

Senate Bill 38

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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**.

Modifies Department of Justice crime victims' compensation program.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime victims' compensation; creating new provisions; amending ORS 147.005, 147.015,
3 147.025 and 147.035; and declaring an emergency.

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

5 **SECTION 1.** ORS 147.035 is amended to read:

6 147.035. *[(1) Losses compensable under ORS 135.905 and 147.005 to 147.367 resulting from death*
7 *or injury to a victim include:]*

8 *[(a) In the case of injury:]*

9 *[(A) Reasonable medical and hospital expenses, including psychiatric, psychological or counseling*
10 *expenses and further including, in cases of:]*

11 *[(i) Child sexual abuse, rape of a child and exploitation described in ORS 419B.005 (1)(a)(C), (D)*
12 *or (E), counseling expenses of the victim's family up to a maximum amount of \$20,000;]*

13 *[(ii) Domestic violence, as defined in ORS 135.230, counseling expenses of children who witnessed*
14 *the domestic violence up to a maximum amount of \$10,000; or]*

15 *[(iii) International terrorism, counseling expenses of a relative of the victim up to a maximum*
16 *amount of \$1,000;]*

17 *[(B) Loss of earnings, not exceeding \$400 per week up to a maximum amount of \$20,000;]*

18 *[(C) Rehabilitation up to a maximum amount of \$4,000; and]*

19 *[(D) Transportation for medical care and mental health counseling when the treatment is*
20 *compensable under this section, the treatment is provided more than 30 miles away from the victim's*
21 *residence and adequate treatment is not available closer to the victim's residence. Payment will be made*
22 *at a rate set by the Department of Justice up to a maximum amount of \$3,000.]*

23 *[(b) In the case of death:]*

24 *[(A) Reasonable funeral expenses up to a maximum amount of \$5,000;]*

25 *[(B) Reasonable medical and hospital expenses up to a maximum amount of \$20,000;]*

26 *[(C) Loss of support to the dependents of the victim not exceeding \$400 per week up to a maximum*
27 *amount of \$20,000, less any amounts paid for loss of earnings;]*

28 *[(D) Reasonable counseling expenses for the survivors of a deceased victim up to a maximum*
29 *amount of \$20,000 for each deceased victim; and]*

30 *[(E) Transportation for mental health counseling when the treatment is compensable under this*

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 *section, the treatment is provided more than 30 miles away from the survivor's or dependent's residence*
 2 *and adequate treatment is not available closer to the survivor's or dependent's residence. Payment will*
 3 *be made at a rate set by the Department of Justice up to a maximum amount of \$3,000.]*

4 [(2) *Compensable losses do not include:*]

5 [(a) *Pain and suffering or property damage; or*]

6 [(b) *Aggregate damages to the victim and to the dependents of a victim exceeding \$47,000.*]

7 [(3) *Notwithstanding subsections (1) and (2) of this section, in the case of abuse of corpse in any*
 8 *degree, losses compensable under ORS 135.905 and 147.005 to 147.367 resulting from the abuse of the*
 9 *corpse may include:*]

10 (1)(a) **Except as otherwise provided in ORS 147.025 and 147.390, compensation may be**
 11 **awarded under ORS 147.005 to 147.367 only for losses described in this section.**

12 (b) **The maximum amount of compensation that may be awarded to a victim or a survivor**
 13 **or dependent of a deceased victim under ORS 147.005 to 147.367 is \$20,000. The maximum**
 14 **amount of compensation that may be awarded, in aggregate, to the victim and the survivors**
 15 **and dependents of a deceased victim is \$47,000.**

16 (c) **When a compensable crime results in:**

17 (A) **Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this sec-**
 18 **tion are compensable.**

19 (B) **Death to a victim, the losses described in subsections (3), (4), (6), (7) and (8) of this**
 20 **section are compensable.**

21 (2) **When a claim for compensation is filed in a case of injury, compensation may be**
 22 **awarded for:**

23 (a) **The victim's reasonable medical and hospital expenses, including counseling expenses,**
 24 **up to a maximum amount of \$20,000;**

25 (b) **Loss of the victim's earnings, at a maximum rate of \$400 per week, up to a maximum**
 26 **amount of \$20,000;**

27 (c) **The victim's rehabilitation expenses, up to a maximum amount of \$4,000; and**

28 (d) **Expenses related to transportation for the victim's medical care or counseling, at a**
 29 **rate determined by the Department of Justice, up to a maximum amount of \$3,000, when:**

