

Recommendation 13

LC0369 Provide that any amount of a dangerous drug is impaired driving *per se*

Working draft number: LClj05
Proposal sponsor: Rep. Peterson

Summary:

This bill would provide that if there is any amount of a dangerous drug or its metabolite in a driver's blood, driving under the influence is assumed. The bill provides an exemption for the appropriate use of prescription drugs.

Background:

Section 61-8-406, MCA, currently provides a *per se* limit for a person's BAC. However, the section does not currently provide a *per se* limit for drugs. Thus, drug-impaired driving is currently handled under section 61-8-401, MCA, which states that "under the influence" means that "as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished". Thus, the person's inability to safely operate a vehicle must be proved.

Testimony and discussion:

This proposal was forwarded by Rep. Peterson at the Committee's February 9, 2010, work session. Proponents included, Mother's Against Drunk Driving, the Montana Highway Patrol, and the Yellowstone County Attorney's Office. The Montana ACLU opposed the proposal on the grounds that it cast too wide a net. During the September 10, 2010, executive work session, concerns were raised about not having scientific evidence that would create a presumption that any amount of a dangerous drug automatically means the person is impaired and cannot safely operate a vehicle. Responding to questions, Ali Bovingdon of the Attorney General's Office said some states, including Arizona, do have zero tolerance driving laws concerning drugs.

Final Committee vote: 7-5 with Sen. Juneau, Sen. Moss, Sen. Shockley, Rep. Menahan, and Rep. Augare voting no.
