

TO: House Committee on Judiciary
FROM: Mary Bruington, Metropolitan Public Defender
DATE: February 1, 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.

My first memory of the restitution statute is from back in 1998, when I was clerking for then Judge Ellen Rosenblum in Multnomah County Circuit Court. I recall that someone had reported his bike stolen, the thief had been prosecuted, and a contested restitution hearing was set. The defense indicated their problem was not with making the victim whole, but with the amount claimed. The victim in the case said their bike was worth thousands of dollars; it turned out to be worth several hundred. I remember making a mental note that you cannot make assumptions based on labels. No matter what role the person plays in the system, they are a human being, and some of those humans will try to take advantage, or be mistaken.

Had the defense in that case not had proper notice of the claim, had the State not had the burden to prove that the claimed restitution was reasonable, there would have been two thieves in that case.

In the years since, as I have represented children and adults in our juvenile and criminal courts, I have seen that most victims accurately report their damage and losses. But sometimes they don't. A few are trying to take advantage. Some just make a mistake. The last restitution hearing I had involved redoing the math because the State/victim made an addition error. It happens.

Our system exists in part to hold people accountable, and that should apply to all the players. That is why I recommend you do not allow the amendments in Section I. The burden of proof is a cornerstone of the American criminal justice system, and should rest squarely on the State. Please don't make the mistake of removing that burden for restitution matters, which are often the crux of a case. The majority of restitution requests are stipulated; no hearing is needed because the defense agrees to the amount. But we must maintain the current safeguards such as notice, reasonableness, accountability, proof of a claim and opportunity to be heard for both victim and defendant. To water down the process would not serve justice.

Sincerely,

Mary Bruington, Attorney
Metropolitan Public Defender
Hillsboro, Oregon