

House Bill 3441

Sponsored by Representative WHISNANT, Senator WESTLUND; Representatives BARKER, BURLEY, FLORES, KRIEGER, NELSON (at the request of Deschutes County Commission on Children and Families)

SUMMARY

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

Authorizes courts to impose additional assessment on persons convicted of specified crimes involving minors. Makes instrumentalities of specified crimes involving minors subject to criminal forfeiture.

Dedicates revenues to State Commission on Children and Families Account. Limits uses of moneys to specified purposes.

A BILL FOR AN ACT

1 Relating to criminal penalties; creating new provisions; and amending ORS 137.295.

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

3 **SECTION 1. Sections 2 to 4 of this 2007 Act shall be known and may be cited as "Denny's**
4 **Bill."**

5 **SECTION 2. (1) In all cases of conviction for a crime listed in paragraphs (a) and (b) of**
6 **this subsection, the trial court may impose upon the defendant, in addition to any other**
7 **monetary obligation imposed, an assessment of \$50. The assessment may be imposed for:**

8 (a) **A violation of:**

9 (A) **ORS 163.355 to 163.445, if the victim is less than 18 years of age;**

10 (B) **ORS 163.479;**

11 (C) **ORS 163.525, if the victim is less than 18 years of age;**

12 (D) **ORS 163.670 to 163.689;**

13 (E) **ORS 167.065 to 167.080;**

14 (F) **ORS 167.262;**

15 (G) **ORS 471.410 (2) or (3); or**

16 (H) **ORS 475.906; or**

17 (b) **An attempt, conspiracy or solicitation to commit a crime listed in paragraph (a) of**
18 **this subsection.**

19 (2) **The assessment described in this section shall be deposited into the State Treasury**
20 **and credited to the State Commission on Children and Families Account to be used for the**
21 **purposes of section 4 of this 2007 Act.**

22 **SECTION 3. (1) Instrumentalities of the crime of conviction are subject to criminal**
23 **forfeiture if the crime of conviction is:**

24 (a) **A violation of:**

25 (A) **ORS 163.355 to 163.445, if the victim is less than 18 years of age;**

26 (B) **ORS 163.479;**

27 (C) **ORS 163.525, if the victim is less than 18 years of age; or**

28 (D) **ORS 167.065, 167.070 or 167.080; or**
29

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 (b) An attempt, conspiracy or solicitation to commit a crime listed in paragraph (a) of
2 this subsection.

3 (2) The criminal forfeiture proceedings shall comply with ORS 131.550 to 131.600.

4 (3) Notwithstanding (2) of this section or ORS 131.591, 131.594 or 131.597, after the seizing
5 agency distributes property under ORS 131.588, the seizing agency shall dispose of and dis-
6 tribute property as follows:

7 (a) The seizing agency shall pay costs first from the property or its proceeds.

8 (b) After costs have been paid, the seizing agency shall distribute to the victim any
9 amount the seizing agency was ordered to distribute under ORS 131.588 (4).

10 (c) Of the property remaining after complying with paragraphs (a) and (b) of this sub-
11 section, the seizing agency shall distribute:

12 (A) Three percent to the Asset Forfeiture Oversight Account established in ORS
13 475A.160;

14 (B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495 for the
15 purposes specified in ORS 475.495 (5);

16 (C) Ten percent to the state General Fund; and

17 (D) Eighty percent to the State Treasury to be deposited to the credit of the State
18 Commission on Children and Families Account.

19 (4) The seizing agency may sell the forfeited property by public or other commercially
20 reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

21 (5) As used in this section:

22 (a) "Costs" includes expenses of publication, service of notices and the towing, storage,
23 servicing, maintaining or selling of the seized property, and the expenses of forfeiture coun-
24 sel in prosecuting the criminal forfeiture.

25 (b) "Instrumentality" has the meaning given that term in ORS 131.550.

26 (c) "Property" has the meaning given that term in ORS 131.550, except that property does
27 not include an ownership interest in grocery or convenience stores or the real property as-
28 sociated with those stores.

29 **SECTION 4.** (1) Moneys credited to the State Commission on Children and Families Ac-
30 count under sections 2 and 3 of this 2007 Act must be used by the State Commission on
31 Children and Families to fund proven strategies that:

32 (a) Promote the healthy development of Oregon's children and families;

33 (b) Prevent child abuse; or

34 (c) Prevent juvenile delinquency.

35 (2) In no event may the costs of administering the moneys described in subsection (1)
36 of this section exceed five percent of the amount collected.

37 **SECTION 5.** ORS 137.295 is amended to read:

38 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
39 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
40 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
41 the payment as provided in this section.

42 (2) There are four categories of monetary obligations. The categories are as follows:

43 (a) Category 1 consists of compensatory fines under ORS 137.101.

44 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
45 419C.450 and a monetary obligation imposed under ORS 811.706.

1 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, **the assessment**
2 **imposed under section 2 of this 2007 Act**, costs imposed under ORS 151.505 or 161.665 and those
3 fines, costs, forfeited security amounts and other monetary obligations payable to the state or to the
4 General Fund of the state in criminal and quasi-criminal cases for which moneys the law does not
5 expressly provide other disposition.

