



## **Sub. H.B. 50**

125th General Assembly  
(As Passed by the General Assembly)

- Reps.** Hughes, Latta, Flowers, J. Stewart, Gilb, McGregor, DePiero, Redfern, Allen, Seaver, Schaffer, Barrett, Young, Schmidt, Grendell, Mason, S. Smith, Brown, Jerse, Oelslager, D. Evans, Beatty, Book, Calvert, Carmichael, Cates, Chandler, Cirelli, Clancy, Daniels, DeBose, Distel, Fessler, Harwood, Hollister, Hoops, Jolivette, Kilbane, Niehaus, Olman, Otterman, S. Patton, T. Patton, Perry, Price, Reidelbach, Schlichter, Schneider, Sferra, G. Smith, D. Stewart, Strahorn, Wagner, Walcher, Webster, Widener, Wilson, Wolpert
- Sens.** Austria, Amstutz, Brady, Carnes, Dann, Harris, Herington, Jacobson, Roberts, Stivers, Miller, Randy Gardner, Spada

**Effective date: October 21, 2003; Sections 4 and 5 effective January 1, 2004**

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### **ACT SUMMARY**

- Increases from a felony of the fifth degree to a felony of the third degree the penalties for an offender who fails to comply with certain statutory provisions regarding a person's duties at the scene of an accident or collision, when the accident or collision that is the basis of the violation results in death of a person.
- Expands the circumstances in which the offense of aggravated vehicular homicide committed as the proximate result of committing an OMVI offense is a felony of the first degree to also include circumstances in which, at the time of the offense, the offender previously has been convicted of or pleaded guilty to: (1) three or more prior violations of preexisting R.C. 1547.11(A) (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--not in the act), (2) three or more prior violations of preexisting R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs--not in the act) or of a substantially equivalent municipal ordinance within

the previous six years, or (3) three or more violations of any combination of state OMVI, state OMVUAC, R.C. 1547.11(A), R.C. 4561.15(A)(3), or a municipal ordinance substantially equivalent to any of those offenses.

- Modifies a preexisting circumstance in which the offense of aggravated vehicular homicide committed as the proximate result of committing an OMVI offense is a felony of the first degree to refer to *three or more prior* (instead of three prior) state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years.
- 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 violating preexisting R.C. 1544.11(A) (operating or being in physical control of a vessel, etc., while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system--not in the act) or a substantially equivalent municipal ordinance, or (2) as the proximate result of violating preexisting R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs--not in the act) or a substantially equivalent municipal ordinance.
- Provides that the penalty for the offense of aggravated vehicular homicide committed in violation of either prohibition described in the preceding dot point is the same as for aggravated vehicular homicide committed as the proximate result of committing an OMVI offense, as modified by the act.
- Expands the circumstances in which the offense of aggravated vehicular assault as the proximate result of committing an OMVI offense is a felony of the second degree to also include circumstances in which, at the time of the offense, the offender previously has been convicted of or pleaded guilty to: (1) three or more prior violations of preexisting R.C. 1547.11(A) (operating or being in physical control of a vessel, etc., while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system--not in the act) or a substantially equivalent municipal ordinance within the previous six

years, (2) three or more prior violations of preexisting R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs--not in the act) or a substantially equivalent municipal ordinance within the previous six years, or (3) three or more violations of any combination of state OMVI, state OMVUAC, R.C. 1547.11(A), R.C. 4561.15(A)(3), or a municipal ordinance substantially equivalent to any of those offenses.

- Modifies a preexisting circumstance in which the offense of aggravated vehicular assault committed as the proximate result of committing an OMVI offense is a felony of the second degree to refer to *three or more prior* (instead of three prior) state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years.
- 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 violating preexisting R.C. 1547.11(A) (operating or being in physical control of a vessel, etc., while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system--not in the act) or a substantially equivalent municipal ordinance, or (2) as the proximate result of violating preexisting R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs--not in the act) or a substantially equivalent municipal ordinance.
- Provides that the penalty for the offense of aggravated vehicular assault committed in violation of either prohibition described in the preceding dot point is the same as for aggravated vehicular assault committed as the proximate result of committing an OMVI offense, as modified by the act.

