



**To: Members of the House Judiciary Committee**

**From: Sgt. Robert Hayes, Albany Police Department**  
On behalf of the Oregon Association Chiefs of Police

**Date: February 27, 2017**

**Re: Support for HB 2613:**  
Driving Under the Influence of Intoxicants to Include Non-Controlled Substances

Chair Barker and Members of the Judiciary Committee. My name is Robert Hayes, I am a Sergeant with the Albany Police Department and I am here today on behalf of the Oregon Association Chiefs of Police to support the passage of HB 2613. By way of a background, I am a certified Drug Recognition Expert and a Drug Recognition Expert Instructor. I am also a Crash Reconstructionist. In my 25 years as a police officer I have conducted numerous investigations in regards to motor vehicle crashes. I teach part time at the Department of Public Standards and Training (DPSST). I instruct classes related to Impaired Driving and Crash Investigations. I am also the Chair for the State of Oregon, DUII Multi-Disciplinary Training Task Force. This Task Force provides training to all disciplines throughout the state in regards to Impaired Driving.

The vast majority of the country's DUII laws recognize that impairment by drugs does not just come in the form of controlled substances. There are prescription or over the counter non-controlled substances that can be abused or combined to significantly affect a person's ability to drive safely. In addition there are illicit substances such as synthetic drugs that are constantly changing and as a result the pharmacy board cannot keep up with adding them to the controlled substance schedules. For many years, this bill has come in front of this committee with claims from the opposition that it will dramatically increase those arrested for DUII. First, when an officer arrests someone for DUII it is because they are observing impairment. It is not until later that it is discovered that the cause of the person's impairment was a non-controlled substance. Since I became a drug recognition expert in 1998 I have only had approximately 25 DUII arrests where the impairment resulted solely from a non-controlled substance. Although this is not a large number, it is important to have the consequences the same for those who are driving impaired and to get them treatment to avoid injuring others or themselves.

House Bill 2614 will also fix a loophole that is used on a regular basis. Here is an example. I had a case go to trial last year where a person admitted to taking a combination of 9 substances – 1 substance was controlled and 8 were non-controlled. The person hit a parked car and a pole and a witness called 911 to report that she seemed impaired. Upon contact she indicated that she did not even know she hit the car. I conducted a drug evaluation on her and she was clearly under the influence of a CNS Depressant. The toxicology report showed she had two CNS Depressants in her system in addition to several other substances. One of the depressants was a controlled substance and the other was not. The defense argued that the impairment was caused by the non-controlled substance and not the one that was controlled. Linn County Judge Daniel Murphy believed she was impaired but stated he could not find her guilty because he could not say which drug was psychoactive at the time. Judge Murphy has also written a letter of testimony to this committee expressing his frustration at this aspect of Oregon's DUI law. This is by far not a unique example.

Linn County District Attorney Doug Marteeny has also expressed frustration with the law and wanted this committed to know the following: "We have had a number of cases where both sides agree that the defendant is impaired. However, we bring in experts that argue about what the impairing substance was. This bill will reduce the amount of money that the taxpayers expend paying for experts on both sides who argue about whether the impairing substance is heroin or whether it is Zoloft. The defense pays lots of money to bring in experts who agree the defendant is impaired, just not by the controlled substance on board. The non-controlled substance, although impairing, serves as the masking agent that erases other impairing substances. We ought not endanger citizens by allowing such a glaring hole in the law."

The fact is impaired drivers injure and kill people. It is time we join the majority of states and remove impaired people of the road no matter what is causing the impairment so that we can reduce crashes, injuries and fatalities.