

Enrolled
House Bill 2663

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to crime; amending ORS 147.508, 147.512, 147.515 and 147.537; and declaring an emergency.

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

SECTION 1. ORS 147.512 is amended to read:

147.512. (1) Notwithstanding ORS 147.510, at the beginning of *[any]* **each judicial settlement conference**, plea hearing *[and any]* **or** sentencing hearing, the prosecuting attorney shall inform the court whether the victim is present. **If the victim is not present and the case involves a defendant charged with a violent felony, the prosecuting attorney shall inform the court whether the victim was informed of the conference or hearing.**

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

(a) If the victim requests, the prosecuting attorney shall make reasonable efforts to consult the victim *[regarding plea discussions]* before making a *[final]* plea **offer and before entering into a final plea agreement.**

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

(A) If the victim is present, the court shall ask whether the victim **was consulted regarding plea negotiations, if the victim** agrees or disagrees with the plea agreement as presented to the court and whether the victim wishes to be heard regarding the plea agreement.

(B) If the victim is not present, the court shall ask the prosecuting attorney whether the victim requested to be *[notified]* **informed** and consulted regarding plea negotiations. If the victim made such a request, the court shall ask the prosecuting attorney **what reasonable efforts to inform and consult the victim concerning plea negotiations were made and** whether the victim agrees or disagrees with the plea agreement.

(c) If the court finds that the victim requested consultation regarding plea negotiations and that the prosecuting attorney failed to make reasonable efforts to consult *[with]* the victim, the court shall direct the prosecuting attorney to make reasonable efforts to consult *[with]* the victim and may not accept the plea unless the court makes a finding on the record that the interests of justice require the acceptance of the plea.

(3) Before the court imposes sentence, the court shall ask whether the victim wishes to express the views described in ORS 137.013.

SECTION 2. ORS 147.508 is amended to read:

147.508. (1) At the request of a victim, the prosecuting attorney may request that the court schedule a hearing to reconsider a release decision if:

(a) The victim did not have notice of, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount; and

(b) The victim's request is made no later than [seven] 30 days after the victim knew or reasonably should have known of the release decision that is to be reconsidered.

(2) As used in this section, "release decision" includes:

(a) Decisions made at arraignment; and

(b) Decisions made at hearings described in ORS 419C.273 (4)(b)(A) to (C).

SECTION 3. ORS 147.515 is amended to read:

147.515. (1) A victim who wishes to allege a violation of a right granted to the victim in a criminal proceeding by section 42 or 43, Article I of the Oregon Constitution, shall inform the court within [seven] 30 days of the date the victim knew or reasonably should have known of the facts supporting the allegation. The victim shall describe the facts supporting the allegation and propose a remedy.

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

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

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

(3) If the victim informs the court of a facially valid claim on a form under subsection (2)(a) of this section, the court shall promptly issue the order to show cause described in ORS 147.517.

(4) If the victim informs the court of a facially valid claim orally under subsection (2)(b) of this section and the court determines:

(a) That each person entitled to notice of the claim and a reasonable opportunity to be heard is present, the court shall hold a hearing under ORS 147.530 as soon as practicable; or

(b) That any person entitled to notice of the claim and a reasonable opportunity to be heard is not present, the court shall issue the order to show cause described in ORS 147.517.

(5) If the court determines that the victim has not alleged a facially valid claim, the court shall enter an order dismissing the claim. The order must:

(a) Include the reasons the claim was dismissed;

(b) Be without prejudice to file, within seven days from the date the victim receives the order dismissing the claim, a corrected claim for the sole purpose of correcting the deficiency identified by the court; and

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

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

SECTION 4. ORS 147.537 is amended to read:

147.537. (1) Appellate review of an order described in ORS 147.535 (4)(a) must be initiated by filing a notice of interlocutory appeal with the Supreme Court substantially in the form prescribed by rule of the Supreme Court. Review of the order is a matter of right.

