

# HOUSE BILL ANALYSIS

## HB 2518

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**Title:** An act relating to testing for drugs or alcohol in suspected cases of driving while under the influence.

**Brief Description:** Providing for testing for drugs or alcohol in suspected cases of driving while under the influence.

**Sponsors:** Representatives McDonald, Sheahan, Sterk, Delvin, O'Brien, Backlund, Carrell, Thompson, Bush and Sullivan.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Bill Perry (786-7123).

**Background:** Under the state's implied consent law, a person who drives a vehicle is deemed to have given consent to a test of his or her breath or blood alcohol concentration (BAC) under certain circumstances. A law enforcement officer may request a BAC if the officer has reasonable grounds to believe a person has been driving while under the influence of alcohol or drugs (DUI). Refusal to take a BAC is grounds for administrative loss of driving privileges, and the fact of refusal may be introduced as evidence in a DUI trial.

Generally, BAC tests are to be of the breath only. A blood test may be administered if the driver is unconscious or is under arrest for vehicular homicide or assault, or if an arrest for DUI resulted from an accident in which there has been serious bodily injury to a person other than the driver. A person who is incapable of refusing a BAC test because of death, injury, or other condition, is deemed to have consented. Blood samples may be taken only by a doctor, nurse, or qualified technician. All testing of breath or blood must be done in accordance with methods approved by the state toxicologist.

DUI may be committed either as the result of a "per se" violation or as the result of being under the influence of. A person commits a per se DUI violation by driving with a BAC of 0.10 or more. This per se offense is defined only in terms of alcohol concentration. A per se violation does not require proof of impairment or intoxication. The per se standard of 0.10 is based in part on controlled studies of the driving abilities of many people with various levels of alcohol in their systems. There is no such per se standard for drugs.

A person may also be convicted of DUI, regardless of the presence of a BAC test, or the BAC level, if the person is shown to have been "under the influence" of either alcohol or drugs. Many law enforcement agencies have expressed growing concern over the number of impaired drivers who appear to be under the influence of alcohol or drugs, but whose BACs are below the legal limit. Many of these drivers are apparently under the influence of drugs, or some combination of drugs and alcohol. It is often difficult to establish what quantity of what drugs may be involved in these cases. Evidence of the presence of a particular drug is not enough to convict a person of DUI. The person must be shown to have been under the influence of the drug sufficiently to have been impaired to some appreciable degree in his or her driving ability.

**Summary of Bill:** Testing of a driver's urine is added to the implied consent law. Testing of urine may be done under the same circumstances as testing of the blood. Otherwise, all testing is still of the breath only. Urine testing must be done under the supervision of a doctor, nurse, or qualified technician. A urine test may be used at trial to show both the quantity and type of drug in a person's system.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.