



February 28, 2016

The Honorable Jennifer Williamson, Chair  
The Honorable Val Hoyle, Vice-Chair  
The Honorable Vic Gilliam, Vice-Chair  
House Committee on Rules, Members

### **Legislative Testimony RE: SB 1553B (Criminally Negligent Assault)**

Chair Williamson, Vice-Chairs Hoyle and Gilliam, and Members:

OCDLA opposes Sections 1 and 2 of SB 1553B, which would create a new felony offense. Specifically, the measure imposes felony criminal liability for those who, with criminal negligence and in split-second moments, cause serious physical injury to a vulnerable road user, such a bicyclist. The felony liability attaches regardless of whether the person has any awareness that their driving is risky or dangerous. The collateral consequences of a felony conviction are enormous and stigmatizing, impacting that person's ability to obtain work, housing, and other opportunities.

OCDLA urges this committee to amend SB 1553B to remove Sections 1 and 2.

#### **1. Criminal Negligence Should Be Used Exceptionally**

Most crimes require a person to have a criminal mental state before they can be found guilty of an offense. These mental states are laid out in statute – the person must act “intentionally,” “knowingly,” “recklessly,” or lastly, with “criminal negligence.”

“Criminal Negligence” was not included in the first draft of Oregon’s criminal code, as there was concerns that it would impose criminal consequences on persons who were not aware that they had created the risk of harm for which they were punished. This is inapposite to criminal justice goals of reformation or the deterrence of future criminal conduct. Ultimately, “criminal negligence” was included in the criminal code. However, in a 2016 opinion issued by the Oregon Supreme Court, “criminal negligence” was described as an exceptional basis for criminal liability.<sup>1</sup>

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<sup>1</sup> State v. Simonov, 358 Or 531 (2016)

## **2. Split-Second Motor Vehicle Responses Should Not Lead to a Felony**

Cases involving negligence often involve behavior that occurs over a significant period of time. Motor-vehicle accidents, however, occur because of split-second decisions and responses. It is highly unusual within our criminal code to attach felony liability to split-second negligence. Motor vehicle accidents have traditionally left to our civil courts to determine fault and damages.

## **3. The Collateral Consequences of a Felony Conviction**

The “felony” label is the one of the most powerful tools within our criminal justice system. Felons are stigmatized and marginalized. They have difficulty obtaining work, housing, and other opportunities. Their rights to possess firearms, serve on juries, and drive are affected. Specifically, someone convicted under this measure would have their driving privileges suspended for 5 years. They would likely be unable to travel internationally.

In 2015, this Legislature addressed several bills regarding the challenges of reintegrating felons into our communities. Ultimately, this Legislature acknowledged those challenges by voting to enact HB 3025, the “Ban the Box” bill. SB 1553B expands the type of behavior that is deemed felony behavior and will subject more people to these challenges.

## **4. Increased Felon-ization**

Since 1993, violent crime rates have fallen in the United States, by roughly 50%.<sup>2</sup> At the same time, the number of felony convictions has risen nationally.<sup>3</sup> This is attributable to policies that have taken historically non-felonious behavior and made it felonious.

This measure would amend the felony Assault in the 3<sup>rd</sup> Degree statute and create a “violent felony” under ORS 135.240. It would show up on a background check as a violent person crime.

## **5. This Measure Eliminates Comparative Fault in Determining Damages**

The proponents advocate this measure is necessary because of the constitutional right to restitution for crime victims. But the argument is circular. The right only attaches if the underlying behavior is criminal. Motor vehicle accidents arising from criminal negligence have never before been criminal.

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<sup>2</sup> F.B.I. ([https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatadecoverviewpdf/table\\_1\\_crime\\_in\\_the\\_united\\_states\\_by\\_volume\\_and\\_rate\\_per\\_100000\\_inhabitants\\_1993-2012.xls](https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1993-2012.xls))

<sup>3</sup> <http://static.prisonpolicy.org/scans/bjs/fssc04.pdf>

Those involved in motor vehicle accidents have access to our civil courts. In those cases, the jury must consider the comparative fault of the parties. In our criminal courts, comparative fault, or contributory negligence, is not a consideration.

Thank you for your consideration of this testimony. Please contact me directly if you have any questions.

Respectfully submitted,

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