition; or

43 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
44 stantial danger to others; and

45 (b) Cannot be adequately controlled if conditionally released.

1 (6) In determining whether a young person should be committed to or retained in a hospital or
 2 facility, conditionally released or discharged, the primary concern of the juvenile panel is the pro-
 3 tection of society.

4 (7) In a hearing before the juvenile panel, a young person who has a mental disease or defect
 5 in a state of remission is considered to have a mental disease or defect if the mental disease or
 6 defect may, with reasonable medical probability, occasionally become active.

7 (8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be certi-
 8 fied, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in
 9 child psychology to examine the young person and submit a written report to the juvenile panel.
 10 Reports filed with the juvenile panel pursuant to the examination must include, but need not be
 11 limited to, an opinion as to whether the young person:

12 (a)(A) Has a serious mental condition; or

13 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
 14 stantial danger to others; and

15 (b) Could be adequately controlled with treatment services as a condition of release.

16 (9) The juvenile panel may make a determination regarding discharge or conditional release
 17 based upon the written report submitted under subsection (8) of this section or ORS 419C.540 (3).
 18 If a member of the juvenile panel desires further information from the examining psychiatrist or li-
 19 censed psychologist who submitted the report, the juvenile panel shall summon the psychiatrist or
 20 psychologist to give testimony.

21 (10) The juvenile panel shall consider all available evidence that is material, relevant and reli-
 22 able regarding the issues before the juvenile panel. Evidence may include, but is not limited to, the
 23 record of the juvenile court adjudication, information supplied by the attorney representing the state
 24 or by any other interested person, including the young person, information concerning the young
 25 person's mental condition and the entire psychiatric and juvenile court history of the young person.
 26 All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their
 27 serious affairs is admissible at the hearings. Testimony must be taken upon oath or affirmation of
 28 the witness from whom received. The officer presiding at the hearing shall administer oaths and
 29 affirmations to witnesses.

30 (11) The standard of proof on all issues at a hearing of the juvenile panel is by a preponderance
 31 of the evidence.

32 (12)(a) The juvenile panel shall furnish **reasonable, accurate and timely** written notice of any
 33 hearing pending under this section [*within a reasonable time prior to the hearing*] to:

34 (A) The young person about whom the hearing is being conducted;

35 (B) The attorney representing the young person;

36 (C) The young person's parents or guardians, if known;

37 (D) The person having legal custody of the young person;

38 (E) The Attorney General or other attorney representing the state, if any; [*and*]

39 (F) The district attorney and the court or juvenile department of the county in which the young
 40 person was adjudicated[.]; **and**

41 **(G) The victim, if the juvenile court or the juvenile panel determines that the victim de-**
 42 **sires notification.**

43 (b) The juvenile panel shall include in the notice required by paragraph (a) of this subsection:

44 (A) The time, place and location of the hearing;

45 (B) The nature of the hearing, the specific action for which the hearing has been requested, the

1 issues to be considered at the hearing and a reference to the particular sections of the statutes and
 2 rules involved;

3 (C) A statement of the authority and jurisdiction under which the hearing is to be held; and

4 (D) A statement of all rights under subsection (13) of this section.

5 [(13)] **(13)(a)** A young person about whom a hearing is being held has the right:

6 [(a)] **(A)** To appear at all proceedings held under this section, except juvenile panel deliber-
 7 ations.

8 [(b)] **(B)** To cross-examine all witnesses appearing to testify at the hearing.

9 [(c)] **(C)** To subpoena witnesses and documents as provided in ORS 161.395.

10 [(d)] **(D)** To be represented by suitable legal counsel possessing skills and experience
 11 commensurate with the nature and complexity of the case, to consult with counsel prior to the
 12 hearing and, if financially eligible, to have suitable counsel appointed at state expense.

13 [(e)] **(E)** To examine all information, documents and reports that the juvenile panel considers
 14 and, if the information, documents and reports are available to the juvenile panel before the hearing,
 15 to examine *[them]* **the information, documents and reports** prior to the hearing.

