

# House Bill 2399

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen 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**.

Authorizes court to impose compensatory fine without imposing any other fine as part of criminal sentence.

Authorizes state to appeal order made prior to trial determining that defendant's out of court statement constitutes confession requiring corroboration. Provides that state appeal from confession order or order allowing demurrer must be decided by appellate court within prescribed time limits.

Provides that, for purposes of naming defendant in post-conviction relief petition, petitioner released on post-prison supervision shall be deemed to be imprisoned in institution from which petitioner was released. Corrects terminology in statute regulating contact with victims during post-conviction relief proceedings. Sets time limits for filing notice of cross-appeal in post-conviction relief proceeding. Specifies that Attorney General represents defendant on appeal from post-conviction relief judgment.

Provides that, for purposes of theft offense, when value of property cannot reasonably be ascertained, value is presumed to be less than \$100.

Exempts charge of conspiracy or endeavor to commit pattern of racketeering activity from specific pleading requirements.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; and amending ORS 137.101, 138.045, 138.261, 138.560,  
3 138.625, 138.650, 164.115 and 166.720.

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

5 **SECTION 1.** ORS 137.101 is amended to read:

6 137.101. (1) **Except as provided in subsection (2) of this section**, whenever the court imposes  
7 a [*fine as penalty for the commission of*] **sentence for** a crime [*resulting*] **that resulted** in injury for  
8 which the person injured by the act constituting the crime has a remedy by civil action, [*unless the*  
9 *issue of punitive damages has been previously decided on a civil case arising out of the same act and*  
10 *transaction, the court may order that the defendant pay any portion of the fine separately to the clerk*  
11 *of the court as compensatory fines in the case*] **the court may impose, in addition to any other**  
12 **financial obligation, a compensatory fine to be paid to the injured person.** The clerk shall pay  
13 over to the injured [*victim or victims*] **person**, as directed in the court's order, moneys paid to the  
14 court as compensatory fines under this subsection. This section shall be liberally construed in favor  
15 of [*victims*] **persons injured as a result of the crime.**

16 **(2) The court may not impose a compensatory fine if the issue of punitive damages to the**  
17 **injured person has been previously decided in a civil action arising out of the same act and**  
18 **transaction.**

19 [(2)] (3) Compensatory fines may be awarded in addition to restitution awarded under ORS  
20 137.103 to 137.109.

21 **(4) The sum of the compensatory fine and any other fine imposed by the court may not**  
22 **exceed the maximum fine authorized by ORS 161.625, 161.635 or 161.655.**

23 [(3)] (5) Nothing in this section limits or impairs the right of a person injured by a defendant's

**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 criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the  
 2 defendant has paid or been ordered to pay compensatory fines under this section may not be intro-  
 3 duced in any civil action arising out of the facts or events [*which*] **that** were the basis for the  
 4 compensatory fine. However, the court in such civil action shall credit any compensatory fine paid  
 5 by the defendant to [*a victim*] **the injured person** against any judgment for punitive damages in  
 6 favor of the [*victim*] **injured person** in the civil action.

7 **SECTION 2.** ORS 138.045 is amended to read:

8 138.045. (1) The state may take an appeal from the circuit court, or from a municipal court or  
 9 a justice court that has become a court of record under ORS 51.025 or 221.342, to the Court of Ap-  
 10 peals from:

11 (a) An order made prior to trial dismissing or setting aside one or more counts in the accusatory  
 12 instrument;

13 (b) An order allowing a demurrer;

14 (c) An order arresting the judgment;

15 (d) An order made prior to trial suppressing evidence;

16 (e) **An order made prior to trial determining that a defendant's out of court statement**  
 17 **constitutes a confession requiring corroboration under ORS 136.425;**

18 [*e*] (f) An order made prior to trial for the return or restoration of things seized;

19 [*f*] (g) For a felony committed on or after November 1, 1989, a judgment, amended judgment  
 20 or corrected judgment of conviction;

21 [*g*] (h) For any felony, a judgment, amended judgment, supplemental judgment, corrected judg-  
 22 ment or post-judgment order, that denied restitution or awarded less than the amount of restitution  
 23 requested by the state;

24 [*h*] (i) An order or judgment in a probation revocation hearing finding that a defendant who  
 25 was sentenced to probation under ORS 137.712 has not violated a condition of probation by com-  
 26 mitting a new crime;

27 [*i*] (j) An order made after a guilty finding dismissing or setting aside one or more counts in  
 28 the accusatory instrument; or

29 [*j*] (k) An order granting a new trial.

30 (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal an order  
 31 described in subsection (1)(a), (b), [*or*] (d) **or** (e) of this section, the state shall take the appeal to  
 32 the Supreme Court if the defendant is charged with murder or aggravated murder.

