



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 2614:
Driving Under the Influence of Intoxicants

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 2614. 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.

HB 2614 has two components. First the bill imposes administrative penalties on a person who refuses to provide a blood sample under the Implied Consent Law. Given the devastating consequences of impaired driving, states across the country have utilized the Implied Consent Laws for decades to encouraging people to cooperate with DUII investigations and if a person does not there are penalties. Oregon already imposes a license suspension and a fine for refusing a breath or urine test but has no similar penalty for blood. Oregon is one of only a few states that still uses a person's urine to determine the presence of drugs. You will find no disagreement within the defense community that blood is much better evidence to show a drug is psychoactive at the time of driving. I have been on the stand countless times testifying in DUII cases where the defense has asked me why I did not get a blood sample from the suspect. They argue that blood would have been a much better tool to show impairment and I cannot disagree with the defense's position. This bill would provide incentive for people to consent to a blood draw and the results can be used by both the prosecution and the defense to argue their case.

The second part of HB2614 allows the state to admit as evidence a person's refusal to provide a drug evaluation by a Drug Recognition Expert (DRE). This is the same as if the person refuses or fails to submit to field sobriety tests or a breath or urine test. When a person refuses to do field sobriety tests we advise them that a failure to do the non-speaking portions of the test can be used against them in a criminal trial. The person then has an opportunity to take the tests without having to say anything. If House Bill 2614 passes a person who refuses to do a drug evaluation will also be advised that a refusal to do the non-speaking portions of the drug evaluation will be used as evidence.

Opponents of this bill would like to cast doubt on the use of the drug evaluation by drug recognition experts. However, this drug evaluation is the tool used nation-wide and in many countries to determine if a person is impaired by drugs or whether there is another reason for what the officer is seeing. This is not a random set of tests, rather the 12 step evaluation has been used for decades and has been studied and shown to be accurate; this is why it has been accepted as scientific evidence by Oregon courts. No one will disagree that the state has to prove a person was actually impaired while driving and the way this is done in drug cases is through the drug evaluation. Otherwise what is the alternative? Simply getting a urine sample as is the case in Oregon now that just shows at some point in the past they used the drug? Once a person has been arrested the first time and realizes that a refusal to do the evaluation has no teeth, they will continue to refuse over and over again and continue to drive in a manner that harms the public.

It is also important to note that a drug evaluation can also help show that a person was not impaired but a controlled substance rather a medical condition or episode. Last year I terminated a drug evaluation when I found the person had abnormally high blood pressure and pulse rate. She was transported to the hospital and treated for her medical needs. Had she not had police contact she may have made it home and suffered a heart attack. In another situation a State Trooper terminated his evaluation after spending a short time with a driver and told him that he should see a doctor as what he was seeing did not look like drug impairment. That Trooper was later contacted by the driver's wife who told him that he had a brain tumor and that it would not have been caught but for the Trooper's actions.

There is no doubt that drugged driving is on the rise in general, and in Oregon I am watching firsthand the increase in marijuana DUIs. An illustration of the growing importance of the drug recognition evaluation can be seen after Washington and Colorado legalized marijuana. Washington State increased their number of DREs and Colorado almost doubled their numbers. In addition Oregon has already recognized the need for drug evaluations. OLCC was tasked with looking at some of the issues surrounding marijuana impaired driving. One of the major conclusions was the need to increase the number of DREs and also that drug evaluations are a crucial tool to collect data to determine the extent of the increase in marijuana DUIs.

House Bill 2614 will make the law consistent. Both field sobriety tests at roadside and much more detailed drug evaluations conducted at a police station are tools that judges and juries need to fairly determine impairment. Refusals to both these tests should be used as evidence.