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SUMMARY OF OPPOSTION TO AB 362

This bill will change the law relating to driving under the influence of marijuana. We are opposed to this bill because:

1. It makes it easier to drive after using marijuana since the level is so high.

2. Most of our marijuana death cases do not involve 20 nanograms. Usually the level is much lower. This proves that 20 nanograms is far too high a level.

3. By singling out marijuana and not other drugs, we allow the entire statute to be challenged on equal protection grounds.

4. By making it a rebuttable presumption that a person is impaired at 20 nanograms we make it more difficult to prosecute a person for having less than 20 nanograms (since the defense can argue that a person with 19 nanograms must not be under the influence since they didn't reach the presumptive amount).

5. It is not possible to currently prove impairment from levels alone so the rebuttable presumption can never be shown.

6. By making 20 nanograms a rebuttable presumption that a person is under the influence, the state would still have to prove a person is under the influence to meet the presumption. But it is already illegal to drive under the influence so the presumption is meaningless

7. The rebuttable presumption provides that the presumption may only be overturned if the defendant proves, by a preponderance of the evidence, that he was not impaired. It is unconstitutional to require a defendant to prove anything in a criminal case (since the defendant has the right to remain silent). Thus, the rebuttable presumption is, at best, unconstitutional.

8. Finally, and most importantly, this bill sends the wrong message. It tells people that it is o.k. to drive after using marijuana so long as you are below 20 nanograms. Because impairment from drugs cannot be determined from levels alone, this bill will result in more impaired drivers being on the road and killing people.