

# House Bill 3282

Sponsored by COMMITTEE ON JUDICIARY (at the request of Attorney General Ellen F. Rosenblum)

## 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**.

Requires trial court to issue written orders in certain victims' rights proceedings. Designates Attorney General as representative of state for appeals of victims' rights claims.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to crime victims' rights; amending ORS 147.515, 147.530, 147.535, 147.537 and 147.545; and  
3 declaring an emergency.

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

5 **SECTION 1.** ORS 147.515 is amended to read:

6 147.515. (1) A victim who wishes to allege a violation of a right granted to the victim in a  
7 criminal proceeding by **Article I**, section 42 or 43, [*Article I*] of the Oregon Constitution, shall in-  
8 form the court within 30 days of the date the victim knew or reasonably should have known of the  
9 facts supporting the allegation. The victim shall describe the facts supporting the allegation and  
10 propose a remedy.

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

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

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

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

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

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

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

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

25 (a) Include the reasons the claim was dismissed; **and**

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

29 [*(c) Be in writing, unless the order is issued on the record in open court in the presence of the*  
30 *victim, the prosecuting attorney and the defendant. If the court issues the order orally under this par-*  
31 *agraph, the court shall issue a written order as soon as practicable.]*

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

4 **SECTION 2.** ORS 147.530 is amended to read:

5 147.530. (1) A hearing on a claim, a response filed under ORS 147.517 (4) or a motion filed under  
 6 ORS 147.522 shall be conducted in accordance with this section.

7 (2) At the hearing, the court may receive evidence relevant to the claim or motion.

8 (3) As to a particular fact at issue, the court shall find against the person bearing the burden  
 9 of persuasion unless the person proves the fact by a preponderance of the evidence.

10 (4) If the court determines that the moving party:

11 (a) Is entitled to relief, the court shall, after giving due consideration to the requested relief,  
 12 issue *[an]* **a written** order.

13 (b) Is not entitled to relief or that the Oregon Constitution or the United States Constitution  
 14 prohibits all appropriate relief, the court shall issue *[an]* **a written** order denying relief.

15 (5) An order issued under subsection (4) of this section must:

16 (a) Be issued within seven days from the date *[the court issued an order to show cause under*  
 17 *ORS 147.517, if an order to show cause was issued]* **of the hearing held pursuant to this section,**  
 18 unless the court finds good cause to issue the order at a later date.

19 (b) Except as provided in ORS 147.517 (4)(b)(B), include the reasons relief was granted or denied.

20 *[(c) Be in writing unless the order is issued on the record in open court. If the court issues the*  
 21 *order orally under this paragraph, the court shall issue a written order as soon as practicable indi-*  
 22 *cating whether relief was granted or denied.]*

23 (6) The court shall provide a copy of the order issued under subsection (4) of this section to the  
 24 victim, the prosecuting attorney, the defendant, any person who filed a response under ORS 147.517  
 25 (4) and any person against whom relief was ordered at the mailing address provided under ORS  
 26 147.517 (1)(a).

27 **SECTION 3.** ORS 147.535 is amended to read:

28 147.535. (1)(a) Notwithstanding any other provision of law and except as provided in paragraph  
 29 (b) of this subsection, appellate review of an order issued under ORS 147.515, 147.520 or 147.530 shall  
 30 be solely as provided in this section and ORS 147.537, 147.539 and 147.542.

31 (b) A defendant who seeks to appeal an order issued under ORS 147.515, 147.520 or 147.530 must  
 32 do so in the manner provided for appeals in ORS chapter 138. The provisions of this section and  
 33 ORS 147.537, 147.539 and 147.542 do not apply to an appeal under ORS chapter 138.

34 (c) Nothing in ORS 147.500 to 147.550 affects the ability of a defendant to petition for a writ of  
 35 mandamus.

36 (2) Jurisdiction for appellate review of an order issued under ORS 147.515, 147.520 or 147.530 is  
 37 vested originally and exclusively in the Supreme Court.

38 (3) Subject to ORS 147.542, the jurisdiction of the Supreme Court is limited to the order for  
 39 which appellate review is sought and the trial court retains jurisdiction over all other matters in  
 40 the criminal proceeding.

41 (4) Appellate review of an order issued under ORS 147.515, 147.520 or 147.530 shall be as pro-  
 42 vided in:

43 (a) ORS 147.537 if the order was issued under ORS 147.520 or 147.530 in a criminal proceeding  
 44 in which a defendant is charged with a felony or a person Class A misdemeanor, as that term is  
 45 defined by rule of the Oregon Criminal Justice Commission, and the order arises from a motion or

1 claim alleging a violation that occurred prior to the pronouncement in open court of the sentence  
 2 or disposition after a plea, admission or trial in the criminal proceeding.

