

A-Engrossed
House Bill 2230

Ordered by the House March 22
Including House Amendments dated March 22

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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.

Defines "economic damages" for purposes of restitution. Establishes payment priority when multiple awards of restitution are imposed in criminal or juvenile proceeding.

A BILL FOR AN ACT

1
2 Relating to restitution; creating new provisions; and amending ORS 137.103, 137.106, 137.109, 137.295,
3 163.245, 163.257 and 163.577.

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

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

6 137.103. As used in ORS 137.101 to 137.109, 137.540, 161.675 and 161.685:

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

9 (2) [*Pecuniary damages*] means all special damages, but not general damages, which a person
10 could recover against the defendant in a civil action arising out of the facts or events constituting the
11 defendant's criminal activities and shall include, but not be limited to, the money equivalent of property
12 taken, destroyed, broken or otherwise harmed, and losses such as medical expenses and costs of psy-
13 chological treatment or counseling.] **"Economic damages" has the meaning given that term in**
14 **ORS 31.710.**

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

18 (4) "Victim" means:

19 (a) **The person against whom the defendant committed the criminal offense, if the court**
20 **determines that the person has suffered economic damages as a result of the offense.**

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

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

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

27 (5) "Victim" [*shall*] **does** not include any coparticipant in the defendant's criminal activities.

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

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.

1 137.106. (1) When a person is convicted of a crime, or a violation as described in ORS 153.008,
 2 that has resulted in [*pecuniary*] **economic** damages, the district attorney shall investigate and
 3 present to the court, prior to the time of sentencing, evidence of the nature and amount of [*such*]
 4 **the** damages. If the court finds from the evidence presented that a victim suffered [*pecuniary*] **eco-**
 5 **nomi**c damages, in addition to any other sanction it may impose, the court shall:

6 (a) Include in the judgment a requirement that the defendant pay the victim restitution in a
 7 specific amount that equals the full amount of the victim's [*pecuniary*] **economic** damages as deter-
 8 mined by the court; or

9 (b) Include in the judgment a requirement that the defendant pay the victim restitution, and that
 10 the specific amount of restitution will be established by a supplemental judgment based upon a de-
 11 termination made by the court within 90 days of entry of the judgment. In the supplemental judg-
 12 ment, the court shall establish a specific amount of restitution that equals the full amount of the
 13 victim's [*pecuniary*] **economic** damages as determined by the court. The court may extend the time
 14 within which the determination and supplemental judgment may be completed for good cause. The
 15 lien, priority of the lien and ability to enforce the specific amount of restitution established under
 16 this paragraph by a supplemental judgment relates back to the date of the original judgment that
 17 is supplemented.

18 (2) After the district attorney makes a presentation described in subsection (1) of this section,
 19 if the court is unable to find from the evidence presented that a victim suffered [*pecuniary*] **eco-**
 20 **nomi**c damages, the court shall make a finding on the record to that effect.

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

24 (4) If a judgment or supplemental judgment described in subsection (1) of this section includes
 25 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only
 26 if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to
 27 pay the judgment in full at the time the judgment is entered. If the court finds that the defendant
 28 is unable to pay, the court may establish or allow an appropriate supervising authority to establish
 29 a payment schedule, taking into consideration the financial resources of the defendant and the bur-
 30 den that payment of restitution will impose, with due regard to the other obligations of the defend-
 31 ant.

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

35 **SECTION 3.** ORS 137.109 is amended to read:

36 137.109. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685
 37 limits or impairs the right of a person injured by a defendant's commission of a crime, or by a de-
 38 fendant's commission of a violation described in ORS 153.008, to sue and recover damages from the
 39 defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution
 40 pursuant to ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 may not be intro-
 41 duced in any civil action arising out of the facts or events [*which*] **that** were the basis for the
 42 restitution. However, the court shall credit any restitution paid by the defendant to a victim against
 43 any judgment in favor of the victim in such civil action.

44 (2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for
 45 [*pecuniary*] **economic** damages of a victim, that issue is conclusively determined as to the defendant

1 if it is involved in a subsequent civil action.

2 **SECTION 4.** ORS 137.295 is amended to read:

3 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
4 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
5 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
6 the payment as provided in this section.

7 (2) There are four categories of monetary obligations. The categories are as follows:

8 (a) Category 1 consists of compensatory fines under ORS 137.101.

9 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
10 419C.450 and a monetary obligation imposed under ORS 811.706.

11 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
12 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
13 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
14 cases for which moneys the law does not expressly provide other disposition.

15 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
16 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
17 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
18 pressly directs be paid to an agency, person or political subdivision of the state, and any other
19 obligation to reimburse for payment of a reward under ORS 131.897.

20 (3) So long as there remains unpaid any obligation under category 1, the clerk shall credit to-
21 ward category 1 all of each payment received.

