



Legislative Testimony

Oregon Criminal Defense Lawyers Association

June 22, 2017

Senator Ginny Burdick, Chair
Senator Ted Ferrioli, Vice-Chair
Members of the Senate Committee on Rules

Re: Testimony in Opposition to HB 2597

Dear Chair Burdick, Vice-Chair Ferrioli, and Members of the Committee:

The Oregon Criminal Defense Lawyers Association is an association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment and post-conviction relief proceedings throughout the state of Oregon. Thank you for the opportunity to submit the following comments in opposition to HB 2597.

Over the course of this 2017 session, this current bill HB 2597 has gone through multiple versions. At the time of the hearing in front of the Senate Judiciary Committee on May 24, OCDLA preferred the Dash-13 amendment and was neutral on the bill at that time. However, the most current drafts of the bill being considered present a few concerns.

Affirmative Defense Language:

While the current amendments being considered (Dash-26 and Dash-27) add back in a few exemptions to the law including truck drivers, bus drivers, loggers, and in the Dash-27, utility workers, a large swath of the public who were previously exempted from the law such as firemen, emergency workers, police, radio-operators, and people using hands-free devices are now subject to the law. The current language, instead of exempting them, gives them an “affirmative defense.” What this means is that law enforcement will now be able to write citations up front and ask questions later.

The proposed language says that people may use “hand-free devices” and may “activate and deactivate” the device. However, the law also says it is an affirmative defense to a citation if a person “was 18 years of age or older and was using a hands-free accessory.” What this means is that law enforcement can write a ticket to someone who they believe was holding or using a device regardless of if the person was complying with the law, and the onus is then on the person to prove they were simply using a hands-free device as allowed.

People subject to the law will now be forced to appear in court to contest their tickets. While many traffic courts allow people to contest their tickets through writing, the vast majority of the people now subject to the statute are those who are more likely to hire a lawyer and contest the ticket in person because their jobs are dependent on a clean driving record (such as ambulance drivers).

The affirmative defense language means more tickets will be written and more people will come into court to contest their tickets, especially if they are cited for a misdemeanor. This will use up more judicial resources, court staff time, and law enforcement time. When a person contests their ticket in writing or in person, the Judge will need to review the affidavit or hold a hearing; law enforcement will be required to come into court to support their citation; and the general public who are part of the “affirmative defense” group will need to take time and spend money to prove they had a defense to the citation.

Racial Profiling and Pretext Stops: OCDLA has consistently been concerned with how this type of broadly written law will open the door for more pretextual or “pretext” stops. A pretext stop is when law enforcement initiates a stop of an automobile for a traffic infraction, often minor, with the intent to investigate a separate and unrelated crime. This type of stop is often a fishing expedition resulting in a search of a motorist’s automobile. Law enforcement has wide discretion in who they stop, and in many cases, people of color are profiled and stopped at higher rates than others. This proposed law adds yet another reason that law enforcement can rely on when justifying a traffic stop. While the current amendments being considered carve out a handful of exceptions, the vast majority of people once exempted will now be subject to the law. The “affirmative defense” language means that the police can essentially issue a citation now for any behavior they think falls under the statute, even if the person may ultimately have an affirmative defense. What this means is that the police will have a legal and valid reason to pull a motorist over even if the citation they issue up front is thrown out of court later. In the context of pretext stops, the police will be able to justify a stop and citation of an adult who may have been using a hand-free device as allowed by the law.

For the reasons outlined above, OCDLA urges a “no” vote on any amendment that restricts the exemptions included in the original bill and adds in the “affirmative defense” language. Thank you for your consideration.

For questions or comments contact Mary A. Sell, OSB # 111401
Legislative Representative
Oregon Criminal Defense Lawyers Association
503-516-1376 * msell@ocdla.org