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February 10, 2020

Sen. Floyd Prozanski
Chair, Senate Judiciary Committee
S-413 Capitol Bldg.
Salem, OR 97330

Rep. Tawna D. Snachez
Chair, House Judiciary Committee
H-273 Capitol Bldg.
Salem, OR 97330

Sen. Mark Hass
Chair, Senate Revenue Committee
S-207 Capitol Bldg.
Salem, OR 97330

Rep. Nancy Nathanson
Chair, House Revenue Committee
H- 279 Capitol Bldg.
Salem, OR 97330

Sen. Betsy Johnson, Sen. Elizabeth Steiner Hayward, Rep. Dan Rayfield
Co-Chairs, Ways & Means Committee
S-209, S- 213, H-275 Capitol Bldg.
Salem, OR 97330

RE: HB 4065

Greetings:

I submit the following testimony regarding HB 4065. This testimony is based upon my service as Justice of the Peace for Linn County for 23+ years ending December 31, 2018, and, during that period pursuant to intergovernmental agreements, exercising the powers, duties and jurisdiction of municipal judge for a number of small cities within Linn County, several of which had free-standing municipal courts. Because of my extensive professional experience in dealing with matters put at issue by HB 4065, I believe it extremely important to bring these matters before you and the legislative committees you chair. Below find a listing of consequences flowing from the adoption of HB 4065:

- The degradation of traffic safety.
- A state-wide catastrophic reduction in funding of the criminal justice system.
- The closure of justice courts and municipal courts or the limitation of case types in those courts.
- Increased criminal case loads and criminal trials in the circuit courts.
- Increased costs to the State General Fund.
- Increased costs to counties.
- The degradation of the efficacy of the criminal justice system and the quality of life in Oregon communities.

There exists a number of measures that the Legislature may enact to ameliorate the concerns expressed by persons in support of this bill, measures that would advance the interests

that underlie those concerns while enhancing the administration of justice, maintaining the fiscal stability of the criminal justice system and continuing accountability and personal responsibility for violations of the Motor Vehicle Code.

- Repeal mandatory minimum fines for violation offenses; restore the court's ability to set fines according to the facts and circumstances of each case and person appearing before the court.
- Provide that the presumptive fine for a violation offense is the maximum fine that may be imposed upon a default in appearance.
- Establish a statutory scheme whereby a person may apply to a justice of the peace or a circuit court judge in the county in which the person resides for relief from fines imposed on traffic violation offenses upon a showing by competent evidence of good cause; allow said court to take jurisdiction over all such sentences in any jurisdiction within this State to affirm or remit all or in part any unpaid balance on any such fines under such conditions as the court shall determine to be fair and equitable, including regular payments consistent with the persons circumstances; allow the court to grant reinstatement to the applicant upon such terms as the court shall order, such conditional driver privilege to continue so long as the person obeys the orders of the court and violates no provision of the Motor Vehicle Code; such payments as may be ordered to continue for a maximum period of 24 to 36 months, unless extended for an equivalent period of time for any forbearance allowed; upon completion of the payment period, any remaining traffic debt would be remitted in full and such debt permanently cancelled.
- Establish a statutory scheme that allows DMV to grant conditional driver privileges to employed persons who agree to make regular payments in equal amounts to all courts in which they have unsatisfied fines so long as the total amount does not exceed 25% of the disposable income of the person's household, such provisional driver privilege to continue so long as the person makes all payments and violates no provision of the Motor Vehicle Code; place a limitation of 36 months on the period of regular payments unless extended for an equivalent period of time for any forbearance allowed; upon completion of the payment period, any remaining traffic debt would be remitted in full and such debt permanently cancelled.

Keep in mind that nothing presently prevents any person from applying to any court for some form of relief from unpaid traffic fines in that court. A letter, a telephone call or e-mail message to a clerk will get an appearance before the court; an appearance by the person and a showing of good cause nearly always results in favorable consideration.

DISCUSSION OF NEGATIVE CONSEQUENCES OF HB 4065.

