

House Committee On Judiciary

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 04/21/15

Action: Do Pass As Amended And Be Printed Engrossed.

Meeting Dates: 04/15, 04/21

Vote:

Yeas: 9 - Barker, Barton, Greenlick, Krieger, Lininger, Olson, Post, Sprenger, Williamson

Prepared By: Jeff Rhoades, Counsel

WHAT THE MEASURE DOES:

Directs Oregon Law Commission to conduct study and make recommendations for changes to law relating to hearsay in criminal actions involving sex trafficking. Directs Commission to make recommendations to interim committee of Legislative Assembly related to judiciary no later than December 31, 2015.

ISSUES DISCUSSED:

- The history of hearsay law
- Problems in prosecuting sex trafficking cases
- The application of the confrontation clause
- Interplay between the confrontation clause and the rule against hearsay

EFFECT OF COMMITTEE AMENDMENT:

Replaces measure.

BACKGROUND:

ORS 40.460 sets out the exceptions to the hearsay rule which provide that, even if the declarant is available, the statement is admissible in court. These exceptions include, but are not limited to: 1) a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition; 2) a statement of a declarant's then existing state of mind, emotion, sensation or physical conditions; 3) statements made for the purposes of medical diagnosis or treatment; and 4) a statement that purports to narrate, describe, report or explain an incident of domestic violence. There are many other exceptions not included in these examples, and many of the examples have specific criteria that must be met before the statement will be admissible in court.

House Bill 3040 A originally sought to create a new hearsay exception even where the declarant is available to testify. Because of the complicated nature of this area of law, amendments were put in place to have the Oregon Law Commission conduct a study on the topic. The Commission will examine amending ORS 40.460 to provide that a statement made by the victim of the crime that purports to narrate, describe or explain a crime of trafficking in persons, purchasing sex with a minor, promoting prostitution or compelling prostitution is admissible in court provided the statement: 1) was recorded, either electronically or in writing, or was made to a peace officer as defined in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency medical services provider or firefighter; and 2) has sufficient indicia of reliability. This potential hearsay exception would closely mirror the exception already existing in statute for statements concerning domestic violence. The Commission will make recommendations to the interim committee no later than December 31, 2015.