



**DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION**

MEMORANDUM

DATE: February 8th, 2016

TO: Honorable Floyd Prozanski, Chair
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 1553 – Extends the Statute of Limitations for First Degree Sex Crimes

This testimony is presented in support of the portions of SB 1553 which pertain to the extension of the statute of limitations.

BACKGROUND

HB 2317 (2015) extended the statute of limitations for first degree sex crimes from six to twelve years. This effort also resulted in an interim workgroup chaired by Senator Floyd Prozanski which assembled in order to consider whether the statute of limitations for first degree sex crimes should be further extended or modified. SB 1553 is the product of that work group.

As a general matter, statutes of limitation are limitations on the amount of time a prosecution can be initiated following the completion of a crime. These statutes are legislative creatures and do not generally implicate a constitutional right as long as they are applied evenly and fairly. Some states do not possess statutes of limitation for certain serious crimes. In Oregon, the default statute of limitations for a crime constituting a felony is three years, but there is no applicable statute of limitations for the crimes of murder, aggravated murder, attempted murder, conspiracy to commit murder or any degree of manslaughter. ORS 131.125. Oregon also recognizes the existence of certain predicate conditions, such as the discovery of DNA evidence, which can functionally extend or remove the statute of limitations. ORS 131.125 (9).

SB 1553 allows prosecution of first degree sex crimes beyond twelve years only when corroborating evidence is present. This corroborating evidence may take four broad categorical forms: First, physical evidence other than DNA. Second, a confession made by the defendant. Third, an oral or written statement provided by the victim to another person at the time of the commission of the crime. Fourth, a report made by a different victim alleging that the defendant committed the crime. This testimony will discuss the practical utility of each of these categories in turn.

Physical Evidence. As our society becomes more fully digitized, evidence is more likely to be retained. This includes E-Mail, text, and other forms of communication which are routinely kept on servers in their original form for years after their transmission, and which can sometimes be located without any loss of data or context.

Confessions. Oregon would follow Indiana in permitting extensions of the statute of limitations following a confession made by the defendant, even if the statute of limitations had elapsed.

Corroborating testimony by someone other than the victim. A victim of sexual assault may be too traumatized to make a report to law enforcement but may make a highly specific, credible report to another person – a friend, care provider, etc. That person can sometimes provide a highly specific corroboration if the victim chooses to come forward at a later date.

Corroboration by a second victim. It is not uncommon for additional victims to come forward upon reading a report or otherwise learning that their assailant has been arrested for committing a similar act against another person. This corroboration can provide specific details which tend to prove a common assailant, even if outside of the statute of limitations.

It is important to hold in mind that the defendant retains all substantive and procedural rights. Any case must ultimately be proven beyond a reasonable doubt, and for this reason cases initiated after the statute of limitations shall necessarily be rare and carefully selected. Any statute of limitations must by its nature strike a balance between the severity of the crime and the inevitable loss of evidence which can occur with the passage of time. SB 1553 strikes this balance appropriately through a reasonable, carefully tailored requirement of evidentiary corroboration. The Department of Justice supports the passage of SB 1553.

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