

B-Engrossed
House Bill 2663

Ordered by the Senate June 13
Including House Amendments dated April 28 and Senate Amendments
dated June 13

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

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.

Modifies rights granted to victim of crime in criminal prosecution. Extends period of time within which victim may assert rights.

Allows notice of interlocutory appeal to be sent by electronic mail or facsimile transmission.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 147.508, 147.512, 147.515 and 147.537; and declaring an emergency.

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

4 **SECTION 1.** ORS 147.512 is amended to read:

5 147.512. (1) Notwithstanding ORS 147.510, at the beginning of [*any*] **each judicial settlement**
6 **conference**, plea hearing [*and any*] **or** sentencing hearing, the prosecuting attorney shall inform the
7 court whether the victim is present. **If the victim is not present and the case involves a de-**
8 **fendant charged with a violent felony, the prosecuting attorney shall inform the court**
9 **whether the victim was informed of the conference or hearing.**

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

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

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

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

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

23 (c) If the court finds that the victim requested consultation regarding plea negotiations and that
24 the prosecuting attorney failed to make reasonable efforts to consult [*with*] the victim, the court
25 shall direct the prosecuting attorney to make reasonable efforts to consult [*with*] the victim and may

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 not accept the plea unless the court makes a finding on the record that the interests of justice re-
2 quire the acceptance of the plea.

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

5 **SECTION 2.** ORS 147.508 is amended to read:

6 147.508. (1) At the request of a victim, the prosecuting attorney may request that the court
7 schedule a hearing to reconsider a release decision if:

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

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

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

13 (a) Decisions made at arraignment; and

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

15 **SECTION 3.** ORS 147.515 is amended to read:

16 147.515. (1) A victim who wishes to allege a violation of a right granted to the victim in a
17 criminal proceeding by section 42 or 43, Article I of the Oregon Constitution, shall inform the court
18 within [*seven*] **30** days of the date the victim knew or reasonably should have known of the facts
19 supporting the allegation. The victim shall describe the facts supporting the allegation and propose
20 a remedy.

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

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

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

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

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

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

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

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

35 (a) Include the reasons the claim was dismissed;

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

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

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

45 **SECTION 4.** ORS 147.537 is amended to read:

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

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

7 (3) The notice of interlocutory appeal must contain:

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

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

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

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

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

17 (c) A memorandum of law containing:

18 (A) A concise but complete statement of facts material to a determination of the question pre-
19 sented and the relief sought; and

20 (B) Supporting arguments and citations of authority.

21 (5) The Supreme Court may:

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

25 (b) Direct the trial court administrator to forward all or part of the trial court record.

26 (6) The appellant shall serve a copy of the notice of interlocutory appeal and the accompanying
27 materials described in subsection (4) of this section on the following other persons:

28 (a) The victim who asserted the claim that resulted in the order being appealed and any victim
29 who asserted a related claim;

30 (b) Any person who filed a response under ORS 147.517 (4) to the claim that resulted in the or-
31 der being appealed or a related claim;

32 (c) Any person who filed the motion that resulted in the order being appealed or a related mo-
33 tion under ORS 147.522;

34 (d) Any person against whom relief was sought in the hearing that resulted in the order being
35 appealed or a related hearing under ORS 147.530;

36 (e) The prosecuting attorney;

37 (f) The Attorney General;

38 (g) The defendant; and

39 (h) The office of public defense services established under ORS 151.216, if the defendant is re-
40 presented by appointed counsel.

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

42 (a) The trial court administrator; and

43 (b) The trial court transcript coordinator, if the notice of interlocutory appeal contains a des-
44 ignation of the oral proceedings before the trial court as part of the record on appeal.

45 (8)(a) Except as otherwise provided in this subsection, the appellant shall serve and file the no-

1 tice of interlocutory appeal and, if applicable, the accompanying materials described in subsection
2 (4) of this section within seven days after the date the trial court issued the order being appealed.

3 (b) The appellant shall serve the prosecuting attorney and the Attorney General so that the
4 copy of the notice of interlocutory appeal and accompanying materials are received on the same day
5 the notice is filed with the Supreme Court.

6 (c) Except as provided in paragraph (b) of this subsection, the appellant shall serve all persons
7 described in subsections (6) and (7) of this section so that the copy of the notice of interlocutory
8 appeal and, if applicable, accompanying materials are received no later than one judicial day after
9 the notice is filed.

10 (9) Within three days after receipt of a notice of interlocutory appeal that contains a designation
11 of record under subsection (3) of this section, the trial court administrator shall forward to the Su-
12 preme Court an audio record of the designated oral proceedings.

13 (10) If the Supreme Court directs a party to provide a transcript of oral proceedings under
14 subsection (5) of this section, the party shall provide the transcript to the Supreme Court within
15 seven days after the date of the Supreme Court's order.

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

17 (A) The timely filing of the original notice of interlocutory appeal and accompanying materials
18 described in subsection (4) of this section with the Supreme Court; and

19 (B) The service of the notice of interlocutory appeal within the time limits described in sub-
20 section (8) of this section on all persons identified in subsection (6) of this section.

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

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

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

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

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

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

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

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

45 (b) The Supreme Court may issue a final decision beyond the 21-day period if the court deter-

1 mines that the ends of justice served by issuing a final decision at a later date outweigh the best
2 interests of the victim, the prosecuting attorney, the defendant, any person against whom relief was
3 ordered and the public.

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

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

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

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

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

20 (19) Notwithstanding any other provision of law, a notice of interlocutory appeal and the re-
21 sponse described in subsection (12) of this section are filed under this section when those documents
22 are physically received by the Supreme Court or, if the documents are filed electronically, as pro-
23 vided by rule of the Chief Justice of the Supreme Court.

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

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

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