

Enrolled
House Bill 3497

Sponsored by COMMITTEE ON JUDICIARY (at the request of Representative Wayne Scott, Representative Wayne Krieger, Senator Ginny Burdick, Senator Avel Gordly)

CHAPTER

AN ACT

Relating to Criminal Fine and Assessment Account; creating new provisions; amending ORS 108.662, 135.280, 137.300, 147.227, 305.830 and 802.155; repealing ORS 137.302; and prescribing an effective date.

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

SECTION 1. The Legislative Assembly finds that:

(1) Systems critical components of the Oregon criminal justice system exist that require the highest priority considerations for funding from the Criminal Fine and Assessment Account.

(2) The systems critical components of the Oregon criminal justice system are interrelated and essential to the initiation and successful conclusion of criminal investigations.

(3) The interests of victims of crime and other Oregonians are advanced by the ability of the public safety community to respond professionally to reports of criminal activity and to successfully investigate criminal cases in a manner that protects the constitutional rights of all Oregonians.

(4) The effective training of police officers, corrections officers, parole and probation officers and other first responders increases the likelihood that crimes will be solved quickly and that the needs of victims of crime will be met.

(5) The collection of evidence at crime scenes, the forensic processing of the evidence by qualified, well-trained technicians and the work of medical examiners are critical statewide functions that allow all Oregonians an equal opportunity to justice.

(6) The collection of criminal information such as that retained in the Law Enforcement Data System enhances the ability of investigators to identify criminals and the unnamed victims of violent crimes.

(7) Timely intervention on behalf of victims of crime through effective assistance programs makes recovery from victimization possible and is necessary to the well-being of Oregonians adversely affected by violent crime.

SECTION 2. ORS 137.300 is amended to read:

137.300. (1) The Criminal Fine and Assessment Account is established in the General Fund of the State Treasury. All moneys in the account are **continuously** appropriated [*continuously*] **to the Department of Revenue** to be distributed by the Department of Revenue [*as provided in subsection (2) of this section*] **according to allocations made by the Legislative Assembly.** The Department of Revenue shall keep a record of moneys transferred into and out of the account. The Department

of Revenue shall report monthly to the Attorney General the amount of moneys received from the state courts in each county and from each city court.

[2] *For biennia beginning on and after July 1, 2003, the Department of Revenue shall distribute moneys in the account to the General Fund to be used for general governmental expenses and to the Criminal Fine and Assessment Public Safety Fund established in ORS 137.302 according to allocations made by the Legislative Assembly and as necessary under ORS 137.302 (5).]*

(2) The Legislative Assembly shall allocate moneys in the account according to the following priority:

(a) Public safety standards, training and facilities;

(b) Criminal injuries compensation and assistance to victims of crime and children reasonably suspected of being victims of crime;

(c) Forensic services of the Oregon State Police including, but not limited to, services of the State Medical Examiner; and

(d) Maintenance and operation of the Law Enforcement Data System.

(3) Moneys in the account may not be allocated for:

(a) The payment of debt service obligations; or

(b) Any purpose other than those listed in subsection (2) of this section.

(4) The Department of Revenue shall deposit in the General Fund all moneys remaining in the account after the distributions required by subsections (1) and (2) of this section have been made.

[3] **(5)** The Department of Revenue shall establish by rule a process for distributing [available] moneys in the [Criminal Fine and Assessment] account.

[4] **(6)** The Department of Justice shall report monthly to the Department of Revenue the amount of moneys ordered to be applied to child support under ORS 135.280.

SECTION 3. ORS 137.302 is repealed.

SECTION 4. On the effective date of this 2005 Act, all moneys remaining in the Criminal Fine and Assessment Public Safety Fund are transferred to the Criminal Fine and Assessment Account.

SECTION 5. ORS 135.280 is amended to read:

135.280. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal judge may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties for the entire security amount set under ORS 135.265 and the costs of the proceedings. At any time before or after entry of the judgment, the defendant or the sureties may apply to the court for a remission of the forfeiture or to modify or set aside the judgment. The court, upon good cause shown, may remit the forfeiture or any part thereof or may modify or set aside the judgment as in other criminal cases, except the portion of the security amount that the court ordered to be applied to child support under subsection (4) of this section, as the court considers reasonable under the circumstances of the case. The court shall adopt procedures to ensure that the amount deposited under ORS 135.265 is available for a reasonable period of time for disposition under subsection (4) of this section.

(4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715, may order that a portion of the security amount be applied to any unsatisfied child support award owed by the defendant and to provide security for child support payments in accordance with ORS 25.230. The portion of the security amount that may be applied to the child support award:

(a) Is limited to the amount deposited under ORS 135.265;

(b) May not exceed [*the percentage*] **66 percent** of the **entire security** amount [*designated for distribution to the General Fund had the deposit been transferred to the Criminal Fine and Assessment Account as provided in subsection (5) of this section*] **set under ORS 135.265**; and

(c) Does not reduce the money award in the judgment entered under subsection (3) of this section that is owed to the state.

