

House Bill 4075

Sponsored by Representative KROPF (Pre-session filed.)

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**.

Modifies procedures for requesting and ordering restitution in criminal cases.

Requires 50 percent of restitution ordered to insurance carriers to be distributed to Criminal Injuries Compensation Account.

Provides that restitution is Level I obligation for priority of payments on judgments in circuit courts and local courts.

A BILL FOR AN ACT

1
2 Relating to restitution; creating new provisions; and amending ORS 137.106, 137.146, 137.147, 137.149,
3 137.151, 137.153, 137.154 and 144.275.

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

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

6 137.106. (1)(a) When a person is convicted of a crime, or a violation as described in ORS 153.008,
7 that has resulted in economic damages, the district attorney shall investigate and present to the
8 court, at the time of sentencing or [*within 90 days after entry of the judgment,*] **as provided in**
9 **paragraph (b) of this subsection**, evidence of the nature and amount of the damages. [*The court*
10 *may extend the time by which the presentation must be made for good cause. If the court finds from*
11 *the evidence presented that a victim suffered economic damages, in addition to any other sanction it*
12 *may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant*
13 *pay the victim restitution in a specific amount that equals the full amount of the victim's economic*
14 *damages as determined by the court. The lien, priority of the lien and ability to enforce the specific*
15 *amount of restitution established under this paragraph by a supplemental judgment relates back to the*
16 *date of the original judgment that is supplemented.*]

17 **(b)(A) If the district attorney is unable to present restitution evidence at sentencing,**
18 **within 90 days after sentencing the district attorney may file a motion requesting that either**
19 **the judgment be amended to require restitution or that a supplemental judgment be entered**
20 **requiring restitution. The motion must contain a statement that documentation supporting**
21 **the requested amount of restitution has been provided to the defendant as described in sub-**
22 **section (7) of this section.**

23 **(B) Upon receipt of a motion described in subparagraph (A) of this paragraph, the court**
24 **shall set a hearing. If the defendant objects to the motion, the objection must be filed at**
25 **least 15 days prior to the hearing and must contain a description of the nature of the ob-**
26 **jection.**

27 **(C) If the parties stipulate to the order and amount of restitution, the court may cancel**
28 **the hearing and amend the judgment or enter a supplemental judgment requiring the de-**
29 **fendant to pay the stipulated amount of restitution.**

30 **(c) At a restitution proceeding, economic damages will be presumed reasonable if the**

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 **damages are documented in the form of a record, bill, estimate or invoice from a business,**
 2 **health care entity or provider or public body as defined in ORS 174.109.**

3 **(2)(a) If the court finds from the evidence presented that a victim suffered economic**
 4 **damages, in addition to any other sanction it may impose, the court shall enter a judgment**
 5 **or supplemental judgment requiring that the defendant pay the victim restitution in a spe-**
 6 **specific amount that equals the full amount of the victim’s economic damages as determined**
 7 **by the court. The lien, priority of the lien and ability to enforce the specific amount of**
 8 **restitution established under this paragraph by a supplemental judgment relates back to the**
 9 **date of the original judgment that is supplemented.**

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

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

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

19 (c) As used in this subsection, “person felony” has the meaning given that term in the rules of
 20 the Oregon Criminal Justice Commission.

21 [(2)] **(3)** After the district attorney makes a presentation described in subsection (1) of this sec-
 22 tion, if the court is unable to find from the evidence presented that a victim suffered economic
 23 damages, the court shall make a finding on the record to that effect.

24 [(3)] **(4)** 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)] **(5)(a)** If a judgment or supplemental judgment described in subsection (1) of this section
 28 includes restitution, a court may delay the enforcement of the monetary sanctions, including
 29 restitution, only if the defendant alleges and establishes to the satisfaction of the court the
 30 defendant’s inability to pay the judgment in full at the time the judgment is entered. If the court
 31 finds that the defendant is unable to pay, the court may establish or allow an appropriate super-
 32 vising authority to establish a payment schedule, taking into consideration the financial resources
 33 of the defendant and the burden that payment of restitution will impose, with due regard to the
 34 other obligations of the defendant. The supervising authority shall be authorized to modify any
 35 payment schedule established under this section.

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

38 [(5)] **(6)** If the defendant objects to the imposition, amount or distribution of the restitution, the
 39 court shall allow the defendant to be heard on such issue at the time of sentencing or at the time
 40 the court determines the amount of restitution.

41 [(6)(a)] **(7)(a)** At least 10 days prior to the presentation described in subsection (1) of this sec-
 42 tion, the district attorney shall:

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

45 (B) Provide the defendant with copies of, or allow the defendant to inspect, any exhibits that

1 will be used or introduced during the presentation.

