

House Bill 3281

Sponsored by COMMITTEE ON JUDICIARY (at the request of Attorney General Ellen F. Rosenblum)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

1
2 Relating to crime victims; amending ORS 131.007, 135.970 and 138.625.

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

4 **SECTION 1.** ORS 135.970 is amended to read:

5 135.970. (1) If the victim or a witness requests, the court shall order that the victim's or
6 witness's address and phone number not be given to the defendant unless good cause is shown to
7 the court.

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

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

17 (a) Subpoenaing or examining the victim at trial or in a pretrial proceeding when the purpose
18 is other than for discovery; or

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

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

24 (b) If a victim notifies the district attorney that the defendant, either directly or indirectly,
25 threatened or intimidated the victim, the district attorney shall notify the court with jurisdiction
26 over the criminal matter and the defense attorney. If the defendant is not in custody and the court
27 finds there is probable cause to believe the victim has been threatened or intimidated by the de-
28 fendant, either directly or indirectly, the court shall immediately issue an order to show cause why
29 defendant's release status should not be revoked. After conducting such hearing as it deems appro-
30 priate, if the court finds that the victim has been threatened or intimidated by the defendant, either
31 directly or indirectly, the defendant's release status shall be revoked and the defendant shall be held

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 in custody with a security amount set in an amount sufficient to ensure the safety of the victim and
 2 the community.

3 **(5) As used in this section, “victim” means the person or persons who have suffered fi-**
 4 **nancial, social, psychological or physical harm as a result of a crime against the person or**
 5 **a third person and includes, in the case of a homicide or abuse of corpse in any degree, a**
 6 **member of the immediate family of the decedent and, in the case of a minor victim, the legal**
 7 **guardian of the minor. In no event shall the criminal defendant be considered a victim.**

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

9 138.625. (1) A petitioner in a post-conviction relief proceeding may not compel a victim to testify,
 10 either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court
 11 allowing a subpoena.

12 (2) A copy of the motion for a subpoena under this section must be served on the counsel for
 13 the defendant.

14 (3) The court may not grant an order allowing a subpoena under this section unless the
 15 petitioner can demonstrate good cause by showing that: *[the victim has information that is material*
 16 *to the post-conviction relief proceeding, is favorable to the petitioner and is other than what was ad-*
 17 *mitted at trial.]*

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

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

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

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

24 **(5) If contacted by the defense or any agent of the defense, the victim must be clearly**
 25 **informed by the defense or other contacting agent, either in person or in writing, of the**
 26 **identity and capacity of the person contacting the victim, that the victim does not have to**
 27 **talk to the defendant’s attorney, or other agents of the defendant, or provide other discovery**
 28 **unless the victim wishes, and that the victim may have a district attorney, assistant attor-**
 29 **ney general or other attorney or advocate present during any interview or other contact.**

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

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

32 131.007. As used in ORS 40.385, 135.230, *[135.970,]* 147.417, 147.419 and 147.421 and in ORS
 33 chapters 136, 137 and 144, except as otherwise specifically provided or unless the context requires
 34 otherwise, “victim” means the person or persons who have suffered financial, social, psychological
 35 or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse
 36 in any degree, a member of the immediate family of the decedent and, in the case of a minor victim,
 37 the legal guardian of the minor. In no event shall the criminal defendant be considered a victim.

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