



TO: Senate Committee on Judiciary and Ballot Measure 110 Implementation
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 2, 2021
RE: Opposition to SB 214 – Imposes Unfair Economic Burden on Low-Income Oregonians through Restitution

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an organization of experts, private investigators, and attorneys who represent Oregon’s children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, Oregon citizens in criminal prosecutions at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon.

OCDLA opposes SB 214 because SB 214:

1. Will cost the state money.

This following language is in the bill: “Evidence of economic damages consisting of a record, bill, estimate or invoice, introduced by the district attorney during the presentation, creates a rebuttable presumption that the charge, expense or cost documented in the evidence is reasonable.” The rebuttable presumption language means that an attorney will spend on more time on a case rebutting this presumption and will probably have to hire experts to do so, which could lead to a fiscal for the Office of Public Defense Services.

2. Imposes restitution on mentally ill people who mostly rely on Social Security benefits.

The Oregon District Attorneys Association (ODAA) states in their testimony that a “problem” is that current law prohibits the court to order restitution in any case in which the defendant is adjudicated to be guilty except for insanity (GEI). This is not a problem. The proposed solution is a problem. Long standing case law holds that people found to be GEI are not responsible for court costs, assessments, and restitution. (See *State v. Thomas*, 187 Or App 782, 69 P3d 814 (2003) (Restitution); *State v. Gile*, 161 Or App 146, 985 P2d 199 (1999) (Statutory costs and assessments)). Their conduct is a result of a mental illness and a GEI finding recognizes that the person is not criminally responsible for their conduct.

By imposing restitution on people found to be GEI, practically speaking, this may keep the person from re-entering the community and could lead to longer stays in the Oregon State Hospital. Most people found to be GEI are low-income. They are committed to the State Hospital and will have to rely on Social Security benefits.

Financially-speaking, imposing restitution on people found to be GEI could cost the Oregon State Hospital more money. If people found to be GEI have to pay restitution, that will cut into their benefits. These Oregonians rely on their Social Security benefits to access mental health treatment in the community and group homes. If they can't access those services, they could stay in the Oregon State Hospital longer, thus costing the state money.

3. Delays expungements.

The ability to set aside a case means fully paying off all financial obligations.

4. Disproportionately impact on Black, Indigenous, and people of color.

SB 214 will disproportionately harm Black, Indigenous, people of color, low-income and marginalized people because these Oregon citizens are already overrepresented in the criminal legal system – from arrests, charging, convictions, and sentences. This applies to adults and youth, who are overrepresented at all stages of the juvenile system. For example, Black and Indigenous youth are three times more likely than White youth to be committed to the Oregon Youth Authority.

There should be a racial and ethnic impact statement requested per ORS 137.683.

There are already provisions that allow courts to impose the costs of prosecution on the defendant provided the state proves that defendant can afford it. ORS 161.665. The costs statute takes into account financial resources of the defendant and the nature of the burden that payment of costs will impose. Restitution has no ability to pay requirement.

5. Does not allow people to be fully informed before deciding to take a plea or go to trial.

Because the prosecution presents the restitution amount to the court at the time of sentencing or within 90 days after entry of the judgment (language which already in the statute), this already does not allow an adult to be fully informed before deciding to take a plea or go to trial. There is also a good cause exception to extend that timeline even further out.

SB 214 uses the same timing and good cause exception language and applies it to youth. Under SB 214, a youth will not be able 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. Plus, restitution could be imposed when a youth is on probation and that could lead to longer probation terms with no corresponding benefit to community safety.

Research shows that juvenile fees undermine the financial and psychological well-being of youth and their families. Harsh penalties for failure to pay juvenile fees compound the economic and emotional harm.

6. Benefits insurance companies and evidence-gathering entities for the prosecution.

This bill adds to the definition of victim for the purpose of restitution, “Any person or entity that has suffered economic damages from expending moneys on behalf of, or providing services to, a minor victim as a result of the offense.” CARES NW is such an entity. So this bill is adding an entity like CARES to the definition of victim entitled to restitution. Courts have recognized that CARES has a medical component that potentially benefits the victim, however, it is a tool for the prosecution, an evidence-gathering entity. Other types of expenses incurred by minor victims, such as post-crime counseling, are already recoverable in restitution.

OCDLA urges you to vote NO on SB 214.

Respectfully submitted by,
Mae Lee Browning
Oregon Criminal Defense Lawyers Association