

Oregon Legislature 2021 Regular Session
House Committee On Judiciary
Testimony Regarding HB 2002
From Michael Mann
Training Sergeant (retired) and Oregon resident, writing as a private individual

February 25, 2021

Chair Bynum and Committee Members,

My name is Michael Mann. As a recently-retired law enforcement officer, I agree with many others who are calling for reform of the criminal justice system. However, aspects of this bill (HB 2002) will not help reform the criminal justice system and will create more problems, including the increased likelihood of more crime and fatalities.

I retired in 2019 as the Training Sergeant of a very professional Oregon municipal police department. In that position I developed and provided training, as well as worked on agency accreditation. The agency is the only police department in Oregon that was awarded international accreditation at the level of "Gold Standard with Advanced Meritorious Certification." It was my goal to help develop the most professional police officers anywhere in the state and country.

Since retiring, I have been learning a new calling as a labor representative, representing labor interests for some front-line members of law enforcement and other public sector employees. I am not writing as a representative of any agency or employer, but I do have information that you may find valuable.

I am giving testimony as an individual and my views are my own. I am writing from three perspectives: from the perspective as a human being who is subject to encounters with law enforcement, from the perspective as a knowledgeable trainer of professional police officers and from the perspective of a representative of criminal justice professionals in labor matters.

Today I am giving testimony on HB 2002 (a bill that creates a number of changes to the criminal justice system). I am specifically writing to object to portions of the bill that related to police officer authority to stop and arrest individuals, as well as to object to a portion of the bill that relates to parole and probation officers.

Statement:

I am not commenting on the sentencing portions of HB 2002; I understand there is a desire for change in that matter. I believe this bill is a flawed approach that, if passed, may lead to negative and tragic results for the public and for people who work in the criminal justice system.

I strongly object to the changes proposed in Section 21 through Section 25 (Limitations on Arrests and Traffic Stops), Section 27 and Section 28 (Community Corrections / Parole and Probation Officers).

Overall, Sections 21 through 25 place severe limits on the authority of peace officers. The restrictions may be well-intended but they will jeopardize the safety of the community and of peace officers, as well as create uncertainty and confusion about the authority of officers.

Section 21 and Section 22 take away a necessary tool of peace officers; the ability to remove a person from a problematic situation.

When I started in law enforcement in 1991, Oregon law did not allow officers to arrest individuals for class B and class C misdemeanors, in any manner. Essentially, officers could do nothing about that crimes (at those levels) that did not happen in their presence.

The law was then changed to allow issuance of a citation for class B and class C misdemeanors based on probable cause. Officers could conduct an investigation and if probable cause existed, a citation could be issued but the individual could remain at the scene of the crime, potentially causing fear to the victim or the public and the situation could escalate back to the previous situation.

The law was then again changed to allow officers to take people into custody for class B and class C misdemeanors based on probable cause. This allowed officers to remove suspected lawbreakers from the situation, allowing for current resolution and establishing safety and community peace. The changes made to allow more authority to solve problems was necessary.

This bill seeks to undo those improvements and more. Officers need the ability to remove individuals from situation as necessary, based on the totality of the circumstances. With the proposed changes, suspected offenders cannot be removed from the situation.

Here are just two examples of why this legislation will encourage continued law-breaking and community alarm, as well as increase actual criminal behavior:

If a person cannot be physically arrested and removed from a situation under the Trespassing laws, the suspected offender may simply remain and continue doing what they were doing. For example, a trespasser at a sporting event who was causing community alarm could continue causing the same problem after being cited; he can remain and continue and officers could do nothing about it. The officer cannot even issue a second citation for trespassing because the offender would still be continuing the same unlawful behavior with no break to establish another offense has occurred. Additionally, if the trespasser is still on private property, Oregon law allows the person in charge of that private property to lawfully use physical force to remove the person. If a trespasser is on your front yard and the

police will not and cannot remove the him but can only issue him a citation, what is the home owner supposed to do about the trespasser? Either the trespasser remains or the homeowner must remove the trespasser herself, leading to physical conflict, more community disorder and possible civil liability on the part of the homeowner. Of course, the homeowner may be defeated in her (or his) attempt to remove the trespasser and the criminal justice system has failed that person.

