

Enrolled
House Bill 2621

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CHAPTER

AN ACT

Relating to crime victim compensation; amending ORS 147.015, 147.025, 147.035, 147.145, 147.205, 147.390 and 419B.035.

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

SECTION 1. ORS 147.015 is amended to read:

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

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

(b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim, **unless the Department of Justice finds good cause exists for the failure of notification;**

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall adopt rules establishing:

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

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

SECTION 2. ORS 147.035 is amended to read:

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

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

(c) When a compensable crime results in:

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

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

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

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

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

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

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

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

(B) The medical care or counseling is provided more than 30 miles away from the victim's residence; and

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

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

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

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

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

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

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

(A) The counseling is compensable under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Notwithstanding subsections (2) and (9) of this section, if a victim suffers catastrophic injuries:

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

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

(12) The department shall adopt rules:

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

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

SECTION 3. ORS 147.145 is amended to read:

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

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

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

SECTION 4. ORS 147.205 is amended to read:

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

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

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

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

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

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

(c) Adopt rules pursuant to ORS chapter 183.

(d) Direct medical examination of victims.

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

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

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

- (a) The department requests the information; and
- (b) A release authorizing the surrender has been completed under ORS 147.105 (1)(h).
- (3) As used in subsection (2) of this section:

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

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

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

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

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

(b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse practitioner or coming before the physician, physician assistant or nurse practitioner for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

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

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

(f) The Office of Child Care for certifying, registering or otherwise regulating child care facilities;

(g) The Office of Children's Advocate;

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

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

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

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

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

(3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 147.390 is amended to read:

147.390. (1) Notwithstanding that a child is not a victim under ORS 147.015 (1)(a), in cases of suspected child sexual abuse as described in ORS 419B.005 (1)(a)(C), (D) or (E), or child physical abuse by an adult or caretaker as otherwise described in ORS 419B.005 (1)(a)(A), compensation may be made on behalf of the child for a child abuse medical assessment as defined in ORS 418.782, [or] a medical examination required by ORS 419B.023[,] **or a forensic interview conducted at a community assessment center as defined in ORS 418.782, if:**

(a) The expenses are actually paid or incurred by the applicant; and

(b) A claim is filed on behalf of the child in the manner provided in ORS 147.015.

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

SECTION 7. ORS 147.025 is amended to read:

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

(a) Paid or incurred such expenses; and

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

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

(a) Paid or incurred such expenses;

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

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

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

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

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

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

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

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

Passed by House April 18, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 10, 2017

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Dennis Richardson, Secretary of State