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**Bill Analysis**  
Legislative Service Commission

## **S.B. 176**

123rd General Assembly  
(As Introduced)

(Part Two: Analysis of the Drunk Driving, Implied Consent, Wrongful Entrustment, Vehicular Homicide, Vehicular Assault, and Watercraft OMVI Portions of the Bill)

**Sens. Oelslager, Latta**

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### **BILL SUMMARY**

- Adds an additional prohibition to the offense of state OMVI (which it renames state OVI) that prohibits a person from operating a vehicle, streetcar, or trackless trolley if the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*.
- Provides that any person who refuses to submit to a chemical test requested by a law enforcement officer under the Vehicle Implied Consent Law is rebuttably presumed to have been under the influence of alcohol, a drug of abuse, or a combination of them in violation of the portion of state OVI that prohibits operating a vehicle, etc., while under the influence of alcohol, a drug of abuse, or a combination of them, at the time of the person's operation of the vehicle, streetcar, or trackless trolley.
- Relocates the general penalty provisions that apply to state OVI within the section that contains the offense, provides that a first-time felony conviction of state OVI is a felony of the fifth degree instead of a felony of the fourth degree but retains the current mandatory incarceration for the conviction, reduces the period of a license suspension for the offense that a court may not suspend, provides that the vehicle immobilization and impoundment sanctions and the vehicle forfeiture sanctions apply only if the vehicle is registered in the offender's name, conforms the driver's license suspension sanctions to other provisions of the bill that consolidate driver's license suspension laws and permits limited driving privileges in accordance with those other provisions, makes certain other changes in the

penalties for the offense, and simplifies the penalty provisions for the offense.

- Adds an additional prohibition to the offense of state OMVUAC (which it renames state OVUAC) that prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley if the person has a concentration of .03 of one per cent but less than .12 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*.
- Relocates the general penalty provisions that apply to state OVUAC within the section that contains the offense, conforms the driver's license suspension sanctions to other provisions of the bill that consolidate driver's license suspension laws, makes certain other changes in the penalties for the offense, and simplifies the penalty provisions for the offense.
- Defines the term "operate," for purposes of R.C. Chapter 4511., including state OVI and state OVUAC, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking."
- Revises the procedures relative to the taking of a chemical test under the state's Vehicle Implied Consent Law and to the use of those tests in a court proceeding, permits the use of certified lab reports as prima facie proof of their contents unless the person accused objects, and specifies that the qualified immunity from civil liability for medical personnel who withdraw blood and for any medical facility at which it is withdrawn is not available if the person engages in willful or wanton misconduct.
- Specifies that the current Ohio Traffic Rules do not apply to felony state OVI violations, and that if, on or after its effective date, the Supreme Court modifies the Rules to provide procedures to govern felony state OVI violations, the modified Rules will apply to felony state OVI violations.
- Specifies that the vehicle immobilization, impoundment, and forfeiture provisions that apply regarding repeat convictions of state OVI, municipal OMVI, driving under suspension, and wrongful entrustment apply regarding a vehicle used in the offense only if the vehicle is registered in the name of the offender and, related to this, repeals the existing "innocent owner" exception to the provisions.

- Specifies that, if a vehicle is seized under existing pretrial seizure and retention provisions that apply in certain cases when a person is arrested for state OVI or municipal OMVI, and the impoundment of the vehicle was not authorized under those provisions as amended by the bill, the court must order that the vehicle and its license plates be returned immediately to the arrested person and order that the state or a political subdivision served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage.
- Modifies some of the provisions of the existing Vehicle Implied Consent Law, including the appeal procedures relative to a suspension under that Law, conforms the driver's license suspension provisions under that Law to other provisions of the bill that consolidate driver's license suspension laws, simplifies some of the procedures that pertain to that Law, and relocates much of the substance of that Law, from existing R.C. 4511.191 into several other sections.
- Provides that the license reinstatement fee that must be paid to obtain a driver's license at the end of a suspension imposed under the Vehicle Implied Consent Law, after a conviction of state OVI, or under R.C. 4511.196 is: (1) \$280, if the person submitted to a chemical test under the Implied Consent Law or if the person refused to submit to such a test and pleaded guilty to, or pleaded no contest to and was found guilty of, state OVI, state OVUAC, or a substantially equivalent municipal ordinance and the offense for which the plea was entered or that resulted in the conviction arose from the same incident that led to the suspension, or (2) \$530, if the person refused to submit to a chemical test under that Law and the circumstances described in clause (1) do not apply.
- Extends the time at which a judge, magistrate, or mayor may impose a suspension under R.C. 4511.196 upon a person accused of state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance from the time of the person's initial appearance to any time prior to the adjudication on the merits of the charge resulting from the person's arrest.
- Enacts the offense of "having control of a vehicle while under the influence," which prohibits a person from being in "actual physical control" of a stationary vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or

while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol prohibited under state OVI.

- Modifies the elements of and penalties for the offense currently named "permitting the operation of a vehicle by a person with no legal right to operate a vehicle," relocates the offense from R.C. 4507.33 to R.C. 4511.203, renames the offense "wrongful entrustment of a motor vehicle," and specifies circumstances in which it is *prima facie* evidence that a person knows or should know that a motor vehicle owned by or under the control of the person was operated in a manner to commit the offense.
- Repeals the existing Revised Code section that contains the offense of "vehicular homicide," incorporates the current vehicular homicide prohibition within the statute that currently contains the prohibition constituting the offense of "aggravated vehicular homicide," modifies the elements of both of those prohibitions as they relate to drunken vehicular homicides and in other manners, enacts a new prohibition located in that statute that it names the offense of "vehicular manslaughter," and enacts a new sentencing structure for all of those prohibitions.
- Modifies the elements of the prohibition that constitutes the offense of "aggravated vehicular assault," enacts a new prohibition located in the statute containing that offense that it names the offense of "vehicular assault," and enacts a new sentencing structure for both of those prohibitions.
- Modifies the elements of, and the additional special sanctions for, the offense of "involuntary manslaughter" when it is based on a misdemeanor offense.
- In the offense of state watercraft OMVI, eliminates the portion of the prohibition that applies in relation to the manipulation of any water skis, aquaplane, or similar device on Ohio waters; adds additional prohibitions that prohibit a person from operating or being in physical control of a vessel underway on Ohio waters if the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma* and that prohibit a person under 21 years of age from operating or being in physical control of a vessel underway on Ohio waters if the person has a concentration of at least .03 of one per cent but less than .12 of one per cent or more by weight per unit volume of alcohol

*in the person's blood serum or plasma*; extends the "look back period" for determining the penalty from five years to six years; modifies the list of prior convictions used in determining the offender's sentence; revises the existing procedures relative to the taking of a chemical test under the state's Watercraft Implied Consent Law and to the use of those tests in a court proceeding; permits the use of certified lab reports as prima facie proof of their contents unless the person accused objects, and specifies that the qualified immunity from civil liability for medical personnel who withdraw blood and for any medical facility at which it is withdrawn is not available if the person engages in willful or wanton misconduct; and makes conforming changes.

- Modifies some of the provisions of the existing Watercraft Implied Consent Law, and simplifies some of the procedures that pertain to that Law.
- Modifies the definition of "OMVI violation" that applies in the Crime Victims Reparation Law and renames it, consistent with other changes in the bill, as an "OVI violation."

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## CONTENT AND OPERATION

### State OMVI--state OVI

#### Existing law--offense of state OMVI

Existing R.C. 4511.19(A) sets forth the offense of "state OMVI." It prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio if any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (2) the person has a concentration of .10 of one per cent or more by weight of alcohol in his or her blood, (3) the person has a concentration of .10 of one gram or more by weight of alcohol per 210 liters of his or her breath, or (4) the person has a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

#### Existing law--penalties for state OMVI

Existing R.C. 4511.99(A) sets forth the sanctions for a conviction of state OMVI. The sanctions vary, depending upon the number of times within the preceding six years that the offender has been convicted of any of a list of specified *vehicle-related and alcohol-related offenses*. The relevant alcohol-related and motor vehicle-related offenses are: state OMVI or state OMVUAC (see below); any municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both; a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine; involuntary manslaughter in a case in which the offender was subject to the sanctions described in R.C. 2903.04(D); aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, or a municipal ordinance substantially similar to vehicular homicide in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both; or a statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to state OMVI or state OMVUAC. The existing sanctions for state OMVI are as follows (R.C. 4507.16(B) and (F) and 4511.99(A)):

(1) **Generally**. Except as described in (2), (3), or (4), below, the offense is a misdemeanor of the first degree, and the court must sentence the offender to a

term of imprisonment of three consecutive days and may sentence the offender under the Misdemeanor Sentencing Law to a longer term of imprisonment. In addition, the court must fine the offender not less than \$200 and not more than \$1,000. The court may suspend the mandatory three consecutive days of imprisonment, if it places the offender on probation and requires the offender to attend, for three consecutive days, a certified drivers' intervention program (a DIP) and may suspend any part of the mandatory three consecutive days of imprisonment if it places the offender on probation for part of the three consecutive days, requires the offender to attend, for the suspended portion, a certified DIP, and sentences the offender to a term of imprisonment equal to the remainder of the three consecutive days that the offender does not spend at the program. The court may require the offender, as a condition of probation and in addition to the required DIP attendance, to attend and complete treatment or education programs that the DIP's operators determine the offender should attend.

Of the fine imposed: (a) \$25 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the offender's arrest, to be used for specified OMVI law enforcement and public information purposes, (b) \$25 is deposited into the county or municipal indigent drivers alcohol treatment fund under the control of the sentencing court, and (c) the balance is disbursed as otherwise provided by law. (R.C. 4511.99(A)(1).)

(2) **Second offense in six years.** Except as described in (4), below, if, within six years of the offense, the offender previously has been convicted of one alcohol-related and vehicle-related offense, the offense is a misdemeanor of the first degree, and the court generally must sentence the offender to a term of imprisonment of ten consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer term of imprisonment. As an alternative to the term of imprisonment, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of five consecutive days and not less than 18 consecutive days of electronically monitored house arrest (EMHA). The five consecutive days of imprisonment and the period of EMHA cannot exceed six months, and the five consecutive days do not have to be served prior to or consecutively with the period of EMHA. In addition, the court must fine the offender not less than \$300 and not more than \$1,500. In addition to any other sentence it imposes, the court may require the offender to attend a certified DIP. If the DIP's officials determine that the offender is alcohol dependent, the court must order the offender to obtain treatment through an authorized alcohol and drug addiction program, to be paid for by the offender.

Of the fine imposed: (a) \$35 is paid to an enforcement and education fund as described above for a first offense, (b) \$65 is paid to the political subdivision

responsible for housing the offender during the term of incarceration, to be used for incarceration costs incurred in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, (c) \$50 is deposited into the county or municipal indigent drivers alcohol treatment fund under the control of the sentencing court, and (d) the balance is disbursed as otherwise provided by law.

Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to an "innocent owner" exception, must order the immobilization for 90 days of the vehicle the offender was operating at the time of the offense and the impoundment for 90 days of its license plates (see "*Immobilization and forfeiture of vehicles*," below). (R.C. 4511.99(A)(2).)

(3) *Third offense in six years*. Except as described in (4), below, if, within six years of the offense, the offender previously has been convicted of two alcohol-related and vehicle-related offenses, the court must sentence the offender to a term of imprisonment of 30 consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. As an alternative to the term of imprisonment, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of 15 consecutive days and not less than 55 consecutive days of EMHA. The 15 consecutive days of imprisonment and the period of EMHA cannot exceed one year, and the 15 consecutive days do not have to be served prior to or consecutively with the period of EMHA. In addition to any other sanctions imposed, the court must fine the offender not less than \$500 and not more than \$2,500 and must require the offender to attend an authorized alcohol and drug addiction program, generally to be paid for by the offender.

Of the fine imposed: (a) \$123 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the arrest of the offender, to be used for specified OMVI law enforcement and public information purposes, (b) \$227 is paid to the political subdivision responsible for housing the offender during the offender's term of incarceration, to be used for incarceration costs incurred in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, and (c) the balance is disbursed as otherwise provided by law.

Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to the "innocent owner" exception, must order the immobilization for 180 days of the vehicle the offender

was operating at the time of the offense and the impoundment for 180 days of its license plates. (R.C. 4511.99(A)(3).)

(4) **Fourth or subsequent offense in six years or prior felony state OMVI conviction.** If, within six years of the offense, the offender previously has been convicted of three or more alcohol-related and vehicle-related offenses, or if the offender previously has been convicted of state OMVI under circumstances in which it was a felony and regardless of when the violation and the conviction occurred, the offense is a felony of the fourth degree. The court must sentence the offender in accordance with the Felony Sentencing Law and must impose as part of the sentence a mandatory term of local incarceration of 60 consecutive days if it is the offender's first felony OMVI offense or a mandatory prison term of 60 consecutive days if it is the offender's second or subsequent felony OMVI offense. If the offender is required to serve a mandatory term of local incarceration of 60 consecutive days, the court may impose a sentence that includes a term of EMHA, provided that the term of EMHA cannot commence until after the offender has served the mandatory term of local incarceration. In addition to all other sanctions imposed, the court must fine the offender not less than \$750 nor more than \$10,000 and must require the offender to attend an authorized alcohol and drug addiction program, generally to be paid for by the offender.

Of the fine imposed: (a) \$210 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the offender's arrest, to be used for specified OMVI law enforcement and public information purposes, (b) \$390 must be paid to the political subdivision responsible for housing the offender during the offender's term of incarceration, to be used for incarceration costs it incurs in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, and (c) the balance is disbursed as otherwise provided by law.

Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to the "innocent owner" exception, must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense. If title to a motor vehicle that is subject to a criminal forfeiture order is assigned or transferred and existing R.C. 4503.234 applies, in addition to or independent of any other sanction, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from any fine so imposed must be distributed under existing R.C. 4503.234(D)(4). (R.C. 4511.99(A)(4).)

