ELLEN F. ROSENBLUM
Attorney General

MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

MEMORANDUM

DATE: May 14, 2013

TO: Honorable Floyd Prozanski, Chair
Senate Judiciary Committee, Members

FROM: Aaron Knott, Legislative Director

SUBJECT: HB 2962

RECOMMENDED ACTION

This testimony is presented in support of HB 2962. We recommend that the Committee approve HB 2962 with a do pass recommendation.

BACKGROUND ON STATUTORY SPEEDY TRIAL

- Currently, ORS 135.747 requires a trial court to dismiss an accusatory instrument if the defendant is "not brought to trial within a reasonable period of time" unless the defendant consented to or requested the delay.
    - A criminal defendant need not establish that he or she has been prejudiced by the delay in their trial in order to have the court dismiss the accusatory instrument pursuant to the speedy trial statute. *State v. Emery*, 318 Or 460, 467, 869 P2d 859 (1994).
    - The speedy trial statute is a "housecleaning" mechanism for trial court dockets and is meant to clear out cases that are "languishing in the criminal justice system." *State v. Johnson*, 342 Or 596, 617, 157 P3d 198 (2007), *cert den*, 552 US 1113 (2008).
- The speedy trial statute was not intended to vest a criminal defendant with any additional *rights* to a speedy trial; however, many defendants do receive windfalls when their cases are dismissed under this statute and the state is not able to file new charges because the statute of limitations has passed.
- Defendants do have *constitutional rights* to a speedy trial under the Sixth Amendment to the United States Constitution and under Article I, section 10, of the Oregon Constitution.
    - Whether a defendant's constitutional rights to a speedy trial have been violated involves looking at: (1) the length of the delay; (2) the reasons for the delay; and

(3) whether the defendant is prejudiced by the delay (and, under the Sixth Amendment, whether the defendant requested a speedy trial).

- Trial and Appellate Courts (and trial and appellate counsel for the state and for defendants) address statutory speedy trial issues on a regular basis.
    - Since January 1, 2012, the Appellate Division has filed 23 briefs addressing, in some way, the applicability of ORS 135.747, and the Oregon Court of Appeals has issued 17 opinions addressing, in some way, the applicability of ORS 135.747.
    - Most of these cases involve a fact-intensive analysis of the procedural history of a case. As noted above, the analysis involves figuring out whether defendant consented to delay or was otherwise responsible for the delay (i.e., by failing to appear for a court date), then looking at the reasons for the remaining delay.
- Statutory speedy trial cases are a particular burden for smaller counties with a shortage of on-the-ground law enforcement personnel. Often, a defendant is indicted and the warrant for their arrest languishes in the system because of insufficient resources to serve it. When a defendant is finally arrested, they are given court dates and assigned a public defender if needed. The public defender drafts the speedy trial motion and the court hears the motion. If the motion is granted, the defendant is often re-indicted, which causes a new warrant to be entered into the system, starting the process all over again.
- When a case is dismissed on speedy trial grounds, a re-indictment requires a crime victim to again testify before a grand jury and reset their case, delaying the prompt resolution of their case.

HB 2962 WILL DECREASE THE AMOUNT OF LITIGATION INVOLVING SPEEDY TRIAL ISSUES—THEREFORE SAVING COURT, PROSECUTION, AND DEFENSE RESOURSES—WHILE STILL ENSURING THAT DEFENDANTS' CONSTITUTIONAL SPEEDY TRIAL RIGHTS ARE PROTECTED

- This bill requires defendants to establish actual or presumptive prejudice before a court will dismiss their case due to excessive delay under the speedy trial statute. Otherwise stated, this requires defendants to show an actual ill effect before a case can be dismissed.
- Most single-issue statutory speedy trial cases on appeal take the Appellate Division 12-20 hours to brief, equaling 276-460 hours per year that DOJ devotes to briefing statutory speedy trial issues. Presumably, the defense bar devotes similar resources.
    - Even if these changes reduced the briefing needed on these cases by only 50% (a conservative estimate), that savings would translate to allowing DOJ to brief 11-16 additional "routine" cases per year.
- Finally, by including a prejudice requirement for statutory speedy trial dismissals, this bill would ensure that defendants would not attain a windfall of having their cases dismissed unless those defendants suffered prejudice as a result of the delay.

DOJ CONTACT

For further information, please contact Aaron Knott at Aaron.D.Knott@state.or.us or 503-798-0987.