DEGRADATION OF TRAFFIC SAFETY. Traffic Safety relies upon obedience to the Oregon Motor Vehicle Code, particularly the Rules of the Road in Chapter 811 of the Motor Vehicle Code. Obedience is enforced through citation into court for violation of the Motor Vehicle Code. The sole punishment for violating the Motor Vehicle Code is the imposition of a fine upon conviction of the violation in a court of competent jurisdiction.

Suppose a person is convicted of a traffic offense and sentenced to pay a fine. What incentive exists for that person to pay the fine? If there is no incentive to pay the fine, what incentive exists for that person to obey the Motor Vehicle Code?

For many, the primary incentive for a person to pay a traffic fine is the knowledge that, to a reasonable degree of certainty, their driver privilege will be suspended if they do not pay the fine. Certainly there are a number of persons who pay the fine because they believe it is the right thing to do. At least to themselves, they are willing to admit their error, accept the consequence and move on. But it is the coercive power of the suspension of the driver privilege that motivates many to do the right thing—pay the fine and obey the law.

In 2018, there were 96,767 FTC suspension notices issued by Oregon DMV for failure to pay fines (FTC suspensions). In that year, there were 46,412 reinstatements for persons who paid the fine, or, at least made an arrangement with a court (or the court's collection agency) to make regular payments and began paying the fine. For many people, however, the 60-day notice of the impending suspension sent to them by DMV is sufficient to gain compliance with the court's order to pay a fine.

How effective is that notice? ODOT's Lindsay Baker submitted testimony on February 5, 2020 to the House Judiciary Committee to the effect that in calendar year 2019, DMV issued 98,669 FTC suspension notices, processed 23,182 suspension rescissions and 28,357 suspension reinstatements. "Rescission" means that the suspending court rescinded the suspension once those 23,182 drivers paid the fine or began regular payments to the court *before* the suspension took effect. "Reinstatement" means that *after* the suspension took effect, 28,357 drivers paid the fine or began making regular payments to the court.

The FTC driver privilege suspension is really the only effective means of enforcing traffic laws. Without effective enforcement of traffic fines, where is the incentive to obey traffic laws? For many persons, loss of the driver privilege is only incentive to obey traffic laws.

REDUCED FUNDING OF THE CRIMINAL JUSTICE SYSTEM. For better or worse, the state-wide criminal justice system relies upon revenue from traffic fines for financial stability. The Criminal Fine Account receives traffic fine monies collected by the circuit courts, justice courts and municipal courts. The Criminal Fine Account provides funding for the Dept. of Public Safety Standards and Training, various programs administered through the Dept. of Justice and other programs as well as the General Fund. The majority of funds in the Criminal Fine Account are derived from traffic fines.

Counties and cities use the fines collected by courts, most of which are traffic fines, to operate justice and municipal courts, provide law enforcement services, operate jails and prosecute crimes and ordinance violations in the local courts. Most of the fines collected result from traffic offense convictions. So, how does the driver privilege suspension contribute to this revenue stream?

Here's an example of how that works: In 2018, DMV issued 46,412 driver privilege reinstatements on FTC suspensions. We do not know the dollar value of the average payment that led to reinstatement, but we can make some reasonable suppositions. Suppose the average

payment was \$100; that translates to \$4,641,200 paid into the justice system. Suppose the average payment was \$200; that translates to \$9,282,400. The payment of \$300 translates to \$13,923,600. In 2019, rescissions and reinstatements totaled 51,539, if the average payment was \$100 that translates to \$5,153,900 paid into the justice system; if the average payment was \$200, that translates into \$10,307,800; if the average payment was \$300, the translates to \$15,461,700.

The average payment was probably greater than \$300. In 2018 and 2019, the justice system probably received revenue in excess of \$20 million each year from FTC suspension rescissions and reinstatements (including fines, fees, and interest). The recipients of those funds include the State of Oregon, every county with a sheriff's office, and every city with a police agency or an IGA with a county sheriff or another city for police services.

It is not possible to determine how much of the revenue stream from traffic offenses results from payments by persons who would not pay *but for the likelihood of suspension*. My experience and the alacrity with which persons respond to the DMV Notice of Suspension seeking rescission or reinstatement suggests that at least as many pay the traffic fines rather than *risk* an FTTC suspension. The loss of fine revenue from these persons would likely result in an additional \$20 million or more in lost revenue to the justice system each year.

