



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: June 26, 2024 Work Group Meeting

TO: Members of the HB 4056 (Tyler v. Hennepin) Work Group

FROM: Kimberly McCullough, Legislative Director
Oregon Department of Justice

SUBJECT: Outline of DOJ's Child Support and Restitution Collection Process

What we collect at DOJ:

- **Child support**
 - The Division of Child Support (DCS) administers the Oregon Child Support Program, the federal Title IV-D program, for the state. After public schools, the Oregon Health Plan, and SNAP, the Oregon Child Support Program is the public program serving the most children in Oregon.
 - The program collects more than \$366 million in child support annually for Oregon families.
- **Restitution**
 - Restitution is compensation for loss or injury. In criminal cases, restitution refers to compensation for loss that a criminal would pay to a victim as part of a criminal sentence or as a condition of probation. In civil cases, restitution is a remedy associated with unjust enrichment in which the amount of recovery is typically based on the defendant's gain rather than the plaintiff's loss.¹
 - **Restitution for crime victims:**
 - In criminal cases where restitution is owed to victims, we assist with collection efforts when the Oregon Judicial Department (OJD) asks our Civil Enforcement Division (CED) for our assistance. OJD typically does this when a judicial foreclosure is occurring and there is a junior lien for criminal restitution.²

¹ See Definition of "Restitution" from the Legal Information Institute (LII) at Cornell Law School.

² Typically, OJD collects criminal restitution through the Department of Revenue or private collection agencies.

- In some cases, restitution is owed to DOJ's Crime Victim and Survivor Services Division (CVSSD), because CVSSD has provided up-front compensation to a victim through our Crime Victims Compensation program. In such cases, CVSSD essentially steps into the shoes of the victim for the purposes of collection of restitution from the defendant.
- **Civil restitution in DOJ cases:**
 - DOJ sometimes collects restitution for victims of harm related to civil cases litigated by CED. Typically, these are cases brought by the Consumer Protection Unit of CED.
 - This is less common than our collection of restitution for crime victims.
 - Typically, the debtor in these cases will be a business that has caused harm to Oregonians and has violated one or more of our state's consumer protection laws, such as our Unlawful Trade Practices Act or our state's antitrust laws. In some matters, officers or agents of the business may also be personally liable and end up owing restitution to victims.
- NOTE: DOJ is also sometimes asked to assist with collection of outstanding debts related to litigation involving other state agencies, but that's not the focus of this document.

How DOJ collects Child Support and Restitution

- **Voluntary payment**
 - Our initial attempts at collection are to obtain voluntary payment.
 - For our child support collection:
 - If not using traditional income withholding (see below), payments of monthly court-ordered amounts are expected to be made voluntarily.
 - DCS has case managers who work closely with paying parents, directly engaging them to fully understand their circumstances and to attempt to find an equitable solution.
 - This often involves getting the paying parent to enter into a voluntary compliance agreement.
 - This also may involve agreeing to a payment plan that works for the paying parent. Payments under these plans is often less than what we could garnish if using that process (see below).
 - This also may involve modification of the child support order over the long life of a child support obligation.

- **Income withholding orders in child support cases**
 - When using this federally mandated collection tool, DCS sends an income withholding order to the paying parent’s employer ordering the employer to withhold the appropriate level of support from the paying parent’s wages and send it to DCS to be distributed to the parent who receives support.
 - An income withholding order is not unlike a continuous garnishment that continues until modified or terminated.
 - Around 70% of the total support collected by DCS is the result of income withholding orders.
 - This is not a tool used by CED related to restitution.
- **Tax refund offsets**
 - If a debtor owes money to a state agency, the IRS and Oregon Department of Revenue may use part or all of the debtor’s tax refund to repay the debt.
 - Both CED and DCS use tax refund offsets as a collection tool.
- **Garnishment**
 - Garnishment refers to the legal process for collecting on a judgment, which takes money directly from the debtor’s wages or other third party who owes the debtor a debt. A writ of garnishment instructs a third party who owes money to the debtor, typically the debtor’s employer or the debtor’s bank, to pay some or all of that money to the creditor instead of the debtor. This third party is called a garnishee.³
 - Like most creditors who engage in garnishment, CED primarily garnishes from employers and banks. DCS generally uses this form of garnishment to collect past-due support (arrears) from bank accounts.
 - After we obtain a money judgment from the court, we fill out a garnishment form and serve it on the employer or bank. The garnishment form instructs the garnishee to put a hold on the amount of funds necessary to pay the garnishment. Note that DCS has authority under ORS 18.645 to issue these writs without involving the court.
 - After service of the garnishee has occurred, we then serve the debtor with the garnishment paperwork, so they are aware of the garnishment process and their legal rights.

