

Enrolled
House Bill 4169

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

CHAPTER

AN ACT

Relating to offenses; creating new provisions; amending ORS 135.891, 147.045, 147.105, 147.115, 147.135, 147.165, 147.205, 147.215, 147.225, 147.240, 147.315, 147.325, 147.335, 147.345, 147.365, 813.030 and 813.240; repealing ORS 135.905; and declaring an emergency.

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

DISTRICT ATTORNEY DIVERSIONS

SECTION 1. ORS 135.891 is amended to read:

135.891. (1) A diversion agreement carries the understanding that if the defendant fulfills the obligations of the program described therein, the criminal charges filed against the defendant will be dismissed with prejudice. It shall include specifically the waiver of the right to a speedy trial. It may include, but is not limited to, admissions by the defendant, stipulation of facts, stipulation that depositions of witnesses may be taken pursuant to ORS 136.080 to 136.100, payment of costs as defined in ORS 135.705, restitution, performance of community service, residence in a halfway house or similar facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

(2) **As a condition of entering into a diversion agreement under ORS 135.881 to 135.901, the defendant must pay a program fee of \$100. The court may waive all or part of the fee in cases involving indigent defendants, or may provide for payment of the fee on an installment basis. A fee collected under this subsection in the circuit court shall be deposited by the clerk of the court in the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$35 of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account, and the remainder of the fee shall be paid to the city or county treasurer.**

ALCOHOL-RELATED EVALUATION AND TREATMENT AFTER CONVICTION

SECTION 2. ORS 813.030, as amended by sections 147 and 324, chapter 597, Oregon Laws 2011, is amended to read:

813.030. The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of \$255, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. *[The]* **A circuit court shall deposit the fee in the Criminal Fine Account. If the fee is collected in a municipal or justice court,**

the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account.

SECTION 3. ORS 813.030, as amended by section 3, chapter 671, Oregon Laws 2011, is amended to read:

813.030. *[The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of \$155, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. The fee shall be ordered paid as follows:]*

[(1) \$105 to be credited and distributed under ORS 137.295 as an obligation payable to the state; and]

[(2) \$50 to be paid to the Director of the Oregon Health Authority for deposit in the Intoxicated Driver Program Fund created by ORS 813.270.] **The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of \$255, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. A circuit court shall deposit the fee in the Criminal Fine Account. If the fee is collected in a municipal or justice court, the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account.**

DUII DIVERSION

SECTION 4. ORS 813.240, as amended by sections 167 and 186, chapter 595, Oregon Laws 2011, is amended to read:

813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 is [~~\$386~~] **\$490**. A fee collected under this subsection in the circuit court shall be deposited by the clerk of the court in the Criminal Fine Account. If the fee is collected in a municipal or justice court, [~~\$163~~] **\$290** of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account, and the remainder of the fee shall be paid to the city or county treasurer.

(2) If less than the full filing fee is collected under subsection (1) of this section in a municipal or justice court, the money received shall be allocated first to the Department of Revenue for deposit in the Criminal Fine Account.

(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.

SECTION 5. ORS 813.240, as amended by section 4, chapter 671, Oregon Laws 2011, is amended to read:

813.240. *[(1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 shall be \$286 and shall be ordered paid as follows if the petition is allowed:]*

[(a) \$136 to be credited and distributed under ORS 137.295 as an obligation payable to the state;]

[(b) \$100 to be treated as provided for disposition of fines and costs under ORS 153.630; and]

[(c) \$50 to be paid to the Director of the Oregon Health Authority for deposit in the Intoxicated Driver Program Fund created under ORS 813.270, to be used for purposes of the fund.]

[(2) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.]

(1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 is \$490. A fee collected under this subsection in the circuit court shall be deposited by the clerk of the court in the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$290 of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account, and the remainder of the fee shall be paid to the city or county treasurer.

