

Opposition to SB 201

I offer this testimony in opposition of SB 201. I ask the committee to carefully consider the possibility of how this law could be abused and the ways in which it may allow government overreach into the lawful private activities of the home. Further, it shifts an incredibly important burden that exists in our legal system when it comes to the presumption of guilt.

With a change of this nature, there exists the dangerous possibility that government actors will end up citing or arresting people for engaging in lawful activity, especially in their own homes. You are opening the door to potential abuse. You must draft and pass laws that take into account the possibility of the worst way in which they may be used, not just their application under ideal circumstances. There is a very real likelihood that innocent citizens will be accused and convicted under this law.

An affirmative defense is something that is invoked when a person is presumed to have done something wrong and the burden shifts to that citizen to defend themselves against the accusation. This law puts people in the position of having to use their lawful consumption of intoxicants in their own home as an affirmative defense to the presumption they were driving intoxicated. So rather than the State being required to prove their guilt, this law will force citizens to prove their innocence. A burden shift of this magnitude has serious ramifications.

There is inevitably bias against the accused. The fight to put into use an affirmative defense of this type will be a difficult and costly uphill battle. The increase in expense for a person defending themselves will increase substantially, as will the cost of indigent defense. Experts will be needed in most cases that proceed to trial. To shift the burden so substantially away from the requirement that the State prove guilt beyond a reasonable doubt is simply unfair and unjust in a system that already heavily favors the State.

Current DUII law results in many convictions. The State has some instances where people have avoided conviction through unique or unlikely sets of facts, but it does not happen often. The balance in the system is that on occasion the State loses. They far more often win. With DUIIs you see a lot of plea deals with few trials. And those plea deals are not for a lesser crime, as allowed in many other states, but simply for a lighter punishment or dismissal of accompanying charges.

This bill upsets the balance of justice to favor the State in a way that is unfair and dangerous for the citizens of our state. **I urge you to vote NO on Senate Bill 201.**

Submitted by Elizabeth Lohrke, attorney in practice in Lane County and member of OCDLA.
Submitting my comments as a constituent and not an official representative of any organization.