

TO: House Committee on Judiciary
FROM: Spencer Bailly, Attorney at Public Defender of Marion
DATE: January 31st, 2022
RE: Concerns with HB 4075

Chair Bynum, Vice Chairs Noble and Power, and Members of the Committee:

I write to express concerns with Section 1 of HB 4075, which would amend ORS 137.106. I ask that you remove Section 1 from HB 4075.

I have been an attorney for almost 3 years, conducting my practice at the Public Defender of Marion County. I've had substantial experience with restitution hearings both in my current job and as a law clerk at the Marion County DA's Office. I believe the current statute is fair to both defendants and victims, as far as it lays out procedural expectations for a hearing.

The reason I oppose Section 1 of this bill is that it removes reasonable safeguards that are there to prevent misuse and abuse of the restitution system.

To be clear, the vast majority of restitution is rightfully ordered. But sometimes it is not, and ORS 137.106 (as it is currently written) contemplates this scenario, and guards against it. Section 1, as it amends ORS 137.106(1)(c), creates a dangerous presumption in the law that 1) could increase fraud, and 2) seeks to obviate Court of Appeals caselaw relating to the burden of proof in restitution hearings. The Court of Appeals usually have good reasons for ruling the way they did and I for one think the legislature should be very considerate when overturning court precedent.

I understand why the district attorneys want ORS 137.106 changed; most criminal attorneys find civil work (restitution hearings) incredibly boring. That's why these hearings are often done by DA law clerks like me. However, Section 1 eliminates a meaningful procedural safeguard, and does not increase financial recovery for the victims, which should be central when considering changing the restitution laws.

A more meaningful discussion needs to be had before we make changes to ORS 137.106.