



Dennis M. Papp

Bill Analysis
Legislative Service Commission

S.B. 294

124th General Assembly
(As Introduced)

Sens. **Herington, DiDonato, Shoemaker, Hagan, Ryan, Coughlin, Mallory, Fingerhut**

BILL SUMMARY

- Provides that state OMVI is a felony of the fourth degree if the offender previously has been convicted of five or more offenses of state OMVI, a comparable municipal ordinance violation, state OMVUAC, or any of a list of specified vehicle-related and alcohol-related offenses (hereafter, collectively referred to as "predicate offenses"), regardless of when the prior convictions occurred.
- Provides an additional mandatory prison term of one, two, three, four, or five years for state OMVI when it is a felony of the third degree or a felony of the fourth degree, if the offender previously has been convicted of five or more predicate offenses and the offender also pleads guilty to or is convicted of a "State OMVI Five Prior Conviction Specification" as enacted in the bill.
- Provides an additional mandatory term of imprisonment of up to six months for state OMVUAC when the offender previously has been convicted of five or more predicate offenses, the offender also pleads guilty to or is convicted of a "State OMVUAC Five Prior Conviction Specification" as enacted in the bill, and the court imposes a term of imprisonment for the underlying state OMVUAC offense.
- Provides a mandatory term of commitment to the Department of Youth Services of not less than one year and not more than five years for a child who is "adjudicated a delinquent child" for committing a violation that is state OMVI (see **COMMENT**), if the violation would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of a "State OMVI Five Prior Conviction

Specification" as enacted in the bill (see above) in relation to the act for which the child was adjudicated a delinquent child.

- Provides a mandatory commitment to a residential disposition of up to six months for a child who is "adjudicated a delinquent child" for committing a violation that is state OMVUAC (see **COMMENT**), if the court determines that, if the child was an adult, the child would be guilty of a "State OMVUAC Five Prior Conviction Specification" as enacted in the bill in relation to the act for which the child was adjudicated a delinquent child and if the court imposes a residential disposition under R.C. 2152.18 upon the child for the underlying delinquent act.

CONTENT AND OPERATION

Introduction

The provisions that are discussed in this analysis as "existing law" are the provisions of the Revised Code that currently are in effect. They are set forth in Section 1 of the bill. The discussions in this analysis of the "operation of the bill" relate to the changes the bill makes in those provisions of existing law, and those changes also appear in Section 1 of the bill.

On January 1, 2004, pursuant to the enactment of Am. Sub. S.B. 123 of the 124th General Assembly, some of the provisions that are discussed in this analysis as "existing law" will be relocated to different Revised Code sections or will be amended in ways that are not discussed in this analysis. In general legislative terminology, these provisions are "future versions" of the Revised Code sections in question. These "future versions" of the Revised Code sections are set forth in Section 3 of the bill, and the bill makes changes in the future versions that are comparable to the changes that it makes in the existing versions of the sections and that are discussed in this analysis. This analysis does not specifically address the changes the bill makes in the future versions, but the changes have the effect of continuing the changes that the bill makes in the existing versions of the sections and that are discussed in this analysis.

State OMVI penalties

Background

Existing law prohibits a person from operating a vehicle, streetcar, or trackless trolley in Ohio if the person is under the influence of alcohol, a drug of abuse, or a combination of them or if the person has: (1) a concentration of .10 of one per cent or more but less than .17 of one per cent by weight per unit volume of

alcohol in the person's blood, (2) a concentration of .10 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (3) a concentration of .14 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (4) a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's blood, (5) a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (6) a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine (R.C. 4511.19(A)). This offense commonly is referred to as "state OMVI."

Under existing law, state OMVI generally is a misdemeanor of the first degree or an unclassified misdemeanor, and the offender generally must be imprisoned in a local correctional facility for a specified period of time. The length of the mandatory jail term varies, depending upon the number of times that the offender, within the preceding six years, previously has been convicted of state OMVI, a comparable municipal ordinance violation, state OMVUAC (see 'State OMVUAC penalties,' below), or any of a list of specified vehicle-related and alcohol-related offenses (hereafter, these offenses collectively are referred to as "predicate offenses") and whether the offender violated the "under the influence" prohibition or the prohibition described in clauses (1) to (3) of the preceding paragraph (hereafter, collectively referred to as "standard state OMVI") or violated clauses (4) to (6) of that paragraph (hereafter, collectively referred to as "high-end state OMVI"). However, if the offender, within the preceding six years, previously has been convicted three or more times of any of the predicate offenses, state OMVI is a felony of the fourth degree, and the offender must be imprisoned for a specified period of time in either a local jail or in prison. If the offender, at any time in the past, previously has been convicted of state OMVI in circumstances in which it is a felony, state OMVI is a felony of the third degree, and the offender must be sentenced to a prison term. The court may impose a term of imprisonment, in addition to the mandatory term, under the general Felony Sentencing Law. In addition to the terms of imprisonment imposed, the court sentencing an offender for state OMVI must impose a mandatory fine, a mandatory driver's license suspension, and, in specified circumstances for repeat offenders, an order that impounds and immobilizes or criminally forfeits to the state the vehicle used in the offense. The amount of the fine and the duration of the suspension varies, depending upon the number of prior convictions of the offender. (R.C. 4511.99(A); also, R.C. 2929.13(G), 2929.14, 4507.16(B), and 4503.234.)