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

6 **SECTION 2.** ORS 144.275 is amended to read:

7 144.275. Whenever the State Board of Parole and Post-Prison Supervision orders the release on
 8 parole of an adult in custody who has been ordered to pay compensatory fines pursuant to ORS
 9 137.101 or to make restitution pursuant to ORS 137.106, but with respect to whom payment of all
 10 or a portion of the fine or restitution was suspended until the release of the adult in custody from
 11 imprisonment, the board may establish a schedule by which payment of the compensatory fine or
 12 restitution shall be resumed. In fixing the schedule and supervising the performance of the paroled
 13 adult in custody thereunder, the board shall consider the factors specified in ORS 137.106 [(4)] (5).
 14 The board shall provide to the sentencing court a copy of the schedule and any modifications
 15 thereof.

16 **SECTION 3. Notwithstanding any other provision of law, upon collection, 50 percent of**
 17 **restitution ordered to insurance carriers shall be distributed to the Criminal Injuries Com-**
 18 **ensation Account established under ORS 147.225.**

19 **SECTION 4.** ORS 137.146 is amended to read:

20 137.146. (1) There are five levels of priority for application of payments on criminal judgments
 21 entered in circuit courts, with Level I obligations having the highest priority and Level V obli-
 22 gations having the lowest priority. All payments on a criminal judgment entered in a circuit court
 23 shall be applied first against the unpaid obligations in the level with highest priority until those
 24 obligations have been paid in full, and shall then be applied against the obligations in the level with
 25 the next highest level of priority, until all obligations under the judgment have been paid in full.

26 (2) Except as provided in ORS [137.153] **137.149**, if there is more than one person or public body
 27 to whom an obligation is payable under a level, a circuit court shall divide each payment based on
 28 each person's or public body's proportionate share of the total amount of obligations in that level.

29 **SECTION 5.** ORS 137.147 is amended to read:

30 137.147. (1) There are four levels of priority for application of payments on criminal judgments
 31 entered in local courts, with Level I obligations having the highest priority and Level IV obligations
 32 having the lowest priority. All payments on a criminal judgment entered in a local court shall be
 33 applied first against the unpaid obligations in the level with highest priority until those obligations
 34 have been paid in full, and shall then be applied against the obligations in the level with the next
 35 highest level of priority, until all obligations under the judgment have been paid in full.

36 (2) Except as provided in ORS [137.154] **137.151**, if there is more than one person or public body
 37 to whom an obligation is payable under a level, a local court shall divide each payment based on
 38 each person's or public body's proportionate share of the total amount of obligations in that level.

39 **SECTION 6.** ORS 137.149 is amended to read:

40 137.149. (1) **There are two types of** Level I obligations in criminal judgments entered in circuit
 41 courts: [are]

42 (a) **Type 1 obligations include** compensatory fines imposed pursuant to ORS 137.101.

43 (b) **Type 2 obligations include awards of restitution as defined in ORS 137.103, awards of**
 44 **restitution under ORS 419C.450 and money awards made under ORS 811.706.**

45 (2) **If a judgment contains both types of Level I obligations, the circuit court shall apply**

1 amounts creditable to Type 1 obligations until paid in full. All subsequent amounts creditable
 2 to Level I obligations shall be applied against Type 2 obligations until paid in full.

3 (3) If there is more than one person for whose benefit a Type 2 money award has been
 4 made, the circuit court shall pay the moneys credited to Type 2 obligations in the following
 5 order of priority:

6 (a) If the judgment contains a money award payable to the person or persons against
 7 whom the defendant committed the offense, the court shall first pay all moneys credited to
 8 Type 2 obligations to those persons, and shall continue to do so until all those obligations
 9 are paid in full. If there is more than one person to whom an obligation is payable under this
 10 paragraph, the court shall divide each payment under this paragraph based on each person's
 11 proportionate share of the total amount of obligations subject to payment under this para-
 12 graph.

13 (b) If the judgment contains a money award payable to the Criminal Injuries Compensa-
 14 tion Account, the court shall thereafter transfer moneys credited to Type 2 obligations to
 15 the account until the award is paid in full.

16 (c) If the judgment contains a money award payable to any other victims, as defined in
 17 ORS 137.103, the court shall thereafter pay the moneys credited to Type 2 obligations to
 18 those victims until those victims are paid in full.

19 **SECTION 7.** ORS 137.151 is amended to read:

20 137.151. (1) There are two types of Level I obligations in criminal judgments entered in local
 21 courts: *[are]*

22 (a) Type 1 obligations include compensatory fines imposed pursuant to ORS 137.101.

23 (b) Type 2 obligations include awards of restitution as defined in ORS 137.103, awards of
 24 restitution under ORS 419C.450 and money awards made under ORS 811.706.

25 (2) If a judgment contains both types of Level I obligations, the local court shall apply
 26 amounts creditable to Type 1 obligations until paid in full. All subsequent amounts creditable
 27 to Level I obligations shall be applied against Type 2 obligations until paid in full.

