

November 4, 2004

**No. OP-8280**

This opinion is issued in response to questions from the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) about the accident reporting requirements for a police officer who intentionally collides with or otherwise intentionally damages a vehicle while in the performance of the officer's duties, and DMV's responsibilities in response to a police officer who fails to file an accident report.

**FIRST QUESTION PRESENTED**

If, while performing official duties, a police officer either intentionally drives into another vehicle or, while not driving a vehicle, intentionally damages another vehicle, is the officer required to file an accident report?

**ANSWER GIVEN**

A police officer must file an accident report if the officer intentionally drives into another vehicle and the collision results in consequences specified in ORS 811.720, *e.g.*, personal injury. An officer who is not operating a vehicle when he or she intentionally damages another vehicle is not required to file an accident report, even if the officer's actions result in consequences specified in ORS 811.720.

**SECOND QUESTION PRESENTED**

If a police officer fails to file a required accident report, what action, if any, must DMV take?

**ANSWER GIVEN**

If a police officer fails to make a required accident report, DMV is required to suspend driving privileges and post the suspension on the officer's non-employment driving record.

## DISCUSSION

### I. Accident Reporting Requirements

ORS 811.720(1) provides that any “accident” occurring on a highway or premises open to the public that results in personal injury or death is subject to the reporting requirements prescribed by ORS 811.725.<sup>1/</sup> ORS 811.720(2) provides that a driver involved in an “accident” occurring on a highway or premises open to the public is subject to the reporting requirements prescribed by ORS 811.725 if damage to the property of any person exceeds \$1500 and either (a) damage to the driver’s vehicle exceeds \$1500; (b) the damage is to property other than a vehicle involved in the accident; or (c) a vehicle involved must be towed from the scene because of damage from the accident.<sup>2/</sup> The driver of a vehicle involved in an “accident” required to be reported under ORS 811.720 must file an accident report within 72 hours. ORS 811.725.<sup>3/</sup> The driver either files the report with, or it is forwarded to, DMV.<sup>4/</sup>

Police officers sometimes intentionally collide with a vehicle as a means to apprehend a fleeing suspect. Alternatively, officers will sometimes intentionally damage and disable a vehicle through other methods, such as shooting its tires or laying a spiked barrier strip across the roadway. In most if not all circumstances, the vehicle with which a police officer collides or that is otherwise damaged is one in which the suspect is a driver or passenger. In answering your first question, we first determine whether a police officer’s intentionally colliding with a suspect’s vehicle is an “accident” for purposes of the reporting requirements stated in ORS 811.720 and 811.725.<sup>5/</sup>

#### A. Intentional Collisions

In the text of a statute, “words of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993). To determine the plain, natural, and ordinary meaning of a word such as “accident,” we would usually begin by consulting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993) (WEBSTER’S). However, in this instance, the Oregon Supreme Court has already considered the meaning of “accident” within the context of the original 1931 enactment governing driver responsibilities subsequent to traffic accidents. *State v. Parker*, 299 Or 534, 704 P2d 1144 (1985). Therefore, we begin our analysis with *Parker*.<sup>6/</sup>

*Parker* interpreted “accident” specifically within the context of former ORS 483.602, which required the driver of a vehicle involved in an “accident” resulting in death, injury or damage to a vehicle to stop “immediately” and “remain at the scene” until he had fulfilled certain specific duties, such as an exchange of information and the rendering of aid.<sup>7/</sup> *Parker*, 299 Or 534. In that case, the defendant was prosecuted for violating ORS 483.602 (among other charges) for failing to perform duties of a driver involved in an accident after deliberately driving his vehicle into another in order to damage it. He contended that he was not in an “accident” because the collision was intentional. The court disagreed, holding that the legislature intended “accident” to encompass intentional as well as unintentional conduct and that a driver who intentionally collides with a vehicle has had an “accident.”<sup>8/</sup> *Id.* at 542-43.

Although *Parker* interprets “accident” as it appears in former ORS 483.602 instead of ORS 811.720 or 811.725, all three statutes prescribe driver behavior following traffic accidents.<sup>9</sup> Moreover, in discerning legislative intent, *Parker* refers back to the law enacted in 1931 to establish uniform traffic regulation, noting that the legislature used the term “accident” in three sections of the law. *Id.* at 541 *citing* Or Laws 1931, ch 360, §§ 15-17. Two of the three relevant sections, sections 15 and 16, were the precursors to both former ORS 483.602 and the current statutes governing stopping at the scene and reporting accidents to DMV. The court stated that “accident” was used “throughout sections 15 and 16 to represent situations where an impact between a vehicle and an object has occurred. No adjectives were used to qualify or restrict the word in any way.” *Id.* at 541-42. The court relied on BLACK’S LAW DICTIONARY to conclude that “[w]hen taken in its natural and obvious sense, ‘accident’ can mean ‘if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens.’” *Id.* at 542.

For that reason, we would expect the court to employ the same analysis in discerning the legislature’s intent with regard to ORS 811.720 and 811.725. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993) (term repeated within statute should be interpreted consistently throughout). Based on the meaning of “accident” ascribed in *Parker*, we conclude that the fact that a police officer’s collision with a suspect’s vehicle is *intentional* does not, by that fact alone, make the collision any less an “accident” as that term is used in ORS 811.720 and 811.725.

