Dear Chair Floyd Prozanski and Senate Judiciary Committee Members:

Support for SB 214:

Court ordered restitution is one of the most critical features of the criminal justice system. Restitution only occurs after a person has been convicted of a crime that results in economic damages to a victim. A court ordering restitution from a defendant to a victim has the potential to benefit both parties. First, restitution is an effort to make a victim whole following the crime. Payment of restitution may provide the victim with the resources to recover financially from their victimization and can bring the satisfaction necessary to heal and move forward with their life. Importantly, victims have a statutory and constitutional right to prompt restitution under ORS 137.106 and Art 1, Section 42 of the Oregon Constitution respectively. Restitution also allows for a non-custodial method for the defendant to make amends for their actions. Restitution is an opportunity for the defendant to make reparations to the person or community they have harmed and thereby begin the process of rehabilitation.

Under current Oregon law, restitution is payable to any person or decedent against whom a defendant has committed the criminal offense, to include individuals, the Criminal Injuries Compensation Account, insurance companies, the estate of a deceased victim, the estate or trustee against which the defendant committed the criminal offense, or any person whom the court determines has suffered economic damages as a result of the defendant's criminal activities. ORS 137.103.

The amount of money a defendant would be obligated to pay under restitution is limited to economic damages only. Per ORS 31.710, economic damages are defined as "objectively verifiable monetary losses" which are reasonable charges that have been necessarily incurred. Common economic damages frequently sought by victims include medical and hospital bills, costs of damaged property and cleaning costs, burial costs, lost wages, and various fees associated with filing restraining orders and bank fees associated with combating fraud and ID theft. These are real costs victims must pay in order to make themselves whole after being victimized. Conversely, a judgment of restitution does not authorize the recovery of any non-economic damages. Non-economic damages are injuries that are subjective in nature. These types of damages include, but are not limited to, pain and suffering, emotional distress, loss of reputation, loss of companionship, and any unspecific future medical expense or future impairment of earning capacity. While these types of losses can be substantial to a victim – these are costs that a judgment of restitution in a criminal case will not cover. A victim is still free to seek any civil remedies on their own for non-economic losses at any point.

Despite the already narrow statutory guidelines regarding the imposition of restitution, Oregon appellate courts have recently decided a litany of cases which create significant challenges to the process of obtaining court ordered restitution in a criminal judgment. This recent caselaw has made securing restitution of otherwise legitimate and clear-cut restitution matters burdensome on the victims, and in the cases involving minor victims impossible, following the conviction of their offenders.

Senate Bill 214 aims to solve several of the problems that exist in the restitution process and to circumvent barriers that prevent victims from recovering non-economic damages they are statutorily and constitutionally entitled.

First, Senate Bill 214 would allow Oregon courts to order restitution for losses suffered by minor victims. As it stands under Oregon case-law, minor children are unable to receive restitution as they are not "victims" because they do not "incur" any expenses due to their age. This precedent was set in *State v. Moreno-Hernandez*, 365 Or. 175 (2019), where after being sexually abused, drugged, and prostituted by an older man, the minor victim sought treatment at a facility for girls who have been sexually exploited. Following his conviction for multiple counts of rape, sodomy, sexual abuse, and compelling prostitution, the state sought to recover restitution for the victim's treatment. However, because the minor victim was not technically liable for the expenses as a minor, she did not "incur" medical expenses and was therefore not a victim for the purpose of restitution. The effect of this precedent is that minors who have been victimized are precluded from receiving restitution. By extension, those who do pay for the services that the minor victims need – like parents, medical facilities, the State, and insurance companies – are precluded from otherwise legally available compensation.

CARES NW is among the several entities in Oregon that serve children of sexual abuse. Under current case law, these entities are precluded from compensation from restitution solely because they provide services to victimized children. There is no similar preclusion that exists as to victimized adults. CARES NW is a not-for-profit community-based child advocacy center (CAC) whose goal is to assess, treat, and prevent child abuse. CARES partners with four major medical service providers (OHSU, Legacy, Kaiser, and Providence) and offers both up-front medical services to abused and neglected children as well as continued medical care and ongoing counseling.

It is critical to note that CARES NW is only one of the CACs that serves Oregon's children. Other CACs (such as Liberty House, Kids FIRST, and the Amani Center) serve a similar function in other regions of the state. Many CACs that serve children in more remote areas often do so without many of the same resources and personnel afforded to CARES NW. The services offered at CARES and other CACs are partially funded by insurance companies; however, a large percentage of children seen at these facilities do not have health insurance, and those who do often do not have the coverage required to fully compensate CACs for their services. As a result, CARES and other CACs try to cover these funding gaps through government grants, community donations, and fundraisers; even then, many CACs are often left operating at a loss. In rural areas with already struggling child advocacy resources, this leaves victimized children without access to essential medical and counseling services.

