



**Testimony of Kimberly McCullough, Policy Director
In Support of HB 4149 – Prohibiting Unjust Waivers in Plea & Release Agreements
Senate Committee on Judiciary
02/23/2018**

Chair Prozanski and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 4149, which would take a significant step toward prohibiting unjust waivers of rights in plea and release agreements.

Close to 95% of cases in Oregon’s justice system get resolved through plea agreements. In these cases, criminal defendants are often required to waive access to rehabilitative programs as a condition of their plea agreement. **Waiver of programs which have been designed by this legislature to encourage rehabilitation and to help put the lives of criminal defendants back on track is counterproductive.**

In some cases, prosecutors have also included the waiver of crucial constitutional and procedural rights in plea agreements. **Waiver of constitutional and procedural rights undercuts the checks and balances that our justice system needs.**

Similar waivers are sometimes found in jail release agreements. For example, we have recently become aware of provisions in jail release agreements waiving a defendant’s right to appear at their own trial. The right to be present at trial, where our liberty and substantial rights are at risk, is an essential part of the due process of law required by the Constitution. **Waivers of rights that strike at the core of due process in our justice system should not be a matter of course.**

HB 4149 will help ensure that whether people are scared, confused, or getting bad counsel, they should not be presented with an offer to waive certain crucial rights.

Note that HB 4149 was amended in the House Judiciary Committee to only address a smaller range of waivers in these agreements. A work group will be formed in the interim to discuss the remaining portions of the bill and bring it back to this legislature for consideration next year. **What remains in HB 4149 is an important step in the right direction.**

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization with more than 42,000 members in the State of Oregon.

As amended, HB 4149 will prohibit requiring a defendant to:

- Waive their right to appear at their own trial as a condition of release from jail;
- Waive the prosecutor's obligation to disclose evidence proving the defendant is innocent;
- Waive the defendant's right to obtain a copy of the recording of grand jury proceedings;
and
- Stipulate that a law is unconstitutional.

The ACLU of Oregon urges you to Support HB 4149. Please feel free to contact me if you have any questions, comments, or concerns.