



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 18, 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 2314

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 regarding House Bill HB 2314.

1. HB 2314 makes the most substantive changes to the intimidation crimes in ORS 166.155 and ORS 166.165 since their enactment in 1983. OCDLA submits that the changes are ill-advised and unnecessary.
2. Section 1 of HB 2314 removes the element that distinguishes Intimidation in the First Degree, a Class C felony, from Intimidation in the Second Degree, a Class A misdemeanor: i.e., that the more serious crime of Intimidation in the First Degree be committed with “two or more person acting together.” Removing this distinguishing element means that conduct which would otherwise be a misdemeanor Assault in the Fourth Degree or a Menacing is elevated to Class C felony status solely because of the person’s perception of the victim’s status, and not because the person acted in concert with another.
3. Throughout our criminal code, assaultive conduct committed in concert with others is recognized as posing a threat distinct from and greater than the harm caused by the assault alone. Examples include assault which is elevated to Assault in the Third Degree if the defendant is “aided by another person actually present,” [ORS 163.165(1)(e)] and robbery which is elevated to Robbery in the Second Degree if the person is “aided by another person actually present.” [ORS 164.405(1)(b)]

4. The crime classification levels of the Intimidation crimes sections are carefully calibrated to parallel the conduct at issue in the assault crimes sections. OCDLA urges caution in upsetting that calibration and balance.

5. Section 2 of HB 2314 makes two changes to the crime of Intimidation in the Second Degree. First, it expands the tampering with property provision in sub-section (1) (a) to include “substantial inconvenience to . . . a community of persons.” OCDLA is concerned that this phrase is so vague that it will engender confusion among prosecutors, juries and courts as to what constitutes a “community,” which community is the “right” community given the character traits of the victim or the conduct of the accused, and whether the community’s “inconvenience” was “substantial” enough to support a conviction.

6. Secondly, Section 2 removes Menacing, a Class B misdemeanor [ORS 163.190] from the crime of Intimidation in the Second Degree. The conduct of Menacing is now captured in Section 1, irrespective whether the offender operates in concert with another person or acts alone.

7. Section 3 of HB 2314 forbids a victim of an intimidation crime from choosing to civilly compromise the charge. Current law affords victims the right and dignity of choosing whether they would like to civilly settle (“compromise”) certain crimes outside the formal criminal process. This power allows for meaningful dialogue, education and creativity that are not otherwise allowed under criminal procedures. The Committee will hear telephonic testimony from attorney Katharine English, an attorney with a long history of structuring civil compromise agreements that resulted in actual change in the intimidator’s heart and mind.

8. Section 4 of HB 2314 eliminates the opportunity to set aside a conviction of intimidation. For the past 18 months, OCDLA has been involved in a work-group comprised of district attorney representatives from Clatsop, Multnomah and Clackamas counties in negotiating a complete over-haul of ORS 137.225 (the “expungement” statute). What crimes are eligible to be set aside, which are not, and under what conditions has been the subject of delicate and detailed negotiations. OCDLA does not wish to see free-standing bills such as HB 2314 upset those negotiations.

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@nwlinc.com