

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6215
BILL NUMBER: HB 1028

NOTE PREPARED: Feb 17, 2021
BILL AMENDED: Feb 16, 2021

SUBJECT: Per se Intoxication Level.

FIRST AUTHOR: Rep. Lucas
FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill establishes a per se intoxication level of five nanograms of THC per milliliter of whole blood for purposes of operating while intoxicated laws, and requires that the analysis of controlled substances in a person's blood measure only the controlled substance and not the metabolites of the controlled substance.

Effective Date: Upon passage.

Explanation of State Expenditures: (Revised) This provision would likely have a minimal reduction in DOC facilities based on the few OWI felonies involving Schedule I and II controlled substances or its metabolite found in the person's blood. [A metabolite is a byproduct of the body breaking down, or "metabolizing," a drug into a different substance.]

There are few felony cases in which persons have been convicted and sentenced for OWI causing either serious bodily injury or death in which a controlled substance or a metabolite has been found in the person's blood. Between CY 2015 and 2019, the total number of persons convicted and sentenced for these offenses ranged between 6 and 25. Marijuana is one of over 250 schedule I and II drugs that could be included in the schedule drugs that these persons may have in their blood when a blood test is performed.

Establishing a threshold of five nanograms [a nanogram is one billionth of a gram] for determining intoxication could reduce the number of persons who are determined to be intoxicated. This will more likely affect persons who are found guilty of a Class C misdemeanor and less likely to affect the few persons who are charged with OWI causing serious bodily injury or death. In these cases, other evidence of intoxication may be found during investigations.

The offenses and frequency of these offenses are shown in the following table based on citations from the Bureau of Motor Vehicles and the abstracts of judgment maintained by the Indiana Supreme Court.

Number of OWI Offenses In Which a Controlled Substance or Metabolite is Found in the Person's Blood					
	CY 2015	CY 2016	CY 2017	CY 2018	CY 2019
IC 9-30-5-1 OWI as a Class C misdemeanor with metabolite (BMV guilty citations)	301	407	424	341	486
IC 9-30-5-4 OWI causing serious bodily injury as a Level 6 or Class D felony	67	80	97	82	114 (est.)
IC 9-30-5-4 OWI causing serious bodily injury with a prior conviction as a Level 5 or Class C felony	6	8	9	12	n/r (est.)
IC 9-30-5-5 OWI causing death of another person as a Level 5 or Class C felony	16	25	20	18	11 (est.)
IC 9-30-5-5 OWI causing death of another person with a prior conviction as a Level 4 felony	14	23	19	17	18 (est.)
IC 35-46-9-6 operating a motorboat while intoxicated as Class C misdemeanor		n/r		n/r	
n/r = Five or fewer offenses					
Sources: Class C misdemeanors – Bureau of Motor Vehicles; OWI Felonies – Abstracts of Judgment, Indiana Supreme Court					

Explanation of State Revenues: (Revised) If a person is acquitted of all charges because of the five nanogram threshold, then fewer fines (which are deposited into the Common School Fund) and court fees (which generally are deposited into the state General Fund) will be collected. But the effect on revenues being deposited into either fund would be minimal.

Explanation of Local Expenditures: (Revised) Persons who are charged with OWI with at least five nanograms of THC will commit a Class C misdemeanor. The number of persons who would be below this threshold are unknown and cannot be estimated.

Explanation of Local Revenues: There would be a minor effect on revenue from fees deposited into county funds if fewer persons are convicted of OWI as a Class C misdemeanor.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Indiana Supreme Court Abstracts of Judgment; Department of Correction, U.S. Department of Justice Marshals Service.

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