(5) **Work release.** Except as described below, upon a showing that imprisonment would seriously affect the ability of a convicted state OMVI

offender to continue employment, the court may authorize that the offender be granted work release from imprisonment after the offender has served the mandatory three, ten, or 30 consecutive days of imprisonment or the mandatory term of local incarceration of 60 consecutive days. No court may authorize work release during the three, ten, or 30 consecutive days of imprisonment or the mandatory term of local incarceration or mandatory prison term of 60 consecutive days that the court is required to impose. (R.C. 4511.99(A)(5).)

(6) **Use of treatment.** Notwithstanding any other provision of law: (a) a court may not suspend the consecutive days of imprisonment required to be imposed on a second- or third-time state OMVI offender, (b) a court may not place a second-time, third-time, or fourth- or subsequent-time state OMVI offender in any treatment program in lieu of imprisonment until after the offender has served the required consecutive days of imprisonment, mandatory term of local incarceration, or mandatory prison term, (c) a court that sentences a fourth- or subsequent-time state OMVI offender may not impose any sanction other than a mandatory term of local incarceration or mandatory prison term to apply to the offender until after the offender has served the mandatory term of local incarceration or mandatory prison term required to be imposed, (d) a court that imposes a sentence of imprisonment and a period of EMHA on a second-time or third-time state OMVI offender cannot suspend any portion of the sentence or place the offender in any treatment program in lieu of imprisonment or EMHA, and (e) except as specifically authorized by law, a court cannot suspend the three consecutive days of imprisonment required for a first-time state OMVI offender or place such an offender in any treatment program in lieu of imprisonment until after the offender has served the three consecutive days of imprisonment. (R.C. 4511.99(A)(6).)

(7) **EMHA limitations.** Courts are prohibited from using the authorized alternative EMHA sentences for second-time and third-time state OMVI offenders unless, within 60 days of the date of sentencing, the court issues a written finding that, due to the unavailability of space at the incarceration facility where the offender would serve the term of imprisonment imposed, the offender will not be able to commence serving the term within the 60-day period following the date of sentencing. If the court issues such a finding, it may impose the authorized alternative EMHA sentence for second-time and third-time state OMVI offenders. (R.C. 4511.99(A)(8).)

(8) **Driver's license suspensions.** The trial judge of any court of record and the mayor of a mayor's court, in addition to or independent of all other penalties, generally must revoke the driver's or commercial driver's license or permit or nonresident operating privilege of any person who is convicted of state OMVI or a violation of a substantially equivalent municipal ordinance, or suspend

it as follows: (a) except as described in (8)(b), (c), or (d), below, the judge or mayor must suspend the license, permit, or privilege for not less than six months nor more than three years, and no judge may suspend the first six months of the suspension, (b) subject to (8)(d), below, if, within six years of the offense, the offender has been convicted of or pleaded guilty to one alcohol-related and vehicle-related offense, the judge must suspend the license, permit, or privilege for not less than one year nor more than five years, and no judge may suspend the first year of the suspension, (c) subject to (8)(d), below, if, within six years of the offense, the offender has been convicted of two alcohol-related and vehicle-related offenses, the judge must suspend the license, permit, or privilege for not less than one year nor more than ten years, and no judge may suspend the first year of the suspension, and (d) if, within six years of the offense, the offender has been convicted of three or more alcohol-related and vehicle-related offenses, or if the offender previously has been convicted of state OMVI under circumstances in which it was a felony and regardless of when the violation and the conviction or guilty plea occurred, the judge must suspend the license, permit, or privilege for a period of time set by the court but not less than three years, no judge may suspend the first three years of the suspension, and the judge may permanently revoke the license, permit, or privilege. The court may grant the offender occupational driving privileges, after the offender has served a specified period of the suspension imposed. (R.C. 4507.16(B), (F), and (I).)

(9) **Occupational driving privileges.** Under existing law, if a person's driver's or commercial driver's license or permit or nonresident operating privilege is under an OMVI suspension, the person is not entitled to request, and the judge or mayor may not grant occupational driving privileges to the person, if the person, within the preceding seven years, has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses. Any other person whose license or privilege is under an OMVI suspension may file a petition alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the court may grant the person occupational driving privileges during the period during which the suspension otherwise would be imposed. However, the judge or mayor may not grant occupational driving privileges to any person who, within seven years of the filing of the petition, has been convicted of or pleaded guilty to the specified offenses. The court also may not grant occupational driving privileges for employment as a driver of commercial motor vehicles to any person who is disqualified from operating a commercial motor vehicle under a default child support order or under the Commercial Driver's Licensing Law. (R.C. 4507.16(F).)

Existing law also prohibits the court from granting occupational driving privileges during any of the following periods of time (R.C. 4507.16(F)(1) to (4)):

(1) The first 15 days of suspension imposed upon an offender whose license, permit, or privilege is under an OMVI suspension. On or after the 16th day of suspension, the court may grant the offender occupational driving privileges, but the court may require the offender to exercise the occupational driving privileges only in vehicles equipped with ignition interlock devices.

(2) The first 30 days of suspension imposed upon an offender whose license, permit, or privilege is under an OMVI suspension and who has been convicted of one other alcohol-related and vehicle-related offense within six years of the offense. On or after the 31st day of suspension, the court may grant the offender occupational driving privileges, but the court may require the offender to exercise the occupational driving privileges only in vehicles equipped with ignition interlock devices.

(3) The first 180 days of suspension imposed upon an offender whose license, permit, or privilege is under an OMVI suspension and who has been convicted of two other alcohol-related and vehicle-related offenses within six years of the offense. The judge may grant occupational driving privileges on or after the 181st day of the suspension only if the judge is not prohibited from granting the privileges and only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender, during the period from the 181st day of suspension until the end of the first year of suspension, from operating any motor vehicle unless it is equipped with a certified ignition interlock device. After the first year of the suspension, the court may authorize the offender to continue exercising the occupational driving privileges in vehicles that are not equipped with ignition interlock devices. If the offender does not petition for occupational driving privileges until after the first year of suspension and if the judge is not prohibited from granting the privileges, the judge may grant the offender occupational driving privileges without requiring the use of a certified ignition interlock device.

(4) The first three years of suspension imposed upon an offender whose license, permit, or privilege is suspended and who has been convicted of three or more other OMVI violations within six years of the offense. The judge may grant occupational driving privileges to an offender who receives such a suspension after the first three years of suspension only if the judge is not prohibited from granting the privileges and only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender from operating any motor vehicle, for the period of suspension following the first three years of suspension, unless the motor

vehicle is equipped with a certified ignition interlock device. (R.C. 4507.16(F)(1) to (4).)

(10) **Imposition of "points."** Under the existing Point System Law, discussed in Part I of this analysis, an offender who is convicted of state OMVI has six "points" assessed against the offender's record. Accumulation of a specified number of points can result in a suspension of a person's driver's license. (R.C. 4507.021.)

### **Operation of the bill--in general**

The bill expands the elements of state OMVI (renamed state OVI) and state OMVUAC (renamed state OVUAC), and relocates and makes a few modifications in the penalties for those offenses.

### **Operation of the bill--offense of state OMVI (renamed state OVI--see below)**

The bill adds an additional prohibition to the offense of state OMVI (renamed state OVI--see below) that will apply in addition to the existing four prohibitions constituting the offense. The additional prohibition prohibits a person from operating a vehicle, streetcar, or trackless trolley if the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to this change, it modifies the existing prohibition against operating a vehicle while having a concentration of .10 of one per cent or more by weight of alcohol in his or her blood to specify that the prohibition pertains *only to whole blood* and is to be determined *per unit volume*. For all four existing prohibitions and the additional prohibition it adds, the bill specifies that the determination of being "under the influence" or of having a "prohibited concentration of alcohol" is determined at the time of the person's operation of the vehicle, streetcar, or trackless trolley. The bill defines the term "operate," for purposes of R.C. Chapter 4511., including state OVI, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking" (see "**New offense--"having physical control of a vehicle while under the influence"**," below). (R.C. 4511.01(GGG) and 4511.19(A).)

The bill also adds a rebuttable presumption of guilt relative to a person who refuses to submit to a chemical test requested by a law enforcement officer under the state's Vehicle Implied Consent Law (see "**Vehicle Implied Consent Law**," below). The bill provides that any person who refuses to submit to a chemical test or tests requested by a law enforcement officer under that Law is rebuttably presumed to have been under the influence of alcohol, a drug of abuse, or a combination of them in violation of the portion of state OVI that prohibits

operating a vehicle, etc., while under the influence of alcohol, a drug of abuse, or a combination of them, at the time of the person's operation of the vehicle, streetcar, or trackless trolley. (R.C. 4511.19(D)(4).)

**Operation of the bill--penalties for state OMVI (renamed state OVI)**

The bill relocates the general penalty provisions that apply to a violation of R.C. 4511.19(A), currently referred to as state OMVI, from R.C. 4511.99(A) and 4507.16(B) to R.C. 4511.19 and makes certain changes in those penalties. The bill names a violation of R.C. 4511.19 the offense of "operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them" (state OVI) and requires a court sentencing a person for the offense to sentence the offender under the Criminal Sentencing Law contained in R.C. Chapter 2929., subject to the differences in sentencing authorized or required as described below. Under the bill, the penalties for state OVI are as follows:

(1) **Generally.** Except as otherwise described below in (2), (3), (4), or (5), state OVI is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(a), 4510.02(A)(4), and 4510.13(A)):

(a) A mandatory jail term of three consecutive days, which means 72 consecutive hours. The court must impose the three-day jail term unless it instead requires the offender to attend, for three consecutive days, a certified DIP; the court may sentence an offender to both a DIP and a jail term; the court may impose a jail term in addition to the three-day mandatory jail term or the DIP intervention program; and in no case may the cumulative jail term imposed for the offense exceed six months.

(b) A fine of not less than \$200 and not more than \$1,000;

(c) A Class 4 (definite period of six months to three years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first 15 days of the suspension. The court may grant limited driving privileges relative to the suspension, as discussed below under "**Limited driving privileges.**"

(2) **Second offense in six years.** If the offender, within six years of the offense, has been convicted of one state OVI violation or one "equivalent offense" (see below), state OVI is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(b), 4510.02(A)(3), and 4510.13(A)):

(a) A mandatory jail term of ten consecutive days. The court must impose the ten-day mandatory jail term unless, subject to the limitation described below, it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense cannot exceed six months. In addition to the jail term or the term of EMHA and jail term, the court may require the offender to attend a certified DIP. If the DIP's operator determines that the offender is alcohol dependent, it must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(b) Notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than \$300 and not more than \$1,500.

(c) A Class 3 (definite period of one to five years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first 30 days of the suspension. The court may grant limited driving privileges, as discussed below under "**Limited driving privileges**," provided that it must require the offender to display on the vehicle that is driven subject to the privileges restricted license plates.

(d) If the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 90 days in accordance with R.C. 4503.233 and impoundment of the vehicle's license plates for 90 days, as discussed below in "**Vehicle impoundment, immobilization, and forfeiture procedures**."

(3) **Third offense in six years**. If the offender, within six years of the offense, previously has been convicted of two state OVI violations or "equivalent offenses" (see below), state OVI is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(c), 4510.02(A)(2), and 4510.13(A)):

(a) A mandatory jail term of 30 consecutive days. The court must impose the 30-day mandatory jail term unless, subject to the limitation described below, it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the 30-day mandatory jail term. Notwithstanding the terms of imprisonment set forth in the Criminal Sentencing Law, the additional jail term cannot exceed one year, and the cumulative jail term imposed for the offense cannot exceed one year.

(b) Notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than \$500 and not more than \$2,500.

(c) A Class 2 (definite period of two to ten years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first 180 days of the suspension. The court may grant limited driving privileges, as discussed below under "**Limited driving privileges**," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates.

(d) If the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 180 days and impoundment of its license plates for 180 days, as discussed below in "**Vehicle impoundment, immobilization, and forfeiture procedures**."

(e) An alcohol and drug addiction program authorized by R.C. 3793.02, subject to a specified limitation.

(4) **Fourth offense in six years**. If the offender, within six years of the offense, previously has been convicted of three state OVI violations or "equivalent offenses" (see below), state OVI is a felony of the fifth degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(d); R.C. 2929.13(G)(1), 4510.02(A)(1), 4510.13(A), and 4511.181(B) and (C)):

(a) A mandatory term of local incarceration of 60 consecutive days. The court may impose a jail term in addition to the 60-day mandatory term of local incarceration. The cumulative total of the mandatory term of local incarceration and the jail term for the offense cannot exceed one year. The court cannot reduce the mandatory 60-day term under any provision of law, cannot impose a prison term, and cannot require the mandatory 60-day term to be served in a prison. It must specify the type of local facility in which the offender is to serve the term (e.g., jail, halfway house, etc.), and the offender must serve the term in the specified type of facility.

(b) Notwithstanding the Felony Sentencing Law financial sanction provisions, a fine of not less than \$750 nor more than \$10,000;

(c) A Class 1 (definite period of three years to life) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first year of the suspension. The court may grant limited driving privileges, as discussed below under "**Limited driving privileges**," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates.

(d) Criminal forfeiture of the vehicle involved in the offense, as discussed below in "**Vehicle impoundment, immobilization, and forfeiture procedures**," if the vehicle is registered in the offender's name.

(e) Participation in an alcohol and drug addiction program, subject to a specified limitation.

(f) In addition, the court may impose a term of EMHA, provided that the term cannot commence until after the offender has served the mandatory term of local incarceration.

(5) **Fifth or subsequent offense in six years or prior felony state OVI conviction.** If the offender, within six years of the offense, has been convicted of four or more state OVI violations or "equivalent offenses" (see below), or if the offender previously has been convicted of a state OVI violation that was a felony, regardless of when the violation and the conviction occurred, state OVI is a felony of the fourth degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(e); R.C. 2929.13(G)(2) and 4511.181(B) and (C)):

(a) A mandatory prison term of 60 consecutive days. The court may impose a prison term in addition to the 60-day mandatory prison term. The cumulative total of the mandatory prison term and the additional prison term for the offense cannot exceed 18 months. In no case can an offender who is being sentenced for a fourth degree felony state OVI offense be sentenced to a mandatory term of local incarceration. The court cannot reduce the mandatory 60-day term under any provision of law and cannot impose a community residential sanction or nonresidential sanction. The Department of Rehabilitation and Correction (DRC) may place the offender in an intensive program prison, in accordance with existing law governing those prisons.

