

HOUSE COMMITTEE ON THE JUDICIARY
TESTIMONY IN SUPPORT OF HOUSE BILL 2328
March 12, 2019

Good Afternoon Chair Williamson and Members of the Committee:

I am Laurie Monnes Anderson, and I represent Oregon's 25th Senate District which includes the communities of Gresham, Fairview, Troutdale, and Wood Village. I come before you today in strong support of House Bill 2328, of which I am a chief sponsor. HB 2328 aims to close Oregon's vehicle theft loophole by modifying the culpable mental state for the crime of unauthorized use of a vehicle.

In Oregon, an unauthorized use of a vehicle (UUV) felony is committed when a person takes or uses a vehicle without consent of the owner. Prior to 2014, when a police officer came across someone in a stolen vehicle, they could use reasonable indicators such as a screwdriver in the ignition, missing license plates, or a disassembled ignition as evidence of unauthorized use. In 2014 and 2015, however, a pair of Court rulings reinterpreted the law to require that evidence must show beyond a reasonable doubt that a defendant *knowingly* used a vehicle without consent of the owner, and further found that using multiple pieces of evidence together is insufficient to prove a defendant "knowingly" lacked the owner's consent. The two cases set a legal precedent that fundamentally disrupted the way that police and prosecutors can manage vehicle theft in our state.

To support a successful UUV prosecution, a police officer must now obtain a statement indicating that the suspects *knew* they lacked consent to use a vehicle. Police in my district report that car thieves have become shrewd about what to say when they encounter police. In Gresham, for example, officers regularly encounter suspects in cars with clear evidence of theft who merely claim to be "borrowing" the vehicle from a friend or acquaintance. In such cases, even when an arrest is made, police officers are regularly frustrated to learn that the suspect was released from jail days or even hours after the arrest due to insufficient evidence under the new mental state burden, as defined by the court. Without an affirmative statement from the suspect demonstrating that they knew they didn't have permission to use the car, prosecutors are unlikely to take the case as it is unlikely to win in court. This is Oregon's so-called *vehicle theft loophole*.

Exploitation of the vehicle theft loophole has become so commonplace that the *Willamette Week* published an article over a year ago with the headline: "In Portland, You Can Steal Cars Over and Over – and Get Away With It. Here's How."¹ Vehicle theft rates across the state have exploded: Clackamas County saw a 78% increase in UUV cases between 2015 and 2017, while in the city of Gresham, cases doubled.² According to one study, Portland and Gresham have the 5th and 8th highest rates of car theft in America out of cities with a population of at least 100,000 people.³ In Portland, FBI statistics show crime is steady or down in almost every key category except auto theft.⁴ When the Multnomah County District Attorney's

¹ Shepherd, Katie. (2017, Nov. 19). "In Portland, You Can Steal Cars Over and Over – and Get Away With It. Here's How." *Willamette Week*. <https://www.wweek.com/news/courts/2017/11/29/in-portland-you-can-steal-cars-over-and-over-and-get-away-with-it-heres-how/>

² Dowling, Jennifer. (2018, Nov. 14). "Clackamas County sees 'epidemic' of car thefts." Koin 6. <https://www.koin.com/news/local/clackamas-county/clackamas-county-sees-epidemic-of-car-thefts/1597534523>

³ Theen, Andrew. (2018, Sept. 27). "Top 10 cars stolen in Oregon; Portland 5th worst in U.S." Oregonlive.com. <https://www.oregonlive.com/expo/news/erry-2018/09/6e51ce13445947/portland-one-of-worst-cities-i.html>

⁴ Liedle, Chris. (2017, Nov. 29). "DA: Car thieves exploiting loophole in state auto theft law." KATU 2. <https://katu.com/news/local/da-car-thieves-exploiting-loophole-in-state-auto-theft-law>

Office reviewed laws in sister states to determine how they establish the evidentiary burden of a person in possession of stolen property, they found that Oregon was greatly out of step with other jurisdictions.

The fiscal and economic effects of Oregon's vehicle theft loophole are broad and, in many cases, borne by the victims. The average dollar loss of a stolen vehicle in 2016 was \$7,680 according to the FBI.⁵ If you multiply that cost by the number of vehicles stolen in Gresham that year (863), the value of vehicles lost in Gresham alone was \$6,627,840.⁶

The Legislative Fiscal Office has suggested that this bill has a fiscal impact, even though it would essentially just return our laws to the way they were interpreted and enforced prior to the adverse court rulings. I think it is important to take a step back and consider the real fiscal impact in Oregon. When people lose their means of getting to work, wages are lost, and businesses lose productivity. And while we may imagine well-insured, luxury car owners as the typical victims, in fact, mid-90s era sedans are Oregon's most commonly stolen cars.⁷ That means regular Oregonians, and often Oregonians struggling the most in our economy, are shouldering the real fiscal impact of the vehicle theft loophole.

Opponents would have you believe that there is a negative fiscal impact associated with this legislation – that more vehicle theft convictions will create a greater financial burden to Oregon's prison system. Such an argument is fundamentally flawed. First, incarceration cost projections predict an increase compared to present-day costs. 2018/2019 is not the proper benchmark against which to compare costs because the vehicle theft loophole exists today. Since the Court rulings, vehicle theft rates have increased while UUV conviction rates have decreased.⁸ To quote my *second favorite* Governor Brown -the one from California- we have arrived at a "new abnormal."⁹ To compare apples to apples, incarceration costs should be compared to 2014, before the existence of the loophole, when conviction rates tracked theft rates.

Further, the real costs related to this issue are not felt in this building. As I stated previously, the value of vehicles stolen annually in Gresham alone likely exceed the LFO's fiscal impact estimate on the state budget. That means investing the money here in the state budget actually has a remarkably positive rate-of-return for Oregonians, meaning that strategic use of their tax dollars to close the loophole will save many more dollars down the road.

At the end of the day, focusing squarely on costs also ignores the question of justice. It would be irresponsible of this body to simply accept a status quo where committing vehicle theft is easy and prosecuting vehicle theft is difficult. I am a chief sponsor of this legislation because we must restore common sense to the way we prosecute vehicle theft in Oregon. I urge you to vote in favor of HB 2382 to close Oregon's vehicle theft loophole. Thank you for your time and attention to this matter.

⁵ FBI: UCR. (2016). *2016 Crime in the United States: Motor Vehicle Theft*. Web. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/motor-vehicle-theft>

⁶ NOTE: Vehicle theft in Gresham has increased by 47% since 2016. The FBI does not provide an estimate of the average dollar loss of a stolen vehicle in 2018. Multiplying 2016 stolen vehicle costs by the number of vehicles stolen in 2018 (1,271), we find that the value of vehicles lost in Gresham in 2018 was at least \$9,761,280.

⁷ Williams, Kale. (2016, Aug.). "Oregon's top 10 most stolen vehicles, as ranked by the National Insurance Crime Bureau." OregonLive. https://www.oregonlive.com/trending/2016/08/oregons_top_10_most_stolen_veh.html

⁸ Dooris, Pat. (2017, April 27). "Auto thefts jump 63 percent in Portland." KGW 8. <https://www.kgw.com/article/news/crime/auto-thefts-jump-63-percent-in-portland/434740827>

⁹ Tchekmedyan, Alene. (2018, Nov. 11). "Gov. Brown: Mega-fires 'the new abnormal' for California." Los Angeles Times. <https://www.latimes.com/local/california/la-me-california-fires-woolsey-hill-camp-gov-brown-mega-fires-the-new-1541985742-htmlstory.html>