

Senate Bill 131

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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**.

Defines "supervising authority" for purposes of restitution. Allows supervising authority to collect payments and modify payment schedule.

A BILL FOR AN ACT

1
2 Relating to restitution; amending ORS 137.106 and 419C.450.

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

4 **SECTION 1.** ORS 137.106 is amended to read:

5 137.106. (1) When a person is convicted of a crime, or a violation as described in ORS 153.008,
6 that has resulted in economic damages, the district attorney shall investigate and present to the
7 court, prior to the time of sentencing, evidence of the nature and amount of the damages. If the
8 court finds from the evidence presented that a victim suffered economic damages, in addition to any
9 other sanction it may impose, the court shall:

10 (a) Include in the judgment a requirement that the defendant pay the victim restitution in a
11 specific amount that equals the full amount of the victim's economic damages as determined by the
12 court; or

13 (b) Include in the judgment a requirement that the defendant pay the victim restitution, and that
14 the specific amount of restitution will be established by a supplemental judgment based upon a de-
15 termination made by the court within 90 days of entry of the judgment. In the supplemental judg-
16 ment, the court shall establish a specific amount of restitution that equals the full amount of the
17 victim's economic damages as determined by the court. The court may extend the time within which
18 the determination and supplemental judgment may be completed for good cause. The lien, priority
19 of the lien and ability to enforce the specific amount of restitution established under this paragraph
20 by a supplemental judgment relates back to the date of the original judgment that is supplemented.

21 (2) After the district attorney makes a presentation described in subsection (1) of this section,
22 if the court is unable to find from the evidence presented that a victim suffered economic damages,
23 the court shall make a finding on the record to that effect.

24 (3) No finding made by the court or failure of the court to make a finding under this section
25 limits or impairs the rights of a person injured to sue and recover damages in a civil action as
26 provided in ORS 137.109.

27 (4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes
28 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
29 if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to
30 pay the judgment in full at the time the judgment is entered. If the court finds that the defendant

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 is unable to pay, the court may establish or allow an appropriate supervising authority to establish
 2 a payment schedule, taking into consideration the financial resources of the defendant and the bur-
 3 den that payment of restitution will impose, with due regard to the other obligations of the defend-
 4 ant. **The supervising authority shall be authorized to collect payments under this section and**
 5 **to modify any payment schedule established under this section.**

6 **(b) As used in this subsection, “supervising authority” means any state or local agency**
 7 **that is authorized to supervise the defendant.**

8 (5) If the defendant objects to the imposition, amount or distribution of the restitution, the court
 9 shall allow the defendant to be heard on such issue at the time of sentencing or at the time the
 10 court determines the amount of restitution.

11 **SECTION 2.** ORS 419C.450 is amended to read:

12 419C.450. (1)(a) It is the policy of the State of Oregon to encourage and promote the payment
 13 of restitution and other obligations by youth offenders as well as by adult offenders. In any case
 14 within the jurisdiction of the juvenile court pursuant to ORS 419C.005 in which the youth offender
 15 caused another person any physical, emotional or psychological injury or any loss of or damage to
 16 property, the district attorney shall investigate and present to the court, prior to or at the time of
 17 adjudication, evidence of the nature and amount of the injury, loss or damage. If the court finds
 18 from the evidence presented that a victim suffered injury, loss or damage, in addition to any other
 19 sanction it may impose, the court shall:

20 (A) Include in the judgment a requirement that the youth offender pay the victim restitution in
 21 a specific amount that equals the full amount of the victim’s injury, loss or damage as determined
 22 by the court; or

23 (B) Include in the judgment a requirement that the youth offender pay the victim restitution,
 24 and that the specific amount of restitution will be established by a supplemental judgment based
 25 upon a determination made by the court within 90 days of entry of the judgment. In the supple-
 26 mental judgment, the court shall establish a specific amount of restitution that equals the full
 27 amount of the victim’s injury, loss or damage as determined by the court. The court may extend the
 28 time within which the determination and supplemental judgment may be completed for good cause.
 29 The lien, priority of the lien and ability to enforce a specific amount of restitution established under
 30 this subparagraph by a supplemental judgment relates back to the date of the original judgment that
 31 is supplemented.

32 (b) After the district attorney makes a presentation described in paragraph (a) of this subsection,
 33 if the court is unable to find from the evidence presented that a victim suffered injury, loss or
 34 damage, the court shall make a finding on the record to that effect.

35 (c) No finding made by the court or failure of the court to make a finding under this subsection
 36 limits or impairs the rights of a person injured to sue and recover damages in a civil action under
 37 subsection (2) of this section.