Operation of the bill

The bill changes the circumstances in which state OMVI is a felony of the fourth degree and provides an additional prison term or jail term for certain repeat state OMVI offenders.

Fourth degree felony state OMVI. Under the bill, subject to the provisions described below regarding third degree felony state OMVI, state OMVI is a felony of the fourth degree if, within six years of the offense, the offender previously has been convicted of *three or four* of the predicate offenses *or if, regardless of when the prior convictions occurred, the offender previously has been convicted of five or more predicate offenses.* The offender may be sentenced to a definite prison term of not less than six months and not more than 30 months. The court must sentence the offender in accordance with the Felony Sentencing Law (R.C. 2929.11 to 2929.19), *must impose as part of the sentence a mandatory prison term of one, two, three, four, or five years as required by and in accordance with R.C. 2929.13(G)(2) if the offender also pleads guilty to or also is convicted of a "State OMVI Five Prior Conviction Specification" as enacted in the bill* (see below), and must impose as part of the sentence either a mandatory term of local incarceration of 60 consecutive days of imprisonment for standard state OMVI or 120 consecutive days for high-end state OMVI in accordance with R.C. 2929.13(G)(1) or a mandatory prison term of 60 consecutive days of imprisonment for standard state OMVI or 120 consecutive days for high-end state OMVI in accordance with R.C. 2929.13(G)(2) if the offender does not plead guilty to and is not convicted of a specification of that type. The bill does not change the existing house arrest, mandatory fine, license suspension, and vehicle immobilization or forfeiture provisions that apply regarding fourth degree felony state OMVI violations. (R.C. 4511.99(A)(4)(a)(i) regarding standard state OMVI and 4511.99(A)(8)(a)(i) regarding high-end state OMVI; also R.C. 2929.01(Y) and 4511.99(A)(9) and (10).)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OMVI. The bill modifies them consistent with the provisions described in the preceding paragraph, as described below under "**R.C. 2929.13(G) sentencing provisions.**"

Third degree felony state OMVI. Under the bill, as under existing law, state OMVI is a felony of the third degree if the offender previously has been convicted of state OMVI under circumstances in which the violation was a felony, regardless of when the prior violation and the prior conviction occurred. But under the bill, the court must sentence the offender in accordance with the Felony Sentencing Law, *must impose as part of the sentence a mandatory prison term of one, two, three, four, or five years as required by and in accordance with R.C. 2929.13(G)(2) if the offender also pleads guilty to or also is convicted of a "State*

OMVI Five Prior Conviction Specification" as enacted in the bill (see below), and must impose as part of the sentence a mandatory prison term of 60 consecutive days of imprisonment for standard state OMVI or 120 consecutive days for high-end state OMVI in accordance with R.C. 2929.13(G)(2) if the offender does not plead guilty to and is not convicted of a specification of that type. The bill does not change the existing house arrest, mandatory fine, license suspension, and vehicle immobilization or forfeiture provisions that apply regarding fourth degree felony state OMVI violations. (R.C. 4511.99(A)(4)(a)(ii) regarding standard state OMVI and 4511.99(A)(8)(a)(ii) regarding high-end state OMVI; also R.C. 2929.01(Y) and 4511.99(A)(9) and (10).)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OMVI. The bill modifies them consistent with the provisions described in the preceding paragraph, as described below under "**R.C. 2929.13(G) sentencing provisions.**"

R.C. 2929.13(G) sentencing provisions. Existing R.C. 2929.13(G), unchanged by the bill in this regard, provides that, notwithstanding the general Felony Sentencing Law, if an offender is being sentenced for fourth degree felony state OMVI or third degree felony state OMVI, the court must impose upon the offender a mandatory term of local incarceration or a mandatory prison term determined in accordance with R.C. 2929.13(G)(1) and (2).

