



DATE: April 1, 2015

TO: House Committee on Judiciary

FROM: Troy Costales, Transportation Safety Division Administrator

SUBJECT: HB 3170, blood tests allowed for implied consent

INTRODUCTION

House Bill 3170 expands the concept of implied consent in the fight against impaired driving, in particular with the legalization of marijuana in the coming months. The bill gives the refusal of a blood test in the investigation of DUII case the same administrative penalties that are currently in the implied consent statutes for the refusal of a breath or urine test. Currently, refusal of a blood test does not result in an administrative penalty.

DISCUSSION

House Bill 3170 is a start to a timely conversation necessary for the implementation of legalizing marijuana—impaired driving. The current laws on Driving Under the Influence of Intoxicants (DUII) largely focus on alcohol. The implied consent statutes, which require a driver under certain conditions to submit to a breathalyzer or urine test, don't adequately address the legalization of marijuana. A breathalyzer does not detect marijuana (or any intoxicating substance other than alcohol), and urine tests have significant limits.

Oregon's implied consent statutes are written to give an administrative penalty for those who refuse to submit to a breath or urine test during a DUII investigation. The law recognizes an agreement, as a condition for the privilege of driving, that one will submit to the test. However, with the legalization of marijuana coming to Oregon in a few months, we find ourselves unprepared for the expected increase in DUII by marijuana. Both Washington and Colorado have experienced increases since those states' respective legalizations.

Current technology does not provide a breath test for cannabis. Oral swab technology is on the horizon, but the science has not been tested to the degree of reliability required for legal standards. Urine tests for cannabis are problematic. They tend to show the metabolite (Carboxy-THC): the inactive and non-impairing residue that indicates marijuana had been consumed in the last 30 days. That does not prove the presence of the intoxicant in the blood and impairment at the time of arrest. Only a blood test and the subsequent analysis by a qualified laboratory can show an active presence of the intoxicant (Delta-9 THC) affecting the body.

Allowing a blood sample for the sake of implied consent, on par with both breath and urine tests, means a better tool for identifying impaired drivers. It is one of the steps that can be taken to incent people not to drive while impaired--regardless of the substance.

SUMMARY

The Transportation Safety Division of ODOT acknowledges the challenges presented by the legalization of marijuana and that a myriad of changes to law may be necessary or appropriate for a safe and efficient implementation. HB 3170 addresses an important issue in part of the implementation of legalization: providing an accurate and fair way to determine impairment, extend the fundamental concept of implied consent to substances other than alcohol, and keep more impaired people off the road—improving safety for everyone.