

House Bill 2621

Introduced and printed pursuant to House Rule 12.00. Presession 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 **as introduced**.

Specifies what constitutes notification to, and cooperation with, law enforcement officials. Directs Department of Justice to adopt rules defining "good cause" for failure to notify or cooperate with law enforcement officials for purpose of determining eligibility of crime victim for compensation award.

Directs department to adopt rules establishing Limited Domestic Violence Counseling Award Program and Limited Sexual Assault Counseling Award Program.

Increases maximum weekly payment rate of crime victim compensation award for loss of earnings and loss of support to dependents.

Authorizes department to extend time period of review of crime victim compensation claim decision with permission of applicant.

Authorizes law enforcement agencies to provide child abuse reports and records to department and to Attorney General for purpose of determining crime victim compensation claim.

A BILL FOR AN ACT

1
2 Relating to crime victim compensation; amending ORS 147.015, 147.035, 147.145, 147.205 and
3 419B.035.

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

5 **SECTION 1.** ORS 147.015 is amended to read:

6 147.015. (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

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

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

12 (c) The applicant [*has*] cooperated [*fully*] with law enforcement officials in the apprehension and
13 prosecution of the assailant or the department has found that the applicant's failure to cooperate
14 was for good cause;

15 (d) The application for compensation is not the result of collusion between the applicant and the
16 assailant of the victim;

17 (e) The death or injury to the victim was not substantially attributable to the wrongful act of
18 the victim [*or substantial provocation of the assailant of the victim*]; and

19 (f) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the
20 department:

21 (A) Within one year of the date of the injury to the victim; or

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

23 (2)(a) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005 is
24 prima facie evidence of good cause for the victim's failure to notify law enforcement in a timely
25 manner under subsection (1)(b) of this section, or for failure to cooperate with law enforcement un-

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 der subsection (1)(c) of this section.

2 **(b) The department shall adopt rules defining the term “good cause” as used in sub-**
 3 **sections (1)(b) and (c) of this section. The rules must specify that “good cause” includes a**
 4 **failure to notify or cooperate due to mental trauma resulting from the compensable crime.**

5 **(c) As used in subsection (1)(b) of this section, the requirement to notify the appropriate**
 6 **law enforcement officials of the perpetration of the crime is satisfied if the victim or appli-**
 7 **cant obtained:**

8 **(A) A stalking protective order or other order of protection; or**

9 **(B) A medical assessment, as defined in ORS 147.395, for sexual assault.**

10 **(d) As used in subsection (1)(c) of this section, the requirement to cooperate with law**
 11 **enforcement officials is satisfied if the victim or applicant:**

12 **(A) Obtained a stalking protective order or other order of protection;**

13 **(B) Obtained a medical assessment, as defined in ORS 147.395, for sexual assault; or**

14 **(C) Made an initial report to law enforcement officials, if the compensable crime consti-**
 15 **tutes sexual assault or domestic violence.**

16 **(3) The department shall adopt rules establishing a:**

17 **(a) Limited Domestic Violence Counseling Award Program for victims of domestic vi-**
 18 **olence who apply for an award of compensation but who did not notify law enforcement of-**
 19 **ficials of the perpetration of the crime as required by subsection (1)(b) of this section.**

20 **(b) Limited Sexual Assault Counseling Award Program for victims of sexual assault who**
 21 **apply for an award of compensation but who did not notify law enforcement officials of the**
 22 **perpetration of the crime as required by subsection (1)(b) of this section.**

23 **SECTION 2.** ORS 147.035 is amended to read:

24 147.035. (1)(a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be
 25 awarded under ORS 147.005 to 147.367 only for losses described in this section.

26 (b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and
 27 the survivors and dependents of a deceased victim is \$47,000.

28 (c) When a compensable crime results in:

29 (A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are
 30 compensable.

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

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

34 (a) The victim’s reasonable medical and hospital expenses, including counseling expenses, up to
 35 a maximum amount of \$20,000;

36 (b) Loss of the victim’s earnings, at a maximum rate of [~~\$400~~] **\$600** per week, up to a maximum
 37 amount of \$20,000;

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

39 (d) Expenses related to transportation for the victim’s medical care or counseling, at a rate de-
 40 termined by the Department of Justice, up to a maximum amount of \$3,000, when:

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

42 (B) The medical care or counseling is provided more than 30 miles away from the victim’s resi-
 43 dence; and

44 (C) Adequate medical care or counseling is not available in closer proximity to the victim’s
 45 residence.

