



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 568**

132nd General Assembly  
(As Introduced)

**Reps.** Butler, DeVitis, Merrin, Riedel

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## **BILL SUMMARY**

### **Injury-accident moving violations: blood or urine tests**

- Permits a law enforcement officer to arrest (instead of ticket) a driver if the officer has probable cause that the driver committed a moving violation that was a contributing factor in an accident that caused serious physical harm to, or the death of, a person ("injury-accident moving violation").
- Permits an officer to transport a driver to a hospital for a blood or urine test if the officer (1) has probable cause that a driver committed an injury-accident moving violation while under the influence, and (2) has obtained a warrant from a court.
- Permits an officer to transport the driver to a hospital for a **warrantless** blood or urine test if the officer has probable cause that a driver committed an injury-accident moving violation while under the influence and either of the following applies:
  - It is not feasible to request a search warrant; or
  - The officer has requested a warrant, but has not received a response within one hour.

### **Other provisions**

- Requires the mandatory bindover (trial as an adult rather than as a juvenile) of a 16- or 17-year-old's case when that 16- or 17-year-old is alleged to have committed aggravated vehicular homicide while under the influence (OVI).
- Names the bill "Sophie's Law."

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## CONTENT AND OPERATION

### Injury-accident moving violations: blood or urine tests

#### Background

The bill establishes new procedures that apply when a driver commits a moving violation and an accident occurs that results in the death or serious physical harm to a person. The procedures authorize a law enforcement officer to order a **warrantless search** of the driver's blood or urine if it is not feasible to request a warrant, or if the officer has not received a response regarding the warrant within one hour.<sup>1</sup>

Under the Fourth Amendment of the U.S. Constitution, a law enforcement officer **must** obtain a warrant from a court before conducting a search (such as a blood draw), unless an exception applies. One exception is a search that takes place under exigent circumstances.<sup>2</sup> Exigent circumstances are circumstances **specific to a particular situation** that would cause a reasonable person to believe that prompt, warrantless action is needed to, for instance, prevent the destruction of evidence.<sup>3</sup> Although the natural dissipation of alcohol in a drunk-driving suspect could constitute an "exigent circumstance," the U.S. Supreme Court **has refused to create a permanent rule declaring that all drunk-driving cases constitute exigent circumstances.**<sup>4</sup>

#### Arrest; blood and urine test procedures

The bill authorizes an officer **to arrest** a motor vehicle driver if the officer has probable cause to believe that a motor vehicle driver has committed a moving violation that was a contributing factor in an accident that caused serious physical harm to, or death of, another person ("injury-accident moving violation"). This includes a moving violation that is a minor misdemeanor. Under current law, an officer is generally not authorized to arrest an individual for a minor misdemeanor. Instead, the officer is required to issue a citation for the offense (see [COMMENT 1](#)).<sup>5</sup>

When the officer arrests the driver, the officer must determine if the driver (and if applicable, each passenger in the driver's vehicle) appears to be under the influence of

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<sup>1</sup> R.C. 4511.199.

<sup>2</sup> *McNeely v. Missouri*, 569 U.S. 141, 148 (2013).

<sup>3</sup> *McNeely* at 149-150.

<sup>4</sup> *McNeely* at 156.

<sup>5</sup> R.C. 4511.199(A) and (H); R.C. 2935.26.



alcohol, a drug of abuse, or a controlled substance ("alcohol or drugs"). The officer may request a court to issue a warrant authorizing a chemical test of a driver's whole blood, blood serum, plasma, or urine ("blood or urine test") if both of the following apply:

- The officer has probable cause to believe that the driver was under the influence of alcohol or drugs; and
- It is feasible to request the warrant. (The U.S. Supreme Court has not established "feasible" as a Fourth Amendment standard.)<sup>6</sup>

The officer may transport the driver to a hospital for a blood or urine test under the following conditions:

(1) If a court **issues the warrant** (the officer may not transport the driver to the hospital for a blood or urine test if the court denies the warrant);

(2) If it is **not feasible to request the warrant**; or

(3) If the officer requests the warrant, but **has not received a response from the court within one hour** (see [COMMENT 2](#)).<sup>7</sup>

Under the bill, serious physical harm includes permanent incapacity, temporary substantial incapacity, permanent disfigurement, temporary serious disfigurement, acute pain, prolonged intractable pain, or a substantial risk of death.<sup>8</sup>

### **Warrant denial and investigation**

If an officer orders a blood or urine test prior to receiving a response with regard to a search warrant request and the request is subsequently denied, the results of the blood or urine test are not admissible as evidence in any legal proceeding. The bill further states that its provisions cannot be construed to limit the authority of an officer to conduct an investigation of a motor vehicle accident or to search any motor vehicle or driver involved in an accident.<sup>9</sup>

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<sup>6</sup> R.C. 4511.199(D) and (E).

<sup>7</sup> R.C. 4511.199(E).

<sup>8</sup> R.C. 4511.199(H).

<sup>9</sup> R.C. 4511.199(F) and (G).



