OCDLA
OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

TO: **Senate Committee on Judiciary**
FROM: **Mae Lee Browning, Oregon Criminal Defense Lawyers Association**
DATE: **March 17, 2023**
RE: **SUPPORT for SB 188 and SB 188 -1**

Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary:

My name is Mae Lee Browning. I represent the Oregon Criminal Defense Lawyers Association. OCDLA's 1,200 members statewide include public defense providers, private bar attorneys, investigators, experts, and law students. Our attorneys represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and appellate level, as well as civil commitment proceedings throughout the state of Oregon. Our mission is championing justice, promoting individual rights, and supporting the legal defense community through education and advocacy.

ORS 136.432 provides that evidence may not be suppressed based on a violation of a statute; it can only be suppressed based on a violation of the U.S. or Oregon constitutions. This statute was passed in 1997. Since the 1920s up until 1997, there has been a right to statutory suppression.

Focusing on law enforcement encounters with Oregonians, I will reference person stops (ORS 131.615) and traffic stops (ORS 810.410), which is what the -1 amendment addresses. The -1 amendment requires trial courts to suppress evidence discovered as a result of unlawful police conduct under ORS 810.410 (traffic stops) and ORS 131.615 (person stops). It allows courts to vindicate Oregonian's statutory rights and encourages proper police conduct and training.

Prior to ORS 136.432 passing in 1997, evidence could be suppressed based on violations of ORS 131.615 (person stops) and ORS 810.410 (traffic stops). Prior to 1997, when statutory suppression was allowed, we still had caselaw on ORS 810.410 and ORS 131.615. So, the courts have a role in developing the law. That is the process and that is how we want the system to work. Statutory suppression and caselaw around suppression can exist together.

SB 188 gives teeth to legislative enactments. Nothing is a right until there is some kind of remedy for it. If it is a right, there has to be a remedy of suppression. The constitution sets the floor; the legislature can put something in statute that goes above the constitutional floor to be more protective of Oregonians' rights.

Let's look at the person stops statute below:

Contact: Mae Lee Browning, OCDLA Legislative Director, mlbrowning@ocdla.org, 310-227-7659

131.615 Stopping of persons.
(1) A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the peace officer is a peace officer, make a reasonable inquiry.
(2) The detention and inquiry shall be conducted in the vicinity of the stop and for no longer than a reasonable time.
(3) The inquiry shall be considered reasonable if it is limited to:
(a) The immediate circumstances that aroused the officer's suspicion;
(b) Other circumstances arising during the course of the detention and inquiry that give rise to a reasonable suspicion of criminal activity; and
(c) Ensuring the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.
(4) (a) The inquiry may include a request for consent to search in relation to the circumstances specified in subsection (3) of this section or to search for items of evidence otherwise subject to search or seizure under ORS 133.535 only if the officer first informs the person that the person has the right to refuse the request.
(b) An officer who obtains consent to search under this subsection shall ensure that there is a written, video or audio record that the person gave informed and voluntary consent to search. (c) This subsection does not apply to implied consent searches described in ORS 813.100, 813.131 or 813.135.
(5) A peace officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons who are present.

Sub (1) above addresses reasonable suspicion for a stop. Reasonable suspicion is required under the constitution. Sub (2) addresses the durational limit of the stop. This also exists under constitution.

Sub (3) addresses reasonable limits on the substance of the encounter. Here, the legislature was ahead of the court. Courts could have relied on the statue instead of what constitution required. We have the *Arreola-Botello* case[1] because courts were interpreting what the constitution required as far as the reasonable limits on the substance of an encounter.

[1] In *State v. Arreola-Botello*, 365 Or 695 (2019), Mr. Arreola-Botello was lawfully stopped for a traffic infraction. During the stop, while Mr. Arreola-Botello was searching for his registration, the officer asked him about the presence of guns and drugs in the vehicle, and requested consent to search the vehicle. Mr. Arreola-Botello consented, and during the search, the officer found a controlled substance. Mr. Arreola-Botello's argument on appeal is that the officer expanded the permissible scope of the traffic stop when he asked about the contents of the vehicle and requested permission to search it because those inquiries were not related to the purpose of the stop.

In *Arreola-Botello*, the court decided that, for the purposes of Article I, section 9, an officer is limited to investigatory inquiries that are reasonably related to the purpose of the traffic stop or that have an independent constitutional justification. The Court explained "that is as the constitution requires and, for statutory purposes, what the legislature intends. See ORS 131.615(3)(a) (officer's inquiries during traffic stop reasonable only if limited to the "immediate circumstances that arouse the officer's suspicion")."

The legislature intended for officers' inquires to be limited to the immediate circumstances that aroused officers' suspicions, but law enforcement was not abiding by the legislature's intent, until, arguably, the *Arreola-Botello* case in 2019. There was no incentive to do so and no consequences if they did not. However, if statutory suppression was allowed, law enforcement would abide by what the legislature intends.

If statutory suppression was allowed, law enforcement would be trained that inquiries during traffic stop must be limited to the "immediate circumstances that arouse the officer's suspicion," otherwise, any evidence discovered would be suppressed. If statutory suppression was allowed, Mr. Arreola-Botello's rights would have been protected. The officer would have figured out another line of inquiry that would have been upheld in court and the evidence discovered would be admissible.

Anything the legislature enacts regarding police contact won't have any meaning unless you can suppress evidence based on a statutory violation.

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