



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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February 22, 2018

The Honorable Senator Floyd Prozanski, Chair  
The Honorable Kim Thatcher, Vice-Chair  
Senate Committee on Judiciary, Members

RE: HB 4055: Testimony in opposition

Dear Chair Prozanski 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 opposition to 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 significant changes to each of these statutes that cause our concerns. **Our concerns with the bill are as follows:**

- **Creates Vague Language that Could be Challenged as Void**

The bill seeks to expand potential criminality from knowing one was in an accident and leaving the scene to discovering later and criminalizing someone if they don’t sufficiently comply with the requirements at a later time. The text throughout the bill reads, “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,” the driver “shall as soon as reasonably possible make a good faith effort to comply with the requirements” of the statute.

This language remains 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.

From a prosecution perspective, the prosecutor is tasked with the likely difficult decision of knowing when someone complied sufficiently with the statute, and if the prosecutor charges the crime, this difficult task would then be up to the fact finder. As written, this statute appears to be aimed at making it easy to prosecute someone and difficult for the average citizen to know what they must actually do to be in compliance with the law.

- **Creates an Affirmative Duty to Call 911 and Provide Identifying Information**

This provision of the statute continues to implicate the 5<sup>th</sup> Amendment, and we have concerns that the bill will be challenged in court as unconstitutional as applied. The ODAA has relied on *State v. Monroe* for the proposition that the Court of Appeals has already decided the current Hit & Run statute doesn't implicate the 5<sup>th</sup> amendment. However, *State v. Monroe* specifically states that while a statute requiring the exchange of information between two citizens doesn't implicate the 5<sup>th</sup>, their analysis would be different if a statute required an affirmative duty to correspond with the police. This bill clearly expands the law and requires a person to affirmatively correspond with law enforcement by requiring they call 911—*State v. Monroe* is not on point. It is important to note that OCDLA highlights for this body that lawyers will very likely challenge this provision in court as applied.

And finally, as a record clarifying matter, the current mental state required by law for these statutes is "knowledge."<sup>1</sup> As the law currently stands, to be guilty of leaving the scene of an accident without complying with the information exchange requirements, one has to be aware they were in an accident. "Criminal negligence" only applies to whether a defendant acted with criminal negligence with respect to whether a person was injured in an accident, it does not apply to a person's state of mind in regards to whether an accident actually occurred<sup>2</sup>. The OCDLA Legislative committee believes that a "reckless" mental state is appropriate in this case. Please note that this bill proposal goes beyond simply requiring someone to try to comply with the Hit & Run requirements if they find out later they've been in an accident.

We urge your "nay" vote.

For questions or comments contact Mary A. Sofia, OSB # 111401  
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<sup>1</sup> *State v. Corpuz*, [49 Or App 811](#), 820, [621 P2d 604](#) (1980)

<sup>2</sup> See *State v. Hamlett*, [235 Or App 72](#), 80, [230 P3d 92](#) (2010) (The state must "prove that [a] defendant acted with criminal negligence with respect to whether a person was injured in the accident.").