

DATE: March 16, 2021

TO: Oregon House Judiciary Committee

FROM: Joshua Wilson

RE: HB3136, Drug Recognition Evaluations

Chair Bynum, Vice Chair Noble, Vice Chair Power, and members of the House Judiciary Committee—

Thank you for the opportunity to offer testimony in this matter. As a bit of background, I have been certified as a Drug Recognition Expert (DRE) in Oregon since 2007 and a DRE instructor since 2011. I have spent the vast majority of my nearly 20 years in law enforcement dedicated to impaired driving enforcement. I have had the opportunity to investigate cases of alcohol and drug impairment, medical impairment, and combinations of those, as well as those ultimately deemed to be unimpaired. I instruct various drug impairment and DUII curricula to police and other professions. I have been admitted as an expert witness in DRE and non-DRE DUII cases in numerous circuit court trials.

Oregon has been involved in the international DRE program (or Drug Evaluation Classification Program) for over 25 years. It is consistently recognized as one of the premier DRE programs in the country, partly because of the high standards to which we hold our DREs—in some cases higher than international standards. As others have testified, the process to become a DRE is not an easy one. It is a competitive, highly selective, and rigorous process to certification; continuing education and competency standards are required for biannual recertification. There are currently only about 170 DREs out of roughly 9,000 sworn law enforcement personnel in the state.

The work of a DRE is highly scrutinized, and as such, is often accepted in court as scientific evidence through expert testimony. The 12-step process of a DRE evaluation is systematic and standardized, and for nearly 40 years the process has been scientifically validated through lab and field validation studies. When it comes to impaired driving detection, DREs offer the very best evidence available about a driver's level and source of impairment or lack thereof. Although a full evaluation is preferred, because of a DRE's extensive training and related experience, a full evaluation is not always necessary for them to come to a sound conclusion about a driver's impairment.

When it comes to evaluating arrested drivers for impairment, DREs are trained to be impartial third parties to these investigations. Our job is not to simply “back up” or confirm what an arresting officer believes. Instead, we offer our expert opinions on what impairment may or may not be present at the time of the evaluation. If a driver is not impaired, the DRE's report will state the person is not impaired. If a driver has a medical condition that is causing the impairment, the DRE will arrange for medical treatment and report the medical condition as the cause. If the driver is impaired by drugs, the DRE will opine to the category or categories of drugs impairing the person during the evaluation.

Part of the DRE evaluation process is obtaining a toxicological sample for confirmatory purposes. Others have testified on this bill that simply obtaining a blood or urine sample after an inconsistent breath test result is enough. That is simply not the case. Although blood and urine samples are evidence of recent use, they do not necessarily correlate to impairment. Urine samples are primarily qualitative, showing only that the person has consumed a drug in recent days or weeks. Blood samples—which are not routinely obtained in Oregon due to testing limitations—can be quantitative, but in the case of some drugs

(cannabis is one example), those results are still not definitive in proving that the driver was impaired at the time. This is due to the way some drugs are processed in the body and the brain. Those blood and urine samples cannot show what the hands-on evaluation shows: noticeable, perceptible, and articulable signs of impairment exhibited by the driver. These signs of impairment are often involuntary physiological responses to the drug(s) the driver has ingested, the significance of which a trained DRE can explain in court.

Others have suggested that passage of this bill will be detrimental to the DRE process. I disagree. There are already situations in which DREs are unable to complete the full 12-step process, yet are still able to form educated opinions as to a driver's condition. Advising a driver of potential consequences of refusing an evaluation will not change the observable, involuntary bodily functions that the impairing drugs induce, and if the signs of impairment are not affected, neither will the DRE's opinion be. This bill still offers the opportunity for a driver to refuse participation. It does not force a driver to submit to an evaluation, just like the DRE program has never forced a person in the past. Unlike the opposition has suggested, in my hundreds of DRE evaluations and all of the training in which I have participated, I have never seen a DRE forcibly hold a person's arm to measure blood pressure or check a pulse. I also have never forced someone to offer incriminating information or tricked them into performing any portion of an evaluation. It simply does not happen. When someone decides they do not want to participate, either that portion of the evaluation is skipped or the evaluation is terminated altogether.

Under this bill, there is the potential that a complete standardized DRE evaluation would not be possible. Because an incomplete evaluation cannot be admitted at trial as scientific evidence, the DRE would not be able to qualify as an expert witness in the administration of that full process. However, those situations already occur in trials around this state. A DRE would still be able to testify to the type and amount of training they have received and their experiences related to drug impairment and DUII. They would still be able to testify to each admitted piece of evidence from the parts of the evaluation they were able to complete and explain what each of those steps disclosed. The significance of this bill is that it would align a DRE evaluation with how the Standardized Field Sobriety Tests (SFSTs) are currently treated in court and state statute.

This background and explanation of the DRE process brings me to the most important reason this bill must pass. Drug-impaired driving is more prevalent than ever. In 2017, a report published by the Governor's Highway Safety Association ([www.ghsa.org/sites/default/files/2017-07/GHSA\\_DruggedDriving2017\\_FINAL\\_revised.pdf](http://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf)) showed that drug-involved fatal crashes surpassed alcohol-involved fatal crashes for the first time in history. That trend continues today, now including here in Oregon as well. Having every available tool to hold impaired drivers accountable and get them the treatment they need is a matter of life safety. House Bill 3136 is one of those tools, and I urge a do-pass recommendation.

Thank you,

Joshua Wilson