- 1 (3) When a claim for compensation is filed in a case of death, compensation may be awarded for:
- 2 (a) Reasonable funeral expenses, up to a maximum amount of \$5,000;
- 3 (b) The victim's reasonable medical and hospital expenses, up to a maximum amount of \$20,000;
- 4 (c) Loss of support to the dependents of the victim, at a maximum rate of [~~\$400~~] **\$600** per week,
- 5 up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection
- 6 (2)(b) of this section;
- 7 (d) Reasonable counseling expenses for the survivors of a deceased victim, up to a maximum
- 8 amount of \$20,000 for each deceased victim; and
- 9 (e) Expenses related to transportation for a survivor's or a dependent's counseling, at a rate
- 10 determined by the department, up to a maximum amount of \$3,000, when:
- 11 (A) The counseling is compensable under this section;
- 12 (B) The counseling is provided more than 30 miles away from the survivor's or dependent's
- 13 residence; and
- 14 (C) Adequate counseling is not available in closer proximity to the survivor's or dependent's
- 15 residence.
- 16 (4) When a claim for compensation is filed in a case of:
- 17 (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in
- 18 ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are compensable up
- 19 to a maximum amount of \$20,000, less any amounts awarded for the victim's medical or hospital
- 20 expenses under subsection (2)(a) of this section.
- 21 (b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who wit-
- 22 nessed the domestic violence are compensable up to a maximum amount of \$10,000.
- 23 (c) International terrorism, the counseling expenses of a relative of the victim are compensable
- 24 up to a maximum amount of \$1,000.
- 25 (5) Compensation may not be awarded under ORS 147.005 to 147.367 for pain and suffering or
- 26 property damage.
- 27 (6) Notwithstanding subsections (2) to (5) of this section, when a claim for compensation is filed
- 28 in a case of abuse of corpse in the first degree as defined in ORS 166.087 or abuse of corpse in the
- 29 second degree as defined in ORS 166.085, compensation may be awarded for one or both of the fol-
- 30 lowing:
- 31 (a) Reasonable funeral expenses, up to a maximum amount of \$5,000.
- 32 (b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000
- 33 for each incident.
- 34 (7) If the case against the assailant of the victim is under direct or collateral review and the
- 35 victim, survivor or dependent is involved in the hearing or oral argument, compensation may be
- 36 awarded for:
- 37 (a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of
- 38 \$5,000; and
- 39 (b) Other expenses related to the review, including transportation and lodging necessary for the
- 40 victim, survivor or dependent to be involved in hearings and oral arguments, up to a maximum
- 41 amount of \$3,000.
- 42 (8) If the assailant of the victim has a hearing scheduled before the State Board of Parole and
- 43 Post-Prison Supervision or the Psychiatric Security Review Board and the victim, survivor or de-
- 44 pendent is involved in the hearing, compensation may be awarded for:
- 45 (a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of

1 \$5,000; and

2 (b) Other expenses related to the hearing, including transportation and lodging necessary for the
3 victim, survivor or dependent to be involved in the hearing, up to a maximum amount of \$3,000.

4 (9) A claim for compensation expires and no further payments may be made with regard to the
5 claim:

6 (a) When three years have elapsed from the entry of a determination order under ORS 147.135;
7 or

8 (b) If the victim, survivor or dependent attains 21 years of age after the date described in par-
9 agraph (a) of this subsection, when the victim, survivor or dependent attains 21 years of age.

10 (10) Notwithstanding subsection (9) of this section:

11 (a) In cases of homicide, a claim for reasonable counseling expenses for survivors may continue
12 until five years have elapsed from the date of the determination order.

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

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

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

19 (c) Claims described in subsection (8) of this section may be filed each time an assailant has a
20 hearing before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security
21 Review Board and expire:

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

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

26 (11) Notwithstanding subsections (2) and (9) of this section, if a victim suffers catastrophic in-
27 juries:

28 (a) A claim for compensation and payments may continue beyond the period described in sub-
29 section (9) of this section; and

30 (b) The department may award compensation for losses in excess of the individual limitations
31 described in subsection (2) of this section, provided that the aggregate award does not exceed the
32 amount described in subsection (1)(b) of this section.

33 (12) The department shall adopt rules:

34 (a) Defining catastrophic injuries and establishing the length of time that a claim for compen-
35 sation and payments may continue under subsection (11)(a) of this section.

36 (b) For medical fee schedules. The schedules shall represent at least the 75th percentile of the
37 usual and customary fees charged to the public as determined by the department. An applicant or
38 victim may not be charged for the percentile amount reduced by the department.

39 **SECTION 3.** ORS 147.145 is amended to read:

40 147.145. (1) If the applicant disagrees with the order entered under ORS 147.135, the applicant
41 may request review by the Department of Justice.

42 (2)(a) The department shall reconsider any order for which a request for review is received. The
43 department shall notify the applicant of its decision on review within 30 days of the department's
44 receipt of the request for review.

45 (b) **If the department determines that the request for review does not contain sufficient**

1 **information to make a decision within 30 days of the department’s receipt of the request for**
 2 **review, the 30-day time period may be extended by the department only with the oral or**
 3 **written permission of the applicant.**

4 **SECTION 4.** ORS 147.205 is amended to read:

5 147.205. (1) To carry out the provisions and purposes of ORS 147.005 to 147.367, the Department
 6 of Justice has the power and duty to:

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

9 (b) Request and obtain from law enforcement agencies, district attorneys, county juvenile de-
 10 partments, the Department of Human Services, the Oregon Youth Authority and the Department of
 11 Corrections such assistance and information, **including police reports**, as will enable the Depart-
 12 ment of Justice to carry out its functions and duties under ORS 147.005 to 147.367. The Department
 13 of Justice may obtain assistance and information under this paragraph, notwithstanding any other
 14 law relating to the confidentiality or disclosure of records. The Department of Justice:

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

17 (B) May use the information or records only for the purposes authorized by ORS 147.005 to
 18 147.367; and

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

21 (c) Adopt rules pursuant to ORS chapter 183.

