

SB 560 Relating to medical marijuana

Disposition: Opponent

Written testimony ONLY

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I am a citizen and resident of Colorado, a state that adopted “medical” marijuana in 2020 and recreational marijuana in 2012. I retired as CEO of a successful worldwide medical device company. After retirement, my son was killed by drivers (two at the wheel of one car) under the influence of marijuana, methamphetamine and heroin in 2010. Because of that experience, I founded DUID Victim Voices to perform research and education on the effects of various drugs on driving safety. Our work has been published in numerous peer-reviewed journals and I have been invited as a guest speaker at numerous professional, scientific, and governmental meetings worldwide. I am the author of the Colorado’s law C.R.S. 24-33.5-520 that requires the state to annually publish research on the causes and judicial consequences of DUI in that state. The latest report pursuant to that law is https://cdpsdocs.state.co.us/ORS/Docs/Reports/2021-DUI_HB17-1315.pdf.

Even though Kansas has not legalized either “medical” or recreational marijuana, it does have a drugged driving problem. That is why Kansas wisely recently approved the use of preliminary oral fluid detection technology for selective use to enforce Kansas statute Section 8-1567, Driving under the influence. Unlike Colorado, Kansas is not aware of the extent of its drugged driving problem. The Kansas Traffic Safety Resource Office publishes limited information on the number of DUI arrests by some agencies and programs in the state but does not have data on the convictions for those arrests. Nor does it analyze and publish data on drugged driving arrests and convictions. Lacking those data, if Kansas were to legalize the use of marijuana for either recreational or medical use, the state would be unable to determine the effect of marijuana legalization on traffic safety.

Like all states, Kansas participates in the Fatality Analysis Reporting System managed by NHTSA, which captures some limited data on traffic fatalities, including coroners’ reports. But even NHTSA cautions that FARS reports, which were designed to analyze the effect of alcohol on traffic fatalities, are unable to achieve the same result for the effects of drugs, including marijuana, on traffic fatalities.

Drugged driving is a problem for all states, regardless of the status of marijuana legalization. But marijuana legalization, for either medical or recreational purposes makes it harder to enforce drugged driving laws.

The Kansas DUI law is particularly problematic since, like about one-third of states, Kansas defines DUI as “incapable of safely driving.”

Colorado uniquely has two impaired driving offenses, DUI (incapable of safely driving) as well as Driving While Ability Impaired (DWAI) (impaired to the slightest degree). The latter definition is used in statutes of another third of the states. The remaining third does not define DUI in statute, leaving it up to the courts. You should know that Colorado has found it extremely difficult to convict drivers impaired by marijuana’s tetrahydrocannabinol (THC) of DUI, since only about half of those arrested for that offense have a blood THC level above Colorado’s arbitrary 5 ng/mL level. For those above the legal limit, only 70% are convicted, compared with 92% of drunk drivers above alcohol’s legal

limit. For those below the THC legal limit, only 8% are convicted. Because of the difficulty enforcing the DUI law, Colorado prosecutors no longer rely upon DUI convictions. Fortunately, the scientifically invalid 5 ng/mL law applies only to DUI, not to DWAI. As a result, 74% of all THC convictions are for DWAI, not for DUI. Furthermore, 99% of those charged with DWAI who have 5 ng/mL or higher are convicted of DWAI. Even 93% of those below 5 ng/mL are convicted of DWAI, proving once again the scientific invalidity of a 5 ng/L limit.

Colorado convicts an average of 900 drivers annually for either DUI or DWAI when THC was the only drug present. Convictions for polydrug impaired drivers, mostly THC combined with alcohol, are more than double that number. The problem is real. Refer to the above linked reference, Appendix J for verification of these data.

If Kansas chooses to follow the ill-advised lead of Colorado and other legal marijuana states, it should first amend its DUI law as Vermont has done to define DUID (Driving Under the Influence of Drugs) as impairment to the slightest degree, and it should consider measuring the causes and judicial consequences of DUI in the state as recommended by the Governors Highway Safety Association and as Colorado is now doing.

An even better idea is to not legalize the use of marijuana for any purpose whatsoever.

Regards,

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