

Chapter 147

1991 EDITION

Compensation of Crime Victims

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PROCEDURE IN CRIMINAL MATTERS GENERALLY

GENERAL PROVISIONS

147.005 Definitions. As used in ORS 135.905 and 147.005 to 147.365 unless the context requires otherwise:

- (1) "Applicant" means:
 - (a) Any victim of a compensable crime who applies to the department for compensation under ORS 135.905 and 147.005 to 147.365;
 - (b) Any person who was a dependent of a deceased victim at the time of the death of that victim;
 - (c) Any person who is a survivor of a deceased victim; or
 - (d) Any person eligible for compensation under ORS 147.025.
- (2) "Board" means the Workers' Compensation Board.
- (3) "Child" means an unmarried person who is under 18 years of age and includes a posthumous child, stepchild or an adopted child.
- (4) "Compensable crime" means an intentional, knowing or reckless act that results in serious bodily injury or death of another person and which, if committed by a person of full legal capacity, would be punishable as a crime in this state.
- (5) "Dependent" means such relatives of a deceased victim who wholly or partially were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.
- (6) "Department" means the Department of Justice.
- (7) "Funeral expenses" means expenses of the funeral, burial, cremation or other chosen method of interment, including plot or tomb and other necessary incidents to the disposition of the remains.
- (8) "Injury" means actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock.
- (9) "Law enforcement official" means a sheriff, constable, marshal, municipal police officer or member of the Oregon State Police and such other persons as may be designated by law as a peace officer.
- (10) "Relative" means a person related to the victim within the third degree as determined by the common law, a spouse, or an individual related to the spouse within the third degree as so determined and includes an individual in an adoptive relationship.
- (11) "Survivor" means any spouse, parent, grandparent, guardian, sibling, child or other immediate family member of a deceased victim.

(12) "Victim" means a person:

- (a) Killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person;
- (b) Killed or injured in this state while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable person under the circumstances;
- (c) Killed or injured in this state while assisting a law enforcement official to apprehend a person who has perpetrated a crime or to prevent the perpetration of any such crime, if that assistance was in response to the express request of the law enforcement official;

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

(e) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated or attempted against the person in a state, within the United States, without a reciprocal crime victims' compensation program. [1977 c.376 §1; 1985 c.552 §4; 1987 c.770 §1; 1989 c.542 §1]

147.010 [Amended by 1973 c.32 §1; renumbered 133.743]

147.015 Eligibility for compensation; generally. A person is eligible for an award of compensation under ORS 135.905 and 147.005 to 147.365 if:

- (1) The person is a victim, or is a survivor or dependent of a deceased victim of a compensable crime that resulted in a compensable loss of more than \$100;
- (2) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the department finds good cause exists for the failure of notification;
- (3) 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;
- (4) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;
- (5) 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
- (6) The application for an award of compensation under ORS 135.905 and 147.005 to 147.365 is filed with the department:

(a) Within six months 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. [1977 c.376 §3; 1987 c.770 §2; 1989 c.542 §2; 1991 c.862 §2]

147.020 [Renumbered 133.747]

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

(a) Such expenses were paid or incurred by the person; and

(b) The person files a claim in the manner provided in ORS 147.015 (2) to (6).

(2) The Department of Justice may pay directly to the provider of the services compensation for medical or funeral expenses incurred by the person. [1977 c.376 §4; 1987 c.770 §3]

147.030 [Renumbered 133.753]

147.035 Amounts and types of losses compensable. (1) Losses compensable under ORS 135.905 and 147.005 to 147.365 resulting from death or injury to a victim include:

(a) In the case of injury:

(A) Reasonable medical and hospital expenses, including psychiatric, psychological or counseling expenses and further including, in cases of child sexual abuse and exploitation described in ORS 418.740 (1)(c) or (d), counseling expenses of the victim's family up to a maximum amount of \$10,000;

(B) Loss of earnings, not exceeding \$200 per week up to a maximum amount of \$10,000; and

(C) Rehabilitation up to a maximum amount of \$3,000.

