

A-Engrossed
House Bill 2621

Ordered by the House April 11
Including House Amendments dated April 11

Introduced and printed pursuant to House Rule 12.00. Pre-session 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.

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 **Department of Justice** compensation award. **Specifies circumstances that are prima facie evidence of good cause for victim's failure to notify law enforcement in timely manner or failure to cooperate with law enforcement.**

Directs department to adopt rules establishing [*Limited Domestic Violence Counseling Award Program*] **limited domestic violence counseling award** and [*Limited Sexual Assault Counseling Award Program*] **limited sexual assault counseling award.**

Increases maximum weekly payment rate of crime victim compensation award for loss of earnings and loss of support to dependents. **Authorizes compensation for prescribed medication for survivors of deceased victim as part of reasonable counseling expenses compensation.**

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.

Authorizes compensation for forensic interview of child at community assessment center.

A BILL FOR AN ACT

1
2 Relating to crime victim compensation; amending ORS 147.015, 147.025, 147.035, 147.145, 147.205,
3 147.390 and 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, **unless the Department of Justice finds good**
11 **cause exists for the failure of notification;**

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

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

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

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 and the assailant of the victim;

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

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

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

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

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

13 **(b) The requirement under subsection (1)(b) of this section to notify the appropriate law**
14 **enforcement officials of the perpetration of the crime is satisfied if, as a result of the**
15 **compensable crime for which the victim or applicant is applying for compensation, the victim**
16 **or applicant obtained:**

17 (A) A temporary or permanent stalking protective order under ORS 30.866 or 163.730 to
18 163.750;

19 (B) A sexual abuse restraining order under ORS 163.760 to 163.777;

20 (C) An abuse prevention order under ORS 107.700 to 107.735 or 124.005 to 124.040; or

21 (D) A medical assessment, as defined in ORS 147.395, for sexual assault.

22 (3) The department shall adopt rules establishing:

23 (a) A limited domestic violence counseling award for victims of domestic violence who
24 apply for an award of compensation but who do not otherwise qualify under the eligibility
25 requirements of this section.

26 (b) A limited sexual assault counseling award for victims of sexual assault who apply for
27 an award of compensation but who do not otherwise qualify under the eligibility require-
28 ments of this section.

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

30 147.035. (1)(a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be
31 awarded under ORS 147.005 to 147.367 only for losses described in this section.

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

34 (c) When a compensable crime results in:

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

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

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

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

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

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

45 (d) Expenses related to transportation for the victim's medical care or counseling, at a rate de-

1 terminated by the Department of Justice, up to a maximum amount of \$3,000, when:

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

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

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

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

8 (a) Reasonable funeral expenses, up to a maximum amount of \$5,000;

9 (b) The victim's reasonable medical and hospital expenses, up to a maximum amount of \$20,000;

10 (c) Loss of support to the dependents of the victim, at a maximum rate of [~~\$400~~] **\$600** per week,
11 up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection
12 (2)(b) of this section;

13 (d) Reasonable counseling expenses for the survivors of a deceased victim, up to a maximum
14 amount of \$20,000 for each deceased victim **and including up to \$1,500 for each survivor for**
15 **prescription medications prescribed in conjunction with the counseling;** and

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

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

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

21 (C) Adequate counseling is not available in closer proximity to the survivor's or dependent's
22 residence.

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

24 (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in
25 ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are compensable up
26 to a maximum amount of \$20,000, less any amounts awarded for the victim's medical or hospital
27 expenses under subsection (2)(a) of this section.

28 (b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who wit-
29 nessed the domestic violence are compensable up to a maximum amount of \$10,000.

30 (c) International terrorism, the counseling expenses of a relative of the victim are compensable
31 up to a maximum amount of \$1,000.

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

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

38 (a) Reasonable funeral expenses, up to a maximum amount of \$5,000.

39 (b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000
40 for each incident.

41 (7) If the case against the assailant of the victim is under direct or collateral review and the
42 victim, survivor or dependent is involved in the hearing or oral argument, compensation may be
43 awarded for:

44 (a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of
45 \$5,000; and

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

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

7 (a) The victim's, survivor's or dependent's counseling expenses up to a maximum amount of
8 \$5,000; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (12) The department shall adopt rules:

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

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

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

2 147.145. (1) If the applicant disagrees with the order entered under ORS 147.135, the applicant
3 may request review by the Department of Justice.