22 (d) Direct medical examination of victims.

23 (e) Determine all claims for awards filed with the department pursuant to ORS 147.005 to
 24 147.367, and to reinvestigate or reopen cases as the department deems necessary.

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

26 (2) Notwithstanding any other law relating to the confidentiality or disclosure of records, when
 27 a crime victim applies for compensation under ORS 147.005 to 147.367, a person that provides med-
 28 ical services or supplies or pays the costs of medical services or supplies provided to the crime
 29 victim shall provide to the Department of Justice any individually identifiable health information the
 30 person has in the person’s possession about the crime victim if:

31 (a) The department requests the information; and

32 (b) A release authorizing the surrender has been completed under ORS 147.105 (1)(h).

33 (3) As used in subsection (2) of this section:

34 (a) “Pays” includes, but is not limited to, payments made directly or indirectly through settle-
 35 ments, judgments, insurance, Medicaid, other compensation or restitution.

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

38 **SECTION 5.** ORS 419B.035 is amended to read:

39 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
 40 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
 41 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
 42 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
 43 ment of Human Services shall make the records available to:

44 (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of
 45 subsequent investigation of child abuse;

1 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
 2 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
 3 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
 4 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
 5 tion, care or treatment;

6 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
 7 ceeding;

8 (d) Citizen review boards established by the Judicial Department for the purpose of periodically
 9 reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile
 10 court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to
 11 participants in case reviews;

12 (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged
 13 that a child has been subjected to child abuse or neglect;

14 (f) The Office of Child Care for certifying, registering or otherwise regulating child care facili-
 15 ties;

16 (g) The Office of Children's Advocate;

17 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
 18 342.176 involving any child or any student in grade 12 or below;

19 (i) Any person, upon request to the Department of Human Services, if the reports or records
 20 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
 21 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
 22 disclosed in accordance with ORS 192.410 to 192.505; and

23 (j) The Office of Child Care for purposes of ORS 329A.030 (8)(g).

24 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
 25 partment of Human Services may exempt from disclosure the names, addresses and other identifying
 26 information about other children, witnesses, victims or other persons named in the report or record
 27 if the department determines, in written findings, that the safety or well-being of a person named in
 28 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
 29 information, and if that concern outweighs the public's interest in the disclosure of that information.

30 (b) If the Department of Human Services does not have a report or record of abuse regarding
 31 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
 32 161.015, the department may disclose that information.

33 (3) The Department of Human Services may make reports and records compiled under the pro-
 34 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
 35 agency, organization or other entity when the department determines that such disclosure is neces-
 36 sary to administer its child welfare services and is in the best interests of the affected child, or that
 37 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
 38 children from abuse and neglect or for research when the Director of Human Services gives prior
 39 written approval. The Department of Human Services shall adopt rules setting forth the procedures
 40 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
 41 section. The name, address and other identifying information about the person who made the report
 42 may not be disclosed pursuant to this subsection and subsection (1) of this section.

43 (4) A law enforcement agency may make reports and records compiled under the provisions of
 44 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
 45 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement

1 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
 2 to child abuse and neglect **or necessary to determine a claim for crime victim compensation**
 3 **under ORS 147.005 to 147.367.**

4 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
 5 case relating to child abuse or neglect, shall make reports and records in the case available upon
 6 request to any law enforcement agency or community corrections agency in this state, to the De-
 7 partment of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose
 8 of managing and supervising offenders in custody or on probation, parole, post-prison supervision
 9 or other form of conditional or supervised release. A law enforcement agency may make reports and
 10 records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement,
 11 community corrections, corrections or parole agencies in an open case when the law enforcement
 12 agency determines that the disclosure will not interfere with an ongoing investigation in the case.
 13 The name, address and other identifying information about the person who made the report may not
 14 be disclosed under this subsection or subsection (6)(b) of this section.

15 (6)(a) Any record made available to a law enforcement agency or community corrections agency
 16 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
 17 vision or to a physician, physician assistant or nurse practitioner in this state, as authorized by
 18 subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board,
 19 physician, physician assistant or nurse practitioner. Any record or report disclosed by the Depart-
 20 ment of Human Services to other persons or entities pursuant to subsections (1) and (3) of this sec-
 21 tion shall be kept confidential.

22 (b) Notwithstanding paragraph (a) of this subsection:

23 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
 24 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
 25 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 26 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 27 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 28 vision or other form of conditional or supervised release.

29 (B) A person may disclose records made available to the person under subsection (1)(i) of this
 30 section if the records are disclosed for the purpose of advancing the public interest.

31 (7) An officer or employee of the Department of Human Services or of a law enforcement agency
 32 or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section
 33 may not release any information not authorized by subsections (1) to (6) of this section.

34 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 35 181A.010.

36 (9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

37