



Oregon Voices  
990 Judson SE  
Salem, OR 97302

February 23, 2016

Senator Diane Rosenbaum, Chair  
Senator Ted Ferrioli, Vice-Chair  
Senator Lee Beyer  
Senator Brian Boquist  
Senator Ginny Burdick

Madame Chair Rosenbaum, Vice-Chair Ferrioli, and members of the committee:

My name is Ken Nolley. I am a retired university professor, and in retirement I work with Oregon Voices, a group of families who have a family member on the registry. We support evidence based legislation that provides justice for victims and punishments that are proportionate to the crime. I am here today to speak about why I believe that Sex Abuse 1 should not be included in this bill.

Sex Abuse 1 differs from the other crimes in this bill in several ways. First, and very importantly, by past state action, it has been determined to be a crime of a different level of seriousness than the others here. Rape 1, Sodomy 1 and Unlawful sexual penetration 1 are all Class A crimes and are classified as either 10 or 9 on the state's 10 point scale of seriousness. They have been designated, as some like to say, the worst of the worst. Sex Abuse 1 is a Class B crime and is classified as an 8. Nevertheless the last session of the legislature extended the statute of limitations for all four of these from 6 years to 12.

Sex Abuse 1, however, shares its Class B, Category 8 status with Rape 2, Sodomy 2 and Unlawful Penetration 2. The Statutes of Limitations on these other three crimes of somewhat lesser seriousness remain at 6 years. If this bill passes, a single non-forcible touch can be prosecuted for life, while a non-forcible rape of a 12-14 year old would retain the 6 year statute of limitations. I should hope that the prospect of that makes us pause.

Sex Abuse 1 differs from the other first degree crimes in another way. It scoops up behaviors of widely varying seriousness. It embraces everything from an ongoing physical violation of a child by an adult to a single thoughtless action of an impetuous teenager. That is why the numbers for Sex Abuse 1 are so high. According to the latest DOC figures, Sex Abuse 1 accounts for 38% of all Measure 11 sex crimes committed by persons currently under DOC sanction. And it impacts juveniles much more heavily than adults, because juvenile victims are often victimized by other juveniles. Almost 50% of all juveniles in the system for Measure 11 sex crimes are there for Sex Abuse 1. That category accounts for very nearly the equivalent of every other category of sex crime committed by juveniles. And taken together Rape 1, Sodomy 1, Unlawful penetration 1 and Sex Abuse 1 account for 87% of all Measure 11 sex crimes. What kind of proportionality could possibly call 87% the worst of the worst?

We all know that juvenile behavior is still regrettably characterized by outbursts of ill-considered, thoughtless and occasionally crude behavior, and that is also represented in this large scoop. Can any of us say with confidence that our children or our grandchildren, with all of the responsibility they can and

usually do exhibit, could never thoughtlessly step over a line to something that could be adjudged to be Sex Abuse 1? A young teenager, who makes a provocative touch, engages in a moment of unjustifiably aggressive horseplay or forces an unwanted kiss gets lifetime vulnerability to prosecution under this bill. As I said earlier, this should perhaps make us pause.

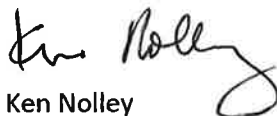
Last, and certainly not least, Sex Abuse 1 differs from Rape 1 or 2 in that whereas nearly all rape reports originate from the victim, many sex abuse charges do not. Often such the allegations in Sex Abuse 1 come from persons observing behavior at some distance—a neighbor, a non-nuclear family member perhaps—but someone whose perspective is less involved, more distant, and thus more subject to misunderstanding or misreading. In any case, it often does not pit the victim's account off against the accused in the same way as rape so often does. Further, while there may well be physical evidence in rape cases, and sodomy cases, there is seldom any physical evidence in Sex Abuse 1 cases, which must rest solely upon that testimony of others.

Let me briefly cite one example—a recent case from the Linn/Benton county area. A father was accused of sexually abusing his children solely by a neighbor based on a comment she thought she heard pass between the children. Perhaps it had to do with the fact that the family sometimes bathed together—something that was traditional in the Japanese society that the mother grew up in and which she encouraged. The police were called, the children were pulled out of school and interviewed twice in a process that included exposing them to graphic images of sexual abuse of children. There was no disclosure of inappropriate touches, although the detective interviewer remained convinced that something had occurred. The father subsequently passed a polygraph, but that did not derail a two year process which forced the father to live apart from his wife and children and involved huge legal bills for the family. In the end, the jury returned a not guilty verdict. But prosecutions do go forward on little more than a charge from a neighbor. Most families in such circumstance do not have the financial resources to mount such a defense, and consequently many are forced into plea bargains.

Sex Abuse 1 is difficult to defend when the charges are fresh because it so often rests solely on assertions such as this one with no other evidence. To extend the Statute of Limitations for life for a crime with so little evidence beyond fallible testimony—testimony that does not become sharper over time—should also be ringing some alarm bells.

I believe that we should not include Sex Abuse 1 in this bill for all of these reasons. Indeed, I believe that what we should be doing instead is revisiting the entire category of Sex Abuse 1, so that our system might be able to do a better job of discriminating between truly damaging, reprehensible behavior and irresponsible, inexcusable behavior that is far less serious.

Sincerely,



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