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Working to Reform Marijuana Laws

## **Written Testimony Opposing The Enactment Of House Bill 575**

**A Bill To Amend New Hampshire's Vehicle Code, Before The Committee On Public Safety**

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I applaud the members of the Public Safety Committee for taking the time to hold this hearing regarding House Bill 575, which seeks to establish criminalize drivers who operate a motor vehicle with trace levels of illicit drugs or inactive drug metabolites in their bodily fluids.

I have more than a dozen years experience working on various aspects of drug policy, and have spent the better part of the past eight years researching the impact of drug use on driving. During this time, I've attended various international conferences on the subject, including those sponsored by the Society of Forensic Toxicologists (SOFT), The Office of National Drug Control Policy (ONDCP), and the International Council on Alcohol, Drugs & Traffic Safety (ICADTS). I've worked closely with legislators and lobbyists in several states to craft legislation addressing the DUID issue. I am the author of the report, "Cannabis and Driving: A Scientific and Rational Review," and I was a consultant for the Canadian Public Health Association's recently launched "Pot and Driving" awareness campaign.

I have no doubt that the members of this Committee all support the goal of keeping impaired motorists off the road, regardless of whether the driver is impaired from alcohol, prescription drugs, or illicit substances. I share this goal. However, it is my expert opinion that the enactment of House Bill 575 is unnecessary, inappropriate, and will do little to deter individuals from driving under the influence of illicit substances.

Criminal sanctions such as those proposed in this bill ought to be enacted only when there is a well- established and well-documented need. Such a need has not been established in this instance. Despite the calls from some in law enforcement for the enactment of zero tolerant *per se* DUID laws, there exists almost no epidemiological data indicating either the

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extent or the severity of so-called "drugged driving." In fact, according to the most recent the most recent edition of the US Department of Transportation (DOT) report, "State of Knowledge of Drug Impaired Driving," the prevalence of illicit drugs among driver populations "is much smaller than the prevalence of alcohol among such populations." The Department of Transportation report goes on to state, "[The] role of drugs as a causal factor in traffic crashes involving drug-positive drivers is still not well understood."[\[1\]](#)

To date, scientific studies have failed to identify whether the use illicit drugs in general – and cannabis in particular – are a significant cause of on-road accidents or fatalities, particularly compared to alcohol. Notably, a recent observational case control study published in the journal *Accident, Analysis and Prevention* reported that only drivers under the influence of alcohol or benzodiazepines experienced an increased crash risk compared to drug-free controls. Investigators did observe increased risks – though they were not statistically significant – among drivers using amphetamines, cocaine and opiates, but found, "No increased risk for road trauma was found for drivers exposed to cannabis."[\[2\]](#)

More recently, a 2007 case-control study published in the *Canadian Journal of Public Health* reviewed 10-years of US auto-fatality data. Investigators found that US drivers with blood alcohol levels of .05 – a level well below the legal limit for intoxication – had an elevated crash risk that was more than three times higher than individuals who tested positive for marijuana.[\[3\]](#)

A similar review of auto accident fatality data from France showed similar results, finding that drivers who tested positive for any amount of alcohol had a four times greater risk of having a fatal accident than did drivers who tested positive for marijuana.[\[4\]](#) Both studies noted that – overall – few traffic accidents appeared to be attributed to driver's operating a vehicle while impaired by cannabis.

That said, I'm sure that we're all in agreement that those minority of drivers who do operate a vehicle while demonstrably impaired by illicit drugs ought to be severely punished. Fortunately New Hampshire – like all states – already has effective DUI laws on the books that sufficiently target, identify, and prosecute such drivers. Additional legislation such as HB 575 is neither warranted nor necessary.

House Bill 575, under strict interpretation, could potentially punish scores of drivers who are not intoxicated.[\[5\]](#) This is because the law calls for criminally sanctioning motorists

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based *not* on their driving behavior – but rather, whether or not they have trace levels of non-psychoactive drug metabolites in their blood or urine.

The inclusion of drug metabolites – which can be detectable in urine for days after past drug use – in this proposal is particularly troubling. Drug metabolites are compounds produced from chemical changes of a drug in the body, but they are not necessarily psychoactive themselves. This means that a person can test positive for the presence of a drug metabolite, but no longer be under the influence of a controlled substance. For this reason, the US Department of Transportation has criticized the inclusion of drug metabolites in state DUID laws, stating, "[W]hile a positive ... test [for drug metabolites] is solid proof of drug use within the last few days, it cannot be used by itself to prove behavioral impairment during a focal event."[\[6\]](#)

The US Department of Justice affirms this conclusion, stating that a positive test result for the presence of a drug metabolite "does not indicate ... recency, frequency, or amount of use; or impairment."[\[7\]](#)

In short, the presence of drug metabolites is not proof of drug impairment. Their detection should never be viewed under the law as *prima facie* evidence of impaired driving.

