

# House Bill 2381

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

## 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**.

Allows prosecuting attorney 90 days after entry of judgment of disposition for youth offender to present restitution information to court. Requires prosecuting attorney to disclose exhibits and witnesses to youth offender 10 days before restitution presentation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to restitution for crime victim of youth offender; creating new provisions; amending ORS  
3 419C.450; and declaring an emergency.

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*] **economic damages**, the victim has the right to receive prompt restitution. The district  
11 attorney shall investigate and present to the court, [*prior to or at the time of adjudication,*] **at the**  
12 **time of disposition or within 90 days after entry of the judgment**, evidence of the nature and  
13 amount of the [*injury, loss or damage.*] **damages. The court may extend the time by which the**  
14 **presentation must be made for good cause.** If the court finds from the evidence presented that  
15 a victim suffered [*injury, loss or damage*] **economic damages**, in addition to any other sanction it  
16 may impose, the court shall[:]

17 [*(A) Include in the judgment a requirement that the youth offender pay the victim restitution in a*  
18 *specific amount that equals the full amount of the victim's injury, loss or damage as determined by the*  
19 *court; or]*

20 [*(B) Include in the judgment a requirement that the youth offender pay the victim restitution, and*  
21 *that the specific amount of restitution will be established by a supplemental judgment based upon a*  
22 *determination made by the court within 90 days of entry of the judgment. In the supplemental judgment,*  
23 *the court shall establish a specific amount of restitution that equals the full amount of the victim's in-*  
24 *jury, loss or damage as determined by the court. The court may extend the time within which the de-*  
25 *termination and supplemental judgment may be completed for good cause. The lien, priority of the lien*  
26 *and ability to enforce a specific amount of restitution established under this subparagraph by a sup-*  
27 *plemental judgment relates back to the date of the original judgment that is supplemented.] **enter a**  
28 **judgment or supplemental judgment of disposition requiring that the youth offender pay the**  
29 **victim restitution in a specific amount that equals the full amount of the victim's economic**  
30 **damages as determined by the court. The lien, priority of the lien and ability to enforce 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 **specific amount of restitution established under this subsection by a supplemental judgment**  
 2 **of disposition relates back to the date of the original judgment of disposition that is supple-**  
 3 **mented.**

4 **(b) Notwithstanding paragraph (a) of this subsection, a court may order that the youth**  
 5 **offender pay the victim restitution in a specific amount that is less than the full amount of**  
 6 **the victim’s economic damages only if:**

7 **(A) The victim consents to the lesser amount, if the disposition is not for conduct that,**  
 8 **if committed by an adult, would constitute a person felony; or**

9 **(B) The victim consents in writing to the lesser amount, if the disposition is for conduct**  
 10 **that, if committed by an adult, would constitute a person felony.**

11 *[(b)]* **(c) After the district attorney makes a presentation described in paragraph (a) of this sub-**  
 12 **section, if the court is unable to find from the evidence presented that a victim suffered [injury, loss**  
 13 **or damage] economic damages, the court shall make a finding on the record to that effect.**

14 *[(c)]* **(d) No finding made by the court or failure of the court to make a finding under this sub-**  
 15 **section limits or impairs the rights of a person injured to sue and recover damages in a civil action**  
 16 **under subsection (2) of this section.**

17 *[(d)]* **(e) The court may order restitution, including but not limited to counseling and treatment**  
 18 **expenses, for emotional or psychological injury under this section only:**

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

21 **(B) For an injury suffered by the victim or a member of the victim’s family who observed the**  
 22 **act.**

23 *[(e)]* **(f) If the youth offender will be present at a hearing under this subsection and the victim**  
 24 **requests notice, the district attorney or juvenile department shall notify the victim of the hearing.**

25 **(g) At least 10 days prior to the presentation described in paragraph (a) of this sub-**  
 26 **section, the district attorney shall:**

27 **(A) Disclose to the youth offender the names of any witnesses that may be called during**  
 28 **the presentation; and**

29 **(B) Provide the youth offender with copies of, or allow the youth offender to inspect, any**  
 30 **exhibits that will be used or introduced during the presentation.**

