

Feb. 11, 2014

Oregon
Voices



To: House Judiciary Committee
Representative Jeff Barker, Chair
Representative Brent Barton, Vice-Chair
Representative Wayne Kreiger, Vice-Chair
Representative Kevin Cameron
Representative Wally Hicks
Representative Ann Lininger
Representative Andy Olsen
Representative Carolyn Tomei
Representative Jennifer Williamson

Testimony on HB 4006

Chair Barker, Vice-Chairs Barton and Kreiger, members of the committee

My name is Ken Nolley. I am a university professor who lives in south Salem and I am speaking for Oregon Voices, a group of families who do research on sex offender laws that have impacted family members. I am appreciative of the opportunity to speak with you again, and I am particularly appreciative of the leadership role that members of this committee played last session in the passage of HB 2549. Even though we think there is much more to be done on sex offender issues, we believe that bill represents an important step toward evidence-based practices in a deeply polarized and polarizing area.

I am writing about HB 4006. As families, we share the concerns of the society to keep everyone safe from sexual violation and violence, and we believe that society should place its attention on populations that pose the greatest risk. But we also know that all but a very small percentage, something like 4 to 5% of all new sex crimes, are committed by someone who has never been arrested for a sex crime before. The statistics show overwhelmingly that few former offenders will ever re-offend.

Still, we recognize that some offenders pose a higher risk than others; that is why HB 2549 develops three tiers of offenders based on risk. On first reading HB 4006, one might imagine that it would be applied, as they say, to “the worst of the worst.” But we have very serious doubts about that drawn from the experiences of people we know or have met.

My wife and I are personally acquainted with a family that went through the wrenching experience of a husband and father being arrested for a sexual relationship with an underage girl. It was not the first time. But in this particular case, the man in question was experienced enough to find a good attorney, and he was able to keep charges confined to a single relationship. He got a relatively light sentence. It seems likely to us that this bill grows out of indignation and frustration with cases like this—indignation and frustration that we share. But our experiences and those of others demonstrate that teenagers who have been engaged in ongoing sexual relationships are often treated much differently.

To that end, we are deeply disturbed by the bill's breadth of phrasing, both with regard to different victims and especially to multiple offenses. It has become common practice to file multiple charges for a single arrest. We know of many times when a young person was prosecuted under Measure 11 on the basis of a single arrest, often because there was an ongoing active sexual relationship between two young people, one of whom was several years younger and under 18. If the discovery process reveals that the couple had sex on multiple occasions, multiple charges may be and often have been filed as separate criminal episodes. If the couple had sex in different places that fell under different municipal or county jurisdictions, this is particularly likely.

Such offenses do not even have to involve physical sexual contact. I recall especially a hearing several years ago when members of this committee were discussing the implications of Measure 73. It was suggested during that meeting that if a teenage girl sent nude pictures of herself to her boyfriend on three separate occasions, she could be subject under Measure 73 to a 25 year mandatory sentence. It was said at the time that the district attorneys had given assurances that the measure would not be used that way. Only a few months later, the *Oregonian* covered a story in which exactly such charges were brought.

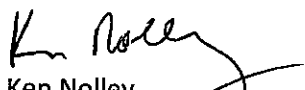
We also know, through the experiences of multiple families, that in the overheated social atmosphere of high school, some girls now realize that they can band together, make charges, and "get" a male classmate they dislike. Indeed, we know of at least one instance when they even bragged about doing so on the internet. Were HB 4006 to pass, our experience suggests that on at least some occasions the "multiple victims" might actually be multiple offenders and the accused high school classmate the real victim. In the current social panic about sex offenders, it is often impossible for an accused student to get a hearing, particularly when faced with the united front of two or three accusers.

Oregon Voices believes that true serial predatory offenders are a serious problem, though the evidence also suggests that the numbers of that kind of offender are very small. This bill weaves a very broad net that experience tells us will scoop up significant numbers of young people for 25 years, even as some serial adult offenders evade it. We are here to say that HB 4006 will indeed be used to label many normal young people as serial and predatory offenders, putting them away for the bulk of their adult lives. Some may well be guilty of irresponsible adolescent behavior that is not predictive of the lives they will lead as they mature. A few of them will even be innocent of the charges made against them.

The impulse that led to HB 2549 grew out of a collective recognition that we are spending vast amounts of our resources to monitor a burgeoning population of sex offenders, the majority of whom pose no more danger to society than other citizens. By creating an approach to the registry which allows for relief from registration for such persons, HB 2549 created distinctions that may allow society to focus its resources on persons whom the evidence suggests pose real dangers. But HB 4006, if adopted, would perpetuate some of the most damaging effects that current practice has on the lives of Oregon families and young people.

I am including a brief attachment below as context for this issue.

Respectfully,


Ken Nolley
President, Oregon Voices

from Oregon Department of Corrections Inmate Population Profile
02/01/2014

1	Current inmate population total	14,684
2	Current male inmate population	13,370
3	Inmates serving time for rape/sodomy/sex abuse	3,786
4	Inmates from line 3 as percentage of population total	@26%

Since the sex offenders are overwhelmingly male, the likelihood is that at least 28% of male inmates in currently in Oregon prisons are serving time for sex offenses. But it is interesting to think about these high numbers in comparison to the following estimates on risk given to the work group on HB2549.

As the group was attempting to get a handle on the relative levels of risk of re-offending posed by the state’s sex offender population, it received from the Department of Corrections the following figures for Oregon offenders already processed through the Static-99—the actuarial instrument being used to assign offenders to tiers under HB 2549.

Tier 1 would embrace Static scores through 3.
 Tier 2 would include Static scores of 4 and 5.
 Tier 3 would be for Static scores of 6 or higher.

Static 99	Count	Percent
Total		
0	1959	12.6821
1	2784	18.0229
2	3403	22.0302
3	3458	22.3862
4	1878	12.1577
5	1006	6.5126
6	482	3.1203
7	266	1.722
8	151	0.9775
9	50	0.3237
10	10	0.0647

- By the standards of these figures, we might anticipate that 75% of all offenders will represent low risk of re-offense.
- Only 6% of offenders are anticipated to represent high risk of re-offense.
- The Static-99’s scoring for young men over 18 and for a single consensual sexual relationship involving a teenager normally results in a score below 4. Although the Static is not normed for offenders under 18, it is reasonable to assume that the risk would not be significantly different for young men from 15 to 18.. We believe that all these are people that HB 4006 is likely to scoop up.