

# HOUSE BILL REPORT

## HB 2465

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to breath test instruments approved by the state toxicologist.

**Brief Description:** Concerning breath test instruments approved by the state toxicologist.

**Sponsors:** Representatives Hurst, Rodne, Kelley, Roberts and Ericks; by request of Washington State Patrol.

**Brief History:**

**Committee Activity:**

Judiciary: 1/14/10, 1/21/10 [DP].

**Brief Summary of Bill**

- Amends the statute governing when a breath test is admissible to include the use of a dry gas external standard in the breath test machines.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts and Ross.

**Staff:** Trudes Tango (786-7384).

**Background:**

The Washington State Patrol (WSP) uses an instrument called the Datamaster to test a person's breath alcohol concentration (BAC). The person is required to blow into the machine at least twice to constitute a breath test. Between the person's two samples, the machine is tested using an external standard simulator, which must produce a reading within a certain range to indicate that the machine is accurate and functioning properly. The Datamaster uses a liquid simulator solution, which is prepared by the state toxicology lab.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Datamaster machines are no longer being manufactured. The WSP plans to use a different machine that employs a dry gas standard as an external simulator, rather than a liquid simulator solution.

The Legislature establishes criteria for the admissibility of the BAC evidence. A breath test performed by an instrument approved by the state toxicologist is admissible at trial or in an administrative proceeding if the prosecution or the Department of Licensing produces prima facie evidence that, among other things, the external standard simulator test was within a specified range.

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**Summary of Bill:**

The statute that lists what evidence the state must show in order for breath test results to be admissible is amended to take into consideration machines that use dry gas simulators as well as liquid simulator solutions.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a simple change to the statute so the WSP can update their technology. There are more advantages to using a dry gas simulator rather than a liquid simulator. Using dry gas will help streamline the process and will be more efficient for the WSP.

(Opposed) None.

**Persons Testifying:** Representative Hurst, prime sponsor; and Fiona Couper, State Toxicologist, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.