

**LC 364 POLICY ISSUE – SINGLE FINE v. RANGE OF FINE WITH DOWNWARD DEPARTURE**

Background: Under existing law a person receiving a ticket has four options:

- (1) Appear in court at the time indicated on the ticket.
- (2) Make a written or oral request to the court for a trial before the time indicated on the ticket.
- (3) Plead guilty by checking the appropriate box on the ticket and sending the amount indicated on the ticket to the court. The person may also send with the ticket a “statement of matters in explanation or mitigation of the violation.”
- (4) Plead no contest by checking the appropriate box on the ticket, sending the amount indicated on the ticket to the court, and attaching a “statement of matters in explanation or mitigation of the violation.”

There is no legal distinction between the consequences of the last two options. In both cases, the court will enter a judgment of conviction and impose a fine.

There is a minimum fine for every level of violation. There is a different amount that is written on the ticket (the base fine amount). The following chart shows the minimum fine and the amount that is written on the ticket. The chart also shows the amount of the average fine that is imposed on the various levels of violations in circuit courts, based on numbers provided by the Judicial Department:

|                   | MINIMUM FINE | AMOUNT ON TICKET | AVERAGE FINE ACTUALLY IMPOSED |
|-------------------|--------------|------------------|-------------------------------|
| Class A violation | \$354        | \$472            | \$431                         |
| Class B violation | \$216        | \$287            | \$262                         |
| Class C violation | \$143        | \$190            | \$179                         |
| Class D violation | \$107        | \$142            | \$133                         |

The majority of tickets are for Class B violations. As can be seen from the chart, the range of discretion that a court current has for a downward departure from the amount on the ticket for a Class B violation is \$71. As can also be seen from the chart, in circuits courts the actual amount of downward departure on a Class B violation, on average, is only \$25.

During the workgroup discussions on LC 364, it became apparent that there is no consistency in the manner in which courts make decisions on returning amounts to persons who have elected to send a check to the court. In Multnomah County, the court will automatically check a person’s driving record and refund part of the amount paid if the court finds that the violation is a first offense. In many other courts, both state and local, the person receiving the ticket may get some refund for a first offense, but only if the person takes some action (e.g. appears at the time indicated on the ticket). Some local courts are not willing to pay the fee charged by the Department of Motor Vehicles for accessing driving records, which means that

*The Joint Interim Committee on State Justice System Revenues voted 6-0-0 to adopt Option A with the requirement that staff identify and report to the Committee on the fiscal implications.*

decisions on refunding part of the submitted amount can only be made based on the person's own statements about the person's driving record.

It also became apparent that there are probably very few cases in which a person is required to pay more than the amount that appears on the ticket. Some courts never require a person to appear solely for the purpose of imposing a higher fine when the person has submitted a check for the amount that appears on the ticket.

LC 364 does not change the rules with respect to the fines that may be imposed when a person asks for a trial. The only question relates to situations in which the person merely wants to send the check and not make an appearance in court.

As currently drafted, LC 364 would eliminate the guilty plea option from the citation. As noted, this option is redundant of the no contest option. In addition, the difference between the guilty plea and the no contest plea can be a trap for the unrepresented person since the choice can have legal consequences in a subsequent civil action.<sup>1</sup>

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<sup>1</sup> ORS 41.905.

## OPTION A

The discussion draft of LC 364 submitted to the Joint Interim Committee on State Justice System Revenues provided for a single fine amount that would appear on a citation and that would be the actual fine if the person receiving the ticket decided to not contest the citation and to pay the fine. If that approach is taken, there is no role for the letter of explanation. The workgroup consensus was that if Option A is chosen, the amounts determined by the Judicial Department as the average fine imposed on the violation (rounded off) should be the amount of the fine that is written on the ticket. The workgroup found that this approach would keep the proposal revenue neutral. Consequently, under Option A the fines would be:

|                   | FINE AMOUNT |
|-------------------|-------------|
| Class A violation | \$430       |
| Class B violation | \$260       |
| Class C violation | \$180       |
| Class D violation | \$135       |

The Judicial Department has indicated that Option A would be the best approach for circuit courts.

### Option A Advantages:

(1) Option A creates a process that is entirely transparent, since the amount of the fine appears on the ticket and there are no variations based on the practices of particular courts.

