



**DEPARTMENT OF JUSTICE
Criminal Justice Division**

**TESTIMONY ON HOUSE BILL 2613
For the House Judiciary Committee
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Presented by:

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SUMMARY

House Bill 2613 allows the state to charge a person with driving under the influence of intoxicants if the only substance impairing them is a non-controlled substance. Current law limits a charge of DUII to those who drive impaired by alcohol, a controlled substance, an inhalant or a combination of those substances.

BACKGROUND

In Oregon, a person is arrested for DUII when an officer sees signs that the person's mental or physical faculties are impaired to the point that they are not safe to drive a car. In a small number of cases, it is later determined that the person was under the influence of a non-controlled substance or substances. These can include non-controlled substances that require a prescription, an over the counter drug that is taken in excess of the recommended dose, as well as an illicit substance that's sole purpose is to impair a person. Under current law, a person driving while impaired by only a non-controlled substance cannot be charged with a DUII and therefore would not have the potential to receive an evaluation and treatment for substance abuse that they would otherwise get following a DUII adjudication. In addition, it is difficult for the federal and state Boards of Pharmacy to keep up with synthetic drugs that are constantly changing in molecular structure and falling off the controlled substance list.

Another side effect of Oregon DUII law only applying to controlled substances is that it creates a loophole for people who are admittedly impaired to avoid conviction and subsequent treatment. In these situations, a person arrested for DUII provides a urine sample that shows the presence of a controlled substance and a non-controlled substance or multiple of each. Because of the nature of Oregon DUII law, the person admits that they were impaired but that the impairment was caused by the non-controlled substances in their urine. Although the state can argue that both the controlled and the non-controlled substances were causing the impairment and that can support a conviction, these cases become very difficult for the jury to determine whether the charge has been proven beyond a reasonable doubt. This is especially true because of the nature of urine toxicology, which shows only that the substance was used at some point in the past, rather than what is psychoactive in the system at the time the sample is collected.

Over the years there have been concerns raised about expanding DUII to include impairment caused by non-controlled substances. One concern is that a person may take a non-controlled medication that was prescribed to them or an over the counter medication, take the medication as directed, and have an unanticipated adverse reaction. The Dash-1 amendment to House Bill 2613 addresses these concerns. It allows for an affirmative defense to be raised in cases where the only impairing substance is a non-controlled substance, the person took the medication as prescribed or directed on the packaging, and the person had an unanticipated adverse reaction. This amendment also requires the person to give the prosecution notice of their intent to use the affirmative defense. This type of notice is seen in many areas in criminal law to allow the prosecution to be able to either rebut the defense or to dismiss the case if satisfied that there is evidence to support the unanticipated adverse reaction. Finally, the Dash-1 amendment allows for the prosecution to have access to medical records, if any, which relate to the non-controlled substance that is the subject of the affirmative defense so that a factual record can be made for the judge and jury.

CONCLUSION

The passage of House Bill 2613 will bring Oregon in line with the DUII laws of 44 other states and the District of Columbia that address driving while impaired by non-controlled substances.

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