



Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 1, 2015

The Honorable Jeff Barker, Chair
House Judiciary Committee, Members

RE: House Bill 2317

Dear Chair Barker 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 House Bill 2317.

The time-honored importance of a statute of limitations

1. It is believed that the need for a limitation period on criminal prosecutions was first recognized by classical Athens, which established a five-year limitation on all crimes except murder. The foundational principles behind a statute of limitations for crimes are many. Foremost among them is the desirability of requiring that prosecutions be based upon reasonably fresh evidence so as to lessen the possibility of an erroneous conviction. The prosecution should be commenced with “sufficient promptness to allow [the accused] to prepare his defense before evidence of his innocence becomes weakened with age.” ALI Model Penal Code.

2. As noted by the United States Supreme Court in *Toussie v. United States*, 397 US 112 (1970):

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature had decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.”

Oregon is different: fewer due process guarantees

3. Comparing Oregon's six year statute of limitations to other states is not an appropriate comparison for several reasons:

(a) Oregon tolerates a non-unanimous jury verdict

"Proof beyond a reasonable doubt" means something different in Oregon than it does in the rest of the nation. Oregon allows a felony conviction on a 10 – 2 jury verdict; all other states except Louisiana and the federal system require unanimity. The difference is critical. Studies show that non-unanimous jury dynamics serve to marginalize the minority voice, whether it be race, social status, sexual preference or political ideology.

(b) Oregon affords the accused fewer rights of pretrial discovery

The criminally accused in Oregon has fewer rights of pretrial discovery than almost any other state in the nation. The defense has no opportunity to compel the complaining witness to grant an interview prior to trial; doing so is barred by Article I Section 42 (1)(c). In fact, in many counties, the defense attorney is ordered to not even attempt contact with the complainant to request a cooperative interview. Sworn testimony given before the grand jury is not recorded; the defense has no ability to learn what the complainant has said under oath. The defense is frequently left with the statements contained in police reports, and nothing more.

In contrast, the four continuous boundary states of Oregon afford the defense much greater discovery opportunities to prepare and investigate their case:

Washington: Under Wash CrR 4.6(a), either party may petition the court for a motion to depose a witness, including the complainant, if they otherwise are uncooperative in giving an interview to opposing counsel prior to trial.

California: Under CA Penal Code § 859(b), a preliminary hearing is held in open court within ten (10) days of arraignment, where the complainant testifies under oath, subject to cross-examination by defense counsel.

Idaho: Under I.C.R. 6.3(a) and (c), grand jury proceedings are recorded verbatim and the defense is entitled to a copy after arraignment.

Nevada: Under N.R.S. 172.215 and 172.225, grand jury proceedings are recorded verbatim and the defense is entitled to a copy after arraignment.

4. Evidence inevitably disappears or degrades with the passage of time. Witnesses who either corroborate or refute the allegation may die, move away, or lose memory of key events. Documents that can refute or support a chronology of events - such as cell phone records, credit card receipts, e-mail messages, log notes, journal entries - are discarded,

lost or destroyed. Perceptions and memories are influenced by subsequent occurring events, hostility, favoritism, suggestion or life experience.

5. Existing law already extends the statute of limitations for sex crimes against minors until age 30, or within 12 years after the crime if first reported (not necessarily when it occurs).

6. By eliminating the statute of limitations for sex crimes altogether, House Bill 2317 would expose a defendant to greater liability under criminal law than under civil law. Oregon law limits a civil claim for "child abuse" to when the child reaches the age of 40, or 5 years from the date the plaintiff discovers the causal relationship between the child abuse and the plaintiff's injuries. Normally, the reverse is true: in recognizing the difference between the loss of personal money versus the loss of personal liberty, the law usually subjects a person to greater civil liability than criminal liability.

7. If Oregon defendants are forced to defend themselves on allegations that are 15, 25, or 40 years old, then they must have the rights of discovery commensurate with the risk. Only civil discovery rights such as the right to take sworn depositions and issue subpoenas for the production of records are suitable to redress the risk of an erroneous and unjust conviction.

8. OCDLA submits that the best public policy is that which encourages and supports the prompt reporting of sexual abuse allegations, whether crimes against minors or against adults. Policies that support prompt reporting serve the interests of all: the complainant, the police, prosecutors, the accused, courts, juries, and the greater public. Countenance of delaying for years, after evidence has inevitably eroded and disappeared, prevents society from having confidence in a just outcome in a court of law.

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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