

**REVENUE: No revenue impact**

**FISCAL: Minimal fiscal impact, no statement issued**

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<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed
<b>Vote:</b>	9 - 0 - 0
<b>Yeas:</b>	Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Darian Stanford, Counsel
<b>Meeting Dates:</b>	5/21, 5/30

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**WHAT THE MEASURE DOES:** Establishes that certain information relating to test instruments is not discoverable or admissible in criminal trials.

**ISSUES DISCUSSED:**

- Nature of driving under the influence of intoxicants (DUII) prosecutions and equipment
- Ability of defense to attach reliability of machine

**EFFECT OF COMMITTEE AMENDMENT:** Specifically states what discovery prosecutors must provide in DUII prosecutions, which, at a minimum, is officer reports, test result reports, Intoxilyzer operator checklist, and implied consent form. Defines discovery that prosecutor need not provide as “schematics, source codes or instrument software that is not in the state’s actual possession.” Provides that DUII prosecution cannot be dismissed based solely on the unavailability of a private witness served with a subpoena for trial.

**BACKGROUND:** In DUII prosecutions, the state often relies on evidence gleaned from certain test instruments that measure the amount of alcohol within a person’s breath and extrapolate from that the amount of alcohol in the person’s blood (or “BAC” for blood alcohol content). Oregon recently switched to machines known as the “Intoxilyzer 8000,” which replaced the previous “Intoxilyzer 5000.” Blood and urine are typically extracted and analyzed through different processes and mechanisms.

In DUII prosecutions, defense attorneys will often request, as part of the discovery process, that the state turn over any and all information relating to the particular instrument that was used to test a particular defendant’s BAC. Such information can include the crime lab’s maintenance records for the machine.

SB 347 B clarifies that certain information relating to these test instruments (whether blood, breath or urine) is not discoverable or admissible. Specifically, this information includes: “schematics, source codes, or software of an instrument that was used to test a person’s breath, blood or urine . . . that are not in the actual possession or control of the state.” If any such information is in the state’s possession, the state must produce it. SB 347 B also specifies what information, at a minimum, that the state must provide to the defense in DUII prosecutions.