TESTIMONY OF
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ON BEHALF OF
The Foundation for Advancing Alcohol Responsibility
In opposition of Senate Bill 225

House Committee on Judiciary
Vermont House of Representatives
April 20, 2016

Good afternoon Chairman Jewett and distinguished members of the committee. Thank you for the opportunity to testify in opposition of Vermont Senate Bill 225. My name is Erin Holmes. I am the Director of Traffic Safety at the Foundation for Advancing Alcohol Responsibility (Responsibility.org). Prior to joining the Foundation in September of 2014, I was a Research Scientist at the Traffic Injury Research Foundation (TIRF). During my tenure at TIRF, I published more than 40 reports, evaluations, and articles and delivered in excess of 50 presentations internationally on impaired driving, justice system improvements, alcohol monitoring technologies, risk assessment, and drug policy.

Responsibility.org is a national not-for-profit organization and a leader in the fight to eliminate drunk driving and underage drinking. We are funded by the following distilled spirits companies: Bacardi U.S.A., Inc.; Beam Suntory; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Edrington; Hood River Distillers, Inc.; and Pernod Ricard USA. Our sole focus is on eliminating drunk driving and underage drinking. For 25 years, Responsibility.org has transformed countless lives through programs that bring individuals, families and communities together to guide a lifetime of conversation around alcohol responsibility and by offering proven strategies to stop impaired driving. To find out more, please visit www.responsibility.org.

Offering _proven_ strategies to stop impaired driving

Responsibility.org researches current trends and develops policy and program initiatives to stop impaired driving. We support proven strategies and evidence-based practices to reduce the number of fatalities and injuries caused on our nation's roadways by impaired drivers.

Over the years, we have worked alongside coalition partners to support effective legislation in more than 45 states and at the Federal level. Additionally, we collaborate with elected officials, criminal justice practitioners, and traffic safety experts to advocate for policy changes. These partners have also helped launch our prevention programs in more than 3,000 communities across the nation.

Historically, Responsibility.org has focused on the elimination of drunk driving but in recent years, the rise in drugged driving has become of great concern. Alcohol-impaired traffic fatalities have declined 53% since 1982 but the percentage of fatally-injured drivers testing positive for drugs has increased. In 2013, 40% tested positive for the presence of drugs. We have worked for 25 years to eliminate drunk driving and tremendous progress has been achieved in this area. However, as the opioid epidemic sweeps across the nation and marijuana is legalized in more states, impaired driving due to alcohol will inaccurately be identified as increasing if drug testing protocols do not improve and distinguish between drugs and alcohol. Without an accurate understanding of the problem, the proper solutions will not be applied.

Opposition to Senate Bill 255 .05 BAC amendments

There are many steps that jurisdictions can take to reduce this threat. In Senate Bill 225, a strategy has been put forth by the House Transportation Committee to lower the legal blood alcohol concentration (BAC) level to .05 when any detectable amount of delta-9-tetrahydrocannabinol is found in a driver's blood. **Responsibility.org opposes this amendment** as Vermont already makes it illegal to drive under the combined influence of alcohol and any other drug (Sec. 8. 23 V.S.A. § 1201(a)(3)). Moreover, there is no scientific evidence to suggest this provision would be effective. Unfortunately, this amended language will do little to address the drugged driving problem in your state. As such, **we ask that the .05 amendment be stripped from the SB 225** and that the committee focus on recommended and consensus-based strategies to address drug-impaired driving.

Challenges of identifying drug-impaired drivers

While the majority of law enforcement officers are trained to identify drivers who are impaired by alcohol, many officers are not trained to identify the signs and symptoms of drug-impairment. It is easier for law enforcement to make an arrest and obtain a BAC level from either a breath or blood sample than it is to complete an investigation for drug-impaired driving. The latter often requires an evaluation by a Drug Recognition Expert (DRE), a law enforcement officer with specialized training, who may not be readily available. Blood tests are also needed to confirm the presence of drugs in a suspect's system and due to delays in obtaining this sample, test results do not accurately reflect the concentration levels at the time of driving on account of the rapid metabolizing of the drug(s). This can make it challenging to successfully prosecute. If an officer observes impairment and can detect a BAC above the legal limit of .08, only DUI evidence and charges will likely be pursued. It is only when alcohol is ruled out as the cause of impairment or if the impairment is not consistent with the driver's BAC level that the use of drugs is explored. The rationale is that testing for alcohol only saves both time and money (Government Accountability Office, 2015). Therefore, DUI is the only crime where police stop investigating once minimal evidence is obtained.

