



**H.B. 220**

124th General Assembly  
(As Introduced)

**Reps. Ford, Coates, Otterman, Hartnett, Britton, Allen, Cirelli, Key, Barrett**

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**BILL SUMMARY**

- Creates an additional exception to the physician and dentist testimonial privilege such that, if a health care provider or its employee administers any test to determine the presence or concentration of alcohol, a drug of abuse, or both in a person's blood, breath, or urine, the provider generally must supply to a peace officer and a prosecutor a copy of the results of the test if (1) the test was administered because the person was injured in an accident that involved a vehicle, streetcar, or trackless trolley the person was operating and occurred within the two hours preceding the administration of the test, or the individual who administers the test or any official of the health care provider otherwise knows or has reasonable cause to believe that the person was operating a vehicle, streetcar, or trackless trolley within the two hours preceding the administration of the test and (2) the results of the test indicate that, at the time of the person's operation of the vehicle, streetcar, or trackless trolley, the person's blood, breath, or urine contained a concentration of alcohol in an amount that would result in the person's operation of a vehicle, streetcar, or trackless trolley being prohibited by the offense of OMVI or OMVUAC.
- Authorizes the custodian of any of these types of records regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question or to the operation of the vehicle, streetcar, or trackless trolley in question, to submit a certified copy of the records.
- Upon the submission of the certified copy, qualifies the certified copy as authentic evidence and authorizes its admission as evidence in accordance with the Rules of Evidence.

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## CONTENT AND OPERATION

### Physician and dentist testimonial privilege

#### Existing law

**Privilege.** Existing law provides that a physician or a dentist must not testify concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except as otherwise described below under “**Exception**” and **COMMENT** (R.C. 2317.02(B)(1)).

**Exception.** If any law enforcement officer submits a written statement to a health care provider (1) that states that an official criminal investigation has begun regarding a specified person or that a criminal action or proceeding has been commenced against a specified person, (2) that requests the provider to supply to the officer copies of any records the provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, or both in the person's blood, breath, or urine at any time relevant to the criminal offense in question, and (3) that conforms to a statutorily specified form, the provider generally must supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider must give the officer a written statement that indicates that the provider does not possess any of the requested records.

If a health care provider possesses any records of this type regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. R.C. 2317.422(A), regarding the qualification of records of a hospital, nursing or rest home, or adult care facility, does not apply to any certified copy of records submitted in accordance with this provision. Also, nothing in this provision may be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made. (R.C. 2317.02(B)(2).) (See **COMMENT** for other exceptions.)

### Operation of the bill

The bill adds another exception to the testimonial privilege. Under the bill, if a health care provider or its employee administers any test to a person to determine the presence or concentration of alcohol, a drug of abuse, or both in the person's blood, breath, or urine, the provider, except to the extent specifically prohibited by any Ohio or federal law, must supply to a peace officer and a prosecutor as specified below a copy of the results of the test if (1) the test was administered because the person was injured in an accident that involved a vehicle, streetcar, or trackless trolley the person was operating and that occurred within the two hours preceding the administration of the test or the individual who administers the test or any official of the health care provider otherwise knows or has reasonable cause to believe that the person was operating a vehicle, streetcar, or trackless trolley within the two hours preceding the administration of the test and (2) the results of the test indicate that, at the time of the person's operation of the vehicle, streetcar, or trackless trolley, the person's blood, breath, or urine contained a concentration of alcohol in an amount that would result in the person's operation of a vehicle, streetcar, or trackless trolley being prohibited by the offense of OMVI or OMVUAC.<sup>1</sup>

If the person was operating a vehicle, streetcar, or trackless trolley that was involved in an accident, the provider must supply the results to a peace officer with jurisdiction over the location of the accident and to the prosecutor with jurisdiction over that location and over OMVI and OMVUAC violations. In all other circumstances, the provider must supply the results to a peace officer with jurisdiction over the premises at which the test is performed and to the prosecutor with jurisdiction over those premises and over OMVI and OMVUAC violations. (R.C. 2317.02(B)(2)(a)(i).)

If a health care provider possesses any of these types of records regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question or to the

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<sup>1</sup> *A person 21 years of age or older would have a prohibited concentration of alcohol if the person has (1) a concentration of 0.10 of 1% or more by weight of alcohol in the person's blood, (2) a concentration of 0.10 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (3) a concentration of 0.14 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. A person under 21 years of age would have a prohibited concentration of alcohol if the person has (1) a concentration of 0.02 of 1% or more by weight of alcohol in the person's blood, (2) a concentration of 0.02 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (3) a concentration of 0.028 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. (R.C. 4511.19(A) and (B).)*

operation of the vehicle, streetcar, or trackless trolley in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. R.C. 2317.422(A), regarding the qualification of records of a hospital, nursing or rest home, or adult care facility, does not apply to any certified copy of records submitted in accordance with this provision. Also, nothing in this provision may be construed to limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made. (R.C. 2317.02(B)(2)(b).)

