



## **Sub. S.B. 8**

126th General Assembly  
(As Passed by the General Assembly)

**Sens. Austria, Jacobson, Gardner, Coughlin, Zurz, Mumper, Padgett, Clancy, Grendell, Hottinger, Harris, Miller, R., Niehaus, Dann**

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**Effective date:** \*

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### **ACT SUMMARY**

- Prohibits a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, if, at the time of the operation, physical control, or manipulation, there is present in the person's whole blood, blood serum or plasma, or urine a concentration of amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite (6-monoacetyl morphine), L.S.D., marihuana, marihuana metabolite, methamphetamine, or phencyclidine that equals or exceeds a concentration specified by statutory provisions enacted in the act.
- Specifies that the new prohibitions described in the preceding dot point do not apply to a person who is operating or in physical control of a vehicle, streetcar, trackless trolley, or vessel, or is manipulating water skis, an aquaplane, or a similar water device, while the person has a concentration of a listed controlled substance, or of a listed metabolite of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified by the statutory provisions enacted in the act, if the person obtained the listed

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the listed controlled substance in accordance with the health professional's directions.

- Modifies existing provisions regarding the use of chemical test results as evidence by providing that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the offense of OVI, "watercraft OVI," an equivalent offense, or the new prohibitions enacted in the act, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of controlled substances*, or a combination of them in the person's whole blood, blood serum or plasma, breath, or urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation* (increased from two hours of the time of the alleged violation), and also by changing references to the personnel authorized to perform analyses of the bodily substance withdrawn in order for it to qualify as prima-facie evidence.
- Related to the provisions described in the preceding dot point, specifies in the vehicle and watercraft Implied Consent Laws that, if an arresting law enforcement officer requests that a person under arrest for the offense of OVI, "watercraft OVI," an equivalent offense, or the new prohibitions enacted in the act submit to a chemical test or tests, the person must submit to the chemical test or tests, subsequent to the request, within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests, and specifies that the three-hour time limit described in the preceding dot point regarding the admission of evidence does not extend or affect this two-hour time limit specified as the maximum period of time during which a person may consent to a chemical test or tests.
- Defines "drug of abuse" in various statutes dealing with OVI related issues.
- Makes conforming changes in numerous provisions of prior law regarding various matters of law.

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## CONTENT AND OPERATION

### Introduction

Prior law contained provisions that prohibited a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, while the person was under the influence of alcohol, a drug of abuse, or a combination of them or while the person had a concentration of alcohol in a specified amount in the person's whole blood, blood serum or plasma, breath, or urine. The act retains these prohibitions and expands the provisions to also prohibit a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, while the person has a concentration of any of seven listed controlled substances, or of four listed metabolites of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds an amount specified by the act in statute.

## Operation of a vehicle, streetcar, or trackless trolley

### Prior law

Prior law prohibited a person from operating any vehicle, streetcar, or trackless trolley within Ohio, if, at the time of the operation, any of the following applied: (1) the person was under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person had a concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (3) the person had a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person had a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (5) the person had a concentration of .11 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (6) the person had a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (7) the person had a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person had a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (9) the person had a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. Prior law also prohibited a person who, within the preceding 20 years, previously has been convicted of or pleaded guilty to a prohibition described in the preceding sentence, the prohibition described in this sentence, a municipal OVI offense, or the prohibition described in the next paragraph, from: (1) operating any vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for the operation described in clause (1) of this sentence, being asked by a law enforcement officer to submit to a chemical test or tests under the Implied Consent Law (see "Implied Consent Laws," below), and being advised in accordance with that Law of the consequences of refusing to submit or submitting to the test or tests, refusing to submit to the test or tests. A violation of either prohibition was the offense of "operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them" (OVI), and the punishment for the violation varied, depending upon the number of times the person previously has been convicted of a violation of the prohibition or any of a list of related prohibitions. (R.C. 4511.19(A) and (G).)

Prior law also prohibited a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within Ohio, if, at the time of the operation, any of the following applied: (1) the person had a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person had a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of

alcohol in the person's blood serum or plasma, (3) the person had a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (4) the person had a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine. A violation of the prohibition was the offense of "operating a vehicle after underage alcohol consumption" (OVUAC), and the punishment for the violation varied, depending upon the number of times the person previously has been convicted of a violation of the prohibition or any of a list of related prohibitions. (R.C. 4511.19(B) and (H).)

