

Bend-area DUII busts on the rise

More enforcement equals more arrests, according to police

By GARRETT ANDREWS and ZACK DEMARS
The Bulletin

BEND — Zach Childers gets a sense about drivers within a few seconds of talking to them. That was the case Wednesday night when Childers, a Bend Police DUII enforcement officer, patrolled Bend's streets for intoxicated drivers as part of the department's renewed effort to target them. The effort includes an emphasis on intoxicating substances other than alcohol.

The first four drivers Childers stopped that night were released after he checked their names for warrants. He's after impaired driving and will only cite traffic offenses if they're egregious, meaning if you're driving sober in Bend, you want Childers, 34, to pull you over more than any other officer.

Not a fan of waiting in "hidey holes," Childers prefers to be proactive and out on the road before there's a crash.

"I don't do well sitting in one spot, waiting for that one person to drive past me," he said. "And I've found if I'm sitting in one place for more than five minutes, I'm losing my mind from boredom."

The time of day isn't a big factor, and Childers likes to search for impaired drivers on highly traveled roads.

He watches for the sort of traffic violations he says are indicative of impairment from either drugs or alcohol: driving way too fast or way too slow, fluctuating speed, weaving back and forth, rolling through stop signs and red lights.

Childers is a highly visible part of Bend Police's DUII enforcement strategy after a major drop in DUII arrests in the early part of the pandemic. DUII arrests in Central Oregon are rising since a low point in 2020, and an increasing share of arrests are for controlled-substance DUIIs or a combination of drugs and alcohol.

At one point Wednesday night, one driver tested Childers' ability to identify impairment.

With slurred speech and glassy eyes, the man said his unusual eye movements were the symptom of a traumatic brain injury, not alcohol or drugs. With more observation, Childers determined he was telling the truth.

During another stop that night, impairment was clearer. Childers was called



Garrett Andrews/The Bulletin

Bend officer Zach Childers enters information into an Intoxilyzer breath test machine at the Bend police station. Assigned to catch intoxicated drivers, Childers said he's seeing an increasing number of DUIIs involving drugs other than alcohol.

to a crash on NE 8th Avenue, where community service officers believed one of the drivers could be impaired.

Despite displaying "every possible" sign of impairment, the man maintained he'd had nothing to drink. He was arrested and taken to the station, where he refused to take a breath test for alcohol, meaning he'll automatically lose his license for a year.

Still, Childers said that arrest was just a drop in the bucket.

"I won't even try to guess how many people are out there driving impaired," Childers said. "I will say that we miss significantly more than we catch."

Some defense attorneys say the department's increased enforcement has meant more questionable DUII cases — some with a blood alcohol content of 0.00% — and more clients feeling pressured to settle cases they could win at trial.

While a 0.08% blood alcohol content is the legal limit to drive in Oregon, it's a common misconception that it's the only way to get a DUII. The ultimate question, in court or on the roadside, is whether a person's ability to drive was adversely affected by intoxication, and showing a blood alcohol level of 0.08% is just one way to do this.

Bend defense attorney Bryan Donahue said law enforcement uses the law's vagueness and complexity to threaten innocent people into taking pleas or entering diversion programs.

"We have very aggressive enforcement mechanisms designed to create criminals," Donahue said. "Many people who aren't guilty will do diversion to mitigate. Countless clients enter it out of fear."

Dedicated position

In March, officer Kyle Chaquico was named Bend Police Department's first dedicated DUII enforcement officer, tasked with looking for impaired drivers during his shifts, and nothing else. Three months later, Childers joined him on the newly formed DUII and Aggressive Driving Enforcement Team.

They tend to work the swing shift. Childers likes to start by taking a few "laps" downtown, so patio diners get a good look at "DUII ENFORCEMENT" emblazoned on the side of his Ford Explorer. Chaquico — son of Jefferson Starship guitarist Craig Chaquico — wants to experiment with the success of patrolling in an unmarked car.

While Childers has other duties that sometimes keep

him off the road, Chaquico, with no such distractions, averages around one DUII arrest per shift. He has more than 120 in 2021.

