

House Bill 2226

Sponsored by Representatives GILLIAM, HOYLE (Presession 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**.

Expands definition of "victim" to include estate, successor in interest, trust and other specified parties for purpose of ordering restitution in criminal case.

A BILL FOR AN ACT

1
2 Relating to restitution; amending ORS 137.103, 137.106 and 161.685.

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

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

5 137.103. As used in ORS 137.101 to 137.109[, *161.675 and 161.685*]:

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

8 (2) "Economic damages":

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

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

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

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

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

20 (4) "Victim" means:

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

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

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

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

30 **(e) The estate, successor in interest, trust, trustee, successor trustee or beneficiary of
31 a trust against which the defendant committed the criminal offense, if the court determines**

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 **that the estate, successor in interest, trust, trustee, successor trustee or beneficiary of a**
 2 **trust suffered economic damages as a result of the offense.**

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

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

5 137.106. (1)(a) When a person is convicted of a crime, or a violation as described in ORS 153.008,
 6 that has resulted in economic damages, the district attorney shall investigate and present to the
 7 court, at the time of sentencing or within 90 days after entry of the judgment, evidence of the nature
 8 and amount of the damages. The court may extend the time by which the presentation must be made
 9 for good cause. If the court finds from the evidence presented that a victim suffered economic
 10 damages, in addition to any other sanction it may impose, the court shall enter a judgment or sup-
 11 plemental judgment requiring that the defendant pay the victim restitution in a specific amount that
 12 equals the full amount of the victim's economic damages as determined by the court. The lien, pri-
 13 ority of the lien and ability to enforce the specific amount of restitution established under this
 14 paragraph by a supplemental judgment relates back to the date of the original judgment that is
 15 supplemented.

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

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

22 (B) The victim **or, if the victim is an estate, successor in interest, trust or other entity,**
 23 **an authorized representative of the victim** consents in writing to the lesser amount, if the con-
 24 viction is for a person felony.

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

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

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

33 (4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes
 34 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
 35 if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to
 36 pay the judgment in full at the time the judgment is entered. If the court finds that the defendant
 37 is unable to pay, the court may establish or allow an appropriate supervising authority to establish
 38 a payment schedule, taking into consideration the financial resources of the defendant and the bur-
 39 den that payment of restitution will impose, with due regard to the other obligations of the defend-
 40 ant. The supervising authority shall be authorized to modify any payment schedule established under
 41 this section.

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

44 (5) If the defendant objects to the imposition, amount or distribution of the restitution, the court
 45 shall allow the defendant to be heard on such issue at the time of sentencing or at the time the

1 court determines the amount of restitution.

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

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

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

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

12 **SECTION 3.** ORS 161.685 is amended to read:

13 161.685. (1) When a defendant who has been sentenced or ordered to pay a fine, or to make
14 restitution [*as defined in ORS 137.103*], defaults on a payment or installment ordered by the court,
15 the court on motion of the district attorney or upon its own motion may require the defendant to
16 show cause why the default should not be treated as contempt of court, and may issue a show cause
17 citation or a warrant of arrest for the appearance of the defendant.

18 (2) If the court finds that the default constitutes contempt, the court may impose one or more
19 of the sanctions authorized by ORS 33.105.

20 (3) When a fine or an order of restitution is imposed on a corporation or unincorporated asso-
21 ciation, it is the duty of the person authorized to make disbursement from the assets of the corpo-
22 ration or association to pay the fine or make the restitution from those assets, and if that person
23 fails to do so, the court may hold that person in contempt.

24 (4) Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines
25 or failure to make restitution shall be set forth in the commitment order, and shall not exceed one
26 day for each \$25 of the fine or restitution, 30 days if the fine or order of restitution was imposed
27 upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the
28 shorter period.

29 (5) If it appears to the satisfaction of the court that the default in the payment of a fine or
30 restitution is not contempt, the court may enter an order allowing the defendant additional time for
31 payment, reducing the amount of the payment or installments due on the payment, or revoking the
32 fine or order of restitution in whole or in part.

33 (6) A default in the payment of a fine or costs or failure to make restitution or a default on an
34 installment on a fine, costs or restitution may be collected by any means authorized by law for the
35 enforcement of a judgment. The levy of execution or garnishment for the collection of a fine or
36 restitution shall not discharge a defendant confined for contempt until the amount of the fine or
37 restitution has actually been collected.

38 (7) The court, or the court clerk if ordered by the court, may report a default on a court-ordered
39 payment to a consumer reporting agency.

40 (8) The Chief Justice of the Supreme Court shall adopt rules under ORS 1.002 establishing poli-
41 cies and procedures for reporting a default under subsection (7) of this section to a consumer re-
42 porting agency that may include, but are not limited to, limitations on reporting a default to a
43 consumer reporting agency.

44 (9) Except as otherwise provided in this section, proceedings under this section shall be con-
45 ducted:

1 (a) As provided in ORS 33.055, if the court seeks to impose remedial sanctions as described in
2 ORS 33.015 to 33.155; and

3 (b) As provided in ORS 33.065, if the court seeks to impose punitive sanctions as described in
4 ORS 33.015 to 33.155.

5 (10) Confinement under this section may be custody or incarceration, whether actual or con-
6 structive.

7 (11) As used in this section[,]:

8 (a) "Consumer reporting agency" means any person that regularly engages for fees, dues, or on
9 a nonprofit basis, in whole or in part, in the practice of assembling or evaluating consumer credit
10 information or other information on consumers for the purpose of furnishing consumer reports to
11 third parties.

12 (b) "**Restitution**" has the meaning given that term in ORS 137.103.

13