16 **(b) The victim has, upon request, the right:**

17 **(A) To be heard at all proceedings held under this section, except juvenile panel deliber-**
 18 **ations.**

19 **(B) To examine all information, documents and reports that the juvenile panel considers**
 20 **and, if the information, documents and reports are available to the juvenile panel before the**
 21 **hearing, to examine the information, documents and reports prior to the hearing.**

22 (14) Except for deliberations of the juvenile panel, the juvenile panel shall keep a record of all
 23 hearings before the juvenile panel.

24 (15) Upon request of a person listed in subsection (12)(a) of this section or on its own motion,
 25 the juvenile panel may continue a hearing for a reasonable period not to exceed 60 days to obtain
 26 additional information or testimony or for other good cause shown.

27 (16) Within 15 days after the conclusion of the hearing, the juvenile panel shall provide written
 28 notice of the juvenile panel's decision to the young person, the attorney representing the young
 29 person, the young person's parents or guardians, if known, the person having legal custody of the
 30 young person, the district attorney of the county in which the young person was adjudicated and
 31 the Attorney General or other attorney representing the state, if any.

32 **(17) If the juvenile court or the juvenile panel determines that the victim desires notifi-**
 33 **cation, the juvenile panel shall:**

34 **(a) Provide reasonable, accurate and timely written notice to the victim of the condi-**
 35 **tional release or discharge of the young person; and**

36 **(b) Immediately notify the victim of an escape of the young person.**

37 [(17)] **(18)** The juvenile panel shall maintain and keep current the medical, social and delin-
 38 quency history of all young persons. The juvenile panel shall determine the confidentiality of records
 39 maintained by the juvenile panel pursuant to ORS 192.501 to 192.505.

40 **SECTION 13. Section 14 of this 2010 Act is added to and made a part of ORS chapter 144.**

41 **SECTION 14. (1) When proceedings conducted by the State Board of Parole and Post-**
 42 **Prison Supervision involve an offender convicted of a crime for which there is a victim, the**
 43 **victim has the following rights:**

44 **(a) The right to dignity, respect and privacy;**

45 **(b) The right to a meaningful role in the proceedings conducted by the board;**

1 (c) The right to be reasonably protected from the offender;

2 (d) The right to attend the proceedings in person or, at the discretion of the victim and
3 with advance notice to the board, to attend the proceedings by alternative means;

4 (e) The right to retain legal counsel;

5 (f) The right to retain a psychologist or psychiatrist to provide testimony;

6 (g) The right to request the district attorney to participate in the proceedings;

7 (h) The right to be notified, in advance of the proceedings, of the victims' rights impli-
8 cated in the proceedings; and

9 (i) The right to exercise, upon request:

10 (A) The right to reasonable breaks in the proceedings, including time and opportunity to
11 access food and water;

12 (B) The right to have decisions to release a person incarcerated for a sex crime as de-
13 fined in ORS 181.594 or an offense involving violence be based, in part, on two or more psy-
14 chological or psychiatric reports; and

15 (C) The right to have decisions for early release be based, in part, on two or more psy-
16 chological reports that conclude that the offender will not be a danger to others if released
17 early.

18 (2)(a) The board must attempt to notify the victim, if the victim requests to be notified
19 and furnishes the board a current address, and the district attorney of the committing
20 county at least 30 days before all hearings conducted by the board by sending written notice
21 to the current addresses of both.

22 (b) The victim, personally or by counsel, and the district attorney of the committing ju-
23 risdiction have the right to appear at any hearing and, in their discretion, to submit a writ-
24 ten statement adequately and reasonably expressing any views concerning the crime and the
25 offender.

26 (c) The victim, personally or by counsel, and the district attorney shall be given access
27 to the information that the board will rely upon, including corrections records, security files,
28 psychological reports and the board's entire file concerning the offender, unless otherwise
29 privileged by law. The victim and the district attorney shall be given adequate time to rebut
30 the information.

31 (d) The victim, personally or by counsel, and the district attorney may present informa-
32 tion or evidence at any hearing, including testifying witnesses, in a manner that is substan-
33 tially similar to that provided to the offender.

34 (e) For purposes of this subsection, the victim may appear personally through the
35 victim's next of kin or a representative selected by the victim.

