

IN THE SUPREME COURT

STATE OF ARIZONA

STATE OF ARIZONA,)	Arizona Supreme Court
)	No. CR-19-0366-PR
Appellant,)	
)	Court of Appeals Division One
vs.)	No. CA-CR 18-0774
)	
VIVEK A. PATEL,)	Maricopa County Superior Court
)	No. LC2018-000192
Appellee.)	
)	Phoenix Municipal Court
)	Complaint No. 14483182
)	

STATE'S SUPPLEMENTAL BRIEF

Amy Offenber, #018544
Assistant Phoenix City Prosecutor
P.O. Box 4500
Phoenix, Arizona 85030-4500
(602) 256-3506 / FAX (602) 534-2693
appeals.law@phoenix.gov
Attorney for the Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF CASES AND AUTHORITIES	ii
I. The restitution cap in Arizona Revised Statutes § 28-672(G) violates the Victims’ Bill of Rights.....	1
A. At the time of the VBR’s enactment it was the intent of the voters to ensure victims received full restitution	2
B. Case law since the VBR’s enactment has reiterated that legislation regarding the VBR must advance the rights of victims	5
C. Arizona Revised Statutes § 28-672(G) does not preserve and protect victims’ rights.....	9
D. The rights included in the VBR were not specifically extended to juvenile cases. Rather the VBR gave the legislature the authority to extend all, some, or none of the rights to that class of cases.....	11
II. The restitution provision contained in subsection 28-672(G) is severable from the remainder of the statute.....	12

TABLE OF CASES AND AUTHORITIES

ARIZONA CASES

<i>F.D.I.C. v. Colosi (Korzuch, Real Party in Interest),</i> 194 Ariz. 114, 977 P.2d 836 (App. 1998)	3
<i>Heath v. Kiger,</i> 217 Ariz. 492, 176 P.3d 690 (2008)	2
<i>In re Eric L.,</i> 189 Ariz. 482, 943 P.2d 842 (App. 1997)	11
<i>Knapp v. Martone,</i> 170 Ariz. 237, 823 P.2d 685 (1992)	10
<i>Republic Investment Fund v. Surprise,</i> 166 Ariz. 143, 800 P.2d 1251 (1990)	12
<i>State Compensation Fund v. Symington,</i> 174 Ariz. 188, 848 P.2d 273 (1993)	13
<i>State ex rel. Napolitano v. Brown (Miles, Real Party in Interest),</i> 194 Ariz. 340, 982 P.2d 815, 819 (1999)	13
<i>State ex rel. Smith v. Reeves,</i> 226 Ariz. 419, 250 P.3d 196 (App. 2011)	10
<i>State ex rel. Thomas v. Klein (Simpson, Real Party in Interest),</i> 214 Ariz. 205, 150 P.3d 778 (App. 2007)	6, 7, 8
<i>State v. Currie,</i> 150 Ariz. 59, 721 P.2d 1186 (App. 1986)	3
<i>State v. Hansen,</i> 215 Ariz. 287, 160 P.3d 166 (2007)	9, 10
<i>State v. Lee,</i> 226 Ariz. 234, 245 P.3d 919 (App. 2011)	2

<i>State v. Pandeli</i> , 215 Ariz. 514, 161 P.3d 557 (2007)	14
<i>State v. Roscoe</i> , 185 Ariz. 68, 912 P.2d 1297 (1996)	5, 6
<i>State v. Zierden</i> , 171 Ariz. 44, 828 P.2d 180 (App. 1992)	3
<i>Winterbottom v. Ronan</i> , 227 Ariz. 364, 258 P.3d 182 (App. 2011)	2

STATUTES

A.R.S. § 8-344(A)	12
A.R.S. § 8-344 (C)	12
A.R.S. §§ 8-381 et seq.	11
A.R.S. § 13-603	3
A.R.S. § 13-603(C)	3
A.R.S. § 13-804(D)	10
A.R.S. § 13-3981	14, 15
A.R.S. § 13-3981(C)	15
A.R.S. §§ 13-4401 et seq.	5
A.R.S. § 28-672	11, 12, 13, 14, 16
A.R.S. § 28-672(F)	14, 15
A.R.S. § 28-672(G)	<i>passim</i>

ARIZONA CONSTITUTION

[Article 2, § 2.1](#).....1
[Article 2, § 2.1\(A\)](#).....1
[Article 2, § 2.1\(D\)](#).....1, 9, 11
[Article 2, § 2.1\(E\)](#).....1, 11

ADDITIONAL REFERENCES

[Arizona Secretary of State 1990 Election Publicity Pamphlet](#).....2, 3
[Corrected, Amended Fact Sheet for House Bill 2208](#).....13
[State of Arizona 1990 Official Canvass](#).....1

The State of Arizona provides this supplemental brief to support its request for this Court to affirm the decision of the court of appeals.

