



Oregon

Kate Brown, Governor

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Honorable Chair Jeff Barker
House Judiciary Committee
2017 Legislative Session

TESTIMONY FOR HOUSE BILL 2614

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). I am here to provide factual information about the program, as the Oregon State Police is neutral on this bill. My intent is to provide an overview of the Drug Evaluation & Classification Program, otherwise known as the Drug Recognition Expert (DRE) program, and the potential impact this legislation would have on us.

Overview of the Drug Evaluation & Classification Program

The Drug Evaluation & Classification Program (DECP), also known as the Drug Recognition Expert (DRE) Program, was developed by the Los Angeles Police Department in the 1970s. In consultation with medical professional and researchers, and supported by the National Highway Traffic Safety Administration (NHTSA), a pilot program was initiated in 1987. Since then, it has expanded to all fifty states, Guam, the District of Columbia and internationally. This international 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 that consists of 213 DREs across more than 70 state, county and municipal law enforcement agencies.

Acceptance into the Drug Recognition Expert program begins with an application process, requiring minimum standards in law enforcement experience and demonstrated aptitude specific to DUI and drug investigations. Recommendations from local prosecutors and area DREs are also required. Following the selection process, students undergo 72 hours of classroom training related to human physiology, drug symptomology, DRE evaluation procedures and documentation. Successful completion of the classroom training leads to 40 hours of field certification training, where students must demonstrate proficiency in procedures and accuracy in opinions related to drug impairment. Following the field certification phase, students must pass a written comprehensive final examination that generally takes 8-10 hours. Only then are they certified as Drug Recognition Experts. They must maintain their proficiency with continuing education, instructor-observed evaluations and adherence to DRE policies and procedures.



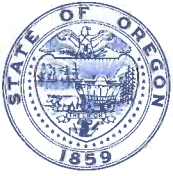
Drug Recognition Expert evaluation process is generally initiated during a DUII investigation after the subject has been arrested and they have provided a breath sample below the per se limit of .08% and the arresting officer has reasonable suspicion a controlled substance other than alcohol is involved. A DRE responds to conduct a voluntary evaluation of the subject in a controlled environment such as a corrections facility, police department or patrol office. DREs follow a 12-step systematic and standardized evaluation procedure. DREs evaluate the subject's physical, cognitive and clinical functions for the presence or absence of impairment.

The Drug Recognition Expert then renders an opinion, based on the totality of the information collected; (1) is the subject impaired or not impaired, (2) if they are impaired, is the impairment drug related or the result of a medical condition, and (3) if it's drug related, what category or combination of categories are 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 DECP has been very effective in accurately identifying drug impairment. Looking back at 2011-2015, Oregon DREs performed over 7244 drug evaluations with a toxicological confirmation rate of approximately 89.5%.

Aside from performing drug evaluations, Oregon DREs provide drug education to law enforcement, prosecutors, school districts, drivers education classes, medical professionals, government agencies, private employers and community groups. Some of these groups include the American Association of Motor Vehicle Administrators, Oregon Department of Transportation, the Oregon Physical Therapy Board, Oregon State University – Student Conduct and OSU University Housing & Dining, Lane DUII Victim Impact Panel, Lane Council of Government – Senior & Disability Services, CLEAR Alliance, Oregon EMS Trauma Systems, Boise Cascade, and many more similar groups. As the state coordinator, I see education and prevention as critical missions of Oregon DECP.

Impact of House Bill 2614

Currently, participation in a drug evaluation is consensual. There is no administrative or criminal penalty connected with a refusal to participate. Oregon DECP has little to no data related to refusal information, as it cannot be accurately tracked by my program. Between 2011 and 2015, 67 evaluations (approximately 1% of all evaluations on file) were terminated early because the subject was unable or unwilling to continue.



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If this bill were to become law, Oregon DECP would work with the Oregon Department of Justice to develop language that advises a person that a refusal to participate in a drug evaluation can be used as evidence in a criminal trial. The language would comply with existing legislation and case law so that only the refusal of the non-testimonial portions of the evaluation would be admissible. The information would be disseminated to all Drug Recognition Experts in Oregon and incorporated into future DUII and DRE training.

There is no way to estimate the exact impact on requests for DRE services state-wide, were this bill to pass and become law, however some available data may provide a rough estimate. According to the Oregon State Police Forensic Division – Implied Consent Unit, 10,122 subjects provided breath samples under .08% on Intoxilyzer 8000 breath test instruments between 2013 and 2015. DREs only evaluated 4091 - or 40% - of those subjects. There are three possible explanations for this:

- (1) Due to low tolerance, the subject was impaired only by a low dose of alcohol.
- (2) The subject exhibited signs of drug impairment and refused the DRE evaluation.
- (3) DRE services were requested, but no DREs were available in that region.

An increase in requests for DRE services state-wide would likely require an increase in certified DREs to meet those requests. This is consistent with the recommendation of the Oregon Liquor Control Commission's report to the Legislature on the impact of Measure 91 on DUII, which suggested the DRE Program be expanded. Oregon DECP has begun to track callout requests across the state and the frequency with which they are being answered, but that data is not available at this time.

This concludes my testimony. I am happy to answer any questions the committee may have.

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