Oregon
Kate Brown, Governor

Governor's Advisory Committee on Driving Under the Influence of Intoxicants
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TO: Senate Judiciary Committee

FROM: Governor's Advisory Committee on DUII

SUBJECT: SB 201 and SB 217

Dear Chair Prozanski and Members of the Committee:

The GAC-DUII strongly supports the fixes that SB 201 and SB 217 provide for two key areas of DUII law.

The first component of SB 201 is the fix to the *Hedgepeth* decision that come from the Oregon Supreme Court that undermined the intent and effect of Oregon's long-standing law that established 0.08 as the per se limit for alcohol-impaired driving. SB 201 applies a two-hour window from the time of driving, which eliminates the problems caused by the *Hedgepeth* decision where a defendant claimed to have consumed a quantity of alcohol just prior to riding (a motorcycle) and argued he was not impaired at the per se level at the time of the stop. Even though he was per se impaired when taking the intoxilyzer test at the police station almost two hours later. The Supreme Court determined that a jury could not reasonably infer the defendant was 0.08 BAC at time of the stop. Most other states have established that impairment occurs if 0.08 is established within two hours of driving and in some states within three hours.

The second component of SB 201 (and SB 217 as a standalone) is the fix to the Oregon Supreme Court Decision in *Guzman* which states that a person charged with DUII cannot be held accountable for DUII's in other states unless the laws are essentially identical, when it comes to sentencing and enhancement purposes. In *Guzman*, the Court interpreted the Colorado (one of the states in question) statutes that defined DUII as:

> "Affect[ed] ***to the **slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle."**

Oregon's own statutes define DUII as:

> "mental or physical faculties were adversely affected by the use of intoxicating liquor to a **noticeable or perceptible degree**…." and "**includes not only the well-known and easily recognized conditions and degrees of intoxication, but also *any* abnormal mental or physical condition that results from consuming intoxicating liquor and that deprives the person of that clearness of intellect or control that the person would otherwise possess.**"

The Oregon Supreme Court did not find these statutes similar enough in their definition of the degree of impairment - either "noticeable and perceptible" or "slightest" to be suffiently compatible in applying the prior Colorado DUII conviction. A person with three DUII's from out-of-state could be treated like a first-time offender here in Oregon, which serves only to further endanger the public and prevent getting the person the kind of treatment that they need. In effect, *Guzman* has made Oregon unique in the country and does not allow out of state convictions to count toward a felony charge.

This critical bill seeks to correct two damaging interpretations of Oregon's DUII law. The first component restores legislative intent when establishing a bright line rule for when BAC evidence constitutes impairment. Secondly, it restores how prior out-of-state DUII conviction are analyzed so that courts can take those into consideration when sentencing a defendant whose criminally dangerous driving behavior continues on the Oregon roadways.

The GAC-DUII urges support and passage for these critical and timely fixes in SB 201 and SB 217, and deeply appreciates the Senate Judiciary Committee's willingness to address this issue.

Respectfully,

Chuck Hayes
Chair, Governor's Advisory Committee on DUII