I. The restitution cap in Arizona Revised Statutes § 28-672(G) violates the Victims’ Bill of Rights.

In 1990, through the initiative process, Arizona voters enacted the [Victims’ Bill of Rights](#) (“VBR”) as section 2.1 of the Arizona Constitution. [State of Arizona 1990 Official Canvass](#). Included among the provisions of the constitutional amendment, and material to the determination of whether [Arizona Revised Statutes § 28-672\(G\)](#) violates the VBR, are [section 2.1\(A\)\(8\)](#) (“[A] victim of crime has a right . . . [t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victims loss or injury.”), [section 2.1\(D\)](#) (“The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.”), and [section 2.1\(E\)](#) (“The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.”).

...
...
...

A. At the time of the VBR’s enactment, it was the intent of the voters to ensure victims received full restitution.

The Court’s goal in interpreting voter approved legislation is “to fulfill the intent of the authors and voters who approved it.” [Winterbottom v. Ronan](#), 227 Ariz. 364, 365, ¶ 5, 258 P.3d 182, 183 (App. 2011). See also [State v. Lee](#), 226 Ariz. 234, 237, ¶ 9, 245 P.3d 919, 922 (App. 2011) (“To determine the meaning of a constitutional provision, we must determine the intent of the electorate that adopted it.”). One tool that courts use in determining voter intent is the publicity pamphlet that the secretary of state’s office publishes prior to the election. [Heath v. Kiger](#), 217 Ariz. 492, 496, ¶ 13, 176 P.3d 690, 694 (2008). In addition to quoting the text of the proposed constitutional amendment, the analysis by the legislative council in the publicity pamphlet explained that the proposed VBR would amend the state constitution “by guaranteeing that victims of crime have the right . . . [t]o receive restitution.” [Arizona Secretary of State 1990 Election Publicity Pamphlet](#).

In an argument in favor of the proposition, the Legislative Council indicated that the proposition “would require the defendant to pay the victim for any harm caused to the victim. This requirement acknowledges that the victim has been harmed and should be compensated for that harm.” *Id.* The Legislative Council statement in favor of the proposed amendment argued that “[t]his Proposition would guarantee victims’ rights because it would put victims’ rights

under the protection of the State Constitution, where they are not subject to change except by vote of the people. Victims' rights would not be subject to judicial whim." *Id.* The arguments opposing the adoption of the amendment included that there were already statutes to protect victims that "include victims' rights to restitution and compensation." *Id.* The publicity pamphlet assured the voters that only they could change the rights owed to victims.

At the time of the VBR's passage, as it does today, [A.R.S. § 13-603\(C\)](#) required a "convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss. . . ." See [State v. Currie, 150 Ariz. 59, 60, 721 P.2d 1186, 1187 \(App. 1986\)](#). After the adoption of the VBR, courts continued to find that defendants had an obligation to pay full restitution. See, e.g., [State v. Zierden, 171 Ariz. 44, 45, 828 P.2d 180, 181 \(App. 1992\)](#) ("The trial court has the affirmative duty to require a defendant convicted of a crime to make full restitution for the economic loss sustained by the victim."); [F.D.I.C. v. Colosi \(Korzuch, Real Party in Interest\), 194 Ariz. 114, 116, ¶ 8, 977 P.2d 836, 838 \(App. 1998\), reconsideration and rev. denied \(1999\)](#) ("Payment of full economic restitution is mandatory under the Arizona sentencing system."). The statutory definition of restitution as full compensation to a victim for economic losses makes

it both unnecessary and improper to use an outside source, such as Black's Law Dictionary, to define restitution.

Among other things, the intent of the VBR drafters and the voters who enacted it was to preserve in the constitution a right that victims already enjoyed by statute: to receive restitution in the full amount of the economic loss a victim suffered as the result of a crime. "Prompt restitution" and "full restitution" are not mutually exclusive. Prior to enactment of the VBR, victims were entitled to full restitution; the VBR did not change that. All that the enactment of the VBR changed was that victims became entitled to receive their restitution promptly.

