Testimony of Kimberly McCullough, Legislative Director
In Opposition to HB 3170
House Committee on Judiciary
April 1, 2015

Chair Barker and Members of the Committee:

Thank you for the opportunity to testify in opposition to HB 3170, which would categorically authorize nonconsensual blood tests of drivers in violation of the Fourth Amendment and Article I, section 9 of the Oregon Constitution.

In 2013, the United States Supreme Court held that a warrant must be obtained before law enforcement may pierce a person's skin to take a blood test. *Missouri v. McNeely*, 133 S.Ct. 1552.

There are several compelling reasons for this constitutional rule. First, "any compelled intrusion into the human body implicates significant, constitutionally protected privacy interests." *Id.* Second, because warrants can be obtained fairly quickly in today's technological world, it is unclear why it would not generally be possible to obtain a warrant before conducting a blood sample to test for the presence and level of an intoxicating substance.

In some exceptional circumstances, an exigency may make obtaining a warrant impractical. In such rare cases, the Court has held that a search may be made without a warrant. But that is the exception. Not the rule. HB 3170 creates exactly the type of categorical rule the United States Supreme Court held unconstitutional in *Missouri v. McNeely*.

As you all are well aware, another exception to the warrant is consent. In our view, the changes made by HB 3170 would **not** meet the requirements for a knowing, valid consent by drivers under Article I, section 9 of the Oregon Bill of Rights, and would therefore be unconstitutional under our state search and seizure clause—at least with regard to evidence that could be used in a criminal prosecution.

For these reasons, we urge your opposition to HB 3170. Please feel free to reach out if you have any questions or concerns.