30 (A) **The medical care or counseling is compensable under this section;**

31 (B) **The medical care or counseling is provided more than 30 miles away from the victim's**
 32 **residence; and**

33 (C) **Adequate medical care or counseling is not available in closer proximity to the**
 34 **victim's residence.**

35 (3) **When a claim for compensation is filed in a case of death, compensation may be**
 36 **awarded for:**

37 (a) **Reasonable funeral expenses, up to a maximum amount of \$5,000;**

38 (b) **The victim's reasonable medical and hospital expenses, up to a maximum amount of**
 39 **\$20,000;**

40 (c) **Loss of support to the dependents of the victim, at a maximum rate of \$400 per week,**
 41 **up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under**
 42 **subsection (2)(b) of this section;**

43 (d) **Reasonable counseling expenses for the survivors of a deceased victim, up to a max-**
 44 **imum amount of \$20,000 for each deceased victim; and**

45 (e) **Expenses related to transportation for a survivor's or a dependent's counseling, at a**

1 rate determined by the department, up to a maximum amount of \$3,000, when:

2 (A) The counseling is compensable under this section;

3 (B) The counseling is provided more than 30 miles away from the survivor's or
4 dependent's residence; and

5 (C) Adequate counseling is not available in closer proximity to the survivor's or
6 dependent's residence.

7 (4) When a claim for compensation is filed in a case of:

8 (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described
9 in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are
10 compensable up to a maximum amount of \$20,000, less any amounts awarded for the victim's
11 medical or hospital expenses under subsection (2)(a) of this section.

12 (b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who
13 witnessed the domestic violence are compensable up to a maximum amount of \$10,000.

14 (c) International terrorism, the counseling expenses of a relative of the victim are
15 compensable up to a maximum amount of \$1,000.

16 (5) Compensation may not be awarded under ORS 147.005 to 147.367 for pain and suffering
17 or property damage.

18 (6) Notwithstanding subsections (2) to (5) of this section, when a claim for compensation
19 is filed in a case of abuse of corpse in the first degree as defined in ORS 166.087 or abuse of
20 corpse in the second degree as defined in ORS 166.085, compensation may be awarded for one
21 or both of the following:

22 (a) Reasonable funeral expenses, up to a maximum amount of \$5,000; *or*].

23 (b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000
24 for each incident.

25 [(4)] (7) If the case against the assailant of the victim is under direct or collateral review[,
26 *compensable losses may include:*] **and the victim, survivor or dependent attends the hearing or
27 oral argument, compensation may be awarded for:**

28 (a) [*Crime-related*] **The victim's, survivor's or dependent's** counseling expenses up to a maxi-
29 mum amount of \$5,000; [*or*] **and**

30 (b) Other expenses related to the review, including transportation and lodging necessary for the
31 victim, **survivor or dependent** to attend hearings and oral arguments, up to a maximum amount
32 of \$3,000.

33 [(5)] (8) If the assailant of the victim has a [*parole*] hearing scheduled before the State Board
34 of Parole and Post-Prison Supervision[, *compensable losses may include:*] **or the Psychiatric Secu-
35 rity Review Board and the victim, survivor or dependent attends the hearing, compensation
36 may be awarded for:**

37 (a) [*Crime-related*] **The victim's, survivor's or dependent's** counseling expenses up to a maxi-
38 mum amount of \$5,000; [*or*] **and**

39 (b) Other expenses related to the hearing, including transportation and lodging necessary for the
40 victim, **survivor or dependent** to attend the hearing, up to a maximum amount of \$3,000.

41 [(6)] (9) [*Except as provided in subsections (7) to (10) of this section,*] A claim for [*benefits*] **com-
42 pensation** expires and no further payments may be made with regard to the claim:

43 (a) When three years have elapsed [*since*] **from** the entry of a determination order under ORS
44 147.135; or

45 (b) **If the victim, survivor or dependent attains 21 years of age after the date described**

1 **in paragraph (a) of this subsection**, when the victim, survivor or dependent attains 21 years of
 2 age., *whichever comes later. The extension of benefits and payments until the victim, survivor or de-*
 3 *pendent attains 21 years of age applies to claims filed on or after August 4, 1991.*

4 [(7)] **(10) Notwithstanding subsection (9) of this section:**

5 (a) If the victim has suffered catastrophic injuries, a claim for [*benefits*] **compensation** and
 6 payments may continue beyond the period described in subsection [(6)] (9) of this section. The de-
 7 partment [*of Justice*] shall adopt rules defining catastrophic injuries and establishing the length of
 8 time that a claim for [*benefits*] **compensation** and payments may continue.