28 (3) If there is more than one person for whose benefit a Type 2 money award has been
 29 made, a local court shall pay the moneys credited to Type 2 obligations in the following order
 30 of priority:

31 (a) If the judgment contains a money award payable to the person or persons against
 32 whom the defendant committed the offense, the court shall first pay all moneys credited to
 33 Type 2 obligations to those persons, and shall continue to do so until all those obligations
 34 are paid in full. If there is more than one person to whom an obligation is payable under this
 35 paragraph, the court shall divide each payment under this paragraph based on each person's
 36 proportionate share of the total amount of obligations subject to payment under this para-
 37 graph.

38 (b) If the judgment contains a money award payable to the Criminal Injuries Compensa-
 39 tion Account, the court shall thereafter transfer moneys credited to Type 2 obligations to
 40 the account until the award is paid in full.

41 (c) If the judgment contains a money award payable to any other victims, as defined in
 42 ORS 137.103, the court shall thereafter pay the moneys credited to Type 2 obligations to
 43 those victims until those victims are paid in full.

44 **SECTION 8.** ORS 137.153 is amended to read:

45 137.153. *[(1) There are two types of]* Level II obligations in criminal judgments entered in circuit

1 courts[:]

2 [(a) Type 1 obligations include awards of restitution as defined in ORS 137.103, awards of
3 restitution under ORS 419C.450 and money awards made under ORS 811.706.]

4 [(b) Type 2 obligations] include all fines and other monetary obligations payable to the state for
5 which the law does not expressly provide other disposition, including fines payable to the state un-
6 der ORS 153.633, 153.645 and 153.650.

7 [(2) If a judgment contains both types of Level II obligations, the circuit court shall apply 50 per-
8 cent of amounts creditable to Level II obligations to Type 1 obligations and 50 percent of the amounts
9 to Type 2 obligations, until all obligations in one of the two types have been paid in full. All subsequent
10 amounts creditable to Level II obligations shall be applied against the other type of obligations until
11 those obligations have been paid in full.]

12 [(3) If there is more than one person for whose benefit a Type 1 money award has been made, the
13 circuit court shall pay the moneys credited to Type 1 obligations in the following order of priority:]

14 [(a) If the judgment contains a money award payable to the person or persons against whom the
15 defendant committed the offense, the court shall first pay all moneys credited to Type 1 obligations to
16 those persons, and shall continue to do so until all those obligations are paid in full. If there is more
17 than one person to whom an obligation is payable under this paragraph, the court shall divide each
18 payment under this paragraph based on each person's proportionate share of the total amount of obli-
19 gations subject to payment under this paragraph.]

20 [(b) If the judgment contains a money award payable to the Criminal Injuries Compensation Ac-
21 count, the court shall thereafter transfer moneys credited to Type 1 obligations to the account until the
22 award is paid in full.]

23 [(c) If the judgment contains a money award payable to any other victims, as defined in ORS
24 137.103, the court shall thereafter pay the moneys credited to Type 1 obligations to those victims until
25 those victims are paid in full.]

26 **SECTION 9.** ORS 137.154 is amended to read:

27 137.154. [(1) There are two types of] Level II obligations in criminal judgments entered in local
28 courts[:]

29 [(a) Type 1 obligations include awards of restitution as defined in ORS 137.103, awards of
30 restitution under ORS 419C.450 and money awards made under ORS 811.706.]

31 [(b) Type 2 obligations] include all fines and other monetary obligations payable to the state, a
32 city or a county, after payment of the amount provided for in ORS 153.633 (2).

33 [(2) If a criminal judgment entered in a local court contains both types of Level II obligations, the
34 court shall apply 50 percent of amounts creditable to Level II obligations to Type 1 obligations and 50
35 percent of the amounts to Type 2 obligations, until all obligations in one of the two types have been
36 paid in full. All subsequent amounts creditable to Level II obligations shall be applied against the other
37 type of obligations until those obligations have been paid in full.]

38 [(3) If there is more than one person for whose benefit a Type 1 money award has been made, a
39 local court shall pay the moneys credited to Type 1 obligations in the following order of priority:]

40 [(a) If the judgment contains a money award payable to the person or persons against whom the
41 defendant committed the offense, the court shall first pay all moneys credited to Type 1 obligations to
42 those persons, and shall continue to do so until all those obligations are paid in full. If there is more
43 than one person to whom an obligation is payable under this paragraph, the court shall divide each
44 payment under this paragraph based on each person's proportionate share of the total amount of obli-
45 gations subject to payment under this paragraph.]

1 *[(b) If the judgment contains a money award payable to the Criminal Injuries Compensation Ac-*
2 *count, the court shall thereafter transfer moneys credited to Type 1 obligations to the account until the*
3 *award is paid in full.]*

4 *[(c) If the judgment contains a money award payable to any other victims, as defined in ORS*
5 *137.103, the court shall thereafter pay the moneys credited to Type 1 obligations to those victims until*
6 *those victims are paid in full.]*

7 **SECTION 10.** **Section 3 of this 2022 Act and the amendments to ORS 137.146, 137.147,**
8 **137.149, 137.151, 137.153 and 137.154 by sections 4 to 9 of this 2022 Act apply to judgments**
9 **entered on or after the effective date of this 2022 Act.**

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