22 (4) After the total obligation has been credited under category 1, then so long as there remains
23 unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such cate-
24 gory 50 percent of each payment received.

25 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
26 2 to the victims for whose benefit moneys under that category were ordered paid. **If there are**
27 **multiple victims for whose benefit moneys have been ordered paid under category 2, the clerk**
28 **shall first transfer moneys credited under category 2 to the victim, as defined in ORS 137.103**
29 **(4)(a). When the moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully**
30 **paid, the clerk shall transfer moneys credited under category 2 to the Criminal Injuries**
31 **Compensation Account if moneys have been ordered paid to the account under category 2.**
32 **When the moneys due the account have been fully paid, the clerk shall transfer moneys**
33 **credited under category 2 to any other victims, as defined in ORS 137.103 (4)(b) or (d), for**
34 **whose benefit moneys under that category were ordered paid in proportion to the amounts**
35 **ordered.** The clerk of a circuit court shall monthly transfer the moneys credited under category 3
36 as directed by the State Court Administrator for deposit in the State Treasury to the credit of the
37 Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or
38 municipal court shall monthly transfer the moneys credited under category 3 to the Department of
39 Revenue as provided in ORS 305.830.

40 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
41 credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid
42 balance of whichever of those categories remains unpaid, until both category 2 and category 3 have
43 been entirely paid.

44 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
45 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-

1 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
2 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
3 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
4 ment for reward under ORS 131.897.

5 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
6 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
7 General Fund.

8 (9) The clerk of a justice or municipal court must make the transfers required by this section
9 not later than the last day of the month immediately following the month in which a payment is
10 made.

11 **SECTION 5.** ORS 137.295, as amended by section 1, chapter 1064, Oregon Laws 1999, section
12 23, chapter 823, Oregon Laws 2001, and section 3, chapter 687, Oregon Laws 2003, is amended to
13 read:

14 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
15 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
16 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
17 the payment as provided in this section.

18 (2) There are four categories of monetary obligations. The categories are as follows:

19 (a) Category 1 consists of compensatory fines under ORS 137.101.

20 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
21 419C.450 and a monetary obligation imposed under ORS 811.706.

22 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
23 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
24 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
25 cases for which moneys the law does not expressly provide other disposition.

26 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
27 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
28 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
29 pressly directs be paid to an agency, person or political subdivision of the state, and any other
30 obligation to reimburse for payment of a reward under ORS 131.897.

31 (3) As long as there remains unpaid any obligation under category 1, including any interest ac-
32 crued on that obligation, the clerk shall credit toward category 1 all of each payment received.

33 (4) After the total obligation has been credited under category 1, then as long as there remains
34 unpaid any obligation under both categories 2 and 3, including any interest accrued on those obli-
35 gations, the clerk shall credit toward each such category 50 percent of each payment received.

36 (5) The clerk shall monthly transfer the principal amount of the moneys credited under category
37 1 and under category 2, and all interest that has accrued on those principal amounts, to the victims
38 for whose benefit moneys under that category were ordered paid. **If there are multiple victims for
39 whose benefit moneys have been ordered paid under category 2, the clerk shall first transfer
40 moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the
41 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall
42 transfer moneys credited under category 2 to the Criminal Injuries Compensation Account
43 if moneys have been ordered paid to the account under category 2. When the moneys due the
44 account have been fully paid, the clerk shall transfer moneys credited under category 2 to
45 any other victims, as defined in ORS 137.103 (4)(b) or (d), for whose benefit moneys under**

1 **that category were ordered paid in proportion to the amounts ordered.** The clerk of a circuit
 2 court shall monthly transfer the principal amount of the moneys credited under category 3 as di-
 3 rected by the State Court Administrator for deposit in the State Treasury to the credit of the
 4 Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or
 5 municipal court shall monthly transfer the principal amount of the moneys credited under category
 6 3 to the Department of Revenue as provided in ORS 305.830. The clerk shall transfer all interest on
 7 the principal amount of the moneys credited under category 3 to the State Court Administrator for
 8 deposit in the Court Facilities Account established under ORS 1.190.

9 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
 10 credited, including any interest that has accrued on the amount, further payments by the defendant
 11 shall be credited by the clerk entirely to the unpaid balance of whichever of those categories re-
 12 mains unpaid, until both category 2 and category 3 have been entirely paid.

13 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
 14 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
 15 ligations under category 4 and shall monthly transfer the principal amount of the moneys so
 16 received to the appropriate recipient, giving first priority to counties and cities entitled to revenues
 17 generated by prosecutions in justice and municipal courts and giving last priority to persons entitled
 18 to moneys as reimbursement for reward under ORS 131.897. The clerk shall transfer all interest on
 19 the principal amount of the moneys credited under category 4 to the agency, person or political
 20 subdivision of the state entitled to the principal amount. All interest on monetary obligations owing
 21 to the state under category 4 shall be transferred to the State Court Administrator for deposit in
 22 the Court Facilities Account established under ORS 1.190.

