

HB 2328 STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 03/21/19

Action: Do pass and be referred to Ways and Means by prior reference

Vote: 8-0-3-0

Yeas: 8 - Barker, Bynum, Gorsek, Lewis, Piluso, Power, Stark, Williamson

Exc: 3 - Greenlick, McLane, Sprenger

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Gillian Fischer, Counsel

Meeting Dates: 3/12, 3/21

WHAT THE MEASURE DOES:

Modifies mental state necessary to prove a person has committed the crime of Unlawful Use of a Vehicle. Requires state to prove that defendant knowingly took control of another's vehicle and was aware of and consciously disregarded a substantial and unjustifiable risk that the owner of a vehicle did not consent to the defendant's use of the vehicle. Provides that a person who knowingly rides in another's vehicle without the consent of the owner or authorized user is also guilty of unlawful use of a vehicle if the person knew, at the time, that the owner or authorized user did not consent to the use.

ISSUES DISCUSSED:

- Case law resulted in ineffective prosecution of stolen vehicles
- Allows for reasonable inferences regarding individual's knowledge of unauthorized use
- Increased standard for passenger's mental state
- Consistent with application of statute prior to change in case law

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In prosecutions for the unlawful use of a vehicle, which frequently involve allegations of a stolen car, the state must prove beyond a reasonable doubt that the defendant knows the vehicle is being operated without the owner's consent. While a judge or jury may base a conviction on reasonable inferences drawn from circumstantial evidence, the Court of Appeals has concluded that certain fact patterns "require[] the stacking of inferences to the point of speculation." *State v. Shipe*, 264 Or. App. 391 (2014); *State v. Korth*, 269 Or. App. 238, 243 (2015).

House Bill 2328 reduces the required mental state and allows a conviction for the unlawful use of a vehicle if the state proves beyond a reasonable doubt that the defendant "is aware of and consciously disregards a substantial and unjustifiable risk" that the owner does not consent to the use of the vehicle. Additionally, the measure refines the mental state required with respect to a passenger in a vehicle. If a passenger knew that the owner of the vehicle did not consent to its use and rode in the vehicle, the passenger may also be subject to unlawful use of a vehicle.