Recent case law has uniformly denied reimbursement for services rendered by CARES NW and similar CACs, by defendants who have been convicted of abusing those same victims, by virtue of their patients being minors. Without the changes proposed in SB 214, the ability of CACs to continue offering robust services to children who need them will be further jeopardized. This collateral consequence is one that Senate Bill 214 aims to correct, by recognizing the victimization of minors and holding individuals who have harmed them fully accountable.

Second, Senate Bill 214 would hold individuals who have pleaded "Guilty Except Insanity" accountable for restitution. Currently, the law does not allow for the imposition of restitution for anyone who is found guilty except insanity as concluded in *State v. Thomas*, 187 Or. App. 762 (2003). The state in *Thomas* conceded that, like a unitary assessment or attorney fees, restitution should not be imposed on those found guilty except insanity. This concession fails to recognize the reality of many persons who are found GEI and the impact this denial of restitution has on victims. Persons who are found to be guilty except insanity are supervised by PSRB and are frequently immediately or eventually treated in an out-of-custody community setting in which they could be contributing financially to reimburse the victim for the losses they caused. This transfer to an out-of-custody setting frequently occurs immediately after adjudication though even in situations where the transfer takes more time, money judgments imposed by the court are valid for fifty years. Importantly, victims who are unfortunate enough to be victimized by someone who qualifies as GEI are never reimbursed for their otherwise legitimate and valid economic losses. The law should allow courts to impose restitution in these cases.

Third, Senate Bill 214 would expand the timeline for imposition of restitution in juvenile delinquency cases to mirror the timelines in the adult criminal justice system. SB 214 also ensures that victims may request restitution even if the youth is offered an alternative adjudication program that may not be "final" until a later date when certain conditions are met. These changes would reflect the founding principles of the Juvenile Justice System which are: personal responsibility, accountability, and reformation within the context of public safety and restitution to the victims and to the community. ORS 419C.001(1). Currently, procedural barriers prevent even a good faith effort in obtaining restitution for victims in the juvenile system. Under current Oregon law, crime victims in the juvenile justice system have less time to submit to a court documentation for restitution of their compensable crime losses than their victim counterparts in the adult justice system enjoy. Currently, in the adult system, the State is given an additional 90 days after sentencing to produce the final restitution request. In the juvenile justice system, cases typically proceed much quicker than in the adult justice system. Youths who are in-custody have their cases reviewed every ten court days (ORS 419C.153) and must go to trial within 28 days or no later than 56 days with good cause found (ORS 419C.150). Frequently juvenile cases resolve at these 10-day detention review hearings where the Youth is adjudicated as being found within the jurisdiction of the court and the disposition (sentencing in adult court) is typically set over to some future date.

Current statutes require the State in juvenile proceedings to present evidence of restitution at the time of adjudication rather than at a disposition hearing or 90 days after disposition – as is allowed in the adult justice system. Out-of-custody youth in the juvenile system are also typically adjudicated in a much quicker manner than adult cases. While Youth proceedings quickly progress and resolve, crime victims are still dealing with the emotional trauma of the events that have dramatically impacted their lives. Victims have to navigate the trauma and turmoil of the crime and the physical limitations of injury and property destruction to come up with documentation in the form of receipts, insurance records, pictures, medical records, repair or replacement documentation and then get that information to a victim advocate in time for a hearing that could take place very quickly after the crime occurred. If the evidence is not

presented at the initial adjudication then restitution cannot ever be ordered under current case law. *In the Matter of M.A.S.*, 302 or. App. 687, (2020). Additionally, in many circumstances where the victims are applying for Crime Victim Compensation Program state funds, victims must wait 90 days before they are even notified whether their claim is even accepted. The wait time alone would prevent these victims from seeking restitution. SB 214 will add the same language to the juvenile justice code as currently exists in the adult restitution statutes and allow for 90 days after adjudication for restitution to be determined, with leave to request an extension for good cause. Additionally, since many juvenile offenders are treated through informal non-court proceedings, it would allow for the presentation of restitution 90 days after any "other final disposition" of the case. Regardless of the manner in which the juvenile justice system deems it most beneficial to treat the youth, the victim should still be afforded the same opportunity to receive restitution for their economic losses.

