

Submitter: Rachel Cunliffe
On Behalf Of:
Committee: Senate Committee On Judiciary
Measure: SB586

Good afternoon members of the committee

I am writing to support the bill SB586 requiring all communications regarding restorative justice meetings to be held confidential.

I have been practicing in the restorative justice field for more than twenty years, starting in mediation, then in victim-offender dialogues with juveniles. I now consult in cases of serious violence with adults seeking to build as much restorative justice capacity as possible. This work sometimes leads to dialogue among parties to a criminalized harm.

Whenever there is to be dialogue, everyone involved is offered opportunities to explore their hopes and needs from the encounter with each other prior to actually meeting. Sometimes that preparation meets everyone's needs so they do not need to dialogue. A responsible facilitator will help all parties to clarify their stories, explore their needs, deepen their capacity to hear one another, imagine possible scenarios in order to prepare. The parties may communicate with the facilitators in various ways during this preparatory period, perhaps using worksheets to examine their motivations and experiences, emailing thoughts, reflections, or questions, or talking on the phone. All such discussions should be confidential so that the opportunity for dialogue which is always very constrained can be maximised for its effectiveness and success. This confidentiality should extend to facilitators working with people who are incarcerated. People will not share their deepest hurts and shames if they fear exposure or are on monitored lines or recorded interactions. If RJ dialogue meetings happen in lieu of adjudication, lawyers will be cautious about what can be revealed lest clients jeopardize their legal position if the communications prior or during the meetings may be disclosed.

Mediation in small claims as well as in family law enjoys confidentiality of all communications with only agreements disclosed. SB 586 brings restorative justice programs into parity with mediation and will render them much more useful and impactful. Sometimes restorative justice encounters are not agreement focused. Serious violence dialogues allow the exchange of information without agreements being the objective, although certain commitments may be made. Restorative Justice dialogues which are, essentially, a diversion are agreement focused. Either way, as with other discussions such as settlements for sentence, plea negotiations and such, communications and discussion should be confidential until a final agreement is reached, written up, and signed by all parties.

Criminal justice in Oregon may focus on impact sentencing, but it still leaves much to be desired in terms of meeting the real needs of victims, some of which can only be met by offenders. I urge you to consider how impactful it will be to extend confidentiality to restorative justice as it will make RJ much more accessible to all concerned. Research shows that restorative justice is very successful in fostering healing and reconciliation with the past for people who are victimized by criminal activity. In addition, the results of restorative justice on recidivism, successful reentry, and helping those incarcerated to deal more effectively and peacefully with imprisonment while seeking to make reparations to those who have been hurt including their own families cannot be denied. Anything that you can do to increase the breadth and depth of the restorative justice option can only serve society best. Thank you for your time and attention to my testimony.