Under the bill, R.C. 2929.13(G)(1) provides that, if an offender is being sentenced for fourth degree felony state OMVI *and if the offender has not pleaded guilty to and has not been convicted of a "State OMVI Five Prior Conviction Specification" as enacted in the bill*, (see below), the court may impose upon the offender a mandatory term of local incarceration of 60 days or 120 days, as specified in R.C. 4511.99(A)(4) or (A)(8), as described above. As under existing law, the court cannot reduce the term pursuant to any provision of the Revised Code, the court must specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender must serve the term in the specified type of facility. (R.C. 2929.13(G)(1).)

Under the bill, R.C. 2929.13(G)(2) provides that, if an offender is being sentenced for third degree felony state OMVI, or if the offender is being sentenced for fourth degree felony state OMVI and the court does not impose a mandatory term of local incarceration under R.C. 2929.13(G)(1), *the court must impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also pleads guilty to or also is convicted of a "State OMVI Five Prior Conviction Specification" as enacted in the bill* or must impose upon the offender a mandatory prison term of 60 days or 120 days as specified in R.C. 4511.99(A)(4) or (A)(8) of that section if the offender has not pleaded guilty to

and has not been convicted of a specification of that type. The court cannot reduce the term pursuant to any provision of the Revised Code. *The bill requires that the offender serve the one-, two-, three-, four-, or five-year mandatory prison term imposed under this provision consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense.* As under existing law, in no case may an offender who once has been sentenced to a mandatory term of local incarceration pursuant to R.C. 2929.13(G)(1) be sentenced to another mandatory term of local incarceration under that division for any state OMVI violation, the court cannot sentence the offender to a community control sanction, and the Department of Rehabilitation and Correction may place an offender sentenced to a mandatory prison term under this provision in an intensive program prison in specified circumstances. (R.C. 2929.13(G)(2).)

State OMVI Five Prior Conviction Specification. The bill provides that imposition of a mandatory additional prison term of one, two, three, four, or five years upon an offender under R.C. 2929.13(G)(2) for felony state OMVI, as described above, is precluded unless the indictment, count in the indictment, or information charging the felony state OMVI violation specifies that the offender previously has been convicted of or pleaded guilty to five or more predicate offense violations. The specification must be stated at the end of the body of the indictment, count, or information, in a specified form set forth in the bill. The bill states that this specification may be used in a delinquent child proceeding in the manner and for the purpose described in R.C. 2152.17 (see **'Delinquent child OMVI and OMVUAC dispositions,'** below). (R.C. 2941.1412.)

State OMVUAC penalties

Background

Existing law prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley in Ohio if the person has: (1) a concentration of at least .02 of one per cent but less than .10 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) a concentration of at least .02 of one gram but less than .10 of one gram by weight of alcohol per 210 liters of the person's breath, or (3) a concentration of at least .028 of one gram but less than .14 of one gram by weight of alcohol per 100 milliliters of the person's urine (R.C. 4511.19(B)). This offense commonly is referred to as "state OMVUAC."

Under existing law, state OMVUAC generally is a misdemeanor of the fourth degree, provided that if, within the preceding year, the offender previously has been convicted of any of the predicate offenses, it is a misdemeanor of the third degree. In addition to any other sanction imposed, the court must suspend the offender's driver's license for a specified period of time. Existing law does not

require a mandatory term of imprisonment for state OMVUAC; rather, under the general Misdemeanor Sentencing Law, a court sentencing an offender convicted of state OMVUAC must sentence the offender to a term of imprisonment, a fine, or both, and generally may suspend any term of imprisonment so imposed. (R.C. 4511.99(N); also, R.C. 2929.21, 2929.51, and 4507.16(E).)

Operation of the bill

The bill provides an additional term of imprisonment for certain repeat state OMVUAC offenders.

Additional term of imprisonment for state OMVUAC. Under the bill, if an offender is convicted of or pleads guilty to state OMVUAC *and also is convicted of or pleads guilty to a "State OMVUAC Five Prior Conviction Specification" as enacted in the bill* (see below), *and if the court imposes a term of imprisonment for the underlying offense, the court must impose upon the offender an additional definite term of imprisonment of not more than six months.* The additional term of imprisonment cannot be reduced pursuant to any provision of the Revised Code, and the offender must serve the additional term of imprisonment consecutively to and prior to the term of imprisonment imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense. (R.C. 2929.21(J).)

The bill does not otherwise change the penalty for state OMVUAC (R.C. 4511.99(N)).