Prior law provided that, in any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in either of the two preceding paragraphs or for an equivalent offense, the court could admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within two hours of the time of the alleged violation*. It provided that a laboratory report from any forensic laboratory certified by the Department of Health that contained an analysis of the substance tested and that contains specified information had to be admitted as prima-facie evidence of the information and statements the report contained. (R.C. 4511.19(D)(1) and (E)(1).)

### **Operation of the act**

The act retains the prohibitions that constituted the offense of OVI and expands them to also prohibit a person, subject to the exception described below, from operating any vehicle, streetcar, or trackless trolley in Ohio, if, at the time of the operation, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following (R.C. 4511.19(A)(1)(j)):

(1) The person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(2) The person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(3) The person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(4) The person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(5) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(6) The person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

(7) The person has a concentration of marihuana in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

(8) Either of the following applies:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(b) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum

or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(9) The person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(10) The person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

The act specifies that this new prohibition does not apply to a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or of a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions (R.C. 4511.19(K)).

The act specifies that a person who violates the new prohibition is guilty of "operating a vehicle while under the influence of a controlled substance or metabolite of a controlled substance." Under the act, a person convicted of that offense is penalized in the same way as a person who is convicted of OVI in violation of R.C. 4511.19(A)(1)(a), (b), (c), (d), or (e) is punished under continuing law. (R.C. 4511.19(G).)

The act modifies the provisions regarding the use of chemical test results as evidence. It provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the offense of OVI or an equivalent offense or the new prohibition enacted in the act, as described above, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of controlled substances*, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation* (increased from within two hours of the time of the alleged violation). However, the act specifies that the three-hour time limit specified in this provision regarding the admission of evidence, as expanded by

the act, does not extend or affect the two-hour time limit the act includes in the Implied Consent Law as the maximum period of time during which a person may consent to a chemical test or tests as described in the Law. The act also changes the existing "prima-facie evidence provision" by replacing the reference to a "certified forensic laboratory" with a reference to "laboratory personnel issued a permit by the Department of Health authorizing them to perform the analysis of the bodily substance." (R.C. 4511.19(D)(1) and (E)(1).)

### **Physical control of a vehicle, streetcar, or trackless trolley**

#### **Prior law**

Prior law prohibited a person from being in "physical control" (see below) of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol specified in R.C. 4511.19(A)(1)(b), (c), (d), or (e) for the offense of OVI. As used in this prohibition, "physical control" meant being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device. A violation of the prohibition was the offense of "having physical control of a vehicle while under the influence," a misdemeanor of the first degree. In addition to other sanctions imposed, the court could impose on the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(7). (R.C. 4511.194(A)(2), (B), and (D).)

#### **Operation of the act**

The act retains the prohibitions that constituted the offense of "having physical control of a vehicle while under the influence" and expands them to also prohibit a person, subject to the exception described below, from being in physical control of a vehicle, streetcar, or trackless trolley if, at the time of the physical control, the person has a concentration of a listed controlled substance or listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds for the listed controlled substance or the listed metabolite of a controlled substance the concentration that is prohibited under the offense of "operating a vehicle while under the influence of a controlled substance or metabolite of a controlled substance" that is enacted under the act (see "**Operation of a vehicle, streetcar, or trackless trolley**," above). The act specifies that this new prohibition does not apply to a person who is in physical control of a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals

or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions. A violation of the prohibition also is the offense of "having physical control of a vehicle while under the influence." The prior and continuing definition of "physical control" and the prior and continuing penalties for the offense apply regarding the new prohibition. (R.C. 4511.194(A)(3), (B), (D), and (E).)

**Operation or physical control of a vessel or manipulation of water skis, aquaplane, or similar water device**

**Prior law**

Prior law prohibited a person from "operating" (see below) or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, any of the following applied: (1) the person was under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person had a concentration of .08 of one per cent or more by weight of alcohol per unit volume in the person's whole blood, (3) the person had a concentration of .096 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person had a concentration of .11 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (5) the person had a concentration of .08 of one gram or more by weight of alcohol per 210 liters of the person's breath. A violation of the prohibition was a misdemeanor of the first degree, and the penalty provided varied, depending upon the number of times the person previously had been convicted of a violation of the prohibition or a similar municipal ordinance (R.C. 1547.11(A) and 1547.99(G)).

