

D R A F T

SUMMARY

Expands definition of “victim,” for purposes of restitution ordered as part of criminal sentence, to include person or entity that has expended moneys on behalf of, or provided services to, minor victim. Authorizes court to order restitution when defendant found guilty except for insanity. Provides that certain evidence of economic damages creates rebuttable presumption of reasonableness.

Authorizes district attorney to present evidence of restitution within 90 days after adjudication or other final disposition in juvenile delinquency case. Authorizes court to extend time period for presentation for good cause.

A BILL FOR AN ACT

Relating to restitution; creating new provisions; and amending ORS 137.103, 137.106 and 419C.450.

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

SECTION 1. ORS 137.103 is amended to read:

137.103. As used in ORS 137.101 to 137.109:

(1) “Criminal activities” means any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(2) “Economic damages”:

(a) Has the meaning given that term in ORS 31.710, except that “economic damages” does not include future impairment of earning capacity; and

(b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes the greater of:

(A) The value to the defendant of the victim’s services as defined in ORS 163.261; or

(B) The value of the victim's services, as defined in ORS 163.261, computed using the minimum wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(3) "Restitution" means full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS 137.101.

(4) "Victim" means:

(a) The person or decedent against whom the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a result of the offense.

(b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant's criminal activities.

(c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(e) Upon the death of a victim described in paragraph (a) or (b) of this subsection, the estate of the victim.

(f) The estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust against which the defendant committed the criminal offense, if the court determines that the estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust suffered economic damages as a result of the offense.

(g) Any person or entity that has suffered economic damages from expending moneys on behalf of, or providing services to, a minor victim as a result of the offense.

(5) "Victim" does not include any coparticipant in the defendant's criminal activities.

SECTION 2. ORS 137.106 is amended to read:

1 137.106. (1)(a) When a person is convicted of a crime[,] or a violation as
2 described in ORS 153.008, *[that]* **or is found guilty except for insanity of**
3 **a crime under ORS 161.290 to 161.373, and the crime or violation** has
4 resulted in economic damages, the district attorney shall investigate and
5 present to the court, at the time of sentencing or within 90 days after entry
6 of the judgment, evidence of the nature and amount of the damages. The
7 court may extend the time by which the presentation must be made for good
8 cause. **Evidence of economic damages consisting of a record, bill, esti-**
9 **mate or invoice, introduced by the district attorney during the pres-**
10 **entation, creates a rebuttable presumption that the charge, expense**
11 **or cost documented in the evidence is reasonable.** If the court finds from
12 the evidence presented that a victim suffered economic damages, in addition
13 to any other sanction it may impose, the court shall enter a judgment or
14 supplemental judgment requiring that the defendant pay the victim
15 restitution in a specific amount that equals the full amount of the victim's
16 economic damages as determined by the court. The lien, priority of the lien
17 and ability to enforce the specific amount of restitution established under
18 this paragraph by a supplemental judgment relates back to the date of the
19 original judgment that is supplemented.

20 (b) Notwithstanding paragraph (a) of this subsection, a court may order
21 that the defendant pay the victim restitution in a specific amount that is less
22 than the full amount of the victim's economic damages only if:

23 (A) The victim or, if the victim is an estate, successor in interest, trust
24 or other entity, an authorized representative of the victim consents to the
25 lesser amount, if the conviction is not for a person felony; or

26 (B) The victim or, if the victim is an estate, successor in interest, trust
27 or other entity, an authorized representative of the victim consents in writ-
28 ing to the lesser amount, if the conviction is for a person felony.

29 (c) As used in this subsection, "person felony" has the meaning given that
30 term in the rules of the Oregon Criminal Justice Commission.

31 (2) After the district attorney makes a presentation described in sub-

1 section (1) of this section, if the court is unable to find from the evidence
2 presented that a victim suffered economic damages, the court shall make a
3 finding on the record to that effect.

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

7 (4)(a) If a judgment or supplemental judgment described in subsection (1)
8 of this section includes restitution, a court may delay the enforcement of the
9 monetary sanctions, including restitution, only if the defendant alleges and
10 establishes to the satisfaction of the court the defendant's inability to pay
11 the judgment in full at the time the judgment is entered. If the court finds
12 that the defendant is unable to pay, the court may establish or allow an
13 appropriate supervising authority to establish a payment schedule, taking
14 into consideration the financial resources of the defendant and the burden
15 that payment of restitution will impose, with due regard to the other obli-
16 gations of the defendant. The supervising authority shall be authorized to
17 modify any payment schedule established under this section.

18 (b) As used in this subsection, "supervising authority" means any state
19 or local agency that is authorized to supervise the defendant.

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

24 (6)(a) At least 10 days prior to the presentation described in subsection
25 (1) of this section, the district attorney shall:

26 (A) Disclose to the defendant the names of any witnesses that may be
27 called during the presentation; and

28 (B) Provide the defendant with copies of, or allow the defendant to in-
29 spect, any exhibits that will be used or introduced during the presentation.

