

D R A F T

SUMMARY

Requires all agents of defense to inform victim of right to refuse contact in criminal and post-conviction proceedings. Expands definition of victim to include third parties for purposes of contact by defense.

A BILL FOR AN ACT

Relating to crime victims; amending ORS 131.007, 135.970 and 138.625.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 135.970 is amended to read:

135.970. (1) If the victim or a witness requests, the court shall order that the victim's or witness's address and phone number not be given to the defendant unless good cause is shown to the court.

(2) If contacted by the defense **or any agent of the defense**, the victim must be clearly informed by the [*defendant's attorney*] **defense or other contacting agent**, either in person or in writing, of the identity and capacity of the person contacting the victim, that the victim does not have to talk to the defendant's attorney, or other agents of the defendant, or provide other discovery unless the victim wishes, and that the victim may have a district attorney, **assistant attorney general or other attorney or advocate** present during any interview **or other contact**.

(3) A victim may not be required to be interviewed or deposed by or give discovery to the defendant, [*or*] the defendant's attorney **or any agent of the defense** unless the victim consents. This subsection does not prohibit the defendant from:

(a) Subpoenaing or examining the victim at trial or in a pretrial pro-

1 ceeding when the purpose is other than for discovery; or

2 (b) Subpoenaing books, papers or documents as provided in ORS 136.580.

3 (4)(a) Any pretrial release order must prohibit any contact with the vic-
4 tim, either directly or indirectly, unless specifically authorized by the court
5 having jurisdiction over the criminal charge. This subsection shall not limit
6 contact by the defense attorney, or an agent of the defense attorney, other
7 than the defendant, in the manner set forth in subsection (2) of this section.

8 (b) If a victim notifies the district attorney that the defendant, either di-
9 rectly or indirectly, threatened or intimidated the victim, the district attor-
10 ney shall notify the court with jurisdiction over the criminal matter and the
11 defense attorney. If the defendant is not in custody and the court finds there
12 is probable cause to believe the victim has been threatened or intimidated
13 by the defendant, either directly or indirectly, the court shall immediately
14 issue an order to show cause why defendant's release status should not be
15 revoked. After conducting such hearing as it deems appropriate, if the court
16 finds that the victim has been threatened or intimidated by the defendant,
17 either directly or indirectly, the defendant's release status shall be revoked
18 and the defendant shall be held in custody with a security amount set in an
19 amount sufficient to ensure the safety of the victim and the community.

20 **(5) As used in this section, "victim" means the person or persons**
21 **who have suffered financial, social, psychological or physical harm as**
22 **a result of a crime against the person or a third person and includes,**
23 **in the case of a homicide or abuse of corpse in any degree, a member**
24 **of the immediate family of the decedent and, in the case of a minor**
25 **victim, the legal guardian of the minor. In no event shall the criminal**
26 **defendant be considered a victim.**

27 **SECTION 2.** ORS 138.625 is amended to read:

28 138.625. (1) A petitioner in a post-conviction relief proceeding may not
29 compel a victim to testify, either by deposition, hearing or otherwise, unless
30 the petitioner moves for an order of the court allowing a subpoena.

31 (2) A copy of the motion for a subpoena under this section must be served

1 on the counsel for the defendant.

2 (3) The court may not grant an order allowing a subpoena under this
3 section unless the petitioner can demonstrate good cause by showing that:
4 *[the victim has information that is material to the post-conviction relief pro-*
5 *ceeding, is favorable to the petitioner and is other than what was admitted at*
6 *trial.]*

7 **(a) The victim’s testimony is material to the post-conviction relief**
8 **proceeding;**

9 **(b) The testimony is favorable to the petitioner; and**

10 **(c) The testimony was not introduced at trial.**

11 (4) If the court grants an order allowing a subpoena under this section,
12 upon a request by the victim for no personal contact between the parties, the
13 court may allow the victim to appear by telephone or other communication
14 device approved by the court.

15 **(5) If contacted by the defense or any agent of the defense, the**
16 **victim must be clearly informed by the defense or other contacting**
17 **agent, either in person or in writing, of the identity and capacity of**
18 **the person contacting the victim, that the victim does not have to talk**
19 **to the defendant’s attorney, or other agents of the defendant, or pro-**
20 **vide other discovery unless the victim wishes, and that the victim may**
21 **have a district attorney, assistant attorney general or other attorney**
22 **or advocate present during any interview or other contact.**

23 **(6) As used in this section, “victim” has the meaning given that**
24 **term in ORS 135.970.**

25 **SECTION 3.** ORS 131.007 is amended to read:

26 131.007. As used in ORS 40.385, 135.230, *[135.970,]* 147.417, 147.419 and
27 147.421 and in ORS chapters 136, 137 and 144, except as otherwise specifically
28 provided or unless the context requires otherwise, “victim” means the person
29 or persons who have suffered financial, social, psychological or physical
30 harm as a result of a crime and includes, in the case of a homicide or abuse
31 of corpse in any degree, a member of the immediate family of the decedent

1 and, in the case of a minor victim, the legal guardian of the minor. In no
2 event shall the criminal defendant be considered a victim.

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