(b) In the case of death:

(A) Reasonable funeral expenses up to a maximum amount of \$2,000;

(B) Reasonable medical and hospital expenses up to a maximum amount of \$10,000;

(C) Loss of support to the dependents of the victim not exceeding \$200 per week up to a maximum amount of \$10,000, less any amounts paid for loss of earnings; and

(D) Reasonable counseling expenses for the survivors of a deceased victim up to a maximum amount of \$10,000 for each deceased victim.

(2) Compensable losses do not include:

(a) Pain and suffering or property damage; or

(b) Aggregate damages to the victim and to the dependents of a victim exceeding \$23,000.

(3) A claim for benefits expires and no further payments shall be made with regard to the claim when three years have elapsed since the entry of a determination order under ORS 147.135.

(4) The Department of Justice shall adopt rules 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. [1977 c.376 §5; 1987 c.770 §4; 1989 c.542 §3; 1991 c.603 §2; 1991 c.862 §3]

Note: Section 4, chapter 862, Oregon Laws 1991, provides:

Sec. 4. The amendments to ORS 147.035 by section 3 of this Act first apply to claims pending on the effective date of this Act [August 5, 1991] for which no determination order under ORS 147.135 has been entered. [1991 c.862 §4]

Note: Section 4, chapter 603, Oregon Laws 1991 which was added to and made a part of ORS chapter 147, provides:

Sec. 4. The amendments to ORS 147.105 and 147.035 by sections 1 and 2 of this 1991 Act apply to all claims for compensation under ORS chapter 147 that are pending on the effective date of this 1991 Act [July 17, 1991], regardless of the date of injury or the date of application for compensation. [1991 c.603 §4]

147.040 [Renumbered 133.757]

147.045 Notification of district attorney upon filing of compensation claim; deferral of compensation proceedings; emergency awards. (1) Upon filing of a claim pursuant to ORS 135.905 and 147.005 to 147.365, the department shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within 10 days after such notification, the district attorney advises the department that a criminal prosecution is pending upon the same alleged crime and requests that action by the department be deferred, the department shall defer all proceedings under ORS 135.905 and 147.005 to 147.365 until such time as such criminal prosecution has been concluded and shall so notify the district attorney and the applicant. When such criminal prosecution has been concluded, the district attorney shall promptly so notify the department.

(2) Nothing in this section shall limit the authority of the department to grant emergency awards pursuant to ORS 147.055. [1977 c.376 §6]

147.050 [Renumbered 133.763]

147.055 Emergency awards; amount; effect on final award. (1) Notwithstanding the provisions of ORS 147.045 (1), the department may make an emergency award to

the applicant pending a final decision in the claim, if it appears to the department, prior to taking action upon the claim that:

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

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

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

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

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the recipient to the department. [1977 c.376 §7]

147.060 [Renumbered 133.767]

147.065 Limitation on time for commencing action for compensable crime. Notwithstanding ORS 12.110 the victim of any compensable crime as defined in ORS 147.005 or the victim's representative may bring an action at any time within the five-year period after the commission of the compensable crime. [1985 c.552 §5]

Note: 147.065 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 147 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

147.070 [Renumbered 133.773]

147.080 [Renumbered 133.777]

147.090 [Renumbered 133.783]

147.100 [Renumbered 133.787]

COMPENSATION PROCEDURE

147.105 Application for compensation; contents; additional information; amended applications; effect of criminal conviction of applicant. (1) An applicant for compensation under ORS 135.905 and 147.005 to 147.365 must file an application under oath on a form furnished by the department. The application shall include:

(a) The name and address of the victim;

(b) If the victim is deceased, the name and address of the applicant and relationship to the victim, the names and addresses of the victim's dependents and the extent to which each is so dependent;

(c) The date and nature of the crime or attempted crime on which the application for compensation is based;

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

(e) The nature and extent of the injuries sustained by the victim, the names and ad-

resses of those giving medical and hospital treatment to the victim and whether death resulted;

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

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

(h) Releases authorizing the surrender to the department of reports, documents and other information relating to the matters specified under this subsection; and

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

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

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

(4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the department has completed its consideration of the original application.

(5) The filing of additional information or the amendment of the application pursuant to subsection (3) or (4) of this section shall be considered for the purposes of ORS 135.905 and 147.005 to 147.365 to have been filed at the same time as the original application.