33 **SECTION 3.** ORS 138.261 is amended to read:

34 138.261. (1) When a defendant is charged with a felony and is in custody pending an appeal un-  
 35 der ORS 138.045 (1)(a), (b), [*or*] (d)[,] **or** (e), the Court of Appeals and the Supreme Court shall de-  
 36 cide the appeal within the time limits prescribed by this section.

37 (2)(a) Pursuant to rules adopted by the Court of Appeals, the Court of Appeals shall ensure that  
 38 the appeal is fully briefed no later than 90 days after the date the transcript is settled under ORS  
 39 19.370.

40 (b) Notwithstanding paragraph (a) of this subsection, the Court of Appeals may allow more than  
 41 90 days after the transcript is settled to fully brief the appeal if it determines that the ends of justice  
 42 served by allowing more time outweigh the best interests of the public, the parties and the victim  
 43 of the crime.

44 (3) The Court of Appeals shall decide the appeal no later than 180 days after the date of oral  
 45 argument or, if the appeal is not orally argued, the date that the State Court Administrator delivers

1 the briefs to the Court of Appeals for decision. Any reasonable period of delay incurred by the Court  
 2 of Appeals on its own motion or at the request of one of the parties is excluded from the 180-day  
 3 period within which the Court of Appeals is required to issue a decision if the Court of Appeals  
 4 determines that the ends of justice served by a decision on a later date outweigh the best interests  
 5 of the public, the parties and the victim of the crime.

6 (4)(a) In determining whether to allow more than 90 days after the transcript is settled to fully  
 7 brief the appeal or more than 180 days after oral argument or delivery of the briefs to decide the  
 8 appeal, the Court of Appeals shall consider whether:

9 (A) The appeal is unusually complex or presents novel questions of law so that the prescribed  
 10 time limit is unreasonable; and

11 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

12 (b) If the Court of Appeals decides to allow additional time to fully brief the appeal or to decide  
 13 the appeal, the Court of Appeals shall state the reasons for doing so in writing and shall serve a  
 14 copy of the writing on the parties.

15 (5) If the Supreme Court allows review of a decision of the Court of Appeals on an appeal de-  
 16 scribed in subsection (1) of this section, the Supreme Court shall issue its decision on review no  
 17 later than 180 days after the date of oral argument or, if the review is not orally argued, the date  
 18 the State Court Administrator delivers the briefs to the Supreme Court for decision. Any reasonable  
 19 period of delay incurred by the Supreme Court on its own motion or at the request of one of the  
 20 parties is excluded from the 180-day period within which the Supreme Court is required to issue a  
 21 decision if the Supreme Court determines that the ends of justice served by a decision on a later  
 22 date outweigh the best interests of the public, the parties and the victim of the crime.

23 (6) In an appeal by the state under ORS 138.045 (2), the Supreme Court shall issue its decision  
 24 no later than one year after the date of oral argument or, if the appeal is not orally argued, the date  
 25 that the State Court Administrator delivers the briefs to the Supreme Court for decision.

26 (7)(a) In determining whether to allow more than 180 days after oral argument or delivery of the  
 27 briefs to decide the review, the Supreme Court shall consider whether:

28 (A) The review is unusually complex or presents novel questions of law so that the prescribed  
 29 time limit is unreasonable; and

30 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

31 (b) If the Supreme Court decides to allow additional time to decide the review, the Supreme  
 32 Court shall state the reasons for doing so in writing and shall serve a copy of the writing on the  
 33 parties.

34 (8) Failure of the Court of Appeals or the Supreme Court to decide an appeal or review within  
 35 the time limits prescribed in this section is not a ground for dismissal of the appeal or review.

36 (9) Any delay sought or acquiesced in by the defendant does not count against the state with  
 37 respect to any statutory or constitutional right of the defendant to a speedy trial.

38 **SECTION 4.** ORS 138.560 is amended to read:

39 138.560. (1) A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be  
 40 commenced by filing a petition with the clerk of the circuit court for the county in which the  
 41 petitioner is imprisoned or, if the petitioner is not imprisoned, with the clerk of the circuit court for  
 42 the county in which the petitioner's conviction and sentence was rendered. Except as otherwise  
 43 provided in ORS 138.590, the petitioner must pay the filing fee established under ORS 21.135 at the  
 44 time of filing a petition under this section. If the petitioner prevails, the petitioner shall recover the  
 45 fee pursuant to the Oregon Rules of Civil Procedure. The clerk of the court in which the petition

1 is filed shall enter and file the petition and bring it promptly to the attention of such court. A copy  
 2 of the petition need not be served by petitioner on the defendant, but, in lieu thereof, the clerk of  
 3 the court in which the petition is filed shall immediately forward a copy of the petition to the At-  
 4 torney General or other attorney for the defendant named in ORS 138.570.

