



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: February 24, 2014

TO: Honorable Jeff Barker, Chair
Senate Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 1550-8

RECOMMENDED ACTION

This testimony is presented in support of SB 1550-8. We recommend that the Committee approve SB 1550-8 with a do pass recommendation.

BACKGROUND ON STATUTORY SPEEDY TRIAL

- Currently, ORS 135.747 requires a trial court to dismiss an accusatory instrument if the defendant is “not brought to trial within a reasonable period of time” unless the defendant consented to or requested the delay. The speedy trial statute is a “housecleaning” mechanism for trial court dockets and is meant to clear out cases that are “languishing in the criminal justice system.” *State v. Johnson*, 342 Or 596, 617, 157 P3d 198 (2007), *cert den*, 552 US 1113 (2008). This analysis can result in dismissals in as little as a year.
- The speedy trial statute was not intended to vest a criminal defendant with any additional *rights* to a speedy trial; however, many defendants do receive windfalls when their cases are dismissed under this statute and the state is not able to file new charges because the statute of limitations has passed.
- Defendants do have *constitutional rights* to a speedy trial under the Sixth Amendment to the United States Constitution and under Article I, section 10, of the Oregon Constitution.
 - Whether a defendant’s constitutional rights to a speedy trial have been violated involves looking at: (1) the length of the delay; (2) the reasons for the delay; and (3) whether the defendant is prejudiced by the delay (and, under the Sixth Amendment, whether the defendant requested a speedy trial).

FEATURES OF SB 1550-8

- Replaces “reasonability” analysis with bright-line rules. Cases must be brought to trial within two years for any misdemeanor from the date of filing of a charging instrument, three years for any felony.

- Excludes all delays caused by the defendant and provides specific statutory language for the periods to be excluded. Any time caused by the defendant is not counted against the two or three year time period. Exclusions include those caused by a failure to appear, a period of time in which the defendant's location is known but they cannot be secured for trial, or a period of time in which the defendant's location cannot be ascertained even with due diligence, and others. The trial court may also consider "substantial and compelling" reasons to allow the case to be continued beyond the allocated time period.
- Upon a violation of this section, a dismissal shall be made without prejudice. If a charge remains within its statute of limitations, a prosecutor is free to reissue charges. This accommodates special felonies with lengthy statutes of limitation – particularly sex crimes and murder.

PROBLEMS ADDRESSED BY SB 1550-8

- **Pre-arraignment delay.** Statutory speedy trial cases are a particular burden for smaller counties with a shortage of on-the-ground law enforcement personnel. Often, a defendant is indicted and the warrant for their arrest languishes in the system because of insufficient resources to serve it. SB 1550-8 dramatically increases the amount of time available to law enforcement to serve a warrant, as well as more directly recognizing that circumstances created by a defendant's attempts to avoid law enforcement should not be counted against the state. Most cases involving prearraignment delay are not of such gravity that they defeat the two or three year limitation period.
- **Judicial delay.** In a small number of counties, the judicial system is not large enough to accommodate swollen dockets. This shortage of judges gives rise to judicially driven delay, in which the state, defendant and victim all appear on a scheduled trial date only to learn that there are no judges available to hear the matter. This has led to the dismissal or challenge of charges even in the absence of significant delay by the prosecution. Our research suggests that these delays are not of such gravity that they defeat the two or three year limitation period.
- **Lack of certainty.** In 2012-2013, the Appellate Division of the Department of Justice filed over 20 briefs addressing, in some way, the applicability of ORS 135.747 and the Court of Appeals issued 17 opinions addressing this topic. Most single-issue statutory speedy trial cases on appeal take the Appellate Division 12-20 hours to brief, equaling 240-400 hours per year that DOJ devotes to briefing statutory speedy trial issues. Presumably, the defense bar devotes similar resources. Much of this litigation turns around the definition of a "reasonable" period of delay. Oregon is alone among the 50 states in declining to recommend a specific period for the adjudication of a crime. This creates an unusually high level of litigation within both our trial and appellate courts. While the exact numbers are impossible to determine, it is fair to assume that these expenses will drop as the highly uncertain concept of "reasonable delay" is replaced by a concrete set of governing rules and statutory guidance.

DOJ CONTACT

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