



TO: House Committee on Judiciary
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: February 17, 2020
RE: Testimony in opposition to SB 1503 – Fundamentally changes Oregon’s DUII law

Chair Sanchez, Vice Chairs Bynum and Sprenger, and Members of House Committee on Judiciary:

The Oregon Criminal Defense Lawyers Association is an organization of experts, private investigators, and attorneys who represent juveniles and parents in juvenile dependency proceedings, juvenile delinquency proceedings, adult criminal prosecutions and appeals, and civil commitment proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments. **We urge you to vote “NO” on Senate Bill 1503.**

The “fix” to the two Oregon Supreme Court cases is too soon and too broad.

- *State v. Hedgpeth* (given as the reason for why we need the two-hour time window) was issued on November 21, 2019 and *State v. Guzman* (dealing with statutory counterpart) was issued on December 27, 2019.
- Because these cases were very recently issued, we don’t know if there is problem, what the problem is, or how big the problem is to determine if a “fix” is necessary and what kind of “fix” would be appropriate.

If the intent behind SB 1503 is to bring Oregon’s DUII laws in line with other states, the critical stakeholder engagement did not occur. If there is going to be a fundamental change in DUII law, a workgroup should be formed, a thorough and thoughtful analysis conducted, and stakeholders (including the defense) should be involved.

SB 1503 authorizes police to arrest people for DUII without police being able to show that the person drove while under the influence. The bill allows people to be arrested and charged with DUII when they might be *under* the legal limit of 0.08 at the time of driving.

People will be wrongfully arrested under SB 1503. Public embarrassment, private embarrassment, financial strain of hiring an attorney and expert witness, missing work for court appearances, possible loss of employment, and the mental and familial burden of being subjected to a criminal prosecution are just several injustices that a person faces when they are wrongfully accused of a crime.

SB 1503 creates a presumption that a person is guilty of DUII, when they may not have committed any crime. Under our current law, the State properly bears the burden to prove each and every element of a DUII case beyond a reasonable doubt. SB 1503 would absolve the State of its responsibility to prove each and every element and requires a defendant to prove his or her innocence.



Shifts the burden of proof onto the defendant by the creation of an affirmative defense. An affirmative defense requires a defendant to prove the defense by a preponderance of the evidence. An affirmative defense requires a defendant to prove the defense by a preponderance of the evidence. If a defendant has no other witnesses to call to corroborate his or her version of the events, it will be difficult to convince jurors that the defendant should be believed. Prosecutors will argue that any such testimony is not worthy of belief, and the defendant is lying to save himself or herself from conviction. **An “affirmative defense” is not a sufficient protection against wrongful arrests and convictions.**

The proposed language in SB 1503 that is in response to *State v. Guzman* will cost the state a lot more in terms of jail space, cause a loss in jobs due to the inability to get a hardship permit, and force more cases to trial with no discernable benefit to public safety. The hypothetical dangerous driver with 9 DUI’s is not going to be treated as a first offender. A judge would not give a minimum sentence in that circumstance. The State would probably ask for the maximum on reckless driving and any additional charges. Under SB 1503, Oregon would essentially give an exponentially harsher punishment to those who had no option of diversion in their state under the guise that they can send a small percentage of the repeat offender cases to prison. **OCDLA would prefer to see strategic investments in the health care delivery system addressing addiction and treatment over expanding the criminal circumstances related to drug and alcohol abuse.**

A short session does not provide adequate time to contemplate and debate the issues raised by SB 1503. **We urge you to vote “NO” on SB 1503.** Thank you for your time and consideration.

Respectfully submitted by,
Mae Lee Browning
Oregon Criminal Defense Lawyers Association