



**H.B. 440**

124th General Assembly  
(As Introduced)

**Rep. DePiero**

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**BILL SUMMARY**

- Enhances the penalty for aggravated vehicular homicide committed as the proximate result of committing an OMVI offense if, at the time of the offense, the offender previously has been convicted of or pleaded guilty to: (1) three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance within the previous six years, or (2) any combination of three violations of state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, a second or subsequent felony state OMVI violation, operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or a substantially equivalent municipal ordinance.
- Expands the offense of aggravated vehicular homicide to additionally 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: (1) as the proximate result of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system or of a substantially equivalent municipal ordinance, or (2) as the proximate result of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance.
- Enhances the penalty for committing aggravated vehicular assault as the proximate result of committing an OMVI offense if, at the time of the

- offense, the offender previously has been convicted of or pleaded guilty to: (1) three prior violations of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system (R.C. 1547.11(A)) or of a substantially equivalent municipal ordinance within the previous six years, (2) three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs (R.C. 4561.15(A)(3)) or of a substantially equivalent municipal ordinance within the previous six years, or (3) any combination of three violations of state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, R.C. 1547.11(A), a substantially equivalent municipal ordinance, R.C. 4561.15(A)(3), or a substantially equivalent municipal ordinance.
- Expands the offense of aggravated vehicular assault to additionally 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: (1) as the proximate result of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system or of a substantially equivalent municipal ordinance, or (2) as the proximate result of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance.

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## CONTENT AND OPERATION

### Aggravated vehicular homicide

#### Existing prohibitions

Existing law prohibits 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), (2), (3), and (4)):

- (1) As the proximate result of committing state OMVI or of violating a substantially equivalent municipal ordinance;

(2) Recklessly.

**New prohibition**

The bill expands the activities that constitute aggravated vehicular homicide. It additionally prohibits 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 either of the following ways (R.C. 2903.06(A)(1)(b) and (c)):

(1) As the proximate result of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system (R.C. 1547.11(A)) or a substantially equivalent municipal ordinance;

(2) As the proximate result of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or a substantially equivalent municipal ordinance.

**Penalties--generally**

A person who violates either of the existing prohibitions or of the new prohibitions is guilty of aggravated vehicular homicide (R.C. 2903.06(B)(1)).

**Existing penalties--committed as the proximate result of committing an OMVI offense**

Generally, aggravated vehicular homicide committed as the proximate result of committing state OMVI or of violating a substantially equivalent municipal ordinance is a felony of the second degree. But, the violation is a felony of the first degree if, at the time of the offense, any of the following apply:<sup>1</sup>

(1) The offender was driving under a suspension.

(2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter.

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<sup>1</sup> *In the offense of aggravated vehicular homicide, when a penalty is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, that reference 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)(2)).*

(3) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.<sup>2</sup>

(4) The offender previously has been convicted of or pleaded guilty to three prior violations of state OMVI or state OMVUAC or of a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to a second or subsequent state OMVI felony violation.

The court must permanently revoke the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person committing aggravated vehicular homicide. The court also must impose a mandatory prison term on the offender. (R.C. 2903.06(B)(1)(a) and (C).)

**New penalty for committing aggravated vehicular homicide as the proximate result of committing an OMVI offense**

The bill expands the circumstances under which aggravated vehicular homicide committed as the proximate result of committing an OMVI offense is enhanced. Under the bill, aggravated vehicular homicide is a felony of the first degree if, at the time of the offense, any of the following apply (R.C. 2903.06(C)(6), (7), and (8)):

(1) The offender previously has been convicted of or pleaded guilty to three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance within the previous six years.

(2) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, a second or subsequent felony state OMVI violation, operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or a substantially equivalent municipal ordinance.

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<sup>2</sup> "Traffic-related homicide, manslaughter, or assault offense" means involuntary manslaughter when the underlying violation is state OMVI or OMVUAC or a substantially similar municipal violation, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, vehicular assault, or a violation of former R.C. 2903.06, 2903.07, or 2903.08 (aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, and vehicular assault) (R.C. 2903.06(D)).

(3) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OMVI violation. (See **COMMENT**.)

**Penalties for new prohibitions**

The penalties for violating either of the new prohibitions parallel the penalties in existing law and the bill for committing aggravated vehicular homicide as a result of committing an OMVI offense. Generally, a violation of either of the new prohibitions is a felony of the second degree. The violation is a felony of the first degree if, at the time of the offense, any of the following apply (R.C. 2903.06(C)):

(1) The offender was driving under a suspension.

(2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter.