³ Definition of “Garnishment” from the Legal Information Institute (LII) at Cornell Law School.

- NOTE: the amount that can be garnished at any given time is limited by the law. Legislation passed last session (SB 1595, the Family Financial Protection Act) altered these amounts, but child support and restitution were carved out from the changes in the law and will therefore remain the same as prior to the passage of SB 1595.
- **Real property liens**
 - When a circuit court enters a money judgment for child support or restitution, that creates a judgment lien against the defendant's real property in that county.
 - **Collection by Title Company at Sale**
 - Generally, DOJ's collection happens when there is a sale of the property. In such circumstances, a title company will notify DOJ that there will be a sale of the property and will request a payoff amount for the lien prior to the sale.
 - After DOJ is paid off, we provide the title company with a release of lien (if we are paid less than what is owed) or satisfaction of judgment (if we are paid the full amount due), so they can record the release or satisfaction in the real property records.
 - **Foreclosure sales with surplus sale proceeds**
 - **Judicial foreclosure sales**
 - In a judicial foreclosure, after we receive notice of the foreclosure, we file a motion with the court to obtain surplus sale proceeds. These are usually distributed to junior lienholders in order of their lien priority.
 - **Nonjudicial foreclosures:**
 - In a nonjudicial foreclosure, we are given notice that there are surplus sale proceeds. We then file a claim with the trustee. If there are competing claims and insufficient assets to fully pay them, the trustee may file an interpleader, and the court determines who is entitled to the sale proceeds.
 - NOTE: these are typically bank foreclosures and do not include tax foreclosures.

- **Personal Property Liens**

- When collecting a judgment, DOJ will sometimes issue a writ of execution to collect the debt from personal property. This is typically a vehicle or other more expensive property.
- Pursuant to ORS 25.670, a lien arises by operation of law on personal property owned by a parent who owes delinquent child support. When property is identified that is in the possession of a third party, a personal property lien notice is recorded and served on the third party.

County Tax Foreclosures

- When a county tax foreclosure occurs, DOJ generally has no viable options to assert our lienholder rights.
- If we get notice of tax foreclosure or a notice of the expiration of the redemption period, we don't have funds to pay the outstanding taxes, like some other creditors do.
 - Other creditors may pay the property tax and step into the shoes of the county, so they could keep the property out of foreclosure and/or foreclose themselves.
See ORS 312.160.

Proposed Solutions

- **Option A**

- This option only addresses collection of DOJ child support and restitution.
- Process:
 - DOJ is provided with notice from the county that identifies the relevant lien and the date when the money will be returned to the property owner.
 - DOJ is allowed to issue a garnishment to the county, which must be issued by DOJ prior to the date that the funds are to be returned to the property owner.
 - Just as when DOJ issues a garnishment to a bank (as described above), the garnishment will include clear instructions to the county regarding how to comply with the garnishment.

- **Option B**

- This option (which has multiple sub-options) would address all lienholders.
- Potential processes:
 - All junior lienholders are provided with notice from the county that identifies their relevant liens and the date when the money will be returned to the property owner.
 - All junior lienholders are then able to assert their claims:
 - Directly with the county;
 - Through an interpleader process; or
 - Through an alternative process.