(6) The department shall not process an application filed by or on behalf of a victim who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the department receives information or materials establishing to the satisfaction of the department that the financial obligation has been satisfied. If the department does not receive the information

or materials within one year after the department notifies the applicant of the need to fulfill this requirement, the application is void.

(7)(a) If at the time of application, the applicant is incarcerated as a result of a conviction of a crime, the application shall be refused and returned to the applicant. The applicant is eligible to refile the application within six months after the applicant is released from incarceration.

(b) At the time the application is refused and returned, the department shall notify the applicant of the right to refile the claim within six months of release from incarceration. [1977 c.376 §8; 1991 c.603 §1; 1991 c.862 §5]

Note: Section 4, chapter 603, Oregon Laws 1991 which was added to and made a part of ORS chapter 147, provides:

Sec. 4. The amendments to ORS 147.105 and 147.035 by sections 1 and 2 of this 1991 Act apply to all claims for compensation under ORS chapter 147 that are pending on the effective date of this 1991 Act [July 17, 1991], regardless of the date of injury or the date of application for compensation. [1991 c.603 §4]

147.110 [Amended by 1973 c.836 §123; renumbered 133.793]

147.115 Confidentiality of application information; board proceedings; use of record; witnesses before board. (1) All information submitted to the department by an applicant and all hearings of the board under ORS 135.905 and 147.005 to 147.365 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

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

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

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

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

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

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

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

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

(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in ORS 44.415 (2). [1977 c.376 §9; 1989 c.980 §7a]

147.120 [Renumbered 133.797]

147.125 Considerations in determining amount of compensation; deduction of other benefits. (1) In determining the amount of compensation for which an applicant is eligible, the Department of Justice shall consider the facts stated on the application filed pursuant to ORS 147.105, and:

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

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

(c) Shall determine the degree or extent to which the victim's acts or conduct provoked or contributed to the injuries or death of the victim, and shall reduce or deny the award of compensation accordingly. However, the department may disregard for this purpose the responsibility of the victim for the injury of the victim where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in the presence of the victim or to apprehend a person who had committed a crime in the presence of the victim;

(d) Shall deduct the amount of benefits, payments or awards, payable under the Workers' Compensation Law, from local governmental, state or federal funds or from any source, and which the victim or survivors or dependents of the victim have received or to which the victim or survivors or dependents

of the victim are entitled as a result of the death or injury of the victim;

(e) Shall consider the amount of money available for victim compensation awards as provided in the current biennial department budget approved by the Legislative Assembly or the Emergency Board, and the anticipated claims against that money; and

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

(2) In determining the amount of an award to be made to an applicant, the department may consider the number and type of claims filed and anticipated to be filed with the department during the current biennial budget period. If the department determines that insufficient funds will be available during the current biennial budget period to pay all filed and anticipated awards, it may prioritize claims or prorate awards based upon the anticipated available funds. The department's decision to prioritize or prorate claims or awards is not subject to administrative or judicial review, including review under ORS 147.155. [1977 c.376 §10; 1987 c.770 §5; 1989 c.542 §4; 1991 c.862 §6]

147.130 [Renumbered 133.803]

147.135 Processing compensation application by department; order; contents. After processing the application filed under ORS 147.105 the department shall enter an order stating:

(1) Its findings of fact;

(2) Its decision as to whether or not compensation is due under ORS 135.905 and 147.005 to 147.365;

(3) The amount of compensation, if any, which is due under ORS 135.905 and 147.005 to 147.365, as determined pursuant to ORS 147.125;

(4) The person or persons to whom the compensation should be paid;

(5) The percentage share of the total compensation award and the dollar amount each person is to receive; and

(6) Whether disbursement of the compensation awarded is to be made in a lump sum or in periodic payments or to a trustee as provided in ORS 147.165. [1977 c.376 §14]

147.140 [Renumbered 133.805]

147.145 Review of order; reconsideration; notice to applicant. If the applicant disagrees with the order entered under ORS 147.135, the applicant may request review by the department. 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. [1977 c.376 §15]

147.150 [Amended by 1963 c.550 §1; 1973 c.836 §124; renumbered 133.807]

147.155 Appeal to Workers' Compensation Board; hearing; record; evidence considered; board determination not subject to further review. (1) Any applicant who requests review by the department under ORS 147.145 and who disagrees with the decision of the department on review may appeal to the board.

