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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

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Office

**S.B. 203**  
**134<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Manning

Margaret E. Marcy, Attorney

### SUMMARY

#### Marijuana and OVI

- Removes the per se prohibited concentration limits for marijuana and marijuana metabolites as measured via a chemical test of a person's urine, whole blood, or blood serum or plasma for purposes of determining an automatic violation of the OVI<sup>1</sup> laws (for both vehicles and watercraft).
- Replaces the per se limits for marijuana and marijuana metabolites with an evidentiary standard that may be used to infer that the operator of a vehicle or watercraft is under the influence of marijuana.
- Specifies that, under the evidentiary standard, 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-tetrahydrocannabinol per milliliter of the person's urine; or
  - Has a concentration of at least five nanograms of delta-9-tetrahydrocannabinol per milliliter of the person's whole blood or blood serum or plasma.
- Removes the automatic administrative license suspension imposed when a vehicle operator consents to a chemical test and the test's results are above the per se limits for marijuana or marijuana metabolite.

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<sup>1</sup> Operating a vehicle while intoxicated.

## 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 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, 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, or other bodily substance.

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## 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 with 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 metabolite 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.<sup>2</sup>

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 these per se marijuana limits from the OVI law. It replaces them with an evidentiary standard that may be used to infer that the operator of a motor vehicle is under the

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<sup>2</sup> 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).

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-tetrahydrocannabinol per milliliter of the person's urine; or
2. A concentration of at least five nanograms of delta-9-tetrahydrocannabinol per milliliter of the person's whole blood or blood serum or plasma.<sup>3</sup>

The bill specifies that the inference may be made without expert testimony. 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.<sup>4</sup>

### **Administrative driver's license suspension**

By removing the per se marijuana limits from the OVI Law, the bill also removes the automatic administrative driver's license suspension imposed when both of the following apply:

- The operator of a vehicle consents to the chemical test of the operator's urine, whole blood, or blood serum or plasma for marijuana or marijuana metabolite; and
- The chemical test returns a result that the operator has a concentration of marijuana or marijuana metabolite at or above the per se limit.<sup>5</sup>

Under current law, this administrative license suspension is imposed for the time between the alleged OVI and the court hearing that determines whether the operator is guilty or not guilty of the OVI. The bill does not impact the administrative license suspension imposed for refusal to submit to a chemical test. It also does not impact the administrative license suspension imposed when a chemical test indicates that a vehicle operator exceeds the per se limit of alcohol or a drug of abuse (other than marijuana).<sup>6</sup>

### **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, 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.

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<sup>3</sup> R.C. 1547.11(F)(1) and 4511.19(D)(5)(a).

<sup>4</sup> R.C. 1547.11(F)(2)(a) and (F)(3) and 4511.19(D)(5)(b)(i) and (D)(5)(c).

<sup>5</sup> R.C. 4511.191(C)(1), not in the bill.

<sup>6</sup> R.C. 4511.191(B)(1), not in the bill.

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;
2. The method, process, reliability, or equipment used in the analysis of the specimen.<sup>7</sup>

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.

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## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 06-23-21 |

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<sup>7</sup> R.C. 1547.11(D)(1)(b) and (c), 3701.143(C), and 4511.19(D)(1)(b) and (c).