



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 4, 2013

The Honorable Jeff Barker, Co-Chair
The Honorable Chris Garrett, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: House Bill 2115

Dear Chair Barker, Vice-Chairs and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments regarding House Bill HB 2115.

1. House Bill 2115 is a continuation of a long-standing effort on behalf of proponents to expand the definition of "intoxicants" to include "any other drug, as defined in ORS 475.005, that adversely affects a person's physical or mental faculties to a noticeable or perceptible degree." OCDLA has the following concerns about the bill.
2. HB 2115 constitutes a very large expansion of criminal liability with no corresponding notice given to the general public about the reach of its terms. Under current law, members of the general public are apprised of the inherent risks in operating a motor vehicle after consuming alcohol or a controlled substances; the public knows that alcohol and controlled substances can impair the person's faculties to drive, and therefore criminal liability is appropriately placed upon those who assume and abuse that risk.
3. House Bill 2115 does not provide corresponding notice as to what conduct is prohibited in regards to over the counter or non-controlled, drugs. HB 2115 defines drug so broadly under the definition of ORS 475.005 such that the only disqualified substance is food. ORS 175.005 (13) provides:

(13) "Drug" means:

(c) Substances (other than food) intended to affect the structure or any function of the body of humans or animals;

Driving. The same is true for someone who used enough of an over the counter medicine to become impaired. Reckless driving is also an "A" misdemeanor crime and accordingly, probation conditions can require a drug evaluation and treatment, if necessary.

9. Finally, the bulk of the population that will be affected by the reach of HB 2115 will be the aging and elderly, as they consume the most over-the-counter and prescribed drugs. Surely this population ought not be required to install an ignition interlock device as a condition of entering a diversion program. If this bill concept were to pass, OCDLA submits that an exception to the ignition interlock requirement must be recognized for those in diversion under its terms.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

Neal Weingart
Oregon Criminal Defense Lawyers Association
neal@nealweingartlaw.com