(2) The request for hearing shall be in writing. The request shall include the applicant's address, shall be signed by the applicant and shall be mailed to the board.

(3) The board shall conduct a hearing upon at least 10 days' notice by mail to all interested persons.

(4) A record of all proceedings at the hearing shall be kept but need not be transcribed.

(5) The board is not bound by rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. However, no evidence is admissible at a hearing that has not previously been considered by the department. The decision by the board shall be final and shall not be subject to further administrative or judicial review. [1977 c.376 §15a]

147.160 [Amended by 1973 c.836 §125; renumbered 133.809]

147.165 Payment of awards; awards to minors and incompetents. (1) The award made under ORS 135.905 and 147.005 to 147.365 shall be paid in a manner determined by the Department of Justice. Payment for medical, hospital and funeral expenses may be made directly to the service providers.

(2) Where a person eligible to receive an award under ORS 135.905 and 147.005 to 147.365 is a person under the age of 18 years or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall:

(a) File an annual accounting of the award with the department; and

(b) Take such other action as the department shall determine is necessary and appropriate for the benefit of the beneficiary of the award.

(3) A person who is incarcerated is not eligible for payments for loss of earnings for the period of incarceration.

(4) Payment of claims is subject to availability of funds for victim compensation awards as provided in the department budget approved by the Legislative Assembly or the Emergency Board. [1977 c.376 §16; 1987 c.770 §6; 1991 c.862 §7]

147.170 [Amended by 1973 c.836 §126; renumbered 133.813]

147.180 [Amended by 1973 c.836 §127; renumbered 133.815]

147.190 [Renumbered 133.817]

147.200 [Renumbered 133.823]

ADMINISTRATIVE PROVISIONS

147.205 Authority of Department of Justice; assistance from other agencies; rules; examination of victims; reports to Governor and Legislative Assembly. To carry out the provisions and purposes of ORS 135.905 and 147.005 to 147.365, the Department of Justice shall have the power and duty to:

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

(2) Request from law enforcement officials and from any other agency of the state or local governmental unit such assistance and information as will enable the department to carry out its functions and duties.

(3) Adopt rules pursuant to ORS 183.310 to 183.550.

(4) Direct medical examination of victims.

(5) Determine all claims for awards filed with the department pursuant to ORS 135.905 and 147.005 to 147.365, and to reinvestigate or reopen cases as the department deems necessary.

(6) Report biennially to the Governor and to the Legislative Assembly on its activities. [1977 c.376 §12; 1987 c.770 §7]

147.210 [Renumbered 133.825]

147.215 Attorney General as legal adviser to department; assistance by governmental agencies. (1) The Attorney General shall serve as legal adviser to the department for all matters arising under ORS 135.905 and 147.005 to 147.365.

(2) Law enforcement officials and other agencies of the state or local governmental units are authorized to give and shall provide any assistance or information requested by the department under ORS 147.205 (2). [1977 c.376 §13]

147.220 [Amended by 1961 c.389 §4; renumbered 133.827]

147.225 Criminal Injuries Compensation Account. There is established the Criminal Injuries Compensation Account. All moneys in the account are continuously appropriated for and may be used by the department for the purposes authorized in ORS 135.905 and 147.005 to 147.365. [1977 c.376 §22]

147.227 Disbursement of moneys to be used for comprehensive victims' assist-

ance programs; qualifications. (1) The Attorney General or the Attorney General's designee shall disburse up to one-half of the moneys that the Criminal Injuries Compensation Account receives from the Criminal Fine and Assessment Account to counties and cities where prosecuting attorneys maintain comprehensive victims' assistance programs approved by the Attorney General or the Attorney General's designee. Those counties and cities shall provide the moneys to the prosecuting attorney therein to be used exclusively for the comprehensive victims' assistance program. Pursuant to consultation with a three member advisory committee, which the Attorney General shall establish administratively, and which shall consist of a representative from the Attorney General's Office, the Oregon District Attorney's Association and a prosecutor's victim assistance program, the Attorney General shall adopt rules for equitable distribution of these moneys among participating counties and cities.

