



Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 28, 2013

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

RE: House Bill 2962-A – 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-A.

Oregon's statutory speedy trial provisions are not unique, ill-considered, or unduly generous.

Oregon's statutory speedy trial provisions in ORS 135.745 *et seq.*, have been existent since Oregon was a territory. Rather than being unique or ill-considered, they are consistent with best-practice management recognized throughout the nation. The American Bar Association, the federal courts, and almost all state courts have statutory speedy trial rules, including the remedy of dismissal without prejudice.

OCDLA submits that the Legislature should first insist upon a comprehensive review of best-practice management in implementing speedy trial provisions before enacting any adjustments to ORS 135.745 *et seq.* This review should include an evaluation of how Oregon's current speedy trial provisions are implemented in Oregon's 27 judicial districts, as well as what best-practices promote the best outcomes.

ABA Standards for Speedy Trial and Timely Resolution of Criminal Cases.

The American Bar Association's Standards for Speedy Trial and Timely Resolution of Criminal Cases, established in August 2004, recommend that state courts operate under speedy trial provisions, either established by rule or by statute. The ABA recommends that these provisions:

- (1) Set specific limits on the time within which either the defendant must be brought to trial or the case must be resolved through a non-trial disposition;
- (2) Provide guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and

- (3) Establish appropriate consequences in the event that the accused's right to a speedy trial is denied.¹

The ABA recommends that the statutes differentiate between serious and complex cases, and cases where the defendant is in detention or on pretrial release. [ABA Standard 12-1.3] There should be codification for instances of excludable delay, such as determination of the defendant's mental competency, when the defendant is detained in another state and is physically unavailable, consent of the defendant, the defendant's failure to appear, the filing of pretrial motions, and interlocutory appeal. [ABA Standard 12-2.3] Additionally, the court may consider "other reasonable periods of time when circumstances warrant exclusion of the time upon good cause shown or upon a determination by the court that the interests of justice" outweigh the defendant's right to have the trial held within the originally prescribed time limit. [ABA Standard 12-2.3 (a)(vi)]

On the issue of resource allocation, the ABA Standard 12-1.4 (b) provides that:

- (b) Jurisdictions should provide adequate resources to the institutions and agencies involved in criminal justice processes, in order to enable the purposes of these standards to be achieved.

With respect to remedy for violation of the speedy time limits, the ABA recommends a hybrid approach: the court should ordinarily dismiss the charges with prejudice, but one final continuance of 30 days (or maximum of 75 days) may be allowed. ABA Standard 12-2.7 provides:

Standard 12-2.7(b) If a defendant who is on pretrial release is not brought to trial or the case is not otherwise resolved before the expiration of the time allowed under the speedy trial rule or states, as extended by periods excluded in accordance with Standard 12-2.3 or extended by the court pursuant to Standard 12-2.1 (d), the court should ordinarily dismiss the charges with prejudice, provided, however, that:

(i) after affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit for a period not to exceed [30] days beyond the date on which the expiration of time is determined by the court, unless the defendant requests a longer period not to exceed [75] days.

(ii) In determining whether and for what period to order such an extension, the court should consider the totality of the circumstances, including:

- (A) the gravity of the offense;
- (B) the reasons for the failure to bring the defendant to trial within the previously-established time limit;
- (C) the extent to which the prosecution or the defense is responsible for the delay; and
- (D) the extent of the prejudice to the interests of the defense, the prosecution, or the public that may result from the extension of time or the dismissal of the charges.

(iii) If the court sets an extended period of time pursuant to this paragraph but the trial does not commence within the extended period, the charges should be dismissed with prejudice.

¹ ABA Standard for Speedy Trial and Timely Resolution of Criminal Cases, Standard 12-1.2(a).

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The Federal Speedy Trial Act of 1974. Federal courts also operate under statutory speedy trial provisions set forth in The Speedy Trial Act of 1972, 18 U.S.C. §§ 3161-3174. As recommended by the ABA Standards, the Act establishes time limits for completing various stages of a federal criminal prosecution, with exceptions for unusual or complex cases. Periods of excludable delay are expressly set forth by statute, along the lines similar to those recommended by ABA Standards. Specifically with respect to resource limitations, 18 U.S.C. § 3161 (7) (C) provides:

(C) No continuance under sub-paragraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

In determining sanctions for violation of statutory speedy trial provisions, 18 U.S.C. §3162 (a)(2) provides:

(2) In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

The National Center for State Courts. The National Center for State Courts (NCSC) has the means through the Institute for Court Management to analyze a jurisdiction's resource management in effectuating speedy disposition of criminal cases. Their website is replete with studies conducted in jurisdictions throughout the United States, with suggestions for system changes to improve outcomes.

To date, HB 2962-A has been the subject of one work-group meeting at which there was scant feedback from the 27 judicial districts in Oregon, very little attention given to the ABA Standards, and no consideration given to the codification of speedy trial provisions in other states. OCDLA submits there is much work to be done before the Legislature can know whether adjustments to ORS 135.745 *et seq.* are necessary, and if so, which adjustments will promote the best outcomes.

OCDLA submits that the Legislature should insist upon a more thorough analysis of best-management practices in implementing speedy trial rights before making any adjustments to ORS 135.745 *et seq.* OCDLA offers its support and assistance in any way desired by this Legislative body.

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