State OMVUAC Five Prior Conviction Specification. The bill provides that imposition of a mandatory, additional, definite term of up to six months upon an offender under R.C. 2929.21(J) for state OMVUAC, as described above, is precluded unless the information charging the state OMVUAC violation specifies that the offender previously has been convicted of or pleaded guilty to five or more predicate offense violations. The specification must be stated at the end of the body of the information, in a specified form set forth in the bill. The bill states that this specification may be used in a delinquent child proceeding in the manner and for the purpose described in R.C. 2152.17 (see **"Delinquent child OMVI and OMVUAC dispositions,"** below). (R.C. 2941.1413.)

Delinquent child OMVI and OMVUAC dispositions

Background

Under existing R.C. 2152.02: (1) a "delinquent child" is a child, *except a juvenile traffic offender*, who violates any law of Ohio or the United States, or any ordinance of an Ohio political subdivision, that would be an offense if committed

by an adult, a child who violates any lawful order of a juvenile court under R.C. Chapter 2151. or 2152. other than an order under R.C. 2151.87, or a child who violates R.C. 2923.211(A), and (2) a "juvenile traffic offender" is a child who violates any traffic law, traffic ordinance, or traffic regulation of Ohio, the United States, or any Ohio political subdivision, other than a political subdivision resolution, ordinance, or regulation that R.C. Chapter 4521. requires to be handled by a parking bureau.

Under existing R.C. Chapter 2152., if a child is adjudicated a delinquent child or a juvenile traffic offender for committing a violation of law that would be a crime if committed by an adult, the juvenile court makes a "disposition" of the child. Delinquent child dispositions are set forth in R.C. 2152.11 to 2152.20, and include a wide variety of sanctions, ranging from commitment to the Department of Youth Services for institutionalization if the violation would be a felony if committed by an adult, other types of residential commitments with entities other than the Department, specified types of community control sanctions, and specified types of financial sanctions. Juvenile traffic offender dispositions are set forth in R.C. 2152.20 and 2152.21, and include financial sanctions, license suspensions, restitution, and specified types of community control sanctions; they do not include commitment to the Department of Youth Services. Regarding a child who is adjudicated a juvenile traffic offender for committing a violation that is state OMVI or is a violation of a substantially equivalent municipal ordinance, one of the dispositional options available to the juvenile court is to commit the child, for not longer than five days, to the temporary custody of a juvenile detention facility or to the temporary custody of a school, camp, institution, or other facility for children operated in whole or in part for the care of juvenile traffic offenders by the county, a district, or any private agency or organization in Ohio.

Operation of the bill

The bill provides a term of commitment to the Department of Youth Services or a residential disposition for certain children who are "adjudicated delinquent children" for a violation that is state OMVI or state OMVUAC and who are repeat state offenders (see **COMMENT**).

Term of commitment for state OMVI violation. Under the bill, if a child is adjudicated a delinquent child for committing a violation that is state OMVI (i.e., a violation of R.C. 4511.19(A); see **COMMENT**), if the violation would be a felony if committed by an adult, and if the court determines that, if the child was an adult, the child would be guilty of a "State OMVI Five Prior Conviction Specification" as enacted in the bill (see above) in relation to the act for which the child was adjudicated a delinquent child, the court must commit the child for the specification to the legal custody of the Department of Youth Services for a

definite period of not less than one and not more than five years (R.C. 2152.17(C)(2)).

Term of residential disposition for state OMVUAC violation. Under the bill, if a child is adjudicated a delinquent child for committing a violation that is state OMVUAC (i.e., a violation of R.C. 4511.19(B); see **COMMENT**), if the court determines that, if the child was an adult, the child would be guilty of a "State OMVUAC Five Prior Conviction Specification" as enacted in the bill (see above) in relation to the act for which the child was adjudicated a delinquent child, and if the court imposes a residential disposition under R.C. 2152.18 upon the child for the underlying delinquent act, the court must commit the child for the specification to a residential disposition specified under that section for a definite period of up to six months (R.C. 2152.17(C)(3)).

COMMENT

The bill provides a term of commitment to the Department of Youth Services or a residential disposition for certain children who are "adjudicated delinquent children" for a violation that is state OMVI or state OMVUAC and who are repeat state offenders. It appears that, under the existing definitions of "delinquent child" and "juvenile traffic offender," a child who commits a violation that is state OMVI (i.e., a violation of R.C. 4511.19(A)) or that is state OMVUAC (i.e., a violation of R.C. 4511.19(B)) is a juvenile traffic offender and not a delinquent child.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-17-02	p. 2038

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