

House Bill 2676

Sponsored by Representative KROPF (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies Department of Justice crime victim compensation program. Expands definition of "compensable crime." Provides that law enforcement notification of commission of crime must occur within reasonable time. Provides that law enforcement notification requirement is satisfied if victim took other specified actions. Authorizes compensation for counseling expenses for witness to death of victim and increases maximum counseling benefit for friend or acquaintance of deceased victim. Provides that medication prescribed in conjunction with counseling expenses is compensable. Authorizes compensation for lost wages for parents of minor victim. Authorizes compensation for cleaning expenses related to death of person. Increases maximum funeral expense benefit. Provides that claims associated with review of assailant's case or hearing on assailant's release do not expire.

Repeals provisions directing department not to process compensation application if victim owes financial obligation associated with prior criminal conviction.

Provides that information submitted to department by applicant is confidential.

Eliminates provisions directing department to notify district attorney when compensation claim is filed and defer compensation if prosecution is pending.

A BILL FOR AN ACT

1
2 Relating to crime victim compensation; amending ORS 147.005, 147.015, 147.025, 147.035, 147.055,
3 147.105, 147.115 and 147.125; and repealing ORS 147.045.

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

5 **SECTION 1.** ORS 147.005 is amended to read:

6 147.005. As used in ORS 147.005 to 147.367 unless the context requires otherwise:

7 (1) "Applicant" means:

8 (a) Any victim of a compensable crime who applies to the Department of Justice for compen-
9 sation under ORS 147.005 to 147.367;

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

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

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

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

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

16 (4) "**Cleaning expenses**" means expenses reasonably related to the cleaning of, and the
17 removal of any organic or inorganic matter from, a private residence or place of business
18 due to the death of a person or conduct that caused the death of a person.

19 [(4)] (5) "Compensable crime" means abuse of corpse in any degree, **failure to perform the**
20 **duties of a driver to injured persons or when property is damaged**, or an intentional, knowing,
21 reckless or criminally negligent act that results in injury or death of another person and that, if
22 committed by a person of full legal capacity, would be punishable as a crime in this state.

23 [(5)] (6) "Counseling" has the meaning given that term by the department by rule.

24 [(6)] (7) "Dependent" means such relatives of a deceased victim who wholly or partially were

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 dependent upon the victim's income at the time of death or would have been so dependent but for
 2 the victim's incapacity due to the injury from which the death resulted.

3 [(7)] (8) "Department" means the Department of Justice.

4 [(8)] (9) "Funeral expenses" means expenses of the funeral, burial, cremation, reduction or other
 5 chosen method of interment, including plot or tomb and other necessary incidents to the disposition
 6 of the remains and also including, in the case of abuse of corpse in any degree, reinterment.

7 [(9)] (10) "Injury" means abuse of a corpse or actual bodily harm and, with respect to a victim,
 8 includes pregnancy and mental or nervous shock.

9 [(10)] (11) "International terrorism" means activities that:

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

13 (b) Appear to be intended to:

14 (A) Intimidate or coerce a civilian population;

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

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

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

20 [(11)] (12) "Involved in the hearing" and "involved in the oral argument" have the meaning
 21 given those terms by the department by rule.

22 [(12)] (13) "Law enforcement official" means a sheriff, constable, marshal, municipal police offi-
 23 cer or member of the Oregon State Police and such other persons as may be designated by law as
 24 a peace officer.

25 [(13)] (14) "Reduction" has the meaning given that term in ORS 97.010.

26 [(14)] (15) "Relative" means a person related to the victim within the third degree as determined
 27 by the common law, a spouse, or an individual related to the spouse within the third degree as so
 28 determined and includes an individual in an adoptive relationship.

29 [(15)] (16) "Survivor" means any spouse, parent, grandparent, guardian, sibling, child or other
 30 immediate family member or household member of a deceased victim.

31 [(16)] (17) "Victim" means:

32 (a) A person:

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

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

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

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

42 (E) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated
 43 or attempted against the person in a state, within the United States, without a reciprocal crime
 44 victims' compensation program; or

45 (F) Who is an Oregon resident killed or injured by an act of international terrorism committed

1 outside the United States; or

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

3 **SECTION 2.** ORS 147.015 is amended to read:

4 147.015. (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

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

7 (b) The appropriate law enforcement officials were notified of the perpetration of the crime
8 allegedly causing the death or injury to the victim, unless the Department of Justice finds [*good*
9 *cause exists for the failure of notification*] **that, notwithstanding the failure of notification, the**
10 **applicant acted reasonably under the circumstances;**

