

House Bill 3480

Sponsored by Representatives BARKER, KRIEGER; Representatives BOONE, GILLIAM, HICKS, MATTHEWS, OLSON, SCHAUFLEER, WAND, WHISNANT, WINGARD, Senators GEORGE, KRUSE (at the request of Crime Victims United)

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**.

Requires state trial court administrator to provide to victim of crime, upon request, status of state efforts to enforce certain criminal judgments. Authorizes victim of crime to enforce judgment if payment is delinquent. Requires crime victim to pay amounts collected to court. Authorizes Judicial Department to adopt rules.

Authorizes certain persons to assign for collection criminal judgment that includes monetary award.

Directs distribution of certain moneys paid by criminal defendant to crime victim whose collection efforts result in credit of moneys.

Requires subrogation of crime victim or third party to rights and remedies of recipient of payment against defendant.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to enforcement of judgments; creating new provisions; amending ORS 18.048, 137.101,
3 137.109, 137.118, 137.183, 137.270 and 137.295; and declaring an emergency.

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

5 **SECTION 1.** ORS 18.048 is amended to read:

6 18.048. (1) Except as provided in this section, the judgment document in a criminal action that
7 contains a money award, whether by reason of a fine, restitution, forfeiture of security under ORS
8 135.280, a fee, an assessment, costs and disbursements or any other monetary obligation, must con-
9 tain a separate section clearly labeled at its beginning as a money award. The separate section must
10 be placed immediately above the judge's or court administrator's signature. If the judgment includes
11 an award of restitution, the label of the separate section must so indicate.

12 (2) The separate money award section described by subsection (1) of this section must contain
13 the following information:

14 (a) A listing of the specific amounts awarded as fines, assessments, costs, restitution and any
15 other monetary obligations imposed in the sentence as part of the money award. If the court is un-
16 able to determine the full amount of restitution at the time of sentencing, the court may include the
17 amount that can be determined or may establish a maximum amount.

18 (b) If restitution or a compensatory fine is ordered, the name and address of the person to whom
19 the court should disburse payments, unless the victim requests that this information be exempt from
20 disclosure in the public record.

21 (c) A statement that, subject to amendment of a judgment under ORS 137.107, money required
22 to be paid as a condition of probation remains payable after revocation of probation only if the
23 amount is included in the money award portion of the judgment document, even if the amount is
24 referred to in other parts of the judgment document.

25 (d) Unless immediate payment is required, the specific terms of payment imposed or allowed by

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 the court.

2 (e) If payment of all or part of a monetary obligation is suspended, a statement specifying the
 3 nature and amount of the suspended obligations.

4 (3) The requirements of this section and ORS 18.038 do not apply to a judgment document if the
 5 action was commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court
 6 has used the space on the citation for the entry of a judgment. The exemption provided by this
 7 subsection does not apply if any indictment, information or complaint other than a uniform citation
 8 is filed in the action.

9 (4) If a judgment is for conviction of a violation as described in ORS 153.008, the judgment
 10 creates a lien only if the court so orders. If a judgment does not create a lien under this subsection,
 11 the judgment document need not contain the separate money award section described by subsection
 12 (1) of this section.

13 (5) **Except as provided in subsection (6) of this section,** a judgment in a criminal action that
 14 contains a money award is a judgment in favor of the state and may be enforced only by the state.

15 (6)(a) **The state trial court administrator shall, upon request, provide to a victim, as de-**
 16 **defined in ORS 137.103 (4), the status of efforts by the state to enforce a judgment in a criminal**
 17 **action that includes an award of restitution or a compensatory fine to the victim or money**
 18 **damages awarded pursuant to ORS 811.706.**

19 (b) **If payment of the judgment is delinquent, in whole or in part, the victim may enforce**
 20 **the judgment for any outstanding amounts by any means authorized by ORS chapter 18 or**
 21 **ORS 137.118.**

22 (c) **Amounts collected by a victim pursuant to this subsection shall be paid to the court**
 23 **for distribution as provided in ORS 137.295.**

24 [(6)] (7) A judgment in a criminal action that includes a money award, but does not contain a
 25 separate section clearly labeled as a money award, does not create a judgment lien but may be en-
 26 forced by any other judgment remedy.

