



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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March 19, 2019

The Honorable Floyd Prozanski, Chair  
Senate Judiciary Committee, Members

**Re: Testimony in opposition to SB 597**

Dear Chair Prozanski and Members of the Committee:

As OCDLA's Legislative Director, I am writing to highlight OCDLA's deep concerns with [SB 597](#). As this committee knows, OCDLA is an organization of attorneys whose mandate is "fairness in justice."

This committee heard a very similar version of this bill back in 2017 ([SB 248](#)), and this committee rejected to move the bill then. The need for transparency in the criminal justice system has not *diminished* since 2017—if anything, *the need for transparency in the administration of justice has increased*.

**The Bill's Provisions Lack Due Process, Prevents Defense Access to Necessary Information at a Critical Stage, and Decreases Transparency Necessary in the Criminal Justice System:**

- **This bill gets rid of the requirement that victims and witnesses are named in indictments<sup>1</sup>.** The bill seeks to allow a pseudonym or initials to be used for victim and witnesses name that are in an indictment where one of the charges alleged is any sex crime. *This bill changes Oregon law establishing what is a "sufficient indictment" that has been appropriately in effect for 100 years.*
- **The bill says a separate document with names "may" be made available at arraignment<sup>2</sup> to the lawyer (not the client) unless "good cause" to provide it "later" has been shown.** This means that under this bill, it is possible that at the beginning of a case, *a person AND their lawyer can be denied the right to know who the victim or witnesses are in a case.* It also means that a person who chooses to forgo a lawyer will not have access to this information at all.
- **The bill does not set a process, nor does it define "good cause," nor does it define when "later" is.** Arraignment is the very beginning of a criminal case, and this is a *critical stage* for the person being accused to have their lawyer *begin their investigation*. Many times, no police reports are provided at this time, sometimes for *weeks* until the investigation is over. *This removes the accused's lawyer's ability to investigate their case and is harmful to the right of the accused to defend themselves against the charge. It is possible that a defendant could sit in jail not knowing who their accusers are without enough information to start their investigation for weeks. In that time, witnesses who testified at grand*

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<sup>1</sup> an "indictment" is the document issued by a grand jury that determines if the DA can issue a felony charge against someone.

<sup>2</sup> "arraignment" is the process where the person being accused is told by the judge what they are being charged with and who is accusing them—two bedrock principles of the criminal justice system.

*jury may have disappeared, evidence gets stale or completely erased such as deleted surveillance video or other information the police chose or failed not to collect. This is clearly a due process violation.*

- **If the separate document with names is provided to the defense lawyer, the lawyer is prohibited from handing the document to their client.** This fosters lack of trust between the client and their lawyer that should not exist, especially at the very beginning of the case. *A defense lawyer must earn their client's trust, and being part of the process that is literally keeping necessary evidence from them is more than problematic. The lawyer is there to aid the person in their defense—it is their constitutional obligation.*
- **The bill also proposes to change the requirement that names of witnesses examined at grand jury be listed on the indictment.** In 2017, this legislative body finally passed the bill to record grand jury. As you recall, DA's across the state opposed this necessary move to a more transparent system citing that victims would no longer come forward and that the system would be harmed—we now know this was not true—([Prosecutors Said Recording Juries Would be a Disaster: They Were Wrong--WW](#)). *This bill is a step backwards—this will ensure a move back to the days when the defense was even more disadvantaged and had no right to know what went on in grand jury proceedings or what information was shared with prosecutors to underpin a charge. (Under the grand jury bill passed in 2017, the actual recording can kept from the defense if a protective order is obtained from a judge. If that provision is utilized AND the indictment only has initials AND it not provided until “later,” there could be a large period of time where a person sits in jail without the ability to investigate and without procedural or substantive due process).*
- **This bill will not accomplish the proponent's goals of keeping the victim or witness's names out of the public sphere.** *In reality, the victim's name and the name of witnesses will appear in the court file in many different documents as the case ages—probable cause affidavits, no contact orders, the restitution documents, the judgment. In addition, victims and witnesses will ultimately be required to testify in open court if the case goes to trial. This is how the justice system must work. This bill will only delay the accused and their lawyer access to critical information at the most critical time.*
- **This bill is in direct opposition to the Oregon's Bill of Rights.** Article 1, Section 10 of the Oregon Constitution states, “No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay . . . .” *SB 597 in removing the identities of victims and witnesses before the grand jury is in direct opposition to the notion embraced by the founders of Oregon Constitution that justice should be administered openly.* Further, Article 1, Section 11 of the Oregon Constitution states that the accused in all criminal prosecutions shall have the right “to demand the nature and cause of the accusation against him, and to have a copy thereof . . . [and] to meet the witnesses face to face.” *SB 597 in removing the identities of the alleged victims and witnesses before the grand jury directly violates the accused's constitutional right to demand “the nature and cause of the accusation against him” and denies him of his constitutional right “to meet the witnesses face to face.”*
- **OCDLA acknowledges the sensitivity of sex crimes, and we understand the proponent's desire to prevent intimidation and embarrassment.** *However, the actual impact this bill will have is to severely disadvantage the defense's ability to investigate their case, force defendants to waive their right to trial*

**For questions or comments contact:**

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*within 60 days as they will not have adequate time to prepare their case given the delay, and codify secrecy that cannot be supported in the fair administration of justice.*

**Thank you for your time. I am available by cell 503.516.1376 to answer any questions you may have.**

Respectfully,

Mary Sofia

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### **About OCDLA**

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

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