

PHILIPS CONSULTING GROUP

May 21, 2021

To: House Committee on Judiciary
From: Rachel Philips, Attorney

Re: **Opposition to SB 214**

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

As a criminal defense attorney with a background of over 8 years as a staff attorney at Metropolitan Public Defender (Multnomah County), time spent working an indigent defense contract in Columbia County, and the past 6 years of working as a private bar attorney who accepts indigent defense conflict cases (various counties), I am strongly opposed to SB 214 for the following reasons:

1. This bill will shift the cost of restitution hearings from the 36 individual counties to the state budget – specifically, the budget for Oregon Public Defense Services. Currently OPDS is in crisis and struggling to correct the problems outlined in the Sixth Amendment Center Report from 2019. Because of this cost-shifting, the bill and potential costs for Oregon should be fully analyzed by an accountant to determine exactly how much this change will impact the Oregon state budget and the budget for public defense.
2. This bill will also disproportionately impact communities of color, who already face biased and discriminatory treatment by the criminal justice system. In addition to a cost-analysis on the potential financial impact of SB 214, there should be racial and ethnic impact statements for this proposed legislation, per ORS 137.683.
3. The provision in SB 214 about the timing of the presentation of the restitution information does not allow defendants 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. Knowing the amount of restitution during plea negotiations could actually help resolve more cases prior to trial, thus saving money for the state overall.
4. Given that SB 214 has originated with the Oregon District Attorneys Association (ODAA), it bears mentioning that there is a way for restitution to get to crime victims in a far timelier fashion, and with less long-term negative impact on the court system, the community, and the state budget – ORS 135.703 – the civil compromise statute. It is currently the general policy of 35 of the 36 District Attorney offices to object to civil compromises (with some counties not allowing civil compromises to proceed at all) contrary to legislative intent, and often contrary to the wishes of crime victims. If the ODAA is truly concerned with crime victims receiving restitution, then the ODAA as an organization should change its policy on civil compromises. Supporting and welcoming civil compromises as an alternative resolution to criminal charges would help alleviate court backlog, lessen court costs for county and state budgets, and have a far-reaching positive impact on the community by reducing convictions.

I want to expand on this with a direct example from my practice. Just last year, in a case that was pending, the victim in one of my cases was a single mother and member of the BIPOC community, who was willing to enter into a civil compromise with client to dismiss charges that were directly related to her property damages in exchange for money that would give her “satisfaction for the injury”. Once the victim told us how much the damages were, the client came up with the funds using their own money and money borrowed from family members in order to pay for the damages they had caused. The Deputy District Attorney on the case opposed the civil compromise, and the victim was upset with the DDA, telling our investigator that it was clear to her the DA did not care about her and her situation and that the funds from the civil compromise would be helpful to her and her family. She wanted a civil compromise and she signed the necessary paperwork for us to submit to a judge for approval. The judge approved the civil compromise and we were then able to bring a certified check for several thousand dollars directly to the victim the very same day.

If the ODAA actually cared about victims they would encourage and support civil compromises because it gets funds directly to victims without delay and without court costs and fines impacting the amount of money they can receive. (Many indigent clients are limited in how much money they can come up with, and many more do not have family and friends who can help supplement the necessary funds for a civil compromise.) Because of the existence of civil compromises as a remedy and way to support victims, and because of ODAA’s overwhelming objection to civil compromises across the state, their assertion that SB214 is for crime victims is simply not credible.

5. The “rebuttable presumption” language in SB 214 creates more problems and more costs – it will lead to the defense needing to hire experts for review of materials and potential testimony – which will further raise the costs for the state public defense budget. This will include court costs for the time-consuming additional hearings that will inevitably be required for the defense to rebut the presumption of restitution. For an example of the restitution process under current law, see *State v. Nichols*, 306 Or App 189 (2020) (Total restitution was \$1,361.15 & Defendant objected to \$792.75 of the total restitution. Court of Appeals agreed & reversed, which brought the total restitution to \$568.40. This was a misdemeanor case where the Defendant was convicted of stealing a flashlight worth \$15 but initial restitution imposed was over \$1000.)
6. SB 214’s “good cause” exception allows for the presentation of restitution information at any time during the pendency of the case. Practically speaking, this means that a defendant 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 defendant and with no benefit to community safety. This will have far-reaching effects on members of the community, especially communities of color.
7. SB 214’s “good cause” exception, while extending probation, will also extend the amount of time it will take before a defendant can get a conviction expunged, as expungement is not allowed until all fines, fees, restitution and court costs are paid. This will also have far-reaching effects on members of the community, especially communities of color.
8. 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 defendants, and allow private business to take money away from the public defense budget for a matter where a civil remedy exists. The state should not be footing the bill

for private business and the state victim's fund should not be allowed to collect funds before crime victims. See: *State v Emerine*, _ Or App_ (December 30, 2020) (The Court of Appeals says it's too speculative to infer the defendant's actions caused the victim company's tax expenses. Reversed & remanded to reduce restitution by \$9,273.26.) *State v. Fuller*, _ Or App _ (January 13, 2021) (in a per curiam opinion the Court of Appeals reversed trial court award of \$1,678 in restitution to CARES NW because it was not a victim entitled to restitution under ORS 137.103.), *State v. Avalos*, _ Or App _ (December 30, 2020) (in a per curiam opinion the Court of Appeals reversed the trial court order of over \$20,000 in restitution & a compensatory fine awarded to CARES and 3 minor children, CARES is not a victim and minor children do not suffer economic damages.) *State v. White*, 296 Or App 445, 450-52, 439 P3d 569, rev den, 365 Or 195 (2019) (on the record before the trial court, CARES did not suffer economic damages "as a result of the defendant's criminal activities" by providing services to the direct victim of the defendant's crimes and, under the restitution statute, was therefore not a "victim" to whom the defendant could be ordered to pay restitution), *State v. Moreno-Hernandez*, 365 Or 175, 181-82, 189, 442 P3d 1092 (2019) (economic damages required to qualify as "victim" under ORS 137.103(4); unemancipated minor does not suffer economic damages for medical expenses).

Additionally, any case that results in restitution after trial will certainly have fines and imposed as well, which vary widely depending upon the county and the particular deputy district attorney. This often places indigent defendants at such a financial disadvantage because it places an undue burden upon individuals with limited means, and can be a roadblock to further education, better housing and better employment opportunities.

For all the above cited reasons, I would urge you to not pursue enacting this bill into law. The far-reaching negative impact it will have on residents of Oregon far outweigh any benefits to private business interests and the ODAA.

Thank you for your time and consideration.

Sincerely,

/s/Rachel Philips
Rachel Philips
Attorney and Founder
Philips Consulting Group