9 [(8)] (b) In cases of homicide, a claim for reasonable counseling expenses for [*surviving family*
 10 *members*] **survivors** may continue until five years have elapsed from the date of the determination
 11 order.

12 [(9) *Claims described in subsection (4) of this section:*]

13 [(a) *May be submitted each time an assailant's case is under direct or collateral review; and*]

14 [(b) *Do not expire until six months after the completion of the direct or collateral review.*]

15 [(10) *Claims described in subsection (5) of this section do not expire until the earlier of six months*
 16 *after the parole hearing for which the application was submitted or the assailant's release.*]

17 (c) **Claims described in subsection (7) of this section may be filed each time an assailant's**
 18 **case is under direct or collateral review and expire:**

19 (A) **If the assailant is released as a result of the direct or collateral review, when six**
 20 **months have elapsed from the date the assailant is released; or**

21 (B) **If the assailant is not released as a result of the direct or collateral review, when six**
 22 **months have elapsed from the completion of the review.**

23 (d) **Claims described in subsection (8) of this section may be filed each time an assailant**
 24 **has a hearing before the State Board of Parole and Post-Prison Supervision or the Psychi-**
 25 **atric Security Review Board and expire:**

26 (A) **If the assailant is denied parole, conditional release or discharge, when six months**
 27 **have elapsed from the date of the hearing.**

28 (B) **If the assailant is paroled, conditionally released or discharged, when six months have**
 29 **elapsed from the date the assailant is paroled, conditionally released or discharged.**

30 (11) The department shall adopt rules for medical fee schedules. The schedules shall represent
 31 at least the 75th percentile of the usual and customary fees charged to the public as determined by
 32 the department. An applicant or victim may not be charged for the percentile amount reduced by
 33 the department.

34 **SECTION 2. ORS 147.035 (9) applies only to claims filed on or after August 4, 1991.**

35 **SECTION 3. ORS 147.015 is amended to read:**

36 147.015. A person is eligible for an award of compensation under ORS [*135.905 and*] 147.005 to
 37 147.367 if:

38 (1) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable
 39 crime that has resulted in or may result in a compensable loss;

40 (2) The appropriate law enforcement officials were notified of the perpetration of the crime
 41 allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the
 42 Department of Justice finds good cause exists for the failure of notification;

43 (3) The applicant has cooperated fully with law enforcement officials in the apprehension and
 44 prosecution of the assailant or the department has found that the applicant's failure to cooperate
 45 was for good cause;

1 (4) The application for compensation is not the result of collusion between the applicant and the
 2 assailant of the victim;

3 (5) The death or injury to the victim was not substantially attributable to the wrongful act of
 4 the victim or substantial provocation of the assailant of the victim; and

5 (6) The application for an award of compensation under ORS [135.905 and] 147.005 to 147.367 is
 6 filed with the department:

7 (a) Within [six months] **one year** of the date of the injury to the victim; or

8 (b) Within such further extension of time as the department for good cause shown, allows.

9 **SECTION 4.** ORS 147.025 is amended to read:

10 147.025. (1) Notwithstanding that a person is not a victim or a dependent of a deceased victim
 11 under ORS 147.015 (1), the person is eligible for compensation for reasonable medical expenses for
 12 the victim and for reasonable funeral expenses of the deceased victim if the person:

13 (a) Paid or incurred such expenses; and

14 (b) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (2)
 15 to (6) are met.

16 (2) Notwithstanding that a person is not a survivor or dependent of a deceased victim under
 17 ORS 147.015 (1), the person is eligible for compensation for reasonable counseling expenses up to a
 18 maximum amount of \$500 if the person:

19 (a) Paid or incurred such expenses;

20 (b) Was a friend or acquaintance of the victim;

21 (c) Was the first person to discover the corpse of the victim; and

22 (d) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (2)
 23 to (6) are met.

24 **(3) Notwithstanding that a person is not a victim or a survivor or dependent of a de-**
 25 **ceased victim under ORS 147.015 (1), the person is eligible for the compensation described in**
 26 **ORS 147.035 (7) and (8) if:**

27 **(a) The person is the personal representative, as defined by the Department of Justice**
 28 **by rule, of a victim or of a survivor or dependent of a deceased victim;**

29 **(b) The person attends the hearing or oral argument in lieu of the victim, survivor or**
 30 **dependent; and**

31 **(c) The person files a claim in the manner provided in ORS 147.105 and the conditions in**
 32 **ORS 147.015 (2) to (6) are met.**

33 [(3)] (4) The Department of Justice may pay directly to the provider of the services compen-
 34 sation for medical, funeral or counseling expenses incurred by the person.