(5) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in a civil action. If entered in circuit court, the judgment shall be entered in the register, and the clerk of the court shall note in the register that the judgment creates a judgment lien. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265, or may collect the judgment as otherwise provided by law. The proceeds of any execution or collection shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice court, or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300, if the offense was defined by a statute of this state and the judgment was entered by a circuit court. The provisions of this section shall not apply to base fine amounts deposited upon appearance under ORS 153.061.

(6) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. Except as provided in subsection (4) of this section, the clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(7) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by a circuit court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

SECTION 6. ORS 108.662 is amended to read:

108.662. Grants awarded through funding from the Criminal Fine and Assessment [*Public Safety Fund*] **Account** for domestic violence programs shall be used to support direct services, with no more than five percent of each grant to be spent for administration.

SECTION 7. ORS 147.227 is amended to read:

147.227. (1) The Attorney General or the Attorney General's designee shall disburse up to one-half of the moneys that the Criminal Injuries Compensation Account receives from the Criminal Fine and Assessment [*Public Safety Fund*] **Account** to counties and cities where prosecuting attorneys maintain comprehensive victims' assistance programs approved by the Attorney General or the Attorney General's designee. Those counties and cities shall provide the moneys to the prosecuting

attorney therein to be used exclusively for the comprehensive victims' assistance program. Pursuant to consultation with a three member advisory committee, which the Attorney General shall establish administratively, and which shall consist of a representative from the Attorney General's Office, the Oregon District Attorneys Association and a prosecutor's victim assistance program, the Attorney General shall adopt rules for equitable distribution of these moneys among participating counties and cities.

(2) To qualify for approval under this section, a comprehensive victims' assistance program shall not restrict services only to victims or witnesses of a particular type of crime, but shall provide services to victims and witnesses generally. The program must also, in the determination of the Attorney General or the Attorney General's designee, substantially accomplish the following:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property, including, but not limited to:

(A) Informing victims and witnesses of their case status and progress;

(B) Performing advocate duties for victims within the criminal justice system;

(C) Assisting victims in recovering property damaged or stolen and in obtaining restitution or compensation for medical and other expenses incurred as a result of the criminal act;

(D) Preparing victims for pending court hearings by informing them of procedures involved;

(E) Accompanying victims to court hearings;

(F) Involving victims, when possible, in the decision-making process in the criminal justice system;

(G) Assisting victims in obtaining the return of property held as evidence;

(H) Assisting victims with personal logistical problems related to court appearances; and

(I) Developing community resources to assist victims of crime;

(b) Be administered by the district attorney of the county or city attorney of the city;

(c) Assist victims of crimes in the preparation and presentation of claims against the Criminal Injuries Compensation Account; and

(d) Generally encourage and facilitate testimony by victims of and witnesses to criminal conduct.

(3) If a proposed victims' assistance program, although not substantially comprising all elements described in subsection (2) of this section, nevertheless comprises a significant portion thereof and if, in the determination of the Attorney General or the Attorney General's designee thereof, it would not be practicable at the current time for the district attorney or city attorney to establish a more comprehensive program, the Attorney General or the Attorney General's designee thereof may qualify the program under this section on a temporary basis and subject to such conditions as the Attorney General or the designee shall impose upon the program.

SECTION 8. ORS 305.830 is amended to read:

305.830. (1) Amounts transferred to the Department of Revenue by justice and municipal courts under ORS 137.295 shall be deposited in a suspense account established under ORS 293.445 for the purpose of receiving criminal fines and assessments.

(2) In carrying out its duties under this section, the Department of Revenue shall have access to the records and dockets of those courts charged with the duty to transfer moneys to the department under ORS 137.295.

(3) The Department of Revenue may retain from the funds transferred under ORS 137.295 an amount not to exceed two percent annually for its actual costs of collection and disbursement of funds under this section, including the cost of all examinations, investigations and searches, and of all traveling and other expenses in connection therewith. The department shall deposit the net amount of moneys in the suspense account described in subsection (1) of this section into the Criminal Fine and Assessment Account for distribution as provided in ORS 137.300 [and 137.302].

(4) All judicial, municipal and county officers shall cooperate with the Department of Revenue with respect to the collections, searches and investigations and shall furnish the Department of Revenue with any information contained in any of the records under their respective custodies relating thereto.

(5) The Department of State Police shall cooperate in the investigation of fines, penalties and forfeitures.

SECTION 9. ORS 802.155 is amended to read:

802.155. (1) There is created the Safety Education Fund, separate and distinct from the General Fund. Interest earned by the fund shall be credited to the fund.

(2) Moneys deposited in the Safety Education Fund from the Criminal Fine and Assessment [*Public Safety Fund*] **Account** are continuously appropriated to the office of the manager of the Transportation Safety section of the Department of Transportation to be used for safety education programs:

- (a) That provide injury prevention education on traffic safety issues for each age group in the kindergarten through college ages;
- (b) That have been recipients of funds under 23 U.S.C. 402 for at least three years;
- (c) That are found by the Transportation Safety section to be effective, as measured by the three-year reporting cycle funded under 23 U.S.C. 402; and
- (d) That operate statewide.

SECTION 10. This 2005 Act takes effect July 1, 2007.

Passed by House July 1, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate July 21, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State