

# Law Office of Erin Olson, P.C.

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DATE: May 8, 2013

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TO: Hon. Floyd Prozanski  
Senate Committee on Judiciary Members

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FROM: Erin K. Olson

RE: **HB 3282 (Public Hearing May 9, 2013 at 8:30 a.m.)**

I am an attorney in private practice, and I represent crime victims in civil and criminal cases. I also do *pro bono* work for crime victims in criminal cases on behalf of the Oregon Crime Victims Law Center<sup>1</sup>.

I regret that I am unable to testify at the May 9<sup>th</sup> hearing. The substance of this written testimony was presented orally to the House Judiciary Committee.

HB 3282 was drafted by the Oregon Department of Justice. Sections 1, 2, and 4 of the bill benefit crime victims because they address procedural problems with the statutes that are intended to permit crime victims to appeal the denial of their constitutional rights in criminal cases. **Sections 3 and 5 of HB 3282 are harmful to crime victims** because they entirely eliminate prosecuting attorneys' legal standing to participate in appeals in crime victim cases. This is significant because in the vast majority of criminal cases, the rights of crime victims are consistent with the public interest and are advanced by the prosecutors since crime victims rarely have access to private attorneys.

While DOJ may advocate for crime victims on appeal, they may also have a conflict that prevents them from doing so by virtue of their role as general counsel to all state agencies. Two real examples of this potential for conflict arose in cases in Multnomah County involving the efforts of victims to enforce their constitutional right to receive prompt restitution from the criminal defendants who harmed them. In one case, *State v. Patrick Roman Garcia*, in which I represented the interest of the child sex abuse victim, DOJ intervened at the trial court level to advance the interests of PERS, and in doing so actively opposed the victims' attempts to collect restitution from the defendant's sole means of paying the restitution – his PERS benefits.

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<sup>1</sup> The Oregon Crime Victims Law Center is the only nonprofit in Oregon that provides direct legal representation for crime victims in criminal cases. The legal work of OCVLC is handled by a half-time Legal Director and a small handful of *pro bono* attorneys.

In another case in which I was involved, *State v. Norman Earl Schlunt*, DOJ appeared on behalf of the Oregon Department of Corrections in opposing the efforts of a victim to collect a compensatory fine from the inmate trust account of her father's murderer.

The statutes which HB 3282 would modify were passed in 2009 as Senate Bill 233. That bill was the product of years of work by a multidisciplinary team, and deliberately included separate roles for the Attorney General and prosecuting attorney. DOJ acknowledged these separate roles in its briefing in *State v. Schlunt* when it wrote, "Chapter 147 discusses separate roles for the DOJ and the DA: ORS 147.504(2) discusses the DA's role in 'assert[ing] the public interest, including but not limited to . . . [a]sserting rights granted to victims,' while ORS 147.545(2) separately provides that the Attorney General 'may intervene at any time on behalf of the State of Oregon' in victims' rights proceedings." Oregon Department of Justice's Response to Defendant's Challenge to Garnishments, p 1, n. 1 (*State v. Schlunt*, Multnomah County case No. 0603-31323).

The fixes needed to the victims' rights laws are accomplished in Sections 1, 2, and 4 of HB 3282. Those fixes are responsive to the concerns raised by Justice DeMuniz in his concurring opinion in *State v. Bray*, 352 Or 34 (2012), in which he wrote separately "to express [his] concern regarding the legislatively prescribed procedures to bring an interlocutory appeal to [the Supreme C]ourt in a victims' rights case." *Id.* at 43. Justice DeMuniz said nothing in his concurring opinion -- and the Oregon Supreme Court has said nothing in any of its opinions addressing crime victims' rights issues -- about a need to "provide clarity" to the representation of the State. The clarity is already in the law: the role of prosecuting attorneys includes asserting the public interest, and the role of the Attorney General is to assert the State of Oregon's interests. While those interests will often be the same, when they are not, the prosecuting attorney should be able to advance the public interest on appeal when DOJ is advancing a different interest on behalf of a state agency.

On behalf of the victims of Patrick Roman Garcia and Norman Earl Schlunt – and for the benefit of the many other crime victims whose interests would not be advanced if Sections 3 and 5 of HB 3282 are passed – I respectfully request that this Committee amend HB 3282 to delete sections 3 and 5 before passage of the bill.