27 (8) **The Judicial Department may adopt rules to implement the provisions of this section.**

28 **SECTION 2.** ORS 137.118 is amended to read:

29 137.118. (1) Judgments in criminal actions that impose monetary obligations, including judgments
 30 requiring the payment of fines, costs, assessments, compensatory fines, **money damages pursuant**
 31 **to ORS 811.706,** attorney fees, forfeitures or restitution, may be assigned **for collection:**

32 (a) By the state, by a municipal court or by a justice court [*for collection.*]; **or**

33 (b) **By a person who has the right to enforce the judgment pursuant to 18.048 (6).**

34 (2)(a) The state may assign a judgment to the Department of Revenue or a private collection
 35 agency.

36 (b) A justice court may assign a judgment to a private collection agency or, in a criminal action,
 37 to the Department of Revenue for the purposes described in ORS 156.315.

38 (c) A municipal court may assign a judgment to:

39 (A) A private collection agency; or

40 (B) The Department of Revenue for the purposes described in subsections (6) to (8) of this sec-
 41 tion, if the judgment was entered in a criminal action and part of the judgment is payable to the
 42 State of Oregon.

43 (d) Nothing in this subsection limits the right of a municipal court or a justice court to assign
 44 for collection judgments in matters other than criminal actions.

45 (3) A municipal or justice court may add to any judgment in a criminal action that includes a

1 monetary obligation a fee for the cost of collection if the court gives the defendant a period of time
 2 to pay the obligation after the date of imposition of the sentence or after the date of the hearing
 3 or proceeding that results in the imposition of the financial obligation. The fee may not exceed 25
 4 percent of the monetary obligation imposed by the court without the addition of the cost of col-
 5 lection and may not be more than \$250. The fee shall be waived or suspended by the court if the
 6 defendant pays the monetary obligation in the manner required by the court.

7 (4) A state court shall add to any judgment in a criminal action that includes a monetary obli-
 8 gation the fees required by ORS 1.202.

9 (5) As used in subsections (1) to [(5)] (4) of this section, “criminal action” has the meaning given
 10 that term in ORS 131.005.

11 (6) If part of a judgment in a criminal action, as described in subsections (1) to (5) of this sec-
 12 tion, is payable to the State of Oregon, a municipal court may assign the judgment to the Collections
 13 Unit in the Department of Revenue for the following purposes:

14 (a) To determine whether refunds or other sums are owed to the debtor by the department; and

15 (b) To deduct the amount of debt from any refunds or other sums owed to the debtor by the
 16 department.

17 (7) If the Collections Unit determines that refunds or other sums are owed to the debtor, the
 18 department shall deduct the amount of the debt from any refunds or other sums owed to the debtor
 19 by the department. After also deducting costs of its actions under subsections (6) to (8) of this sec-
 20 tion, the department shall remit the amount deducted from refunds or other sums owed to the debtor
 21 to the municipal court that assigned the judgment.

22 (8) A debtor whose account is assigned to the Department of Revenue for setoff under sub-
 23 subsections (6) to (8) of this section is entitled to the notice required by ORS 293.250 (3)(d) and to the
 24 opportunity for payment in ORS 293.250 (3)(c).

25 **SECTION 3.** ORS 137.183 is amended to read:

26 137.183. (1)(a) Criminal judgments bear interest at the rate provided by ORS 82.010. Except as
 27 provided in paragraph (b) of this subsection, criminal judgments bear interest for a period of 20
 28 years after the judgment is entered. Except as provided in paragraph (b) of this subsection, criminal
 29 judgments begin to accrue interest on the date the judgment is entered and do not bear interest
 30 after the expiration of the 20-year period.

