



**Testimony of Kimberly McCullough, Legislative Director  
In Support of SB 352  
Senate Committee on Judiciary  
February 27, 2017**

Chair Prozanski and Members of the Committee:

I am Kimberly McCullough, Legislative Director for The American Civil Liberties Union (ACLU) of Oregon. We are a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 28,000 members across the State of Oregon, and that number is growing as we speak.

Thank you for the opportunity to submit comments in support of SB 352, which would require police officers to inform each person stopped for a traffic violation or upon suspicion of criminal activity that the person has the right to refuse the request for a search.

The ACLU is concerned that purportedly consensual searches may in many cases effectively be coercive with respect to individuals that often may not understand the implications of consent or their right to refuse, or who feel intimidated into stating their consent. Because there is no judicially-defined standard of proof (e.g., probable cause or reasonable suspicion) required for police officers to initiate a consent search, the ACLU is also concerned that consent searches effectively facilitate racial and other forms of profiling, resulting in an undermining of Fourth Amendment rights for affected groups of people. The ACLU has particular concern about coercion and profiling with respect to juveniles.

Our review of relevant literature, case law, statutes, and police department policies reveals a number of potential reforms to current consent search practices. Some of these reforms would apply to all consent searches, while others are tailored to protecting juveniles. Based on our analysis of these proposals, in an ideal world, Oregon would adopt the following set of consent-search reforms:

1. Requiring officers to have reasonable suspicion of criminal activity prior to requesting a consent search;
2. Adopting a short, *Miranda*-like statement of the right to refuse or limit consent to a search and requiring officers to provide a multilingual written statement of that right;
3. A categorical exception from consent searches for juveniles below a certain age;
4. Adopting the “reasonable juvenile” standard for reviewing the validity of consent;
5. Requiring courts to consider relevant scientific research when determining the validity of consent; and

6. Adopting legislative findings of fact regarding scientific research and preferred policy.

Because the bill before you today, SB 352, would be a significant step of bringing Oregon closer to our recommended policy package for consent reform, we urge your consideration of the bill and its policy proposals.

Thank you for your consideration of our testimony. Because we have done significant research on this topic, we would be happy to be a resource for the committee. Please feel free to contact me with any questions, comments or concerns.