

**TO: Rep. Janelle Bynum, Chair
Rep. Ron Noble, Vice Chair
Rep. Karin Power, Vice Chair
Members of the House Committee on Judiciary**

**FR: Jason Myers, Oregon State Sheriffs' Association
Kevin Campbell, Oregon Association Chiefs of Police
Paige Clarkson, Oregon District Attorneys Association
Rob Bovett, Association of Oregon Counties
Scott Winkels, League of Oregon Cities**

RE: Public Safety Concerns with HB 2002 -4 Working Amendment

April 7, 2021

Chair Bynum and Members of the House Judiciary Committee:

As your public safety and law enforcement partners we thank you for your thoughtful engagement and partnership over the past 4 months. As you know, your Committee has shaped meaningful and impactful police reform and policy bills – all the result of diverse stakeholder engagement, tough conversations and hours of collaboration.

Unfortunately, the dash-4 Working Draft Amendment to HB 2002 makes sweeping changes to the public safety system from initial stop, to arrest, to the sentence and to probation...all without, in our opinion, the thoughtful exchange necessary to ensure these reform driven measures don't result in unintended impacts and real safety risks to Oregonians.

To that end, we have combined our collective concerns with the dash 4 Working Draft Amendment to HB 2002 below and request that this bill not be advanced during the 2021 Legislative Session.

Sections 3 through 5 – Officer Stops

While officers are trained to provide the reason for a stop in routine situations, requiring them to do so for every stop is problematic. Circumstances involving victim safety, officer safety, and sensitive criminal investigations are reasons why an officer would have valid reasons for not identifying the reason for the stop. For example, if the stop is to effectuate an arrest of a homicide suspect or in response to a serious physical assault, the individual stopped may attempt to escape or become violent. If the stop is in response to an amber alert or child abduction report, giving the reason for the stop could put the child victim at risk.

Section 7 – Arrests

As drafted, the amendment would prohibit officers from arresting individuals for several delineated crimes. Many of these crime categories, after the arrest, would result in removal of

an individual for trespass, resisting arrest (without an accompanying underlying charge), or interfering with a peace officer. Which is often the desired deescalating result. Take for example the recent attacks on the Oregon State Capitol. While we understand the desire to limit when an officer executes a custodial arrest, this should be discretionary and not a blanket prohibition that doesn't consider the unintended consequences.

Additionally, a blanket prohibition on the police's ability to arrest for prostitution causes significant unintended consequences for victims of human trafficking, as debated under SB 274 (2021). Removing a police officer's ability to arrest and detain for prostitution removes law enforcement's ability to investigate and protect trafficking victims, particularly youth. Law enforcement intervention, while not ideal, is the only tool available to first responders (including DHS) for a forced separation between victims and their traffickers. That removal can connect victims with resources while holding their offenders accountable.

Section 9 - Infraction Stops

This section prevents law enforcement from stopping a person if one headlight or one taillight is out. This poses an incredible safety risk to the motoring public. First, a car's lights are what give those around them an awareness of their presence and a perception of the other car's location in relation to their own. Take a person who has both their headlight and taillight out on one side of their car. If another car is attempting to merge into their lane, their perception of the location of the car will be completely wrong which could easily lead to a crash. This is especially hazardous on darker roads. In addition, when law enforcement stops a person for lighting being out, it is often the first time the person becomes aware that the light needs replacing. This ensures the person's safety and those driving around them.

Section 11- Jail Admission for Ill Persons

This section prohibits jail admission for those "in serious need of psychiatric care... or in acute need of psychiatric care" without any exception for risk to victims or the community at large. In addition, the term "appropriate medical facility" is not defined and the party authorized to provide medical clearance is not identified.

In addition, the broad and undefined language of this section places police agencies, including the Oregon State Police, at risk of civil liability for making a determination or failing to make a determination as to whether or not a subject is "seriously ill" or "seriously injured" or "in serious need of psychiatric care."

Sections 12 and 13 – Parole and Probation Officers

These sections prohibit a parole and probation officer from carrying a firearm and compromise their ability to perform their job duties safely. In response, local government and county risk departments will be forced to make changes to current parole and probation job duties that are not in keeping with best practice polices.

Section 12 also restricts where an officer may visit a person on supervision, including locations in which "individuals seek social services or public benefits" – which would mean officers could

not visit people on supervision who are participating in a community corrections program, such as an embedded resource center, or even a JRI-funded treatment program or community housing.

