WEST VIRGINIA CODE: §17C-5-8

§17C-5-8. Interpretation and use of chemical test.

(a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood or breath, is admissible, if the sample or specimen was taken within the time period provided in subsection (g).

(b) The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:

(1) Evidence that there was, at that time, .05 of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

(2) Evidence that there was, at that time, more than .05 of one percent and less than .08 of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(3) Evidence that there was, at that time, .08 of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

(c) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:

(1) The number of grams of alcohol per 100 cubic centimeters of blood;

(2) The number of grams of alcohol per 210 liters of breath; or

(3) The number of grams of alcohol per 86 milliliters of serum.

(d) A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:

(1) Marijuana metabolites;

(2) Cocaine metabolites;

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(3) Amphetamines;

(4) Opiate metabolites;

(5) Phencyclidine (PCP);

(6) Benzodiazepines;

(7) Methadone;

(8) Barbiturates; and

(9) Synthetic narcotics.

(e) (1) A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the West Virginia State Police Forensic Laboratory.

(A) The West Virginia State Police Forensic Laboratory shall prescribe, by legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code, methods and standards for the chemical analysis of a person's blood or breath.

(B) Legislative rules proposed by the West Virginia State Police Forensic Laboratory must specify the test or tests that are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community, and must provide an approved method of administration which must be followed in all such tests given under this section.

(C) The West Virginia State Police Forensic Laboratory shall review prescribed standards and methods at least every two years to ensure that the methods and standards are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community.

(2) A chemical analysis of blood to determine the alcohol content or the controlled substance or drug content of blood shall be conducted by an accredited laboratory or by the West Virginia State Police Forensic Laboratory.

(f) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

(g) For the purposes of the admissibility of a chemical test under subsection (a):

(1) A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or

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(2) For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

(h) The results of any test administered pursuant to this section for the purpose of detecting the concentration of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

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