36 (3) Except to the extent section 42 or 43, Article I of the Oregon Constitution, grants
37 rights to, and is enforceable by, a victim in a proceeding conducted by the board, the failure
38 of the board to notify the victim under this section or failure of the victim to appear at the
39 hearing does not affect the validity of the proceeding.

40 **SECTION 15.** ORS 144.120 is amended to read:

41 144.120. (1)(a) Within six months of the admission of a prisoner to any Department of Cor-
42 rections institution, with the exception of those prisoners sentenced to a term of imprisonment for
43 life or for more than five years, the State Board of Parole and Post-Prison Supervision shall conduct
44 a parole hearing to interview the prisoner and set the initial date of release on parole pursuant to
45 subsection (2) of this section. For those prisoners sentenced to a term of imprisonment for more than

1 five years but less than 15 years, the board shall conduct the parole hearing and set the initial date
 2 of release within eight months following admission of the prisoner to the institution. For those
 3 prisoners sentenced to a term of imprisonment for life or for 15 years or more, with the exception
 4 of those sentenced for aggravated murder or murder, the board shall conduct the parole hearing,
 5 and shall set the initial release date, within one year following admission of the prisoner to the in-
 6 stitution. Release shall be contingent upon satisfaction of the requirements of ORS 144.125.

7 (b) Those prisoners sentenced to a term of imprisonment for less than 15 years for commission
 8 of an offense designated by rule by the board as a non person-to-person offense may waive their
 9 rights to the parole hearing. When a prisoner waives the parole hearing, the initial date of release
 10 on parole may be set administratively by the board pursuant to subsections (2) to (6) of this section.
 11 If the board is not satisfied that the waiver was made knowingly or intelligently or if it believes
 12 more information is necessary before making its decision, it may order a hearing.

13 (2) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this
 14 section, the board shall apply the appropriate range established pursuant to ORS 144.780. Vari-
 15 ations from the range shall be in accordance with ORS 144.785.

16 (3) In setting the initial parole release date for a prisoner pursuant to subsection (1) of this
 17 section, the board shall consider the presentence investigation report specified in ORS 144.791 or,
 18 if no such report has been prepared, a report of similar content prepared by the Department of
 19 Corrections.

20 (4) Notwithstanding subsection (1) of this section, in the case of a prisoner whose offense in-
 21 cluded particularly violent or otherwise dangerous criminal conduct or whose offense was preceded
 22 by two or more convictions for a Class A or Class B felony or whose record includes a psychiatric
 23 or psychological diagnosis of severe emotional disturbance such as to constitute a danger to the
 24 health or safety of the community, the board may choose not to set a parole date.

25 (5) After the expiration of six months after the admission of the prisoner to any Department of
 26 Corrections institution, the board may defer setting the initial parole release date for the prisoner
 27 for a period not to exceed 90 additional days pending receipt of psychiatric or psychological reports,
 28 criminal records or other information essential to formulating the release decision.

29 (6) When the board has set the initial parole release date for a prisoner, it shall inform the
 30 sentencing court of the date.

31 *[(7) The State Board of Parole and Post-Prison Supervision must attempt to notify the victim, if the*
 32 *victim requests to be notified and furnishes the board a current address, and the district attorney of*
 33 *the committing county at least 30 days before all hearings by sending written notice to the current ad-*
 34 *dresses of both. The victim, personally or by counsel, and the district attorney from the committing*
 35 *jurisdiction shall have the right to appear at any hearing or, in their discretion, to submit a written*
 36 *statement adequately and reasonably expressing any views concerning the crime and the person re-*
 37 *sponsible. The victim and the district attorney shall be given access to the information that the board*
 38 *or division will rely upon and shall be given adequate time to rebut the information. Both the victim*
 39 *and the district attorney may present information or evidence at any hearing, subject to such reasonable*
 40 *rules as may be imposed by the officers conducting the hearing. For the purpose of this subsection,*
 41 *“victim” includes the actual victim, a representative selected by the victim, the victim’s next of kin or,*
 42 *in the case of abuse of corpse in any degree, an appropriate member of the immediate family of the*
 43 *decedent.]*

44 **SECTION 16.** ORS 144.108 is amended to read:

45 144.108. (1) If the violation of post-prison supervision is new criminal activity or if the supervi-

1 sory authority finds that the continuum of sanctions is insufficient punishment for a violation of the
 2 conditions of post-prison supervision, the supervisory authority may:

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

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

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

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

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

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

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

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

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

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

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

26 *[(B) To appear personally at the hearing; and]*

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

28 *[(b) Except to the extent section 42 or 43, Article I of the Oregon Constitution, grants rights to, and*
 29 *is enforceable by, a victim in a proceeding conducted by the board, the failure of the board to notify*
 30 *the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does*
 31 *not affect the validity of the proceeding.]*

32 **SECTION 17.** ORS 144.343 is amended to read:

33 144.343. (1) When the State Board of Parole and Post-Prison Supervision or its designated rep-
 34 resentative has been informed and has reasonable grounds to believe that a person under its juris-
 35 diction has violated a condition of parole and that revocation of parole may be warranted, the board
 36 or its designated representative shall conduct a hearing as promptly as convenient to determine
 37 whether there is probable cause to believe a violation of one or more of the conditions of parole
 38 has occurred and also conduct a parole violation hearing if necessary. Evidence received and the
 39 order of the court at a preliminary hearing under ORS 135.070 to 135.225 may be used by the board
 40 to determine the existence of probable cause. A waiver by the defendant of any preliminary hearing
 41 shall also constitute a waiver of probable cause hearing by the board. The location of the hearing
 42 shall be reasonably near the place of the alleged violation or the place of confinement.

43 (2) The board may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) Whether to reinstate parole;

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

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

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

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

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

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

1 and

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

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

11 (6)(a) The parolee may admit or deny the violation without being physically present at the
 12 hearing if the parolee appears before the board or its designee by means of simultaneous television
 13 transmission allowing the board to observe and communicate with the parolee and the parolee to
 14 observe and communicate with the board or by telephonic communication allowing the board to
 15 communicate with the parolee and the parolee to communicate with the board.

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

19 (7) If the board or its designated representative has determined that there is probable cause to
 20 believe that a violation of one or more of the conditions of parole has occurred, the hearing shall
 21 proceed to receive evidence from which the board may determine whether to reinstate or continue
 22 the alleged parole violator on parole subject to the same or modified conditions of parole or revoke
 23 parole and require that the parole violator serve a term of imprisonment as provided by ORS
 24 144.346.

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

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

34 *[(A) Upon request made within the time period prescribed in the notice required by ORS 147.417,*
 35 *to be notified by the board of any hearing before the board that may result in the revocation of the*
 36 *parolee's parole;]*

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

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

39 *[(b) Except to the extent section 42 or 43, Article I of the Oregon Constitution, grants rights to, and*
 40 *is enforceable by, a victim in a proceeding conducted by the board, the failure of the board to notify*
 41 *the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does*
 42 *not affect the validity of the proceeding.]*

43 **SECTION 18.** ORS 181.601 is amended to read:

44 181.601. (1)(a) When information about a person is first entered into the Law Enforcement Data
 45 System under ORS 181.592, the person will be assigned a registry identification number.

1 (b) A victim shall be issued a victim identification number and shall be given the registry iden-
2 tification number of the person who committed the crime against the victim:

3 (A) At any time, upon request by the victim; and

4 (B) Upon verification of the identification of the victim.

5 (2) The Department of State Police shall establish a toll-free telephone number to provide vic-
6 tims with updates on the prison status, release information, parole status and any other information
7 authorized for release in ORS 181.592 (2) and (3) regarding the person who committed the crime
8 against the victim. The telephone line shall be operational within the state during normal working
9 hours.

10 (3) Access of the victim to the telephone line shall be revoked if the victim makes public, or
11 otherwise misuses, information received.

12 (4) When a victim receives notification under [ORS 144.120 (7)] **section 14 of this 2010 Act** of
13 upcoming parole release hearings, or at any other time that the victim is notified concerning the
14 offender, the victim shall be provided a notice of rights under this section and information about the
15 toll-free telephone number.

16 **SECTION 19. This 2010 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
18 **on its passage.**

19 _____