



John S. Foote, District Attorney for Clackamas County

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**Testimony of Scott P. Healy  
House Committee on Judiciary**

February 7, 2013

**RE: House Bill 2125**

Chair Barker and Members of the Committee:

**House Bill 2125** adds language to the Restitution and DUII Diversion statutes under ORS 137.109, ORS 813.200 and ORS 813.210, to provide a legal process for victims to receive restitution when there are economic damages as a result of the alleged criminal conduct being diverted to treatment for the person charged.

This most often occurs when a person causes an accident resulting in damage to property (another car, fence, house, etc). Injuries to a person would not apply, because if that has occurred, the person is not eligible for Diversion. Currently, the State must file a companion "Reckless" Criminal Mischief 2 charge (if more than \$500 damage) and convict the person to receive restitution for the victim.

This is because the current statutes only contemplate restitution as a part of a sentence if a person is convicted of a crime. Any person allowed to enter the Diversion program is not convicted if they successfully complete the program, because they are never sentenced (which is required for conviction) and then the DUII charge is subsequently dismissed.

We expect there to be virtually **No Fiscal Impact** as a result of this amendment. The established Court system already handles all future Diversion eligible DUII cases; collection of fines, fees and restitution, etc. There is no reason to believe the existing budgetary resources for both the DA's Offices and Court could not fulfill the requirements of this Bill. So, it would not be necessary to hire any new full-time equivalent (FTE) positions within the DA's Offices or Court system to implement this proposal. Judges will simply order that restitution be paid as a part of the Diversion agreement for all future eligible candidates; whatever that number may be.

Furthermore, there would not be any effect on expenditures or revenues, because the restitution collected is for the victims. At the end of the one-year Diversion period (or 18-month Diversion period if an extension is granted), any outstanding balance for the restitution amount will be ordered as a judgment against the person, just as in any other case.

**One important amendment I intend to propose immediately:** If at the end of the Diversion period, the only condition the person on Diversion has not completed is the payment of restitution, then the Diversion can be ordered completed, and the remaining restitution amount will be ordered as a judgment against the person by the Court. This allows the person to complete the Diversion program and get their DUII case dismissed, but also provides the victim with a valid judgment to further seek the damages owed to them if they so choose.