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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: House Bill 4149 – Testimony in Support

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

My name is Heidi Sternhagen. I am an attorney with the defense consortium in Linn County, Oregon. I practice criminal law and my entire practice involves representing defendants who are provided court appointed attorneys who cannot afford one. I have been with the defense consortium for two years. Prior to that I was a deputy district attorney with the Linn County District Attorney's Office for over 15 years and prior to that I was a public defender in Medford, Oregon. I have spent my entire legal career as either a prosecutor or a criminal defense attorney.

I am here to testify in support of HB 4149. Thank you to Rep. Williamson for bringing this bill forward.

Since House Bill 3078 came into law, (the bill reduces the presumed prison sentences for the crimes of identity theft and theft in the first degree) the DA office in our county has taken the position that it is unconstitutional. They have made plea offers that are contingent on the defendant stipulating on the record that house bill 3078 is unconstitutional. I believe one attorney in our county has done that for one case but since then, the defense consortium has refused to concede that issue on any of our cases.

I'm here to tell you a brief story about a plea bargain I am currently involved in.

My client is charged with Theft in the 1st degree. Under the Measure 57 presumptive property sentences before the latest amendment, my client would look at a presumptive sentence of 28 months prison. If the State were to get an upward departure he could look at a maximum prison sentence of 56 months.

With the amendment of house bill 3078, the presumptive sentence for my client is 13 months prison and if the state were to get an upward departure, the maximum sentence he could look at is 28 months prison.

Based on my client's criminal history and the facts of the underlying case, it appeared to me that drugs have been a major issue for my client most of his life and has been a driving force in his criminal behavior. He agreed and after talking with him he wanted me to approach the District Attorney's office for consideration into the Drug Court Program. The District Attorney's office in our county has sole control of who they will recommend into drug court. Once a drug court offer has been made and a defendant pleads to one or more charges pursuant to the plea offer, the drug court team will set out the requirements that need to be met to successfully graduate from drug court. Rarely but sometimes, the drug court team determines that a client isn't appropriate for drug court through no fault of their own. (such as they have mental health issues that can't be addressed by the drug court team)

In this case, the District Attorney's office did make a drug court offer.

The offer included that the defendant must stipulate on the record that the changes made to ORS 137.717 (House Bill 3078) is unconstitutional.

Defendant must plead to the Theft 1st degree and a sentence enhancement fact.

Defendant must agree that if the drug court team determined that he wasn't an appropriate candidate for drug court that he agreed to a sentenced of 28 months prison. This would be the presumptive sentence under ORS 137.717 before the most recent amendment.

If defendant entered drug court but failed to comply and was removed from drug court, he agreed that his sentence would be 56 months prison which would be the maximum sentence under the property crime measure before the amendment under House Bill 3078.

If my client successfully completes drug court, he would not receive any further jail/prison sanction.

If there were no drug court offer and my client were to be convicted of theft 1st degree and sentenced to the maximum with a sentence enhancement under the most recent amended the most he would be is 26 months prison. While I believe drug court will be beneficial for my client, I'm also very aware that drug dependency is very difficult for people to overcome and he may very well fail. I can't in good conscious recommend that he accept this plea offer because he risks going to prison for double the time than the current law allows.

At this point, the case has been set over to another date because we couldn't agree to this offer. The case is still open. My client isn't getting the benefit of intensive supervision and treatment if he were in drug court now.

As an attorney, this kind of plea offer puts me in a bind because if I agree that a statute is unconstitutional, the Deputy DA's will press the issue against other clients. Then if we argue

the statute is constitutional at a later time on behalf of another client, the judges then question our positions when we've agreed it's unconstitutional in a different case.

As I said when I introduced myself, I was a prosecutor at the Linn County District Attorney's Office for many years. When I started, the District Attorney at the time told me "just because you can, doesn't mean you should." That restraint isn't happening now. Prosecutors often use their power to prevent defendants from utilizing the rights conferred to them by the legislature and this is just one example.

I urge your yes vote.

Sincerely,

Heidi Sternhagen