(2) If less than the full filing fee is collected under subsection (1) of this section in a municipal or justice court, the money received shall be allocated first to the Department of Revenue for deposit in the Criminal Fine Account.

(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.

SECTION 6. (1) The amendments to ORS 135.891, 813.030 and 813.240 by sections 1 to 5 of this 2012 Act become operative April 1, 2012.

(2) The amendments to ORS 135.891 by section 1 of this 2012 Act apply only to diversion agreements entered into under ORS 135.881 to 135.901 on or after April 1, 2012.

(3) The amendments to ORS 813.030 by sections 2 and 3 of this 2012 Act apply only to offenses for which a judgment of conviction is entered on or after April 1, 2012.

(4) The amendments to ORS 813.240 by sections 4 and 5 of this 2012 Act apply only to petitions for diversion filed under ORS 813.210 on or after April 1, 2012.

(5) The amount of any fee collected in a court pursuant to ORS 813.030 or 813.240, as in effect immediately before the effective date of this 2012 Act, is validated.

MISCELLANEOUS

SECTION 7. ORS 135.905 is repealed.

SECTION 8. ORS 147.045 is amended to read:

147.045. (1) Upon filing of a claim pursuant to ORS [135.905 and] 147.005 to 147.367, the Department of Justice shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within 10 days after such notification, the district attorney advises the department that a criminal prosecution is pending upon the same alleged crime and requests that action by the department be deferred, the department shall defer all proceedings under ORS [135.905 and] 147.005 to 147.367 until such time as such criminal prosecution has been concluded and shall so notify the district attorney and the applicant. When such criminal prosecution has been concluded, the district attorney shall promptly so notify the department.

(2) Nothing in this section shall limit the authority of the department to grant emergency awards pursuant to ORS 147.055.

SECTION 9. ORS 147.105 is amended to read:

147.105. (1) An applicant for compensation under ORS [135.905 and] 147.005 to 147.367 must file an application under oath on a form furnished by the Department of Justice. The application shall include:

(a) The name and address of the victim;

(b) If the victim is deceased, the name and address of the applicant and relationship to the victim, the names and addresses of the victim's dependents and the extent to which each is so dependent;

(c) The date and nature of the crime or attempted crime on which the application for compensation is based;

(d) The date and place where, and the law enforcement officials to whom, notification of the crime was given;

(e) The nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;

(f) The loss to the applicant and to such other persons as are specified under paragraph (b) of this subsection, resulting from the injury or death;

(g) The amount of benefits, payments or awards, if any, payable from any source, which the applicant or other person, listed under paragraph (b) of this subsection, has received or for which the applicant or other person is eligible as a result of the injury or death;

(h) Releases authorizing the surrender to the department of reports, documents and other information relating to the matters specified under this subsection; and

- (i) Such other information as the department determines is necessary.
- (2) The department may require that the applicants submit with the application materials substantiating the facts stated in the application.
- (3) If the department finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that the applicant has 30 days from the date of mailing in which to furnish those items to the department. Unless an applicant requests and is granted an extension of time by the department, the department shall reject with prejudice the claim of the applicant for failure to file the additional information or materials within the specified time.
- (4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the department has completed its consideration of the original application.
- (5) The filing of additional information or the amendment of the application pursuant to subsection (3) or (4) of this section shall be considered for the purposes of ORS [135.905 and] 147.005 to 147.367 to have been filed at the same time as the original application.
- (6) Unless the department finds good cause exists for the applicant's failure to satisfy a financial obligation or unless the interest of justice requires otherwise, the department shall not process an application filed by or on behalf of a victim who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the department receives information or materials establishing to the satisfaction of the department that the financial obligation has been satisfied. If the department does not receive the information or materials within one year after the department notifies the applicant of the need to fulfill this requirement, the application is void.
- (7)(a) If at the time of application, the applicant is incarcerated as a result of a conviction of a crime, the application shall be refused and returned to the applicant. The applicant is eligible to refile the application within six months after the applicant is released from incarceration.
- (b) At the time the application is refused and returned, the department shall notify the applicant of the right to refile the claim within six months of release from incarceration.