(2) Option A creates a process that is entirely uniform, since there are no variations based on which court the person is cited to.

(3) Under Option A, a person who has a good driving record and receives a ticket will not be required to submit more than the actual fine for the offense and then wait for a refund (if the court automatically refunds based on driving record) or know the court's policies on the manner in which a person can get a refund based on a good driving record (if the court does not automatically issue a refund based on driving record).

(4) Under Option A, the amount on the ticket will be less than the amount that currently appears on the ticket, and in many cases will result in a fine that is less than what the person would pay under the existing law.

(5) Option A will result in significant administrative savings, since judge's time will not be used to read letters submitted with the plea (often for the purpose of relative small refunds) and the court will not need to issue checks for refund amounts. Option A could also result in a significant reduction of the number of persons who appear in court at the time indicated in the summons, since the main reason many of those persons appear is the belief (accurate in many

courts) that making the appearance is the only way to get a reduction of the fine based on the person's driving record.

(6) The option is consistent with online payment of fines, an approach that is used in other states. Convenient online payment could result in increased collections.

Option A Disadvantages:

(1) The courts lose the discretion to adjust the fine amount based on the circumstances of the offense. In the case of a Class B violation, this discretion currently allows the court to refund up to \$71 of the amount submitted with the plea.

(2) The option could result in more persons asking for trials, since the only way to avoid the full fine is to contest the ticket. This effect might be mitigated by the fact that a person can be assessed with a higher fine than the amount indicated on the ticket if the person asks for a trial, whereas the liability of a person who pleads no contest is limited to the amount indicated on the ticket. (Note that this is the case under the existing law.)

(3) People who get tickets may get some psychological satisfaction from writing a letter explaining the circumstances of the offense. Option A eliminates the letter as a legal factor.

(4) Under Option A, the court can only assess a higher fine based on a driving record by requiring the person to appear. As previously noted, the difference in many courts between a first or a tenth Class B violation is often a very small amount, and almost never exceeds \$71 as a practical matter. In most cases, the real deterrent for multiple offenses is the effect that those convictions will have on a person's insurance premiums.

## OPTION B

Option B would retain the existing statutory structure that requires a person who checks the no contest box on the citation to pay an amount that the court may, or may not, partially refund. A person would be able to write a letter of explanation with the check being forwarded to the court, and a judge would read the letter and make a decision on the actual fine amount. The existing minimum fine, and the number placed on the ticket, would remain the same as provided under existing law, as follows:

|                   | MINIMUM FINE | AMOUNT ON TICKET |
|-------------------|--------------|------------------|
| Class A violation | \$354        | \$472            |
| Class B violation | \$216        | \$287            |
| Class C violation | \$143        | \$190            |
| Class D violation | \$107        | \$142            |

Under Option B, a decision would be need to be made about the impact of driving record on the amount of the fine, but consistent with the principles adopted by the committee that impact should be the same in whatever court the person appeared. This could be addressed by either eliminated driving records as a factor to be considered by the courts when a person mails in the check, or by establishing by statute an automatic rebate for a person who has a good driving record. If the second approach is taken, the statute will need to address how far back in the driving record the court will look, whether the rebate would be available if the only violations were non-moving violations, and other issues.

### Option B Advantages:

- (1) The courts retains the discretion to adjust the fine amount to some degree based on the circumstances of the offense.
- (2) The option will provide some uniformity to the system, providing that the draft establishes uniform rules for the impact of driving records. The actual fine will vary based on the judge's evaluation of the letter, but this may not be a major issue since the range of discretion is very limited.
- (3) Persons receiving a ticket will have the option of writing a letter and getting a lower fine based on the court's evaluation of the letter. (However, some courts might return less than would normally be returned if the court determines that the letter shows contempt for the law or the court.)

Option B Disadvantages:

(1) A person who receives a citation will need to write a letter in order to get a rebate on the ticket, instead of simply paying a smaller amount up front.

(2) The option does not produce significant administrative savings, since judge's time will continue be used to read letters submitted with a plea (often for the purpose of relative small rebates) and the court will need to issue checks for rebate amounts.

(3) The option is not consistent with online payment of fines, because of the need for a judge to consider information submitted with a plea.