

## STAFF MEASURE SUMMARY

CARRIER: Sen. Prozanski

## Senate Committee On Judiciary

**Fiscal:** Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 02/10/16**Action:** Do Pass With Amendments. (Printed A-Eng.)**Meeting Dates:** 02/08, 02/09, 02/10**Vote:**

Yeas: 4 - Gelser, Kruse, Prozanski, Rosenbaum

Nays: 1 - Thatcher

**Prepared By:** Channa Newell, Counsel**WHAT THE MEASURE DOES:**

Allows for unlimited statute of limitation on first degree sex crimes when prosecuting attorney receives additional corroborative evidence of a crime. Specifies additional corroborative evidence can be physical evidence other than DNA sample, confession of crime, oral or written statements made in temporal proximity to crime, and report made by different victim alleging defendant committed a substantially similar crime. Requires prosecuting attorney to present any evidence reasonably tending to negate guilt of defendant. Includes within Assault in the Third Degree (ORS 163.165) causing physical injury to a vulnerable road user by means of a motor vehicle with criminal negligence. Specifies criminally negligent assault is category four on sentencing guideline. Adds to existing public records disclosure exemption by prohibiting disclosure of images of death as part of law enforcement investigation if release of images would constitute an unreasonable invasion of privacy of deceased person's family. Allows disclosure if shown by clear and convincing evidence that public interest requires disclosure. Requires party seeking disclosure to shown by clear and convincing evidence that disclosure is not unreasonable invasion of privacy. Clarifies that any misdemeanor, Class C felony, or felony punishable as misdemeanor is eligible for set aside.

**ISSUES DISCUSSED:**

- Effects of amendments
- Explanation of corroborating evidence that reopens statute of limitation
- Limitation of Assault 3 provisions to vulnerable victims
- Assault 3 as category 4 on sentencing grid allows for probation

**EFFECT OF COMMITTEE AMENDMENT:**

Adds to existing public records exemption. Prohibits disclosure of images of death as part of law enforcement investigation if release of images would constitute an unreasonable invasion of privacy of deceased person's family. Allows disclosure if shown by clear and convincing evidence that public interest requires disclosure. Requires party seeking disclosure to show by clear and convincing evidence that disclosure is not unreasonable invasion of privacy. Limits assault 3 provisions to those who are vulnerable road users. Refines substantially similar crime to apply to a reported crime that could be charged in same charging instrument and clarifies that statement made by victim to another person or written statement of victim must be in temporal proximity to commission of crime in order to reopen statute of limitations. Specifies that prosecuting attorney must disclose evidence known to prosecuting attorney. Clarifies that any misdemeanor, Class C felony, or felony punishable as misdemeanor is eligible for set aside.

**BACKGROUND:**

Senate Bill 1553 A is the "relating to crimes" omnibus bill. It has four distinct elements. First, it allows an unlimited statute of limitations for first degree sex crimes when there is additional corroborating evidence of the crime. This corroborating evidence can be through non-DNA physical evidence, such as a video tape or recording; a confession by the defendant to that particular crime; statements made by the victim that are made close in time to the alleged crime; or when multiple victims

come forward alleging a crime that is so similar, they could be on the same charging instrument. Second, the measure expands Assault in the Third Degree to include causing serious physical injury through criminal negligence to a vulnerable road user, such as a bicyclist, road worker, person on skates, or pedestrian. Criminal negligence is defined in ORS 161.085(10) as, “a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.” Third, the measure provides a small modification to the set-aside statutes to clarify that any Class C felony may be expunged. This is in keeping with current law. Finally, the measure adds a new public records disclosure exemption to ORS 192.502(2), extending protections against unreasonable invasions of privacy to a deceased person’s family as pertain to images of the person’s death contained in a law enforcement investigation.