



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

**MEMORANDUM**

DATE: April 4, 2013

TO: Honorable Jeff Barker, Chair  
House Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 3281

**RECOMMENDED ACTION**

This testimony is presented in support of HB 3281. We recommend that the Committee approve HB 3281 with a do pass recommendation.

**BACKGROUND ON CRIME VICTIMS' RIGHTS IN OREGON**

- In 1986, Oregon voters passed Ballot Measure 10, the Crime Victims' Bill of Rights. Among the rights enacted by Measure 10 was the right of a crime victim to refuse to speak to the defendant or agents of the defendant.
- To effectuate that right, ORS 135.970 requires that defendants' attorneys identify themselves and their capacity (as a representative of the defense) to the victim and must notify the victim that he or she does not have to talk to or provide evidence for the defense, and that the victim may have a district attorney present during any conversations with the defense.
- In *Johnson v. DPSST*, 253 Or App 307 (2012), the Oregon Court of Appeals held that—by its plain terms—ORS 135.970 did not place any obligations on defense investigators. The court held that ORS 135.970 placed obligations on only defendant's attorneys:
  - “In sum, we conclude that ORS 135.970(2) does not impose a duty on anyone other than the defendant's attorney to inform the victim of ‘the identity and capacity of the person contacting the victim and the victim's other rights under the statute.’” *Johnson*, 253 Or App at 315.

- **This has created a significant loophole.** At present, defense investigators are free under the law to affirmatively mislead crime victims as to their identity and purpose, including denying that they are working on behalf of the defendant.

**HB 3281 WILL FURTHER EFFECTUATE VICTIMS' RIGHTS BY IMPOSING THE SAME OBLIGATIONS ON DEFENSE INVESTIGATORS AND OTHER AGENTS OF THE DEFENDANT AS ARE CURRENTLY IMPOSED ON DEFENSE COUNSEL**

- This bill makes four important changes to victims' rights statutes to effectuate a victim's right not to speak with the criminal defendants or their agents; it (1) clarifies that obligations of ORS 135.970 apply to any agent of the defense; (2) clarifies that—in addition to a district attorney—a victim has a right to have an assistant attorney general or victim advocate present during any meetings with the defense; (3) clarifies and specifies who is considered a “victim”; and (4) applies the same changes to victim contact once the case has moved to the collateral review (post-conviction relief) stage.
- The first change is a direct response to the *Johnson* decision. They clarify that any agent of the defense must notify the victim of their rights if they contact the victim. This would include a defense investigator like Mr. Johnson.
- The second change recognizes the reality that some prosecutions are carried out by the Department of Justice and, therefore, the primary attorney contact that a victim has is with an assistant attorney general—not a district attorney. It also recognizes that victims often have contact with non-attorney victims' advocates and they should have the right to have a victim advocate present during meetings with the defense, if that is their preference.
- The third change clarifies who is a victim. This change largely mirrors the definition of “victim” in Article I, section 42 and 43, of the Oregon Constitution, plus it includes immediate family members of homicide and abuse-of-corpse victims.
- The final change clarifies that the same victim-contact limitations and obligations apply once a case has moved into the post-conviction relief phase.

**THERE IS NO KNOWN FISCAL IMPACT FOR DEPARTMENT OF JUSTICE**

**DOJ CONTACT**

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