



**DEPARTMENT OF JUSTICE
Criminal Justice Division**

**TESTIMONY ON SENATE BILL 965
For the Senate Judiciary Committee
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Presented by:

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SUMMARY

Senate Bill 965 seeks to close a loophole commonly used in DUII cases where there is evidence that a person has consumed a non-controlled substance in combination with alcohol, cannabis, a controlled substance, or an inhalant. Oregon's DUII law only applies if the state can prove that a person is under the influence of the latter – alcohol, cannabis, a controlled substance, or an inhalant. In situations where there is evidence of the use of a non-controlled substance, it is commonly argued that the impairment seen is caused by the non-controlled substance rather than those substances covered under Oregon's DUII laws. At the very least, this argument is used to create reasonable doubt as to the exact source of impairment and rather than challenging the fact that the person is impaired.

BACKGROUND

In Oregon, a person is arrested for DUII when an officer sees signs that the person's mental and/or physical faculties are noticeably impaired and the person is therefore not safe to drive a car. Often times a drug recognition expert does an evaluation which is designed to determine if the person is impaired and if so by what drug category. It is common that under a particular drug category there can be both controlled and non-controlled substances. When a person's toxicology reveals the presence of both, it is a common defense that although impairment

is seen, the impairment is caused by the non-controlled substance. The argument continues that since the DUII statutes do not cover impairment by non-controlled substance, the jury cannot find the person guilty regardless of the fact that impairment is not at issue.

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 the source of the impairment beyond a reasonable doubt. This is especially true because of the nature of urine - which is routinely collected in drug DUIIs - that shows that the substance was used at some point in the past rather than what is psychoactive in the system at the time.

CONCLUSION

Over the years there have been concerns raised about expanding DUII to cover impairment caused only by non-controlled substances despite giving numerous examples of obvious impairment by certain substances and that 45 other states have a similar law. This bill is meant to only close a loophole where impairment is established but it is argued that impairment is attributed to only to a non-controlled substance in the urine and not the alcohol, cannabis, a controlled substance that may also be present.

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