3 (b) ORS 147.539 in all appeals arising under ORS 147.500 to 147.550 except those described in  
 4 paragraph (a) of this subsection.

5 (5) The victim, [*the prosecuting attorney*] **the state** or any person against whom relief was or-  
 6 dered has standing to seek appellate review of an order unless, after notice and a reasonable op-  
 7 portunity to be heard on the claim or motion that resulted in the order or a related claim or motion,  
 8 the person **or party** seeking appellate review did none of the following:

- 9 (a) Inform the court of a claim.
- 10 (b) File a response under ORS 147.517 (4).
- 11 (c) File a motion under ORS 147.522.
- 12 (d) Participate in a hearing under ORS 147.530.

13 **(6) Pursuant to ORS 180.060, the Attorney General shall appear for the state in all ap-  
 14 peals under this section and ORS 147.537, 147.539 and 147.542.**

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

16 147.537. (1) Appellate review of an order described in ORS 147.535 (4)(a) must be initiated by  
 17 filing a notice of interlocutory appeal with the Supreme Court substantially in the form prescribed  
 18 by rule of the Supreme Court. Review of the order is a matter of right.

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

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

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

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

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

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

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

32 (c) A memorandum of law containing:

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

35 (B) Supporting arguments and citations of authority.

36 (5) The Supreme Court may:

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

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

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

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

45 (b) Any person who filed a response under ORS 147.517 (4) to the claim that resulted in the or-

1 der being appealed or a related claim;

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

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

6 (e) The prosecuting attorney;

7 (f) The Attorney General;

8 (g) The defendant; and

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

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

12 (a) The trial court administrator; and

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

15 (8)(a) Except as otherwise provided in this subsection, the appellant shall serve and file the no-  
 16 tice of interlocutory appeal and, if applicable, the accompanying materials described in subsection  
 17 (4) of this section within seven days after the date the trial court *[issued]* **entered** the order being  
 18 appealed.

19 **(b) An appellant who seeks to appeal an order issued under ORS 147.530 and who was not**  
 20 **provided with a copy of the order as required by ORS 147.530 (6) may serve and file the notice**  
 21 **of interlocutory appeal and, if applicable, the accompanying materials described in subsection**  
 22 **(4) of this section within seven days after the date of receiving a copy of the order.**

23 [(b)] (c) The appellant shall serve the prosecuting attorney and the Attorney General so that the  
 24 copy of the notice of interlocutory appeal and accompanying materials are received on the same day  
 25 the notice is filed with the Supreme Court.

26 [(c)] (d) Except as provided in paragraph [(b)] (c) of this subsection, the appellant shall serve  
 27 all persons described in subsections (6) and (7) of this section so that the copy of the notice of  
 28 interlocutory appeal and, if applicable, accompanying materials are received no later than one ju-  
 29 dicial day after the notice is filed.

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

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

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

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

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

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

44 (c) Notwithstanding paragraph (b) of this subsection, the Supreme Court may dismiss the appeal  
 45 as to any respondent if the appellant, after receipt of a notice of noncompliance, does not promptly

1 cure a deficiency in the materials or if the failure to timely serve a true and complete copy of the  
 2 accompanying materials substantially prejudices the respondent's ability to respond to the appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (20) In addition to any other method authorized by law, service under this section may be ac-  
 45 complished by electronic mail or facsimile transmission, in a manner consistent with any applicable

1 rules of appellate procedure.

2 **SECTION 5.** ORS 147.545 is amended to read:

3 147.545. (1)(a) Prior to the Attorney General's first appearance in an appellate court proceeding  
4 in which the State of Oregon is a party and to which **Article I**, section 42 or 43, [*Article I*] of the  
5 Oregon Constitution, applies, the Attorney General shall determine whether the Department of  
6 Justice has taken all reasonably practicable steps to fulfill the rights granted by **Article I**, sections  
7 42 and 43, [*Article I*] of the Oregon Constitution, to the victim of the crime in the appellate courts.

8 (b) Unless otherwise provided by rule or order of the Chief Justice of the Supreme Court, the  
9 Attorney General shall, in the cases described in paragraph (a) of this subsection, certify the results  
10 of that determination to the court simultaneously with the Attorney General's first appearance.

11 (2) The Attorney General may intervene at any time on behalf of the State of Oregon in any  
12 trial [*or appellate*] court proceeding arising under ORS 147.500 to 147.550.

13 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**  
14 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
15 **on its passage.**

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