



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 5, 2018

The Honorable Representative Jeff Barker, Chair
The Honorable Representative Jennifer Williamson, Vice-Chair
The Honorable Representative Andy Olson, Vice-Chair
House Committee on Judiciary, Members

RE: HB 4055: Testimony in opposition

Dear Chair Barker, Vice-Chairs Williamson and Olson, and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment and post-conviction relief proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments in opposition to HB 4055.

First and foremost, my committee and I extend our deepest condolences to the Dieter-Robinson family for the incredible loss of their two daughters. Our concerns with the revisions of ORS 811.700, 811.705, 811.710 is purely legal in nature, and we do not in any way seek to minimize the very real tragedy that befell their family.

HB 4055 seeks to revise three “Failure to Perform Duties of a Driver” statutes, all colloquially known as the “Hit & Run” statutes. The first statute ORS 811.700 deals specifically with conduct when only property is damaged, the second statute ORS 811.705 deals specifically when people are injured or killed, and the final statute ORS 811.710 deals with specifically when an animal is injured or killed in a collision. This bill creates changes to each of these statutes that cause our concerns. **Our concerns with the bill are as follows:**

Mental States Need Addressed

The statute adds “has reason to believe” and the amendment adds “is aware or should reasonably be aware.” Neither of these phrases are common Model Penal Code mental states, and we suggest that one of the four common (and thus less likely to be litigated in trial courts) mental states of intentionally, knowingly, recklessly or criminally negligent apply.

Our understanding is the addition of the new mental state is meant to address not just someone who knew they were in an accident, but also someone who chose to disregard they were in an accident. This goal would likely be addressed by the “reckless,” mental state, and a further

discussion is warranted. Anything lower, such as criminal negligence, will loop in people who truly did not know they were in an accident.

Creates Vague Language that is Unclear regarding a Motorist's Duties

Page 2, lines 32-35 (Section 1: ORS 811.700) and page 3, lines 33-35 (Section 2: ORS 811.705) of the bill require that “if the driver discovers only after leaving the scene of the collision that the driver’s vehicle may have been involved in a collision that resulted in” “damage to another vehicle, fixture or property” or “resulted in injury or death to any person,” they must “*immediately comply as nearly as possible with the requirements of*” the statute.

The “comply as nearly as possible” language is potentially legally vague and leaves much discretion with the police and prosecutor regarding when to bring charges and what conduct is actually criminal or not criminal.

From a lay person’s perspective, it is unclear what they would need to do to comply with the statute sufficiently as to avoid criminal prosecution. We are concerned that statute changes that don’t clarify what is expected of someone is unfair, and this should be looked at more thoroughly.

From a prosecution perspective, the prosecutor is tasked with the likely difficult decision of knowing when someone complied “as nearly as possible” with the statute, and if the prosecutor charges the crime, this difficult task would then be up to the fact finder.

From a practical legal standpoint, this language will likely open the statute up to challenges for vagueness in the trial courts when someone believes they’ve reasonably complied, but they are still prosecuted.

Temporal Issues Present in the Bill

As previously outlined above, the bill is unclear on what actual compliance means for people who realize later they were in an accident. The bill does not address what a person is supposed to do if they realize days later they were in an accident. By that time, what if there is not a shred of information for the person to piece together what occurred? The bill is silent here, and the temporal issues presented need addressed.

Creates an Affirmative Duty to Call 911 and Provide Information

In Section 2 modifying ORS 811.705, the bill imposes an affirmative defense on the driver to call 911: “The driver shall immediately contact 9-1-1 and provide to the dispatcher any identifying information requested by the dispatcher and the location and approximate time of the collision.” This provision of the statute implicates the 5th Amendment, and as written, it is likely that this requirement will open the statute up to challenges under the 5th Amendment in the trial courts. We would like to spend more time working with Rep. Olson to help avoid this result.

As outlined, OCDLA has concerns with this bill, and we ask that you vote “nay” as the bill creates a number of legal and problematic snags that could be worked out with more time and a workgroup of all necessary stakeholders at the table.

Very respectfully,

Mary A. Sofia

For questions or comments contact Mary A. Sofia, OSB # 111401
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