(2) To qualify for approval under this section, a comprehensive victims' assistance program shall not restrict services only to victims or witnesses of a particular type of crime, but shall provide services to victims and witnesses generally. The program must also, in the determination of the Attorney General or the Attorney General's designee, substantially accomplish the following:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property, including, but not limited to:

(A) Informing victims and witnesses of their case status and progress;

(B) Performing advocate duties for victims within the criminal justice system;

(C) Assisting victims in recovering property damaged or stolen and in obtaining restitution or compensation for medical and other expenses incurred as a result of the criminal act;

(D) Preparing victims for pending court hearings by informing them of procedures involved;

(E) Accompanying victims to court hearings;

(F) Involving victims, when possible, in the decision-making process in the criminal justice system;

(G) Assisting victims in obtaining the return of property held as evidence;

(H) Assisting victims with personal logistical problems related to court appearances; and

(I) Developing community resources to assist victims of crime;

(b) Be administered by the district attorney of the county or city attorney of the city;

(c) Assist victims of crimes in the preparation and presentation of claims against the Criminal Injuries Compensation Account; and

(d) Generally encourage and facilitate testimony by victims of and witnesses to criminal conduct.

(3) If a proposed victims' assistance program, although not substantially comprising all elements described in subsection (2) of this section, nevertheless comprises a significant portion thereof and if, in the determination of the Attorney General or the Attorney General's designee thereof, it would not be practicable at the current time for the district attorney or city attorney to establish a more comprehensive program, the Attorney General or the Attorney General's designee thereof may qualify the program under this section on a temporary basis and subject to such conditions as the Attorney General or the designee shall impose upon the program. [1987 c.905 §11]

Note: Section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991, provides:

Sec. 39. Chapter 905, Oregon Laws 1987, takes effect on July 1, 1992. It shall apply only to persons convicted of or granted diversion from offenses for which the accusatory instrument was filed on or after that date and to moneys ordered to be paid as a result of such conviction or diversion. The provisions of chapter 905, Oregon Laws 1987, do not apply to persons convicted of or granted diversion from offenses for which the accusatory instrument was filed before July 1, 1992. Such persons may be prosecuted on and after July 1, 1992, as if chapter 905, Oregon Laws 1987, had not been enacted, and the disposition of moneys ordered paid by such persons shall be as if chapter 905, Oregon Laws 1987, had not been enacted. All fine and assessment moneys received by the courts on or after July 1, 1992, shall be disposed of according to chapter 905, Oregon Laws 1987, regardless of the date of filing the accusatory instrument charging the offense that resulted in conviction or diversion. [1987 c.905 §39; 1989 c.844 §6; 1991 c.490 §1]

147.230 [Amended by 1973 c.836 §128; renumbered 133.833]

147.235 [1961 c. 389 §3; renumbered 133.837]

147.240 Department of Justice to submit claims to account for payment of awards. After the entry of an award under ORS 135.905 and 147.005 to 147.365, the department shall submit the claim for payment from the Criminal Injuries Compensation Account pursuant to ORS 293.295 to 293.460 and 293.465 to 293.510. [1977 c.376 §23]

147.245 Disposition of moneys recovered from assailant; disposition of gifts or grants. (1) Any moneys recovered by the department under ORS 147.345 and 147.355

shall be credited to the Criminal Injuries Compensation Account.

(2) Any gifts, contributions, grants or federal funds specifically given to the department for the benefit of victims of crimes shall be credited to the Criminal Injuries Compensation Account. [1977 c.376 §24]

147.250 [Renumbered 133.839]

147.253 [Renumbered 133.843]

147.255 Recovery of moneys paid on fraudulent claims; recovery of fees. The department may institute suit:

(1) To recover any awards made because of fraudulent claims.

(2) On behalf of the applicant or recipients, to recover all fees paid to a counsel or agent in violation of ORS 147.315. [1977 c.376 §25]

147.256 [Renumbered 133.845]

147.259 [1983 c.725 §2; 1985 c.16 §448; 1985 c.761 §4; 1989 c.844 §2; repealed by 1987 c.905 §37]

Note: 147.259 is repealed July 1, 1992. See sections 37 and 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991. The text (1989 Edition) is set forth for the user's convenience.