30 (b) If the court finds that the district attorney has violated the require-
31 ments of this subsection, the court shall grant a continuance to allow addi-

1 tional time for preparation upon request of the defendant. Any additional
2 time granted under this paragraph may not count toward the 90-day time
3 limitation described in subsection (1) of this section.

4 **SECTION 3.** ORS 419C.450 is amended to read:

5 419C.450. (1)(a) It is the policy of the State of Oregon to encourage and
6 promote the payment of restitution and other obligations by youth offenders
7 as well as by adult offenders. In any case within the jurisdiction of the ju-
8 venile court pursuant to ORS 419C.005 in which the youth offender caused
9 another person any physical, emotional or psychological injury or any loss
10 of or damage to property, the victim has the right to receive prompt
11 restitution. The district attorney shall investigate and present to the court,
12 prior to, [or] at the time of **or within 90 days after** adjudication **or other**
13 **final disposition**, evidence of the nature and amount of the injury, loss or
14 damage. **The court may extend the time by which the presentation**
15 **must be made for good cause.** If the court finds from the evidence pre-
16 sented that a victim suffered injury, loss or damage, in addition to any other
17 sanction it may impose, the court shall:

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

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

1 (b) After the district attorney makes a presentation described in para-
2 graph (a) of this subsection, if the court is unable to find from the evidence
3 presented that a victim suffered injury, loss or damage, the court shall make
4 a finding on the record to that effect.

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

8 (d) The court may order restitution, including but not limited to coun-
9 seling and treatment expenses, for emotional or psychological injury under
10 this section only:

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

14 (B) For an injury suffered by the victim or a member of the victim's
15 family who observed the act.

16 (e) If the youth offender will be present at a hearing under this subsection
17 and the victim requests notice, the district attorney or juvenile department
18 shall notify the victim of the hearing.

19 (2) Restitution for injury inflicted upon a person by the youth offender,
20 for property taken, damaged or destroyed by the youth offender and for a
21 reward offered by the victim or an organization authorized by the victim and
22 paid for information leading to the apprehension of the youth offender, shall
23 be required as a condition of probation. Restitution does not limit or impair
24 the right of a victim to sue in a civil action for damages suffered, nor shall
25 the fact of consultation by the victim be admissible in such civil action to
26 prove consent or agreement by the victim. However, the court shall credit
27 any restitution paid by the youth offender to a victim against any judgment
28 in favor of the victim in such civil action. Before setting the amount of such
29 restitution, the court shall notify the person upon whom the injury was in-
30 flicted or the owner of the property taken, damaged or destroyed and give
31 such person an opportunity to be heard on the issue of restitution.

(3)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only if the youth offender alleges and establishes to the satisfaction of the court the youth offender's inability to pay the judgment in full at the time the judgment is entered. If the court finds that the youth offender is unable to pay, the court may establish or allow an appropriate supervising authority to establish a payment schedule. The supervising authority shall be authorized to modify any payment schedule established under this section. In establishing a payment schedule, the court or the supervising authority shall take into consideration:

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

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

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

(D) The rehabilitative effect on the youth offender of the payment of restitution and the method of payment.

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

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

(5) A person required to pay restitution under subsection (1) of this section may file a motion supported by an affidavit for satisfaction of the

1 judgment or supplemental judgment requiring payment of restitution in the
2 circuit court of the county in which the original judgment was entered if:

3 (a) At least 50 percent of the monetary obligation is satisfied or at least
4 10 years have passed since the original judgment was entered;

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

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

10 (d) The person has satisfactorily completed any required period of pro-
11 bation or parole for the act for which the judgment of restitution was en-
12 tered.

13 (6) When a person files a motion described in subsection (5) of this sec-
14 tion, the district attorney for the county in which the motion was filed shall
15 promptly notify the victim for whose benefit the judgment of restitution was
16 entered that the person has filed the motion and that the victim may object
17 in writing to the motion through the district attorney.

18 (7) If the victim does not object to the motion as provided in subsection
19 (6) of this section, the court shall hold a hearing on the motion and may
20 enter an order granting a full or partial satisfaction if the allegations in the
21 affidavit supporting the motion are true and failure to grant the motion
22 would result in an injustice. In determining whether an injustice would re-
23 sult, the court shall take into account:

24 (a) The financial resources of the defendant and the burden that contin-
25 ued payment of restitution will impose, with due regard to the other obli-
26 gations of the defendant;

27 (b) The ability of the defendant to continue paying restitution on an in-
28 stallment basis or under other conditions to be fixed by the court; and

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

31 (8) A person may file a motion under subsection (5) of this section no

1 more than one time per year for each judgment of restitution entered against
2 the person.

3 **SECTION 4. The amendments to ORS 137.103, 137.106 and 419C.450**
4 **by sections 1 to 3 of this 2021 Act apply to crimes committed on or**
5 **after the effective date of this 2021 Act.**

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