
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 127 **Hearing Date:** June 4, 2019
Author: Lackey
Version: May 14, 2019
Urgency: Yes **Fiscal:** No
Consultant: MK

Subject: *Driving Under the Influence: Research*

HISTORY

Source: Author

Prior Legislation: None

Support: Alcohol Justice; California District Attorneys Association; California Narcotic Officers' Association; California State Sheriffs' Association; Los Angeles County Sheriff's Department;

Opposition: None known

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to allow a person who is under the supervision and on the property of the California Highway Patrol, to drive a vehicle while under the influence of a drug, or while under the combined influence of a drug and alcohol, for the purpose of conducting research on impaired driving, and it contains an urgency clause.

Existing law makes it unlawful to drive a vehicle while under the influence of an alcoholic beverage. (Vehicle Code § 23152 (a).)

Existing law makes it unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Vehicle Code § 23152 (b).)

Existing law makes it unlawful for a person who is under the influence of any drug to drive a vehicle. (Vehicle Code § 23152 (f).)

Existing law makes it unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Vehicle Code § 23152 (g).)

Existing law provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation driving under the influence of drugs or alcohol. If a blood or breath test, or both, are unavailable, then the person shall give urine. (Vehicle Code § 23612 (a)(1)(A).)

Existing law provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested driving under the influence of drugs or drugs and alcohol. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Vehicle Code § 23612 (a)(1)(B).)

Existing law states that the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of specified driving under the influence offenses. (Vehicle Code § 23612 (a)(1)(C).)

This bill allows a person who is under the supervision and on the property of the California Highway Patrol, to drive a vehicle while under the influence of a drug, or while under the combined influence of a drug and alcohol, for the purpose of conducting research on impaired driving, and it contains an urgency clause.

COMMENTS

1. Need for This Bill

According to the author:

In 2016, voters approved the California Marijuana Legalization Initiative (Proposition 64) which authorized the Department of California Highway Patrol (CHP) three million dollars annually for five years to develop internal protocols for detection, testing, and enforcing laws against driving under the influence. However, in existing law, there is no statutory exemption which permits anyone to be both lawfully under the influence of a drug and to drive a vehicle (VEH 23152). This impacts the Department's ability to adequately test and observe the effects cannabis has on driving related abilities. Ultimately, this hinders the Department from completing its obligation to the California voters. This bill will make a technical, statutory fix to permit CHP to develop protocols as approved by voters in Proposition 64.

2. Proposition 64

In 2016, Californians voted to approve Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). Prop 64 legalized the recreational use of marijuana by adults age 21 and over, imposed taxes on the retail sale and cultivation of marijuana, and took a number of other steps to establish a regulatory and administrative scheme for the product.

Prop 64 also established the California Marijuana Tax Fund, which is a continuously appropriated fund consisting of specified taxes, interest, penalties, and other amounts imposed by AUMA. AUMA requires, after other specified disbursements are made from the fund, the Controller to disburse the sum of \$3,000,000 annually to the Department of the California Highway Patrol beginning fiscal year 2018–2019 until fiscal year 2022–2023, and

requires the department to use those funds to, among other things, establish and adopt protocols to determine whether a driver is operating a vehicle while impaired and setting forth best practices to assist law enforcement agencies.

3. Research on Marijuana Impaired Driving

The Center for Medicinal Cannabis Research (CMCR) was established by SB 847 (Vasconcella), Chapter 750, Statutes of 1999. CMCR has worked closely with California State legislators, regulatory agencies, and law enforcement regarding the development and implementation of research and policy pertaining to the use and impact of cannabis and cannabinoid products. Since the passage of California Proposition 64, CMCR leadership has met with representatives from the Bureau of Cannabis Control, the Medical Board of California, the California Highway Patrol, and the California Office on Traffic Safety, among others.

Although California is one of just ten states that has legalized the recreational use of marijuana, every state in the country criminalizes the act of driving under the influence. Unlike alcohol, however, there is no *per se* level at which a person is presumed to be under the influence as a result of marijuana use. Alcohol is straightforward: a higher concentration in the bloodstream means more impairment and a higher likelihood of accidents. Marijuana is more complex. The psychoactive ingredient in marijuana is tetrahydrocannabinol (THC). Although there are tests that can determine the concentration level of THC in a driver's blood, saliva, urine, and hair, the level of intoxication associated with a given THC blood concentration depends on how marijuana was ingested, whether someone is a regular user, the level of THC in the dose, and whether they've ingested other drugs or alcohol. (Berger, *Why It's Difficult to Develop a Test for Roadside Marijuana*. Healthline (January 25, 2018), available at: <https://www.healthline.com/health-news/difficult-to-develop-roadside-test-for-marijuana#1>, [as of February 12, 2019].)

The National Institutes of Health (NIH) notes that "Marijuana significantly impairs judgment, motor coordination, and reaction time, and studies have found a direct relationship between blood THC concentration and impaired driving ability." (<https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving>, [as of Feb. 11, 2019].)

The NIH also points out a study by the United States Department of Transportation's National Highway Traffic Safety Association (NHTSA). (https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812117-drug_and_alcohol_crash_risk.pdf, [as of Feb. 11, 2019].) The NHTSA study initially found that drivers with higher levels of THC in their system correlated with a higher risk of being involved in a crash. Ultimately, however, the NHTSA concluded that once the analyses were adjusted for variables such as age, gender, ethnicity, and alcohol concentration level, there was not a significant increase in levels of crash risk associated with the presence of THC. (*Id.* at p. 8.) The study done by the NHTSA appears to be at odds with a number of other studies which did find a statistically significant increase in crash risk associated with higher THC concentrations. (*See E.g.* Hartman, *Cannabis Effects on Driving Skills*, *Clinical Chemistry*, Vol. 59, iss. 3, March 2013, available at: <http://clinchem.aaccjnls.org/content/59/3/478.long>, [as of February 13, 2019].) At this point, there is no scientific consensus on what amount or level of THC in breath, blood or saliva constitutes functional impairment for drivers.

4. CHP research

This bill will allow CHP to conduct research on drunk or drugged driving by allowing a person to drive a vehicle under the influence when under the supervision of and on the property of CHP for research purposes.

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