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To: House Committee on Judiciary

Re: HB 3136

Committee Members,

I write to voice my opposition to HB 3136. I am a criminal defense attorney, but I am also a former certified drug recognition expert. I want those considering this submission to understand that even through I work in defense now, I do in fact support the enforcement of impaired driving statutes. My opposition to this bill is based on issues surrounding the DRE program and not a blanket opposition to DUI enforcement.

It is true that the Oregon Court of Appeals found that the DRE program was sufficiently reliable to be used in court just over 20 years ago. See *State v. Sampson*, 167 Or. App. 489 (2000) (DRE protocol admissible as scientific evidence when correct foundation laid). However, technology and science have evolved at rapid pace over the last 20 years which has expanded our knowledge in these areas greatly. For example, the DRE program has been called into question more than once since *Sampson* was decided here in Oregon. Dr. Kane questions the very foundations of the DRE program when he discusses the studies that resulted in the DRE program and points out the biases underlying those studies.<sup>1</sup> Another study used actual DREs to test accuracy rates using the objective signs and found accuracy rates of DREs to be poor when the subject did not tell the DRE exactly what they had ingested.<sup>2</sup>

On a more anecdotal level, I have noticed an uptick in what I would describe as unsupported DRE opinions with respect to cannabis DUIs since marijuana was legalized here in Oregon. As such, I suspect that people are being wrongfully convicted regularly. I also regularly see cases where the arresting officers clearly have not retained their training when proceeding on making these arrests and DREs render opinions that are at odds with their training.

In sum, I would urge the Committee to either reject this bill, or at a minimum, take the time to further educate yourselves about the debate surrounding the accuracy of the DRE program in the scientific community before forcing your constituents to submit to an evaluation that has some very real drawbacks. I am happy to assist in further fact-finding should your workgroup find it necessary.

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<sup>1</sup> The methodological quality of three foundational law enforcement Drug Influence Evaluation validation studies. Kane, *Journal of Negative Results in BioMedicine*, 2013

<sup>2</sup> Shinar D, Schechtman E: Drug identification performance on the basis of observable signs and symptoms. *Accid Anal Prev* 2005

Very truly yours,

*Neil Halttunen*

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