31 **(h) If the court finds that the district attorney has violated the requirements of para-**  
 32 **graph (g) of this subsection, the court shall grant a continuance to allow additional time for**  
 33 **preparation upon request of the youth offender. Any additional time granted under this**  
 34 **paragraph may not count toward the 90-day time limitation described in paragraph (a) of this**  
 35 **subsection.**

36 **(i) As used in this subsection:**

37 **(A) “Economic damages” has the meaning given that term in ORS 31.710, except that**  
 38 **“economic damages” does not include future impairment of earning capacity.**

39 **(B) “Person felony” has the meaning given that term in the rules of the Oregon Criminal**  
 40 **Justice Commission.**

41 **(2) Restitution for injury inflicted upon a person by the youth offender, for property taken,**  
 42 **damaged or destroyed by the youth offender and for a reward offered by the victim or an organiza-**  
 43 **tion authorized by the victim and paid for information leading to the apprehension of the youth**  
 44 **offender, shall be required as a condition of probation. Restitution does not limit or impair the right**  
 45 **of a victim to sue in a civil action for damages suffered, nor shall the fact of consultation by the**

1 victim be admissible in such civil action to prove consent or agreement by the victim. However, the  
2 court shall credit any restitution paid by the youth offender to a victim against any judgment in  
3 favor of the victim in such civil action. Before setting the amount of such restitution, the court shall  
4 notify the person upon whom the injury was inflicted or the owner of the property taken, damaged  
5 or destroyed and give such person an opportunity to be heard on the issue of restitution.

6 (3)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes  
7 restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only  
8 if the youth offender alleges and establishes to the satisfaction of the court the youth offender's  
9 inability to pay the judgment in full at the time the judgment is entered. If the court finds that the  
10 youth offender is unable to pay, the court may establish or allow an appropriate supervising au-  
11 thority to establish a payment schedule. The supervising authority shall be authorized to modify any  
12 payment schedule established under this section. In establishing a payment schedule, the court or  
13 the supervising authority shall take into consideration:

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

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

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

20 (D) The rehabilitative effect on the youth offender of the payment of restitution and the method  
21 of payment.

22 (b) As used in this subsection, "supervising authority" means any state or local agency that is  
23 authorized to supervise the youth offender.

24 (4) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a youth offender  
25 to pay restitution, as provided in this section, the judgment shall be entered in the register or  
26 docket of the court in the manner provided by ORS chapter 18 and enforced in the manner provided  
27 by ORS 18.252 to 18.993. The judgment is in favor of the state and may be enforced only by the state.  
28 Notwithstanding ORS 419A.255, a judgment for restitution entered under this subsection is a public  
29 record. Judgments entered under this subsection are subject to ORS 18.048.

30 (5) A person required to pay restitution under subsection (1) of this section may file a motion  
31 supported by an affidavit for satisfaction of the judgment or supplemental judgment requiring pay-  
32 ment of restitution in the circuit court of the county in which the original judgment was entered if:

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

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

36 (c) The person has not been found to be within the jurisdiction of the juvenile court under ORS  
37 419C.005 or convicted of an offense since the date the original judgment of restitution was entered;  
38 and

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

41 (6) When a person files a motion described in subsection (5) of this section, the district attorney  
42 for the county in which the motion was filed shall promptly notify the victim for whose benefit the  
43 judgment of restitution was entered that the person has filed the motion and that the victim may  
44 object in writing to the motion through the district attorney.

45 (7) If the victim does not object to the motion as provided in subsection (6) of this section, the

1 court shall hold a hearing on the motion and may enter an order granting a full or partial satis-  
2 faction if the allegations in the affidavit supporting the motion are true and failure to grant the  
3 motion would result in an injustice. In determining whether an injustice would result, the court shall  
4 take into account:

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

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

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

11 (8) A person may file a motion under subsection (5) of this section no more than one time per  
12 year for each judgment of restitution entered against the person.

13 **SECTION 2. The amendments to ORS 419C.450 by section 1 of this 2015 Act apply to dis-**  
14 **positions occurring on or after the effective date of this 2015 Act.**

15 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**  
16 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
17 **on its passage.**

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