

HB 3816 -3 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 4/2, 4/7

WHAT THE MEASURE DOES:

This measure directs the Department of Justice to study victims.

ISSUES DISCUSSED:

- Retaliatory taxes on insurers
- Publicly funded legal services resulting in restitution awards
- Differences between civil and criminal recovery
- Other states' approaches to insurer restitution
- House Bill 4075 (2022)

EFFECT OF AMENDMENT:

-3 The amendment replaces the measure and establishes that when an insurance carrier receives an award of restitution under ORS 137.103(3), ORS 419C450, or ORS 811.706, the insurer must pay 50% of the award to the Department of Justice to fund victims' services. The full amount of a restitution award is credited to the defendant as an offset to any resulting civil judgment. This measure also allows an insurance carrier to direct a district attorney not to seek restitution so the insurance carrier can instead pursue recovery in civil litigation.

BACKGROUND:

The purpose of ordering restitution at a criminal proceeding is not to provide full compensation to a crime victim. Rather, restitution is intended to correct a defendant's behavior to accomplish both rehabilitation and deterrence. As such, restitution does not necessarily fully compensate the victim, does not include general or punitive damages, and a defendant cannot be required to pay damages beyond their ability to pay. *State v. Hart*, 299 Or 128, 138 (1985).

ORS 137.109(1) provides that an order of restitution does not impair a victim's right to bring a civil action against the defendant although amounts paid in restitution are credited to the defendant. Restitution is intended as penal, not compensatory, and is best understood through the lens of criminal law and not as a means of seeking quasi-civil recovery. *Id.* at 139.