Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 24, 2014

The Honorable Jeff Barker, Chair
The Honorable Brent Barton, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: SB 1550-A ~ A10 Amendment

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 in opposition to the Dash A10 Amendment to SB 1550-A.

The A10 Amendment makes a significant carve-out to 2013 HB 2549 by expanding the list of crimes for which relief from the sex offender registry will never be allowed. OCDLA urges the Committee to vote "no" on the A10 Amendment.

1. 2013 HB 2549 was the result of an 18-month work-group comprised of all stakeholders in the public safety system: Community Corrections Directors, members of SOSN (Sex Offender Supervision Network); experts in the field of sex offender risk assessment; law enforcement; Oregon State Police; district attorneys, criminal defense attorneys, the Judicial Department; the Board of Parole and Post-Prison Supervision, and the Department of Corrections.

2. Members of the HB 2549 work-group were unanimous in one conclusion: Oregon's presumptive life-time one-size-fits-all sex offender registry is neither justifiable nor workable. Very few states require life-time registration for all sex offenses. The members of SOSN recommended that Oregon embrace the evidence-based best practice of tiering its registry according to level of risk of re-offense, and allow the lowest risk offender an opportunity to petition for relief from registration under certain circumstances after the passage of a certain amount of time. To allow the registry to grow incrementally every year, with little-to-no safety valve, will render the registry bloated, inefficient, and

unsuited for its primary purpose, which is to assist law enforcement in the apprehension and prevention of future offenses.

3. In coming to agreement on HB 2549, the District Attorneys Association insisted that five crimes ("the Big Five") be carved-out from eligibility to petition for relief. Those crimes are: Rape I, Sodomy I, Unlawful Sexual Penetration I, Kidnapping I, and Burglary I (with sexual intent). The proponent of the Dash A10 amendment would expand this list by including the lesser-included crimes of "attempt" for Rape I, Sodomy I, Unlawful Sexual Penetration I, as well as the completed crime of Sexual Abuse I.

4. Most generally, convictions for "attempt" are the result of plea negotiation from allegations of a first-degree sex crime. Those offers are not obtained for the mere asking. Two things are generally required in order to get a reduced offer to an "attempt":

- The defendant must have undergone a full psycho-sexual evaluation which shows the defendant to be a low-risk offender with no indicators of violence or pedophilia. Usually a defendant must also pass a full-disclosure polygraph which indicates there were no other victims of abuse other than those currently known to authorities.

- The strength of the State's case has been weakened as a result of information obtained by the defense during the course of its investigation and case preparation.

5. Convictions for Sexual Abuse I are of a different nature. These are generally not derived from plea negotiations, but rather represent the actual conduct alleged in the indictment. Sex Abuse I can be completed upon the mere touching of a "sexual or other intimate part" for the purpose of arousing or gratifying the sexual desire of either party. Prosecutions have ensued for the simple, non-forcible touching of the upper thigh; the lower part of a woman's back; the nibbling of an ear; rubbing the bare stomach of a toddler; kissing another person on the lips.

6. Sexual Abuse I is the primary charge that scoops up minors into the vice of Measure 11. If a 15 year old touches an 11 year old in a sexual or intimate body part for sexual gratification or arousal, the 15 year old is subject to a mandatory minimum sentence of 70 months in prison. With the intervention of treatment, that 15 year very often poses a very low risk of re-offense.

7. Sexual Abuse I is also the crime most subject to prosecution for delayed-report of conduct occurring when both minors were very young. If an 11 year old sexually touches a 9 year old, but the 9 year old delays reporting the incident for 15 years, the now-26 year old (former 11 year old) is subject to prosecution for Sexual Abuse I. That now-26 year old could have a proven history of no re-offense, and be a very low risk to recidivate.

8. Additionally, a number of statutory anomalies result from disallowing convictions for Sexual Abuse I from relief from the registry. The completed act of sexual intercourse with a child under the age of 14 years is Rape in the Second Degree. This

crime of Rape II would continue to be eligible to petition for relief, whereas the mere touching of the same child, if alleged as Sexual Abuse I, would not be.

9. It is important to recount the steps that must be undertaken in HB 2549 in order to secure relief from registration. Merely being eligible to petition for relief does not guarantee the outcome of relief. The following steps must be undertaken:

- As previously mentioned, in order to obtain a plea offer to an "attempt," in most instances the defendant must first offer a full disclosure polygraph and a "clean" psycho-sexual evaluation evidencing that the defendant is non-violent and non-predatory.
- As previously mentioned, if convicted of Sexual Abuse I, the conduct itself ("touching") is usually non-forcible and non-invasive.
- The defendant must have successfully completed his sentence and post-prison supervision without revocation. The term of post-prison supervision requires completion of sex offender specific treatment.
- For five years after the completion of the supervision period, the defendant must have remained in the community conviction-free of a person felony or Class A misdemeanor.
- The defendant must be assessed as a Level I offender, posing a low risk of re-offense.
- The Board of Parole and Post-Prison Supervision must determine at a hearing, where the State is represented by counsel and the victim is present, that relief is warranted.

10. In short, many offenders convicted of "attempted" sex crimes, or of Sexual Abuse I, truly are offenders that pose a very low risk of re-offense. There is no justifiable reason, consistent with public safety, to forever exclude them from eligibility to petition for relief from registering.

11. OCDLA urges the Committee to reject the Dash A10 Amendment, and to approve SB 1550-A in unamended form.

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