11 (c) The notification described in paragraph (b) of this subsection occurred within [*72 hours after*
12 *the perpetration of the crime*] **a reasonable time**, unless the Department of Justice finds good cause
13 exists for the failure of notification within [*72 hours*] **a reasonable time;**

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

17 [(*e*)] **(d)** The application for compensation is not the result of collusion between the applicant
18 and the assailant of the victim;

19 [(*f*)] **(e)** **The department determines that the victim acted reasonably with respect to the**
20 **incident causing** the death or injury to the victim, [*was not substantially attributable to the wrongful*
21 *act of the victim*] **taking into account the specific situation of the victim and what a reasonable**
22 **action would be for a person in the victim's circumstances;** and

23 [(*g*)] **(f)** The application for an award of compensation under ORS 147.005 to 147.367 is filed with
24 the department:

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

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

27 (2)(a) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005,
28 domestic violence as defined in ORS 135.230, sexual abuse as defined in ORS 163.760 or stalking as
29 defined in ORS 163.732 is prima facie evidence of good cause for the victim's failure to notify law
30 enforcement in a timely manner under subsection (1)(c) of this section[, *or for failure to cooperate*
31 *with law enforcement under subsection (1)(d) of this section*].

32 (b) The requirement under subsection (1)(b) of this section to notify the appropriate law
33 enforcement officials of the perpetration of the crime is satisfied if[,]:

34 **(A)** As a result of the compensable crime for which the victim or applicant is applying for
35 compensation, the victim or applicant obtained:

36 [(*A*)] **(i)** A temporary or permanent stalking protective order under ORS 30.866 or 163.730 to
37 163.750;

38 [(*B*)] **(ii)** A sexual abuse restraining order under ORS 163.760 to 163.777;

39 [(*C*)] **(iii)** An abuse prevention order under ORS 107.700 to 107.735 or 124.005 to 124.040; [*or*]

40 **(iv) Any other abuse prevention order or no contact order issued by a state, local, tribal**
41 **or federal court; or**

42 [(*D*)] **(v)** A medical assessment, as defined in ORS 147.395, for sexual assault[.], **or any other**
43 **forensic exam or medical assessment;**

44 **(B)** **A victim service provider certifies that the victim reported the crime to the provider;**

45 **(C)** **A tribal health provider, student health provider or community mental health pro-**

1 **vider certifies that the victim reported the crime to the provider;**

2 **(D) The victim reported the crime to the hate crimes telephone hotline described in ORS**
 3 **147.380; or**

4 **(E) The victim provides to the department documentation that qualifies as law enforce-**
 5 **ment notification under the rules of the department.**

6 (3) The department shall adopt rules establishing:

7 (a) A limited [*domestic violence*] counseling award for victims [*of domestic violence*] who apply for
 8 an award of compensation but who do not otherwise qualify under the eligibility requirements of this
 9 section.

10 [(b) A limited sexual assault counseling award for victims of sexual assault who apply for an
 11 award of compensation but who do not otherwise qualify under the eligibility requirements of this
 12 section.]

13 **(b) The types of documentation that qualify as notification to the appropriate law**
 14 **enforcement officials of the perpetration of the crime as described in subsection (2)(b) of this**
 15 **section.**

16 **SECTION 3.** ORS 147.025 is amended to read:

17 147.025. (1) Notwithstanding that a person is not a victim or a dependent of a deceased victim
 18 under ORS 147.015 (1)(a), the person is eligible for compensation for reasonable medical expenses for
 19 the victim and for reasonable funeral expenses of the deceased victim if the person:

20 (a) Paid or incurred such expenses; and

21 (b) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b)
 22 to [(g)] **(f)** are met.

23 (2) Notwithstanding that a person is not a survivor or dependent of a deceased victim under
 24 ORS 147.015 (1)(a), the person is eligible for compensation for reasonable counseling expenses up to
 25 a maximum amount of [\$500] **\$5,000** if the person:

26 (a) Paid or incurred such expenses;

27 [(b) Was a friend or acquaintance of the victim;]

28 [(c) Was the first person to discover the corpse of the victim; and]

29 **(b)(A) Was a friend or acquaintance of the victim and was the first person to discover**
 30 **the corpse of the victim; or**

31 **(B) Was a witness to the crime resulting in the death of a victim; and**

32 [(d)] **(c)** Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015
 33 (1)(b) to [(g)] **(f)** are met.

