

May 30, 2017

To: The Honorable Floyd Prozanski, Chair

Oregon Senate Committee on Judiciary

From: Deputy Robert Gross (Ret.), Lane County Sheriff's Department. OR.

Subject: Oregon HB 2545

Oregon HB 2545 is being considered this term by the Oregon Legislature. The bill would allow for the updating of ORS 703.310, which was written in 1975. In its current form, ORS 703.310 (2) contains one single sentence that prohibits any advances in technologies developed the past 40 years in the field of deception detection to be used in Oregon.

At present, **ORS 703.310 states: "a person may not use any instrument or mechanical device to test or question an individual for the purpose of detecting deception or verifying the truth of statements made by the individual that does not comply with the minimum requirements for the instrument or device under subsection (1) of this section."** Subsection (1) describes polygraph equipment. Polygraph was invented in 1921 when Warren G. Harding was President of the United States – he signed the "Sheppard-Towner Maternity and Infancy Act" (Social Security) into law. ORS 703.310 was written in 1975, the same year Bill Gates and Paul Allen founded Microsoft – Gerald Ford was President at that time.

Enormous advances in technology have been developed and put in useable form since 1975 and incalculably so since 1921. HB 2545 would allow for modern technologies which have been developed (and technologies that will be developed in the future) for deception detection to be available in Oregon as they are in 30+ other States. HB 2545 does not seek to change the way in which polygraph is licensed or regulated by DPSST and the State of Oregon, or to relax any lawful protections person presently enjoy from being compelled to undergo a polygraph or deception detection exam. **HB 2545 is addressing non polygraph technologies.**

Concern emerged that new deception detection technologies be carefully monitored and overseen by law enforcement to safeguard test accuracy, prevent any potential abuses and/or examiner/examinee contamination. While a valid concern, it is built on misunderstanding per the way EyeDetect functions as

uniquely different and independent from polygraph. EyeDetect utilizes standardized test questions and applications not created or manipulated by any proctor. Test results are tabulated via computerized algorithms with no access or interference by examiners. There are no wires or sensors attached to the examinee that may skew data. Thus, no counter measures by the examinee nor variability in the examiner's training, temperament, competence or bias can unfairly alter data. EyeDetect was created to minimize the subjectivity and errors that human proctors may make when assessing credibility.

I'm asking you to review and consider revising the proposed scope and limitations of HB 2545B. The HB 2545B "Staff Measure Summary from the House Committee on Rules" states:

"WHAT THE MEASURE DOES: Allows police, corrections, parole and probation officers to use any instrument or mechanical device to test veracity of statements when investigating a crime or misconduct of adults in prison or jail, or when supervising adult parolees or probationers, so long as officer is authorized by their employing agency. Defines "deception detection examination" within statutes governing unlawful employment practices to include ocular motor deception detection examinations and prohibits their use as a condition of employment."

If the language as proposed in HB 2545B remains as is, modern technologies will remain unavailable to a large and important pool of professionals who would benefit from these technological advances. There is a great need for treatment providers (sex offender treatment providers and others) who work hand in hand with the Judicial System, and with Parole & Probation to have access to the best tools available to manage their caseloads and to make the most complete and accurate reports and recommendations to District Attorneys and others charged with making decisions about Public Safety. **As HB 2545B is proposed, no present or future technologies other than polygraph will be available to these treatment providers!** This I believe would constitute a significant loss; one I believe that is being overlooked or missed with the bill as currently configured.

Deception detection technology is a vital part of the rehabilitation efforts for treatment providers who work closely with Probation Officers. Most times, the caseload for a Probation Officer is very large, yet they are charged with making the best decisions they can in regard to a probationer's level of supervision, contact with minors, reunification with a family, granting for travel outside of the County of supervision, etc. The treatment provider typically has much greater contact and

interaction with the probationer within the court mandated treatment program, and can provide valuable input to the Probation Officer who is making these important Public Safety decisions.

To write the HB 2545B is such a way that denies treatment providers access to modern deception detection technology removes the opportunity for treatment providers to have even more resources to make accurate assessments of client progress, and treatment program compliance. Extending modern technology to treatment providers will only strengthen the probability that decisions made in the supervision and treatment of offenders will be enhanced. This I believe will improve the efficacy of treatment programs thereby adding to Public Safety.

Financial impact on DPSST: I believe there need be little if any financial burden for DPSST; as new technologies (EyeDetect) can be authorized in the same manner as an Abel assessment.

The ABEL assessment is a computerized examination that is (in part) used by treatment providers when making a psycho-sexual evaluation for treatment or for a recommendation to the Courts. The ABEL company trains the test provider to properly administer the exam, and certifies the training. DPSST is not involved.

The EyeDetect (ocular-motor) technology follows this pattern. The manufacture of the equipment provides the training and certifies that the test proctor / administrator is competent to administer an exam. The proctor in this technology has minimal interaction with a client, only enough to set the computerized exam up. The proctor does not score or evaluate any of the test data – it is all done by a computer algorithm. The test results are then delivered to the client (therapist, treatment provider, etc). If any mistake was made when the proctor set up the equipment and administered the exam, the algorithm will catch the mistake, and the exam will not be scored.

This is very much like what happens every day at every Community College across the United States. Students walk into the computer lab for a mid-term or final exam. A student proctors the exam by verifying I.D. and then instructing the test taker which computer the mid-term will be given on. The student taking the exam

then has the exam delivered to them by means of a computer. The computer scores the exam which is then sent to the course instructor.

A deception detection proctor / administrator would simply have to supply DPSST with the certification from the EyeDetect manufacture that they were trained and competent to proctor exams. This could be required as DPSST deems correct.

This is the type of training and certification you see in the private sector. A trained technician will for example, administer an ultrasound test, take an x-ray, draw a blood sample. These are things that need to be done correctly, but it is unnecessary any longer to require a physician or physician's assistant to do the things that a trained technician can competently do.

EyeDetect and other technologies can be competently proctored by trained technicians – a law enforcement background or experience is not required or needed. Scoring of the data is not part of the proctor's function. The proctor has no way to influence the data collected, the scoring, or the report generated from the test data. Ultrasound technicians, x-ray technicians, or phlebotomists do not require training in EyeDetect technology to do their jobs well. In the same fashion, EyeDetect or other deception detection technologies that have nothing to do with polygraph do not require polygraph training or background to administer exams properly and competently.

The simplest solution would be to amend ORS 703-310(2) which at present prohibits any non-polygraph technology for the purpose of deception detection from being used in Oregon, and allow for (based upon training and certification) modern deception detection technologies to be used as they are developed and brought into the marketplace.

Please consider adjusting HB 2545B so that it can be made available to treatment providers and other professionals by allowing trained and certified technicians to proctor / administer modern deception detection exams. This would be a great boon to law enforcement, treatment providers, and other professions where appropriate deception detection stands to enhance public safety. It would also allow for considerable fiscal budget savings and make treatment more affordable and therefore desirable to the population that most needs it.

Respectful regards,

Robert Gross

A handwritten signature in black ink, appearing to read 'Robert Gross', with a long horizontal line extending to the right.