Finally, Senate Bill 214 will treat a bill, estimate, or record produced by the State as a rebuttable presumption that it is, in fact, a reasonable service and cost. Already, in order to secure restitution for a victim, the state must prove both that there is was a criminal activity that directly resulted in economic damages to a victim, and that there is a casual relationship between the two. These prerequisites were articulated in *State v. Pumphrey,* 266 Or.App.729 (2014), where the defendant continuously terrorized the victim despite having a permanent stalking protection order issued against him. The victim was granted restitution to cover a variety of economic losses including the costs of changing her phone number and locks because the defendant continued to call her and follow her; reimbursement for lost wages for the time it took the victim to facilitate the lock change; and the cost of temporary housing while her locks were changed. Since *Pumphrey* was upheld by the Oregon Court of Appeals, Oregon case law has become extremely strict when analyzing the "economic damage" prong. A recent litany of Oregon Appellate law has concluded that an accurate copy of the victim's medical bill, ambulance bill, repair bill or service bill is not sufficient to prove economic losses because, under current case law, the "sentencing court cannot presume that medical or hospital services provided to a victim were necessary, merely by the virtue of the fact that they were provided." *State v. Dickinson*, 298 Or App 679 (2019).

As a result, the State must currently clear additional hurdles by proving in a hearing that the amount of the restitution requested by the victim is: foreseeable, reasonable as to the services or procedures rendered, and reasonable as to the amount of losses that are requested. In practice, this means that the victim of a drunk driving accident, who may be rushed into surgery via ambulance while unconscious, will need to justify that the actual services provided were reasonable, in addition to proving that the cost charged (and requested in restitution) for the ambulance, the surgery, the hospital stay, and any rehabilitation services are "reasonable" expenses in the current market place. In every case, just to prove the additional "reasonableness" of the charges required by case law, the state must provide witness testimony from medical and other experts to prove why a particular service or treatment was provided, if it was reasonable and necessary, and why this particular amount was charged, and if that amount was a reasonable cost. The time needed to collect additional documents, subpoena witnesses, and make these additional findings simply to secure restitution for a crime which the defendant has been

convicted is overwhelming. Senate Bill 214 will allow the state to provide a receipt, bill, or other document to prove the amount of restitution requested. SB 214 will allow the document to speak for itself and reflect that the marketplace will appropriately charge fees for services that the respective professionals, and insurance companies, have deemed to be reasonable. When, and if, the defendant, questions the reasonableness of a requested economic loss based on the documents provided in discovery, the defense can provide evidence to disprove that assumption.

Please join me in supporting SB 214, with a few technical amendments that are forthcoming, to help all victims to more equitably, efficiently, and judiciously receive restitution for their economic losses, and to facilitate holding defendants accountable for their actions, by providing them an opportunity to make reparations to their victim and their community.

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On Behalf of ODAA in support of SB 214

Case law addendum:

MINOR VICTIMS

- ***State v. Allida***, 300 Or App 819 (2019) (**Unemancipated minors cannot claim medical expenses**)
    - Defendant convicted of third-degree sexual abuse and attempted second-degree sexual abuse. Court ordered $2,443 in restitution ($1,473.25 to Criminal Injuries Compensation Account and $969.75 to Providence Health). COA reversed.
    - COA: "An unemancipated minor who claims only medical expenses as damages as a result of a defendant's conduct does not qualify as a 'victim' under ORS 137.103… Thus, even if the amounts paid… are properly viewed as medical expenses, they were not expended on behalf of a qualifying victim."

- ***State v. White***, 299 Or App 165 (2019) (**Child and Child's insurance are not victim**)
    - Facts: Defendant was convicted for physical injuries she caused to her 8-year-old son. The child was evaluated at CARES and Randall Children's Hospital for his injuries, and the Defendant's son's insurance, Providence, covered all costs. The trial court awarded $2,641.28 in restitution to Providence.
        - "The evidentiary record is clear that those amounts were expended on behalf of defendant's son alone."
    - COA: "Assuming without deciding that it is appropriate to view the costs of the evaluations in this case as medical expenses… those costs were not damages suffered by defendant's son. As a result… defendant's son is not a 'victim' within the meaning of ORS 137.103(4)(a). That, in turn, means that Providence is not a

'victim' within the meaning of ORS 137.103(4)(d).... Because defendant's son is not a 'victim' under ORS 137.103(4)(a), moneys spent on his behalf by Providence do not operate to make Providence a victim under ORS 137.103(4)(d)."