(3) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(4) The offender previously has been convicted of or pleaded guilty to three prior violations of state OMVI, state OMVUAC, or a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of state OMVI.

(6) The offender previously has been convicted of or pleaded guilty to three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance within the previous six years.

(7) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, a second or subsequent felony violation of state OMVI, operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or a substantially equivalent municipal ordinance.

(8) The offender previously has been convicted of or pleaded guilty to a second or subsequent state OMVI felony violation. (See **COMMENT**.)

The court must permanently revoke the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person who violates either of the new prohibitions. The

court also must impose a mandatory prison term on the offender. (R.C. 2903.06(C), (D), and (H) and 4507.16(D)(1).)

### **Aggravated vehicular assault**

#### **Existing prohibition**

Existing law prohibits 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 as the proximate result of committing state OMVI or of violating a substantially equivalent municipal ordinance. A person who violates this prohibition is guilty of aggravated vehicular assault.

**New prohibitions.** The bill expands the activities that constitute aggravated vehicular assault. The bill additionally prohibits 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)(b) and (c)):

(1) As the proximate result of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system or of a substantially equivalent municipal ordinance;

(2) As the proximate result of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or of a substantially equivalent municipal ordinance.

#### **Existing penalties**

Generally, aggravated vehicular assault is a felony of the third degree. But, aggravated vehicular assault is a felony of the second degree if, at the time of the offense, any of the following apply:<sup>3</sup>

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<sup>3</sup> *For the purposes of the offense of aggravated vehicular assault, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified 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. 2903.08(E)).*

(1) The offender was driving under a suspension.

(2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault.

(3) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(4) The offender previously has been convicted of or pleaded guilty to three prior violations of state OMVI, state OMVUAC, or a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OMVI violation.

The court must suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person committing aggravated vehicular assault for a definite period of two to ten years or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault or any traffic-related homicide, manslaughter, or assault offense, for a definite period of three years to life. The court also must impose a mandatory prison term on an offender who is convicted of or pleads guilty to aggravated vehicular assault. (R.C. 2903.08(A)(1), (B)(1), and (C).)

#### **New penalties for existing prohibition**

The bill expands the circumstances in which aggravated vehicular assault is enhanced. Under the bill, aggravated vehicular assault is a felony of the second degree if, at the time of the offense, any of the following apply (R.C. 2903.08(B)(1)(e), (f), and (g)):

(1) The offender previously has been convicted of or pleaded guilty to three prior violations of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system (R.C. 1547.11(A)) or of a substantially equivalent municipal ordinance within the previous six years.

(2) The offender previously has been convicted of or pleaded guilty to three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs (R.C. 4561.15(A)(3)) or of a substantially equivalent municipal ordinance within the previous six years.

(3) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance violation, R.C. 1547.11(A), a substantially equivalent municipal ordinance, R.C. 4561.15(A)(3), or a substantially equivalent municipal ordinance.

**Penalties for new prohibitions**

The penalties for violating either of the new prohibitions parallel the penalties in existing law and the bill for committing aggravated vehicular assault as a result of committing an OMVI offense. Generally, a violation of either of the two new prohibitions is a felony of the third degree. But, the violation is a felony of the second degree if, at the time of the offense, any of the following apply (R.C. 2903.08(B)(1)):

(1) The offender was driving under a suspension.

(2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault.

(3) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

(4) The offender previously has been convicted of or pleaded guilty to three prior violations of state OMVI, state OMVUAC, or a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to three prior violations of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system (R.C. 1547.11(A)) or of a substantially equivalent municipal ordinance within the previous six years.

(6) The offender previously has been convicted of or pleaded guilty to three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs (R.C. 4561.15(A)(3)) or of a substantially equivalent municipal ordinance within the previous six years.

(7) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, R.C. 1547.11(A), a substantially equivalent municipal ordinance, R.C. 4561.15(A)(3), or a substantially equivalent municipal ordinance.

(8) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OMVI violation.

The bill requires the court to suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person violating either of the new prohibitions for a definite period of two to ten years or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault or any traffic-related homicide, manslaughter, or assault offense, for a definite period of three years to life. The court also must impose a mandatory prison term on the offender. (R.C. 2903.08(B)(2) and (D).)

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## COMMENT

R.C. 2903.06(C)(8) in the bill is duplicative of R.C. 2903.06(C)(5) and should be removed; this reference probably was intended to be a reference to R.C. 1547.11(A) (compare with R.C. 2903.08(B)(1)(e)).

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## HISTORY

| ACTION     | DATE     | JOURNAL ENTRY |
|------------|----------|---------------|
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