



H.B. 61*

123rd General Assembly
(As Reported by S. Judiciary)

Reps. Womer Benjamin, Mead, Coughlin, Terwilleger, Thomas, Clancy, Gardner, Jacobson, Harris, Corbin, Taylor, Jerse, Mottley, Damschroder, Carey, Jones, O'Brien, Haines, Brading, Salerno, Maier, Opfer, Winkler, Metzger, Patton, Hartnett, Grendell, Logan, Olman, Pringle, Flannery, DePiero, Ford, Sulzer, Boyd, Britton, Evans, Allen, Cates, Myers, Vesper

Sens. Oelslager, Latta, Herington, Cupp

BILL SUMMARY

- Permits a judge to impose a pre-trial suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is charged with the offense of aggravated vehicular homicide, vehicular homicide when it is a felony, or aggravated vehicular assault if the judge determines that the person's continued driving will be a threat to public safety.
- Increases from a misdemeanor of the first degree to a felony of the fourth degree the penalty for vehicular homicide when the offender's driver's or commercial driver's license or permit or nonresident operating privilege was suspended or revoked at the time of the offense.

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Pre-trial suspensions of driver's and commercial driver's licenses

Current law

Under current law, if a person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine (hereafter, "state or local OMVI or OMVUAC"), the person's initial appearance on the charge must be held within five days of the arrest or the issuance of a citation, subject to continuance under provisions contained in existing R.C. 4511.191(H)(1)--not in the bill. At the initial appearance, if the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the state Administrative License Suspension (ALS) law (R.C. 4511.191(H), not in the bill), the judge, magistrate, or mayor may terminate the ALS if certain conditions are met. If the judge, magistrate, or mayor terminates the ALS but also determines at the initial appearance that the person's continued driving will be a threat to public safety, the judge, magistrate, or mayor may impose a new suspension of the person's driver's or commercial driver's license or permit or nonresident operating privilege.

If a person is arrested for state or local OMVI or OMVUAC and the person's driver's or commercial driver's license or permit or nonresident operating privilege had not been suspended under the ALS law, the judge, magistrate, or mayor may impose a suspension of the person's driver's or commercial driver's license or permit or nonresident operating privilege if the judge, "referee," or mayor determines at the initial appearance that the person's continued driving will be a threat to public safety.

Both of these pre-trial suspensions continue until the complaint on the charge resulting from the arrest is adjudicated on the merits by the judge or magistrate of the trial court or the mayor of the mayor's court. Such a suspension terminates if the person subsequently is found not guilty of the charge resulting from the arrest. (R.C. 4511.196(A), (B), and (C).)

Operation of the bill

The bill enacts a new type of suspension that may be imposed at a court appearance of a person arrested for certain specified offenses. Under the bill, if a person is arrested and charged with the offense of aggravated vehicular homicide, aggravated vehicular assault, or vehicular homicide when it is a felony (see **COMMENT**), the judge at the person's initial appearance, preliminary hearing, or

arraignment may suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege if the judge determines at any of those proceedings that the person's continued driving will be a threat to public safety. The suspension continues until the indictment or information alleging the violation is adjudicated on the merits. A court that imposes a suspension under the bill must send the person's driver's or commercial driver's license or permit to the Registrar of Motor Vehicles. (R.C. 4511.196(D).)

The bill also changes an erroneous reference to "referee" in the relevant Revised Code section to "magistrate" (R.C. 4511.196(B)(2)).

Penalty for vehicular homicide

Current law

Current law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from negligently causing the death of another or the unlawful termination of another's pregnancy. A person who violates the prohibition is guilty of the offense of "vehicular homicide." Vehicular homicide generally is a misdemeanor of the first degree, but, if the offender previously has been convicted of vehicular homicide, aggravated vehicular homicide, aggravated vehicular assault, or involuntary manslaughter in a case in which the special sentencing provisions for that offense set forth in R.C. 2903.04(D) apply, it is a felony of the fourth degree. If the judge or jury as trier of fact determines that the offender was under the influence of alcohol, a drug of abuse, or both at the time of the commission of the offense, then the offender's driver's or commercial driver's license or permit or nonresident operating privilege must be permanently revoked. In specified circumstances, the court must impose a mandatory prison term on the offender. (R.C. 2903.07.)

Operation of the bill

The bill expands the circumstances in which the offense of vehicular homicide is a felony of the fourth degree instead of a misdemeanor of the first degree. Under the bill, in addition to the existing circumstances in which the penalty is so increased, vehicular homicide is a felony of the fourth degree if the offender's driver's or commercial driver's license or permit or nonresident operating privilege was suspended or revoked under any Revised Code section at the time the offender committed the offense. (R.C. 2903.07(B).)

COMMENT

Aggravated vehicular homicide (a felony of either the third or second degree) and aggravated vehicular assault (a felony of either the fourth or third degree) always are felonies. Vehicular homicide is a felony of the fourth degree, and the bill's suspension provisions apply, if: (1) the offender has at least one previous aggravated vehicular homicide, aggravated vehicular assault, vehicular homicide, or vehicle-related and alcohol-related involuntary manslaughter conviction, or (2) as expanded by the bill (see "*Penalty for vehicular homicide*"), the offender's driver's or commercial driver's license or permit was suspended or revoked under a statute at the time the offender committed the offense. Vehicular homicide is a misdemeanor of the first degree in all other circumstances; the bill's suspension provisions do not apply to such a person. (R.C. 2903.06, 2903.07, and 2903.08.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Transportation & Public Safety	01-20-99	p. 95
Passed House (97-0)	02-17-99	p. 212
Reported, S. Judiciary	03-10-99	pp. 280-281
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