Prior law also prohibited a person under 21 years of age from "operating" (see below) or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, any of the following applied: (1) the person had a concentration of at least .02 of one per cent, but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person had a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person had a concentration of at least .028 of one gram, but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine, or (4) the person had a concentration of at least .02 of one gram, but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath. (R.C. 1547.11(B) and 1547.99(G).)

Prior law provided that, in any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in either of the two preceding paragraphs (a "watercraft OVI offense") or for an equivalent offense, the court could admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, or urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within two hours of the time of the alleged violation*. It provided that a laboratory report from any forensic laboratory certified by the Department of Health that contained an analysis of the substance tested and that contained specified information had to be admitted as prima-facie evidence of the information and statements the report contained. (R.C. 1547.11(D)(1) and (F)(1).)

As used in these provisions, "operate" meant that a vessel was being used on the waters in Ohio when the vessel was not securely affixed to a dock or to shore or to any permanent structure to which the vessel had the right to affix or that a vessel was not anchored in a designated anchorage area or boat camping area that was established by the United States Coast Guard, Ohio, or a political subdivision and in which the vessel had the right to anchor (R.C. 1547.11(H)(3)).

### **Operation of the act**

The act retains the prohibitions constituting the offense described above under "**Prior law**" regarding the operation, control, or manipulation of a vessel, water skis, aquaplane, or similar device while under the influence or while having a prohibited concentration of alcohol in one's system. The act expands the prohibitions to also prohibit a person, subject to the exception described below, from "operating" or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, the person has a concentration in the person's whole blood, blood serum or plasma, or urine of amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite (6-monoacetyl morphine), L.S.D., marihuana, marihuana metabolite, methamphetamine, or phencyclidine that equals or exceeds the concentration specified above for OVI in "**Operation of the act**" under "**Operation of a vehicle, streetcar, or trackless trolley**." The act specifies that this new prohibition does not apply to a person who operates or is in physical control of a vessel underway or manipulates any water skis, aquaplane, or similar device while the person has a concentration of a listed controlled substance, or of a listed metabolite of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and who injected, ingested, or

inhaled the controlled substance in accordance with the health professional's directions. (R.C. 1547.11(A)(6), (H), and (I)(4) and (5).)

Under the act, a person convicted of a violation of the new prohibition is penalized in the same way as a person who is convicted of a violation of R.C. 1547.11 is punished under continuing law (R.C. 1547.99(G)).

The act modifies the existing provisions regarding the use of chemical test results as evidence. It provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the "watercraft OVI offense" or an equivalent offense or the new prohibition enacted in the act, as described above, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of a controlled substance*, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation* (increased from within two hours of the time of the alleged violation). However, the act specifies that the three-hour time limit specified in this provision regarding the admission of evidence, as expanded by the act, does not extend or affect the two-hour time limit the act includes in the Implied Consent Law as the maximum period of time during which a person may consent to a chemical test or tests as described in the Law. The act also changes the existing "prima-facie evidence provision" by replacing the reference to a "certified forensic laboratory" with a reference to "laboratory personnel issued a permit by the Department of Health authorizing them to perform the analysis of the bodily substance." (R.C. 1547.11(D)(1) and (F)(1).)

### **Implied Consent Laws**

Prior law provided that any person who operated a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio or who was in physical control of a vehicle, streetcar, or trackless trolley was deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for OVI, OVUAC, "having physical control of a vehicle while under the influence," or a municipal OVI ordinance (R.C. 4511.191). Prior law provided procedures that the arresting officer had to follow relative to a request that the person arrested submit to the test or tests (including warnings of the possible license suspension sanctions), procedures for the administration of the test or tests, driver's or commercial driver's license or permit or nonresident operating privilege suspension sanctions that applied to a person who refused to submit to the test or tests or (except for a person arrested for the "physical control offense") who

submitted to the test or tests and had a prohibited concentration of alcohol in his or her system, and appeal procedures. If a person refused to submit to a test or tests, no test was administered. (R.C. 4511.191 and 4511.192, and R.C. 4511.197--not in the act.)