The loss of FTC suspensions would be critical for the private collection agencies that presently receive assignment of traffic debt from circuit courts (through OJD), justice courts and municipal courts. The FTC suspension drives the effective collection of traffic debt by private collection agencies. Without the incentive of reinstatement of the FTC suspension, private collection agencies have no leverage to effect collection of traffic fines. There is simply no effective replacement for the FTC suspension to collect traffic fines and enforce traffic laws

Section 11 of HB 4065 appears to anticipate a precipitate loss of fine revenue, but appears to seek to moderate the loss from a steep drop to a gradual taper. This is a false hope. In my experience, most FTC reinstatements occur within one year of suspension (in 2019, more than 1 of 5 suspensions were rescinded within the 60-day notice period). The loss of the driver privilege becomes immediately significant once it takes effect. Thus remedial action by the suspended person most often occurs within the first year following suspension. Even with the Oct 1 effective date and the normal delay from citation to judgment, there will be a significant 1st year drop in revenue, a fully stepped down 2nd year drop, followed by a gradual taper, if any, when stabilization occurs between the 3rd and 5th year following adoption.

CLOSURE OF JUSTICE COURTS AND MUNICIPAL COURTS; LIMITATIONS ON ACTIONS. Should HB 4065 become law, within 2 to 3 years of its effective date as many as ½ of the justice of the peace courts would close or limit jurisdiction. The prosecution of crimes is the most costly activity in justice courts because of the high demand on staff time, judge time, the cost of indigent defense and the costs of jury trials. Without fine revenue to at least largely offset the costs of operating these courts, few counties would be able to operate their justice court. Prosecution of crimes would be the first cut; but, because of the precipitate loss of traffic revenue, those courts most at risk would likely be closed.

Many cities would be similarly forced to eliminate prosecution of crimes, eliminate prosecution of all offenses except city ordinance violations or simply close the municipal court.

Counties and cities do not have a lot of weasel-room in their annual budgets. They have limited tax resources. Fine revenues must in large part if not entirely offset the cost of operating their court—there is no other revenue source. Especially in small cities, and most cities in Oregon meet that definition, the cities' general fund cannot underwrite the full cost of court operations. Most small cities already tap their general fund to operate their courts and they rely upon revenue from fines to mitigate the cost to their general fund of operating the municipal court. Without traffic fine revenue, cities will find it difficult to finance the high cost of prosecuting crime and may not even be able to operate at court at all.

The justice court and municipal courts are the quality of life courts in the communities they serve. These courts handle everything from truancy to trespass, from harassment to barking hound dogs; if it isn't a felony, they probably get it. Loss of a community's court is nearly an automatic diminution of the community's quality of life. The reality is that traffic fine revenue is necessary to continue operation of these courts. Few counties or cities have the resources to replace lost fine revenue.

INCREASED CRIMINAL CASE LOAD IN CIRCUIT COURTS. Oregon law provides for 2 kinds of crimes: felonies and misdemeanors. Except for occasional pre-trial proceedings in justice courts, felony proceedings are handled in circuit courts. Except for Multnomah County and a few other counties scattered throughout this State, most misdemeanor proceedings are handled in justice and municipal courts. In Linn County for example, the justice court and municipal courts handle on average 65% of the misdemeanor crimes, the circuit court handles 35% of the misdemeanor crimes filed each year. Linn County is not unique in this respect, though the case load proportion varies from county to county.

Counties and cities rely upon revenue from their courts to cover or offset the cost of operating those courts. The greatest expense in operating those courts is the cost of the prosecution of misdemeanor crimes in those courts, to wit: prosecutors, indigent defense counsel, court staff, judges, juries, witnesses, court facilities, ancillary fees and services, and the cost of operating a jail or, for some cities, paying for beds at the county jail.