147.259 (1) Whenever a person is convicted in any court of a crime committed on or after September 1, 1983, the court shall impose upon the person a penalty assessment of \$50 for a felony and \$20 for a misdemeanor. However, the court shall impose a penalty assessment of \$40 in the case of conviction for driving under the influence of intoxicants under ORS 813.010. The assessment provided for in this subsection shall be in addition to and not in lieu of any other penalty or assessment authorized by law. Moneys paid to the court by a convicted person shall be applied to the assessment under this subsection before being applied to any other fine, penalty, cost or assessment imposed upon the convicted person. The court may decline to impose the penalty for which this section provides, or part of such penalty, if it finds that the defendant is indigent or that the penalty would impose an undue hardship.

(2) Whenever a person is convicted in any court of a violation after July 26, 1989, the court shall impose a penalty assessment of \$20.

(3) Whenever a person accused of committing a crime on or after September 1, 1983, posts security pursuant to ORS 135.230 to 135.295 and fails to appear, there shall be assessed against the security an assessment of \$50 in the case of a felony accusation and \$20 in the case of a misdemeanor accusation, except that in the case of an accusation of driving under the influence of intoxicants under ORS 813.010 there shall be assessed an assessment of \$40. An assessment under this subsection shall be an offset against any assessment under subsection (1) of this section.

(4) Whenever a person accused of committing a crime on or after September 1, 1983, participates in a diversion agreement under ORS 135.881 to 135.901 or ORS 813.210 to 813.230, the defendant, as a condition of diversion, shall pay the assessment for which the defendant would have been liable pursuant to subsection (1) of this section if the defendant had been convicted. The district attorney or city attorney if the case is prosecuted by the city attorney shall include in the diversion agreement a provision setting forth the defendant's obligation. If the diversion is terminated and criminal proceedings are resumed against the defendant, any payment made by the defendant under this sub-

section shall be refunded upon subsequent acquittal of the defendant or dismissal of the case.

(5) Penalty assessments provided for under this section shall be paid within 90 days of imposition, unless the court allows payment at a later time. The assessments shall be paid to the clerk of the court. The clerk of the court monthly shall transmit the moneys collected to the Department of Revenue. Pursuant to ORS 305.830, the Department of Revenue shall deposit the moneys with the State Treasurer for the Criminal Injuries Compensation Account established under ORS 147.225. The Attorney General or the designee thereof monthly shall return one-half of the moneys collected from each county or city to the district attorney of the county or the city attorney of the city if the district or city attorney maintains a comprehensive victims' assistance program approved by the Attorney General or the designee thereof upon application by the district or city attorney. The district or city attorney shall expend such moneys exclusively for the comprehensive victims' assistance program.

(6) In order to qualify for approval under this section, comprehensive victims' assistance programs shall not restrict services only to victims or witnesses of a particular type of crime and must, in the determination of the Attorney General or the designee thereof, substantially accomplish the following:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property, including, but not limited to:

(A) Informing victims and witnesses of their case status and progress;

(B) Performing advocate duties for victims within the criminal justice system;

(C) Assisting victims in recovering property damaged or stolen and in obtaining restitution or compensation for medical and other expenses incurred as a result of the criminal act;

(D) Preparing victims for pending court hearings by informing them of procedures involved;

(E) Accompanying victims to court hearings;

(F) Involving victims, when possible, in the decision-making process in the criminal justice system;

(G) Assisting victims in obtaining the return of property held as evidence;

(H) Assisting victims with personal logistical problems related to court appearances; and

(I) Developing community resources to assist victims of crime;

(b) Be administered by the district attorney of the county or city attorney of the city;

(c) Assist victims of crimes in the preparation and presentation of claims against the Criminal Injuries Compensation Account; and

(d) Generally encourage and facilitate testimony by victims of and witnesses to criminal conduct.

(7) If a proposed victims' assistance program, although not substantially comprising all elements described in subsection (6) of this section, nevertheless comprises a significant portion thereof and if, in the determination of the Attorney General or the designee thereof, it would not be practicable at the current time for the district attorney or city attorney to establish a more comprehensive program, the Attorney General or the designee thereof may qualify the program under this section on a temporary basis and subject to such conditions as the Attorney General or the designee shall impose upon the program.

(8) Penalty assessments under this section may also be imposed in juvenile offense disposition when the

court takes jurisdiction under ORS 419.476 (1)(a) as a result of conduct engaged in on or after September 1, 1983.

