To the legislative committee:

I provide this written testimony in opposition to the shifting presumption of reasonableness being proposed as an addition to the restitution statutes. I have litigated many criminal and juvenile restitution cases before the trial courts and several before the Court of Appeals, and I have been charged with training all incoming attorneys in our office in the law of restitution for the last few years. I also routinely assist other attorneys who are fighting unfair or unsupportable restitution demands from aggrieved parties in criminal and juvenile cases. Through this experience I have observed that the victims of crimes can sometimes become opportunistic about obtaining more than the law of economic damages would provide them, and judges have a hard time saying "no" in light of the fact that they are legitimately aggrieved by the criminal conduct of youth and defendants.

I call this a "retributive presumption" which is not written into the law, but is a natural human inclination. So far, the presumption that economic damages are not reasonable has served as a check against that more emotional response to determination of restitution, and has provided an important tool for judges facing these difficult decisions by applying the time-tested concepts of the law instead of the desire to (sometime unjustly) enrich the victim and penalize the defendant.

The limitation proposed of presuming that reasonableness can be shown because a "record, bill, estimate or invoice from a business,health care entity or provider or public body" was issued is also insufficient. Recent opinions in the Court of Appeals approve of de-facto reasonableness in some cases; bills paid at medicare or worker's comp rates, while placing minor limits on the ability of the crime victim's compensation services our state offers to seek reimbursement through the restitution process. A judge, not a bureaucrat, should be in the position of actively and critically examining these requests. Allowing those whose job it is to advocate for crime victims to vet the reasonableness of their demands for financial compensation is putting the fox in charge of the henhouse.

Presuming reasonableness in such documents signals to judges that a lack of skepticism will not be checked on appeal, and worse, it allows a void of information to become satisfactory, where it was not before. The less information a prosecutor brings to a hearing, and the less a restitution amount is tested by the adversarial process, the more the due process clause of the Fourteenth Amendment of the United States Constitution is strained. The statute may become a source of protracted constitutional litigation.

Further, it adds yet another burden of producing evidence to prove a negative (that the presumed-reasonable document is actually not reasonable) on the public defenders of this state, who are currently operating at three times the capacity that they should be in order to provide constitutionally sufficient service to our people. It will also demand significant financial outlays from the legislature to pay for all of the experts who will now be required to disprove the reasonableness of these proffered documents. Counsel may be constitutionally obliged to hire such medical and other experts in order to provide effective assistance of counsel in restitution matters, an issue which some allusion has been made by at least one respected and very intellectually gifted judge on the Court of Appeals.

The legislature can be sure that these and potentially other issues will begin to load up the dockets of our appellate courts should the burden be shifted away from the state on the question of reasonableness of economic damages.

Sincerely,

Matthew J. Steven, Public Defender