

### What and Why

The purpose of this action pamphlet is to encourage injured riders to create strong enforcement of bicyclist rights to the road in injury accidents by taking things into their own hands and using laws already on the books to charge and convict drivers in court for violation of the Rules of the Road.

In spite of the best of intentions law enforcement agencies do not have the resources or the legal understanding of laws relating to bicycles from a bicyclist perspective, to investigate and issue citations for traffic law violations in most injury accidents. For example, in Portland, Oregon's most populous city known for its friendly attitude toward bike riders, city police maintain a departmental policy of facilitating exchange of information between the parties to an accident, but not investigating or issuing citations in traffic accidents unless one of the parties is placed into the area hospital Trauma system or the driver has a warrant or a suspended license. The Trauma system only takes the most serious injuries; entry triggers a police investigation including witness accounts and a scene diagram. However many bicycle accidents involve high energy transfers and serious injuries; yet no police investigation is provided—often an unpleasant surprise to many healing bike riders who later find out that it is their word against the motorist when it comes time to make an insurance claim.

### Background

Police spokesmen have stated in the past that the Oregon statutes prohibit citation unless the cop witnesses commission of the offense. This is not technically correct because the law (ORS 810.410 (4) ) allows a police officer to issue a citation after an accident based on their own after the fact personal investigation. However, even if a police investigation of the accident is available, non-motorized roadway users may still not like the result because some police officers do not see these user groups as legitimate and rightful roadway users. This paternalistic attitude fails to accord full legal rights to the most vulnerable roadway users, those who because of their vulnerability (since they are not encased in sheet metal) most need vigilant protection of the law.

But, bicyclists must consider fully the high costs associated with more intensive traffic accident investigation by police. After all, the insurance adjuster/attorney system serve pretty well in sorting out who is at fault in most accidents. Police officers' primary mission is to protect public safety; in the great majority of collisions fault is clear and investigation of accidents is more appropriately performed by claim adjusters in insurance companies. Regardless of where one draws the line, there is a point after which it is just more important for a cop to be working on a criminal case than answering a radio call to conduct a traffic investigation for an intersection collision.

### We Can Do It Ourselves

And, without requiring any change in law or policy, Oregon bicyclists already have the legal tools to initiate prosecution of traffic law breakers. Oregon law allows a citizen to initiate traffic violation prosecutions in state court, AND to have police help (per Oregon statute). After the initial report is taken and the citizen signs the Oregon Uniform Citation and Complaint, the completed paperwork is served on the bad driver summoning them to traffic court to face the charges in a non-jury trial in front of a traffic judge. The complaining citizen gives an informal presentation of the case, the judge hears evidence and testimony, and then decides. If convicted the bad driver receives a conviction and fine for a moving violation which is no different than one from a ticket issued by a police officer.

The process, known as a citizen "Initiation of Violation Proceeding " is important for bicyclists – we usually get banged up the most in a bike-car collision. Too many of these wrecks occur because drivers fail to yield to us or give us our legal share of the road. These drivers are among the most dangerous drivers on the road and it is important that their driving records reflect it. Also, Insurance adjusters frequently fail to give adequate recognition to bicyclist legal rights. Whether ignorant of the law or just hostile to bike riders, many insurance adjusters see a bike collision case and instinctively favor their insured motorist. Since only the most serious collisions involve law enforcement accident investigation, the bike rider who is hurt after a clear cut violation of the traffic law by a motorist is often disappointed to learn that the driver who was clearly admitting fault at the scene is now claiming that it was the bicyclist who violated the law. If the record contains a citation and traffic court conviction of the driver, then the insurance adjuster will be hard pressed to ignore the true liability picture.

## Follow The Recipe

The Oregon statute is detailed and task specific. It includes every step of the process. The exact text is printed below because it may be necessary to show it to the authorities. Few law enforcement personnel are likely to have direct experience with the process when it is initiated by a citizen; but most officers are very familiar with the Oregon Uniform Citation and Complaint form (the statewide "ticket book"). The law requires that the officer facilitate the process. If you dead-end with the officer who first responds then try the department non-emergency and/or hit and run traffic phone number. In rural areas, state police and sheriff officers share jurisdiction. The gravity of any injury and seriousness of the motorist's traffic violation will greatly influence the officer's response. Filing these cases over petty traffic standoffs is going to tax a tax-poor law enforcement and court system struggling to contain Oregon's dangerous traffic offenders. But in bike-car collisions resulting in injury in which the driver commits a clear violation of the traffic laws the bike rider should consider whether a traffic violation conviction is an option that will be important later to clarify the legal cause of the accident and to make a legal record of the driver's law violation.

### Excerpts of Frequent Violations of Oregon Vehicle Code

**"811.490 Improper opening or leaving open of vehicle door; penalty.** (1) A person commits the offense of improper opening or leaving open a vehicle door if the person does any of the following:

(a) Opens any door of a vehicle unless and until it is reasonably safe to do so and it can be done without interference with the movement of traffic, or with pedestrians and bicycles on sidewalks or shoulders."

**"811.280 Failure of driver entering roadway to yield right of way; penalty.** (1) A person commits the offense of failure of a driver entering a roadway to yield the right of way if the person:

(a) Is operating a vehicle that is about to enter or cross a roadway from any private road, driveway, alley or place other than another roadway; and

(b) Does not yield the right of way to any vehicle approaching on the roadway to be entered or crossed so closely as to constitute an immediate hazard."

**"811.350 Dangerous left turn; penalty.** (1) A person commits the offense of making a dangerous left turn if the person:

(a) Is operating a vehicle;

(b) Intends to turn the vehicle to the left within an intersection or into an alley, private road, driveway or place from a highway; and

(c) Does not yield the right of way to a vehicle approaching from the opposite direction that is within the intersection or so close as to constitute an immediate hazard."

**"811.050 Failure to yield to rider on bicycle lane; penalty.** (1) A person commits the offense of failure of a motor vehicle operator to yield to a rider on a bicycle lane if the person is operating a motor vehicle and the person does not yield the right of way to a person operating a bicycle, electric assisted bicycle, electric personal assistive mobility device, moped, motor assisted scooter or motorized wheelchair upon a bicycle lane."

### Excerpt of Oregon Revised Statute 153.058

**"153.058 Initiation of violation proceeding by private party.** (1) A person other than an enforcement officer may commence a violation proceeding by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the complaint is subject to ORS 153.048. The complaint shall be entered by the court in the court record.

1. (2) A complaint under this section must contain:

(a) The name of the court, the name and address of the person bringing the action and the name and address of the defendant.

(b) A statement or designation of the violation that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the violation is alleged to have occurred.

(c) A certificate signed by the complainant stating that the complainant believes that the named defendant committed the violation specifically identified in the complaint and that the complainant has reasonable grounds for that belief. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties provided in ORS 153.990.

(3) Upon the filing of a complaint under this section, the court shall cause a summons to be delivered to the defendant and shall deliver a copy of the complaint to the district attorney for the county in which the complaint is filed. The court may require any enforcement officer to serve the summons.

(4) If the complaint does not conform to the requirements of this section, the court shall set it aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.

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(b) Traffic violations under ORS chapters 801 to 826, or any violation of rules adopted pursuant to those chapters if the violation constitutes an offense;