Unfortunately, as currently written, HB 575 would treat sober drivers as impaired and criminally punish them for their previous, non-driving-related activities. To do so is illogical. The purpose of the traffic safety laws is to target and punish those drivers whose on-road actions threaten the safety and security of others; these laws should not be misused to enforce unrelated laws prohibiting the use of certain controlled substances in the privacy of one's home.

In addition these initial concerns, I further believe that it's premature for the members of this Committee to be considering the enactment of this law when similar action remains pending from Congress. As authorized by Section 2013 of the 2005 Transportation Appropriations bill, the US Secretary of Transportation must "advise and coordinate with other federal agencies on how to address the problem of driving under the influence of an illegal drug; and conduct research on the prevention, detection, and prosecution of driving under the influence of an illegal drug."

The law further states, "After the ... enactment of this act, the Secretary, in cooperation with

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the National Institutes of Health, shall submit to Congress recommendations for developing a model statute for states relating to drug impaired driving, including:

- Threshold levels of impairment for illicit drugs;
- Practicable methods for detecting the presence of illegal drugs;
- Penalties for drug impaired driving."

These recommendations are expected imminently. At a minimum, the House should wait until Congress has weighed in on this issue before moving forward with this poorly drafted legislation.

Finally, there exists no evidence that the passage of these strict zero tolerance and/or *per se* laws are actually having any tangible effect in reducing the number of drugged drivers from the roadways. This is because, in most cases, those who violate our state's drugged driving laws are habitual offenders whose actions are undeterred by the passage of strict criminal sanctions.

In fact, the only published study to date to assess the impact of strict, zero tolerance *per se* DUID legislation reports: "[The enactment of] zero-concentration limit[s] have done nothing to reduce DUID or deter the typical offender because recidivism is high in this population of individuals. ... Indeed, many traffic delinquents ... are criminal elements in society with previous convictions for drunk and/or drugged driving as well as other offenses. The spectrum of drugs identified in blood samples from DUID suspects has not changed much since the zero-limit law was introduced."[\[8\]](#)

In conclusion, I urge the members of the Public Safety Committee to oppose this legislation. While driving under the influence of illicit and licit substances is arguably an issue worthy of legislative concern, this proposal neither addresses the problem nor offers a legitimate solution. At best, it is an inappropriate, inflexible response to a negligible social ill. At worst, it is a cynical attempt to misuse the traffic safety laws to prosecute illicit drug consumers *per se*.

Rather than support the passage of inappropriate, non-scientific, and overly punitive legislation such as HB 575, I believe that the House would be better advised to authorize public campaign efforts warning citizens, particularly young people, of the dangers of drugged driving. Such an educational campaign was recently launched nationwide in Canada by the Canadian Public Health Association.[\[9\]](#) I was an advisor to this campaign

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and would be pleased to work with Committee members on crafting similar education efforts in New Hampshire.

### CONTACT INFORMATION:

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[1] US Department of Transportation, National Highway Safety Administration. *State of Knowledge of Drugged Driving: FINAL REPORT*. September 2003.

[2] Movig et al. 2004. *Psychoactive substance use and the risk of motor vehicle accidents*. Accident Analysis and Prevention 36: 631-636.

[3] Bedard et al. 2007. The impact of cannabis on driving. *Canadian Journal of Public Health* 98: 6-11.

[4] Laumon et al. 2005. Cannabis intoxication and fatal road crashes in France: a population base case-control study. *British Medical Journal*.

[5] *People v Derror, People v Kurts* (Michigan Supreme Court, June 21, 2006). "Nor does [the statute] require a defendant to be impaired while driving. Rather it punishes for the operation of a motor vehicle with any amount of a scheduled I controlled substance in the body. ... That the statute might apply to some persons who are not actually 'under the influence' of [a controlled substance] does not render the statute unconstitutional."

[6] US Department of Transportation, National Highway Safety Administration. *State of Knowledge of Drugged Driving: FINAL REPORT*.

[7] US Department of Justice, Bureau of Justice Statistics. *Crime and the Justice System* (NCJ-133652). December 1992. Working to Reform Marijuana Laws

[8] Alan Jones. 2005. *Driving Under the Influence of Drugs in Sweden with Zero Concentration Limits in Blood for Controlled Substances*. Traffic Injury and Prevention 6: 317-322.

[9] Canadian Public Health Association. "The Pot and Driving Campaign."  
<http://www.potanddriving.cpha.ca/index.html>