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TO: House Committee on Judiciary
FROM: Jennifer L. Myrick
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.

My name is Jennifer Myrick, I am a member of OCDLA and a public defense provider for Columbia County with a dedicated caseload to indigent defense in matters from Misdemeanors to Measure 11 crimes. I submit this testimony in opposition of HB 4075. Since 2014 I have been practicing criminal law. In that time, I have come to understand that my clients, indigent and needing public defense are some of the most vulnerable individuals in our state. This is largely due to failures in our mental health system. Yet it is also due to systemic racism, sexism, and classist systems perpetuating our marginalized communities into dangerous positions. This restitution bill in substance is a tool that keeps vulnerable individuals trapped in our flawed system.

I am have serious concerns regarding the restitution procedures outlined in the newly proposed bill. As stated in 137.106 (b)(A), the statute gives the opportunity for prosecutors to present their evidence, but (B) requires defense counsel to object and set out a description of the objection fifteen days before the hearing. By prosecution merely providing a bill and a blanket motion the defense must respond with legal analysis, investigated facts, and written motion outlining the issues presented. As a result, this not only shifts the burden to the defense to disprove the amount, but it creates a substantial amount of work for defense providers. Many of these defense attorneys are similar to myself, public defense providers that have well documented high caseloads to the point that the American Bar Association has raised ethical concerns.

Perhaps even more concerning is section (c) of the proposed will which states that “economic damages will be presumed reasonable if the damages are documented in the form or a record, bill, estimate or invoice from a business [...]” The Oregon Supreme Court has held since 1969 that a bill is insufficient to establish that a cost is reasonable. *Farris v. McCracken*, 253 Or 273, 273, 453 P2d 932 (1969). This is an incredibly important rule because often these bills are inflated and inaccurate, with individuals taking advantage of the situation they are in to install upgrades or improvements. In



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fact, I currently have a matter requesting over half a million of dollars for property damage for only a \$200,000 dollar home in a rural area.

The criminal courts have been known to “trap” individuals with fines and fees. And there are separate paths for victims or plaintiffs to obtain money from individuals - *in civil court*. Therefore, it is with great caution that I urge your committee to keep prosecutors as prosecutors and not agents of insurance companies or civil claim attorneys. We need to have a firm delineation of the prosecution’s role and ensure that it is to serve public interests, not private.

Thank you for the opportunity to provide this testimony. I urge you to vote NO on HB 4075. I am available to answer any questions.

Sincerely,

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