5 (2) For the purposes of ORS 138.510 to 138.680, a person released on parole, **post-prison**  
 6 **supervision** or conditional pardon shall be deemed to be imprisoned in the institution from which  
 7 the person [*is so*] **was** released.

8 (3) Except when petitioner’s conviction was for a misdemeanor, the release of the petitioner  
 9 from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680  
 10 shall not cause the proceedings to become moot. Such release of petitioner shall not change the  
 11 venue of the proceedings out of the circuit court in which the proceedings were commenced and  
 12 shall not affect the power of such court to transfer the proceedings as provided in subsection (4)  
 13 of this section.

14 (4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the  
 15 circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the  
 16 petition can be more expeditiously conducted in the county in which the petitioner was convicted  
 17 and sentenced, the circuit court upon its own motion or the motion of a party may order the  
 18 petitioner’s case to be transferred to the circuit court for the county in which petitioner’s conviction  
 19 and sentence were rendered. The court’s order is not reviewable by any court of this state.

20 (5) When a petitioner who is imprisoned in a Department of Corrections institution is trans-  
 21 ferred to another Department of Corrections institution, the circuit court in which a post-conviction  
 22 relief proceeding is pending may deny a motion for a change of venue to the county where the  
 23 petitioner is transferred. The court’s order is not reviewable by any court of this state.

24 **SECTION 5.** ORS 138.625 is amended to read:

25 138.625. (1) A petitioner in a post-conviction relief proceeding may not compel a victim to testify,  
 26 either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court al-  
 27 lowing a subpoena.

28 (2) A copy of the motion for a subpoena under this section must be served on the counsel for  
 29 the defendant.

30 (3) The court may not grant an order allowing a subpoena under this section unless the  
 31 petitioner can demonstrate good cause by showing that:

- 32 (a) The victim’s testimony is material to the post-conviction relief proceeding;
- 33 (b) The testimony is favorable to the petitioner; and
- 34 (c) The testimony was not introduced at trial.

35 (4) If the court grants an order allowing a subpoena under this section, upon a request by the  
 36 victim for no personal contact between the parties, the court may allow the victim to appear by  
 37 telephone or other communication device approved by the court.

38 (5) If contacted by the [*defense*] **petitioner** or any agent of the [*defense*] **petitioner**, the victim  
 39 must be clearly informed by the [*defense*] **petitioner** or other contacting agent, either in person or  
 40 in writing, of the identity and capacity of the person contacting the victim, that the victim does not  
 41 have to talk to the [*defendant’s*] **petitioner’s** attorney, or other agents of the [*defendant*]  
 42 **petitioner**, or provide other discovery unless the victim wishes, and that the victim may have a  
 43 district attorney, assistant attorney general or other attorney or advocate present during any  
 44 interview or other contact.

45 (6) As used in this section, “victim” has the meaning given that term in ORS 135.970.

**SECTION 6.** ORS 138.650 is amended to read:

138.650. (1) Either the petitioner or the defendant may appeal to the Court of Appeals within 30 days after the entry of a judgment on a petition pursuant to ORS 138.510 to 138.680. The manner of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall be the same as that provided by law for appeals in criminal actions, except that:

(a) The trial court may provide that the transcript contain only such evidence as may be material to the decision of the appeal; and

(b) With respect to ORS 138.081 (1), if petitioner appeals, petitioner shall cause the notice of appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of record, on petitioner.

(2)(a) Upon motion of the petitioner, the Court of Appeals shall grant the petitioner leave to file a notice of appeal after the time limit described in subsection (1) of this section if:

(A) The petitioner, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the petitioner personally; and

(B) The petitioner shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) The request for leave to file a notice of appeal after the time limit described in subsection (1) of this section shall be filed no later than 90 days after entry of the judgment from which the petitioner seeks to appeal and shall be accompanied by the notice of appeal sought to be filed. A request for leave under this subsection may be filed by mail. The date of filing shall be the date of mailing if the request is mailed as provided in ORS 19.260.

(c) The Court of Appeals may not grant relief under this subsection unless the defendant has received notice of and an opportunity to respond to the petitioner's request for relief.

**(3) A party cross-appealing shall serve and file the notice of cross-appeal:**

**(a) Within 10 days of the expiration of the time allowed in subsection (1) of this section;**  
**or**

**(b) If the petitioner's notice of appeal is filed pursuant to subsection (2) of this section, within 10 days of the expiration of the time allowed in subsection (2) of this section.**

~~(3)~~ (4) An appeal under this section taken by the defendant stays the effect of the judgment. If the petitioner is incarcerated, the trial court may stay the petitioner's sentence pending the defendant's appeal and order conditional release or security release, in accordance with ORS 135.230 to 135.290, only if:

(a) The post-conviction court's judgment vacates the judgment of conviction or reduces the sentence or sentences imposed upon conviction;

(b) The petitioner has completed any other sentence of incarceration to which the petitioner is subject; and

(c) The petitioner otherwise would be entitled to immediate release from incarceration under the court's judgment.