District attorneys are not required to file crimes in justice courts and cities are not required to handle crimes in their municipal courts. DA's possess the discretion to choose where to file and cities possess the discretion whether to prosecute crimes at all in their municipal court. If the loss of revenue exceeds the fiscal ability to fund the court, misdemeanor crimes now handled by justice courts and municipal courts will of necessity migrate to the circuit court. There is no other court for those misdemeanor cases.

Here is an example of what that would look like: In Linn County, if the Justice Court could no longer handle misdemeanor filings, about 700 crimes, more or less, would migrate to the circuit court each year. If the cities of Lebanon and Sweet Home had to discontinue misdemeanor prosecutions in their courts, the circuit court misdemeanor caseload would double, overnight. Each of those cities has its own police agency; one day the officers would cite crimes into the municipal court, the next day those same crimes would be cited into the circuit court.

But it's not just crimes that will migrate to the circuit courts, any number and type of violation offenses will go to circuit courts, too. When a justice court or municipal court closes,

everything that court handled (including civil actions from justice courts) will have to be filed in the circuit court, including traffic violation offenses, which HB 4065 renders substantially unenforceable.

INCREASED COSTS TO THE STATE. More crimes filed in circuit courts, more violations filed in circuit courts, more civil actions filed in circuit courts requires greater General Fund appropriations for indigent defense counsel, court staff, judges, juries, witnesses, court facility and ancillary fees and services associated with circuit court operations. How much more money will have to be appropriated to the Judicial Department remains to be seen. But if this bill becomes law, the State Court Administrator would be well-advised to begin surveys at 6-month intervals of all the justice courts and those misdemeanor municipal courts serving a population 5,000 or more to ascertain the likelihood of those courts continuing to handle misdemeanor crimes or, in justice courts, civil actions or continuing to operate at all. Such surveys would provide at least an inkling of the size of the fiscal train coming at OJD and the State General Fund.

To put this in as simple terms as possible, if HB 4065 becomes law most cities and counties will no longer be able to handle a misdemeanor case load; some counties and many cities will be forced to close their justice courts and municipal courts. The circuit court will then have to absorb that case load at state expense. Not only will it cost the State a lot more per case to handle that case load than it cost the counties and cities, the State will realize significantly less revenue per case, too. Costs will go up, revenue will not.

INCREASED COSTS TO COUNTIES. When misdemeanors are prosecuted in municipal courts, the City Prosecutor or City Attorney files and prosecutes the action. When misdemeanors are prosecuted in circuit courts, Deputy District Attorneys file and prosecute the actions. The City Prosecutor is paid by the City. The Deputy District Attorney is paid by the County.

When cities cease prosecution of crimes in their municipal court, prosecution of that case load falls on the District Attorney's office and the DA's deputies must handle those additional cases. Depending upon the size of the case load, the county will either hire additional attorneys or the DA will have to decline prosecution of some or all of those crimes. Either the county will have to find the money to hire additional Deputy DA's or many quality of life misdemeanors will not be prosecuted. Because counties are typically strapped for cash, DA's in some counties have already publicly declined certain misdemeanor prosecutions because of inability to fund necessary staff even without the closure of municipal courts.

DEGRADATION OF THE EFFICACY OF THE CRIMINAL JUSTICE SYSTEM AND THE QUALITY OF LIFE IN OREGON COMMUNITIES. The efficacy of the criminal justice system depends upon the steady functioning of the 3 trial courts, circuit, justice and municipal. Each of these courts play important, if varying, roles in nearly all of Oregon's 36 counties. With few if any exceptions, the justice courts and municipal courts are crucial to the prosecution of misdemeanor crimes and minor offenses that promote and maintain the quality of life in Oregon communities.

Fiscal strangulation of these courts will benefit no one. Shifting the justice court and municipal court case load to the circuit courts will merely result in delay, increased costs and a denial of justice. Lacking adequate resources, District Attorneys will deny prosecution of

“minor” misdemeanors, especially of property crimes. When District Attorneys deny prosecution of crimes, that is justice denied to the victims of those crimes.

The failure to prosecute crimes degrades the quality of life in the communities where these crimes occur. It doesn't take long for a certain class of persons to discover that no adverse consequence to them arises from certain types of criminal conduct such as trespass, theft, destruction of property, telephonic harassment, disorderly conduct and other misdemeanor offenses all to the degradation of a community's quality of life.

