

KEIR E. BOETTCHER
BRENDAN P. MURPHY
AMY M. QUEEN
DAVID R. WILSON
ADULT PROSECUTION
TRIAL TEAM SUPERVISORS

DAWN THOMPSON
ADMINISTRATIVE SERVICES MANAGER

PAIGE E. CLARKSON
DISTRICT ATTORNEY



CONCETTA F. SCHWESINGER
SUPPORT ENFORCEMENT
TRIAL TEAM SUPERVISOR

SUSANA ESCOBEDO
VICTIM ASSISTANCE DIRECTOR

ROBERT ANDERSON
CHIEF MEDICAL LEGAL DEATH
INVESTIGATOR

MARION COUNTY DISTRICT ATTORNEY
P.O. BOX 14500, 555 COURT ST NE
SALEM, OREGON 97309

February 24, 2020

Honorable Representative Tawna Sanchez
Chair, House Committee on Judiciary

RE: Testimony in support of Senate Bill 1503A

Chair Sanchez, Vice Chairs Bynum and Sprenger, Members of the House Committee on Judiciary:

My name is Katie Suver. I am a Deputy District Attorney in Marion County. I have served as a prosecutor in Oregon since September of 1997. I am here on behalf of my office and the Oregon District Attorney's Association. Both support Senate Bill 1503A.

As a Deputy District Attorney I have prosecuted DUII cases throughout my career. Senate Bill 1503A is a crucial fix to two recent Oregon Supreme Court decisions that have and will result in inconsistent rulings and application of our current DUII statutes. I urge this committee to vote "YES" on Senate Bill 1503A.

SB 1503A is narrowly tailored to restore Oregon's DUII statutes

In two recent cases, State v. Hedgpeth, 365 Or 724 (2019) and State v. Guzman, 366 Or 18 (2019), the Oregon Supreme Court interpreted Oregon's DUII statutes in ways that impact the bright line rules that the legislature has previously attempted to establish.

Prosecutors throughout the state are already seeing challenges in DUII cases based on *Hedgpeth* and *Guzman* so it is appropriate to pass this fix in the short session. The bill is narrowly tailored to address only the issues raised by these recent cases; it does not fundamentally alter DUII laws in this state.

SB 1503A does not change Oregon law requiring *probable cause to arrest*

A police officer must have probable cause for all elements of a DUII charge to support an arrest. The "under the influence" requirement does not change under SB 1503A; it must be established in the field and in court by the same objective standards police have been

using for decades – roadside observations. A breath or blood test is never administered until *after* a DUII arrest has been made and probable cause has been established.

SB 1503A will not lead to wrongful arrests or arrests without probable cause .

As discussed above, a breath or blood test is performed *after* a person is arrested for DUII. SB 1503A does not change DUII arrest requirements. Due to the time constraints inherent in any DUII investigation, there is *always a delay* between the time of the traffic stop and contact with the driver, and the later administration of a breath or blood test. SB 1503A brings Oregon in line with the majority of States that recognize this reality.

SB 1503A does not absolve the state of its burden to prove guilt beyond a reasonable doubt in DUII cases

In any criminal prosecution, the state rightly bears the burden of proving a defendant's guilt beyond a reasonable doubt. That burden does not change under SB 1503A. Affirmative defenses are found in other parts of the criminal code and are constitutional.

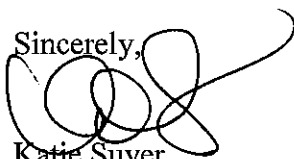
SB 1503A ensures that there will not be inconsistent results in DUII cases

The problem created by *Hedgpeth* is one of uncertainty. In *Hedgpeth* the court ruled that “something more” than a BAC of .09% was required to sustain a DUII conviction, but did not instruct what that “something more” had to be. In a courtroom in Deschutes County, a judge may decide that “something more” is satisfied if the driver does poorly on field sobriety tests, whereas a judge in a Clackamas County courtroom may rule the same evidence does not. The reason Oregon established a .08% or higher BAC standard was to create a bright line rule. *Hedgpeth* undermined that. SB 1503A would re-establish it.

Additionally, SB 1503A fixes what the *Guzman* case created: the inconsistent application of DUII laws in this state. If a defendant has prior *Oregon* DUII convictions, that defendant will be faced with one set of potential penalties, whereas a defendant with out-of-state DUII convictions (who has perhaps recently moved into Oregon or is passing through it) faces different potential penalties. That is unfair. ***Every person knows is that DUII is a crime, wherever you live.*** And a person committing this very serious and potentially deadly offense in Oregon who has a prior record of committing DUII in other states should face equal application of the law as would a longtime Oregon resident.

The Oregon District Attorney's Association urges passage of SB 1503A. Thank you for your consideration.

Sincerely,



Katie Suver

Deputy District Attorney