Another example: If an officer lawfully tells a suspected offender to stop walking away so the officer can conduct an investigation and the suspected offender does not comply and continues to walk away, the officer may physically stop the person as allowed under ORS but cannot take the person into physical custody for Interfering with a Peace Officer or Parole and Probation Officer. The officer can only issue a citation.

Furthermore, the officer's ability to use force to stop the person under the civil liability laws has just diminished because under the standard established by the US Supreme Court case *Graham v. Connor*, the severity of the offense is a factor in determining civil liability for using force; this change in Oregon law clearly diminishes the "severity of the crime" because the law now deems this offense unworthy of physical arrest. Officers will likely (and appropriately) be very hesitant to physically stop a suspect from walking away from the officer because of the increased liability and scrutiny for making a physical stop.

This essentially means that suspected offenders will figure out that they can simply walk away from peace officers when they are told to stop. Courts have established that officers need to ability to use physical force in order to stop people so the law can be enforced; these changes completely undermine that concept and sends the message that the law will be enforced only on people who decide to comply with an order to stop. Furthermore, carving out specific laws that officers cannot arrest people for will cause confusion and mistakes; an officer will be required to memorize a list of crimes that they cannot arrest people for and hopefully they will remember the list prior to exerting force to arrest a person.

The remainder of the Sections (23 through 25) restrict the ability of officers to stop motorists for specific traffic violations, mostly equipment violations. This change will increase the danger posed by the public because these equipment problems make the roads less safe. Drivers without headlights cannot see people or objects as well in diminished light conditions; people (pedestrians and other drivers) cannot see the moving vehicle as well if all lights are not working, increasing the danger. As an example, a driver with only one headlight may be thought to be a motorcycle by on-coming drivers, who would otherwise swerve to avoid a head-on collision of a one-headlight vehicle who is over the middle line may not detect that necessity, resulting in a head-on collision that could lead to death.

Lack of any brake lights could result in many more rear-end collisions. In 1986, the federal government started requiring the "cyclops", third brake light in most vehicles and the number of rear-end collisions dramatically decreased and saved

many lives. This bill would undo those safety improvements by allowing people to drive and not be stopped by police officers.

Community safety will decrease. Period.

Regarding Sections 27 and 28, those sections restrict the manner of dress and the carrying of weapons by Parole and Probation Officers. These changes will likely result in the death of Parole and Probation Officers.

P&P Officers do have arrest powers and should hold their clients accountable by physical arrest, when justified. Requiring P&P officers to dress in a manner that may lessen their ability to be identified as enforcement officers puts everyone in the situation in danger; they have arrest authority and should clearly be identifiable to everyone. They carry weapons, including firearms and there should be no mistake that they are properly authorized to have those weapons. Otherwise, clients may resist arrest or citizens or police officers may confront P&P Officers who are ambiguously identified when performing their duties. Furthermore, P&P Officers take clients into custody who may be returning to prison; those clients' very freedom is at stake. If a P&P Officer is prohibited from carrying the necessary weapons to defend themselves or others in any circumstance, only tragedies can occur. Offenders will know that the officers are unarmed if the law requires it and the officer will not be able to defend themselves against offenders who may do anything to protect their own freedom, even kill an unarmed P&P officer.

For all of these reasons, Sections 21 through 25 and Sections 27 and 28 of this bill should be removed. The community and P&P Officers must be protected and these concepts should not be passed into law.

Thank you for your consideration in this matter.

Respectfully submitted,
Michael Mann

Additional Statement Regarding Training as a Method of Improving the Police Profession:

I instructed Oregon police officers for 25 years in areas such as de-escalation, police authority, force, physical skills, and other topics including the DPSST developed course "Police Legitimacy and Procedural Justice." I am still involved in instructing. I believe that competent, frequent, and progressive training delivered in a consistent manner is vital to establish a successful and trusted police agency.

There are many paths to build a justice system that more accurately reflects the vision of our nation; one path that I believe would deliver substantial results would be to require standardized on-going training for all law enforcement officers in Oregon, not just to basic police recruits. Many people likely do not realize that

police officers in Oregon only receive mandatory state-standardized training during the basic police academy which occurs during the first eighteen months of employment. After that, police officers must receive on-going training, but the content and quality of that training is up to each individual agency; the training is not standardized which inevitably results in different knowledge, different skills, and different practices on the street. Thank you for your consideration.