

**SB 999 A STAFF MEASURE SUMMARY**

Carrier: Sen. Prozanski

**Senate Committee On Judiciary****Action Date:** 04/08/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 5-2-0-0**Yeas:** 5 - Bentz, Fagan, Gelser, Manning Jr, Prozanski**Nays:** 2 - Linthicum, Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Michael Lantz, Counsel**Meeting Dates:** 4/3, 4/8**WHAT THE MEASURE DOES:**

Creates two-pronged process for police officer to request consent for breath, blood, or urine test from individual arrested under suspicion of driving under the influence of intoxicants. Directs officer to first ask for consent to test individual and then, if individual refuses, to ask for physical cooperation and explain legal consequences of refusal to cooperate with test. Provides that evidence of refusal to cooperate can be used against defendant in court.

**ISSUES DISCUSSED:**

- Effect of *Banks* decision
- Process for taking breath samples
- Constitutionality of amendments

**EFFECT OF AMENDMENT:**

Replaces the measure.

**BACKGROUND:**

In Oregon and in most other states, an individual operating a vehicle on a public road is deemed to have given implied consent to a breath, urine, or blood test if the person is arrested under suspicion of driving a vehicle while intoxicated. If a defendant refused to provide a sample, that refusal could be used against the defendant in court. Recently, the Oregon Supreme Court in *State v. Banks* (364 Or. 332, 2019) found that the act of refusing to provide a sample can be either an act of noncooperation or an invocation of that individual's constitutional protections against self incrimination. If a court determines that the refusal is an invocation of a constitutional right, then that defendant's refusal cannot be used against him or her in court.

Senate Bill 999 A creates a bifurcated process for a police officer to request a suspect's consent and cooperation for a breath, urine, or blood test when the officer arrests a suspect under suspicion of driving under the influence of intoxicants. First, the officer will ask the suspect to consent to the breath, urine, or blood test. If the suspect refuses, the officer will then only ask the defendant for physical cooperate while also informing the suspect of the administrative penalties for failing to cooperate. If the defendant still refuses to provide a sample, evidence of the suspect's refusal to cooperate can be used against the suspect in court, though not evidence of the suspect's initial refusal to give consent.