CARINI & FRANCIS

ATTORNEYS
1555 E. McAndrews Road, Suite 302
Medford, Oregon 97504
(541) 779-5000
carinifrancis@gmail.com

Senate Committee on Judiciary
House Committee on Judiciary
Re: SB 387
April 27, 2015

I understand the House Committee on Judiciary is set to consider SB 387 on April 29, 2015. I offer this testimony not only in support the passage of this measure but also to state my position that the provisions of this legislation should be expanded.

As noted by the Committee's Counsel, ORS 181.511 currently requires that, immediately on a person's arrest for three classes of crimes, a law enforcement agency must collect fingerprints and submit data to the Oregon State Police. The three crime classifications are: (1) any felony, (2) any misdemeanor or other offense which involves criminal sexual conduct and (3) any crime which constitutes a violation of the Uniform Controlled Substances Act. (The police may, however, take a DUII defendant to jail, or have the defendant held in custody, at their option.)

SB 387 would create a new classification of booking requirements that are specific to DUII cases. In my opinion, it's unfortunate that SB 387 isn't written more broadly to ensure that its objectives would be accomplished before a DUII defendant ever gets to court. I would have proposed that ORS 181.511 be amended by adding DUII as a fourth classification of crime where police would be required to complete the booking process on arrest. This information would become public record immediately.

SB 387 does not amend ORS chapter 181. Instead, it would amend ORS chapter 813 to require that the courts, rather than the police, would be responsible for booking defendants in DUII cases. The bill provides that when a DUII defendant is arraigned, a court *"shall ensure"* that the defendant submits to booking, if the person has not already been booked on that charge.

Apparently recognizing that defendants may not be compelled to submit to a "booking process" immediately following arraignment, the legislation also provides, "When a court grants a petition for a driving while under the influence of intoxicants diversion agreement, a court *shall ensure* that the defendant submits to booking, if the defendant has not already been booked on the charge of driving while under the influence of intoxicants." (Emphasis added.)

There is no language suggesting when or by what form of order or procedure a court would "ensure" that a DUII defendant gets booked. As I say, my position, legally, is that police generally should book DUII defendants. In cases where the police choose to not book a defendant, SB 387 ultimately would require the courts to "ensure" that a defendant will be booked when a defendant enters a plea of "guilty" or "no-contest," or is sentenced following a conviction for a misdemeanor DUII.

SB 387 would amend 813.020 to provide that when a person is convicted of DUII, a court *"shall comply"* with this provision and *"shall require"* a defendant to: "(c) [s]ubmit to booking, if the person has not already been booked."

I concur with Judge Edward Jones of the Multnomah County Circuit Court, who has made it eminently clear that the purpose of this legislation is to do no more than give the courts a means of keeping statistics on recidivism rates of DUII offenders. Despite popular misconception among some judges and lawyers that booking has to be completed as part of the "release process" in DUII cases, it doesn't. Judge Jones told me that the purpose for ordering booking at arraignment has nothing to do with failures to appear. I told Judge Jones that private DUII defense clients virtually never fail to appear. And, ORS 135.030 provides that I can appear on my clients' behalf at arraignment in misdemeanor cases, anyway.

The purpose of mandating booking is to better track recidivism data in DUII cases. As Committee Counsel correctly points out in his memorandum:

"In practice, individuals who are booked into jail are fingerprinted under jail policy; however, there is no statutory requirement for such record keeping. As such, individuals who are eligible for DUII diversion and not arrested at the scene are not required to be fingerprinted."

This creates problems in collecting data so that the courts may study recidivism rates. As I understand it, booking is required only to assign SID numbers so that DUII defendants may be tracked for the purpose of providing statistics. This data would tell us which treatment programs are working and which are not.

I haven't been able to find a statute or rule defining "booking," or requiring that fingerprints or photographs be taken of persons charged with typical misdemeanors. DUII defendants often avoid the booking process because they don't want their mugshots posted on the Internet. In cases where the police elect to skip the booking process, SB 387 would seem to allow DUII defendants the option of delaying their booking until they entered diversion or were sentenced, without fear of retribution by the court.

Although presently there is not a statute in existence requiring that DUII defendants be booked, the proposed provisions of ORS 813.020 may be interpreted to spare DUII defendants the public humiliation and other consequences of an arrest while still complying with the proposed statutory provision, unless the police take them to jail, or until the court has accepted a plea of guilty or "no-contest" on the charge of DUII.

In supporting this bill (and in oppostition to HB 3192), Judge Jones wrote, "There is no reason for the five day limit, or for the penalty of not allowing entry into diversion. We don't need booking within five days and we certainly don't need to further limit entry into diversion. The focus of the bill should not be the punishment of defendants who officers failed to book; the focus should on the courts, and having judges make sure that all defendants are booked *prior to be[ing] sent to treatment,* regardless of whether they go because they have diverted or because they have been sentenced." (Emphasis added.) As written, this measure can be applied to protect defendants who have been accused but not adjudicated guilty of DUII.

Respectfully submitted,

William Francis