



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 5, 2014

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

RE: Senate Bill 1517

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 Senate Bill 1517.

1. The issue of whether, when, how and why a sex offender should receive a life sentence in prison has been the subject of much legal, medical and policy debate. Suffice to say, there is consensus that if ever and how a determination of a life sentence should be made, it cannot be done on the fly, or on the cheap.

2. Senate Bill 1517 espouses using the results of a risk assessment instrument as the primary evidence upon which a jury would make a determination of future dangerousness that would mandate a life sentence. Presumably, this risk assessment tool would be the Static-99R, as that is the tool which is likely to be used by the Department of Corrections pursuant to ORS 181.800. The limitations of using any risk-assessment instrument to predict future dangerousness are well documented. They include:

(a) A risk assessment tool such as the Static-99R is an actuarial instrument only; meaning, it identifies a statistical range of likelihood of re-offense based on a set of actuarial predictors. It does not *individualize* its findings, just as an insurance determination of risk doesn't individualize whether a particular 19 year old male is a safe or reckless driver. Hence, if an individualized determination of future dangerousness is sought, as OCDLA submits by right it should be, a risk assessment instrument is not the appropriate basis to make the determination.

(b) In particular to the Static-99, it is validated only for adult male offenders who are at least 18 years of age at the time of their release to the community. It is to be used for the purpose of determining the appropriate level of supervision once an offender is released into the community. It is not designed to predict future dangerousness as an offender is entering prison for a 100 or 300 month sentence.

(c) In particular to the Static-99, it is not validated for women offenders of any age.

3. The procedures set forth in SB 1517 are far more truncated than those employed in existing ORS 161.725, which establishes a procedure by which an offender may be sentenced to an indeterminate sentence of 30 years.

(a) Existing ORS 161.725 requires that the offender either have a severe personality disorder, or have been previously convicted of a felony not related to the instant crime. SB 1517 requires no severe personality disorder and may apply to a first-time offender.

(b) Existing ORS 161.725 requires an *individualized* determination of dangerousness upon examination by a court-ordered psychiatrist or psychologist. As discussed, SB 1517 dispenses with this requirement and allows the use of an actuarial statistical tool.

(c) Existing ORS 161.725 affords the court discretion whether to sentence the defendant to 30 years as a dangerous offender. SB 1517 mandates that a life sentence be imposed upon the jury's finding of dangerousness.

4. The discussion of a reasoned approach, grounded in good science and policy, of how to prevent, apprehend and treat sex offenders is a very meritorious discussion to undertake. OCDLA encourages this Committee to engage in that discussion and to invite to the discussion experts in the field of curtailing sexual re-offense.

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