(2) The person filing the notice of interlocutory appeal shall be identified as the appellant and the defendant shall be identified as the respondent. Any other person described in subsection (6)(a) to (f) of this section who is a party to the appeal shall be identified as a respondent.

(3) The notice of interlocutory appeal must contain:

(a) A designation of those portions of the trial court record, including oral proceedings, to be included in the record on appeal; and

(b) A statement of why the notice is timely.

(4) The appellant shall include with the notice of interlocutory appeal the following materials:

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

(b) Excerpts of the record necessary to determine the question presented and the relief sought. An excerpt of record must include a copy of the form described in ORS 147.515 (2)(a), if the form was completed and provided to the trial court.

- (c) A memorandum of law containing:
 - (A) A concise but complete statement of facts material to a determination of the question presented and the relief sought; and
 - (B) Supporting arguments and citations of authority.
- (5) The Supreme Court may:
 - (a) Direct a party to the appeal to supplement the record with a copy of additional parts of the record or a transcript of the parts of the oral proceedings in the trial court necessary to determine the question presented and the relief sought; or
 - (b) Direct the trial court administrator to forward all or part of the trial court record.
- (6) The appellant shall serve a copy of the notice of interlocutory appeal and the accompanying materials described in subsection (4) of this section on the following other persons:
 - (a) The victim who asserted the claim that resulted in the order being appealed and any victim who asserted a related claim;
 - (b) Any person who filed a response under ORS 147.517 (4) to the claim that resulted in the order being appealed or a related claim;
 - (c) Any person who filed the motion that resulted in the order being appealed or a related motion under ORS 147.522;
 - (d) Any person against whom relief was sought in the hearing that resulted in the order being appealed or a related hearing under ORS 147.530;
 - (e) The prosecuting attorney;
 - (f) The Attorney General;
 - (g) The defendant; and
 - (h) The office of public defense services established under ORS 151.216, if the defendant is represented by appointed counsel.
- (7) The appellant shall serve a copy of the notice of interlocutory appeal on:
 - (a) The trial court administrator; and
 - (b) The trial court transcript coordinator, if the notice of interlocutory appeal contains a designation of the oral proceedings before the trial court as part of the record on appeal.
- (8)(a) Except as otherwise provided in this subsection, the appellant shall serve and file the notice of interlocutory appeal and, if applicable, the accompanying materials described in subsection (4) of this section within seven days after the date the trial court issued the order being appealed.
 - (b) The appellant shall serve the prosecuting attorney and the Attorney General so that the copy of the notice of interlocutory appeal and accompanying materials are received on the same day the notice is filed with the Supreme Court.
 - (c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all persons described in subsections (6) and (7) of this section so that the copy of the notice of interlocutory appeal and, if applicable, accompanying materials are received no later than one judicial day after the notice is filed.
- (9) Within three days after receipt of a notice of interlocutory appeal that contains a designation of record under subsection (3) of this section, the trial court administrator shall forward to the Supreme Court an audio record of the designated oral proceedings.
- (10) If the Supreme Court directs a party to provide a transcript of oral proceedings under subsection (5) of this section, the party shall provide the transcript to the Supreme Court within seven days after the date of the Supreme Court's order.
- (11)(a) The following requirements are jurisdictional and may not be waived or extended:
 - (A) The timely filing of the original notice of interlocutory appeal and accompanying materials described in subsection (4) of this section with the Supreme Court; and
 - (B) The service of the notice of interlocutory appeal within the time limits described in subsection (8) of this section on all persons identified in subsection (6) of this section.
- (b) Failure to timely serve a true and complete copy of the accompanying materials described in subsection (4) of this section is not jurisdictional, provided that the appellant made a good faith effort to do so and substantially complied with those requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) In addition to any other method authorized by law, service under this section may be accomplished by electronic mail or facsimile transmission, in a manner consistent with any applicable rules of appellate procedure.

SECTION 5. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House May 4, 2011

Repassed by House June 17, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 15, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State