

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	4 - 1 - 0
Yeas:	Beyer, Kruse, Prozanski, Burdick
Nays:	Walker
Exc.:	0
Prepared By:	Darian Stanford, Counsel
Meeting Dates:	5/30

WHAT THE MEASURE DOES: Establishes procedural mechanism for defense to notify state that defense wants criminalist to appear at trial. Provides mechanism for defendant in drug prosecution to object to admittance of certified copy of laboratory report from crime lab analyst by providing written notice of such objection to court and district attorney no later than 15 days before trial. Adopts two-year sunset provision.

ISSUES DISCUSSED:

- Limited number of forensic scientists in Oregon and high number of drug cases
- Need to balance efficiency and constitutional rights

EFFECT OF COMMITTEE AMENDMENT: Replaces original bill.

BACKGROUND: In drug prosecutions, the state seizes the suspected drugs and sends them to the State Forensic Crime Lab for analysis. A forensic scientist then performs the appropriate analysis and issues a written opinion (typically one page depending on the amount of the drugs) stating what the substance is and, if appropriate, its weight. Until recently, the law allowed the state to introduce a certified copy of the criminalist's report at trial rather than having to bring the actual criminalist *unless* the defense subpoenaed the criminalist prior to trial. In that case, the state would have to call the criminalist as its witness (even though the defense subpoenaed them). The concern underlying the policy was twofold: (1) there are numerous drug prosecutions throughout the state and only a limited number of criminalists and, (2) generally, the defense really does *not* want the criminalist to appear at trial (if the criminalist did not believe that the substance was illegal, the case would not be going to trial).

Recently, the Oregon Supreme Court (*State v. Birchfield*, decided April 19, 2007) found that this scheme violated a defendant's constitutional right "to meet the witnesses face to face" under Article I, Section 11 of the Oregon Constitution (a United States Supreme Court case called *Crawford v. Washington* dealt with similar issues under the Sixth Amendment). The primary problem, according to the court, was that requiring the defendant to subpoena the criminalist was too big of a burden for the defense. The Oregon Supreme Court suggested that some sort of notice to the state in advance of trial that the defense wants the criminalist present would be more appropriate: "The legislature may require the defendant to assert that right or to design a procedure to determine whether the defendant agrees that a written report will suffice."

HB 2340 A attempts to create this system. It amends ORS 475.235 to state that a certified copy of a crime lab report is admissible and sufficient at trial *unless* the defense has provided written notice of an objection. The defense must serve this written notice at least 15 days prior to trial on the court and the district attorney. A formal subpoena is no longer required.

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This summary has not been adopted or officially endorsed by action of the committee.