

**Testimony in Opposition of HB 2548
Before the House Judiciary Committee**

March 26, 2013

My name is Vanessa Nordyke. I am an Assistant Attorney General in the Department of Justice's Trial Division. I am also the chair of the Oregon State Bar's Judicial Administration Committee, and I am speaking to you today in that capacity.

One of the missions of the bar's Judicial Administration Committee is to carefully examine proposed changes to the way in which Oregon's court system operates, and to report to the Board of Governors and to our members on the positive or negative effects these changes might have. I can report that we have number of very serious concerns about House Bill 2548. I have submitted with my written testimony a detailed analysis of some of the major problems with this bill. There is not time to cover all of the problems with this bill today, so I would like to focus my testimony on a couple of the most concerning.

Elimination of Release Conditions as a Public Safety Tool

First and foremost, House Bill 2548 seriously threatens a very important public safety tool that judges have used for decades. When a defendant posts security in order to be released from custody today, they must agree to a number of "release conditions". These conditions can be determined by the judge on a case by case basis, but normally include conditions such as refraining from contacting crime victims, witnesses, or codefendants; refraining from using drugs or alcohol; sometimes staying away from certain designated places. They often also include general conditions such as not committing new crimes and staying in contact with their lawyer.

Under current law, if a defendant violates their release conditions, their security is forfeited. This is an extremely important deterrent that helps keep criminals from contacting their victims or committing other bad acts. House Bill 2548 effectively eliminates this provision, by stating that bail bonds can only be forfeited if a defendant fails to appear in court. The judge has no ability to order additional release conditions, and to enforce those through loss of bail. This means that a defendant out on bail can contact witnesses and victims all they want, without risking any financially penalty for doing so. Since this contact is usually not independently illegal, and is not a violation of the defendant's release conditions, there would be little that law enforcement could do to stop it.

This change may also violate Victim's Rights provisions of Oregon's Constitution. Article 1, Section 43(1)(b) specifically requires that:

"decisions by the court regarding the pretrial release of a criminal defendant [be] based upon the principle of reasonable protection of the victim".

HB 2548 quite simply diminishes the courts' authority to protect victims in this way. The proponents have claimed that defendants out on bail are somehow better supervised than under our current system. The truth is that under HB 2548, defendants have fewer restrictions on their behavior, and crime victims are less safe.

Restitution for Crime Victims, Child Support Payments, Fines and Court Fees

Another major problem with this bill is that it will seriously diminish the amount of money courts can recover for back child support payments, the amount of restitution going to crime victims, and the amount of fines and court fees that are ultimately recovered to help fund court operations.

Under current law, courts may order that money that was deposited for security release be retained after judgment on the case in order to pay back child support obligations, to pay restitution that is owed to crime victims, and to pay other court fines and fees. This is not limited to defendants who violated release conditions, or failed to show up to court, and does not require that security be forfeited. All defendants with these obligations can have money withheld for this purpose. For many crime victims, the only restitution they ever get paid comes from money that was withheld from security release.

House Bill 2548 explicitly eliminates this authority in the case of defendants who choose to post a bail bond instead of posting security directly with the court. Under this bill, the entire bail amount must be returned to the surety once the case is resolved, regardless of the defendant's unmet financial obligations. It is much, much harder to recover this money from convicted defendants after judgment than it is to simply decline to return money that the court already has in hand. This will increase collection costs for money we do ultimately get, but more importantly it means that a great deal of money owed to crime victims and owed as back child support will simply never be paid.

Again, it is likely that this provision is at least partly in conflict with Victim's Rights provisions of the Oregon Constitution. Article 1, Sec 42(1)(d) provides that a victim has:

"The right to receive prompt restitution from the convicted criminal who caused the victim's loss or injury."

House Bill 2548 will not only slow the speed with which restitution is returned, but it will assuredly mean that less restitution will ultimately be paid to crime victims.

House Bill 2548 will have a clear adverse effect on court funding by both raising operating costs and diminishing revenue ultimately flowing back to the courts. It will significantly reduce monies returned to crime victims and child support obligations, and most importantly it puts crime victims and the community at risk by limiting supervision of defendants' release before trial.

On behalf of the Oregon State Bar and the Judicial Administration Committee I strongly urge this committee to reject House Bill 2548.