31 (b) When a person is sentenced to a term of imprisonment, interest on a judgment in a criminal
 32 action does not begin to accrue until the first day of the second full calendar month after the
 33 person’s initial release from custody following the sentencing in which the monetary obligation was
 34 imposed. If the judgment includes a money award for restitution, **a compensatory fine or money**
 35 **damages awarded pursuant to ORS 811.706**, the judgment accrues interest for a period of 20 years
 36 after the first day of the second full calendar month after the person’s initial release from custody
 37 following the sentencing in which the monetary obligation was imposed.

38 (2) The State Court Administrator may waive interest, or cause waiver of interest, on any
 39 criminal judgment or category of criminal judgments for the purpose of administering the collection
 40 of judgments of the Supreme Court, the Court of Appeals, the Oregon Tax Court and circuit courts.
 41 A judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court or a circuit court may
 42 waive interest in any criminal action or proceeding for good cause shown.

43 (3) A municipal judge may waive interest on any criminal judgment, or category of criminal
 44 judgments, entered in the municipal court in which the judge presides. A justice of the peace may
 45 waive interest on any criminal judgment, or category of criminal judgments, entered in the justice

1 court in which the justice of the peace presides.

2 (4) A waiver under subsection (2) or (3) of this section may be for all or part of the interest
3 payable on a criminal judgment and may be for a specified period of time.

4 (5) All payments collected under a criminal judgment must first be applied against the principal
5 amount of a money award. Payments may be applied against interest on the money award only after
6 the principal amount of the money award is paid. This subsection applies only to judgments of the
7 Supreme Court, the Court of Appeals, the Oregon Tax Court and circuit courts.

8 (6) Moneys collected as interest under a criminal judgment may be applied against costs of
9 collection. Except as provided in subsection (7) of this section:

10 (a) Any amounts of moneys collected as interest on judgments of the Supreme Court, Court of
11 Appeals, Oregon Tax Court or circuit courts that remain after payment of collection costs shall be
12 deposited in the Criminal Injuries Compensation Account to be used for the purposes specified in
13 ORS 147.225.

14 (b) Any amounts of moneys collected as interest on judgments of the municipal or justice courts
15 that remain after payment of collection costs shall be deposited in the general fund of the city or
16 county in which the court operates and be available for general governmental purposes.

17 (7) After any payment of costs of collection, any interest collected on an award for restitution,
18 **a compensatory fine or money damages awarded pursuant to ORS 811.706**, on and after Janu-
19 ary 1, 2012, must be paid to the person in whose favor the award [*of restitution*] was made.

20 (8) As used in this section, "criminal judgment" means a judgment entered in a criminal action
21 as defined in ORS 131.005.

22 **SECTION 4.** ORS 137.270 is amended to read:

23 137.270. No conviction of any person for crime works any forfeiture of any property, except in
24 cases where the same is expressly provided by law; but in all cases of the commission or attempt
25 to commit a felony, the state has a lien, from the time of such commission or attempt, upon all the
26 property of the defendant for the purpose of satisfying any judgment which may be given against the
27 defendant for any fine, **restitution or money damages awarded pursuant to ORS 811.706** on ac-
28 count thereof and for the costs and disbursements in the proceedings against the defendant for such
29 crime; provided, however, such lien shall not attach to such property as against a purchaser or
30 incumbrancer in good faith, for value, whose interest in the property was acquired before the entry
31 of the judgment against the defendant.

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

33 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
34 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
35 monetary obligations imposed as a result of that conviction or diversion, **or when money is oth-**
36 **erwise received to be credited against the monetary obligations**, the clerk shall distribute the
37 payment as provided in this section.

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

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

40 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
41 419C.450 and a monetary obligation imposed under ORS 811.706.

42 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
43 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
44 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
45 cases for which moneys the law does not expressly provide other disposition.

1 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
2 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
3 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
4 pressly directs be paid to an agency, person or political subdivision of the state, and any other
5 obligation to reimburse for payment of a reward under ORS 131.897. Notwithstanding paragraph (c)
6 of this subsection, the portion of assessments collected as required by ORS 137.290 (2)(c) and (d)
7 shall be considered category 4 obligations.

