



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 14, 2013

The Honorable Floyd Prozanski, Chair
The Honorable Betsy Close, Vice-Chair
Senate Judiciary Committee, Members

RE: House Bill 2962 – testimony in opposition

Dear Chair Prozanski 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 2962.

HB 2962 repeals ORS 135.757, which is the codification of Oregon's speedy trial rule since Oregon was a territory. See *State v. Glushko/Little*, 35 Or 297, 305-06 (2011) (discussing history). In 1864, the provision was adopted into the original Deady Code, which was enacted at statehood. General Laws of Oregon, Crim. Code, ch. XXXI, § 320, p 496 (Deady 1845-1864). [See the accompanying history of ORS 135.747.]

Having a statutory provision that establishes a higher bar for bringing criminal cases to trial than is constitutionally required promotes legitimate institutional interests at the trial court level. It motivates trial courts and prosecutors to diligently pursue, prosecute and adjudicate cases, rather than to tolerate delay born from inactivity or inattentiveness.

House Bill 2962 has proceeded without in-puT from the trial courts, and without analysis of data of its utility at the trial court level. OCDLA submits that a statutory provision that has been with Oregon since statehood ought not to be repealed absent a deeper analysis of its effectiveness and impact on court administration.

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
gimlobby@nwlink.com

ORS 135.747 History

- ORS 135.747, the speedy trial statute, originated in the Oregon Territorial Code. *See State v. Glushko/Little*, 351 Or 297, 305-06 (2011). In 1864, it was adopted into the original Deady Code, enacted at statehood. *Id.*
- Early cases understood the statute as a legislative attempt to preserve the constitutional speedy trial right, and construed the statute identically with the constitutional provision. *State v. Johnson*, 339 Or 69, 78 (2005).
- In 1864, the statute provided: "If a defendant, indicted for a crime, whose trial has not been postponed upon his application or by his consent, be not brought to trial at the next term of court in which the indictment is triable, after it is found, the court must order the indictment to be dismissed, unless good cause to the contrary be shown." General Laws of Oregon, Crim. Code, ch. XXXI, § 320, p 496 (Deady 1845-1864).
- The legislature has only amended the statute three times since, each in a large omnibus bill with little-to-no relevant history specific to ORS 135.747:
 - first, to change "terms of court" to "reasonable period of time," because the courts had stopped sitting in terms;
 - second, to change "indicted for a crime" to "charged with a crime," because the legislature codified other forms of charging instruments;
 - and third, to change "his application" and "his consent" to "the application of the defendant" and "the consent of the defendant," respectively, when the legislature neutralized gender terminology throughout the Oregon Revised Statutes.
- In 1994, the Oregon Supreme Court acknowledged that the speedy trial statutes and constitutional provisions had taken "divergent paths." *State v. Emery*, 318 Or 460, 496 (1994). Most significantly, the court acknowledged that ORS 135.747 did not include a prejudice component, and turned solely on the "length of time that a particular case has been in the system, rather than the effect of the delay on a particular defendant." *Id.* at 467, 470.
- Since 1994, ORS 135.747 has been viewed as a "housecleaning mechanism" that permits dismissal of a case that has been "languishing" in the court system "without prosecutorial action," while at the same time permitting the state to "reprosecute serious charges." *Emery*, 318 Or at 466-67. *See also* ORS 135.753 (permits state to refile A misdemeanor and above).
- The court evaluates any delay that defendant does not expressly request or consent to for "reasonableness." *State v. Glushko/Little*, 351 Or 297, 305-15 (2011). "Reasonableness" involves an evaluation of "all the attendant circumstances." *Id.* at 315-16. The cause of the delay "generally will determine whether the delay is reasonable." *Id.* at 316. Delay by a defendant "entirely in control" of its length, is likely "reasonable." *Id.* at 316-17.
- Limited judicial resources can also justify delay if shown in the record. *Johnson*, 339 Or at 91.
- If the delay is unreasonable under ORS 135.747, ORS 135.750 permits a trial court to continue the case if the state shows a "sufficient reason" not to dismiss the indictment.
- The Court of Appeals holds that a "sufficient reason requires that the delay be attributable to some specific circumstance or policy that outweighs the general determination of unreasonableness under ORS 135.747." *State v. Spicer*, 222 Or App 215, 220 (2008).