We recognize that there are differences between the facts in *Parker* and the question that you pose. In *Parker*, the driver intentionally struck another vehicle when committing the crimes of criminal mischief and menacing, while an intentional collision caused by a police officer pursuant to policy is a lawful act. However, the meaning ascribed to “accident” in *Parker* does not include that the event be unlawful. Neither does anything in the text and context of ORS 811.720 and 811.725 suggest an exemption for police officers. For a court to find such an exemption would be inconsistent with the rule of statutory construction that requires a court to neither “insert what has been omitted” or “omit what has been inserted” by the legislature. ORS 174.010.

On the basis of the foregoing analysis, we conclude that the accident reporting requirements of ORS 811.720 and 811.725 apply to a police officer who, while performing official duties, drives a vehicle so as to intentionally collide with another vehicle. To achieve a contrary result, the legislature would need to amend the relevant statutes, either to exempt on-duty police officers from reporting intentional collisions or to define “accident” for reporting purposes in a way that excludes this type of collision.

## **B. Intentional Damage Not Caused By a Collision**

You also ask whether police officers are obligated to file accident reports when they take other types of action to damage another vehicle, for example, shooting out the tires on a suspect’s vehicle. ORS 811.725 requires the “driver” of a vehicle to report an accident when he or she is “driving” any vehicle that is involved in an accident. In the context of motor vehicles, the plain, natural and ordinary meaning of “drive” is “to operate the mechanism and controls and direct the course of (as a motor vehicle or speedboat).” WEBSTER’S at 692. In interpreting

statutes addressing driving under the influence, the Oregon Court of Appeals has held that “driving” is synonymous with “operation,”<sup>10/</sup> so that a person in the passenger seat who takes a hold of the steering wheel and presses the accelerator or turns on the ignition and places the car in gear is a “driver” of the car. *State v. Cruz*, 121 Or App 241, 855 P2d 191 (1993); *Moe v. Motor Vehicles Division*, 133 Or App 75, 889 P2d 1334 (1995). Accounting for the meaning of “driving” provided by WEBSTER’S and Oregon case law, we conclude that a police officer is *not* required to file an accident report when the officer intentionally damages a vehicle by an act such as placing a spiked barrier across the highway or shooting out the tires of a vehicle, *i.e.*, an act that does not involve the officer driving a vehicle.

### **C. Reporting Distinctions**

ORS 811.725 requires reporting when a person is driving a vehicle that is involved in a reportable accident. For example, in the context of a police officer’s intentional collision with a suspect’s car, the statutes require that the officer file an accident report if either the officer’s *or* the suspect’s vehicle causes injury to any person.<sup>11/</sup> If the officer’s vehicle collides with the suspect’s and the suspect loses control and strikes another car causing injury to the occupants, the officer must file an accident report, even if the initial collision is not reportable because neither the officer nor the suspect was injured and damage to the vehicles caused by the collision is less than \$1500. But, if the suspect causes such injury as a result of losing control of his vehicle after puncturing a tire upon hitting a spiked barrier placed by the police officer, the officer does not have to file an accident report.

## **II. Suspension of Driving Privileges for Failure to File an Accident Report**

ORS 809.417(1) requires DMV to suspend the driving privileges of a person who fails to file an accident report as required under ORS 811.725.<sup>12/</sup> Having concluded that a police officer who drives so as to intentionally collide with a vehicle must comply with the requirements of ORS 811.720 and 811.725, DMV must suspend the officer’s driving privileges and right to apply for driving privileges if the officer does not file an accident report and DMV learns of the collision from another source. We are not aware, however, of any statute that would require DMV to search out unreported accidents involving police officers. A suspension under ORS 809.417(1) continues until the police officer files the accident report.

Because DMV may place only employment-related suspensions that are ordered or recommended by a court under ORS 809.280 on a person’s employment driving record, ORS 802.200(10)(b), DMV must post the suspension of driving privileges due to a failure to file an accident report on the police officer’s non-employment driving record. ORS 802.200(10)(c). Because suspension for failure to report is on the police officer’s non-employment driving

record, an insurance company could consider the suspension for purposes of issuing, renewing, or canceling a policy or for setting insurance rates on the police officer's personal vehicles. ORS 746.265.

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<sup>1/</sup> In pertinent part 811.720(1) provides:

(1) [A]ny accident occurring on a highway or upon premises open to the public resulting in injury or death to any person is subject to the reporting requirements under the following sections:

- (a) The reporting requirements for drivers under ORS 811.725.
- (b) The reporting requirements for occupants of vehicles in accidents under ORS 811.735.
- (c) The reporting requirements for owners of vehicles under ORS 811.730.

