

Sine Die!

By Gail Meyer

The 2009 Oregon Legislative Assembly adjourned "sine die" (Latin for "without day") Monday evening, June 29th at 10 PM. OCDLA enjoyed a fair measure of success in seeing its own bills enacted, and while there were the inevitable spate of bills enhancing penalties, the depressed economic forecast spared us the worst of the worst.

I will be preparing the 2009 *Legislative Analysis*, available for purchase through OCDLA in September. The *Legislative Analysis* summarizes and analyzes the bills that affect criminal jurisprudence, provides their full text, and has a helpful index by subject. For now, let me highlight the OCDLA bills that were enacted and review the omnibus public safety cost-savings bill that addressed Measure 57 and increased earned time to 30 percent. You can download the full text of the bills from the Oregon State Legislature's website: www.leg.state.or.us/bills_laws.

Our Bills

SB 309 Custodial Recordation

This was OCDLA's major reform bill of the session. Requires law enforcement to electronically record the entirety of custodial interrogations when they occur in a law enforcement facility. Recording requirement is timed to advice of constitutional rights. First phase is effective July 1, 2010, for those charged with homicides, and to minors and/or non-native speakers requiring the services of an interpreter charged with Measure 11 offenses. Second phase is effective July 1, 2011, for all those charged with a Measure 11 offense or aggravated murder. Many thanks to Jim Hennings and Larry Matasar for their critical support on this bill.

HB 2323 Property Crimes

Increases the dollar threshold of property crimes to increments of \$100, \$750 and \$1,000 to adjust for inflation. Effective January 1, 2010.

HB 2318 Arrest Record Expungement

This bill was introduced by Rep. Andy Olson (R-Albany), but was identical to one introduced by OCDLA. Allows record of arrest for state or municipal traffic offenses to be set aside under certain circumstances; exempts arrests for DUII

where case is processed through diversion. Effective January 1, 2010.

HB 2968 Implied Consent Hearing

This bill was written, introduced and lobbied for by OCDLA member John Henry Hingson. Authorizes the postponement of implied consent hearing if person's attorney is ill, on vacation or has certain scheduling conflicts at time hearing must otherwise be held. Effective January 1, 2010.

Public Safety/Measure 57

HB 3508-Enrolled Public Safety Cost-Saving Measure 57:

Suspends certain provisions of Ballot Measure 57 (2008) for those sentenced on February 15, 2010, until January 1, 2012. During the suspension period, Measure 57 applies to those who commit identity theft on victims over 65, deliver controlled substances of any amount to minors, or deliver substantial quantities of controlled substances. Effective immediately, sunsets January 1, 2012.

Increased earned time: Effective immediately upon passage, this provision increases the maximum eligible earned time from 20 to 30 percent. Applies retroactively as well as prospectively; only nonviolent offenders are eligible. Contained resentencing process for existing offenders due to Article I, section 42, requirement that sentences must be declared in open court. DOC must calculate which offenders are eligible for the increase and send notices of same to the DA, presiding judge and the inmate. If the crime involves a victim, the DA must use reasonable efforts to locate the victim. Victim has 20 days from date of notice to file objection with DA. Either victim or DA may object to the increase and request a hearing within 21 days of receipt of DOC notice. For crimes without victims, DA may file an objection to the increase within 14 days of receipt of DOC notice. If judge agrees to entry of order increasing earned time, then no need for a hearing;

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OCDLA member **Gail Meyer** is the Association's substantive issues lobbyist.

order is signed and inmate is entitled to the increase. If judge does not agree to granting increase without a hearing, or if DA/victim request hearing, then counsel is appointed for inmate and hearing must be held within 35 days of receipt of DOC notice. Hearing is limited to determining whether the increase in earned time is appropriate based on information known at time of original sentence, not based on institutional behavior. Provision sunsets July 1, 2013.

Probation violation: Limits maximum sanction for nontechnical violation of probation (other than commission of new crime) to 60 days. Sunsets July 1, 2011.

Active and inactive probation status: Allows offender to earn "good time" off probationary sentence for every day offender is in compliance, up to maximum of 50 percent of probationary sentence. For balance, offender is on inactive supervision. Sunsets July 1, 2011.

Inactive PPS status: Offender on post-prison supervision may be transitioned to inactive supervision after 6 months for crimes in categories 1 to 3, and after 12 months for crimes in categories 4 to 10. Sunsets July 1, 2011.

ICE detainees: Streamlines the commutation process for inmates subject to ICE detainers. Offenders must be incarcerated for a nonviolent felony and agree not to object to deportation. Allows for appointment of counsel for

purpose of advising offender regarding waiver of statutory or constitutional rights. Sunsets July 1, 2011.

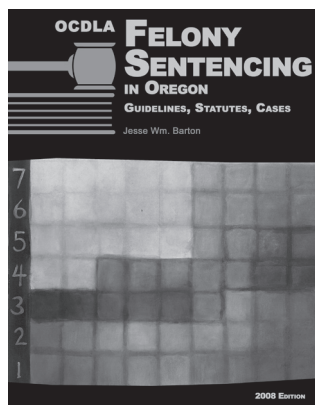
Board of Parole and Post-Prison Supervision: Allows BPPPS to hold parole hearings in other than two-year increments under certain circumstances.

A Collaborative Effort of Many

Getting our reform legislation enacted and derailing bad bills of others doesn't happen without a collaborative team effort. This organization owes a great deal to the Legislative Committee who tirelessly and faithfully met every Tuesday during the session: committee chair Bob Homan, then-OCDLA President Greg Hazarabedian, Kathie Berger, Lee Berger, Ann Christian, Becky Duncan, Paul Levy, Alex Hamalian, DeAnna Horne, Susan Reese, Ross Shepard, and Bob Suchy. Many more answered my plea and scrambled to testify before judiciary committees, and many more answered feverish emails and phone messages. As a result, OCDLA has a very credible presence in Salem, and it continues to grow.

How can you help? First step, email me at glmlobby@nwlink.com and express your interest and areas of expertise. Second, give me your home zip code so we can data-bank the constituents in every legislative district. Third, contact your legislator and get to know them. Trust me: they are interested in hearing from you. I never believed it either, but now I do.

2008 edition includes FREE March, 2009 Update *Felony Sentencing in Oregon: Guidelines, Statutes, Cases*



by Jesse Wm. Barton

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