



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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March 14, 2019

The Honorable Representative Jennifer Williamson, Chair  
House Judiciary Committee, Members

### **Re: Testimony Concerning HB 2500**

Dear Chair Williamson and Members of the Committee:

**Thank you for the opportunity to submit the following comments citing concerns with HB 2500 and the Dash-2 Amendments.** We did not submit testimony at the time of the public hearing because we had discussed working with the bill sponsor to reach compromise on the language. However, we have been unable to reach any agreement on changes that we think make this bill a good or fair law.

**While OCDLA is an organization that generally focuses on criminal laws and their impacts, this civil law proposal will have a large financial impact on people accused of animal abuse, and the bill does not have enough judicial discretion or sidebars to offer the type of due process we think everyone facing criminal charges or civil lawsuits deserve in our system of justice.**

#### **Issues With What the Bill Does:**

House Bill 2005 is a bill that seeks to create a new civil cause of action for third parties who *decide* to provide care to a domestic animal that has been *suspected* of suffering abuse by someone else.

The bill allows *anyone* who *thinks* someone else's domestic animal needs care to take on that care and then sue the other person for expenses they incur.

The bill does not require that the person who has allegedly caused the abuse *be convicted of any crime* in criminal court. While the person suing will need to put on a case showing the abuse occurred, the standard in civil court is low, and this bill allows the court to issue a *default judgment* if the person accused *doesn't have the ability to pay* the thousands of dollars it normally requires to hire a lawyer and respond in court.

The bill also *does not explicitly require the court to make a finding* that the expenses incurred by the person who decided to take on the care of the animal was reasonable before deciding to award the person suing the expenses.

The bill *requires that attorney fees be mandatory* and *takes away the Judge's discretion* to decide whether attorney fees are appropriate in the case. It is our understanding that mandatory attorney fees provisions are not common, and we disagree with them being placed in this bill.

**Why We Care:**

Criminal defendants who are already being ordered to pay restitution to those who suffered economic damages due to their conduct will be the people who are sued under this newly created cause of action.

We believe this bill will loop in people who are indigent or have little resources to hire a lawyer to fight a civil suit—these are the same people who will be in criminal court being subject to restitution judgments.

We believe default judgments will be issued routinely in these cases, and the person being sued will have little recourse to overturn the judgment due to inability to hire legal counsel. As a result, the person being sued will have an additional money judgment against them (on top of any restitution imposed in criminal court) that includes attorney's fees for the person suing.

Anecdotally, but important to share nonetheless—many of the people convicted of animal abuse suffer from mental illnesses or are extremely impoverished meaning there will be additional obstacles for them to defend themselves in court.

**Our Suggestions:**

At the very least, this bill should not allow default judgments, it should not tie a court's hands regarding the imposition of mandatory attorney's fees, it should explicitly state that the court must make a finding that the costs/expenses incurred were reasonable and required before a court can award any damages, and it should limit the award based on what is being collected/has already been collected through a criminal restitution judgment.

**Thank you for your consideration.**

**About OCDLA**

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar 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. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

**For questions or comments contact:**

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