



**DEPARTMENT OF JUSTICE
Criminal Justice Division**

**TESTIMONY ON HOUSE BILL 2371
For the House Judiciary Committee
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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

During an investigation for driving under the influence of controlled substances, a person may be asked to participate in a drug evaluation conducted by a certified Drug Recognition Expert (DRE). If the person consents to the evaluation, there is a 12 step process that is followed. This 12 step process is the same process followed by all certified DRE's internationally. *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 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” per se 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 be presented as scientific evidence. However, this bill would allow the tests and observations that were completed as part of a partial evaluation to be admissible as nonscientific evidence for the fact finder to consider when determining if the person is impaired. 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 the fact finder to consider when determining impairment.

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