

# David L. Kramer, P.C. | Attorney

3265 Liberty Road S.  
Salem, OR 97302-4561  
Telephone: (503) 364-1117  
Fax: (503) 391-4269  
David@KramerLaw.us

March 19, 2021

Oregon Senate Committee on the Judiciary  
Senator Floyd Prozanski, Chair  
Senator Sara Gelser, Member  
Oregon State Legislature  
900 Court St. NE  
Salem, OR 97301

BY EMAIL and EFILING ONLY:  
[mike.reiley@oregonlegislature.gov](mailto:mike.reiley@oregonlegislature.gov)  
[sen.saragelser@oregonlegislature.gov](mailto:sen.saragelser@oregonlegislature.gov)

RE: Written Testimony, SB 565

Dear Senators Prozanski and Gelser:

I write to express my strong support for SB 565.

I am an Oregon attorney whose practice is primarily focused on tort claims arising from the abuse and neglect of children and seniors, which often occurs because of institutional negligence including that of the Oregon Department of Human Services (DHS). A primary goal of my practice is to make sure that these cases shed light on poor institutional practices and that they benefit surviving children and not their abusive or neglectful parents. My background includes many years of state service at the Oregon Department of Justice, where I served as a trial attorney and as a manager, including Chief Trial Counsel.

SB 565 will correct a real-world problem my private practice encountered in the past and likely will see again. A few years ago, DHS settled a substantial wrongful death claim that arose from a psychotic mother beating and strangling her son to death. The mother was prosecuted and a significant issue in the criminal matter was whether she was “guilty but insane” of the charged crimes, including murder. One would assume the mother in that scenario would not be the beneficiary of the wrongful death claim brought by the Estate of the murdered child. To that end, ORS 112.465(1) precludes a “slayer” from obtaining wrongful death proceeds. However, ORS 112.555 presently narrows the definition of a “slayer” to only those killers who a criminal or civil court determines to have acted with a “felonious and intentional” state of mind. A psychotic, “guilty but insane” person, by definition, cannot form such an intent. It follows that a parent in that circumstance would be the presumptive beneficiary of financial compensation paid to the Estate for the very murder he/she committed.

In my client’s case we ultimately avoided the dilemma because the mother was at the Oregon State Hospital and she was both stable and willing to voluntarily decline the settlement proceeds in favor of her surviving children. Obviously, that outcome had more to do with luck

than anything else. In future cases, it is much more likely that a stabilized parent in the jurisdiction of the Psychiatric Security Review Board would be more than happy to enjoy the irony and the windfall of a wrongful death or insurance payment, and do so at the expense of his or her surviving children.

I believe that SB 565 will prevent this problem from happening again and would have no financial or policy-related downside to the people of Oregon. I encourage you to pass SB 565.

Thank you for your ongoing efforts to help children in Oregon. I would especially thank Senator Gelser and Senator Thatcher for sponsoring this bill.

/s  
David L. Kramer  
Attorney