



DEPARTMENT OF JUSTICE  
Criminal Justice Division

TESTIMONY ON HB 2114  
For the House Judiciary Committee  
February 4, 2013

Presented by:

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SUMMARY

This bill would clarify that certain evidence collected consensually during an investigation for driving under the influence of a controlled substance is admissible in trial. Currently there is a disparity in how the courts rule as to the admissibility of the tests and observations made in a drug recognition evaluation and this bill will serve to fix this inconsistency.

BACKGROUND

State v. Sampson, 167 Or App 489 (2000) established that a completed 12 step drug evaluation conducted by a certified Drug Recognition Expert (DRE) is admissible in trial as scientific evidence. Subsequent to *Sampson*, the court of appeals in State v. Aman, 194 Or App 463 (2004) was presented with a situation where only eleven steps of protocol were present. The defendant in the *Aman* case was unable to provide a urine sample which is the twelfth step of the protocol (the evidence showed that the defendant was under the influence of heroin which makes it difficult for a person to urinate). The court of appeals determined that without all steps of the protocol being present, the state was not able to present the DRE protocol as “scientific evidence” pursuant to the *Sampson* case. The court in *Aman* did however indicate,

“That is not to say that the evidence of individual tests or observations that are components of the DRE protocol necessarily are inadmissible as nonscientific evidence of drug impairment or

some other condition. However, for the reasons explained above, we conclude that an incompletely administered DRE protocol is not, itself, admissible as scientific evidence.”

This bill would not change the ruling in *Sampson* which requires all twelve steps to be present for the DRE protocol to come in as scientific evidence. However, this bill would allow the tests and observations that were completed as part of a partial evaluation to come into evidence for whatever value given to it by the fact finder. Both the defense and the prosecution can and do use this evidence to establish whether a person is or is not impaired. In addition, case law dictates what type of opinion a drug recognition expert may or may not give with regards to this evidence. This bill will not change this case law but would only affect the admissibility of the tests and observations gathered by the officer.

#### CONCLUSION

Although the court in *Aman* suggests that the evidence collected in a partial DRE evaluation is admissible in trial, there is disparity in how the courts rule around the state. This proposed legislation would clarify that evidence and observations gathered through a partial drug recognition evaluation is admissible as evidence for whatever value the fact finder gives that evidence.

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