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February 1, 2022

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TO: House Committee on Judiciary  
FROM: Zara Lukens  
DATE: February 1, 2022  
RE: Concerns with HB 4075

Chair Bynum, Vice Chairs Noble and Power, and Members of the Committee:

I write to express concerns with Section 1 of HB 4075, which would amend ORS 137.106. I ask that you remove Section 1 from HB 4075. I am a public defender in Lane County, and I have seen first-hand the injustice that would result if the District Attorney's requested restitution was presumed reasonable.

Last year I received a restitution schedule requesting \$2,188 in restitution. The DA was asking for \$1440 for lost wages and money for carpet cleaning (\$250) and for damage to a door inside the apartment (\$498). Although I did not receive documentation of the expenses in that case, the DA could have included documentation and it would not have made the request any more reasonable. As I investigated the restitution request, I learned that the victim had been drawing unemployment at the time and therefore did not suffer any lost wages. I also learned that the carpet had been damaged prior to the criminal incident by a flood in the apartment, and that the doors in the apartment were certainly not worth \$498.

I filed an objection to the restitution schedule and asked for a hearing. I then brought the issues with the requested restitution to the DA's attention. The DA ultimately agreed, prior to the hearing, to reduce the total amount of restitution to \$250 – a far cry from the originally requested \$2,188. It was clear that the DA could not prove that the originally requested restitution figure was reasonable.

Because the burden to prove the requested restitution lies with the District Attorney, we are often able to arrive at a reasonable number without litigation and with minimal resource expenditure. The District Attorney has access to the victim and can much more easily confirm restitution figures than the defense team could if the burden were with us. If the DA's requested restitution were presumed reasonable simply because it was documented in some form, we would have to hire experts, costing our clients, or, in the case of indigent criminal defense, the State of Oregon, significant expense. In this case, the victim could have provided documentation of the damage to the carpet and a receipt justifying \$498 worth of damage to the door. Under the proposed law,

that restitution would be presumed reasonable. That would be unfair given that the damage to the door was exaggerated, and the damage to the carpet did not occur as a result of the crime.

I strongly oppose SB 214. Mere documentation should not be enough for requested restitution to be presumed reasonable. A presumption of reasonableness would chip away at the already paltry protections for people convicted of crimes by essentially allowing crime victims to name their restitution figures with minimal justification. And, at least in the case of indigent criminal defendants, the State of Oregon would end up covering the cost of hiring defense experts to rebut the restitution figure selected by the DA.