

Senate Bill 214

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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**.

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

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

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

3 **SECTION 1.** ORS 137.103 is amended to read:

4 137.103. As used in ORS 137.101 to 137.109:

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

7 (2) "Economic damages":

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

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

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

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

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

19 (4) "Victim" means:

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

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

25 (c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim
26 described in paragraph (a) of this subsection.
27

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

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

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

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

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

12 **SECTION 2.** ORS 137.106 is amended to read:

13 137.106. (1)(a) When a person is convicted of a crime[,] or a violation as described in ORS
14 153.008, [*that*] **or is found guilty except for insanity of a crime under ORS 161.290 to 161.373,**
15 **and the crime or violation** has resulted in economic damages, the district attorney shall investi-
16 gate and present to the court, at the time of sentencing or within 90 days after entry of the judg-
17 ment, evidence of the nature and amount of the damages. The court may extend the time by which
18 the presentation must be made for good cause. **Evidence of economic damages consisting of a**
19 **record, bill, estimate or invoice, introduced by the district attorney during the presentation,**
20 **creates a rebuttable presumption that the charge, expense or cost documented in the evi-**
21 **dence is reasonable.** If the court finds from the evidence presented that a victim suffered economic
22 damages, in addition to any other sanction it may impose, the court shall enter a judgment or sup-
23 plemental judgment requiring that the defendant pay the victim restitution in a specific amount that
24 equals the full amount of the victim's economic damages as determined by the court. The lien, pri-
25 ority of the lien and ability to enforce the specific amount of restitution established under this
26 paragraph by a supplemental judgment relates back to the date of the original judgment that is
27 supplemented.

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

31 (A) The victim or, if the victim is an estate, successor in interest, trust or other entity, an au-
32 thorized representative of the victim consents to the lesser amount, if the conviction is not for a
33 person felony; or

34 (B) The victim or, if the victim is an estate, successor in interest, trust or other entity, an au-
35 thorized representative of the victim consents in writing to the lesser amount, if the conviction is
36 for a person felony.

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

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

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

45 (4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes

1 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
 2 if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to
 3 pay the judgment in full at the time the judgment is entered. If the court finds that the defendant
 4 is unable to pay, the court may establish or allow an appropriate supervising authority to establish
 5 a payment schedule, taking into consideration the financial resources of the defendant and the bur-
 6 den that payment of restitution will impose, with due regard to the other obligations of the defend-
 7 ant. The supervising authority shall be authorized to modify any payment schedule established under
 8 this section.

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

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

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

16 (A) Disclose to the defendant the names of any witnesses that may be called during the pres-
 17 entation; and

18 (B) Provide the defendant with copies of, or allow the defendant to inspect, any exhibits that
 19 will be used or introduced during the presentation.

20 (b) If the court finds that the district attorney has violated the requirements of this subsection,
 21 the court shall grant a continuance to allow additional time for preparation upon request of the
 22 defendant. Any additional time granted under this paragraph may not count toward the 90-day time
 23 limitation described in subsection (1) of this section.

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

25 419C.450. (1)(a) It is the policy of the State of Oregon to encourage and promote the payment
 26 of restitution and other obligations by youth offenders as well as by adult offenders. In any case
 27 within the jurisdiction of the juvenile court pursuant to ORS 419C.005 in which the youth offender
 28 caused another person any physical, emotional or psychological injury or any loss of or damage to
 29 property, the victim has the right to receive prompt restitution. The district attorney shall investi-
 30 gate and present to the court, prior to, [or] at the time of **or within 90 days after** adjudication **or**
 31 **other final disposition**, evidence of the nature and amount of the injury, loss or damage. **The court**
 32 **may extend the time by which the presentation must be made for good cause.** If the court
 33 finds from the evidence presented that a victim suffered injury, loss or damage, in addition to any
 34 other sanction it may impose, the court shall:

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

38 (B) Include in the judgment a requirement that the youth offender pay the victim restitution,
 39 and that the specific amount of restitution will be established by a supplemental judgment based
 40 upon a determination made by the court within 90 days of entry of the judgment. In the supple-
 41 mental judgment, the court shall establish a specific amount of restitution that equals the full
 42 amount of the victim's injury, loss or damage as determined by the court. The court may extend the
 43 time within which the determination and supplemental judgment may be completed for good cause.
 44 The lien, priority of the lien and ability to enforce a specific amount of restitution established under
 45 this subparagraph by a supplemental judgment relates back to the date of the original judgment that

1 is supplemented.

2 (b) After the district attorney makes a presentation described in paragraph (a) of this subsection,
3 if the court is unable to find from the evidence presented that a victim suffered injury, loss or
4 damage, the court shall make 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 under this subsection
6 limits or impairs the rights of a person injured to sue and recover damages in a civil action under
7 subsection (2) of this section.

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

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

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

14 (e) If the youth offender will be present at a hearing under this subsection and the victim re-
15 quests notice, the district attorney or juvenile department shall notify the victim of the hearing.

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

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

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

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

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

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

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

44 (4) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a youth offender
45 to pay restitution, as provided in this section, the judgment shall be entered in the register or

1 docket of the court in the manner provided by ORS chapter 18 and enforced in the manner provided
 2 by ORS 18.252 to 18.993. The judgment is in favor of the state and may be enforced only by the state.
 3 Notwithstanding ORS 419A.255, a judgment for restitution entered under this subsection is a public
 4 record. Judgments entered under this subsection are subject to ORS 18.048.

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

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

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

11 (c) The person has not been found to be within the jurisdiction of the juvenile court under ORS
 12 419C.005 or convicted of an offense since the date the original judgment of restitution was entered;
 13 and

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

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

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

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

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

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

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

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