(b) Notwithstanding the Criminal Sentencing Law financial sanction provisions, a fine of not less than \$750 nor more than \$10,000;

(c) A Class 1 (definite period of three years to life) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The court may grant limited driving privileges as discussed below under "**Limited driving privileges**," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates.

(d) Criminal forfeiture of the vehicle involved in the offense, as discussed below in "**Vehicle impoundment, immobilization, and forfeiture procedures**," if the vehicle is registered in the offender's name.

(e) In addition, the court may order the offender to participate in an alcohol and drug addiction program, subject to a specified limitation.

(6) **Limited driving privileges.** Under the bill, any person whose license, permit, or nonresident operating privilege, has been suspended for an OVI violation may file a petition for limited driving privileges during the suspension. The person must file the petition in the court that has jurisdiction over the place of arrest. The court may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. However, the court may not grant the privileges for employment as a driver of a commercial motor vehicle to any person who is disqualified from operating a commercial motor vehicle under the Commercial Driver's Licensing Law or during any of the periods during which a court is not permitted to suspend a suspension. In granting limited driving privileges to an offender whose license, permit, or privilege is suspended for an OVI violation, the court may require that any vehicle the offender operates be equipped with an immobilizing or disabling device. (R.C. 4510.13(B) and (C).)

(7) **Use of EMHA.** If an offender is sentenced to a jail term under the provision described above in paragraph (2) or (3) and if, within 60 days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is to serve the term, the offender will not be able to begin serving it within the 60-day period following the date of sentencing, the court may impose an alternative sentence that includes a term of EMHA. As an alternative to a mandatory jail term of ten consecutive days required under the provision described above in paragraph (2), the court may sentence the offender to five consecutive days in jail and not less than 18 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding six months. As an alternative to a mandatory jail term of 30 consecutive days required under the provision described above in paragraph (3), the court may sentence the offender to 15 consecutive days in jail and not less than 55 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding one year. (R.C. 4511.19(G)(3).)

(8) **Disposition of fines.** Under the bill, fines imposed for state OVI must be distributed as follows (R.C. 4511.19(G)(5)):

(a) \$25 of the fine for a first offense in six years, \$35 of the fine for a second offense in six years, \$123 of the fine for a third offense in six years, and \$210 of the fine for a fourth or subsequent offense in six years or for a prior state OVI felony is to be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency that primarily was responsible for the arrest of the offender, as determined by the sentencing court. This share must be used by the agency to pay only those costs it incurs in enforcing the state OVI law or an ordinance containing an equivalent offense and in informing the public of the laws governing the operation of a vehicle while under the influence

of alcohol, the dangers of such operation, and other information relating to such operation and the consumption of alcoholic beverages.

(b) \$25 of the fine for a first offense in six years and \$50 of the fine for a second offense in six years is to be deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the sentencing court.

(c) \$65 of the fine for a second offense in six years, \$227 of the fine for a third offense in six years, and \$390 of the fine for a fourth or subsequent offense in six years or for a prior state OVI felony is to be paid to the political subdivision responsible for housing the offender during the offender's term of incarceration. This share must be used by the political subdivision to pay or reimburse incarceration costs it incurs in housing persons who commit state OVI or an ordinance containing an equivalent offense, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of EMHA equipment needed for persons who commit state OVI.

(d) The balance of the fine imposed is to be disbursed as otherwise provided by law.

### **State OMVUAC--state OVUAC**

#### **Existing law--offense of state OMVUAC**

Existing R.C. 4511.19(B) sets forth the offense of "state OMVUAC." It prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within Ohio, if any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .10 of one per cent by weight of alcohol in his or her blood, (2) the person has a concentration of at least .02 of one gram but less than .10 of one gram by weight of alcohol per 210 liters of his or her breath, or (3) the person has a concentration of at least .028 of one gram but less than .14 of one gram by weight of alcohol per 100 milliliters of his or her urine.

#### **Existing law--penalties for state OMVUAC**

In general, state OMVUAC is a misdemeanor of the fourth degree. But if, within one year of the offense, the offender has been convicted of an alcohol-related and vehicle-related offense, it is a misdemeanor of the third degree. In addition to or independent of all other penalties, the offender's driver's or commercial driver's license or permit or nonresident operating privilege is suspended for not less than 60 days and not more than two years. (R.C. 4511.99(N) and 4507.16(E).)

Under existing law, if a person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended because of OMVUAC, the person is not entitled to request, and the judge or mayor may not grant to the person, occupational driving privileges if the person, within the preceding seven years, has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses. Any other person whose license or privilege is under an OMVUAC suspension may file a petition alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the court may grant the person occupational driving privileges during the period during which the suspension otherwise would be imposed. However, the judge or mayor may not grant occupational driving privileges to any person who, within seven years of the filing of the petition, has been convicted of or pleaded guilty to three or more alcohol-related or vehicle-related suspensions. The court also may not grant occupational driving privileges for employment as a driver of commercial motor vehicles to any person who is disqualified from operating a commercial motor vehicle and may not grant occupational driving privileges during the first 60 days of an OMVUAC suspension. (R.C. 4507.16(G).)

**Operation of the bill--offense of state OMVUAC (renamed state OVUAC--see below)**

The bill adds an additional prohibition to the offense of state OMVUAC (renamed state OVUAC--see below) that will apply in addition to the existing three prohibitions constituting the offense. The additional prohibition prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley if the person has a concentration of .03 of one per cent but less than .12 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to this change, it modifies the existing prohibition against a person under 21 years of age operating a vehicle while having a concentration of at least .02 of one per cent but less than .10 of one per cent or more by weight of alcohol in his or her blood to specify that the prohibition pertains *only to whole blood* and is to be determined *per unit volume*. For all three existing prohibitions and the additional prohibition it adds, the bill specifies that the determination of having a "prohibited concentration of alcohol" is determined at the time of the person's operation of the vehicle, streetcar, or trackless trolley. Finally, the bill defines the term "operate," for purposes of R.C. Chapter 4511., including state OVI, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking." (R.C. 4511.01(GGG) and 4511.19(B).)

**Operation of the bill--penalties for state OMVUAC (renamed state OVUAC)**

The bill relocates the general penalty provisions that apply to a violation of R.C. 4511.19(B), currently referred to as state OMVUAC, from R.C. 4511.99(N) and 4507.16(E) to R.C. 4511.19, makes certain changes in those penalties, and renames the offense as "operating a vehicle after underage alcohol consumption" or "state OVUAC." Under the bill (R.C. 4511.19(H)):

(1) **Generally.** Except as otherwise described below, state OVUAC is a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court must impose a Class 5 (definite period of three months to two years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

(2) **Second or subsequent offense in one year.** If, within one year of the offense, the offender previously has been convicted of one or more state OVUAC violations or of an equivalent offense that is equivalent to state OVUAC, state OVUAC is a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court must impose a Class 3 (definite period of one to five years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

(3) **Limited driving privileges.** Under the bill, any person whose license, permit, or nonresident operating privilege has been suspended for OVUAC may file a petition for limited driving privileges during the suspension. The person must file the petition in the court that has jurisdiction over the place of arrest. The court may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. However, the court may not grant the privileges for employment as a driver of a commercial motor vehicle to any person who is disqualified from operating a commercial motor vehicle under the Commercial Driver's License Law or during any of the periods during which a court is not permitted to suspend a suspension. (R.C. 4510.13(B).)

**Definition of "equivalent offense" for purposes of state OVI and other provisions of R.C. Chapter 4511.**

The bill defines the term "equivalent offense," for use in R.C. 4511.181 to 4511.197. State OVI and state OVUAC are included within that range of sections. Under the bill, the term means any of the following: (1) the offense of "aggravated vehicular homicide" or "aggravated vehicular assault," as modified by the bill, when it is based on the offender's commission of state OVI or a substantially equivalent municipal ordinance, (2) the offense of "aggravated vehicular homicide" or "vehicular assault," as modified and enacted by the bill, when it is

based on the offender acting recklessly, (3) a violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OVI or to any offense listed in clause (1) or (2) of this paragraph, or (4) a violation of a former Ohio law that was substantially equivalent to state OVI or to any offense listed in clause (1) or (2) of this paragraph. (R.C. 4511.181(A).)

**Taking of chemical tests, use of tests in a criminal or juvenile proceeding, qualified immunity, and reports as prima facie proof regarding state OVI and state OVUAC**

**Generally**

The bill revises the existing procedures relative to the taking of a chemical test under the state's Vehicle Implied Consent Law (see below) and to the use of those tests in a court proceeding. Under the bill, when a person submits to a chemical test under that Law, only a physician, a registered nurse, or a *qualified* technician, chemist, or *phlebotomist* may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the *whole blood, blood serum, or blood plasma*. As under existing law, this limitation does not apply regarding breath or urine samples. A person authorized to withdraw blood under this provision may refuse to withdraw it if, in that person's opinion, the physical welfare of the person would be endangered by withdrawing the blood.

Under the bill, in any criminal prosecution or juvenile court proceeding for a state OVI or state OVUAC violation or for an "equivalent offense" (see above), the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within two hours of the time of the alleged violation. (R.C. 4511.19(D)(1).)

Under the bill, in a criminal prosecution or juvenile court proceeding for a state OVI violation or for an "equivalent offense," if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentrations specified in the offense of state OVI, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state OVUAC violation or for an "equivalent offense" that is substantially equivalent to state OVUAC. (R.C. 4511.19(D)(2).)

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon completion of the chemical analysis. The person tested, at the person's own

expense, may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test, in addition to any administered at the request of a law enforcement officer. The form to be read to the person under the Vehicle Implied Consent Law must state this fact. (R.C. 4511.19(D)(3).)

### **Qualified immunity**

The law provides a qualified immunity from civil liability based upon assault and battery or any other cause of action other than malpractice for any of the above-described medical personnel who so withdraws blood and for any medical facility at which it is withdrawn. The bill specifies that the immunity is not available if the person engages in willful or wanton misconduct. (R.C. 4511.19(F).)

### **Laboratory reports as prima facie proof**

The bill specifies that, in general, in any criminal prosecution or juvenile court proceeding for a state OVI violation based on a prohibited concentration of alcohol, drugs of abuse, or both, for a state OVUAC violation, or for an "equivalent offense" (see below) that is substantially equivalent to either offense, a laboratory report from any forensic laboratory certified by the Department of Health that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified below must be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report must contain all of the following: (1) the signature, under oath, of any person who performed the analysis, (2) any findings as to the identity and quantity of alcohol, a drug of abuse, or a combination of them that was found, (3) a copy of a notarized statement by the laboratory director or a designee that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties, and (4) an outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health. (R.C. 4511.19(E)(1).)

Before the prosecutor may use such a report against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, the prosecutor must serve a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

Such a report is not prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice. (R.C. 4511.19(E).)

**Retention of license during appeal of state OVI or state OVUAC conviction**

Any person whose license has been suspended subsequent to the person's conviction of state OVI or state OVUAC and who desires to retain the license during the pendency of an appeal, at the time sentence is pronounced, must notify the court of record or mayor's court that suspended the license of the person's intention to appeal. If the person so notifies the court, the court, mayor, or clerk of the court must retain the license until the appeal is perfected, and, if execution of sentence is stayed, the license must be returned to the person to be held by the person during the pendency of the appeal. If the appeal is not perfected or is dismissed or terminated in an affirmance of the conviction, then the license must be taken up by the court, mayor, or clerk, at the time of putting the sentence into execution, and the court must proceed in the same manner as if no appeal was taken. (R.C. 4511.197(F).)

**Miscellaneous changes regarding state OVI and state OVUAC**

The bill prohibits a court from sentencing an offender to an alcohol treatment program for state OVI or state OVUAC unless the treatment program complies with the minimum standards for such programs adopted by the Director of Alcohol and Drug Addiction Services. An offender who stays in a program under this provision must pay the cost of the stay in the program. If the court determines that the offender is unable to pay the cost of the stay, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund. (R.C. 4511.19(I).)

The bill specifies that all terms defined in R.C. 4510.01, as enacted in the bill, apply regarding state OVI and state OVUAC. If the meaning of a term so defined conflicts with the meaning of the same term as defined in the general Vehicle Law definitions contained in R.C. 4501.01 and R.C. 4511.01, the term as defined in R.C. 4511.01 applies regarding state OVI and state OVUAC (R.C. 4511.19(J)).

Existing R.C. 2937.46 authorizes the Ohio Supreme Court, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of traffic cases, to adopt uniform rules for practice

and procedure in courts inferior to the courts of common pleas, that are not inconsistent with R.C. Chapter 2937. All of the Rules so adopted are binding on all courts inferior to the courts of common pleas. The Court has adopted a series of rules under this authority. The bill specifies that the Ohio Traffic Rules in effect on its effective date do not apply to felony state OVI violations, and that if, on or after the bill's effective date, the Supreme Court modifies the Ohio Traffic Rules to provide procedures to govern felony state OVI violations, the modified Rules will apply to felony state OVI violations. (R.C. 2937.46 and 4511.19(K).)

The bill modifies numerous existing provisions, generally by changing cross-references or making other technical changes, to conform them to its provisions described above that modify the offense of state OVI (state OMVI) and that relocate the penalties for the offense from existing R.C. 4511.99 to R.C. 4511.19 (R.C. 733.40, 1901.024, 1901.31(F), 1907.20(C), 2323.59(B), 2743.51, 2743.52, 2919.22(E)(5)(e) and (H)(2)(a), 2929.01(Z), (JJ), (KK), and (NN), 2929.13(A) and (G), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), 2929.17, 2929.18(B)(3), 2929.19(B), 2929.23(A) and (B), 3793.02, 3793.10, 4501.17, 4503.233, 4503.234, 4511.191(H), 4511.195(C), 5120.033, and 5120.161).