23 (8) Notwithstanding subsection (5) of this section, the clerk of a circuit court shall monthly
 24 transfer the moneys attributable to parking violations to the State Treasurer for deposit in the
 25 General Fund.

26 (9) The clerk of a justice or municipal court must make the transfers required by this section
 27 not later than the last day of the month immediately following the month in which a payment is
 28 made.

29 **SECTION 6.** ORS 163.245 is amended to read:

30 163.245. (1) A person commits the crime of custodial interference in the second degree if,
 31 knowing or having reason to know that the person has no legal right to do so, the person takes,
 32 entices or keeps another person from the other person's lawful custodian or in violation of a valid
 33 joint custody order with intent to hold the other person permanently or for a protracted period.

34 (2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody
 35 order in locating and regaining physical custody of the person taken, enticed or kept in violation
 36 of this section are "[*pecuniary*] **economic** damages" for purposes of restitution under ORS 137.103
 37 to 137.109.

38 (3) Custodial interference in the second degree is a Class C felony.

39 **SECTION 7.** ORS 163.257 is amended to read:

40 163.257. (1) A person commits the crime of custodial interference in the first degree if the person
 41 violates ORS 163.245 and:

42 (a) Causes the person taken, enticed or kept from the lawful custodian or in violation of a valid
 43 joint custody order to be removed from the state; or

44 (b) Exposes that person to a substantial risk of illness or physical injury.

45 (2) Expenses incurred by a lawful custodial parent or a parent enforcing a valid joint custody

1 order in locating and regaining physical custody of the person taken, enticed or kept in violation
2 of this section are “[*pecuniary*] **economic** damages” for purposes of restitution under ORS 137.103
3 to 137.109.

4 (3) Custodial interference in the first degree is a Class B felony.

5 **SECTION 8.** ORS 163.577 is amended to read:

6 163.577. (1) A person commits the offense of failing to supervise a child if the person is the
7 parent, lawful guardian or other person lawfully charged with the care or custody of a child under
8 15 years of age and the child:

9 (a) Commits an act that brings the child within the jurisdiction of the juvenile court under ORS
10 419C.005;

11 (b) Violates a curfew law of a county or any other political subdivision; or

12 (c) Fails to attend school as required under ORS 339.010.

13 (2) Nothing in this section applies to a child-caring agency as defined in ORS 418.205 or to foster
14 parents.

15 (3) In a prosecution of a person for failing to supervise a child under subsection (1)(a) of this
16 section, it is an affirmative defense that the person:

17 (a) Is the victim of the act that brings the child within the jurisdiction of the juvenile court; or

18 (b) Reported the act to the appropriate authorities.

19 (4) In a prosecution of a person for failing to supervise a child under subsection (1) of this sec-
20 tion, it is an affirmative defense that the person took reasonable steps to control the conduct of the
21 child at the time the person is alleged to have failed to supervise the child.

22 (5)(a) Except as provided in subsection (6) or (7) of this section, in a prosecution of a person for
23 failing to supervise a child under subsection (1)(a) of this section, the court shall order the person
24 to pay restitution under ORS 137.103 to 137.109 to a victim for [*pecuniary*] **economic** damages aris-
25 ing from the act of the child that brings the child within the jurisdiction of the juvenile court.

26 (b) The amount of restitution ordered under this subsection may not exceed \$2,500.

27 (6) If a person pleads guilty or is found guilty of failing to supervise a child under this section
28 and if the person has not previously been convicted of failing to supervise a child, the court:

29 (a) Shall warn the person of the penalty for future convictions of failing to supervise a child and
30 shall suspend imposition of sentence.

31 (b) May not order the person to pay restitution under this section.

32 (7)(a) If a person pleads guilty or is found guilty of failing to supervise a child under this section
33 and if the person has only one prior conviction for failing to supervise a child, the court, with the
34 consent of the person, may suspend imposition of sentence and order the person to complete a par-
35 ent effectiveness program approved by the court. Upon the person’s completion of the parent effec-
36 tiveness program to the satisfaction of the court, the court may discharge the person. If the person
37 fails to complete the parent effectiveness program to the satisfaction of the court, the court may
38 impose a sentence authorized by this section.

39 (b) There may be only one suspension of sentence under this subsection with respect to a person.

40 (8) The juvenile court has jurisdiction over a first offense of failing to supervise a child under
41 this section.

42 (9) Failing to supervise a child is a Class A violation.

43 **SECTION 9.** The amendments to ORS 137.103, 137.106, 137.109, 137.295, 163.245, 163.257 and
44 163.577 by sections 1 to 8 of this 2005 Act apply to judgments imposing awards of restitution
45 that are entered as described by ORS 18.075 on or after the effective date of this 2005 Act.