There was no indication to the electorate that they were doing anything other than preserving a victim's right to full restitution. The statement in the publicity pamphlet supporting passage of the VBR indicated that the VBR would require defendants to pay the victim for "any" harm caused. The statement in opposition said that there was already a statute that protected a victim's right to obtain restitution, arguing in effect that the VBR was redundant to existing statutory law. There was no reason to include *full* in the VBR to modify *restitution*; both those supporting and opposing the VBR understood that it guaranteed a victim the right to full restitution. But the VBR's passage was important because, among other things, it prevented the legislature from later

limiting the amount of restitution a victim could recover. Before the VBR, a provision like that found in [A.R.S. § 28-672\(G\)](#) would have been permissible.

B. Case law since the VBR's enactment has reiterated that legislation regarding the VBR must advance the rights of victims.

Since the adoption of the VBR, decisions in two cases have reinforced the primacy of protecting victims. In 1991, the legislature passed the Victims' Rights Implementation Act which was codified in [A.R.S. §§ 13-4401 through 13-4438](#). In 1992, the legislature amended A.R.S. § 13-4433(F) in an attempt to force police-officer victims to submit to a pre-trial interview with the defendant or the defendant's attorney, if the crime for which the officer was the victim occurred while the officer was on duty. This Court subsequently amended Arizona Rule of Criminal Procedure 39(b)(11) to conform to the statute, allowing police officers who became victims in the course of their duties to retain all rights contained in the VBR other than the right to refuse an interview.

After the amendments, defendant Fred Roscoe was indicted for aggravated assault on a police officer in two separate cases. [State v. Roscoe, 185 Ariz. 68, 69, 912 P.2d 1297, 1298 \(1996\)](#). While preparing for trial, Roscoe's attorney requested interviews with the officer-victims. [Id.](#) The trial court twice denied the motion, finding that subsection 13-4433(F) conflicted with the victims' constitutional protections. [Id.](#) Roscoe was convicted, and the court of appeals affirmed the convictions. [Id.](#) The court of appeals found that the statute and rule

permitting interviews of officer-victims unconstitutionally abrogated their rights under the VBR. [*Id.*](#)

On review, this Court agreed that the exception allowing interviews with officer-victims violated the VBR. Looking to prior decisions regarding citizen initiatives, this Court found that neither the legislature nor the courts can restrict rights created by the people through a constitutional amendment. [*Id.*, 185 Ariz. at 72, 912 P.2d at 1301.](#) This Court concluded that:

These provisions, and the Implementation Act in general, illustrate the type of power the voting public granted to the legislature by giving it the power “to define, implement, preserve, and protect the rights guaranteed to victims.” The people, in their legislative power, enacted a constitutional provision setting forth victims' rights, but they could not hope to do so with the specificity required to address all of the procedural and substantive issues that might accompany the enactment of such a bill.

[*Id.*, 185 Ariz. at 73, 912 P.2d at 1302.](#)

Roscoe made clear that while the legislature has the power to enact both substantive and procedural statutes for the implementation of the VBR, it cannot lessen the protections that the voters approved. The restitution cap contained in [A.R.S. § 28-672\(G\)](#) lessens the protections by limiting a victim’s ability to obtain restitution from a defendant who caused harm.

In [State ex rel. Thomas v. Klein \(Simpson, Real Party in Interest\), 214 Ariz. 205, 150 P.3d 778 \(App. 2007\)](#), the court of appeals rejected another legislative attempt to hinder victims’ rights. There, the court considered whether

the legislature could limit the class of people who qualified as victims under the VBR. At the time that the VBR was adopted, the definition of a crime was “a misdemeanor or felony.” [Id., 214 Ariz. at 207, ¶ 8, 150 P.3d at 780](#). In 1992, the legislature amended the definition of criminal offense found in the Victims’ Rights Implementation Act to a felony or a “misdemeanor involving physical injury, the threat of physical injury or a sexual offense.” [Id., 214 Ariz. at 208, ¶ 10, 150 P.3d at 781](#). Subsequent to the changed definition, Simpson was charged with aggravated assault for touching a fifteen-year-old with the intent to injure, insult, or provoke. The State designated the charge as a class 1 misdemeanor. [Id., 214 Ariz. at 206, ¶ 2, 150 P.3d at 779](#). Simpson’s attorney filed a motion to depose the victim in his misdemeanor case. [Id., 214 Ariz. at 206, ¶ 3, 150 P.3d at 779](#). The trial court granted the deposition motion, finding that the specific definition in the Implementation Act excluded the victim from the VBR’s protections against pre-trial interviews. [Id., 214 Ariz. at 207, ¶ 3, 150 P.3d at 780](#).

