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February 1, 2021

To: Senate Committee On Judiciary and Ballot Measure 110 Implementation
From: Amy Miller, Executive Director

Re: **Opposition to SB 214**

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

Youth, Rights & Justice is Oregon's only non-profit juvenile public defense firm. Every year, YRJ represents over 1200 children and parents in Oregon's juvenile court system. All of our clients come from low-income families. Most have suffered significant trauma and many have physical, mental health and/or substance abuse issues. Approximately 45% of our clients are children of color. Because of our unique position handling court-appointed juvenile cases, we often see the same systemic problems and we work to change the policies that contribute to these problems.

We are writing to express our concerns regarding SB 214. This bill has the potential to prolong a youth's involvement in the juvenile justice system, thereby leading to an increased number of probation violations, deeper involvement in the juvenile justice system, and increased collateral consequences that, in some cases, serve as lifetime barriers to successful adulthood.

Our specific concerns are described below.

1. The provision in SB 214 about the timing of the presentation of the restitution information does not allow youth to make an informed decision about whether to plead or go to trial, since the amount of restitution requested may be an important part of that decision.

This problem is exacerbated by the fact that although the adult criminal restitution statutes only allow restitution awards for harm done by the conduct for which the defendant was convicted, the juvenile restitution statutes do not require such a nexus to the adjudicated charges. They may consequently result in "more victims [being allowed] to obtain restitution awards in juvenile cases than in criminal cases." *State v. G.L.D.*, 253 Or App 416, 429-30, 290 P3d 852 (2012); *State ex rel. Juvenile Dept of Benton County v. Z.D.B.*, 238 Or App 377, 383, 242 P3d 714 (2010).

In fact, so long as the court finds a "but for" causal relationship between criminal activity of the youth and the requested damages, at a "separate evidentiary hearing" after an

adjudication, the juvenile court must order the youth to pay damages even for acts for which he or she was not adjudicated delinquent. *Z.D.B.*, 238 Or App at 383-84.

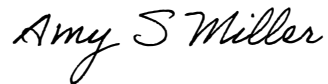
Not only could SB 214's timing change result in an unfair surprise to a youth who accepted a plea bargain for one offense, only to find that the State would request restitution for a different, unadjudicated offense, but it also means that the burden of proof for the acts underlying the restitution order could be "beyond a reasonable doubt" in an adult criminal case, but merely "preponderance of the evidence" in a juvenile case, raising constitutional concerns.

2. SB 214's "good cause" exception allows for presentation of restitution information at any time during the pendency of the case. Practically speaking, this means that a youth could be on probation for many months before the restitution judgment is entered, leading to an increased length of probation (and attendant scrutiny) through no fault of the youth and with no benefit to community safety.
3. SB 214 also greatly expands the scope of victims eligible for restitution, almost exclusively benefitting insurance companies and the state victim's compensation fund. This expansion will fall heavily on youth, as peers (who are themselves minors) are often the victims in delinquency cases.

As described in this letter, restitution is a complex part of the justice system. Consequently, significant changes to Oregon's restitution statutes should be thoroughly vetted, taking into account the many perspectives and diversity of stakeholders impacted by the system. Victims, as well as youth offenders, must be treated fairly under the law. Additionally, care should be given to ensure that the outcome does not further contribute to disproportionality and inequity. We welcome the opportunity to participate in further discussion as it relates to the application of restitution in the juvenile delinquency system.

Thank you for your consideration.

Sincerely,



Amy Miller
Executive Director