



Oregon State Police

Written Testimony

Committee: House Judiciary

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Presented By:	Sgt. Evan Sether
Division:	Patrol
Phone Number:	503-991-9374

Introduction

Chair Barker, members of the committee; my name is Sergeant Evan Sether of the Oregon State Police. I am the state coordinator for Oregon's Drug Evaluation & Classification Program (DECP). The Oregon State Police is neutral on this bill. My intent is to provide a high level overview of the Drug Evaluation & Classification Program, otherwise known as the Drug Recognition Expert (DRE) program, and provide factual data for your consideration.

Background

The Drug Recognition Expert program was developed in California thirty years ago. Since then, it has gained wide acceptance and expanded to all fifty states and internationally. This program is managed by the International Association of Chiefs of Police (IACP). Oregon's DRE program has been coordinated through the Oregon State Police since its inception in 1995. Currently, I manage a program of 184 DREs across 66 state, county and municipal law enforcement agencies.

Certification as a DRE encompasses more than 120 hours of both classroom and field work. DREs must demonstrate a high level of proficiency, accuracy and knowledge in order to maintain their certification.

When requested, a DRE responds to conduct a voluntary evaluation of an arrested subject that is suspected of drug impairment. DREs follow the 12-step systematic and standardized evaluation procedure in order to evaluate the subject's physical, cognitive and clinical functions for the absence or presence of impairment.

The DRE then renders an opinion, using the following guide;

- Is the subject impaired or not impaired?
- If the subject is impaired, is it drug-related or an underlying medical condition?
- If drug-related, what drug category or combination of drug categories is causing the impairment?

The final step in a drug evaluation is the collection of a toxicological sample, generally a urine sample, as a confirmatory step. Oregon's Drug Recognition Expert program has been very effective in accurately identifying drug impairment. Looking back at 2011-2014, Oregon DREs performed over 5500 drug evaluations and their opinions of drug impairment were confirmed in over 89% of those cases. (Note: Evaluations where the DRE determines the subject was not impaired, medically impaired, impaired only by alcohol,

urine was not collected, or the urine test was refused are not calculated in the confirmation rate)

Additionally, DREs do not determine that everyone they investigate is under the influence of alcohol and/or drugs. Since January 2011, the Oregon DECP reported 250 subjects who were not impaired at the time of the evaluation, and 200 medically impaired subjects. Combined, these amount to approximately 8-9% of all drug evaluations.

Impact of House Bill 2371

The current legal environment (State vs. Sampson – 2000, State vs Aman – 2004) does not permit the DRE protocol to be introduced into court as scientific evidence unless all twelve steps were completed. Instances where all twelve steps are not completed arise from one of four situations:

1. The subject refuses to continue at some point during the evaluation.
2. The subject refuses or is unable to provide a toxicological sample.
3. A dangerous medical issue is identified and the DRE terminates the evaluation.
4. The results of the toxicological examination are suppressed in court proceedings.

In each of those circumstances, a DRE may still have sufficient information to form an opinion as to the subject's impairment and, if applicable, the source of that impairment. However there is no consistent standard across the state with respect to admissibility of incomplete evaluation results; partial drug evaluations are admitted in some jurisdictions, in others they are not. HB 2371 would establish that consistency for the admissibility of drug evaluation results.

It is beneficial to understand the extent to which this legislation would affect the DRE program. Since January 2011, Oregon DREs had 334 (approximately 6%) evaluations that were incomplete;

- 76% of those cases were the subject refusing to provide a urine sample.
- 14% were incomplete due to refusal part-way through evaluation or termination of the evaluation by the DRE due to an identified medical issue.
- 10% where toxicology was not available.

This concludes my testimony and I'd be happy to answer any questions.