### **Fines, impoundment, and forfeiture for municipal OMVI offenses**

#### **Existing law**

Under existing law, \$25 of any fine imposed for a violation of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine (municipal OMVI) must be deposited into a specified municipal or county indigent drivers alcohol treatment fund created under the Vehicle Implied Consent Law (R.C. 4511.193(A)).

Also, if a person is convicted of municipal OMVI and if, within six years of the current offense, the offender has been convicted of any offense that is considered in determining the sentence of an offender convicted of state OMVI (see "**Existing law--penalties for state OMVI**," above), or if the other circumstances described in paragraph (3), below, apply, the court, in addition to and independent of any sentence it imposes upon the offender for the offense, regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, and subject to an existing "innocent owner" exception contained in R.C. 4503.235, must do whichever of the following is applicable (R.C. 4511.193(B)):

(1) **Second offense in six years**. Except as otherwise described in paragraph (2) or (3), if, within six years of the current offense, the offender has

been convicted of one of those offenses, the court must order the immobilization for 90 days of the vehicle the offender was operating at the time of the offense and the impoundment for 90 days of its license plates (see "**Impoundment, immobilization, and forfeiture procedures**," below).

(2) **Third offense in six years**. Except as otherwise described in paragraph (3), if, within six years of the current offense, the offender has been convicted two times of any of those offenses, the court must order the immobilization for 180 days of the vehicle the offender was operating at the time of the offense and the impoundment for 180 days of its license plates.

(3) **Fourth or subsequent offense in six years or prior felony state OMVI conviction**. If, within six years of the current offense, the offender has been convicted three or more times of any of those offenses, or if the offender previously has been convicted of state OMVI under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred, the court must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense (see "**Impoundment, immobilization, and forfeiture procedures**," below).

### **Operation of the bill**

The bill expands the references to municipal OMVI so that, instead of referring to municipal ordinances relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, they parallel the new provisions the bill includes in the offense of state OVI and refer to *a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine that is substantially equivalent to the state OVI prohibited concentration prohibitions*. It also replaces the listing of offenses that are used in determining whether a person convicted of municipal OMVI is subject to the impoundment and immobilization or forfeiture provisions with the term "equivalent offense," as defined in the bill (see "**Definition of "equivalent offense" for purposes of state OVI and other provisions of R.C. Chapter 4511.**" above), and specifies that those provisions apply only if the vehicle the offender was operating at the time of the arrest is registered in the offender's name. (R.C. 4511.193.)

### **Vehicle impoundment, immobilization, and forfeiture procedures**

#### **Existing law**

Existing law contains detailed procedures that apply regarding the immobilization and impoundment, or the criminal forfeiture to the state, of vehicles used in state OMVI or municipal OMVI violations, when the offender has

one or more prior convictions of any of a list of specified offenses and R.C. 4511.193 or 4511.99 requires the immobilization and impoundment or the forfeiture. The provisions also apply regarding certain "driving under license suspension" violations, as discussed in Part I of this analysis, and regarding "wrongful entrustment" violations, as discussed below. Under existing law, reflecting the existing penalty provisions of R.C. 4511.99 regarding state OMVI and the existing provisions of R.C. 4511.193 regarding municipal OMVI, the immobilization, impoundment, and forfeiture provisions apply regarding the vehicle used in the offense even if the person who commits the offense (the vehicle operator) is not the vehicle's owner. (R.C. 4503.233 and 4503.234.)

Existing law contains related provisions, referred to as the "innocent owner exception," to protect vehicle owners whose vehicles were used in a state OMVI or municipal OMVI offense (or a driving under suspension or wrongful entrustment offense) that is subject to the immobilization, impoundment, and forfeiture provisions, but who were not involved in the offense and did not know or have reason to suspect that the vehicle would be used in the offense or who would suffer a substantial injustice if the vehicle were immobilized or forfeited. A vehicle owner who wishes to utilize the exception must file a motion with the court requesting that the immobilization and impoundment order, or the forfeiture order, not be issued. (R.C. 4503.235.)

### **Operation of the bill**

The bill modifies the immobilization, impoundment, and forfeiture procedures to conform them to the changes it makes in the state OVI (state OMVI) penalty provisions regarding vehicle immobilization, impoundment, and forfeiture for state OMVI and the provisions of R.C. 4511.193 regarding vehicle immobilization, impoundment, and forfeiture for municipal OMVI (it makes similar changes regarding the driving under suspension and the wrongful entrustment provisions). Under the bill, the state OVI and the R.C. 4511.193 immobilization, impoundment, and forfeiture provisions apply regarding a vehicle used in a state OVI or municipal OVI violation *only if the vehicle is registered in the name of the offender*. The bill changes the terminology of the immobilization, impoundment, and forfeiture procedures to reflect this change. It also changes numerous cross-references to existing Revised Code sections, the content of which it relocates to reflect the new Revised Code locations of the provisions. Finally, it repeals the existing "innocent owner" exception that is available in potential vehicle immobilization, impoundment, and forfeiture situations; under the bill, an immobilization and impoundment order or a forfeiture order may be issued only if the person convicted of the offense also is the vehicle owner. (R.C. 4503.233 and 4503.234, and repeal of R.C. 4503.235 in Section 2.)

The bill modifies a few provisions, generally by changing cross-references or by making other technical changes, to conform them to its changes described above that relate to vehicle impoundment, immobilization, and forfeiture (R.C. 2743.191(A), 4501.19, and 4503.236).

**Pretrial seizure and retention of vehicle involved in OMVI (OVI) offense**

**Existing law**

Under existing law, if a person is arrested for a state OMVI or municipal OMVI violation and if the person, upon conviction of the offense, would be subject to the issuance of a vehicle immobilization and impoundment order or a vehicle criminal forfeiture order as a result of the conviction, the arresting officer or another officer of the agency that employs the arresting officer must seize the vehicle that the person was operating at the time of the offense and its license plates. The law provides detailed procedures that govern the disposition of the vehicle after its seizure, including its possible return in specified circumstances to the vehicle owner.

A vehicle seized under this provision must be safely kept at the place to which it is towed or otherwise moved by the law enforcement agency until the vehicle operator's initial appearance relative to the charge in question. If, at the initial appearance, the vehicle operator pleads guilty or no contest to the state OMVI or municipal OMVI violation: (1) the court must impose sentence upon the vehicle operator as provided by law or ordinance, (2) the court, except as described below and subject to the "innocent owner" exception, must order the immobilization of the vehicle and the impoundment of its license plates or the criminal forfeiture of the vehicle, whichever is applicable, and (3) the vehicle and its license plates cannot be returned or released to the vehicle owner. If the vehicle operator is not the vehicle owner and the owner is not present at the appearance and if the court believes that the owner was not provided adequate notice of the initial appearance, the court may refrain for a period of time not exceeding seven days from ordering the immobilization of the vehicle and the impoundment of its license plates, or the criminal forfeiture of the vehicle so that the owner may appear before the court to present evidence as to why the court should not order the immobilization and impoundment or forfeiture.

If, at any time, the charge that the vehicle operator committed the state OMVI or municipal OMVI violation is dismissed for any reason, the court must order that the vehicle seized at the time of the arrest and its license plates immediately be released to the vehicle owner subject to the payment of expenses or charges incurred in the removal and storage of the vehicle.

If a vehicle seized under the provision is not returned or released to the vehicle owner as described above, the vehicle or its license plates must be retained until the final disposition of the charge in question. Upon the final disposition of that charge, the court must do whichever of the following is applicable: (1) if the vehicle operator is convicted of the state OMVI or municipal OMVI violation, the court must impose sentence upon the vehicle operator as provided by law or ordinance and, subject to the innocent owner exception, must order the immobilization and impoundment of the vehicle or the criminal forfeiture of the vehicle, whichever is applicable, (2) if the vehicle operator is found not guilty of the violation, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage, or (3) if the charge that the vehicle operator committed the state OMVI or municipal OMVI violation is dismissed for any reason, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage.

The vehicle owner may be charged expenses or charges incurred in the removal and storage of the immobilized vehicle. The court with jurisdiction over the case, after notice to all interested parties, including lienholders, and after an opportunity for them to be heard, if the vehicle owner fails to appear in person, without good cause, or if the court finds that the vehicle owner does not intend to seek release of the vehicle at the end of the period of immobilization or that the vehicle owner is not or will not be able to pay the expenses and charges incurred in its removal and storage, may order that title to the vehicle be transferred, in order of priority, first into the name of the person or entity that removed it, next into the name of a lienholder, or lastly into the name of the owner of the place of storage. Special provisions apply regarding any lienholder that receives title under such a court order. (R.C. 4511.195.)

### **Operation of the bill**

The bill modifies the pretrial vehicle seizure and retention provisions to conform them to the changes it makes in the state OVI penalty provisions regarding vehicle immobilization, impoundment, and forfeiture and the provisions of R.C. 4511.193 regarding vehicle immobilization, impoundment, and forfeiture for municipal OMVI. Under the bill, the state OVI and the R.C. 4511.193 immobilization, impoundment, and forfeiture provisions apply regarding a vehicle used in a state OVI or municipal OMVI violation *only if the vehicle used in the offense was registered in the offender's name*. The bill changes the terminology, and many of the procedures, of the pretrial seizure and retention provisions to reflect this change. It also changes the definition of a municipal OMVI ordinance to conform to the bill's modification of state OVI to include prohibited

concentrations of alcohol in a person's *whole blood, blood plasma, or blood serum*, utilizes the term "equivalent offense" as it is defined in the bill (see above), eliminates references to the "innocent owner" exception the bill repeals, and adds a new "fourth option" that applies to the court upon the final disposition of the charge that was the basis for the seizure of the vehicle. Under the bill's fourth option, instead of using any of the three existing options as described in the second preceding paragraph, if the impoundment of the vehicle in question was not authorized under the pretrial seizure and retention provision as amended by the bill, the court must order that the vehicle and its license plates be returned immediately to the arrested person and order that the state or a political subdivision of the law enforcement agency served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage. (R.C. 4511.195.)

### **Vehicle Implied Consent Law**

#### **Existing law**

The existing Vehicle Implied Consent Law specifies that any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular traffic or parking within Ohio is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine if 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. If specified procedures are complied with, and if either a person is asked to submit to such a test and refuses or a person submits to such a test and has a prohibited concentration in his or her blood, breath, or urine, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended. The Law contains procedures for appealing a suspension so imposed. At the end of the period of a suspension imposed under that Law, the person may get his or her license back if the person shows proof of financial responsibility, a policy of liability insurance of a specified nature, or proof that the person is able to respond to damages in an amount at least equal to a minimum specified amount and if the person pays to the Bureau of Motor Vehicles (BMV) a single license reinstatement fee of \$405, to be deposited in a specified manner (see "**Reinstatement of suspended license or permit**," below). (R.C. 4511.191.)

#### **Operation of the bill**

The bill modifies some of the provisions of the existing Vehicle Implied Consent Law, simplifies some of the procedures that pertain to that Law, and

relocates much of the substance of that Law from existing R.C. 4511.191 into several other sections.

**General implied consent.** Under the bill, any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular traffic or parking within Ohio is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's *whole blood, blood serum or plasma*, breath, or urine if arrested for the offense of state OVI or state OVUAC, as they exist under the bill, or for a substantially equivalent municipal ordinance. The tests under this provision must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was committing state OVI or state OVUAC or a violation of a substantially equivalent municipal ordinance. The officer's law enforcement agency must designate which test or tests is to be administered. Any person who is dead or unconscious or who otherwise is in a condition rendering the person incapable of refusal is deemed to have consented as described above, and the test or tests generally may be administered. (R.C. 4511.191(A).)

**Giving of advice by arresting officer.** The bill provides that, when a person is arrested for state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance, the arresting law enforcement officer must give the person a specified type of advice. The advice must be in a written form containing the information described below and must be read to the person. The form must contain a statement that it was shown to the person under arrest and read to the person by the arresting officer. One or more persons must witness the officer's reading of the form and certify to that fact by signing the form. The bill also specifies that the person must be read the form before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath, or urine. (R.C. 4511.192(A).)

The form must read as follows (R.C. 4511.192(B)):

"You now are under arrest for operating a vehicle while under the influence. If you take any chemical test or tests required under section 4511.191 of the Revised Code and are found to be at or over the prohibited amount of alcohol in your whole blood, blood serum or plasma, breath, or urine as set by law, you will be subject to at least the following:

- (1) Immediate suspension of your privilege to operate a vehicle in Ohio;
- (2) Payment of a reinstatement fee.

If you refuse to take any chemical test or tests required under that section, you will be subject to at least the following:

- (1) A presumption that you were under the influence of alcohol, a drug of abuse, or a combination of them at the time you were operating the vehicle;
- (2) Immediate suspension of your privilege to operate a vehicle in Ohio;
- (3) Payment of a reinstatement fee that is substantially higher than the fee that would be required if you had taken the test or tests.

If you take a chemical test or tests required under that section, you may have an independent chemical test taken at your own expense."

**Duties of arresting officer when chemical test is not requested.** If a person is arrested for state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance and the arresting law enforcement officer does not ask the person to submit to a chemical test or tests, the officer must seize the person's Ohio or out-of-state driver's or commercial driver's license or permit and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person does not have the person's license or permit or it is not in the person's vehicle, the officer must order the person to surrender it to the officer's law enforcement agency within 24 hours after the arrest, and, upon the surrender, the agency immediately must forward it to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court must retain it pending the arrested person's initial appearance and any action taken under R.C. 4511.196, as described below in "**R.C. 4511.196 suspension.**" (R.C. 4511.192(C).)

