

I write to express my concerns with Section 1 of HB4075, which would amend ORS 137.106 and I ask that you remove that section from the bill. Specifically, I take issue with the language that “economic damages will be presumed reasonable if the damages are documented in the form of a record, bill, estimate or invoice from a business, health care entity or provider or public body...”

This drastic change will have fundamentally and patently unfair outcomes for Oregonians coming through our courts. I have been an attorney in public defender offices for over 7 years and been in my current position at Multnomah Defenders, Inc for almost 4 years. In my years as a public defender, I have had countless restitution hearings where victims present costly medical bills with no explanation, exorbitant estimates for work not actually done, or invoices lacking sufficient detail to understand. It is only through the law in its current form that defendants were protected against the unjust enrichment of the other party. An amendment creating a rebuttable presumption that these costs are reasonable would be a windfall against an already almost entirely indigent population.

I can only assume this language relies on the assumption that district attorneys screen records and vet their victims, only introducing bills or invoices which the DA themselves believe are reasonable. Unfortunately, this is often not the case. Instead, it is often treated as an exercise of a victim's right to request whatever they believe they are owed, and prosecutors honor that right by introducing it, even when they themselves don't believe it could or should be legally ordered. Instead, they depend on a judge to do the difficult job of determining what a victim can and cannot be granted as restitution under the law. In fact, often a restitution hearing is agreed to by both sides specifically because the victim is seeking potentially unreasonable costs that the DA does not think should be required as part of a plea offer. Instead, the hearing allows the victim to be heard and for the law to guide the outcome. The restitution hearing as a tool for fair resolution of cases will be seriously undermined if this change is made.

Further, creating this presumption of reasonableness shifts the burden to defense to rebut in a way they often can't. The state and the victims have access to medical records to show the resulting bill is reasonable; defense does not. A victim can ask a provider or a doctor or someone providing an estimate to give context or an explanation as to how a figure was reached or why it is a reasonable price, while defense quite often cannot. This change in the law puts an impossible burden on a defendant to disprove something they may be unable to investigate.

Requiring those seeking restitution through the court to show that their requests are reasonable should not be considered too high a burden. It is not a technicality or a trick by which hearings are won or lost, but rather an incredibly important cornerstone encouraging fair and just outcomes. If amended, this is an overcorrection that will be laid squarely on the shoulders of my clients: Oregonians who are already disproportionately overcoming poverty, addiction and mental illness. They are owed the diligence of the State and the Court when decisions are made affecting their lives and their liberty.

It's for these reasons I urge you NOT to adopt language presuming the reasonableness of certain restitution evidence introduced by a district attorney.