The bill also provides that the right to request and receive records pursuant to the provisions described under 'Existing law' is in addition to any right to receive records that is granted under the bill (R.C. 2317.022(C)).

### Definitions

#### Communication

As used in the bill, "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician or dentist to diagnose, treat, prescribe, or act for a patient. A "communication" may include, but is not limited to, any medical or dental, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis. (R.C. 2317.02(B)(5)(a).)

#### Health care provider

"Health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner (R.C. 2317.02(B)(5)(b)(i) by reference to R.C. 3729.01(G), not in the bill).<sup>2</sup>

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<sup>2</sup> "Health care practitioner" means all of the following (R.C. 4769.01(C), not in the bill): (1) a licensed dentist or dental hygienist, (2) a registered or licensed practical nurse, (3) a licensed optometrist, (4) a licensed dispensing optician, spectacle dispensing optician, contact lens dispensing optician, or spectacle-contact lens dispensing optician, (5) a licensed pharmacist, (6) a physician authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (7) a physician assistant authorized to practice as a physician assistant, (8) a certified practitioner of a limited branch of medicine, (9) a licensed psychologist, (10) a licensed chiropractor, (11) a licensed hearing aid dealer or fitter, (12) a licensed speech-language pathologist or audiologist, (13) a licensed occupational therapist or occupational therapy assistant, (14) a licensed

### **Peace officer**

"Peace officer" generally includes a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a police force employed by a metropolitan housing authority; member of a police force employed by a regional transit authority; state university law enforcement officer; enforcement agent of the Department of Public Safety; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer, a park officer, or a state watercraft officer; individual designated to perform law enforcement duties; Ohio veterans' home police officer; special police officer employed by a port authority; police constable of any township; police officer of a township or joint township police district; and for specified purposes and areas the Superintendent and troopers of the State Highway Patrol (R.C. 2317.02(B)(5)(b)(ii) by reference to R.C. 2935.01(B), not in the bill).

### **Prosecutor**

"Prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case (R.C. 2317.02(B)(5)(b)(ii) by reference to R.C. 2935.01(C), not in the bill).

### **Streetcar**

"Streetcar" means a car, other than a railroad train, for transporting persons or property, operated upon rails principally within a street or highway (R.C. 2317.02(B)(5)(b)(iii) by reference to R.C. 4511.01(R), not in the bill).

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*physical therapist or physical therapy assistant, (15) A licensed professional clinical counselor, professional counselor, social worker, or independent social worker or a registered social work assistant, (16) a licensed dietitian, (17) a licensed respiratory care professional, and (18) a certified emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic.*

### Trackless trolley

"Trackless trolley" means every car that collects its power from overhead electric trolley wires and that is not operated upon rails or tracks (R.C. 2317.02(B)(5)(b)(iii) by reference to R.C. 4511.01(S), not in the bill).

### Vehicle

"Vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except motorized wheelchairs, devices moved by power collected from overhead electric trolley wires, or used exclusively upon stationary rails or tracks, and devices other than bicycles moved by human power (R.C. 2317.02(B)(5)(b)(iii) by reference to R.C. 4511.01(A), not in the bill).

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## COMMENT

Existing law provides two other exceptions to this testimonial privilege:

(1) This testimonial privilege does not apply, and a physician or dentist may testify or may be compelled to testify, in any of the following circumstances (R.C. 2317.02(B)(1)):

(a) In any civil action, in accordance with the discovery provisions of the Civil Rules in connection with a civil action, or in connection with a worker's compensation claim, under certain circumstances.<sup>3</sup>

(b) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the patient's blood, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.<sup>4</sup>

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<sup>3</sup> *If this testimonial privilege does not apply in a civil action or a worker's compensation claim under this provision, a physician or dentist may be compelled to testify or to submit to discovery under the Civil Rules only as to a communication made to the physician or dentist by the patient in question in that relation, or the physician's or dentist's advice to the patient in question, that related causally or historically to physical or mental injuries that are relevant to issues in the civil action or claim. (R.C. 2317.02(B)(3)(a).)*

<sup>4</sup> *If this testimonial privilege does not apply to a physician or dentist as provided in this provision, the physician or dentist, in lieu of personally testifying as to the results of the test in question, may submit a certified copy of those results, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. R.C. 2317.422(A) does not apply to any certified*

(c) In any criminal action against a physician or dentist.

(2) A patient of a physician is deemed to have waived the testimonial privilege with respect to a communication if the patient, at the time of the communication is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, the physician knows or suspects, as a result of the communication or any observations made during that communication, that the patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the patient, and that the physician-patient relationship does not arise out of the patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with R.C. 2151.85. (R.C. 2151.421.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-18-01	p. 305

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*copy of results submitted in accordance with this provision. Nothing in this provision may be construed to limit the right of any party to call as a witness the person who administered the test in question, the person under whose supervision the test was administered, the custodian of the results of the test, the person who compiled the results, or the person under whose supervision the results were compiled. (R.C. 2317.02(B)(3)(b).)*