



Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 25, 2019

The Honorable Senator Floyd Prozanski, Chair
Senate Judiciary Committee, Members

Re: Testimony in Support of HB 2932

Chair Prozanski and members of the committee,

My name is Mary Sofia, and I am the Legislative Director for OCDLA. We were proud to participate in Representative Hernandez' workgroup this past year that met to explore this concept in detail.

As this committee knows, OCDLA as an organization is committed to fairness in the justice system, and we are often advocating for procedural and substantive due process for those haled into the system.

This bill is really about fairness and access to justice, and this bill will result in efficiencies in the system that do not currently exist. This bill will not impair the function of the court or of the parties, but it will without question make the process more fair.

HB 2932 prevents courts from inquiring into a defendant's immigration status on the record and ensures that all defendants receive the constitutionally required advice from their attorneys on how a conviction can impact their immigration status.

Currently, in some courts across the 36 counties, judges will often ask a defendant if they are a citizen. As you can see from the original language in this bill, courts are already obligated by statute to share that a plea could implicate a person's status. Judges will often follow up that statutorily required admonishment of informing them it could implicate their status with an inquiry about the person's actual status. That question and the elicited answer is not actually legally necessary nor is it necessary for the information to be effectively shared.

This invited statements to be made on the record that can harm a defendant's status, their case, and subject them to other collateral consequences.

When I was a practicing attorney, in order to comply with my duties under *Kentucky v Padilla*, I would routinely interrupt my client from answering and tell the court we "did not have information to share on that point" as I knew my obligation was to advise my client of risks to

their status due to the criminal proceeding and also mitigate any damage that could be done to them on the record. Quite literally, when this question is asked by courts, it runs counter to my obligations to my client under the law.

This bill ensures that all accused are not inadvertently harmed by answering a question that does not need to be legally or otherwise asked, and it will also ensure that the accused has been appropriately advised and has enough time to contemplate that information further if need be.

This a small, but necessary change, and we ask you support it too. For these reasons, I urge you to support HB 2392. I am available to answer any of your questions.

Thank you.

Mary Sofia
Legislative Director
Oregon Criminal Defense Lawyers Association

About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar 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. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

For questions or comments contact:
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