**Duties of arresting officer when chemical test is requested.** If a law enforcement officer arrests a person for state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance, the arresting officer asks the person to submit to a chemical test or tests, the officer advises the person of the consequences of the person's refusal or submission as described above, and the person either refuses to submit to the test or tests or submits to the test or tests and the results indicate a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer must do all of the following (R.C. 4511.192(D)):

- (1) On behalf of the Registrar of Motor Vehicles (the Registrar), notify the person that, independent of any penalties or sanctions imposed, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date

of the person's arrest or the issuance of a citation to the person, *and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance;*

(2) Seize the person's driver's or commercial driver's license or permit and immediately forward it to the Registrar. If the arrested person does not have the person's license or permit or it is not in the person's vehicle, the officer must order the person to surrender it to the officer's law enforcement agency within 24 hours after the person is given notice of the suspension, and, upon the surrender, the officer's agency immediately must forward it to the Registrar.

(3) Verify the person's current residence and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the Registrar of the change;

(4) Send to the Registrar, within 48 hours after the arrest, a sworn report that includes all of the following statements: (a) that the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was committing state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance, (b) that the person was arrested and charged with a violation described in clause (a), (c) that the officer asked the person to take the designated chemical test or tests, advised the person as described above of the consequences of submitting to, or refusing to take, the test or tests, and gave the person the required form, and (d) that the person either refused to submit to the test or tests or submitted to the test or tests and the test results indicate a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

**Delivery and effect of officer's sworn report.** The arresting officer must give the sworn report the officer completes to the arrested person at the time of the arrest, or the Registrar must send it to the person by regular first class mail as soon thereafter as possible, but not later than 14 days after receipt of the report. An arresting officer may give an unsworn report to the arrested person at the time of the arrest if it is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than 48 hours after the arrest, the arresting officer must send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

The arresting officer's sworn report is prima facie proof of the information and statements that it contains. It must be admitted and considered as prima facie proof of the information and statements it contains in any appeal under the bill

relative to any suspension of a person's license, permit, or privilege (see below) that results from the arrest covered by the report. (R.C. 4511.192(E) and (F).)

**Suspension for refusal to take a chemical test.** Upon receipt of the sworn report of a law enforcement officer who arrested a person for committing state OVI or state OVUAC or a violation of a substantially equivalent municipal ordinance that was completed and sent to the Registrar and a court pursuant to another provision of the bill (see below) and that is in regard to a person who refused to take the designated chemical test, the Registrar must enter into the Registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer and the period of the suspension.

The suspension, which is subject to appeal as described below, is for whichever of the following periods applies: (1) except when clause (2) or (3) applies, the suspension is a Class C (one year) administrative suspension, (2) if the arrested person, *within six years* of the date of the refusal, had refused one previous request to consent to a chemical test, the suspension is a Class B (two years) administrative suspension, and (3) if the arrested person, within six years of the date of the refusal, had refused two or more previous requests to consent to a chemical test, the suspension is a Class A (three years) administrative suspension. The Registrar must terminate a suspension imposed under this provision, or a denial of a license or permit, upon receipt of a notice that the person has entered a plea of guilty to, or has been convicted of, state OVI or state OVUAC or a violation of a law or ordinance containing an equivalent offense, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial. Also, the Registrar must credit against any judicial suspension of a person's license or permit imposed by the sentencing judge as a sanction for conviction of the offense of state OVI or state OVUAC any time during which the person serves a related suspension imposed under the provision described in this paragraph. (R.C. 4511.191(B) and 4510.02(B).)

**Suspension for taking and "failing" a chemical test.** Upon receipt of the sworn report of a law enforcement officer who arrested a person for committing state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance that was sent to the Registrar and a court and that is in regard to a person who took the designated chemical test and whose test results indicate that the person's *whole blood, blood serum or plasma*, breath, or urine contained a concentration specified in state OVI as a prohibited concentration, the Registrar must enter into the Registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer and the period of the suspension.

The suspension, which is subject to appeal as described below, is for whichever of the following periods applies: (1) except when clause (2), (3), or (4) applies, the suspension is a Class E (three months) administrative suspension, (2) if the arrested person, *within six years* of the date of the refusal, *has not been convicted* one time of state OVI, state OVUAC, or an equivalent offense, the suspension is a Class C (one year) administrative suspension (note that this provision should say that if the person *has been convicted* one time of one of those offenses), (3) if the arrested person, *within six years* of the date of the refusal, has been convicted two times of state OVI, state OVUAC, or an equivalent offense, the suspension is a Class B (two years) administrative suspension, and (4) if the arrested person, *within six years* of the date of the refusal, has been convicted more than two times of state OVI, state OVUAC, or an equivalent offense, the suspension is a Class A (three years) administrative suspension. The Registrar must terminate a suspension imposed under this provision, or a denial of a license or permit, upon receipt of a notice that the person has entered a plea of guilty to, or has been convicted of, state OVI or state OVUAC or a violation of a law or ordinance containing an equivalent offense, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial. Also, the Registrar must credit against any judicial suspension of a person's license or permit imposed by the sentencing judge as a sanction for conviction of the offense of state OVI or state OVUAC any time during which the person serves a related suspension imposed under the provision described in this paragraph. (R.C. 4511.191(C) and 4510.02(B).)

**Taking effect of the suspension.** A suspension of a person's license, permit, or privilege under the bill's provisions for refusing to take a chemical test, or for taking and "failing" a chemical test, as described above, is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge in question does not affect the suspension. (R.C. 4511.191(D)(1).)

**Notification of officials from another state.** The bill retains an existing provision that specifies that, when it finally has been determined under Ohio law that a nonresident's operating privilege has been suspended, the Registrar must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license (R.C. 4511.191(E)).

**Time of initial appearance.** If a person is arrested for state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance, regardless of whether the person's license or permit or nonresident operating privilege is or is not suspended under any provision of law, the person's initial

appearance on the charge resulting from the arrest must be held within five days of the person's arrest or the issuance of the citation to the person, subject to any continuance granted by the court under a specified provision of law (see below) regarding the issues specified in that provision (R.C. 4511.191(D)(2)).

**Appeal of suspension.** The bill relocates and modifies the existing provisions that pertain to the appeal of a license suspension imposed under the Implied Consent Law. Under the bill, if a person is arrested for state OVI, state OVUAC, or a substantially equivalent municipal ordinance violation and if the person's driver's or commercial driver's license or permit or nonresident operating privilege is so suspended, the person may appeal the suspension at the person's initial appearance on the charge resulting from the arrest *or within the period ending 30 days after the person's initial appearance on that charge*, in the court in which the person will appear on that charge. If the person appeals the suspension, either the person or the Registrar may request a continuance of the appeal and the court may grant the continuance. The court also may continue the appeal on its own motion. An appeal must be filed in the municipal court, county court, juvenile court, mayor's court, or court of common pleas with jurisdiction over the charge in relation to which the person was arrested. (R.C. 4511.197(A) and (B).)

If a person appeals a suspension as described above, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable ground to believe the arrested person was committing state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance and whether the arrested person was in fact placed under arrest, (2) whether the law enforcement officer requested the arrested person to submit to the chemical test or tests designated under law, (3) whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test or tests, (4) whether the arrested person refused to submit to the chemical test or tests requested by the officer or whether the chemical test results indicate that the arrested person's whole blood, blood plasma or serum, breath, or urine contained a concentration of alcohol prohibited under state OVI. A person who appeals a suspension has the burden of proving, by a preponderance of the evidence, that one or more of these conditions has not been met. If, during the appeal, the judge or magistrate of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, magistrate, or mayor must uphold the suspension, continue the suspension, and notify the Registrar of the decision on a form approved by the Registrar. (R.C. 4511.197(C) and (D).)

Generally, if a suspension imposed under the Vehicle Implied Consent Law, as described above, is upheld on appeal or if the subject person does not appeal the suspension, the suspension continues until the complaint alleging the

violation for which the person was arrested and in relation to which the suspension was imposed is adjudicated on the merits or terminated pursuant to law. If the suspension was imposed for a refusal to submit to a requested test and it is continued under this provision, any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not terminate or otherwise affect the suspension. If the suspension was imposed because the person had a prohibited concentration of alcohol in the person's blood, breath, or urine in relation to an alleged misdemeanor state OVI or state OVUAC violation and it is continued under this provision, the suspension terminates if, for any reason, the person subsequently is found not guilty of the charge that resulted in the person taking the chemical test or tests. (R.C. 4511.197(D).)

If, during the appeal, the judge or magistrate of the trial court or the mayor of the mayor's court determines that one or more of the conditions specified in the second preceding paragraph have not been met, the judge, magistrate, or mayor must: terminate the suspension, subject to the imposition of a new suspension under R.C. 4511.196 (see "R.C. 4511.196 suspension," below); notify the Registrar of the decision on a form approved by the Registrar; and, except as provided under R.C. 4511.196, order the Registrar to return the driver's or commercial driver's license or permit to the person or to take any other measures that may be necessary, if the license or permit was destroyed under law, to permit the person to obtain a replacement license or permit from the Registrar or a deputy registrar in accordance with law. The court also must issue to the person a court order, valid for not more than ten days from the date of issuance, granting the person operating privileges for that period. (R.C. 4511.197(D).)

Except as otherwise described in this paragraph, if a person whose driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the Vehicle Implied Consent Law appeals the suspension as described above, the prosecuting attorney of the county in which the arrest occurred represents the Registrar in the appeal. If the arrest occurred within a municipal corporation within the jurisdiction of the court in which the appeal is conducted, the city director of law, village solicitor, or other chief legal officer of that municipal corporation represents the Registrar. If the appeal is conducted in a municipal court, the Registrar is represented as provided in a specified provision of Municipal Court Law. If the appeal is conducted in a mayor's court, the city director of law, village solicitor, or other chief legal officer of the municipal corporation that operates that mayor's court represents the Registrar. (R.C. 4511.197(G).)

**Limited driving privileges.** Any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended

pursuant to the Vehicle Implied Consent Law may file a petition requesting limited driving privileges in the common pleas court, municipal court, county court, mayor's court, or juvenile court with jurisdiction over the related criminal or delinquency case. The petition may be filed at any time subsequent to the date on which the arresting law enforcement officer serves the notice of suspension upon the arrested person but no later than 30 days after the arrested person's initial appearance or arraignment. Upon the making of a request, limited driving privileges may be granted under R.C. 4503.13, as enacted in the bill (and as discussed in Part I of this analysis), regardless of whether the person appeals the suspension under this section or appeals the decision of the court on the appeal, and, if the person has so appealed the suspension or decision, regardless of whether the matter has been heard or decided by the court. The person must pay the costs of the proceeding, notify the Registrar of the filing of the petition, and send the Registrar a copy of the petition. The court may not grant a person limited driving privileges when prohibited by R.C. 4510.13 or 4511.191, as enacted and amended by the bill (R.C. 4511.197(E)).

**Giving of information and notice regarding actions taken under the suspension appeal provision.** The bill requires the court to give information in writing of any action taken under the R.C. section containing the appeal provisions relative to a suspension under the Vehicle Implied Consent Law to the Registrar. Additionally, when it finally has been determined under the procedures of that section that a nonresident's privilege to operate a vehicle within Ohio has been suspended, the Registrar must give information in writing of the action taken to the motor vehicle administrator of the state of the nonresident's residence and of any state in which the nonresident has a license. (R.C. 4511.197(H) and (I).)

**Conforming changes.** The bill modifies a few existing provisions, generally by changing cross-references or making other technical changes, to conform them to its changes described above relative to the Vehicle Implied Consent Law (R.C. 2743.191(A), 2919.22(C)(1), and 4510.53(B)).

### **Reinstatement of suspended license or permit**

#### **Existing law**

Existing law provides that at the end of the period of a suspension of a person's license or permit under the existing Vehicle Implied Consent Law (for refusing to take a chemical test or for taking and "failing" a chemical test), under the existing provisions requiring the suspension of a license or permit as a result of a state OMVI conviction, or under the existing provisions authorizing the suspension of a license or permit at a person's initial appearance and upon the request of the person whose license or permit was suspended and who is not

otherwise subject to suspension, cancellation, or disqualification, the Registrar must return the license or permit to the person upon the occurrence of all of the following conditions (R.C. 4511.191(L)):

(1) A showing by the person that the person has proof of financial responsibility, a policy of liability insurance of a specified nature, or proof that the person is able to respond to damages in an amount at least equal to a minimum specified amount;

(2) Subject to the limitation described in paragraph (3), below, payment by the person to the BMV of a license reinstatement fee of \$405. The reinstatement fee must be deposited in the State Treasury and credited as follows:

(a) \$112.50 must be credited to the Drivers' Treatment and Intervention Fund, to be used in a specified manner.

(b) \$75 must be credited to the existing Repairs Fund under R.C. 2743.191.

(c) \$37.50 must be credited to the existing Indigent Drivers Alcohol Treatment Fund, to be used in a specified manner.

(d) \$75 must be credited to the existing Ohio Rehabilitation Services Commission under R.C. 3304.12, to be used in the same manner as provided under existing law.

(e) \$75 must be credited to the existing Drug Abuse Resistance Education Programs Fund, to be used by the Attorney General for specified purposes as under existing law (these purposes are identified in R.C. 4511.191(L)(4)).

(f) \$30 must be credited to the existing State Bureau of Motor Vehicles Fund under R.C. 4501.25.

(3) If a person's license or permit is suspended under any of the provisions described above, or any combination of those suspensions, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and shall be required to pay to the BMV, only one reinstatement fee of \$405. The reinstatement fee must be distributed by the BMV as described above under (2)(a) to (f).

