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 and Dash A13 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 support of Senate Bill 1550-A. OCDLA is opposed to the Dash 13 amendment.

SB 1550-A is the consensus product of a seven-month work-group.

As this Committee is aware, 2013 HB 2962 repeals ORS 135.747, which is Oregon's existing statutory speedy trial provision, effective April 1 2014. The purpose of the April1 repeal date was to provide time for stakeholders to come together and work in codifying a new framework for a statutory speedy trial right in Oregon. The Department of Justice (DOJ) and Oregon Criminal Defense Lawyers Association (OCDLA) worked collaboratively and separately from July 2013 through January 2014 analyzing:

- Statutory laws on speedy trial in the 49 states and the federal system;
- Appellate case law interpreting the statutes in several key states;
- Data from Oregon Judicial Department on the time-to-trial in the 36 counties;
- Data from Criminal Justice Commission on the number of outstanding warrants in the 36 counties;
- Feedback from DAs, defense lawyers, judges and sheriffs around the state.

In undertaking this work, DOJ and OCDLA discovered one salient truth: the issue of "speedy trial," such as it is, looks different in each of the 36 counties. Some counties

experience constraint in pre-arraignment delay; other counties experience constraint in post-arraignment judicial delay; many counties reported no "problem" at all.

Members of the Oregon District Attorneys Association (ODAA) attended the work-group on occasion, and were kept informed of its discussions and progress. In the main, however, ODAA chose not to participate. At no time did it submit a proposal of a statutory framework that it would support.

A statute is necessary to protect the public's right to speedy disposition of criminal cases

Having a statutory speedy trial provision is important because it protects societal and institutional interests beyond those recognized in constitutional guarantees. Constitutional guarantees recognized in the federal and state constitutions are personal to the accused. A statutory right, by contrast, protects the rights of the *public,* including victims and witnesses, to the prompt adjudication of criminal charges, and helps assure that the judicial system will make wise use of its limited resources by ferreting out stale allegations. [ABA Standard on Speedy Trial, Standard 12-1.2]

The American Bar Association (ABA) recommends that every state enact a statute protecting speedy trial rights. Forty-eight (48) states have such a statute, including Oregon. Oregon's current statute, ORS 135.747, has its roots in laws enacted prior to statehood.

SB 1550-A adopts a framework recommended by the ABA and used in federal and most state courts

In studying the statutes of the other 49 states, DOJ and OCDLA observed that most states, including the federal government, use a framework that is recommended by the ABA. SB 1550-A mirrors that framework, and establishes the following:

- **A bright-line timeframe to bring a case to trial**: two years for a misdemeanor, and three years for a felony. This is a much clearer standard than the current requirement in ORS 135.747 that the State bring the accused to trial "within a reasonable time."

- **Exclusions from the timeframe for any delays caused by the accused**, such as: proceedings relating to mental incompetency, if the accused requests a delay or continuance to prepare his case, if the accused fails to appear at a court proceeding, or is avoiding apprehension or prosecution.

- **Exclusions from the timeframe if the State needs to undertake an appeal** based on pretrial rulings of evidence, etc.

- **A remedy of "dismissal without prejudice"** that allows the State to refile charges if there is an extended statute of limitations period for the underlying charges, as there are in sex crime prosecutions and prosecutions for elder abuse.

- **A remedy that allows a court to continue a case beyond the presumptive timeframe** if the court finds "substantial and compelling reasons" to continue the action.

The Dash 13 amendment distorts the careful balance of interests achieved in SB 1550-A

As previously mentioned, the District Attorneys were invited - indeed, expressly asked - to participate in the work-group with DOJ and OCDLA but, in the main, chose to sit it out. Now, in the second chamber of this short session, the District Attorneys proffer the Dash 13 amendment which substantially distorts the careful balance of interests negotiated between DOJ and OCDLA.

In particular, the Dash 13 amendment:

- Imports the entirety of the statute of limitation period for all crimes as the timeframe for bringing a case to trial. This importation substantially alters the two- and three-year timeframe agreed to between DOJ and OCDLA. The statute of limitations period for homicides is the lifetime of the accused; the statute of limitations period for some sex crimes is as long as twelve (12) years from the date of initial disclosure. [See ORS 131.125 (1) - (2)] To import a timeframe of life, or twelve years as the bench mark for bringing a case to trial makes a mockery of any notion of "speedy" justice.

Moreover, it is unnecessary to import these extended timeframes because the State will have the opportunity to refile criminal charges if there is an extended statute of limitation period for the underlying crime.

- Establishes a complete forfeiture of the statutory protections altogether if the defendant fails to appear at any court proceeding along the way. This provision would be unlike that in any other state. Almost all states provide that delay caused by the defendant's failure to appear tolls the running of the statute, but it does not cause a forfeiture of the statute. Again, a statute protects the *public's* right to speedy disposition of criminal charges, and does not belong personally to the accused. SB 1550-A recognizes this reality, and strikes a balance: it tolls the running of the time to trial in the event the defendant causes a delay by failing to appear at a proceeding other than trial. In the event the defendant fails to appear at a date set for trial, only then is there a complete forfeiture of the statute.

- Substantially weakens the State's obligation to employ diligence in apprehending the accused who has an outstanding grand jury warrant. SB 1550-A tolls the timeframe when the defendant's location is unknown and it cannot be determined

with the exercise of due diligence. The Dash 13 amendment would weaken this standard to "reasonable effort."

- The Dash 13 Amendment requires a court to consider the "interests and statutory and constitutional rights of the victim" in determining whether to continue an action beyond the two- and three-year timeframe. DOJ and OCDLA intentionally chose to not codify any factor a court "must" consider, on the anticipation that the court would wisely consider any and all relevant factors, including the impact of a continuance or dismissal on the victim.

In short, the Dash 13 Amendment unnecessarily yet substantially distorts the careful balance of interests achieved in SB 1550-A. OCDLA respectfully urges this Committee to honor and respect the work undertaken by DOJ and OCDLA, and to pass out SB 1550-A without amendment.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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