



Oregon

Kate Brown, Governor

Governor's Advisory Committee on DUII

Transportation Safety Division, MS #3

4040 Fairview Industrial Drive SE

Salem, OR 97302-1142

Phone: (503) 986-4190

Fax: (503) 986-3143

DATE: April 3, 2019

TO: Senate Judiciary Committee

FROM: Corporal Joshua Wilson; Washington County Sheriff's Office

SUBJECT: Senate Bill 965

Introduction:

My name is Joshua Wilson, and I have been a sworn law enforcement officer with the Washington County Sheriff's Office for over 15 years. I am also a current member of the Governor's Advisory Committee (GAC) on DUII, and I am here today on behalf of the GAC to express my support for Senate Bill 965. This bill addresses a need to amend our DUII statutes to cover people who are impaired by non-controlled substances, when used in combination with alcohol, controlled substances, inhalants, and/or cannabis. This includes many prescription medications, over-the-counter drugs, and substances other than food. Currently our DUII statute only includes those who are impaired by controlled substances and not non-controlled substances. The statutory amendments proposed in Senate Bill 965 are a logical solution to close a common and unintended loophole in our current impaired driving law. The loophole exists where a person can be impaired by a non-controlled substance in addition to alcohol, controlled substances, inhalants, and/or cannabis, yet the defense argues that the impairment is only caused by the non-controlled substance, and therefore not covered by our DUII statute.

In addition to my Advanced Police Officer and Instructor certifications through DPSST, I am also trained and internationally certified as a Drug Recognition Expert (DRE). This certification includes extensive classroom and situational field training on seven drug categories, each of which have their own unique set of signs and symptoms of impairment. My job as a DRE is to evaluate drivers who are already under arrest for DUII, and who are suspected of being impaired by substances other than—or in addition to—alcohol. My primary function as a DRE is to determine whether or not the driver is impaired. If they are, I then determine if that impairment is caused by a medical condition or by drugs, and if by drugs, what category or categories of drugs the person is under the influence of.

In a drug influence evaluation, I administer psychophysical divided attention tests, check vital signs, measure pupils, and test the eyes for the presence of nystagmus, among other things. Alcohol and other drugs affect the human body—including the central nervous system (CNS)—in various ways. These effects are evident through the tests and measurements of a drug influence evaluation—a highly-accurate and standardized process used nationwide and supported by lab and field validation studies. I have personally evaluated hundreds of people who were arrested for DUII, many of whom were significantly impaired, including those whose toxicology results involving drugs other than what are covered in our current DUII statutes.

Because of how drugs work in the body, even with my extensive training and experience, I cannot be expected to go inside the mind or body of a person to know exactly which specific drug(s) that person is under the influence of; I only opine to categories of drugs. So for example, if a person has a controlled substance in the depressant category present as well as several non-controlled substances in the same category, it is not possible to parse out which of the substances are causing the observed and real impairment.

The result of this type of case is the argument that the person is only impaired by the non-controlled substances and not the controlled substance and therefore does not fit in our definition of DUII in Oregon. It should be about proving impairment, not the exact substance that is causing the impairment in this situation. I have had DUII cases in my career where this situation has arisen and this argument has been made.

The drugs proposed for inclusion in this bill have many of the same impairing qualities as their controlled “cousins.” In my experience, even at prescribed therapeutic doses, these drugs will often impair a person when combined with other drugs or taken in excess of the prescribed amount. The US Food and Drug Administration and pharmaceutical manufacturers themselves publish studies and literature warning against combining these drugs with alcohol and/or other drugs, and against operating a vehicle under the influence of them. Combining them can cause symptoms such as increased sedation, dizziness, pupil dilation or constriction, and vital sign changes, just to name a few.

Background:

Examples

I. PRESCRIPTION NON-CONTROLLED DRUGS

In 2009 and 2010, I evaluated the same female on two separate cases. In 2009, I evaluated her after she caused a 4-car crash. In that evaluation, she told me that she was currently prescribed thirteen different medications for her various disorders. She was significantly impaired, with difficulty standing, slurred speech, severe balance problems, and elevated pulse and body temperature. Her toxicology results showed that the only drug in her system was Cogentin (a.k.a. Benzotropine), a non-controlled CNS Depressant which can also cause blurred vision and impaired reactions.

Approximately six months later, I evaluated this driver for a second time after she nearly caused another crash. During this evaluation, she exhibited most of the same signs of impairment as she had during the first evaluation, but was not as severely impaired. She told me that she had consulted her doctor after the last incident, and her doctor immediately discontinued a number of the medications from her daily regimen. Her new list of medications included no controlled substances, and her toxicology report showed only the presence of Wellbutrin and Doxylamine, both CNS Depressants that are not controlled substances.

Both of these evaluations clearly showed that this driver was impaired. Had her drugs been combined with alcohol, controlled substances, inhalants, or Cannabis, her impairment would have been even worse.

II. DRUG COMBINATIONS

In 2017, I evaluated a driver after he was arrested in Beaverton for DUII. He was highly impaired, showing signs of a combination of drugs. The visible signs of CNS Depressant impairment included horizontal gaze nystagmus, slurred speech, a dazed appearance, unsteady sway, and droopy eyelids. He also showed signs of Cannabis impairment, including body tremors, delayed cognition, and elevated pulse rate. The impairment he exhibited from CNS Depressants was significant, and he told me that he was taking two of those: Gabapentin and Trazodone, both non-controlled CNS Depressants. His toxicology result included Cannabis, Gabapentin, and Trazodone. Neither Gabapentin nor Trazodone is a controlled substance, yet he was still impaired by these drugs in combination with the Cannabis in his system. This is an example of a situation where the defense can argue impairment by Gabapentin and Trazodone, and not by Cannabis, regardless of the driver’s high level of impairment.

Summary:

On behalf of the Governor’s Advisory Committee on DUII, I ask you to consider the danger of these drug combinations and close this loophole. The crime of DUII should be about impairment and not about whether the impairment comes from a controlled or a non-controlled substance. From an enforcement perspective, the impact of this bill is insignificant as these drivers are already being arrested based on impairment and their toxicological samples already being tested. The societal impact will be great, as these drivers are held accountable for their dangerous behaviors, they will be getting the treatment they need, and the users of Oregon’s highways are safer as a result.