The State filed a petition for special action to stop the deposition from occurring. [Id.](#) The court of appeals accepted jurisdiction to determine whether the legislature’s attempt to change the definition of victim after the VBR’s passage was constitutional. [Id., 214 Ariz. at 207, ¶ 4, 150 P.3d at 780](#).

The court of appeals looked to whether the legislature “had the authority to enact a statutory definition that narrowed the class of persons

otherwise protected by the Victims’ Bill of Rights.” [Id.](#), [214 Ariz. at 208, ¶ 10, 150 P.3d at 781](#). In examining the issue, the court looked to prior decisions from this Court that indicated that the legislature “cannot eliminate or reduce the rights otherwise guaranteed” by the VBR. [Id.](#), [214 Ariz. at 208, ¶ 11, 150 P.3d at 781](#) (citing [State v. Lamberton](#), [183 Ariz. 47, 50, 899 P.2d 939, 942 \(1995\)](#); [Roscoe](#), [185 Ariz. at 72–73, 912 P.2d at 1301–1302.](#)).

The court of appeals held that the amended definition was unconstitutional. [Klein](#), [214 Ariz. at 206, ¶ 1, 150 P.3d at 779](#). The court found that while the amended definition excluded a class of victims – people who had a misdemeanor committed against them that did not involve the use of violence or threatened use of violence – the language of the VBR contained no such limitation. [Id.](#), [Klein](#), [214 Ariz. at 208–09, ¶ 13, 150 P.3d at 781–82](#). The court concluded that the legislature “does not have the authority to restrict rights created by the people through constitutional amendment.” [Id.](#), [214 Ariz. at 209, ¶ 15, 150 P.3d at 782](#). To exclude people who were already protected at the time of the VBR’s adoption “infringe[d] on the sovereign power of the voting public.” [Id.](#)

The adoption of the amended definition of “criminal offense,” discussed in *Klein* is analogous to the legislature’s adoption of the restitution cap in [section 28-672\(G\)](#). In both cases, the legislature amended statutes so that protections that existed in 1990 were no longer available to victims. At the time of

the adoption of the VBR, there was nothing in statutes that capped a victim's restitution for any offense. By definition, restitution was the *full* amount of a victim's economic loss. It wasn't until more than fifteen years after the voters approved the VBR, in 2006, that a restitution cap – the idea that a victim could receive less restitution than their full economic loss – was included in the criminal code. Just as the *Klein* court found that excluding a class of victims from the VBR violated voted approved protections, so does limiting restitution. The legislature does not have the ability to limit the amount of restitution that a victim may recover, any more than it has the ability to limit the class of people protected by the VBR, without unconstitutionally violating the power of the electorate. Those rights were preserved in the VBR when it passed and can only be limited by the voting public.

C. Arizona Revised Statutes § 28-672(G) does not preserve and protect victims' rights.

[Article 2, § 2.1\(D\)](#) of the Arizona constitution requires legislative enactments to “define, implement, preserve and protect” victims' rights. The legislature does not have unlimited power to create new laws under the VBR. [State v. Hansen, 215 Ariz. 287, 290, ¶ 12, 160 P.3d 166, 169 \(2007\)](#). *Hansen* is an example of a case where this Court looked at a legislative enactment in order to determine whether it preserved and protected a victims' right.

Prior to the passage of the VBR, Arizona Rule of Criminal Procedure 31.6 provided that “a sentence to pay a fine or restitution shall be stayed pending appeal.” [Id.](#), 215 Ariz. at 288, ¶ 1, 160 P.3d at 167. After the enactment of the VBR, the legislature passed [A.R.S. § 13-804\(D\)](#) which mandated that defendants continue to make restitution payments while an appeal is pending, but had the courts hold the payments pending the outcome of the appeal. In reconciling the two provisions, this Court looked to whether [A.R.S. § 13-804\(D\)](#) was “a valid exercise of the legislature’s valid rulemaking powers under the VBR.” [Id.](#), 215 Ariz. at 289, ¶ 10, 160 P.3d at 168. This Court concluded that, because the statute protects and advances victims’ right to prompt restitution, it was a valid exercise of legislative power under the VBR. [Id.](#), 215 Ariz. at 291, ¶ 17, 160 P.3d at 170. As a result, the Court repealed the unconstitutional provision of the Rules of Criminal Procedure.

