



## Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 8, 2013

The Honorable Jeff Barker, Co-Chair  
The Honorable Chris Garrett, Vice-Chair  
The Honorable Wayne Krieger, Vice-Chair  
House Judiciary Committee, Members

**RE: House Bill 3284**

Dear Chair Barker, Vice-Chairs and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in opposition to House Bill 3284.

The foundational principles behind a statute of limitations for crimes are many. Foremost among them is the need to base prosecutions on reasonably fresh evidence so as to lessen the possibility of an erroneous conviction. As noted by the United States Supreme Court in *Toussie v. United States*, 397 US 112 (1970):

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.”

Evidence that either corroborates or refutes an allegation of abuse will inevitably disappear or degrade with the passage of time. Witnesses who either corroborate or refute an allegation may die, move away, or lose memory of key events. Documents that either corroborate or refute a chronology of events - such as cell phone records, credit card receipts, e-mail messages, log notes, journal entries - are discarded, lost or destroyed.

Perceptions and memories of corroborating or refuting witnesses are influenced by subsequent occurring events, hostility, favoritism, suggestion or life experience.

Existing law already extends the statute of limitations for sex crimes against minors until age 30, or within 12 years after the crime if first reported (not necessarily when it occurs). These laws give victims ample time to report these crimes and for police and prosecutors to investigate and prosecute them.

The criminally accused in Oregon face perils unlike those in other states for the reason that Oregon is the only state in the nation that allows a 10-to-2 jury verdict in a criminal case.<sup>1</sup> In addition, the criminally accused in Oregon has decisively fewer discovery rights than is afforded the accused in other states. Defendants are not given transcripts of the witnesses' sworn testimony before the grand jury; they are not afforded a public preliminary hearing; they have no right to compel a state witness to grant them an interview prior to the trial. Often, the defense proceeds to trial with scant more than the limited information contained in police reports. In contrast, the accused in neighboring states have far broader discovery rights than those afforded in Oregon.

If Oregon defendants are forced to defend themselves on allegations that are 30, 40 or 50 years old, then they must have the pretrial discovery rights commensurate with the risk. While the civil discovery rights of compelled pretrial production of documents and sworn pretrial depositions are not, of themselves, a panacea for defending a delayed claim, they are a necessary prerequisite to reducing the risk of an erroneous and unjust conviction.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

*Respectfully submitted,*

Gail L. Meyer, JD  
Legislative Representative  
Oregon Criminal Defense Lawyers Association  
glmlobby@nwlink.com

---

<sup>1</sup> Louisiana allows an 11-1 jury verdict; all other states, federal courts and federal territories require jury unanimity in a criminal case.

A COMPARISON OF CRIMINAL PRETRIAL DISCOVERY RIGHTS  
IN THIRTEEN (13) WESTERN STATES

STATE	GRAND JURY RECORDED?	GRAND JURY TRANSCRIPTS PROVIDED TO DEFENSE?	NEED TO "REVERSE MIRANDIZE" VICTIM?	REQUIRE UNANIMITY OF JURY VERDICT?	DUTY TO DISCLOSE FAVORABLE "BRADY" EVIDENCE CODIFIED?
Alaska	Yes	Yes	Yes	Unanimous	Yes
Arizona	Yes	Yes	Yes	Unanimous	Yes
California	Yes	Yes	No	Unanimous	Yes
Colorado	Yes	Yes	No	Unanimous	Yes
Idaho	Yes	Yes	No	Unanimous	Yes
Hawaii	Yes	Yes	No	Unanimous	Yes
Montana	Yes	Yes	No	Unanimous	Yes
Nevada	Yes	Yes	No	Unanimous	No
New Mexico	Yes	Yes	No	Unanimous	Yes
Oregon	DA Optional	No, except for inconsistent testimony or perjury	Yes	10-2	No
Utah	Yes	Yes	No	Unanimous	Yes
Washington	Yes	For good cause, in furtherance of justice	No	Unanimous	Yes
Wyoming	Yes	By court order in support of Motion to Dismiss	No	Unanimous	No

For questions, contact Gail L. Meyer, Legislative Representative  
Oregon Criminal Defense Lawyers Association  
glmlobby@nwlink.com

	CIVIL			CRIMINAL		
	Plaintiff	Defendant	Net Effect	State	Defendant	Net Effect
Making of claim of sexual abuse	Plaintiff <b>waives</b> all rights of privacy or confidentiality about history of sexual abuse or activity.		Defendant is assured that all documents relevant to the claim of sexual abuse will be disclosed to defendant prior to trial.	Victim in criminal case maintains rights of privacy and confidentiality of other sexual activity, history of therapy, etc.		Defendant has no knowledge what documents may exist relevant to victim's claim.
Access to relevant documents prior to trial		Defendant has right to copies of <b>all</b> records and documents which <b>may</b> contain relevant evidence: i.e., all therapy records, diaries, calendars, etc. Documents are delivered directly to defendant's lawyer prior to deposition.	Defendant does not need to establish that the records contain evidence that will be admissible at trial; only that they may lead to the discovery of potentially relevant evidence. Defendant need not first disclose case theory in order to see records.	State must provide copies of documents which it intends to introduce as evidence as trial. State typically does not seek out <b>all</b> relevant records (such as diaries, etc.), but relies primarily on police reports, state physical evaluations, and crime lab reports.	Defendant may subpoena to the <b>court</b> documents which defendant can establish <b>contain admissible evidence</b> . Court determines what, if any, records defendant can see.	Defendant must first know that documents exist in order to initiate request. Defendant must submit pleading with affidavit disclosing case theory with copy given to the State. Defendant must establish admissibility of evidence in order to receive copy.
Other discovery provisions		Defendant has right to demand that plaintiff admit or deny in writing certain facts.			If defense attorney seeks to interview victim, attorney must deliver Miranda-type warnings that victim may remain silent. [ORS 135.970(2)]	Victim has right to refuse all contact with defendant prior to trial.
Sworn statements prior to trial		Defendant has right to sworn deposition of plaintiff under oath. Plaintiff must answer all questions that potentially may lead to the discovery of other relevant evidence.	Defendant may question victim under oath about entries in all records and documents.	State questions victim under oath at the grand jury. State intentionally chooses to not record grand jury statements.	Defendant does not know what statements victim or other state witnesses make under oath before grand jury.	Defendant has no prior sworn statements under oath of victim prior to trial. In many cases, defendant's only information of victim's statements is contained in police reports.
Trial			Defendant elects whether to settle case or proceed to trial after evaluating all evidence and documents.			Defendant elects whether to accept plea offer, or proceed to trial knowing only what is contained in police reports, or which he has obtained through his own investigation.