### **Operation of the bill**

The bill modifies the amount and the manner of distribution of the required license reinstatement fee. Under the bill, at the end of the period of a suspension of a person's license or permit under the bill's provisions for refusing to take a

chemical test or for taking and "failing" a chemical test, under the bill's provisions requiring the suspension of a license or permit as a result of a state OVI conviction, or under the bill's provisions authorizing the suspension of a license or permit at a person's initial appearance and upon the request of the person whose license or permit was suspended and who is not otherwise subject to suspension, cancellation, or disqualification, the Registrar must return the license or permit to the person upon the occurrence of all of the following conditions (R.C. 4511.19(G)(2) and 4511.191(F)):

(1) As under existing law, a showing by the person that the person has proof of financial responsibility or a related, specified liability coverage;

(2) Subject to the limitation described in paragraph (3), below, payment by the person to the BMV of a license reinstatement fee. The fee is \$280 if the person submitted to a designated chemical test under the Vehicle Implied Consent Law or if the person refused to submit to such a test and pleaded guilty to, or pleaded no contest to and was found guilty of, state OVI, state OVUAC, or a substantially equivalent municipal ordinance and the offense for which the plea was entered or that resulted in the conviction arose from the same incident that led to the suspension. The fee is \$530 if the person refused to submit to a designated chemical test under that Law and the circumstances described in the preceding sentence do not apply. The reinstatement fee must be deposited in the State Treasury and credited as follows:

(a) \$75 of each \$280 fee and \$150 of each \$530 fee must be credited to the Drivers' Treatment and Intervention Fund, to be used in the same manner as described under existing law.

(b) \$50 of each \$280 fee and \$100 of each \$530 fee must be credited to the existing Repairs Fund under R.C. 2743.191.

(c) \$25 of each \$280 fee and \$50 of each \$530 fee must be credited to the existing Indigent Drivers Alcohol Treatment Fund, to be used in the same manner as provided under existing law.

(d) \$50 of each \$280 fee and \$100 of each \$530 fee must be credited to the existing Ohio Rehabilitation Services Commission under R.C. 3304.12, to be used in the same manner as provided under existing law.

(e) \$50 of each \$280 fee and \$100 of each \$530 fee must be credited to the existing Drug Abuse Resistance Education Programs Fund, to be used by the Attorney General for the same purposes as under existing law (these purposes are identified in R.C. 4511.191(G)(4))--the bill modifies these provisions by specifying that, in the evaluation of the effectiveness of the program that the Attorney

General currently is required to make to the Governor and the General Assembly each year, the evaluation must include, but is not limited to, performance or implementation standards).

(f) \$30 of each \$280 fee and of each \$530 fee must be credited to the existing State Bureau of Motor Vehicles Fund under R.C. 4501.25.

(3) If a person's license or permit is suspended under any of the provisions described above, or any combination of those suspensions, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and shall be required to pay to the BMV, only one reinstatement fee in the amount determined above under (2). The reinstatement fee must be distributed by the BMV as described above under (2)(a) to (f).

### **R.C. 4511.196 suspension**

#### **Existing law**

Under existing law, if a person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for having a prohibited concentration of alcohol in the person's blood, breath, or urine, if the person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under the Vehicle Implied Consent Law in relation to that arrest, if the person appeals the suspension in accordance with that Law (at the person's initial appearance), and if the judge, magistrate, or mayor terminates the suspension in accordance with that Law, the judge, magistrate, or mayor may impose a new suspension of the person's license, permit, or nonresident operating privilege, notwithstanding the termination, if the judge, magistrate, or mayor determines that the person's continued driving will be a threat to public safety. If a person is so arrested and the person's driver's or commercial driver's license or permit or nonresident operating privilege has not been suspended under the Vehicle Implied Consent Law in relation to that arrest, the judge, magistrate, or mayor may impose a suspension of the person's license, permit, or nonresident operating privilege if the judge, referee, or mayor determines that the person's continued driving will be a threat to public safety.

A suspension described under the preceding paragraph continues until the complaint on the charge resulting from the arrest is adjudicated on the merits. Any time during which the person serves the suspension is credited against any judicial suspension of the person's license, permit, or nonresident operating privilege that is imposed as a result of the person's conviction of state OMVI or an equivalent municipal ordinance. (R.C. 4511.196.)

### **Operation of the bill**

The bill specifies that the R.C. 4511.196 suspensions apply in relation to a person arrested for state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance and a judge, magistrate, or mayor may impose the suspensions *at any time prior to the adjudication on the merits of the charge resulting from the subject person's arrest*. The bill also makes several changes to conform to other, previously described, changes it contains. (R.C. 4511.196.)

### **New offense-- "having physical control of a vehicle while under the influence"**

The bill enacts a new offense named "having physical control of a vehicle while under the influence." It prohibits a person from being in "actual physical control" (see below) of a stationary vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified as being a prohibited concentration under the offense of state OVI under the bill. The offense is a misdemeanor of the first degree. In addition to all other sanctions imposed, the sentencing court is authorized to impose on the offender a Class 6 (definite period not to exceed one year) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. (R.C. 4511.194(B) and (C).)

For purposes of the new offense, the bill defines "actual physical control" as being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's streetcar's, or trackless trolley's ignition key or other ignition device. (R.C. 4511.194.)

The new offense is linked to the definition of "operate" that the bill enacts in R.C. 4511.01 and that, in relevant part, applies to the offenses of state OVI and state OVUAC under the bill. Under the bill, state OVI and state OVUAC prohibit a person from *operating* a vehicle, streetcar, or trackless trolley in specified circumstances. And under the bill's definition of "operate," a person must cause, or have caused, movement of the vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking. Thus, under the bill, if a person *does not cause, and has not caused, movement* of a vehicle, streetcar, or trackless trolley in the specified manner, the person has not committed state OVI or state OVUAC. However, if the person is in the driver's position and possesses the ignition device, the person might have committed the new offense of having physical control of a vehicle while under the influence. (R.C. 4511.01(GGG), 4511.19(A) and (B), and 4511.194.)

## Offense of wrongful entrustment

### Existing law

Existing law prohibits a person from authorizing or knowingly permitting a motor vehicle owned by the person or under the person's control to be driven by another if either of the following applies: (1) the offender knows or has reasonable cause to believe the other person has no legal right to drive the motor vehicle, or (2) the offender knows or has reasonable cause to believe the other person's act of driving the motor vehicle would violate any prohibition contained in the state's Driver's License Law contained in R.C. Chapter 4507. (R.C. 4507.33.)

A violation of either of these prohibitions is the offense of "permitting the operation of a vehicle by a person with no legal right to operate a vehicle," and is punished as follows (R.C. 4507.99(E)):

(1) Except as otherwise provided in paragraph (2), it is a misdemeanor of the first degree. In addition to or independent of any other sentence it imposes upon the offender and subject to the existing "innocent owner" exception in R.C. 4503.235, the court must order the immobilization for 30 days of the vehicle involved in the offense and the impoundment for 30 days of its license plates. The order must be issued and enforced under R.C. 4503.233, as described above in "**Vehicle impoundment, immobilization, and forfeiture procedures.**"

(2) If the offender one or more times previously has been convicted of the offense, permitting the operation of a vehicle by a person with no legal right to operate a vehicle is a misdemeanor of the first degree. In addition to or independent of any other sentence it imposes upon the offender and subject to the existing innocent owner exception, the court must order the criminal forfeiture to the state of the vehicle involved in the offense. The order must be issued and enforced under R.C. 4503.233, as described above in "**Vehicle impoundment, immobilization, and forfeiture procedures.**" If title to a motor vehicle that is subject to an order for criminal forfeiture under this provision is assigned or transferred, generally, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from the fine are distributed under existing R.C. 4503.234(D)(4).

Existing law provides for the pretrial seizure and retention of a vehicle involved in a violation of existing R.C. 4507.33 if, upon conviction of the violation, the vehicle would be subject to an order of immobilization and impoundment or an order of criminal forfeiture to the state. The pretrial seizure and retention provisions parallel the existing pretrial seizure and retention

provisions that apply in relation to a vehicle involved in an OMVI offense, as described above in "Pretrial seizure and retention of vehicle involved in and OMVI (OVI) offense." (R.C. 4507.38.)

### **Operation of the bill**

The bill modifies the elements of and penalties for the offense currently named "permitting the operation of a vehicle by a person with no legal right to operate a vehicle," relocates the offense from R.C. 4507.33 to R.C. 4511.203, and renames the offense "wrongful entrustment of a motor vehicle."

**Offense.** Under the bill, the provision prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if any of the following applies (R.C. 4511.203(A)): (1) the offender knows or should know that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges or that the license, permit, or privilege have been suspended or canceled under the Revised Code, (2) the offender knows or should know that the other person's act of driving the motor vehicle would violate any prohibition contained in the state's Financial Responsibility Law, or (3) the offender knows or should know that the other person's act of driving would be the offense of state OVI, state OVUAC, or a violation of any substantially equivalent municipal ordinance.

**Prima facie evidence of offender's knowledge.** The bill specifies that it is *prima facie* evidence that the offender knows or should know that the motor vehicle owned by the offender or under the offender's control was operated in violation of the above-described prohibition if either of the following applies (R.C. 4511.203(B)): (1) the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense, or (2) the offender and the operator of the motor vehicle reside in the same household.

**Penalties.** The bill specifies that a violation of the above-described prohibition is the offense of "wrongful entrustment of a motor vehicle," a misdemeanor of the first degree. In addition to the penalties imposed under the Criminal Sentencing Law, the court must impose a Class 6 (definite period not to exceed one year) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. If the vehicle involved in the offense is registered in the offender's name, the court must order one the following (R.C. 4511.203(C)):

(1) Except as otherwise described below in (2) or (3), the court must order, for 30 days, the immobilization of the offender's vehicle and the impoundment of its license plates.

(2) If the offender previously has been convicted one time of wrongful entrustment or a violation of a substantially equivalent municipal ordinance, the court must order, for 60 days, the immobilization of the offender's vehicle and the impoundment of its license plates.

(3) If the offender previously has been convicted two or more times of wrongful entrustment or a violation of a substantially equivalent municipal ordinance, the court must order the criminal forfeiture to the state of the offender's vehicle. If title to a motor vehicle that is subject to an order for criminal forfeiture is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from the fine are distributed in accordance with R.C. 4503.234(C)(2).

If a court orders the immobilization of a vehicle as described above, it cannot release the vehicle from the immobilization before the termination of the period of immobilization ordered unless it is presented with current proof of financial responsibility with respect to that vehicle (R.C. 4511.203(D)).

If a court orders the criminal forfeiture of a vehicle as described above, upon receipt of the order from the court, neither the Registrar nor any deputy registrar may accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial is five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the Registrar of the termination. If the court terminates the forfeiture and notifies the Registrar, the Registrar must take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the vehicle's registration. (R.C. 4511.203(E)).

**Exclusion.** The bill states that none of its provisions described above relative to the offense of wrongful entrustment apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in R.C. 4549.65 (R.C. 4511.203(F)).

**Pretrial seizure and retention of vehicle involved in the offense.** The bill modifies some of the existing provisions that pertain to the pretrial seizure and retention of a vehicle involved in a wrongful entrustment violation and relocates the provisions from R.C. 4507.38 to R.C. 4510.41. The modified provisions are discussed in more detail in Part I of this analysis.

**Conforming changes regarding wrongful entrustment.** The bill modifies a few existing provisions, generally by changing cross-references or making other

technical changes, to conform them to its changes described above relative to the offense of wrongful entrustment (R.C. 4503.233, 4503.234, 4507.164(E), and 4510.41).

### **Vehicular homicide, vehicular assault, and involuntary manslaughter offenses**

#### **Vehicular homicide offenses**

**Existing law--offense of aggravated vehicular homicide.** Existing law prohibits any person, while operating or participating in the operation of a "motor vehicle" (see below), motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *recklessly* causing the death of another or the "unlawful termination of another's pregnancy." A violation of the prohibition is the offense of "aggravated vehicular homicide." The offense generally is a felony of the third degree, but, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, the offense of "vehicular homicide" or "aggravated vehicular assault," or the offense of "involuntary manslaughter" in a case in which the offender was subject to the special sanctions provided for that offense in specified circumstances in which it was vehicle-related and alcohol-related (hereafter, "R.C. 2903.04(D) sanctions"), it is a felony of the second degree. (R.C. 2903.06(A) and (B).)

If the jury or judge as trier of fact finds that an offender convicted of aggravated vehicular homicide 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. When the trier of fact determines whether the offender was under the influence of alcohol, a drug of abuse, or both, the concentration of alcohol in the offender's blood, breath, or urine may be considered as competent evidence, and the offender must be presumed to have been under the influence of alcohol if there was at the time the bodily substance was withdrawn for a chemical test a concentration of .10 of one per cent or more by weight of alcohol in the offender's blood, .10 of one gram or more by weight of alcohol per 210 liters of the offender's breath, or .14 of one gram or more by weight of alcohol per 100 milliliters of the offender's urine. (R.C. 2903.06(B).)

Further, the offender must be sentenced to a mandatory prison term and is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits if any of the following applies (R.C. 2903.06(C)): (1) the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, involuntary manslaughter when the offender was subject to the R.C. 2903.04(D) sanctions, state watercraft OMVI (R.C. 1547.11), vehicular homicide, aggravated vehicular assault, state OMVI or state OMVUAC, driving

with a suspended license (R.C. 4511.192), driving under suspension or revocation in violation of license restrictions, driving under OMVI suspension or revocation, or driving under financial responsibility law suspension or revocation (R.C. 4507.02(B) and (D)), R.C. 4507.38 or 4507.39 as they existed prior to September 24, 1986, a violation of a municipal ordinance that is substantially similar to vehicular homicide, aggravated vehicular assault, state OMVI, state OMVUAC, or driving with a suspended license, a violation of a municipal ordinance that is substantially similar to R.C. 4507.38 or 4507.39 as they existed prior to September 24, 1986, or a violation of a municipal ordinance that is substantially similar to involuntary manslaughter when R.C. 2903.04(D) would apply, (2) the offender has accumulated 12 points pursuant to the state's Motor Vehicle Law within one year of the offense, or (3) in the commission of the offense the offender was driving under suspension or operating a motor vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.

**Existing law--offense of vehicular homicide.** Existing law prohibits any 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 violation of the prohibition is the offense of "vehicular homicide." The offense generally is a misdemeanor of the first degree, but, if the offender previously has been convicted of or pleaded guilty to vehicular homicide, the offense of aggravated vehicular homicide or aggravated vehicular assault, or the offense of involuntary manslaughter when the R.C. 2903.04(D) sanctions apply, it is a felony of the fourth degree. (R.C. 2903.07(A) and (B).)