147.260 [Renumbered 133.847]

147.265 [1983 c.725 §3; repealed by 1987 c.905 §37]

Note: 147.265 is repealed July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991. The text (1989 Edition) is set forth for the user's convenience.

147.265 A sentencing court may make payment of assessments under ORS 147.259 a condition of probation. Failure to comply with a penalty assessment imposed under ORS 147.259 is also punishable as a contempt of court. Contempt proceedings or other proceedings to collect the assessment shall be initiated by the district attorney or city attorney or by the court on its own motion.

147.270 [Renumbered 133.853]

147.275 Contracts for producing or publishing story of compensable crime; escrow account for benefit of victims; notice; distribution. (1) When any person or other legal entity contracts with any individual charged with or convicted of committing a compensable crime in this state or found guilty except for insanity with regard to such a crime, or whenever any person or other legal entity contracts with a representative or assignee of that individual, for the payment of money in return for the right to reenact such crime, or to describe the individual's thoughts, opinions or emotions regarding the crime, in a motion picture, book, magazine, article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind, the person or legal entity shall promptly submit a copy of the contract to the Department of Justice and pay to the department any moneys which would otherwise, under the terms of the contract, be paid to the accused or convicted individual, the person found guilty except for insanity or the representative or assignee of the individual.

(2) The department shall deposit moneys received under this section in an escrow account established for the benefit of the victims or dependents of the victims of the crime for which the individual whose earnings are placed in the escrow account is convicted or found guilty except for insanity. Moneys in the escrow account shall be paid to satisfy judgments as provided in subsection (3) of this section or restitution orders under ORS 137.103 to 137.109.

(3) A person is entitled to payment of moneys from the escrow account established under this section if:

(a) The person is the victim or a dependent of a deceased victim of a compensable crime for which the individual whose earnings are placed in the escrow account is convicted or found guilty except for insanity; and

(b) Within five years after the establishment of the escrow account, the person commences a civil action against such individual in a court of competent jurisdiction and receives a money judgment for damages suffered as a result of the crime.

(4) The department, at least once every year for five years from the date it establishes the escrow account, shall cause to have published a legal notice in a newspaper of general circulation in the county in which the crime was committed and in the counties adjoining such county advising victims that the escrow moneys are available to satisfy judgments pursuant to this section. The department may, in its discretion, provide for such additional notice as it considers necessary.

(5) Upon dismissal of charges or acquittal of any individual whose earnings are placed in an escrow account under this section, the department shall immediately pay such individual the moneys in the escrow account.

(6) Upon a showing by any convicted individual or the individual found guilty except for insanity that five years have elapsed from the establishment of the escrow account in which the individual's earnings have been placed under this section and that no civil actions by victims or dependents of deceased victims of the individual's crime have been commenced, the department shall immediately pay any moneys in the escrow account to such individual or the legal representative of the individual.

(7) Any action taken by an individual charged with or convicted of committing a compensable crime in this state, including, but not limited to, execution of a power of attorney or creation of a corporate entity, to defeat the purpose of this section is null and void. Any action taken by an individual found guilty except for insanity with regard to a compensable crime in this state is similarly null and void.

(8) When an escrow account has insufficient funds to meet all judgments presented by victims or their representatives, the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. There shall be no payment from the escrow account to a victim or a victim's representative until either the amounts of all unsatisfied judgments are determined, or it is determined that the payment for an unsatisfied judgment will not diminish the escrow account so that other potential victim claims could not be satisfied. [1985 c.552 §3; 1987 c.158 §21]

147.280 [Renumbered 133.855]

147.290 [Amended by 1961 c.389 §1; renumbered 133.857]

MISCELLANEOUS PROVISIONS

147.305 Effect of criminal conviction on compensation proceedings. If any person is convicted of a crime based on a compensable crime for which application for compensation is made, proof of the conviction shall be conclusive evidence that the crime was committed. [1977 c.376 §11]

147.315 Charging fees to applicants prohibited. No fee may be charged to the applicant in any proceeding under ORS 135.905 and 147.005 to 147.365. [1977 c.376 §17]