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

7 **(b) If the department determines that the request for review does not contain sufficient**
8 **information to make a decision within 30 days of the department's receipt of the request for**
9 **review, the 30-day time period may be extended by the department only with the oral or**
10 **written permission of the applicant.**

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

12 147.205. (1) To carry out the provisions and purposes of ORS 147.005 to 147.367, the Department
13 of Justice has the power and duty to:

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

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

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

24 (B) May use the information or records only for the purposes authorized by ORS 147.005 to
25 147.367; and

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

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

29 (d) Direct medical examination of victims.

30 (e) Determine all claims for awards filed with the department pursuant to ORS 147.005 to
31 147.367, and to reinvestigate or reopen cases as the department deems necessary.

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

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

38 (a) The department requests the information; and

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

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

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

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

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

1 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and
2 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
3 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
4 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
5 ment of Human Services shall make the records available to:

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

8 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
9 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
10 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
11 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
12 tion, care or treatment;

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

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

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

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

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

24 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
25 342.176 involving any child or any student in grade 12 or below;

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

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

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

37 (b) If the Department of Human Services does not have a report or record of abuse regarding
38 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
39 161.015, the department may disclose that information.

40 (3) The Department of Human Services may make reports and records compiled under the pro-
41 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
42 agency, organization or other entity when the department determines that such disclosure is neces-
43 sary to administer its child welfare services and is in the best interests of the affected child, or that
44 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
45 children from abuse and neglect or for research when the Director of Human Services gives prior

1 written approval. The Department of Human Services shall adopt rules setting forth the procedures
 2 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
 3 section. The name, address and other identifying information about the person who made the report
 4 may not be disclosed pursuant to this subsection and subsection (1) of this section.

5 (4) A law enforcement agency may make reports and records compiled under the provisions of
 6 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
 7 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement
 8 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
 9 to child abuse and neglect **or necessary to determine a claim for crime victim compensation**
 10 **under ORS 147.005 to 147.367.**

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

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

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

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

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

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

41 (8) As used in this section, "law enforcement agency" has the meaning given that term in ORS
 42 181A.010.

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

44 **SECTION 6.** ORS 147.390 is amended to read:

45 147.390. (1) Notwithstanding that a child is not a victim under ORS 147.015 (1)(a), in cases of

1 suspected child sexual abuse as described in ORS 419B.005 (1)(a)(C), (D) or (E), or child physical
2 abuse by an adult or caretaker as otherwise described in ORS 419B.005 (1)(a)(A), compensation may
3 be made on behalf of the child for a child abuse medical assessment as defined in ORS 418.782,
4 [or] a medical examination required by ORS 419B.023[,] **or a forensic interview conducted at a**
5 **community assessment center as defined in ORS 418.782**, if:

- 6 (a) The expenses are actually paid or incurred by the applicant; and
- 7 (b) A claim is filed on behalf of the child in the manner provided in ORS 147.015.

8 (2) The Department of Justice may pay compensation for child abuse medical assessments or
9 medical examinations required by ORS 419B.023 regardless of whether a finding of abuse is made
10 and only if other insurance is unavailable. If the department pays compensation, the department
11 shall pay the compensation directly to the provider of the services. The medical fee schedules for
12 payment under this section shall be the schedules adopted under ORS 147.035.

13 **SECTION 7.** ORS 147.025 is amended to read:

14 147.025. (1) Notwithstanding that a person is not a victim or a dependent of a deceased victim
15 under ORS 147.015 (1)(a), the person is eligible for compensation for reasonable medical expenses for
16 the victim and for reasonable funeral expenses of the deceased victim if the person:

- 17 (a) Paid or incurred such expenses; and
- 18 (b) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b)

19 to [(f)] (g) are met.

20 (2) Notwithstanding that a person is not a survivor or dependent of a deceased victim under
21 ORS 147.015 (1)(a), the person is eligible for compensation for reasonable counseling expenses up to
22 a maximum amount of \$500 if the person:

- 23 (a) Paid or incurred such expenses;
- 24 (b) Was a friend or acquaintance of the victim;
- 25 (c) Was the first person to discover the corpse of the victim; and
- 26 (d) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (1)(b)

27 to [(f)] (g) are met.

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

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

33 (b) The person is involved in the hearing or oral argument in lieu of the victim, survivor or
34 dependent; and

35 (c) The person files a claim in the manner provided in ORS 147.105 and the conditions in ORS
36 147.015 (1)(b) to [(f)] (g) are met.

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

39