SECTION 10. ORS 147.115 is amended to read:

147.115. (1) All information submitted to the Department of Justice by an applicant and all hearings of the Workers' Compensation Board under ORS [135.905 and] 147.005 to 147.367 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

- (a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either the apprehension or the trial of the alleged assailant;
- (b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;
- (c) The victim or alleged assailant is a minor; or
- (d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

(2)(a) A record shall be kept of the proceedings held before the board and shall include the board's findings of fact and conclusions concerning the amount of compensation, if any, to which the applicant and the dependents of a deceased victim are entitled.

(b) No part of the record of any proceedings before the board may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have committed perjury in testimony before the board.

(c) Where the interests of justice require, the board may refuse to disclose to the public the names of victims or other material in the record by which the identity of the victim could be discovered.

(3) Notwithstanding subsection (2)(b) and (c) of this section, the record of the proceedings held before the board is a public record. However, any record or report obtained by the board, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in ORS 44.415 (2).

SECTION 11. ORS 147.135 is amended to read:

147.135. After processing the application filed under ORS 147.105 the Department of Justice shall enter an order stating:

(1) Its findings of fact; and

(2) Its decision as to whether or not compensation is due under ORS [135.905 and] 147.005 to 147.367.

SECTION 12. ORS 147.165 is amended to read:

147.165. (1) The award made under ORS [135.905 and] 147.005 to 147.367 shall be paid in a manner determined by the Department of Justice. Payment for medical, hospital and funeral expenses may be made directly to the service providers.

(2) Where a person eligible to receive an award under ORS [135.905 and] 147.005 to 147.367 is a person under the age of 18 years or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall:

(a) File an annual accounting of the award with the department; and

(b) Take such other action as the department shall determine is necessary and appropriate for the benefit of the beneficiary of the award.

(3) A person who is incarcerated is not eligible for payments for loss of earnings for the period of incarceration.

(4) Payment of claims is subject to availability of funds for victim compensation awards as provided in the department budget approved by the Legislative Assembly or the Emergency Board.

SECTION 13. ORS 147.205 is amended to read:

147.205. (1) To carry out the provisions and purposes of ORS [135.905 and] 147.005 to 147.367, the Department of Justice has the power and duty to:

(a) Appoint such employees and agents as it determines are necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(b) Request and obtain from law enforcement agencies, district attorneys, county juvenile departments, the Department of Human Services, the Oregon Youth Authority and the Department of Corrections such assistance and information as will enable the Department of Justice to carry out its functions and duties under ORS 147.005 to 147.367. The Department of Justice may obtain assistance and information under this paragraph, notwithstanding any other law relating to the confidentiality or disclosure of records. The Department of Justice:

(A) Shall maintain the confidentiality of any privileged or confidential information or records obtained under this paragraph;

(B) May use the information or records only for the purposes authorized by ORS 147.005 to 147.367; and

(C) May not disclose the contents of any privileged or confidential records to any other person or entity.

(c) Adopt rules pursuant to ORS chapter 183.

(d) Direct medical examination of victims.

(e) Determine all claims for awards filed with the department pursuant to ORS [135.905 and] 147.005 to 147.367, and to reinvestigate or reopen cases as the department deems necessary.

(f) Report biennially to the Governor and to the Legislative Assembly on its activities.

(2) Notwithstanding any other law relating to the confidentiality or disclosure of records, when a crime victim applies for compensation under ORS 147.005 to 147.367, a person that provides medical services or supplies or pays the costs of medical services or supplies provided to the crime

victim shall provide to the Department of Justice any individually identifiable health information the person has in the person's possession about the crime victim if:

- (a) The department requests the information; and
- (b) A release authorizing the surrender has been completed under ORS 147.105 (1)(h).
- (3) As used in subsection (2) of this section:

(a) "Pays" includes, but is not limited to, payments made directly or indirectly through settlements, judgments, insurance, Medicaid, other compensation or restitution.