147.325 Compensation not subject to assignment or legal process prior to receipt by beneficiary. No compensation payable under ORS 135.905 and 147.005 to 147.365 shall, prior to actual receipt thereof by the person or beneficiary eligible therefor, or their legal representatives, be assignable or subject to execution, garnishment, attachment or any other process, including process to satisfy an order or judgment for support or alimony. [1977 c.376 §18; 1991 c.862 §8]

147.335 Compensation rights not to survive beneficiary; death of beneficiary after filing of application. The rights to compensation created by ORS 135.905 and 147.005 to 147.365 are personal and shall not survive the death of the person or beneficiary eligible therefor. However, if such death occurs after an application for compensation has been filed with the department, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate. [1977 c.376 §19; 1991 c.862 §9]

147.345 State subrogated to rights accruing to beneficiary; suit by state against assailant; disposition of proceeds; settlement. (1) The acceptance of an award made pursuant to ORS 135.905 and 147.005 to 147.365 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient against the assailant or any other person or entity liable for the injury constituting the basis for the award.

(2)(a) On behalf of the state, the Department of Justice may bring suit against an assailant for money damages, but must first notify the applicant or recipient of an award and give the applicant or recipient an opportunity to participate in the prosecution of the suit.

(b) The excess of the amount recovered in any such suit over the amount of the award under ORS 135.905 and 147.005 to 147.365 plus costs of suit and attorney fees actually incurred shall be paid to the applicant or recipient of the award.

(3) Any settlement of a right or right of action against the assailant or any other person or entity by the victim or the dependent of the victim based on the compensable crime must be approved by the Department of Justice if the department has made an award to the victim or the dependent of the victim. If the settlement is not approved by the department, the department may void the settlement. [1977 c.376 §20; 1987 c.770 §8]

147.355 Claim by state against recoveries from assailant; notice of award; Marion County Circuit Court to adjudicate rights. (1) The state has a claim for the amount of compensation paid under ORS 135.905 and 147.005 to 147.365 upon all claims, demand or causes of action against an assailant to recover for the injuries or death of a victim which were the basis for an award.

(2) At the time an award is paid under ORS 135.905 and 147.005 to 147.365 the department shall give written notice of this claim to the applicant and all other recipients of the award. The claim attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the claim, demand, cause of action or suit against the assailant after notice is given.

(3) On petition filed by the department on behalf of the state or by the applicant or other recipient of an award, the Circuit Court for Marion County, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the claim. [1977 c.376 §21]

147.365 Law enforcement agencies to inform crime victims of compensation procedure; agencies not civilly liable for failure to comply. (1) All law enforcement agencies in this state shall deliver cards to victims of crime stating the procedure to be followed in applying for compensation under ORS 135.905 and 147.005 to 147.365.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section. [1977 c.376 §27]

147.375 Law enforcement agencies to pay cost of medical examination required in investigation of sexual offenses. (1) When a law enforcement agency investigating an alleged or suspected sexual offense defined in ORS 163.305 to 163.465 requests the victim of the alleged or suspected offense to participate in a medical examination for purposes of the investigation, the examination shall be paid for or otherwise provided by the investigating agency at no cost to the victim.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense. [1987 c.241 §1]

CRIME VICTIMS' BILL OF RIGHTS

147.405 Short title. Chapter 2, Oregon Laws 1987, shall be known as the "CRIME VICTIMS' BILL OF RIGHTS." [1987 c.2 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 2, Oregon Laws 1987." Chapter 2, Oregon Laws 1987, enacted into law and amended ORS sections which may be found by referring to the Comparative Section Table located in volume 15 of Oregon Revised Statutes.

147.410 Purpose. We, the people of the State of Oregon, declare that victims of crime are entitled to fair and impartial treatment in our criminal justice system. The purpose of chapter 2, Oregon Laws 1987, is to declare to our legislature and our courts that victims' rights shall be protected at each stage of the criminal justice system. We reject the notion that a criminal defendant's rights must be superior to all others. By chapter 2, Oregon Laws 1987, we seek to secure balanced justice by eliminating unbalanced rules. [1987 c.2 §2]

Note: See note under 147.405.

147.415 Severability. If any section, portion, clause or phrase of chapter 2, Oregon Laws 1987, is for any reason held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force in effect. [1987 c.2 §18]

Note: See note under 147.405.