6 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
7 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
8 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
9 pressly directs be paid to an agency, person or political subdivision of the state, and any other
10 obligation to reimburse for payment of a reward under ORS 131.897.

11 (3) So long as there remains unpaid any obligation under category 1, the clerk shall credit to-
12 ward category 1 all of each payment received.

13 (4) After the total obligation has been credited under category 1, then so long as there remains
14 unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such cate-
15 gory 50 percent of each payment received.

16 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
17 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
18 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first
19 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the
20 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer
21 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
22 been ordered paid to the account under category 2. When the moneys due the account have been
23 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
24 in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in
25 proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the moneys
26 credited under category 3 as directed by the State Court Administrator for deposit in the State
27 Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300.
28 The clerk of a justice or municipal court shall monthly transfer the moneys credited under category
29 3 to the Department of Revenue as provided in ORS 305.830.

30 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
31 credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid
32 balance of whichever of those categories remains unpaid, until both category 2 and category 3 have
33 been entirely paid.

34 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
35 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
36 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
37 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
38 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
39 ment for reward under ORS 131.897.

40 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
41 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
42 General Fund.

43 (9) The clerk of a justice or municipal court must make the transfers required by this section
44 not later than the last day of the month immediately following the month in which a payment is
45 made.

1 **SECTION 6.** ORS 137.295, as amended by section 1, chapter 1064, Oregon Laws 1999, section
 2 23, chapter 823, Oregon Laws 2001, section 3, chapter 687, Oregon Laws 2003, and section 5, chapter
 3 564, Oregon Laws 2005, is amended to read:

4 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
 5 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
 6 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
 7 the payment as provided in this section.

8 (2) There are four categories of monetary obligations. The categories are as follows:

9 (a) Category 1 consists of compensatory fines under ORS 137.101.

10 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
 11 419C.450 and a monetary obligation imposed under ORS 811.706.

12 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, **the assessment**
 13 **imposed under section 2 of this 2007 Act**, costs imposed under ORS 151.505 or 161.665 and those
 14 fines, costs, forfeited security amounts and other monetary obligations payable to the state or to the
 15 General Fund of the state in criminal and quasi-criminal cases for which moneys the law does not
 16 expressly provide other disposition.

17 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
 18 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
 19 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
 20 pressly directs be paid to an agency, person or political subdivision of the state, and any other
 21 obligation to reimburse for payment of a reward under ORS 131.897.

22 (3) As long as there remains unpaid any obligation under category 1, including any interest ac-
 23 crued on that obligation, the clerk shall credit toward category 1 all of each payment received.

24 (4) After the total obligation has been credited under category 1, then as long as there remains
 25 unpaid any obligation under both categories 2 and 3, including any interest accrued on those obli-
 26 gations, the clerk shall credit toward each such category 50 percent of each payment received.

27 (5) The clerk shall monthly transfer the principal amount of the moneys credited under category
 28 1 and under category 2, and all interest that has accrued on those principal amounts, to the victims
 29 for whose benefit moneys under that category were ordered paid. If there are multiple victims for
 30 whose benefit moneys have been ordered paid under category 2, the clerk shall first transfer moneys
 31 credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the moneys due the
 32 victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer moneys cred-
 33 ited under category 2 to the Criminal Injuries Compensation Account if moneys have been ordered
 34 paid to the account under category 2. When the moneys due the account have been fully paid, the
 35 clerk shall transfer moneys credited under category 2 to any other victims, as defined in ORS
 36 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in proportion
 37 to the amounts ordered. The clerk of a circuit court shall monthly transfer the principal amount of
 38 the moneys credited under category 3 as directed by the State Court Administrator for deposit in
 39 the State Treasury to the credit of the Criminal Fine and Assessment Account established under
 40 ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the principal amount
 41 of the moneys credited under category 3 to the Department of Revenue as provided in ORS 305.830.
 42 The clerk shall transfer all interest on the principal amount of the moneys credited under category
 43 3 to the State Court Administrator for deposit in the Court Facilities Account established under
 44 ORS 1.190.

45 (6) When the entire amount owing for purposes of either category 2 or category 3 has been

1 credited, including any interest that has accrued on the amount, further payments by the defendant
2 shall be credited by the clerk entirely to the unpaid balance of whichever of those categories re-
3 mains unpaid, until both category 2 and category 3 have been entirely paid.

4 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
5 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
6 ligations under category 4 and shall monthly transfer the principal amount of the moneys so
7 received to the appropriate recipient, giving first priority to counties and cities entitled to revenues
8 generated by prosecutions in justice and municipal courts and giving last priority to persons entitled
9 to moneys as reimbursement for reward under ORS 131.897. The clerk shall transfer all interest on
10 the principal amount of the moneys credited under category 4 to the agency, person or political
11 subdivision of the state entitled to the principal amount. All interest on monetary obligations owing
12 to the state under category 4 shall be transferred to the State Court Administrator for deposit in
13 the Court Facilities Account established under ORS 1.190.

14 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
15 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
16 General Fund.

17 (9) The clerk of a justice or municipal court must make the transfers required by this section
18 not later than the last day of the month immediately following the month in which a payment is
19 made.

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