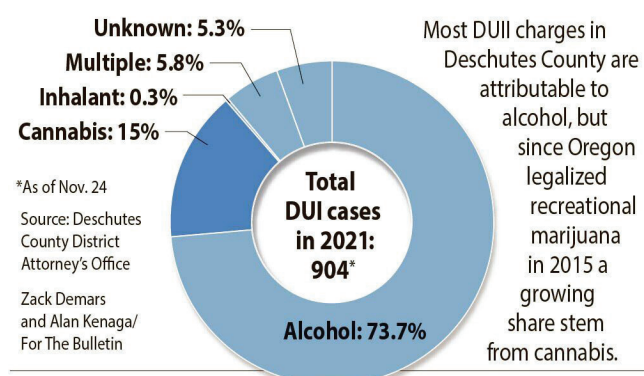
Chaquico and Childers have received advanced training in identifying signs of impairment. Childers, who's gone through Drug Recognition Expert training at the state police academy, is trained to spot the impairing effects of different substances.

Childers said Wednesday that seven of his previous 10 DUII arrests involved a controlled substance. Some of those won't be reflected in statistics as controlled-substance DUIIs because the drivers also had blood alcohol levels above 0.08% and he based the citations on the blood alcohol level and not the drugs, which are harder to prove.

Despite these challenges, controlled-substance DUIIs are rising, after Deschutes County experienced the third-largest drop in DUII arrests in Oregon during the pandemic.

It could be due to more controlled-substance use

Under the influence — of what?



Graphic by ALAN KENAGA for The Bulletin/Bend Bulletin

by the public in response to decriminalization and the lifting of a taboo, according to Andrew Doyle, a prosecutor with the Deschutes County District Attorney's office specializing in traffic crime.

"One thing for sure is cops and lawyers are getting better at controlled-substance DUIIs," Doyle said.

Younger members of both professions now receive better training based on a scientific understanding of what substances do to the body.

"Before, attorneys would see a DUII come in with a 0.00% BAC and no-file it. Now, more attorneys are willing to do it," Doyle said.

'No line in the sand'

In Oregon, someone with a blood alcohol level over the legal limit is presumed to be impaired under the law. But with controlled substances, like meth or marijuana, there's no figure associated with impairment.

"I can't go into court and say, 'This person had 12 nanograms of THC in his body and the law says if he's over 5 nanograms, he's impaired,'" Doyle said. "There's no line in the sand with controlled substances."

Another wrinkle with proving a controlled-substance DUII is testing.

Urine tests, used instead of blood tests in many cases, only show the presence of drugs in a person's body, not the amount or when they were taken.

"The reason that these cases are so challenging and that people have such strong opinions on them is that, yeah, it comes down a subjective judgment call," Doyle said. "With alcohol, you can just point to the number, even if they were driving fine."

Doyle expects the spread of body cameras will help prove more controlled-sub-

stance DUIIs.

"Some DUIIs on paper don't look too bad. Then you watch the body cam footage and it clicks: the person is impaired," he said. "It can show people literally falling asleep."

New attorneys often work traffic cases, so do a lot of the best trial lawyers. That's because DUIIs are complex, highly specialized and often go to trial, where juries can go either way.

"For many people in the U.S., driving after having a few too many drinks is something they've done. But maybe they haven't sold a pound of meth," Doyle said. "There are lots of cases at the trial level where you really have a chance to convince the jury. A lot of your panel has engaged in, if not in the same conduct, something similar."

But a skilled trial attorney is expensive — and it's one of many expenses associated with a DUII, including a yearlong driver license suspension. Traffic crimes remain one of the only convictions that aren't expungable.

Because of those costs, many clients prefer to divert their cases instead of standing trial, meaning officers are more likely to make questionable arrests they know won't be challenged, defense attorneys say.

Deschutes County District Attorney John Hummel said what law enforcement decides to police is a reflection of values. He thinks arrests and prosecutions can act as a deterrent but also that there are many more impaired drivers than ever get arrested.

"Look, the biggest driver in DUII arrests is enforcement," he said. "If we say so, there could be zero DUII arrests tomorrow. Also if we say so, there could be 200 DUII arrests tomorrow."

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