Prior law also provided that any person who operated or was in physical control of any vessel underway or manipulated any water skis, aquaplane, or similar device on the waters in Ohio was deemed to have given consent to a chemical test or tests to determine the alcohol, drug of abuse, or alcohol and drug of abuse content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of R.C. 1547.11 (R.C. 1547.111). Prior law provided procedures that the arresting officer had to follow relative to a request that the person arrested submit to the test or tests (including warnings of the possible consequences of a refusal), procedures for the administration of the test or tests, sanctions regarding vessel, water ski, aquaplane, and similar water device privileges and registration suspensions that applied to a person who refused to submit to the test or tests, and appeal procedures. If a person refused to submit to a test or tests, no test was administered. (R.C. 1547.111.)

The two laws described in this part of the analysis generally are referred to as "Implied Consent Laws."

### **Operation of the act**

The act retains the Implied Consent Laws, modified as described below. By their terms, the Implied Consent Laws apply to persons arrested for a violation of any of the same prohibitions as under prior law as well as the new prohibitions the act enacts, as described above in "**Operation of a vehicle, streetcar, or trackless trolley**," "**Physical control of a vehicle, streetcar, or trackless trolley**," and "**Operation or physical control of a vessel or manipulation of water skis, aquaplane, or similar water device**." The act includes, in the listing of substances for which the person "impliedly consents" to testing, references to controlled substances and metabolites of controlled substances. (R.C. 1547.111, 4511.191, and 4511.192.)

As stated above, the act modifies existing provisions regarding the use of chemical test results as evidence, by extending from two to three hours after an alleged violation the time within which the chemical test must occur in order for the chemical analysis of the results to be used as evidence. Specifically, the act provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes OVI, the "watercraft OVI offense," an equivalent offense, or the new OVI and watercraft prohibitions

enacted in the act, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of a controlled substance*, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation*. (R.C. 1547.11(D)(1) and 4511.19(D).)

Related to these provisions, the act specifies in the Implied Consent Laws that, if an arresting law enforcement officer requests that the person under arrest submit to a chemical test or tests, *the person must submit to the chemical test or tests, subsequent to the request of the officer, within two hours of the time of the alleged violation, and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests* (R.C. 1547.111(C) and 4511.192(A)). The act specifies that the three-hour time limit specified in the provisions described in the preceding paragraph regarding the admission of evidence, as expanded by the act, does not extend or affect this two-hour time limit specified as the maximum period of time during which a person may consent to a chemical test or tests. (R.C. 1547.11(D)(1) and 4511.19(D).)

**Application of the prohibited concentrations of a controlled substance or metabolite to R.C. 2923.16**

R.C. 2923.16(D), not in the act, prohibits a person from knowingly transporting or having a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol prohibited for persons operating a vehicle, as specified in R.C. 4511.19(A), regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

A violation of this prohibition is a felony of the fifth degree (R.C. 2923.16(I)).

The act does not include a reference to controlled substances or metabolites of controlled substances in this prohibition. Instead, the act states in R.C. 4511.19 that the prohibited concentrations of a controlled substance or a metabolite of a controlled substance described above in "**Operation of a vehicle, streetcar, or trackless trolley: Operation of the act**" also apply in a prosecution of a violation

of R.C. 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol. (R.C. 4511.19(L).)

**Definition of drug of abuse**

In the Commercial Driver's Licensing Law (R.C. Chapter 4506.) "drug of abuse" means any controlled substance, dangerous drug as defined in R.C. 4729.01, or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes (R.C. 4506.01(K)). The act applies this definition to the following sections of the Revised Code (R.C. 1547.01(B)(31), 2317.02(B)(5)(d), 2317.022(A)(2), 3701.143, 4510.011, and 4511.181(E)):

(1) State watercraft OVI and watercraft implied consent laws;

(2) The exception to the doctor-patient testimonial privilege in a criminal action concerning any test that determines the presence or concentration of a drug of abuse in the patient's bodily substance at any time relevant to the criminal offense in question;

(3) A written request by a law enforcement officer requesting the release of records regarding the presence or concentration of a drug of abuse in a person's bodily substance pursuant to R.C. 2317.022;

(4) Techniques or methods determined by the Director of Health for chemically analyzing a person's bodily substances to ascertain the amount of a drug of abuse in that substance;

(5) Driver's Licensing Law (R.C. Chapter 4510.);

(6) OVI law (R.C. 4511.181 to 4511.197).

