

March 18, 2019

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Senate Committee on Judiciary  
Oregon State Capitol  
900 Court Street NE  
Salem, OR 97301

**RE: Senate Bill 597**

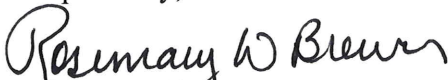
Dear Chair Prozanski, Vice-Chair Thatcher and Members of the Committee:

The Oregon Crime Victims Law Center (“OCVLC”) is a nonprofit legal clinic whose five staff attorneys and affiliated pro bono counsel provide free legal representation to crime victims to help them assert their rights in criminal cases and to advocate for them in related matters. OCVLC is writing to offer its support of SB 597.

One of the issues faced by the crime victims we represent is the loss of privacy when they participate in the criminal justice system. This is especially true when the crime is a sex crime. This loss of privacy can have serious consequences for victims and can serve as a deterrent to reporting and ongoing participation in the prosecution of an offender. Allowing crime victims to safely participate in the criminal justice system empowers them, assists them with the healing process and increases confidence in the criminal justice system.

Senate Bill 597 helps prevent secondary victimization and improves the functioning of the criminal justice system - all without compromising defendants’ constitutional rights. OCVLC supports SB 597.

Respectfully,

  
Rosemary W. Brewer  
Executive Director



## **Protecting Victims' Privacy Rights: The Use of Pseudonyms in Criminal Cases<sup>i</sup>**

Some victims may welcome being publically identified as a part of criminal proceedings, but for those victims who may want or need to protect their privacy, the use of pseudonyms can be a powerful tool.<sup>ii</sup> The availability of such a tool is important because the loss of privacy can have serious consequences for victims. Unwanted publicity can subject victims to public scorn and harassment and to other forms of revictimization at the hands of the justice system—often referred to as “secondary trauma” or “secondary victimization.”<sup>iii</sup> Compelling disclosure of a victim’s identity may also weaken confidence in the criminal justice system as a means to protect and serve the public. Thus, allowing victims to proceed by pseudonym in criminal proceedings not only helps prevent “secondary victimization,” but also assists with the proper functioning of the system.

### **Use of Pseudonyms in Criminal Cases: Why It Matters**

“In the aftermath of crime, participation in the criminal justice system can be beneficial for crime victims.”<sup>iv</sup> But for some victims, interactions with justice system personnel and processes can cause secondary victimization, which has been associated with increased posttraumatic stress symptoms and other physical and mental distress.<sup>v</sup> One source of such harms can be the unwanted publicity and loss of control experienced when victims’ identities are revealed as part of the criminal justice process without their consent.<sup>vi</sup> The use of pseudonyms by victims may reduce the risk of this revictimization at the hands of the justice system.

The consequences associated with a crime victim’s loss of anonymity in justice proceedings may be particularly severe now that public access to criminal proceedings has been radically transformed by widespread use of the Internet. As more jurisdictions make public records available online, the reality of court records existing in “practical obscurity,” available only to those individuals willing and able to seek them out at the local courthouse, is becoming a thing of the past.<sup>vii</sup> Today, anyone can retrieve a variety of records simply by typing a name into a



search engine, and the existence of e-mail, social networking websites like Facebook and Twitter, as well as blogs, means this information can then be shared with thousands all over the world in an instant. Even accidental disclosure of information can become permanent in the public sphere once it enters the Internet.<sup>viii</sup>

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<sup>i</sup> This *Victim Law Article* discusses the use of pseudonyms to protect a victim's identity in criminal proceedings. For more information about the use of pseudonyms by victims in civil proceedings, see *Protecting Victims' Privacy Rights: The Use of Pseudonyms in Civil Law Suits*, NCVLI Violence Against Women Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), July 2011, available at <http://law.lclark.edu/live/files/11778-protecting-victims-privacy-rights-the-use-of>. For more information or to submit a request for technical assistance regarding these or other strategies to protect victim privacy, please visit NCVLI's website, [www.ncvli.org](http://www.ncvli.org).

