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**Testimony to the Senate Judiciary Committee
On HB2289, DUI Administrative Hearings
March 3, 2016**

Chairman King and Committee Members,

Our associations support the House Substitute for HB2289. We opposed the original bill, which at the end of the 2015 session was referred to the Judicial Council for study. During the interim, the Judicial Council Criminal Law Committee studied the bill extensively and received input from several groups involved in this process. As a result, the Judicial Council has issued a recommendation which our associations support.

That recommendation would provide access to the police reports for any person appearing for a DUI related administrative hearing. It also preserves the issue of reasonable suspicion for the stop to be determined by a court in the appeal process, not in the administrative hearing process. This is a critical distinction for several reasons. For example, administrative hearings generally do not result in constitutionality rulings. Also, administrative hearings do not have legal representation for both sides. By preserving the issue for the court hearing the appeal, attorneys will be present representing both the state and the driver.

The bill also provides a change in the officer's affidavit to include a statement there was reasonable suspicion for the contact leading to the test refusal or failure. This provision was part of the recommendation from the Judicial Council, but we question the need for this provision as it appears to have limited or no value to the hearing or to the court proceedings. The court's determination must be made on more information than a statement of the officer's opinion. Those details can be lengthy and should be in the police report and would require testimony and availability of cross examination in the appeal case. The validity of the stop is determined by the court based on the totality of circumstances. We believe removing these declarations on the form does not harm the driver's rights to challenge the legality of the contact and simplifies the process. We ask the committee to consider striking the inserted language on page 1, lines 26-31 and on page 2, lines 6-12;

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