**(5) In an appeal under this section or to the United States Supreme Court, the Attorney General shall represent the defendant.**

**SECTION 7.** ORS 164.115 is amended to read:

164.115. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property

1 at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of re-  
 2 placement of the property within a reasonable time after the crime.

3 (2) Whether or not they have been issued or delivered, certain written instruments, not including  
 4 those having a readily ascertainable market value, shall be evaluated as follows:

5 (a) The value of an instrument constituting an evidence of debt, including, but not limited to, a  
 6 check, draft or promissory note, shall be considered the amount due or collectible thereon or  
 7 thereby.

8 (b) The value of any other instrument which creates, releases, discharges or otherwise affects  
 9 any valuable legal right, privilege or obligation shall be considered the greatest amount of economic  
 10 loss which the owner might reasonably suffer because of the loss of the instrument.

11 (3) The value of a gambling chip, token, imitation currency or similar device is its face value.

12 (4) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS  
 13 496.705.

14 (5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an  
 15 amount less than [\$50] **\$100** in a case of theft, and less than \$500 in any other case.

16 (6) The value of single theft transactions may be added together if the thefts were committed:

17 (a) Against multiple victims by similar means within a 30-day period; or

18 (b) Against the same victim, or two or more persons who are joint owners, within a 180-day  
 19 period.

20 **SECTION 8.** ORS 166.720 is amended to read:

21 166.720. (1) It is unlawful for any person who has knowingly received any proceeds derived, di-  
 22 rectly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful  
 23 debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds de-  
 24 rived from the investment or use thereof, in the acquisition of any title to, or any right, interest or  
 25 equity in, real property or in the establishment or operation of any enterprise.

26 (2) It is unlawful for any person, through a pattern of racketeering activity or through the col-  
 27 lection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control  
 28 of any real property or enterprise.

29 (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or  
 30 participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or  
 31 the collection of an unlawful debt.

32 (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of  
 33 subsections (1), (2) or (3) of this section.

34 (5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections  
 35 (1) to (4) of this section is guilty of a Class A felony.

36 (b) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct  
 37 in violation of the provisions of subsections (1) to (4) of this section, through which the person de-  
 38 rived a pecuniary value, or by which the person caused personal injury or property damage or other  
 39 loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or  
 40 three times the gross loss caused, whichever is greater, plus court costs and the costs of investi-  
 41 gation and prosecution, reasonably incurred.

42 (c) The court shall hold a hearing to determine the amount of the fine authorized by paragraph  
 43 (b) of this subsection.

44 (d) For the purposes of paragraph (b) of this subsection, "pecuniary value" means:

45 (A) Anything of value in the form of money, a negotiable instrument, a commercial interest or

1 anything else the primary significance of which is economic advantage; or

2 (B) Any other property or service that has a value in excess of \$100.

3 (6)(a) **For purposes of charging an offense described in subsection (1), (2) or (3) of this**  
4 **section, the** [An] allegation of a pattern of racketeering activity is sufficient if it contains sub-  
5 stantially the following:

6 [(a)] (A) A statement of the acts constituting each incident of racketeering activity in ordinary  
7 and concise language, and in a manner that enables a person of common understanding to know  
8 what is intended;

9 [(b)] (B) A statement of the relation to each incident of racketeering activity that the conduct  
10 was committed on or about a designated date, or during a designated period of time;

11 [(c)] (C) A statement, in the language of ORS 166.715 (4) or other ordinary and concise language,  
12 designating which distinguishing characteristic or characteristics interrelate the incidents of  
13 racketeering activity; and

14 [(d)] (D) A statement that the incidents alleged were not isolated.

15 (b) **For purposes of charging an offense described in subsection (4) of this section, the**  
16 **allegation of racketeering is sufficient if it complies with ORS 132.550 (7).**

17 **SECTION 9. (1) The amendments to ORS 137.101 and 164.115 by sections 1 and 7 of this**  
18 **2019 Act apply to crimes committed on or after the effective date of this 2019 Act.**

19 (2) **The amendments to ORS 138.045 and 138.261 by sections 2 and 3 of this 2019 Act apply**  
20 **to appeals taken on or after the effective date of this 2019 Act for which the time limit in**  
21 **ORS 138.071 has not expired.**

22 (3) **The amendments to ORS 138.650 by section 6 of this 2019 Act apply to proceedings in**  
23 **which the notice of appeal is filed on or after the effective date of this 2019 Act.**

24 (4) **The amendments to ORS 166.720 by section 8 of this 2019 Act apply to charging in-**  
25 **struments filed on or after the effective date of this 2019 Act.**

26