Provisions similar to the mandatory license revocation and mandatory prison term provisions described above in "**Existing law--offense of aggravated vehicular homicide**" also apply, in similar circumstances, in relation to the offense of vehicular homicide (R.C. 2903.07(B) and (C)).

**Operation of the bill--generally.** The bill repeals the existing Revised Code section that contains the offense of vehicular homicide, incorporates the current vehicular homicide prohibition within the statute that currently contains the offense of aggravated vehicular homicide, modifies the elements of, and penalties for, both of those offenses, and enacts a new, related offense that it names "vehicular manslaughter." The prohibitions that constitute those offenses are consolidated within the Revised Code section that currently contains the offense of aggravated vehicular homicide. (Section 2--repeal of R.C. 2903.07; R.C. 2903.06.)

**Operation of the bill--prohibitions.** The consolidated provisions of the bill prohibit a person, while operating or participating in the operation of a motor

vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways (R.C. 2903.06(A)): (1) as a proximate result of the offender's committing state OVI or a violation of a municipal ordinance substantially equivalent to state OVI, (2) *recklessly* (similar to the current offense of aggravated vehicular homicide), (3) *negligently* (similar to the current offense of vehicular homicide, or (4) as a proximate result of the offender's committing a minor misdemeanor violation of the state's Motor Vehicle Law (R.C. Title XLV) or a violation of a municipal ordinance that, regardless of whether the ordinance classifies the violation as a minor misdemeanor or as a different degree of misdemeanor, is substantially similar to a minor misdemeanor violation of the state's Motor Vehicle Law.

**Operation of the bill--penalties.** The bill generally repeals the existing sentencing structure and special sanctions for the two existing vehicular homicide offenses and enacts a new sentencing structure for those offenses and for violations of the new prohibitions. It designates, and penalizes, violations of the prohibitions described in the preceding paragraph as follows:

(1) A violation of the prohibition set forth in clause (1) of "**Prohibitions,**" above, is designated as the offense of "aggravated vehicular homicide." A violation of the prohibition generally is a felony of the second degree. However, if at the time of the offense, the offender was driving under a suspension imposed under the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions,**" above, any "traffic-related homicide, manslaughter, or assault offense" (see "**Definition,**" below), three prior state OVI or state OMVUAC violations or violations of substantially equivalent municipal ordinances within the previous six years, or a second or subsequent felony state OVI violation, it is a felony of the first degree. The court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to impose upon the offender a Class 7 lifetime suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under R.C. 4510.02(A)(7). (R.C. 2903.06(B)(1)(a), (C), and (D)(1).)

(2) A violation of the prohibition set forth in clause (2) of "**Prohibitions,**" above, also is designated as the offense of "aggravated vehicular homicide." A violation of the prohibition generally is a felony of the third degree. However, if at the time of the offense, the offender was driving under a suspension under new Chapter 4510. of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions,**" above, or any other "traffic-related homicide, manslaughter, or

assault offense," it is a felony of the second degree. If the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or a violation of R.C. 2903.08 as modified by the bill (see "**Vehicular assault offenses**," below), or if, at the time of the violation, the offender was driving under suspension under new Chapter 4510., the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to impose upon the offender a Class 1 (definite period of three years to life) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. (R.C. 2903.06(B)(1)(b), (C), and (D)(1).)

(3) A violation of the prohibition set forth in clause (3) of "**Prohibitions**," above, is designated as the offense of "vehicular homicide." A violation of the prohibition generally is a misdemeanor of the first degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under the Revised Code, or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or any other "traffic-related homicide, manslaughter, or assault offense," it is a felony of the fourth degree. In the same circumstances as are described in the preceding paragraph relative to aggravated vehicular homicide, the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to impose upon the offender a Class 3 (definite period of one to five years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege, provided that, if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above or any "traffic-related homicide, manslaughter, or assault offense," the suspension is a Class 2 (definite period of two to ten years) suspension. (R.C. 2903.06(B)(2) and (C).)

(4) A violation of the prohibition set forth in clause (4) of "**Prohibitions**," above, is designated as the offense of "vehicular manslaughter." A violation of the prohibition generally is a misdemeanor of the second degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under new Chapter R.C. 4510. or if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions set forth in "**Prohibitions**," above, or any other "traffic-related homicide, manslaughter, or assault offense," it is a misdemeanor of the first degree. The court also is required to impose upon the offender a Class 5 (definite period of three months to two years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege, provided that, if the offender previously has been convicted of

or pleaded guilty to a violation of any of the prohibitions set forth in "Prohibitions," above, or any "traffic-related homicide, manslaughter, or assault offense," the suspension is a Class 3 (definite period of one to five years) suspension. (R.C. 2903.06(B)(3).)

**Operation of the bill--definition.** The bill defines the term "traffic-related homicide, manslaughter, or assault offense," for purposes of R.C. 2903.06, as a violation of R.C. 2903.06 as modified by the bill or as it existed before the bill's effective date, a violation of R.C. 2903.08 as modified by the bill or as it existed before the bill's effective date (see "Vehicular assault offenses," below), a violation of R.C. 2903.07 as repealed by the bill, or the offense of involuntary manslaughter when R.C. 2903.04(D) applies. For purposes of R.C. 2903.06, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former Ohio law, or current or former law of another state or the United States. (R.C. 2903.06(D)(1)(b) and (2).)

#### **Vehicular assault offenses**

**Existing law--offense of aggravated vehicular assault.** Existing law prohibits any person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *recklessly* causing serious physical harm to another person or "another's unborn." A violation of the prohibition is the offense of "aggravated vehicular assault." The offense generally is a felony of the fourth degree, but, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, the offense of vehicular homicide or aggravated vehicular homicide, or the offense of involuntary manslaughter when the R.C. 2903.04(D) sanctions applied, it is a felony of the third degree. (R.C. 2903.08(A) and (B).)

Provisions similar to the mandatory license revocation and mandatory prison term provisions described above in "Existing law--offense of aggravated vehicular homicide" also apply, in similar circumstances, in relation to the offense of aggravated vehicular assault (R.C. 2903.08(B) and (C)).

**Operation of the bill--generally.** The bill modifies the elements of, and penalties for, aggravated vehicular assault and enacts a new offense that it names "vehicular assault." The prohibitions that constitute those offenses are located within the Revised Code section that currently contains the offense of aggravated vehicular assault. (R.C. 2903.08.)

**Operation of the bill--prohibitions.** The bill's prohibitions prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn in either of the following ways (R.C. 2903.08(A)): (1) as a proximate result of the offender's committing state OVI or a violation of a municipal ordinance substantially similar to state OVI, or (2) *recklessly* (similar to the current offense of aggravated vehicular assault).

**Operation of the bill--penalties.** The bill generally repeals the existing sentencing structure and special sanctions for aggravated vehicular assault and enacts a new sentencing structure for that offense and vehicular assault. It designates, and penalizes, violations of the prohibitions described in the preceding paragraph as follows:

(1) A violation of the prohibition set forth in clause (1) of "**Prohibitions**," above, is designated as the offense of "aggravated vehicular assault." A violation of the prohibition generally is a felony of the third degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under the Revised Code or the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, any other "traffic-related homicide, manslaughter, or assault offense" (see "**Definition**," below), three prior state OVI or state OMVUAC violations or violations of a substantially equivalent municipal ordinance within the previous six years, or a second or subsequent felony state OVI violation, it is a felony of the second degree. The court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to impose upon the offender a Class 2 (definite period of two to ten years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege, except that, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or a traffic-related homicide, manslaughter, or assault offense, the suspension is a Class 1 (definite period of three years to life) suspension. (R.C. 2903.08(B)(1), (C), and (D)(1).)

(2) A violation of the prohibition set forth in clause (2) of "**Prohibitions**," above, is designated as the offense of "vehicular assault." A violation of the prohibition generally is a felony of the fourth degree. However, if, at the time of the offense, the offender was driving under a suspension imposed under new R.C. Chapter 4510. or if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "**Prohibitions**," above, or, any other "traffic-related homicide, manslaughter, or assault offense," it is a felony

of the third degree. If the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "Prohibitions," above, or a violation of R.C. 2903.06 as modified by the bill, or if, at the time of the violation, the offender was driving under suspension imposed under the Revised Code, the court is required to impose a mandatory prison term on the offender, and the offender is not eligible for a sentence to a community control sanction, for judicial release, or for earned credits. The court also is required to impose upon the offender a Class 3 (definite period of one to five years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege, except that, if the offender previously has been convicted of or pleaded guilty to a violation of either of the prohibitions set forth in "Prohibitions," above, or a traffic-related homicide, manslaughter, or assault offense, the suspension is a Class 2 (definite period of two to ten years) suspension. (R.C. 2903.08(B)(2), (C), and (D).)

Operation of the bill--definition. The bill specifies that the definition of the term "traffic-related homicide, manslaughter, or assault offense" that is described above in "Vehicular homicide offenses" and the statement regarding inclusion of municipal ordinance violations and violations of current or former laws of Ohio, another state, or the United States within penalty and suspension enhancement provisions, also apply for purposes of R.C. 2903.08 as modified by the bill (R.C. 2903.08(D)(2) and (F)).

### Involuntary manslaughter

Existing law. Existing law prohibits any person from doing either of the following: (1) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony (hereafter, the "felony-related prohibition"), or (2) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of the first, second, third, or fourth degree or a minor misdemeanor (hereafter, the "misdemeanor-related prohibition"). A violation of either prohibition is the offense of "involuntary manslaughter." A violation of the felony-related prohibition is a felony of the first degree, and a violation of the misdemeanor-related prohibition is a felony of the third degree. (R.C. 2903.04(A) to (C).)

In addition to any penalty imposed upon the offender under the above-described provisions and the existing Felony Sentencing Law, if the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's commission of the involuntary manslaughter included, as an element of that felony or misdemeanor

offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the following apply (R.C. 2903.04(D)(1)):

(1) The offender's driver's or commercial driver's license or permit or nonresident operating privilege must be permanently revoked pursuant to the state's Motor Vehicle Law.

(2) The offender is not eligible for a sentence to a community control sanction or for judicial release if any of the following apply relative to the offender: (a) the offender previously has been convicted of or pleaded guilty to involuntary manslaughter in circumstances in which the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's commission of the involuntary manslaughter included, as an element of that felony or misdemeanor offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (b) the offender previously has been convicted of or pleaded guilty to a violation of a municipal ordinance that is substantially similar to involuntary manslaughter, and the felony or misdemeanor that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's violation of the municipal ordinance included, as an element of that felony or misdemeanor offense, the offender's operation or participation in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (c) the offender previously has been convicted of or pleaded guilty to a violation of any of a list of motor vehicle operation-related offenses, (d) the offender has accumulated 12 points pursuant to the state's Motor Vehicle Law within one year of the offense, or (e) the offender was driving under suspension at the time the offender committed the offense.

In determining, for purposes of the above-described provisions, whether an offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse at the time of the commission of the offender's commission of the involuntary manslaughter, the trier of fact may consider as competent evidence the concentration of alcohol in the offender's blood, breath, or urine as shown by a chemical test taken pursuant to the state's Implied Consent Law. The offender must be presumed to have been under the influence of alcohol if there was, at the time the bodily substance was withdrawn for the chemical test, a concentration of

.10 of one per cent or more by weight of alcohol in the offender's blood, .10 of one gram or more by weight of alcohol per 210 liters of the offender's breath, or .14 of one gram or more by weight of alcohol per 100 milliliters of the offender's urine. (R.C. 2903.04(D)(2).)

**Operation of the bill--generally.** The bill modifies the elements of, and the additional special sanctions for, involuntary manslaughter. (R.C. 2903.04.)

**Operation of the bill--prohibitions.** The bill does not change the existing felony-related prohibition included within the offense but modifies the language of the misdemeanor-related prohibition included within it (R.C. 2903.04(A) and (B)). Under the bill, the latter prohibition prohibits a person from causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a "regulatory offense" (the bill does not define this term), or a minor misdemeanor, other than one of the following (R.C. 2903.04(B)):

- (1) A minor misdemeanor violation of the state's Motor Vehicle Law;
- (2) A violation of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to a minor misdemeanor violation of the state's Motor Vehicle Law.

**Operation of the bill--penalties.** The bill retains the existing penalty structure for the offense, so that a violation of the existing felony-related prohibition remains a felony of the first degree and a violation of the modified misdemeanor-related prohibition is a felony of the third degree. However, the bill repeals the special sanctions that are provided for the offense under existing law and replaces them with special sanctions that specify that, if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's commission of the involuntary manslaughter was a state OVI or state OMVUAC violation or a violation of a substantially equivalent municipal ordinance or included as an element of the felony, misdemeanor, or regulatory offense the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or both, the court is required to impose a mandatory prison term on the offender from the range of prison terms authorized by law for that level of felony, and the court is required to impose a Class 7 lifetime suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege as specified in R.C. 4510.02(A)(7). (R.C. 2903.04(C) and (D).)

**Conforming changes regarding vehicular homicide and vehicular assault offenses**

The bill modifies a few existing provisions, generally by changing cross-references or making other technical changes, to conform them to its changes described above relative to the vehicular homicide and vehicular assault offenses (R.C. 2901.01(B)(2)(a), 2903.09(C)(1), 2919.22(E)(5), 2929.13(F), 2930.01, 2935.36, 2951.02(A) and (G), 4510.17(E), and 4510.41(C) and (D)).

**State watercraft OMVI**

**Existing law--offense and penalties**

Existing R.C. 1547.11(A) and (B) prohibit a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of Ohio if any of the following applies (hereafter, a violation of any of the prohibitions is referred to as "state watercraft OMVI"):

(1) Regardless of the person's age, any of the following applies: (a) the person is under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, (b) the person has a concentration of .10 of one per cent or more by weight of alcohol in his or her blood, (c) the person has a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of his or her urine, or (d) the person has a concentration of .10 of one gram or more by weight of alcohol per 210 liters of his or her breath.

