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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Manning

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SUMMARY

Marijuana and OVI

- Increases the per se prohibited concentration limits for marijuana (delta-9-tetrahydrocannabinol) as measured via a chemical test of a person's whole blood from two nanograms per milliliter to five nanograms per milliliter for purposes of determining an automatic violation of the OVI[1] laws (for both vehicles and watercraft).
- Removes measurements of marijuana metabolites and measurements via a chemical test of a person's urine or blood serum or plasma for purposes of determining a per se violation of the prohibited concentration limits for marijuana.
- Creates a new evidentiary standard through which a trier of fact may infer that a person is under the influence of marijuana if the person either:
  - Has a concentration of at least 25 nanograms of delta-9-tetrahydrocannibinol per milliliter of the person's urine; or
  - Has a concentration of at least two but less than five nanograms of delta-9-tetrahydrocannibinol per milliliter of the person's whole blood.

Admissibility of evidence in an OVI prosecution

- Specifies that any evidence or testimony regarding the concentration of alcohol, a drug of abuse, or a combination of them is subject to the Rules of Evidence, including the rules pertaining to expert testimony.
- Specifies that the admissibility of any evidence or testimony pertaining to the concentration of alcohol, a drug of abuse, or a combination of them within a person does

[1] Operating a vehicle while intoxicated.

not affect, impair, or limit the admissibility of evidence or testimony regarding either of the following:

- The analysis of the person's whole blood, blood serum or plasma, urine, breath, oral fluid, or other bodily substance; and
- The method, process, reliability, or equipment used in the process of analyzing the person's whole blood, blood serum or plasma, urine, breath, oral fluid, or other bodily substance.

DETAILED ANALYSIS

Marijuana and OVI

Under current law, a person commits an OVI offense (operating under the influence) related to the person's use of marijuana if the person operates a vehicle or a watercraft and the person:

1. Is under the influence of marijuana (or a combination of alcohol and marijuana);
2. Has a concentration of at least 10 nanograms of marijuana per milliliter of the person's urine or at least two nanograms of marijuana per milliliter of the person's whole blood or blood serum or plasma;
3. Is under the influence of alcohol, a drug of abuse, or a combination of them AND has a concentration of marijuana metabolite of at least 15 nanograms of marijuana metabolite per milliliter of the person's urine or at least five nanograms of marijuana per milliliter of the person's whole blood or blood serum or plasma; or
4. Has a concentration of at least 35 nanograms of marijuana metabolite per milliliter of the person's urine or at least 50 nanograms of marijuana metabolite per milliliter of the person's whole blood or blood serum or plasma.[2]

Per se violations

Numbers 2 through 4, above, are considered per se violations of the OVI Law. In other words, if a person exceeds the amount specified, the person automatically is considered in violation of the law without any need to show additional evidence of marijuana impairment.

The bill removes numbers 3 and 4, above, from the OVI law (thus, removing measurements of "marijuana metabolites" to determine a per se violation). Additionally, from number 2, above, it removes the chemical tests for urine and blood serum or plasma in determining a per se violation and increases the concentration from two nanograms of marijuana (now defined as delta-9-tetrahydrocannabinol) per milliliter to five nanograms of delta-9-tetrahydrocannabinol per milliliter in the person's whole blood as the prohibited concentration. Thus, under the bill, to be guilty of a *per se violation* of the OVI Law because of marijuana consumption, the person's chemical test of their blood would need to measure a

[2] R.C. 1547.11(A)(1), (A)(6)(g), and (A)(6)(i) and 4511.19(A)(1)(a), (A)(1)(j)(vii), and (A(1)(j)(viii).

concentration of five nanograms or more of delta-9-tetrahydrocannabinol per milliliter of whole blood.[3]

Inference of influence

While the bill removes much of the current law governing per se limits related to marijuana, it replaces those removals with an evidentiary standard that may be used to infer that the operator of a vehicle or watercraft is under the influence of marijuana (number 1, above). Specifically, an inference may be made that a person is under the influence of marijuana if the person has either:

1. A concentration of at least 25 nanograms of delta-9-tetrahydrocannibinol per milliliter of the person's urine; or
2. A concentration of at least two but less than five nanograms of delta-9-tetrahydrocannibinol per milliliter of the person's whole blood.[4]

The bill specifies that if the court admits any evidence or testimony that demonstrates that a person had a concentration of delta-9-tetrahydrocannabinol that is within one of the levels specified above, the trier of fact may, without expert testimony, infer that the person was under the influence of marijuana. However, both the prosecution and defense may present additional evidence or testimony to support or rebut the inference. The trier of fact (the judge or jury) is required to consider all relevant and competent evidence, including the inference, and may give the evidence whatever weight the trier of fact considers appropriate.[5]

Admissibility of evidence in an OVI prosecution

The bill addresses the admissibility of certain types of evidence related to the OVI Law. Specifically, the bill focuses on evidence and testimony related to the concentration of alcohol, drugs of abuse, controlled substances, or metabolites of controlled substances in a specimen of a defendant's urine, whole blood, blood serum or plasma, breath, oral fluid, or other bodily substance.

The bill specifies that any evidence or testimony proposed to be admitted regarding the specimen is subject to the Rules of Evidence, including the rules regarding expert testimony. Additionally, the admissibility of any evidence or testimony of the specimen itself does not affect, impair, or limit the admissibility of evidence or testimony of either of the following, if they are otherwise admissible under the Rules of Evidence:

1. The analysis of the specimen, as conducted under the Director of Health's rules prescribed for that analysis;

[3] R.C. 1547.11(A)(6)(g) and (A)(6)(i) and 4511.19(A)(1)(j)(vii) and (A(1)(j)(viii).

[4] R.C. 1547.11(F)(1) and 4511.19(D)(5)(a). The measurements above five nanograms would constitute a per se violation, as specified above.

[5] R.C. 1547.11(F)(2)(a) and (F)(3) and 4511.19(D)(5)(b)(i) and (D)(5)(c).

2. The method, process, reliability, or equipment used in the analysis of the specimen.[6]

For example, the prosecution proposes that a specimen of whole blood, taken from a defendant at the time of an alleged OVI, be admitted as evidence in a criminal prosecution. The specimen meets the standards of the Rules of Evidence and is admitted. The bill specifies that the admission of that specimen does not then prevent admission of testimony, proposed by the defense, that the equipment used to test the specimen was not working correctly at the time of the analysis, provided the testimony meets the standards of the Rules of Evidence.

HISTORY

Action	Date
Introduced	01-28-25

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[6] R.C. 1547.11(D)(1)(b) and (c), 3701.143(C), and 4511.19(D)(1)(b) and (c).