Section 15 – PPS Reduction

This section would make all individuals released from prison eligible for up to a 50% reduction in their period of Post-Prison Supervision. This broad eligibility would include those who have committed gun offenses, DV assaults, sexual abuse, and other serious person to person crimes. As written the bill does not provide safeguards to ensure that an offender has sufficient time to complete any treatment or programming that has been ordered as part of their PPS, to pay restitution or to ensure that the period of Post-Prison Supervision is long enough to ensure that valid victim safety measures, such as a no contact order, can remain in place. This section would diminish the community's expectation of post-prison supervision for when offenders are released from custody.

Section 16 - Conditions of Supervision

This section discusses conditions of probation that may be imposed by the court if they are "necessary and appropriate in a particular case." This raises several questions: Will the court need to make a record as to why each condition imposed is necessary and appropriate? What is the standard for this and how will it be applied? Will this create inherent inequity when not applied to like or similar situations? This departs from consistent conditions of probation that would apply across the board, standardizing collaborative case planning and cognitive-behavioral interventions that we have worked hard to create. This is also very likely to lead to significant litigation.

In addition, and most significantly, under this bill an individual would be able to continue to use controlled substances while on criminal supervision. This is true even when the person is required to engage in treatment. Currently, courts require those under supervision to abstain from the "use of controlled substances except pursuant to a medical prescription." With this bill, probation for DUII, domestic violence assault, and other assault crimes that directly involve the use of controlled substances will not address the cause of the underlying issue. This puts the safety of Oregonians at risk. It also creates an inconsistency within the law: Why require treatment (which requires abstinence for successful completion) while not requiring the same as a condition of probation? We understand that relapse is part of recovery, but this conduct should still be brought before a court for a judge to decide how to best address the ongoing concern.

There are additional practical concerns: this section allows for testing and an evaluation for controlled substance if the person has a "history of abuse." It is unclear how history of abuse in a particular case is presented, defined or assessed.

Section 17 – Supervision & Impact Panel Fees

This section of the bill deals with post-prison supervision. The same language is present that prevents the imposition of a condition of abstaining from the use of controlled substances. This

would include individuals who have seriously injured or killed Oregonians while driving impaired by controlled substances. This section also prevents offenders from paying the minimal \$5 fee to support those who run victim impact panels. Victims impact panels are an incredibly effective tool for preventing future drunk and drugged driving, and they rely on this money to run their programs and without them offenders will not get this much needed educational awareness of the impact of their crime on victims.

Section 18 - Jail as a Sanction

The section prohibits the court from ordering jail as a sanction when a probationer uses drugs. As noted above, this has the potential for serious consequences to many programs which are serving as an alternative to incarceration. It is not uncommon in such a program for a jail sanction to be used as a way to intervene in a person's relapse before they can be placed back into an inpatient program. Sometimes an individual relapses and is no longer allowed to stay in their program housing and it is clear they need a higher level of care and a jail sanction is used as an intermediate step. There are circumstances where community safety and personal well-being of the individual will be deeply harmed unless jail is available. Judges are in the best position to consider whether jail serves these needs for individuals and the community.

Sections 19 through 21 – Supervision Fees

The elimination of supervision fees includes funding through the DOC for FY 21-23. The proposed section states that DOC shall use a formula based on the previous collections in a county as the allocation method. This methodology does not carry the same fairness as the current Grant in Aid allocation methodology. Section 21 does not state the amount needed for distribution to counties, and for counties to maintain the amount budgeted for FY 21-22, the statewide amount would need to be \$12,129,380. This amount also should be infused into the Current Service Level as distributed through Grant in Aid funding.

Sections 27 to 31 – Justice Reinvestment Funding Shift

The JRI proposed amendments beginning in section 27 would mandate 20% of funding go to the Northwest Health Foundation, a 501(c)(3)(4) serving the Portland and SW Washington area. It is unclear what their role would be statewide. The amendment also shifts an additional 5% to victim services. This would result in a 25% reduction in JRI services if total JRI funding is not raised to compensate. As many of you know, Justice Reinvestment funding provides critical statewide evidence-based programs and services. Without new additional funds, current services would be eliminated under this proposal and likely divert less persons from prison and increase the risk of recidivism statewide. This is a departure from the science-based approach used by the CJC in all of its programs, including JRI and could compromise the entire JRI program by infusing a part of the program with a structure and standards that are not accountable in terms of proof of efficacy.

Thank you for your consideration and careful review.