35 **SECTION 5.** ORS 147.005 is amended to read:

36 147.005. As used in ORS [135.905 and] 147.005 to 147.367 unless the context requires otherwise:

37 (1) "Applicant" means:

38 (a) Any victim of a compensable crime who applies to the Department of Justice for compen-
 39 sation under ORS [135.905 and] 147.005 to 147.367;

40 (b) Any person who was a dependent of a deceased victim at the time of the death of that victim;

41 (c) Any person who is a survivor of a deceased victim; or

42 (d) Any person eligible for compensation under ORS 147.025.

43 (2) "Board" means the Workers' Compensation Board.

44 (3) "Child" means an unmarried person who is under 18 years of age and includes a posthumous
 45 child, stepchild or an adopted child.

1 (4) “Compensable crime” means abuse of corpse in any degree or an intentional, knowing, [or]
 2 reckless **or criminally negligent** act that results in serious bodily injury or death of another person
 3 and [which] **that**, if committed by a person of full legal capacity, would be punishable as a crime in
 4 this state.

5 **(5) “Counseling” has the meaning given that term by the department by rule.**

6 [(5)] (6) “Dependent” means such relatives of a deceased victim who wholly or partially were
 7 dependent upon the victim’s income at the time of death or would have been so dependent but for
 8 the victim’s incapacity due to the injury from which the death resulted.

9 [(6)] (7) “Department” means the Department of Justice.

10 [(7)] (8) “Funeral expenses” means expenses of the funeral, burial, cremation or other chosen
 11 method of interment, including plot or tomb and other necessary incidents to the disposition of the
 12 remains and also including, in the case of abuse of corpse in any degree, reinterment.

13 [(8)] (9) “Injury” means abuse of a corpse or actual bodily harm and, with respect to a victim,
 14 includes pregnancy and mental or nervous shock.

15 [(9)] (10) “International terrorism” means activities that:

16 (a) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws
 17 of the United States or any state or that would be a criminal violation if committed within the ju-
 18 risdiction of the United States or of any state;

19 (b) Appear to be intended to:

20 (A) Intimidate or coerce a civilian population;

21 (B) Influence the policy of a government by intimidation or coercion; or

22 (C) Affect the conduct of a government by assassination or kidnapping; and

23 (c) Occur primarily outside the territorial jurisdiction of the United States or transcend national
 24 boundaries in terms of the means by which they are accomplished, the persons they appear intended
 25 to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

26 [(10)] (11) “Law enforcement official” means a sheriff, constable, marshal, municipal police offi-
 27 cer or member of the Oregon State Police and such other persons as may be designated by law as
 28 a peace officer.

29 [(11)] (12) “Relative” means a person related to the victim within the third degree as determined
 30 by the common law, a spouse, or an individual related to the spouse within the third degree as so
 31 determined and includes an individual in an adoptive relationship.

32 [(12)] (13) “Survivor” means any spouse, parent, grandparent, guardian, sibling, child or other
 33 immediate family member or household member of a deceased victim.

34 [(13)] (14) “Victim” means:

35 (a) A person:

36 (A) Killed or injured in this state as a result of a compensable crime perpetrated or attempted
 37 against that person;

38 (B) Killed or injured in this state while attempting to assist a person against whom a
 39 compensable crime is being perpetrated or attempted, if that attempt of assistance would be ex-
 40 pected of a reasonable person under the circumstances;

41 (C) Killed or injured in this state while assisting a law enforcement official to apprehend a
 42 person who has perpetrated a crime or to prevent the perpetration of any such crime, if that as-
 43 sistance was in response to the express request of the law enforcement official;

44 (D) Killed or injured in another state as a result of a criminal episode that began in this state;

45 (E) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated

1 or attempted against the person in a state, within the United States, without a reciprocal crime
2 victims' compensation program; or

3 (F) Who is an Oregon resident killed or injured by an act of international terrorism committed
4 outside the United States; or

5 (b) In the case of abuse of corpse in any degree, the corpse or a relative of the corpse.

6 **SECTION 6. The amendments to ORS 147.005, 147.015, 147.025 and 147.035 by sections 1,
7 3, 4 and 5 of this 2011 Act apply to applications for compensation filed on or after the effec-
8 tive date of this 2011 Act.**

9 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
11 on its passage.**

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