



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

MEMORANDUM

DATE: May 9th, 2013

TO: Honorable Floyd Prozanski, Chair
Senate Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 3282

RECOMMENDED ACTION

This testimony is presented in support of HB 3282. We recommend that the Committee approve HB 3282 with a do pass recommendation.

BACKGROUND ON VICTIM'S RIGHTS PROCEEDINGS

HB 3282 is advanced for your consideration as a response to a ruling by the Oregon Supreme Court in *State v. Bray*, in which the court called particular attention to certain procedural deficiencies in the existing procedures surrounding the invocation of victim's rights. Two areas of difficulty were highlighted by this case: the timing of interlocutory appeals, and a lack of clarity on the representation of the State during an interlocutory appeal.

- An interlocutory appeal is an immediate appeal of a ruling by a trial court that is made before the trial itself has concluded. This has the effect of stopping a trial while the appeal is resolved. For this reason, interlocutory appeals are subject to extremely firm timelines.
 - ORS 147.500-.550 provides the procedure for crime victims to file claims asserting that their constitutional rights under Article I, sections 42 and 43, of the Oregon Constitution, have been violated, and for appealing the denial of those claims to the Oregon Supreme Court.
 - The procedures set forth in ORS 147.500-.550 operate on an accelerated timeline. Per ORS 147.537(8)(a): a notice of interlocutory appeal must be filed by a victim within seven days after the trial court issues the order being appealed. Under existing law, this timeline begins with the issuance of *either* an oral or written ruling. In *State v. Bray*, this provision caused confusion because of the presence of both an oral and subsequent written opinion issued by the court.

- Under present law, both the prosecuting attorney and the Attorney General are arguably permitted to appear on behalf of the State of Oregon. This occurred during the appellate proceedings in *State v. Bray*, causing confusion. In this instance, the positions taken by the prosecuting attorney and the Attorney General were in rough alignment.
- This section as written raises the possibility of two representatives ostensibly appearing for the State within the appellate process and taking irreconcilable positions. There is no precedent for this approach and no structural capacity to handle it.
- Under ORS Chapter 180, the Attorney General is the only primary representative of the State of Oregon in an appeal from any criminal case. The only statutory exception contained in this Chapter, which establishes the operational parameters for the office of the Attorney General, is in cases where the Attorney General chooses to authorize an agency other than the Attorney General to appear. The office of the Attorney General fields an Appellate Division for precisely this purpose. They are historically and presently the instrument tasked by the State for handling all appeals.

HOW HB 3282 WILL PROVIDE CLARITY

- HB 3282 clarifies that an order issued under ORS 147.515 and ORS 147.530 *must* be in writing. This will clarify to victims when a clock has started to run for the purposes of a filing of notice of interlocutory appeal and address directly the issue raised by *State v. Bray*.
- This bill clarifies that, once a case moves to the Appellate Courts, the Attorney General represents the interests of the state. This avoids the confusion that can occur when two parties both appear to be speaking for the State (and may, in fact, be taking different positions).
- This bill does not modify the process by which a crime victim may seek an appellate remedy or change who may represent them within that process. This simply clarifies that the State shall be represented by the Attorney General, consistent with every other appellate action covered by Chapter 180.
- It is important to note that the State cannot represent a crime victim during the interlocutory appeal process. Such an action would create a demonstrable conflict of interest, as the State cannot simultaneously represent itself and another party.

THERE IS NO KNOWN FISCAL IMPACT FOR DEPARTMENT OF JUSTICE

DOJ CONTACT

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