## Reporting requirements

If the officer determines that there is no probable cause that the driver was under the influence at the time of the accident, the officer must file a report detailing the circumstances of the accident. Also, an officer who has supervisory authority over others who have filed reports pursuant to the bill must annually review the reports and document each review and any subsequent actions taken.<sup>10</sup>

## Mandatory bindover for aggravated vehicular homicide

Mandatory transfer, commonly referred to as "mandatory bindover," is the transfer of a child's case from juvenile court to criminal court for criminal prosecution. Current law requires the mandatory bindover of a 16- or 17-year-old's case when the 16- or 17-year-old is alleged to have committed murder, attempted murder, aggravated murder, or attempted aggravated murder. The bill adds to this list of offenses: it requires the mandatory bindover of a 16- or 17-year-old's case when the 16- or 17-year-old is alleged to have committed aggravated vehicular homicide while driving under the influence (OVI).<sup>11</sup>

The bill does not authorize the mandatory bindover of a 14- or 15-year-old's case if the 14- or 15-year-old is alleged to have committed aggravated vehicular homicide. Nor does the bill authorize the mandatory bindover of a 16- or 17-year-old's case if the 16- or 17-year-old committed aggravated vehicular homicide while driving recklessly.<sup>12</sup>

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## COMMENT

1. Under current law, an officer may not arrest a person for a minor misdemeanor unless certain limited exceptions, related to the offender's response to the citation, apply. The Ohio Supreme Court has found that the government's interests in arresting a person for a minor misdemeanor (1) are minimal, (2) are outweighed by the serious intrusion upon that person's liberty, and (3) violate Article I, Section 14 of the Ohio Constitution.<sup>13</sup> (Article 1, Section 14 generally addresses unreasonable searches and seizures.)

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<sup>10</sup> R.C. 4511.199(B) and (C).

<sup>11</sup> R.C. 2152.02(AA); R.C. 2903.06(A)(1), not in the bill. In addition to operating a motor vehicle, a person also may be convicted of this offense when operating a snowmobile, watercraft, or aircraft.

<sup>12</sup> R.C. 2152.10; R.C. 2903.06(A)(2), not in the bill.

<sup>13</sup> *State v. Brown*, 99 Ohio St.3d 323, 324-327 (2003). The exceptions are as follows: when the offender (1) requires medical care or is unable to provide for the offender's own safety, (2) the offender cannot or will not offer satisfactory evidence of identity, (3) the offender refuses to sign the citation, (4) the offender

The bill authorizes an officer to arrest a driver for an injury-accident moving violation even if the violation is a minor misdemeanor. It is unclear if this authorization is constitutional in light of the Ohio Supreme Court's holdings regarding arrests for minor misdemeanors.<sup>14</sup>

2. The bill's authorization of a warrantless blood or urine draw may violate the Fourth Amendment of the U.S. Constitution. As discussed in the Background portion of this analysis, the Fourth Amendment requires an officer to obtain a warrant before conducting a search, unless certain exceptions exist, such as exigent circumstances.<sup>15</sup>

In *Missouri v. McNeely*, Missouri asked the U.S. Supreme Court to hold that the natural dissipation of alcohol in the bloodstream is always an exigency that would permit warrantless, nonconsensual blood testing in drunk-driving investigations. The Court determined that, although natural dissipation of alcohol in the blood may sometimes support a finding of exigency in a specific case, it does not do so automatically. The Court emphasized the neutral judge's essential role as a check on police discretion, and held that "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances."<sup>16</sup>

Thus, the Court **refused to create a permanent rule** declaring that drunk-driving is always an exigent circumstance that allows warrantless, nonconsensual blood draws. Circumstance, by definition, is a condition that describes *one* particular event; therefore, "circumstance," by definition, cannot describe *all* events.

In contrast, the bill **creates a permanent rule** that states that a warrantless blood or urine draw is always permitted if the following exigent circumstances exist:

(1) It is not feasible to request a warrant; or

(2) One hour has elapsed from the time the warrant was requested, with no response from the court.

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was previously issued a citation for the commission of that misdemeanor and failed to appear or comply with court requirements. R.C. 2935.26.

<sup>14</sup> *Brown* at 324-327.

<sup>15</sup> *McNeely* at 149.

<sup>16</sup> *McNeely* at 151-152, 155-157. Although there is little case law on the constitutionality of warrantless urine draws, it is likely that, as one court stated, "[the] Fourth Amendment's protection of 'human dignity and privacy' might require a warrant at the very least before . . . compel[ling] a citizen to undergo a catheterization." *Lovett v. Boddy*, 810 F.Supp. 844, 848 (K.Y.W.D. 1993).

This poses two potential constitutional problems. First, "feasible" means something "capable of being done or carried out," whereas "exigent" means something that "requires immediate aid or action."<sup>17</sup> As a result, the bill appears to alter the standard that an officer must use to determine when to proceed without a warrant in impaired-driving cases.

Second, creation of a one-hour standard as a permanent "exigent circumstance" may conflict with *McNeely*. As indicated above, whether exigent circumstances exist must be determined on a case-by-case basis. Therefore, creating a permanent rule defining exigent circumstances may violate the Fourth Amendment.<sup>18</sup>

Additionally, although consent is an exception to the warrant requirement, it is unlikely that Ohio's implied consent statute would suffice: it does not mention warrants, and seems to authorize **warrantless** blood and urine draws in all circumstances. In *Birchfield v. North Dakota*, the U.S. Supreme Court deemed this unconstitutional. So, viewed through the lens of that case, Ohio's implied consent statute may be constitutionally problematic, and thus may not solve this bill's potential Fourth Amendment issues.<sup>19</sup>

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## HISTORY

ACTION	DATE
Introduced	03-20-18

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<sup>17</sup> Merriam Webster Dictionary, online edition.

<sup>18</sup> *McNeely* at 151-152, 155-157.

<sup>19</sup> R.C. 4511.191; *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2184-85 (2016).