<sup>2/</sup> In pertinent part 811.720(2) provides:

(2) [A]n accident occurring on a highway or upon premises open to the public resulting in damage to the property of any person in excess of \$1500 is subject to the following reporting requirements:

- (a) The driver of a vehicle that has more than \$1500 damage must report the accident in the manner specified under ORS 811.725.
- (b) The owner of a vehicle that has more than \$1500 damage must report the accident in the manner specified in ORS 811.730 and under the circumstances specified in ORS 811.730.
- (c) If the property damage is to property other than a vehicle involved in the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 \* \* \*.
- (d) If a vehicle involved in the accident is damaged to the extent that the vehicle must be towed from the scene of the accident, each driver involved in the accident must report the accident in the manner specified under ORS 811.725 \* \* \*.

\* \* \* \* \*

<sup>3/</sup> In pertinent part 811.725 provides:

(1) The driver of a vehicle commits the offense of driver failure to report an accident if the driver does any of the following:

(a) Is driving any vehicle that is involved in an accident required to be reported under ORS 811.720 and does not, within 72 hours of the accident, complete a report of the accident in a form approved by the Department of Transportation \* \* \*.

\* \* \* \* \*

(5) The offense described in this section, driver failure to report an accident, is a Class B traffic violation.

<sup>4/</sup> A driver may file a report with any city, county, or state law enforcement agency, or any DMV office. ORS 811.725.

<sup>5/</sup> In interpreting a statute, we first look at the text and context of the statute to determine the legislative intent. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). If the legislative intent is clear from the text and context, the search ends there. If the legislative intent is not clear from the text and context of the statute, we look to the legislative history to attempt to discern the legislative intent. *Id.* at 611-612.

<sup>6/</sup> In analyzing the text and context of a statute to discern legislative intent, we consider case law interpreting the statutory provision. *Norden v. State ex rel. Water Resources Dept.*, 329 Or 641, 645-46, 996 P2d 958 (2000) *citing State v. Toevs*, 327 Or 525, 532, 964 P2d 1007 (1998).

<sup>7/</sup> ORS 483.602 was repealed in 1983. Or Laws 1983, ch 338, § 978. The statute provided as follows:

(1) The driver of any vehicle involved in an accident which results in injury or death to any person or causes damage to a vehicle which is driven or attended by any person, immediately shall stop such vehicle at the scene of the accident, or as close thereto as possible, and shall remain at the scene of the accident until the driver has fulfilled the requirements of subsection (2) of this section. Every such stop shall be made without obstructing traffic more than is necessary.

(2) The driver of any vehicle involved in any accident resulting in injury or death to any person or damage to any such vehicle shall:

(a) Give to the driver or surviving passenger, or any person not a passenger injured as a result of such accident, the name, address, and the registration number of the vehicle which the driver is driving, and the name and address of any other occupants of such vehicle.

- (b) Upon request and if available, exhibit and give the number of the operator's or chauffeur's license of the driver to the persons injured, or to the occupant of or person attending any vehicle damaged.
  - (c) Render to any person injured in such accident reasonable assistance, including the conveying or the making of arrangements for the conveying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such conveying is requested by any injured person.
- (3) Any witness to the accident shall furnish to the driver or occupant of such vehicles, or injured person, the true name and address of the witness.
- (4) (a) A driver involved in an accident which results in injury or death to any other person and who fails to perform the duties required under subsection (1) of this section commits a Class C felony.
- (b) A driver involved in an accident which results only in damage to a vehicle which is driven or attended by any other person and who fails to perform the duties required under subsection (1) of this section commits a Class A misdemeanor.
  - (c) A witness to an accident who fails to perform the duties required under subsection (3) of this section commits a Class B traffic infraction.

*Parker*, 299 Or at 536-37.

<sup>8/</sup> Courts in several other jurisdictions have used *Parker* in interpreting “accident” as used in their states’ statutes. Most recently, the Washington Court of Appeals cited the case in holding that accidents within the meaning of Washington’s statutes include incidents arising from intentional conduct on the part of the driver. *State v. Silva*, 24 P3d 477, 482 (Wash 2001), *rev den* 37 P3d 291 (Wash 2001). Among the other states that have relied on the *Parker* analysis directly are: Alaska, *Wylie v. State*, 797 P2d 651 (Alaska App 1990), California, *People v. Laursen*, 222 Cal Rptr 122 (1985), and Michigan, *People v. Martinson*, 409 NW 2d 754 (Mich 1987).

<sup>9/</sup> Repealed in 1983, the substance of ORS 483.602 and related statutes was recodified. *See* ORS 811.700, 811.705, 811.720 and 811.725. In recodifying the earlier statutes the legislature did not change the word “accident” or its meaning. *See* Or Laws 1983, ch 338, § 3.

<sup>10/</sup> ORS 801.370 defines “operation” as “any operation, towing, pushing, movement, or otherwise propelling” a vehicle.

<sup>11/</sup> If the police officer driving the vehicle is physically incapable of making the required accident report for an accident resulting in injury or death, any other officer who is a passenger in the vehicle at the time of the accident is responsible for making the required report. ORS 811.720(1) and 811.735. The passenger’s failure to make the required report is a Class B traffic infraction. *Id.*

<sup>12/</sup> A passenger’s failure to file an accident report as required under ORS 811.720(1) and 811.735 is not grounds for suspension of driving privileges.

