



DEPARTMENT OF JUSTICE

March 14, 2019

The Honorable Senator Jackie Winters, Co-Chair
The Honorable Representative Carla Piluso, Co-Chair
Ways and Means Public Safety Subcommittee
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Memo: **Response to questions raised during March 13, 2019 presentation on Appellate Division**

Dear Co-Chairpersons and Members of the Subcommittee:

During my presentation to the subcommittee, Senator Winters asked if I could provide a list of the counties where courts had determined that HB 3078 (2017) was unconstitutional and therefore had sentenced repeat property offenders based on the previous version of the law.

I am aware of appeals involving the constitutionality of HB 3078 from the following counties: Clackamas, Clatsop, Crook, Jefferson, Lincoln, Tillamook, Umatilla, and Washington. I have been told that there were also similar cases in Coos, Linn, Marion, and Wasco Counties, but I have not seen any of those cases on appeal so far.

Representative Stark asked for information about the costs that the Department of Justice had incurred in correcting the sentences in those cases. I understood the question to be about the costs that we had incurred addressing the sentences *after* the Supreme Court's decision in *State v. Vallin* resolved the constitutional question; if that is incorrect, please let me know. My response is also confined to the costs incurred by the Department of Justice; I am not able to estimate what resources the public defense system, the district attorneys' offices, or the courts may have expended on those cases.

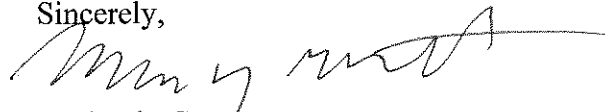
The costs for the Department of Justice have been minimal: a few hours' worth of lawyer time in total across about a dozen appeals presenting the HB 3078 issue. We have been working closely with the Office of Public Defense Services (which generally represents the defendants on appeal) and the district attorneys to determine whether the sentences imposed in particular cases would have been different under HB 3078 and, if so, how to resolve the appeals in the fastest and least burdensome way. In some cases the defense attorney, with the agreement of the district attorney's office, have filed a short motion to the trial court to correct the judgment; in others the defense attorney and the Department of Justice we have jointly asked the Court of Appeals to reverse the sentence and send the case back for a new sentencing proceeding. Some cases are

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more complicated, but so far none have required a significant expenditure of Department of Justice resources. Although there are likely more cases in the pipeline that have not yet reached the Appellate Division, I expect that we will be able to resolve them quickly and efficiently as well. The professionalism shown by the Office of Public Defense Services attorneys and the district attorneys and their deputies has made the process go smoothly.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Gutman", with a long horizontal flourish extending to the right.

Benjamin Gutman
Solicitor General