38 (d) The court may order restitution, including but not limited to counseling and treatment ex-
 39 penses, for emotional or psychological injury under this section only:

40 (A) When the act that brought the youth offender within the jurisdiction of the court would
 41 constitute aggravated murder, murder or a sex crime if committed by an adult; and

42 (B) For an injury suffered by the victim or a member of the victim’s family who observed the
 43 act.

44 (2) Restitution for injury inflicted upon a person by the youth offender, for property taken,
 45 damaged or destroyed by the youth offender and for a reward offered by the victim or an organiza-

1 tion authorized by the victim and paid for information leading to the apprehension of the youth
 2 offender, shall be required as a condition of probation. Restitution does not limit or impair the right
 3 of a victim to sue in a civil action for damages suffered, nor shall the fact of consultation by the
 4 victim be admissible in such civil action to prove consent or agreement by the victim. However, the
 5 court shall credit any restitution paid by the youth offender to a victim against any judgment in
 6 favor of the victim in such civil action. Before setting the amount of such restitution, the court shall
 7 notify the person upon whom the injury was inflicted or the owner of the property taken, damaged
 8 or destroyed and give such person an opportunity to be heard on the issue of restitution.

9 (3)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes
 10 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
 11 if the youth offender alleges and establishes to the satisfaction of the court the youth offender's in-
 12 ability to pay the judgment in full at the time the judgment is entered. If the court finds that the
 13 youth offender is unable to pay, the court may establish or allow an appropriate supervising au-
 14 thority to establish a payment schedule[.]. **The supervising authority shall be authorized to col-
 15 lect payments under this section and to modify any payment schedule established under this
 16 section. In establishing a payment schedule, the court or the supervising authority shall
 17 [taking] take** into consideration:

18 [(a)] (A) The availability to the youth offender of paid employment during such time as the youth
 19 offender may be committed to a youth correction facility;

20 [(b)] (B) The financial resources of the youth offender and the burden that payment of
 21 restitution will impose, with due regard to the other obligations of the youth offender;

22 [(c)] (C) The present and future ability of the youth offender to pay restitution on an installment
 23 basis or on other conditions to be fixed by the court; and

24 [(d)] (D) The rehabilitative effect on the youth offender of the payment of restitution and the
 25 method of payment.

26 **(b) As used in this subsection, "supervising authority" means any state or local agency
 27 that is authorized to supervise the youth offender.**

28 (4) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a youth offender
 29 to pay restitution, as provided in this section, the judgment shall be entered in the register or
 30 docket of the court in the manner provided by ORS chapter 18 and enforced in the manner provided
 31 by ORS 18.252 to 18.993. The judgment is in favor of the state and may be enforced only by the state.
 32 Notwithstanding ORS 419A.255, a judgment for restitution entered under this subsection is a public
 33 record. Judgments entered under this subsection are subject to ORS 18.048.

34 (5) A person required to pay restitution under subsection (1) of this section may file a motion
 35 supported by an affidavit for satisfaction of the judgment or supplemental judgment requiring pay-
 36 ment of restitution in the circuit court of the county in which the original judgment was entered if:

37 (a) At least 50 percent of the monetary obligation is satisfied or at least 10 years have passed
 38 since the original judgment was entered;

39 (b) The person has substantially complied with all established payment plans;

40 (c) The person has not been found to be within the jurisdiction of the juvenile court under ORS
 41 419C.005 or convicted of an offense since the date the original judgment of restitution was entered;
 42 and

43 (d) The person has satisfactorily completed any required period of probation or parole for the
 44 act for which the judgment of restitution was entered.

45 (6) When a person files a motion described in subsection (5) of this section, the district attorney

1 for the county in which the motion was filed shall promptly notify the victim for whose benefit the
2 judgment of restitution was entered that the person has filed the motion and that the victim may
3 object in writing to the motion through the district attorney.

4 (7) If the victim does not object to the motion as provided in subsection (6) of this section, the
5 court shall hold a hearing on the motion and may enter an order granting a full or partial satis-
6 faction if the allegations in the affidavit supporting the motion are true and failure to grant the
7 motion would result in an injustice. In determining whether an injustice would result, the court shall
8 take into account:

9 (a) The financial resources of the defendant and the burden that continued payment of
10 restitution will impose, with due regard to the other obligations of the defendant;

11 (b) The ability of the defendant to continue paying restitution on an installment basis or under
12 other conditions to be fixed by the court; and

13 (c) The rehabilitative effect on the defendant of the continued payment of restitution and the
14 method of payment.

15 (8) A person may file a motion under subsection (5) of this section no more than one time per
16 year for each judgment of restitution entered against the person.

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