



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

MEMORANDUM

DATE: May 14, 2013

TO: Honorable Floyd Prozanski, Chair
Senate Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 3277A

RECOMMENDED ACTION

This testimony is presented in support of HB 3277A. We recommend that the Committee approve HB 3277A with a do pass recommendation.

BACKGROUND ON RESTITUTION

- Criminal trial court's authority to impose restitution is found in ORS 137.106. If restitution is in dispute, ORS 137.106(1)(b) allows a trial court to hold a supplemental hearing and impose a supplemental judgment of restitution within 90 days after the original judgment of conviction is entered. In any case involving criminal conduct resulting in economic damages to a crime victim, the district attorney is required to investigate and present to the court evidence of the nature and amount of the victim's damages.
- In *State v. McLaughlin*, 243 Or App 214 (2011), the Oregon Court of Appeals interpreted the "prior to the time of sentencing" language in the statute to require all evidence of the nature and amount of the victim's damages to be presented before the original judgment of conviction and sentence were entered.
 - This requirement has been variably interpreted by courts across the state and has served to impose extremely tight timelines on crime victims who may now be required to present evidence of economic losses mere days after indictment.
 - This interpretation effectively eliminates the availability of the supplemental hearing to address any restitution disputes unless the defense is willing to stipulate to such an arrangement.
 - Although the *McLaughlin* decision is currently on review in the Oregon Supreme Court, the specific question presented by this proposal is not the subject of that

litigation. It is unlikely that the Supreme Court will alter the Court of Appeals' interpretation of "prior to the time of sentencing."

HB 3277 WILL RETURN THE PROCEDURE FOR REQUESTING AND IMPOSING RESTITUTION TO WHAT IT WAS BEFORE *McLAUGHLIN*

- Before *McLaughlin*, prosecutors could request 90 days from the time of sentencing to work with the victim to gather the necessary evidence to establish the amount of their economic damages. This bill would codify the procedure that was utilized prior to the *McLaughlin* decision.
 - Often these damages are unknown (or unknowable) at the time of the criminal trial and the original judgment.
 - This bill furthers the constitutional and statutory requirements that victims be able to promptly receive restitution that equals the full amount of their economic damages.
- Defendants retain the ability to contest the alleged restitution amount throughout the 90 day period. Defendants are entitled to a hearing, counsel, judicial process and subpoena power as to the determination of restitution. The burden of establishing the fact and amount of any economic damages remains with the State even after the entry of judgment.
- The requirement that prosecutors present the nature and amount of the victim's damages before sentencing was never intended to be a sword that defendants could use to avoid paying restitution. Rather, it was a pro-restitution requirement designed to ensure that sentencing courts were fully aware of the amount of a victim's economic damages when setting restitution and to facilitate victims being able to collect restitution quickly by providing prosecutors with an incentive to return restitution information within 90 days.
- This bill will ensure that prosecutors and victims have enough time to gather and present damage evidence to the sentencing court, so that the court can order the appropriate amount of restitution.

THERE IS NO KNOWN FISCAL IMPACT FOR DEPARTMENT OF JUSTICE

DOJ CONTACT

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