



**DEPARTMENT OF JUSTICE**  
CIVIL ENFORCEMENT DIVISION

**MEMORANDUM**

DATE: April 17, 2013

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

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 3287 – -1 Amendments

**RECOMMENDED ACTION**

This memorandum seeks to explain the scope and purpose of the -1 amendments to HB 3287. We recommend that the Committee approve HB 3287 as amended.

**BACKGROUND ON HB 3287**

- The Oregon Rules of Civil Procedure apply to actions for post-conviction relief (PCR), unless the Post-Conviction Hearings Act specifies otherwise. Under the rules of civil procedure, parties are not required to disclose the identity of their witnesses, or the content of their expert witnesses' expected testimony before trial. This can lead to expert witnesses being discovered only during the trial itself, causing significant and unnecessary cost run-up on behalf of the state and "ambush" tactics.
- HB 3287 asks that the identity and limited testimonial content of witnesses, including expert witnesses, be disclosed prior to the date of the hearing in post-conviction relief cases.
- In response to a suggestion by Chair Barker, representatives of the Department of Justice met with Gail Meyer of OCDLA and two PCR practitioners to attempt to reach a compromise amendment. Ultimately, Ms. Meyer expressed that she believed PCR was most appropriate for an interim workgroup and a more holistic approach to reform of the underlying statutory provisions. While the Department of Justice is not in disagreement with Ms. Meyer's desire to take a broader legislative look at PCR generally, we have elected to draft an amendment incorporating most if not all of Ms. Meyer's suggested reforms and move the bill forward in the current session.

## **SIGNIFICANCE OF AMENDMENT LANGUAGE**

- **Reduces scope of disclosure required.** HB 3287-1 reduces the scope of the disclosure required as to expert witnesses. As amended, HB 3287-1 requires the petitioner to disclose the name, contact information, opinions to be offered by the expert and any reports or underlying data relied upon by the expert in formulating that opinion. These requirements are designed to track with what the expert would ultimately be stating at the hearing, approximate similar disclosure thresholds found more generally in criminal law and are tailored to impose no additional requirements.
- **Eliminates timelines for when disclosure needs to occur.** As drafted, HB3287 contains a series of timelines requiring when the disclosure of witness information must be made. HB 3287-1 eliminates these timelines and vests sole discretion as to when a disclosure must reasonably be made in the court. This allows flexibility while still preserving the important core principle that the disclosure be made prior to the hearing, therefore ending the possibility of ambush.
- **Clarifies that the disclosure requirements apply to both sides.** With the exception of the identity of crime victims, who are subject to separate and more rigorous protections, the State will be required to make exactly the same witness disclosures as the petitioner. This creates symmetry and fairness in disclosure requirements.
- **Additional technical changes.** HB 3278 -1 also modifies language to make it more directly consistent with existing statutory analogues and to clarify that disclosure of identity applies to even those witnesses expected to testify by affidavit.

## **DOJ CONTACT**

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