**Other changes**

In the following provisions, the act expands references to a concentration of alcohol, drugs of abuse, or both to refer also to the concentration of controlled substances or metabolites of controlled substances:

(1) Evidentiary rules in watercraft, water ski, etc. offense cases (R.C. 1547.11(D) and (F));

(2) Violations of municipal ordinances prohibiting the operation of watercraft, water skis, etc. as prior offenses that result in enhanced penalties in watercraft, water ski, etc. offense cases (R.C. 1547.99(G));

(3) Limitations on the jurisdiction of a mayor's court to hear OVI and OVUAC cases based on violations of municipal ordinances (R.C. 1905.01);

(4) Suspension by a mayor's court of driver's or commercial driver's license for violation of an OVI-type municipal ordinance (R.C. 1905.201);

(5) Exceptions to the testimonial privilege of physicians and dentists and authority of a law enforcement officer to obtain records from a health care provider (R.C. 2317.02);

(6) Form used by a law enforcement officer to obtain records from a health care provider (R.C. 2317.022);

(7) Qualification of records of health care facilities as evidence in criminal cases (R.C. 2317.422);

(8) Award under the Crime Victims Reparation Law to a victim of a violation of an OVI-type municipal ordinance (R.C. 2743.51(P));

(9) Considering a person arrested for a violation of R.C. 2919.22(C) (the offense of "endangering children") as being under arrest for purposes of the vehicle Implied Consent Law and related provisions (R.C. 2919.22(C));

(10) Requiring a person under suspension or limitation of driving privileges for violation of an OVI- or OVUAC-type municipal ordinance to only operate a vehicle equipped with an ignition interlock device (R.C. 2951.02(C));

(11) Determination and approval by the Director of Health of ways to chemically analyze bodily substances (also adds references to R.C. 1547.11 and 4511.194) (R.C. 3701.143);

(12) Implied consent law for drivers of commercial motor vehicles (reference to metabolites only) (R.C. 4506.17);

(13) Convictions not relating to OVI for purposes of the points law (R.C. 4510.032(A));

(14) Assessment of points for violation of an OVI-type municipal ordinance (R.C. 4510.036(C));

(15) Prior convictions for violations of OVI- or OVUAC-type municipal ordinances for determining "hard suspensions" of driving privileges (R.C. 4510.17(E));

(16) Termination of certain class one and class two suspensions of driving privileges (R.C. 4510.54(A)(4));

(17) Definition of "municipal OVI ordinance" and "municipal OVI offense" (R.C. 4511.181(C));

(18) Evidentiary rules in OVI and OVUAC cases (R.C. 4511.19(D) and (E));

(19) Information required of an applicant for employment as an ambulette driver with a licensed organization (R.C. 4766.15).

In paragraphs (5), (6), (7), (10), (11), (15), and (19) of the foregoing provisions, the act replaces references to "blood" with references to "whole blood, blood serum, or plasma" to conform with language of other previously enacted acts.

The act also changes references to municipal OVI-type ordinances to "municipal OVI ordinances" as defined in the act (see (17) above) in the following provisions:

(1) Supreme Court rules prescribing educational standards for mayors who wish to hear OVI-type cases (R.C. 1905.03);

(2) Authority of a mayor's court magistrate to hear OVI-type cases (R.C. 1905.05);

(3) Consideration by an insurer of a policyholder's or applicant's involvement in certain accidents if the policyholder or applicant is engaged in law enforcement, firefighting, or other specified employment (R.C. 3937.41).

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## HISTORY

ACTION	DATE
Introduced	01-24-05
Reported, S. Judiciary on Criminal Justice	02-16-05
Passed Senate (30-1)	02-16-05
Reported, H. Criminal Justice	03-22-06
Passed House (90-6)	03-29-06
Senate concurred in House amendments (30-2)	03-29-06

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