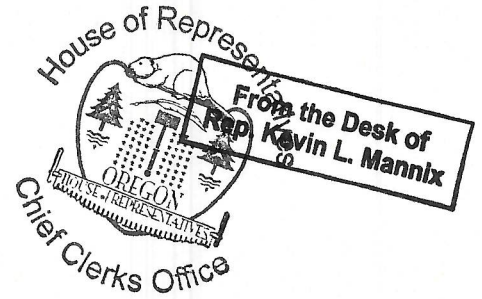


KEVIN L. MANNIX
STATE REPRESENTATIVE
DISTRICT 21



HOUSE OF REPRESENTATIVES



Dear House members,

This letter is about SB586, which is set for third reading today. I have serious concerns about this bill in regard to the protection of crime victims before a trial has been held and a criminal defendant has been held accountable.

Presently, we have a Restorative Justice process which is recognized by law but is only carried out under the auspices of the Oregon Department of Corrections in regard to convicted felons. The Department of Corrections controls this process and there is a provision that allows for confidentiality as to restorative justice sessions, because a criminal defendant may want to acknowledge guilt even if he or she has an appeal pending. The entire process occurs after conviction.

This bill creates a restorative justice process which is available before trial. It allows restorative justice advocates to contact crime victims and to recruit them to participate in the process even though a trial has not yet occurred. The bill then makes it unlawful for any crime victim to communicate with anyone about the contact and the process because all proceedings are confidential.

So, a crime victim cannot contact the Victim's Advocate, law enforcement, or the District Attorney, to discuss the victim's potential recruitment into this process. The victim also cannot complain to anyone about methods of recruitment.

I have attached a memo describing laws which protect victims from unwanted contact by criminal defendants. This bill eliminates these protections.

I am especially sensitive to victims of sex crimes and domestic assault crimes. Such victims are already reluctant to proceed in the criminal justice process as to such crimes. As to domestic violence, it is usually very hard to get victims to be willing to come forward and assist in prosecution. This bill would allow restorative justice advocates to contact domestic violence and sexual assault survivors before trial and try to convince them to meet with the criminal defendant, who most often is a former domestic partner or boyfriend. The victims can be intimidated into dropping charges or reducing charges.

For example, it is unlawful for a person convicted of a Class A misdemeanor involving domestic violence to possess a firearm. I can see restorative justice advocates trying to convince domestic violence victims to have the charges reduced to a Class B or C misdemeanor, based on an argument along these lines: "Gee, we ought to hold so and so accountable, but don't force him to lose his gun rights."

I can also see victims of sex crimes being pressured to reduce the charges to a form of non-sexual assault on the basis that the defendant will otherwise be required to register as a sex offender.

This process is not open justice. It is the opposite: closed justice, which can lock victims into a process where they can say nothing about being pressured. This is because of the confidentiality requirements.

I will not be making a procedural motion on this bill. I simply ask my colleagues on the House floor to deeply consider these issues when you vote yes or no on passage of this bill.

Sincerely,

Representative Kevin L. Mannix
Oregon House District 21



HOUSE OF REPRESENTATIVES

Crime Victims' Rights Related to Unwanted Contact

Oregon has laws that are designed to protect crime victims from being contacted by the defendant or the defendant's representatives before trial.

Under ORS 135.970, a defendant or the defendant's representatives are prohibited from initiating contact with the victim of the alleged crime, or any member of the victim's family, before the trial. The law also prohibits the defendant or the defendant's representatives from causing any third party to contact the victim or the victim's family.

There are some exceptions to this law. For example, the defendant or the defendant's representatives are allowed to contact the victim or the victim's family if they have received prior consent from the victim, or if the contact is initiated by the victim or the victim's family.

This law is intended to protect the privacy and safety of crime victims during the pre-trial period, and to prevent them from being intimidated or harassed by the defendant or the defendant's representatives. Violation of this law can result in criminal charges and civil liability for the defendant or the defendant's representatives.

Under this statute, crime victims “may not be required to be interviewed or deposed by or give discovery to the defendant or the defendant’s attorney unless the victim consents.” ORS 135.970(3). A defense attorney must inform a victim of the identity and capacity of persons contacting the victim on behalf of the defense and the victim’s right to have “a district attorney, assistant attorney general or other attorney or advocate present during any interview or other contact,” ORS 135.970(2). See also ORS 138.625(5), which imposes the same duty to inform in post-conviction proceedings. The statutory right to refuse discovery also applies in juvenile proceedings. ORS 419C.276.

Related to this, when a defendant is released pretrial, the trial court or releasing authority must include a condition that the defendant have no contact with the victim. See ORS 135.970

(4)(a): "Any pretrial release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court having jurisdiction over the criminal charge." In addition, ORS 135.270 provides: "[I]f the defendant is charged with an offense that also constitutes domestic violence, the court shall include as a condition of the release agreement that the defendant not contact the victim of the violence." If a defendant is charged with a sex crime or domestic violence offense, the trial court or release officer or deputy must order that the defendant have no contact with the victim while he is in custody. ORS 135.247.

Sincerely,

A handwritten signature in black ink that reads "Kevin L. Mannix". The signature is written in a cursive style with a large, stylized 'K' and 'M'.

Representative Kevin L. Mannix
Oregon House District 21