The VBR should be liberally construed to preserve and protect the rights to which victims are entitled. [State ex rel. Smith v. Reeves](#), 226 Ariz. 419, 422, ¶13, 250 P.3d 196, 199 (App. 2011). [Subsection 28-672\(G\)](#) neither preserves nor protects victims’ rights. The “legislature has power to ‘define, implement, preserve and protect victims’ rights but not to redefine the scope of those rights.” [Knapp v. Martone](#), 170 Ariz. 237, 240, n. 5, 823 P.2d 685, 688 (1992). By limiting the amount of restitution that a trial court can award to a victim, the legislature

failed to protect the right of victims to collect full restitution. In adding a restitution cap to [A.R.S. § 28-672](#), the legislature redefined victims' right to restitution from a right to the full amount of victims' economic losses to potentially only a partial amount of the victims' losses. In doing so, the legislature failed to protect the victims' rights and the provision of [A.R.S. § 28-672\(G\)](#) are unconstitutional.

D. The rights included in the VBR were not specifically extended to juvenile cases. Rather the VBR gave the legislature the authority to extend all, some, or none of the rights to that class of cases.

The drafters of the VBR believed that juvenile cases should be handled differently from those of adults. Thus, none of the rights contained in the VBR were made applicable to juvenile cases. [Article 2, § 2.1\(D\)](#) of the Arizona Constitution instead grants the legislature the “authority to extend any rights guaranteed by the VBR to juvenile proceedings.” The legislature has exercised that authority and enacted several statutes implementing the VBR to juvenile cases. For instance, similar to the Victims' Rights Implementation Act for adult offenders, the juvenile code contains statutes to implement portions of the VBR in juvenile proceedings. *See* [A.R.S. §§ 8-381 through 8-422](#).

As in adult proceedings, restitution is mandatory in juvenile proceedings. [In re Eric L., 189 Ariz. 482, 486, 943 P.2d 842, 846 \(App. 1997\), rev. denied.](#) But unlike adult proceedings, the juvenile court may order the full or

partial amount of the victim’s economic loss, depending on the “nature of the offense and the age, physical and mental condition and earning capacity of the juvenile.” [A.R.S. § 8-344\(A\)](#). Additionally, the juvenile’s parents can also be ordered to pay restitution, without regard of the parents’ ability to pay. [A.R.S. § 8-344 \(C\)](#).

The VBR treats victims’ rights, including the right to restitution, differently in juvenile cases than in adult cases. Therefore, it is not instructive to look at juvenile statutes when determining whether [subsection 28-672\(G\)](#) is unconstitutional under the VBR.

II. The restitution provision contained in subsection 28-672(G) is severable from the remainder of the statute.

In its amicus brief, the Maricopa County Public Advocate (OPA) argues that the court of appeals “invaded the legislature’s authority by striking” [subsection 28-672\(G\)](#), which the OPA deems an integral part of [section 28-672](#). *Brief of Amicus Curiae, Office of the Public Advocate at 14*. [Section 28-672](#) as a whole, however, is not dependent on subsection G.

If a portion of a statute is found to be unconstitutional, the “entire statute need not be declared unconstitutional if constitutional portions can be separated.” [Republic Investment Fund v. Surprise, 166 Ariz. 143, 151, 800 P.2d 1251, 1259 \(1990\)](#). On the other hand, if “the unconstitutional portions of the amendments are not severable from the remainder of the law, [the Court] must

strike down the legislation as a whole. [*State ex rel. Napolitano v. Brown \(Miles, Real Party in Interest\)*](#), 194 Ariz. 340, 344, ¶ 14, 982 P.2d 815, 819 (1999). In determining severability, one thing courts can look to is whether the unconstitutional portion induced the passage of the entire statute:

[T]he whole statute will be declared invalid where the constitutional and unconstitutional provisions are so connected and interdependent in subject matter, meaning, and purpose as to . . . justify the conclusion that the legislature intended them as a whole and would not have enacted a part only. Unless we can determine that the valid portion of the statute would have been enacted absent the invalid portion, the provisions are not severable. Thus the problem is twofold: the legislature must have intended that the act be separable, and the act must be capable of separation in fact.