34 (3) Notwithstanding that a person is not a victim or a survivor or dependent of a deceased vic-
 35 tim under ORS 147.015 (1)(a), the person is eligible for the compensation described in ORS 147.035
 36 (7) [and (8)] if:

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

39 (b) The person is involved in the [*hearing or oral argument*] **proceeding** in lieu of the victim,
 40 survivor or dependent; and

41 (c) The person files a claim in the manner provided in ORS 147.105 and the conditions in ORS
 42 147.015 (1)(b) to [(g)] **(f)** are met.

43 (4) The Department of Justice may pay directly to the provider of the services compensation for
 44 medical, funeral or counseling expenses incurred by the person.

45 **SECTION 4.** ORS 147.035 is amended to read:

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

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

5 (c) When a compensable crime results in:

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

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

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

11 (a) The victim's reasonable medical and hospital expenses, including counseling expenses **and**
 12 **the cost of any prescription medications prescribed in conjunction with the counseling**, up to
 13 a maximum amount of \$20,000;

14 (b) Loss of the victim's earnings, at a maximum rate of \$600 per week, up to a maximum amount
 15 of \$20,000;

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

17 **(d) The costs of obtaining forensic evidence, using an evidence collection kit, during a**
 18 **medical assessment related to strangulation;**

19 **(e) For parents of a minor victim, lost wages due to providing care for the victim, within**
 20 **the terms and up to a maximum amount determined by the department by rule; and**

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

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

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

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

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

29 (a) Reasonable funeral expenses, up to a maximum amount of [~~\$5,000~~] **\$10,000;**

30 **(b) Reasonable cleaning expenses, up to a maximum of \$2,500;**

31 [*b*] **(c) The victim's reasonable medical and hospital expenses, up to a maximum amount of**
 32 **\$20,000;**

33 [*c*] **(d) Loss of support to the dependents of the victim, at a maximum rate of \$600 per week,**
 34 **up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection**
 35 **(2)(b) of this section;**

36 [*d*] **(e) Reasonable counseling expenses for the survivors of a deceased victim **or witnesses****
 37 **to the crime resulting in the death of the victim**, up to a maximum amount of \$20,000 for each
 38 deceased victim and including [*up to \$1,500 for each survivor for*] **the cost of any** prescription
 39 medications prescribed in conjunction with the counseling; and

40 [*e*] **(f) Expenses related to transportation for a survivor's or a dependent's counseling, at a rate**
 41 **determined by the department, up to a maximum amount of \$3,000, when:**

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

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

45 (C) Adequate counseling is not available in closer proximity to the survivor's or dependent's

1 residence.

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

3 (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in
 4 ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family, **including the cost**
 5 **of any prescription medications prescribed in conjunction with the counseling**, are
 6 compensable up to a maximum amount of \$20,000, less any amounts awarded for the victim's medical
 7 or hospital expenses under subsection (2)(a) of this section.

8 (b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who wit-
 9 nessed the domestic violence, **including the cost of any prescription medications prescribed in**
 10 **conjunction with the counseling**, are compensable up to a maximum amount of \$10,000.

11 (c) International terrorism, the counseling expenses of a relative of the victim, **including the**
 12 **cost of any prescription medications prescribed in conjunction with the counseling**, are
 13 compensable up to a maximum amount of \$1,000.

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

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

20 (a) Reasonable funeral expenses, up to a maximum amount of [~~\$5,000~~] **\$10,000**.

21 (b) Reasonable counseling expenses for emotional distress, **including the cost of any pre-**
 22 **scription medications prescribed in conjunction with the counseling**, up to a maximum amount
 23 of \$5,000 for each incident.

24 (7) If the case against the assailant of the victim is under direct or collateral review [*and the*
 25 *victim, survivor or dependent is involved in the hearing or oral argument,*] **or the subject of any**
 26 **other post-conviction proceeding, or the assailant of the victim has a hearing scheduled be-**
 27 **fore the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Re-**
 28 **view Board or has applied for or is being considered for clemency or any other relief,**
 29 compensation may be awarded for:

30 (a) The victim's, survivor's or dependent's counseling expenses, **including the cost of any**
 31 **prescription medications prescribed in conjunction with the counseling**, up to a maximum
 32 amount of [~~\$5,000~~] **\$10,000**; and

33 (b) Other expenses related to the [*review*] **proceeding**, including transportation, [*and*] lodging
 34 **and any other expenses determined by the department by rule that are necessary for the vic-**
 35 **tim, survivor or dependent to be involved in [hearings and oral arguments] the proceeding**, up to
 36 a maximum amount [*of \$3,000*] **determined by the department by rule**.