The fate of HB 4065 will determine the degree to which Oregon citizens will continue to be safe on their highways and secure in their homes and communities. The consequences of passing this bill will go far beyond the loss of several tens of millions of dollars to the criminal justice system each year.

DISCUSSION OF ALTERNATIVES TO HB 4065

REPEAL MANDATORY MINIMUM FINES; RESTORE DISCRETION TO COURTS. The 1995 Legislature took a number of positive steps to establish more consistent and fair fine scheme for traffic offenses. Repeal of mandatory fines and restoration of the discretion of courts over all monetary obligations were crucial aspects of this legislation. It was then possible for courts to deal fairly and effectively in all cases—and where appropriate impose nominal monetary obligations that vindicated the public's interest in safe highways while recognizing the financial limitations faced by many persons.

Despite, or perhaps because of, a substantial growth in the revenue stream from traffic offenses following that 1995 legislation, within a few years the Legislature began chipping away courts discretion, diverted steadily increasing amounts of revenue from local courts into the Criminal Fine Account and established mandatory minimum fines. To some it seemed that the only thing that mattered to the Oregon Legislature during the past 20 years was bringing increasing revenue into the Criminal Fine Account without regard to the effect on the justice system.

Repeal mandatory minimum fines. Restore the court's discretion to impose fines appropriate to each case. Restore the ability to impose the nominal fine in cases where appropriate and substantially reduce fines in appropriate circumstances without regard to a mandate that may be egregiously unfair to some persons in their particular circumstances. Let the court decide what is fair and just in each case. Take “mandatory” out of the fine scheme.

LIMIT THE FINE THAT MAY BE IMPOSED UPON DEFAULT. Presently, courts are permitted to impose the maximum fine for a particular violation offense upon the defendant's default in appearance. Some courts do that. In my view, that is grievously unfair, and the fact that some courts follow that practice contributes to the factors leading to HB 4065.

Typically, the maximum fine is substantially greater than the presumptive fine. For example the presumptive fine for a Class B violation \$265; the maximum fine is \$1,000. The \$265 figure is what the cited persons sees on the citation; that becomes the fine of expectation.

The fine print on the citation does state that the court may impose the maximum fine upon the person's failure to appear, but the fine print does not state the maximum fine.

The fine imposed upon default should be the presumptive fine. Other fees can and likely will be added to the judgment before the debt is paid. But, the judgment is vastly fairer, and far more likely to be paid when the amount imposed is the presumptive fine rather than the maximum fine. This is a very simple change to ORS 153.021(1) that along with restoration of discretion will go a long way to improving justice for traffic violations.

ESTABLISH A COURT-BASED PROGRAM FOR EQUITABLE RELIEF. There are a number of persons with court debt from traffic offenses in a number of courts. Often these debts amount to thousands of dollars. Their driver privilege is suspended by multiple courts. The debts have sometimes been assigned to private collections agencies or the Dept. of Revenue for collection. Often these debts are beyond the means, sometimes far beyond the means, of the suspended person to ever pay. The traffic debt amounts to a small—and sometimes not-so-small—mortgage on that person's future.

Establish a procedure whereby a person may file a petition in a justice court or a circuit court in the county in which the person resides seeking relief from fines imposed on traffic violation offenses. Upon a showing by competent evidence of good cause, which would include the person's ability to pay those obligations, this court could take jurisdiction over all such sentences in any court within this State, circuit, justice or municipal. Give the court discretion to affirm or remit all or any part of any unpaid balance on any traffic fines and other fees and costs that comprise the judgments under such conditions as the court shall determine to be fair, just and equitable, including regular payments consistent with the persons circumstances. Allow the court to grant conditional reinstatement of any FTC suspension to the applicant upon such terms as the court shall order, such conditional driver privilege to continue so long as the person obeys the orders of the court and violates no provision of the Motor Vehicle Code for a period of 24 to 36 months. If payments are required, limit the period such payments may be ordered to continue to a maximum period of 24 to 36 months, unless extended for an equivalent period of time for any forbearance allowed. Upon completion of the payment period, any remaining traffic debt would be remitted in full, the debts permanently cancelled and the driver privilege fully reinstated. Provide that a person may not make more than 2 applications for such relief during any 40 year period and that a second application for such relief may not be made within 10 years of time proceedings on a previous application concluded.