[*State Compensation Fund v. Symington*](#), 174 Ariz. 188, 195, 848 P.2d 273, 280 (1993), [internal citations omitted](#).

If this Court agrees that the restitution cap in subsection [28-672\(G\)](#) is unconstitutional, this Court could sever that subsection and leave the rest of [A.R.S. § 28-672](#) intact. None of the remaining portions of [section 28-672](#) rely on the restitution cap. There is no evidence in the legislative history to indicate that the statute would not have been enacted without the restitution cap. Nothing about the statute's enactment indicates that the restitution cap was the impetus for passage of the bill that created the crime. See [Corrected, Amended Fact Sheet For House Bill 2208](#). In other words, nothing in the legislative record or the statute itself shows that the legislature enacted [section 28-672](#) contingent upon the restitution cap.

[State v. Pandeli, 215 Ariz. 514, 530, ¶ 63, 161 P.3d 557, 573 \(2007\)](#). As such, should this Court determine that the restitution provision is unconstitutional under the VBR, this Court can sever the restitution provision and leave the remainder of the statute in place.

The OPA contends that an interplay between [subsections 28-672\(F\)](#) and [28-672\(G\)](#) demonstrates that the latter provision is not severable. Subsection F allows the trial court to dismiss any charges alleged under the statute if the victim appears before the court and “acknowledges receipt of satisfaction for the injury”—if the victim tells the court that he or she has been compensated by the defendant for costs incurred. Subsection G, of course, purports to cap the amount of restitution a victim is constitutionally entitled to. Neither subsection F nor G is dependent on the other to operate as intended by the legislature.

For one thing, the satisfaction that a victim receives from a defendant under subsection F could include payment for costs beyond what could be recouped through restitution. Subsection F contains no bar against recouping such costs.

For another, the legislature allows for compromise in many misdemeanor offenses listed in Title 13 for which restitution can be obtained. *See* [Arizona Revised Statutes § 13-3981](#). [Subsection 28-672\(F\)](#) merely extends this possibility to violations under [section 28-672](#). The language of [subsections](#)

[28-672\(F\)](#) and [13-3981\(C\)](#) is similar. Compare [subsection 28-672\(F\)](#) (“If the person who suffers serious physical injury as a result of a violation of this section appears before the court in which the action is pending at any time before trial and acknowledges receipt of satisfaction for the injury, on payment of the costs incurred, the court shall order that the prosecution be dismissed and the defendant be discharged. The reasons for the order shall be set forth and entered of record, and the order shall be a bar to another prosecution for the same offense.”) and [13-3981\(C\)](#) (“If the party injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed, and the defendant discharged. The reasons for the order shall be set forth and entered of record on the minutes and the order shall be a bar to another prosecution for the same offense.”).

Lastly, [subsection 28-672\(F\)](#) can operate as intended by the legislature whether the cap is \$10,000 or \$100,000, or where there is no cap at all. The presence or absence of the cap specified in [subsection 28-672\(G\)](#) does not affect how or whether victims utilize subsection F. The absence of a restitution cap does not hinder [section 13-3981](#) from operating where the defendant and victim come to a mutually acceptable agreement.

OPA asserts, “the fact that the legislature increased the cap on restitution indicates that the legislature believed [that] the limit on restitution was important.” *Brief of Amicus Curiae, Office of the Public Advocate at 12*. The OPA reasons that increasing the cap to \$100,000 encourages motorists to “carry more than the bare minimum insurance coverage.” *Brief of Amicus Curiae, Office of the Public Advocate at 13*. Removing the restitution cap altogether accomplishes the same goal, if indeed that was the legislature’s intent in increasing the cap to \$100,000. More importantly though, and contrary to the OPA’s assertion, the legislature’s recent ten-fold increase in the restitution cap diminishes any significance that the restitution cap in subsection G plays in [section 28-672](#) as a whole.

RESPECTFULLY SUBMITTED this 23rd day of March, 2020.

PHOENIX CITY PROSECUTOR

By: /s/ Amy Offenberg
AMY OFFENBERG
Assistant Phoenix City Prosecutors