

HB 3816 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 5/8, 5/19

WHAT THE MEASURE DOES:

This measure establishes that when an insurance carrier receives an award of restitution under ORS 137.103(3), ORS 419C.450, or ORS 811.706, the insurer must pay 50 percent of the award to the Department of Justice to fund victims' services, and the full amount of a restitution award is credited to the defendant towards 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.

HOUSE VOTE: Ayes, 50; Nays, 1

FISCAL: Fiscal impact statement issued

REVENUE: Revenue impact statement issued

ISSUES DISCUSSED:

- Criminal vs. civil restitution
- Public representation and resources to pursue criminal restitution
- Insurers' use of public representation and opt out to pursue civil recovery
- U.S. Constitution Takings Clause

EFFECT OF AMENDMENT:

No amendment.

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.