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

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

13 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
14 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
15 tiple victims for whose benefit moneys have been ordered paid under category 1 or 2, the clerk shall
16 first transfer moneys credited under category 1 or 2 to the victim, as defined in ORS 137.103
17 (4)(a), **whose collection efforts have resulted in the credit of moneys, and otherwise to all**
18 **victims as defined in ORS 137.103 (4)(a) in equal proportions.** When the moneys due the victim,
19 as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer moneys credited under
20 category 2 to the Criminal Injuries Compensation Account if moneys have been ordered paid to the
21 account under category 2. When the moneys due the account have been fully paid, the clerk shall
22 transfer moneys credited under category 2 to any other victims, as defined in ORS 137.103 (4)(b) or
23 (d), for whose benefit moneys under that category were ordered paid in proportion to the amounts
24 ordered. The clerk of a circuit court shall monthly transfer the moneys credited under category 3
25 as directed by the State Court Administrator for deposit in the State Treasury to the credit of the
26 Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or
27 municipal court shall monthly transfer the moneys credited under category 3 to the Department of
28 Revenue as provided in ORS 305.830.

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

33 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
34 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
35 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
36 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
37 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
38 ment for reward under ORS 131.897. The clerk shall monthly transfer the portion of assessments
39 collected as required by ORS 137.290 (2)(c) and (d) to the county for administration of substance
40 abuse treatment programs described in ORS 430.420.

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

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

1 made.

2 **SECTION 6.** ORS 137.101 is amended to read:

3 137.101. (1) Whenever the court imposes a fine as penalty for the commission of a crime result-
 4 ing in injury for which the person injured by the act constituting the crime has a remedy by civil
 5 action **or had such a remedy upon the commission of the act**, unless the issue of punitive dam-
 6 ages has been previously decided on a civil case arising out of the same act and transaction, the
 7 court may order that the defendant pay any portion of the fine separately to the clerk of the court
 8 as compensatory fines in the case. The clerk shall pay over to the injured victim or victims, as di-
 9 rected in the court's order, moneys paid to the court as compensatory fines under this subsection.
 10 This section shall be liberally construed in favor of victims.

11 (2) Compensatory fines may be awarded in addition to restitution awarded under ORS 137.103
 12 to 137.109.

13 (3) Nothing in this section limits or impairs the right of a person injured by a defendant's
 14 criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the
 15 defendant has paid or been ordered to pay compensatory fines under this section may not be intro-
 16 duced in any civil action arising out of the facts or events which were the basis for the
 17 compensatory fine. However, the court in such civil action shall credit any compensatory fine paid
 18 by the defendant to a victim against any judgment for punitive damages in favor of the victim in the
 19 civil action.

20 **SECTION 7.** ORS 137.109 is amended to read:

21 137.109. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685
 22 limits or impairs the right of a person injured by a defendant's commission of a crime, or by a
 23 defendant's commission of a violation described in ORS 153.008, to sue and recover damages from
 24 the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay
 25 restitution pursuant to ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 may
 26 not be introduced in any civil action arising out of the facts or events that were the basis for the
 27 restitution. However, the court shall credit any restitution paid by the defendant to a victim against
 28 any judgment in favor of the victim in such civil action.

29 (2) If a conviction [*in a criminal trial*] necessarily decides the issue of a defendant's liability for
 30 economic damages of a victim, that issue is conclusively determined as to the defendant if it is in-
 31 volved in a subsequent civil action.

32 **SECTION 8. Section 9 of this 2011 Act is added to and made a part of ORS chapter 147.**

33 **SECTION 9. (1) Except as provided in ORS 147.345, the payment by a victim or by a third**
 34 **party upon request of the victim of any amount that the defendant is ordered to pay as**
 35 **restitution shall subrogate the victim or the third party, to the extent of the payment, to**
 36 **all rights and remedies the recipient of the payment has against the defendant.**

37 **(2) The court shall order subrogation pursuant to subsection (1) of this section upon**
 38 **proof that the victim or third party has made a payment as described in subsection (1) of this**
 39 **section.**

40 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**
 41 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 42 **on its passage.**