- "Defendant's son was the only person against whom defendant's crimes were committed and, thus, the only person in this case with the potential to qualify as a victim under ORS 137.103(4)(a)"

- ***State v. Martinez-Mateo***, 302 Or App 181 (2020) (**No restitution to CARES**)
  - Defendant convicted of rape and sexual abuse. Trial court imposed $2,632.99 restitution to CARES Northwest for the cost of a medical evaluation of the victim.
  - COA: Reversed. Restitution should not have been awarded to CARES Northwest under this circumstance.

REASONABLENESS – AMOUNT OF RESTITUTION

- ***State v. Cruse***, 303 Or App 807 (2020) (**Reasonableness - billing**)
  - Defendant was convicted of second-degree criminal mischief based on damaging school property. At the restitution hearing the state presented evidence from the school faculty that they paid a company $1,178 to replace three damaged windows. Defendant was ordered to pay $1,178 in restitution for the damages. COA reversed.
  - COA: "The state did not present evidence of the reasonableness of the cost to replace the damaged windows, having only presented testimony that the school district paid the amount that the glass company billed for the work. That evidence is legally insufficient."

- ***State v. Rebollo Alvardo***, 302 Or App 802 (2020) (**Reasonableness**)
  - An estimate of the cost of repairs the victim obtained from an auto-body repair shop was not legally sufficient to establish that the amount was "reasonable" under ORS 137.103(2)(a). Court cited *State v. Aguirre-Rodriguez*, 301 Or App 42 (2019) as controlling.

- ***State v. Aguirre-Rodriguez***, 301 Or App 42 (2019) (**Reasonableness**)
  - Evidence of a repair-shop bill for automobile repair costs and evidence that the victim's insurer had paid the amount of the bill was not sufficient to establish that the amount paid for the repairs was reasonable for purposes of restitution.

- ***State v. O'Donnell***, 301 Or App 514 (2019) (**Reasonableness – ambulance bill)**
  - Defendant was convicted of attempted first degree assault and second-degree assault for hitting a victim with a baseball bat. The court ordered the defendant to pay $2,572 in restitution for the ambulance service and victim's lost wages. Defendant argued that the state presented insufficient evidence of victim's lost wages and reasonableness of ambulance service charge. <u>COA affirmed the wages but reversed the ambulance charge</u>.

- COA: reject defendant's argument about wages without discussion. The state "failed to adduce evidence that the ambulance charge of $452 was "reasonable" as require by *State v. McClelland*, 278 Or App 138 (2016) ('submission of a bill, without more is insufficient proof for recovery of 'reasonable'*** medical services')."

REASONABLENESS – SERVICES RENDERED

- ***State v. Dickinson***, 298 Or App 679 (2019) (**Reasonableness - medical bills**)
  - Hospital invoice alone was insufficient to prove the necessity of the charges for those services, as required to cover such costs as restitution. There is no presumption that medical or hospital charges are reasonable. "Sentencing court cannot presume that medical or hospital services provided to a crime victim were necessary, merely by virtue of the fact that they were provided."

- ***State v. Gallup,*** 290 Or App 781 (2018) (**reasonableness – medical bills**)
  - Facts: Defendant appeals a judgment of conviction for fourth-degree assault, ORS 163.160, and harassment, ORS 166.065. Included in his sentence for those convictions was a restitution order to pay $150.44 to AllCare Health Systems. On appeal, defendant raises two assignments of error. We reject defendant's first assignment without written discussion and write only to address his second assignment. As to that second assignment or error, defendant asserts that the trial court plainly erred when it imposed restitution in the amount of $150.44. We agree and therefore remand for resentencing.
  - "An award of restitution for medical and hospital services requires proof – through more than just the medical bills – that the charges were reasonable."

- ***State v. McClelland,*** 278 Or App 138 (2016) **(reasonableness inquiry/med bill alone is not enough to prove reasonableness)**
  - Facts: Defendant was convicted of fourth-degree misdemeanor assault and interfering with a police officer, and was ordered to pay restitution of $55,490.69 (including medical bill for $27,677.50 knee surgery). Defendant appealed.
  - The Court of Appeals held that proof of victim's cost of medical services for knee surgery, through hospital invoice alone, *was insufficient* to prove the reasonableness of the charge for those services, as required to recover such costs as restitution.
  - **Medical Records, without further evidence, are <u>not</u> *per se* Reasonable**: "…submission of a hospital bill, without more, is insufficient proof for recovery of "reasonable" hospital or medical services. Some additional testimony or evidence is required to support the reasonableness of the bill for the hospital or medical services." *McClelland*, 278 Or App at 144