<sup>ii</sup> Depending upon the nature of the crime charged and the size of the community in which the crime occurred, the victim may be readily identifiable even when referred to only by initials. For example, with intra-familial or other crimes that require or imply a particular relationship between the defendant and the victim—such as domestic violence or incest—knowledge of the defendant's name and the victim's initials may be enough to identify the victim. For this reason, it is a best practice to request that the victim proceed by pseudonym. In cases where the victim and defendant are members of the same family, it may be necessary to ask the court to also permit the defendant and other family members to be identified by pseudonym. See *Commonwealth v. Hartnett*, 892 N.E.2d 805, 808 (Mass. App. Ct. 2008) (explaining that “we employ a pseudonym for the victim. To further insulate his identity, pseudonyms also have been assigned to the family members discussed in this opinion.”). Also, although motions to seal and for protective orders may serve as alternative procedures to help protect victim privacy, these procedures—alone—do not provide the same level of protection for the victim. For example, seals can be lifted and in some jurisdictions they are routinely lifted at the end of the case.

<sup>iii</sup> People are “harmed in a significant, cognizable way when their personal information is distributed against their will.” Ann Bartow, *A Feeling of Unease About Privacy Law*, 155 U. Pa. L. Rev. PENumbra 52, 61 (2007) (critiquing a recent article on privacy and arguing that it fails to adequately label and categorize the very real harms of privacy invasions). See also generally, *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate “Secondary Victimization” in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), March 2013, at 1 & 4 n.6, available at <http://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool> (describing some of the deleterious effects of secondary victimization on victims and the proper administration of justice); Suzanne M. Leone, *Protecting Rape Victims' Identities: Balance Between the Right to Privacy and the First Amendment*, 27 New Eng. L. Rev. 883, 909-10 (1993) (A victim's right to control information about him or herself “constitutes a central part of the right to shape the ‘self’ that any individual presents to the world. It is breached most seriously when intimate facts about one's personal identity are made public against one's will . . . in defiance of one's most conscientious efforts to share those facts only with close relatives or friends.”) (quoting Laurence H. Tribe, *American Constitutional Law* § 12-14, at 650 (1st ed. 1978)); *Commonwealth ex rel. Platt v. Platt*, 404 A.2d 410, 429 (Pa. Super. Ct. 1979) (“The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, and behavior and opinions are to be shared with or withheld from others.”) (internal citation omitted).

<sup>iv</sup> Nat'l Crime Victim Law Inst., *supra* note 3, at 1 & 4 n.6 (explaining that “[f]or those victims, participation in the justice system may assist with the healing process, empower them, and provide them with greater safety and protection, public validation of the harm caused by the offenders, and financial compensation through restitution” and citing sources). See also Margaret E. Bell et al., *Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcomes and Process*, 17 Violence Against Women 71, 72 (2011) (noting that some studies “have in fact found that positive experiences in the justice system are associated with less physical and psychological distress and better posttraumatic adjustment”).

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<sup>v</sup> Nat'l Crime Victim Law Inst., *supra* note 3, at 1 & 4 nn.5-8 (citing sources).

<sup>vi</sup> *See* Leone, *supra* note 3, at 909-10.

<sup>vii</sup> Elbert Lin, *Prioritizing Privacy: A Constitutional Response to the Internet*, 17 Berkeley Tech. L.J. 1085, 1100 (2002) ("Previously, the physical restraints of time and space prevented gross violations of informational privacy. For instance, paper records are often filed in numerous locations, are easy to misplace or permanently destroy, and require a great deal of effort to gather and sort.").

<sup>viii</sup> *See* Kellie Wingate Campbell, *Victim Confidentiality Laws Promote Safety and Dignity*, 69 J. Mo. B. 76, 82 (2013) ("The permanency of information posted to the Internet either legitimately or maliciously makes it even more important to safeguard confidential victim information. . .").

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