The result of this practice is that many drug-impaired drivers escape detection and the magnitude of the drugged driving problem is not accurately captured. In addition, many drivers who are under the influence of both alcohol and drugs are prosecuted as drunk drivers as opposed to polysubstance users. Failure to identify their drug use can hinder the identification of drug dependency and miss an opportunity to refer the individual to an appropriate treatment intervention.

The good news is that Senate Bill 225 does contain provisions that will assist law enforcement in detecting and removing drugged drivers from the roadways.

The use of oral fluid screening devices to test for the presence of drugs at roadside has the potential to assist law enforcement in identifying a larger number of drug-impaired drivers who would otherwise avoid detection. This practice would provide objective data to justify an arrest and to require an evidential blood or urine sample. In addition, the on-site screening device would identify the drug categories that the evidential test should examine, which can save both time and money (Hedlund, 2015). These devices offer many advantages over blood and urine testing as they are quick, easy, minimally invasive, inexpensive, and provide a sample proximate to the time of driving (Bosker and Huestis, 2009; Moore and Crouch, 2013; Wille et al., 2014). Several oral fluid devices are currently available and the kits cost approximately $20.

SB 225 contains provisions to increase the use of saliva testing that, if used, will go a long way towards identifying drug-impaired drivers. We therefore, support this portion of the bill.

How states can effectively address drug-impaired driving

There are many other ways to address the drug-impaired driving problem that do not involve lowering the legal BAC limit. Many of these strategies can be found in a report released by the Governors Highway Safety Association (GHSA) and funded by Responsibility.org. As part of this publication, a panel of nationally recognized experts in the field of drugged driving formulated multiple recommendations that states can implement to reduce the drug-impaired driving problem. This report identified the following priorities and policy recommendations:

- **Improved laws:**
  - Separate and distinct sanctions for DUI and DUID are necessary in order to adequately prosecute drug-impaired driving. States must distinguish between alcohol, drug and combination impairment in order to effectively tackle the problem;
  - Penalties should be enhanced for drivers who operate a vehicle under the influence of drugs or a combination of alcohol and drugs;
  - Zero tolerance per se laws for people under 21 for marijuana and other drugs should be passed just as every state has passed for alcohol.

- **Better data collection:**
  - Increased testing for drug impairment including mandatory testing for drugs and alcohol in all fatal and serious injury crashes;
  - Improved drug testing protocols; and,
  - Improved data and record systems which differentiate between arrests for alcohol-impaired and drug-impaired driving.

- **Education and training for criminal justice practitioners** (including law enforcement, prosecutors, and judges).
  - Responsibility.org has teamed up with the Governors Highway Safety Association to award grants to train law enforcement officers in how to detect drug-impaired drivers. Year one

grants were [announced this month](). In 2017, grants will be awarded again. We hope that Vermont will apply.

In addition to these recommendations, Responsibility.org also believes that it is essential that effective screening for alcohol, drugs, and mental health issues be conducted among all impaired driving offenders. Research shows that repeat DUI offenders often suffer from multiple disorders. In one study, in addition to a lifetime alcohol disorder, 41% of the participants had a drug-related disorder and 45% had a major mental health disorder that was not alcohol or drug-related (Shaffer et al., 2007). In order to prevent future instances of drunk driving, and subsequently, save lives, the underlying causes of DUI offending (such as substance misuse or mental health issues) must be addressed.

Responsibility.org and the Division on Addiction at Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, are working together to expand and test a Computerized Assessment and Referral System (CARS) for use with a structured diagnostic mental health assessment in DUI intervention and treatment settings. Already piloted with support from the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the project examines the relationship between psychiatric profiles and driving under the influence among repeat DUI offenders. We hope this project will help states better identify, sentence, supervise, and treat drunk drivers and subsequently reduce recidivism.

Conclusion

Responsibility.org believes that strong laws enabling swift identification, certain punishment, and effective treatment are fundamental elements necessary to reduce the incidence of impaired driving – both drunk and drugged. **We urge the House Committee on Judiciary to remove the .05 BAC language from SB 225** (proposed amendments of Sec. 31. 23 V.S.A. §1201 (a)(1)(D); Sec. 35. 23 V.S.A. §1204 (a) and 1204 (a)(3)) as this is an unproven approach that is likely to have no real impact in reducing the occurrence of drug-impaired driving. Vermont is currently in a position to include the above recommendations and address drug-impaired driving in a meaningful and practical way. We therefore, encourage legislators to consider these consensus-based strategies in lieu of lowering the BAC level. Thank you.