



**DEPARTMENT OF JUSTICE**

March 31, 2004

Michael D. Schrunk  
Multnomah County District Attorney  
1021 SW Fourth Ave, Room 600  
Portland, OR 97204-1193

Dan Norris  
Malheur County District Attorney  
251 B Street West  
Vale, OR 97918

Re: Restitution Awards to Third-Party Payors

Dear Mr. Schrunk and Mr. Norris:

In response to your request for a legal opinion, this will confirm that restitution orders under revised ORS 137.106 and ORS 419C.450 must include pecuniary damages incurred by a victim but reimbursed by a third party (i.e. insurance company, state or federal victims program). Further, restitution orders under these statutes must name both the actual victim and the third-party payor as restitution payees, in the amount of their respective pecuniary losses.

Revised ORS 137.106(1)(a) provides that the court “shall include in the judgment a requirement that the defendant pay the victim restitution in an amount that equals the full amount of the victim’s pecuniary damages as determined by the court.” (Emphasis added). Similarly, revised ORS 419C.450 provides that the court shall “include in the judgment a requirement that the youth offender pay the victim restitution in the specific amount that equals the full amount of the victim’s injury, loss or damages as determined by the court.” *ORS 419C.450(A)(emphasis added)*.

To properly interpret a statute, the court must determine the intent of the legislature. *Portland General Electric Co. v. Bureau of Labor and Industries*, 317 Or 606, 610 (1993). To do so, a court will look first to the text and context of the statute. *Id.* If the meaning of the statute is unclear from its text, the court will then consider relevant legislative history. *Id.*, at 611-612. If the meaning of the statute still remains unclear from the legislative history, the court’s final step is to consider general maxims of statutory construction to ascertain legislative intent. *Id.*, at 612.

The text of revised ORS 137.106 and 419.450C specifically requires the defendant to pay the victim restitution in the full amount of the victim's damages. At the same time, neither statute requires the court to offset the restitution award by amounts recovered from a third-party. The context of revised ORS 137.106 supports the conclusion that restitution must be paid to third-party payors, in addition to the actual victim. ORS 137.103 defines "victim" as "any person whom the court determines has suffered pecuniary damages." (Emphasis added). Further, ORS 174.100(5) defines "person" to include "individuals, corporations, associations."<sup>1</sup> Thus, for the purposes of a restitution order under ORS 137.106, a "victim" includes any person or entity who suffered pecuniary losses as a result of the crime, including but not limited to third parties who have reimbursed an actual victim for his or her losses.

In the case of revised ORS 419C.450, the statute itself indicates that it is the state's policy to "promote the payment of restitution and other obligations by youth offenders as well as by adult offenders." *ORS 419C.450(1)(a)*. Thus, the context of this statute demonstrates the intent of the legislature that youth offenders be treated in a manner similar to that of adult offenders by requiring repayment of the full amount of damages to the victim. Although the context of ORS 419C.450 does not specifically define the term "victim," a victim is generally considered a "person subjected to . . . deprivation or suffering." *Webster's Third New Int'l Dictionary*. Since ORS 174.100(5) and related case law defines "person" to include "individuals, corporations, associations," as well as the state, a restitution order under ORS 419C.450 must include payment to all victims, including third-party payors, who have suffered a loss due to the actions of the youth offender.

Finally, the purpose of the amendments to ORS 137.106 and ORS 419C.450 was to ensure that offenders are required to make a victim whole by paying the full amount of a victim's damages. At the same time, the intent was not that the actual victim obtain a double recovery by receiving both a third-party reimbursement along with full reimbursement from the offender.

Thus, the legislative history of these revisions confirms the conclusion that courts are required to include in restitution orders payment of pecuniary losses to third-party payors, as well as the actual victim.

Sincerely,



HARDY MYERS  
Attorney General

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<sup>1</sup> The State of Oregon is a "person" under an analysis similar to that set forth in *Beaver v. Pelett*, 299 OR 664 (1985) ("state is a 'person' within ORS 18.440"). See also, *Pike v. Allen*, 287 OR 55 (1979) (state is a "person" under the Uniform Declaratory Judgments Act).