(2) The person is under 21 years of age and any of the following applies: (a) the person has a concentration of at least .02 of one per cent but less than .10 of one per cent or more by weight of alcohol in his or her blood, (b) the person has a concentration of at least .028 of one gram but less than .14 of one gram or more by weight of alcohol per 100 milliliters of his or her urine, or (c) the person has a concentration of at least .02 of one gram but less than .10 of one gram or more by weight of alcohol per 210 liters of his or her breath.

State watercraft OMVI is a misdemeanor of the first degree, and the offender must be punished as follows (R.C. 1547.99(G)):

(1) Except as described in paragraph (2) or (3), the court must sentence the offender to a term of imprisonment of three consecutive days, may sentence the offender to a longer term of imprisonment authorized for misdemeanors of the first degree, and must impose a fine of not less than \$150 nor more than \$1,000. The court may suspend the mandatory three days of imprisonment in specified circumstances.

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of R.C. 1547.11, of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or both, or a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the blood, breath, or urine, or of a violation of R.C. 2903.06 or 2903.07 (aggravated vehicular homicide and vehicular homicide) in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, the court must sentence the offender to a term of imprisonment of ten consecutive days, may sentence the offender to a longer term of imprisonment authorized for a misdemeanor of the first degree, and must impose a fine of not less than \$150 nor more than \$1,000.

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to more than one violation of a type specified in paragraph (2), above, the court must sentence the offender to a term of imprisonment of 30 consecutive days, may sentence the offender to a longer term of imprisonment of not more than one year, and must impose a fine of not less than \$150 nor more than \$1,000.

#### **Operation of the bill--offense and penalties**

The bill eliminates the portion of the existing prohibitions constituting state watercraft OMVI that applies in relation to *the manipulation of any water skis, aquaplane, or similar device on Ohio waters*. Second, it adds two additional prohibitions to the offense that will apply in addition to the existing prohibitions constituting the offense. One additional prohibition prohibits any person from operating or being in physical control of any vessel underway on Ohio waters if the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*; the second additional prohibition prohibits a person under 21 years of age from operating or being in physical control of any vessel underway on Ohio waters if the person has a concentration of at least .03 of one per cent but less than .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to this change, it modifies the existing prohibitions against operating or being in physical control of a vessel underway on Ohio waters while having a specified concentration of alcohol in his or her blood to specify that the prohibition pertains *only to whole blood* and is to be determined *per unit volume*. For all the existing prohibitions and the additional prohibitions it adds, the bill specifies that the determination of being "under the influence" or of having a "prohibited concentration of alcohol" is determined at the time of the person's operation or control of the vessel. (R.C. 1547.11(A) and (B).)

Regarding the penalties for state watercraft OMVI, the bill extends the "look back period" for determining the penalty from five years to six years. Thus, if any of the specified prior convictions occurs within six years of the state watercraft OMVI offense for which sentence is being imposed, the prior conviction will be considered in determining the offender's sentence. It also modifies the list of prior convictions that is so used. In the list, the bill: (1) removes references to convictions of municipal ordinances relating to manipulating any water skis, aquaplane, or similar device, and (2) revises the list so it refers to a violation of R.C. 2903.06(A)(1) under the bill (aggravated vehicular homicide based on the offender's commission of state OVI or a violation of a substantially equivalent municipal ordinance), or the offense of aggravated vehicular homicide committed in violation of any other prohibition under R.C. 2903.06 under the bill or of the former offense of aggravated vehicular homicide or vehicular homicide as they exist before the bill's effective date in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both. (R.C. 1547.99(G)(2) and (3).)

**Taking of chemical tests, use of tests in a criminal or juvenile proceeding, qualified immunity, and reports as prima facie proof**

**Generally.** The bill revises the existing procedures relative to the taking of a chemical test under the state's Watercraft Implied Consent Law (see below) and to the use of those tests in a court proceeding. Under the bill, when a person submits to a chemical test under that Law, only a physician, a registered nurse, or a *qualified* technician, chemist, or *phlebotomist* may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the *whole blood, blood, serum or blood plasma*. As under existing law, this limitation does not apply regarding breath or urine samples. A person authorized to withdraw blood under this provision may refuse to withdraw it if, in that person's opinion, the physical welfare of the person would be endangered by withdrawing the blood.

Under the bill, in any criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation, or for a violation of a prohibition that is "substantially equivalent" (see below) to such a violation, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn, or specimen taken within two hours of the time of the alleged violation. For purposes of this provision, the related provisions discussed below, and the state's Watercraft Implied Consent Law, "equivalent violation" means a violation of a municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state watercraft OMVI. (R.C. 1547.11(D)(1) and (G)(1).)

Under the bill, in a criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation, other than one that applies only in relation to a person under 21 years of age, or for a substantially equivalent violation, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentrations specified in the offense of state watercraft OMVI, other than the portion of that offense that applies only to persons under 21 years of age, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant or in making an adjudication of the child. This provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation under the portion of the offense that applies only to a person under 21 years of age or for a violation of a prohibition that is substantially equivalent to that portion of the offense (R.C. 1547.11(D)(2)).

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon completion of the chemical analysis. The person tested, at the person's own expense, may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test, in addition to any administered at the request of a law enforcement officer. (R.C. 1547.11(D)(3).)

**Qualified immunity.** The law provides a qualified immunity from civil liability based upon assault and battery or any other cause of action other than malpractice for any of the above-described medical personnel who so withdraws blood and for any medical facility at which it is withdrawn. The bill specifies that the immunity is not available if the person engages in willful or wanton misconduct. (R.C. 1547.11(F).)

**Laboratory reports as prima facie proof.** The bill specifies that, in general, in any criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation or for a violation of an equivalent offense, the court must admit as prima-facie evidence a laboratory report from any forensic laboratory certified by the Department of Health that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified below. The laboratory report must contain all of the following: (1) the signature, under oath, of any person who performed the analysis, (2) any findings as to the identity and quantity of alcohol, a drug of abuse, or a combination of them that was found, (3) a copy of a notarized statement by the laboratory director or a designee that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory, and a notation that performing an analysis of the type involved is part of the analyst's or test

performer's regular duties, and (4) an outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health. (R.C. 1547.11(E)(1).)

Before the prosecuting attorney in a case may use such a report against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, the prosecuting attorney must serve a copy of the report on the defendant's or child's attorney or, if the defendant or child has no attorney, on the defendant or child.

Such a report is not prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant or child to whom the report pertains or the defendant's or child's attorney receives a copy of the report, the defendant or child or the defendant's or child's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice. (R.C. 1547.11(E).)

#### **Watercraft Implied Consent Law--existing law**

Existing law specifies that any person who operates a vessel or uses any water skis, aquaplane, or similar device upon Ohio waters is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine, if arrested for state watercraft OMVI. If specified procedures are complied with, and if a person is asked to submit to such a test and refuses, the person is prohibited from operating a vessel or using any water skis, aquaplane, or similar device, and is prohibited from registering any watercraft under Ohio law, for one year following the date of the alleged violation. If the person under arrest is the owner of the vessel involved in the alleged violation, the arresting law enforcement officer must seize the watercraft registration certificate and tags from the vessel and forward them to the Chief, and the person's registration privileges are suspended for one year following the date of the alleged violation. The law contains procedures for appealing a suspension so imposed. (R.C. 1547.111.)

#### **Watercraft Implied Consent Law--operation of the bill**

The bill modifies some of the provisions of the existing Watercraft Implied Consent Law, and simplifies some of the procedures that pertain to that Law.

**General implied consent.** Under the bill, any person who operates or is in physical control of a vessel (*but not water skis, an aquaplane, or a similar device*) upon Ohio waters is deemed to have given consent to a chemical test or tests to

determine the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine, if arrested for the offense of state watercraft OMVI, as it exists under the bill, or for a substantially equivalent municipal ordinance. The tests under this provision must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was committing state watercraft OMVI or a violation of a substantially equivalent municipal ordinance. The officer's law enforcement agency must designate which test or tests are to be administered. Any person who is dead or unconscious or who otherwise is in a condition rendering the person incapable of refusal is deemed to have consented as described above, and the test or tests generally may be administered. (R.C. 1547.111(A) and (B).)

**Giving of advice by arresting officer.** The bill provides that, when a person is arrested for state watercraft OMVI or a violation of a substantially equivalent municipal ordinance, the person must be given a specified type of advice regarding the consequences of refusing to submit to a requested test. The advice must be in a written form prescribed by the Chief of the Division of Watercraft and be read to the person. One or more persons must witness the officer's reading of the form and certify to that fact by signing the form. (R.C. 1547.111(C).)

**Effect of refusal of requested chemical test.** If a person is arrested for state watercraft OMVI or a violation of a substantially equivalent municipal ordinance and the arresting law enforcement officer asks the person to submit to a chemical test or tests, if the officer advises the person of the consequences of the person's refusal as described above, and if the person refuses to submit to the test or tests, no chemical test is given. Upon receipt of a sworn statement from the arresting officer that the officer had reasonable grounds to believe that the person committed state watercraft OMVI or a violation of a substantially equivalent municipal ordinance and that the person refused to submit to the requested test, and upon receipt of the form certifying that the person was advised of the consequences of the refusal, the Chief of the Division of Watercraft must inform the person by written notice that the person is prohibited from operating or being in physical control of a vessel and from registering any watercraft under law, for one year following the date of the alleged violation. The suspension of the operation, physical control, and registration privileges continues for the entire one-year period, subject to review as described below.

If the person under arrest is the owner of the vessel involved in the alleged violation, the law enforcement officer who arrested the person must seize the watercraft registration certificate and tags from the vessel involved in the violation and forward them to the Chief. The Chief must retain the impounded registration certificate and tags, and must impound all other registration certificates and tags

issued to the person, for a period of one year following the date of the alleged violation, subject to review as described below.

If the arrested person fails to surrender the registration certificate because it is not on the person of the arrested person or in the watercraft, the officer who made the arrest must order the person to surrender it within 24 hours to the officer or the law enforcement agency that employs the officer. If the person fails to do so, the officer must notify the Chief of that fact in the statement the officer submits to the Chief.

Upon suspending a person's operation, physical control, and registration privileges under this provision, the Chief must notify the person in writing, at the person's last known address, and inform the person that the person may petition for a hearing as described below. If a person whose privileges have been suspended petitions for a hearing or appeals any adverse decision, the suspension of privileges begins at the termination of any hearing or appeal unless the hearing or appeal results in a decision favorable to the person. (R.C. 1547.111(D) and (E).)

**Appeal of suspension.** Any person who has been notified by the Chief that the person is prohibited from operating or being in physical control of a vessel and from registering any watercraft, or who has had the registration certificate and tags of the person's watercraft impounded, within 20 days of the notification or impoundment, may file a petition in the municipal court, county court, or juvenile court, with jurisdiction over the place of the arrest, agreeing to pay the cost of the proceedings and alleging error in the action taken by the Chief or alleging one or more of the matters within the scope of the hearing (see below), or both. The petitioner must notify the Chief of the filing of the petition and send the Chief a copy of it.

The scope of the hearing is limited to the issues of whether the law enforcement officer had reasonable grounds to believe the petitioner was committing state watercraft OMVI as modified under the bill or violating a substantially equivalent municipal ordinance, whether the petitioner was placed under arrest, whether the petitioner refused to submit to the chemical test upon request of the officer, and whether the petitioner was advised of the consequences of the refusal. The bill does not change the existing hearing procedures or the existing reinstatement provisions, other than to eliminate references to "use" and including references to being in "physical control of." (R.C. 1547.111(F) through (H).)

No person who has received written notice from the Chief that the person is prohibited from operating or being in physical control of a vessel and from registering a watercraft, or who has had the registration certificate and tags of the

person's watercraft impounded, as described above, may operate or be in physical control of a vessel for a period of one year following the date of the person's alleged commission of state watercraft OMVI or alleged violation of a substantially equivalent municipal ordinance. As under existing law, a violation of this prohibition is a misdemeanor of the first degree. (R.C. 1547.111(I) and 1547.99(B).)

### **Crime Victims Reparations Law**

#### **Existing law**

Existing law (the Crime Victims Reparations Law) provides for the payment of awards of reparations, for specified types of losses and expenses, to persons injured by the "criminally injurious conduct" of another (R.C. 2743.51 to 2743.72). Criminally injurious conduct consists of various types of crime-related conduct, including the use of a vehicle in a manner that constitutes an "OMVI violation" (R.C. 2743.51(C)). For purposes of these provisions, OMVI violation means (R.C. 2743.51(P)):

(1) The offense of state OMVI or state OMVUAC, as contained in R.C. 4511.19(A) and (B), of any municipal ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of any municipal ordinance prohibiting the operation of a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(2) The offense of aggravated vehicular homicide, if the offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense;

(3) The offense of vehicular homicide or a violation of a municipal ordinance substantially similar to that offense, if the offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense;

(4) For purposes of persons in certain specified categories who claim in relation to conduct occurring outside of Ohio, a violation of any law of the state, district, territory, or foreign country in which the criminally injurious conduct occurred, if that law is substantially similar to a violation described above in paragraph (1) or if that law is substantially similar to a violation described above in paragraph (2) or (3) and the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, at the time of the commission of the offense.

**Operation of the bill**

The bill modifies the portions of the Crime Victims Reparations Law definition of "OMVI violation" that are described above in paragraphs (2) and (3) and renames the defined phrase, consistent with other parts of the bill, as an "OVI violation":

(1) Under the bill, the portion described above in paragraph (2) is modified so that it refers to *a violation of division (A)(1) of R.C. 2903.06 (under the bill, aggravated vehicular homicide based on the offender's commission of state OVI or a substantially equivalent municipal ordinance)*, if the offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense (R.C. 2743.51(P)(2)).

(2) Under the bill, the portion described above in paragraph (3) is modified so that it refers to *a violation of division (A)(2), (3), or (4) of R.C. 2903.07 (under the bill, aggravated vehicular homicide based on the offender acting recklessly, vehicular homicide, or vehicular manslaughter) or a substantially similar municipal ordinance, if the offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense* (R.C. 2743.51(P)(3)).

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**HISTORY**

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