

Jeffrey Nitschke
Testimony Regarding SB 965

Good morning Chair Prozanski, Vice Chair Thatcher, and Members of the Committee,

My name is Jeffrey Nitschke. I am testifying on behalf of ODAA regarding our support of SB 965. I have worked at the Clackamas District Attorney for almost 5 years. I spent over two years on our misdemeanor team handling hundreds of DUII cases. Since moving to our felony unit, I have handled felony DUIIs and cases where a DUII crash causes major injuries and/or death.

SB 965 is designed to close a loophole in the law, which allows drivers who are impaired, sometimes to a high level, to drive on Oregon roads without deterrence or accountability. Currently, it is illegal to drive while impaired by an intoxicant (alcohol, controlled substances, inhalants, or cannabis). However, it is not illegal to drive while impaired by non-controlled substances (things like Flexeril or Wellbutrin), Kratom or designer drugs like synthetic cannabinoids (K2, or Spice). These substances and others are widely available. They can cause significant impairment and can be abused. In fact, Oregon is one of only about 4 states that does not have a DUII law which covers all impairing substances.

SB 965 does not seek to add all impairing substances to the DUII law. It does however seek to close a loophole where non-controlled substances are present with controlled substances, cannabis, alcohol or inhalants. In cases where a person's toxicology (i.e. presence of substances in blood or urine) reveals non-controlled substances in addition to the substances covered by statute, and the state is able to prove signs of impairment, defense commonly argues that the impairment seen is due to the non-controlled substance and not the covered substances. Since the DUII statute only covers impairment by covered substances, their argument is that a person cannot be found guilty even where impairment is established. In these cases, the defense doesn't argue that the defendant is not impaired, that they are not safe to drive on the roads, or that they don't present a serious risk to the lives and safety of the community. They only ask the jury to find that the state has not proven the person was impaired by the controlled substance, and not the non-controlled, and therefore the DUII statute does not apply.

Unfortunately, it is becoming common in DUII investigations that defendants are impaired multiple substances. Officers trained as Drug Recognition Experts can recognize signs of impairment of drugs and corroborate their observations by obtaining urine samples. However, these officers are trained to recognize particular drug categories, not specific drugs. Similarly, urine can only tell us what has been in the defendant's body in the past few days, not what is impairing them at the moment the officer sees them. Thus, when a person's urine has both controlled substances and non-controlled, the state has to prove that the controlled substance was at least in part causing the impairment.

SB 965 closes this loophole by adding language that a person who is using a non-controlled drug and intoxicant covered by statute, the person is nonetheless guilty of DUII if the state proves that they are impaired. Notably, the state does not have to prove which substance is causing the impairment. This corrects the law where a non-controlled substance like Kratom or Spice is being used with cannabis, a controlled substance, inhalant, or alcohol, to make the driver impaired. This law will help deter criminal behavior, help the community, and ensure defendants in need have access to treatment.

Thank you.