37 [(8) *If the assailant of the victim has a hearing scheduled before the State Board of Parole and*
 38 *Post-Prison Supervision or the Psychiatric Security Review Board and the victim, survivor or de-*
 39 *pendent is involved in the hearing, compensation may be awarded for:]*

40 [(a) *The victim's, survivor's or dependent's counseling expenses up to a maximum amount of \$5,000;*
 41 *and]*

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

44 [(9)] (8) A claim for compensation expires and no further payments may be made with regard to
 45 the claim:

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

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

5 [(10)] **(9)** Notwithstanding subsection [(9)] **(8)** of this section:

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

8 (b) Claims described in subsection (7) of this section may be filed *[each time an assailant's case*
 9 *is under direct or collateral review and expire:]* **at any time while an assailant's case is involved**
 10 **in the post-conviction proceeding or the assailant has a hearing scheduled or is being con-**
 11 **sidered for release or clemency and do not expire.**

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

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

16 [(c) *Claims described in subsection (8) of this section may be filed each time an assailant has a*
 17 *hearing before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Re-*
 18 *view Board and expire:]*

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

21 [(B) *If the assailant is paroled, conditionally released or discharged, when six months have elapsed*
 22 *from the date the assailant is paroled, conditionally released or discharged.]*

23 [(11)] **(10)** Notwithstanding subsections (2) and [(9)] **(8)** of this section, if a victim suffers cat-
 24 astrophic injuries:

25 (a) A claim for compensation and payments may continue beyond the period described in sub-
 26 section [(9)] **(8)** of this section; and

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

30 [(12)] **(11)** The department shall adopt rules:

31 **(a) Defining the terms and maximum amount of compensation available under subsection**
 32 **(2)(e) of this section.**

33 **(b) Defining the types of compensable expenses and maximum amount of compensation**
 34 **available under subsection (7)(b) of this section.**

35 [(a)] **(c)** Defining catastrophic injuries and establishing the length of time that a claim for com-
 36 pensation and payments may continue under subsection [(11)(a)] **(10)(a)** of this section.

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

40 **SECTION 5.** ORS 147.105 is amended to read:

41 147.105. (1) An applicant for compensation under ORS 147.005 to 147.367 must file an application
 42 under oath on a form furnished by the Department of Justice. The application shall include:

43 (a) The name and address of the victim;

44 (b) If the victim is deceased, the name and address of the applicant and relationship to the vic-
 45 tim, the names and addresses of the victim's dependents and the extent to which each is so de-

1 pendent;

2 (c) The date and nature of the crime or attempted crime on which the application for compen-
3 sation is based;

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

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

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

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

13 (h) Releases authorizing the surrender to the department of reports, documents and other in-
14 formation relating to the matters specified under this subsection; and

15 (i) Such other information as the department determines is necessary.

16 (2) The department may require that the applicants submit with the application materials sub-
17 substantiating the facts stated in the application.

18 (3) If the department finds that an application does not contain the required information or that
19 the facts stated therein have not been substantiated, it shall notify the applicant in writing of the
20 specific additional items of information or materials required [*and that the applicant has 30 days from*
21 *the date of mailing in which to furnish those items to the department. Unless an applicant requests*
22 *and is granted an extension of time by the department, the department shall reject with prejudice the*
23 *claim of the applicant for failure to file the additional information or materials within the specified*
24 *time*].

25 (4) An applicant may file an amended application or additional substantiating materials to cor-
26 rect inadvertent errors or omissions at any time before the department has completed its consider-
27 ation of the original application.

28 (5) The filing of additional information or the amendment of the application pursuant to sub-
29 section (3) or (4) of this section shall be considered for the purposes of ORS 147.005 to 147.367 to
30 have been filed at the same time as the original application.

31 [(6) *Unless the department finds good cause exists for the applicant's failure to satisfy a financial*
32 *obligation or unless the interest of justice requires otherwise, the department shall not process an ap-*
33 *plication filed by or on behalf of a victim who owes a financial obligation ordered or imposed as a*
34 *result of a previous criminal conviction until the department receives information or materials estab-*
35 *lishing to the satisfaction of the department that the financial obligation has been satisfied. If the de-*
36 *partment does not receive the information or materials within one year after the department notifies the*
37 *applicant of the need to fulfill this requirement, the application is void.*]

38 [(7)(a)] (6)(a) If at the time of application, the applicant is incarcerated as a result of a con-
39 viction of a crime, the application shall be refused and returned to the applicant. The applicant is
40 eligible to refile the application within six months after the applicant is released from incarceration.