(b) "Person" includes, but is not limited to, health care providers and their agents, insurers and their agents, employers and public bodies as defined in ORS 174.109.

SECTION 14. ORS 147.215 is amended to read:

147.215. (1) The Attorney General shall serve as legal adviser to the Department of Justice for all matters arising under ORS [135.905 and] 147.005 to 147.367.

(2) Law enforcement officials and other agencies of the state or local governmental units are authorized to give and shall provide any assistance or information requested by the department under ORS 147.205 (1)(b).

SECTION 15. ORS 147.225 is amended to read:

147.225. There is established the Criminal Injuries Compensation Account. All moneys in the account are continuously appropriated for and may be used by the Department of Justice for the purposes authorized in ORS [135.905,] 147.005 to 147.367 and 147.397.

SECTION 16. ORS 147.240 is amended to read:

147.240. After the entry of an award under ORS [135.905 and] 147.005 to 147.367, the Department of Justice shall submit the claim for payment from the Criminal Injuries Compensation Account pursuant to ORS 293.295 to 293.460 and 293.465 to 293.510.

SECTION 17. ORS 147.315 is amended to read:

147.315. No fee may be charged to the applicant in any proceeding under ORS [135.905 and] 147.005 to 147.367.

SECTION 18. ORS 147.325 is amended to read:

147.325. No compensation payable under ORS [135.905 and] 147.005 to 147.367 shall, prior to actual receipt thereof by the person or beneficiary eligible therefor, or their legal representatives, be assignable or subject to execution, garnishment, attachment or any other process, including process to satisfy an order or judgment for support or alimony.

SECTION 19. ORS 147.335 is amended to read:

147.335. The rights to compensation created by ORS [135.905 and] 147.005 to 147.367 are personal and shall not survive the death of the person or beneficiary eligible therefor. However, if such death occurs after an application for compensation has been filed with the Department of Justice, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

SECTION 20. ORS 147.345 is amended to read:

147.345. (1) The acceptance of an award made pursuant to ORS [135.905 and] 147.005 to 147.367 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient against the assailant or any other person or entity liable for the injury constituting the basis for the award.

(2)(a) On behalf of the state, the Department of Justice may bring suit against an assailant to recover the amount of compensation paid to an applicant or recipient of an award made pursuant to ORS [135.905 and] 147.005 to 147.367 as a result of the assailant's commission of a compensable crime. Before initiating a suit under this subsection, the Department of Justice must notify the applicant or recipient that the Department of Justice is going to initiate a suit. A suit under this subsection does not affect any right or right of action accruing to the applicant or recipient against the assailant for the injury constituting the basis for the award, except that the assailant may be able to offset payments made to the Department of Justice against any award to the applicant or recipient for the same damages. The assailant also may offset any payments the assailant has made

to the applicant or recipient for the same damages against any recovery by the Department of Justice under this subsection.

(b) In a suit under this subsection, the Department of Justice may recover attorney fees and costs of suit.

(c) Each separate payment of compensation under ORS [135.905 and] 147.005 to 147.367 creates a cause of action under this subsection.

(3) Any settlement of a right or right of action against the assailant or any other person or entity by the victim or the dependent of the victim based on the compensable crime must be approved by the Department of Justice if the department has made an award to the victim or the dependent of the victim. If the settlement is not approved by the department, the department may void the settlement.

SECTION 21. ORS 147.365 is amended to read:

147.365. (1) All law enforcement agencies in this state shall deliver cards to victims of crime stating the procedure to be followed in applying for compensation under ORS [135.905 and] 147.005 to 147.367.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section.

SECTION 22. The unit captions used in this 2012 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2012 Act.

SECTION 23. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by House February 24, 2012

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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 February 29, 2012

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State