Enacting such provisions would allow a circuit court or a justice court to gather all traffic debt into a single package and establish conditions that would allow a person's traffic debt to be extinguished and their driver privilege restored. A program such as this would allow equitable restoration of the driver privilege, but would require an extended period of compliance with the Motor Vehicle Code and at least nominal contribution to the satisfaction of the traffic debt. The application filing fee would be the amount set forth in ORS 21.145, subject to waiver or deferral as provided in ORS 21.680 to 21.698.

ESTABLISH A DMV PROGRAM FOR EMPLOYED PERSONS TO OBTAIN CONDITIONAL RELIEF. Establish administered by Driver & Motor Vehicle Services (DMV) whereby DMV could grant a conditional driver privilege to an employed person who agrees to make regular payments to all

courts in which they have unsatisfied traffic fines for a period not to exceed 36 months, provided that the period shall be extended to the equivalent of any period of forbearance that may be allowed. The total amount of the payments could not exceed 25% of the person's household disposable income (income beyond necessities) and would be paid in equal amounts to each court by the person until all court traffic debt is satisfied. Full compliance with all provisions of the Motor Vehicle Code would be required during the entire 36-month period. Fine amounts remaining unsatisfied would be remitted and those debts cancelled at the conclusion of the 36-month period.

Such a program would enable a gainfully employed person to deal with a situation where the person has limited funds on a monthly basis, has multiple obligations to multiple courts—all of which have differing requirements for payment. Typically, the demands for monthly payments exceed the amount of funds available each month and the person is unable to reconcile the amount of available funds with the total demands for payment. This would necessarily be a fee-based program, probably on a sliding scale according to income. A monthly fee paid to DMV would be the most equitable means for payment.

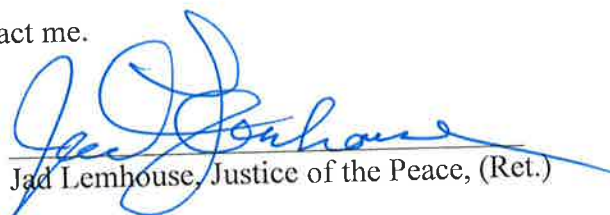
At the conclusion of the 36-month period, any traffic fines remaining unsatisfied would be remitted and the debt cancelled by each of the courts included in the particular person's program. This program would be particularly useful to those persons who had somewhat "wild period" at some point, but subsequently settled down, became regularly employed but remain encumbered by substantial court debt that they acquired during their "wild period."

SUMMARY

Adoption of HB 4065 would result in a catastrophic impact on the criminal justice system in every virtually every community in Oregon. The initial impact will be a fiscal impact—as much as \$100 million, more or less, each biennium—but the degradation of traffic safety and the degradation in the quality of life in Oregon's communities shall soon follow. However, the conditions which underlie the concerns from which HB 4065 arises may be ameliorated by other measures that address those concerns with minimal fiscal impact.

There are effective ways to resolve the concerns of the proponents of HB 4065 while maintaining the fiscal integrity of the criminal justice system. These issues could be more effectively resolved if referred to a broad based interim work group to report to the 2021 Legislature the results of their findings and suggestions for remedial legislation.

If I may be of further assistance, please contact me.


Jad Lemhouse, Justice of the Peace, (Ret.)

- c: Hon. Martha Walters, Chief Justice, Oregon Supreme Court
Hon. Thomas McHill, Presiding Judge, Linn County Circuit Court
Hon. Kathy Stinnett, Pres. OJPA
Mr. Kristopher Strickler, Director, ODOT

Mr. Mr. Rob Bovett, AOC
Mr. Mike Cully, LOC
Mr. Mazen Malik, LRO
Mr. Steve Bender, LFO