

House Bill 2229

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Attorney General's Restitution Reform Task Force)

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**.

Provides that parent or guardian of youth offender ordered to pay restitution is jointly and severally liable for \$750 of restitution.

A BILL FOR AN ACT

1
2 Relating to restitution imposed on youth offenders; creating new provisions; and amending ORS
3 419C.450.

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

5 **SECTION 1.** ORS 419C.450 is amended to read:

6 419C.450. (1)(a) It is the policy of the State of Oregon to encourage and promote the payment
7 of restitution and other obligations by youth offenders as well as by adult offenders. In any case
8 within the jurisdiction of the juvenile court pursuant to ORS 419C.005 in which the youth offender
9 caused another person any physical, emotional or psychological injury or any loss of or damage to
10 property, the district attorney shall investigate and present to the court, prior to or at the time of
11 adjudication, evidence of the nature and amount of the injury, loss or damage. If the court finds
12 from the evidence presented that a victim suffered injury, loss or damage, in addition to any other
13 sanction it may impose, the court shall:

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

17 (B) Include in the judgment a requirement that the youth offender pay the victim restitution,
18 and that the specific amount of restitution will be established by a supplemental judgment based
19 upon a determination made by the court within 90 days of entry of the judgment. In the supple-
20 mental judgment, the court shall establish a specific amount of restitution that equals the full
21 amount of the victim's injury, loss or damage as determined by the court. The court may extend the
22 time within which the determination and supplemental judgment may be completed for good cause.
23 The lien, priority of the lien and ability to enforce a specific amount of restitution established under
24 this subparagraph by a supplemental judgment relates back to the date of the original judgment that
25 is supplemented.

26 (b) After the district attorney makes a presentation described in paragraph (a) of this subsection,
27 if the court is unable to find from the evidence presented that a victim suffered injury, loss or
28 damage, the court shall make a finding on the record to that effect.

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

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

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

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

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

17 (3) If a judgment or supplemental judgment described in subsection (1) of this section includes
 18 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
 19 if the youth offender alleges and establishes to the satisfaction of the court the youth offender's in-
 20 ability to pay the judgment in full at the time the judgment is entered. If the court finds that the
 21 youth offender is unable to pay, the court may establish or allow an appropriate supervising au-
 22 thority to establish a payment schedule, taking into consideration:

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

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

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

29 (d) The rehabilitative effect on the youth offender of the payment of restitution and the method
 30 of payment.

31 (4) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a youth offender
 32 to pay restitution, as provided in this section, the judgment shall be entered in the register or
 33 docket of the court in the manner provided by ORS chapter 18 and enforced in the manner provided
 34 by ORS 18.252 to 18.850. The judgment is in favor of the state and may be enforced only by the state.
 35 Notwithstanding ORS 419A.255, a judgment for restitution entered under this subsection is a public
 36 record. Judgments entered under this subsection are subject to ORS 18.048.

37 **(5) The parent or legal guardian of a youth offender ordered to pay restitution under this**
 38 **section is jointly and severally liable with the youth offender for \$750 of the restitution, and**
 39 **the court shall include the name of a youth offender's parent or legal guardian in the judg-**
 40 **ment as a judgment debtor if:**

41 **(a) The youth offender was less than 16 years of age at the time the youth offender**
 42 **committed the act that brought the youth offender within the jurisdiction of the court; and**

43 **(b) The parent or legal guardian was served with summons under ORS 419C.300, 419C.303**
 44 **and 419C.306 prior to the adjudication or at least 10 days prior to disposition.**

45 [(5)] (6) A person required to pay restitution under subsection (1) of this section may file a mo-

1 tion supported by an affidavit for satisfaction of the judgment or supplemental judgment requiring
2 payment of restitution in the circuit court of the county in which the original judgment was entered
3 if:

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

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

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

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

12 [(6)] (7) When a person files a motion described in subsection [(5)] (6) of this section, the district
13 attorney for the county in which the motion was filed shall promptly notify the victim for whose
14 benefit the judgment of restitution was entered that the person has filed the motion and that the
15 victim may object in writing to the motion through the district attorney.

16 [(7)] (8) If the victim does not object to the motion as provided in subsection [(6)] (7) of this
17 section, the court shall hold a hearing on the motion and may enter an order granting a full or
18 partial satisfaction if the allegations in the affidavit supporting the motion are true and failure to
19 grant the motion would result in an injustice. In determining whether an injustice would result, the
20 court shall take into account:

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

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

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

27 [(8)] (9) A person may file a motion under subsection [(5)] (6) of this section no more than one
28 time per year for each judgment of restitution entered against the person.

29 **SECTION 2. The amendments to ORS 419C.450 by section 1 of this 2005 Act apply to**
30 **judgments entered for acts committed on or after the effective date of this 2005 Act.**

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