41 (b) At the time the application is refused and returned, the department shall notify the applicant
42 of the right to refile the claim within six months of release from incarceration.

43 **SECTION 6.** ORS 147.115 is amended to read:

44 147.115. (1) All information submitted to the Department of Justice by an applicant [*and*] **under**
45 **ORS 147.005 to 147.367 is confidential.** All hearings of the Workers' Compensation Board under

1 ORS 147.005 to 147.367 shall be open to the public unless the [*department or*] board determines that
 2 the information shall be kept confidential or that a closed hearing shall be held because:

3 (a) The alleged assailant has not been brought to trial and disclosure of the information or a
 4 public hearing would adversely affect either the apprehension or the trial of the alleged assailant;

5 (b) The offense allegedly perpetrated against the victim is rape, sodomy, [*or*] sexual abuse,
 6 **trafficking in persons or a crime involving domestic violence as defined in ORS 135.230**, and
 7 the interests of the victim or of the victim's dependents require that the information be kept confi-
 8 dential or that the public be excluded from the hearing;

9 (c) The victim or alleged assailant is a minor; or

10 (d) The interests of justice would be frustrated rather than furthered, if the information were
 11 disclosed or if the hearing were open to the public.

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

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

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

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

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

26 **SECTION 7.** ORS 147.125 is amended to read:

27 147.125. (1) In determining the amount of compensation for which an applicant is eligible, the
 28 Department of Justice shall consider the facts stated on the application filed pursuant to ORS
 29 147.105, and:

30 (a) Need not consider whether or not the alleged assailant has been apprehended or brought to
 31 trial or the result of any criminal proceedings against that person;

32 (b) Shall determine the amount of the loss to the applicant and, in the case of a deceased victim,
 33 of the victim's survivors or dependents as determined under ORS 147.035;

34 [*(c) Shall determine the degree or extent to which the victim's acts or conduct contributed to the*
 35 *injuries or death of the victim, and may reduce or deny the award of compensation accordingly. How-*
 36 *ever, the department may disregard for this purpose the responsibility of the victim for the injury of the*
 37 *victim where the record shows that such responsibility was attributable to efforts by the victim to pre-*
 38 *vent a crime or an attempted crime from occurring in the presence of the victim or to apprehend a*
 39 *person who had committed a crime in the presence of the victim;]*

40 [(*d*)] (c) Except as provided in paragraph [(*e*)] (d) of this subsection, shall deduct the amount of
 41 benefits, payments or awards that are payable under the Workers' Compensation Law, from local
 42 governmental, state or federal funds or from any source, and that the victim or survivors or depen-
 43 dents of the victim have received or to which the victim or survivors or dependents of the victim
 44 are entitled as a result of the death or injury of the victim;

45 [(*e*)] (d) Shall not deduct the amount of proceeds from life insurance or contributions from the

1 community that the survivors or dependents of the victim have received or to which the survivors
2 or dependents of the victim are entitled as a result of the death of the victim;

3 [(f)] (e) Shall consider the amount of money available for victim compensation awards as pro-
4 vided in the current biennial department budget approved by the Legislative Assembly or the
5 Emergency Board, and the anticipated claims against that money; and

6 [(g)] (f) Shall award the resultant amount to the applicant as provided in ORS 147.165.

7 (2) In determining the amount of an award to be made to an applicant, the department may
8 consider the number and type of claims filed and anticipated to be filed with the department during
9 the current biennial budget period. If the department determines that insufficient funds will be
10 available during the current biennial budget period to pay all filed and anticipated awards, it may
11 prioritize claims or prorate awards based upon the anticipated available funds. The department's
12 decision to prioritize or prorate claims or awards is not subject to administrative or judicial review,
13 including review under ORS 147.155.

14 **SECTION 8. ORS 147.045 is repealed.**

15 **SECTION 9.** ORS 147.055 is amended to read:

16 147.055. (1) [*Notwithstanding the provisions of ORS 147.045 (1),*] The Department of Justice may
17 make an emergency award to the applicant pending a final decision in the claim, if it appears to the
18 department, prior to taking action upon the claim that:

19 (a) The claim is one with respect to which an award probably will be made; and

20 (b) Undue hardship will result to the applicant if immediate payment is not made.

21 (2)(a) The amount of such emergency award shall not exceed \$1,000.

22 (b) The amount of such emergency award shall be deducted from any final award made as a
23 result of the claim.

24 (c) The excess of the amount of such emergency award over the amount of the final award, or
25 the full amount of the emergency award if no final award is made, shall be repaid by the recipient
26 to the department.

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