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## TABLE OF CONTENTS

Penalty for leaving the scene of an accident involving persons or property.....	4
Operation of the act.....	4
Duties regarding leaving the scene of an accident involving persons or property.....	4
Aggravated vehicular homicide .....	6
Aggravated vehicular homicide prohibitions .....	6
Aggravated vehicular homicide penalties .....	7
Background--vehicular homicide and vehicular manslaughter .....	10
Aggravated vehicular assault .....	11
Aggravated vehicular assault prohibitions .....	11
Aggravated vehicular assault penalties.....	12
New penalty added by the act for aggravated vehicular assault committed as the proximate result of committing an OMVI offense.....	13
Background--vehicular assault .....	15

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## CONTENT AND OPERATION

### *Penalty for leaving the scene of an accident involving persons or property*

#### *Operation of the act*

Preexisting law, unchanged by the act and described below in "*Duties regarding leaving the scene of an accident involving persons or property,*" imposes certain requirements that a person who operates a motor vehicle that is involved in an accident or collision with persons or property must satisfy at the scene of the accident or collision (see **COMMENT**). The act enhances the penalties, in certain circumstances, for an offender who violates these requirements. Formerly, if a person violated these requirements: (1) generally, the offender was guilty of a misdemeanor of the first degree, and (2) if the accident or collision that was the basis of the violation resulted in physical harm to or death of a person, the offender was guilty of a felony of the fifth degree. The act raises this penalty when the accident or collision that is the basis of the violation results in death of a person to a felony of the third degree. (R.C. 4549.99(B) in Section 1 of the act and R.C. 4549.02(B) and 4549.021(B) in Section 4 of the act.)

#### *Duties regarding leaving the scene of an accident involving persons or property*

*R.C. 4549.02*. The duties imposed under preexisting R.C. 4549.02, which are unchanged by the act, provide that, in case of accident to or collision with



persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, is required to immediately stop the motor vehicle at the scene of the accident or collision. The person must remain at the scene of the accident or collision until the person has given the person's name and address (and, if the person is not the owner, the name and address of the owner of the motor vehicle) and the registered number of the motor vehicle, to (1) any person injured in the accident or collision, (2) to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or (3) to any police officer at the scene of the accident or collision.

In the event the injured person is unable to comprehend and record the information, the other driver involved must forthwith notify the nearest police authority concerning the location of the accident or collision, and the other driver's name, address, and the registered number of the motor vehicle the other driver was operating. The other driver then must remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an ambulance or an emergency vehicle operated by a political subdivision.

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator colliding with such a motor vehicle must securely attach the required information, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle. (R.C. 4549.02.)

On and after January 1, 2004, a violation of these provisions will be named "failure to stop after an accident" (R.C. 4549.02(B) in Section 4 of the act).

**R.C. 4549.021.** The duties imposed under preexisting R.C. 4549.021, which are unchanged by the act, provide that, in case of accident or collision resulting in injury or damage to persons or property upon any public or private property other than public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, is required to stop. Upon request of the person injured or damaged, or any other person, the driver or operator of the motor vehicle must give the other person the driver's or operator's name and address (and, if the driver or operator is not the motor vehicle owner, the name and address of the owner) together with the registered number of the motor vehicle, and, if available, exhibit the driver's or operator's driver's or commercial driver's license.

If the owner or person in charge of damaged property is not furnished with this information, the driver involved in the accident or collision must, within 24 hours after the accident or collision, forward to the appropriate police department



or sheriff the same information required to be given to the owner or person in control of the damaged property and give the date, time, and location of the accident or collision.

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator so colliding with the motor vehicle must securely attach the required information, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle. (R.C. 4549.021.)

On and after January 1, 2004, a violation of these provisions will be named "failure to stop after a nonpublic road accident" (R.C. 4549.021(B) in Section 4 of the act).

### **Aggravated vehicular homicide**

Preexisting law, expanded by the act as described below, prohibited 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 four specified manners. Depending upon the provision violated, a person who violated any of the prohibitions was guilty of the offense of "aggravated vehicular homicide," which is discussed in this part of the analysis and is modified by the act, or the offense of "vehicular homicide" or "vehicular manslaughter," which are discussed below in "**Background--vehicular homicide and vehicular manslaughter**" and are retained by the act without change.

### **Aggravated vehicular homicide prohibitions**

**Formerly.** Formerly, the law prohibited 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: (1) as the proximate result of committing state OMVI (i.e., a violation of R.C. 4511.19(A)) or a violation of a substantially equivalent municipal ordinance, or (2) recklessly. A person who violated either prohibition was guilty of aggravated vehicular homicide (R.C. 2903.06(A)(1), (A)(2), and (B)(1)).

**New prohibitions added by the act.** The act expands the activities that constitute aggravated vehicular homicide. In addition to the conduct prohibited under prior law, the act also 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 violating preexisting R.C. 1547.11(A), not in the act, which prohibits a person from 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 violating a substantially equivalent municipal ordinance;

(2) As the proximate result of violating preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or of violating a substantially equivalent municipal ordinance.

### **Aggravated vehicular homicide penalties**

**Formerly.** Formerly, aggravated vehicular homicide committed as the proximate result of committing state OMVI or a violation of a substantially equivalent municipal ordinance, as described in (1) under "**Formerly**"-- "**Aggravated vehicular homicide prohibitions**," above, generally was a felony of the second degree. But, the violation was a felony of the first degree if any of the following applied:<sup>1</sup> (1) at the time of the offense, the offender was driving under a suspension, or (2) the offender previously had been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter; any traffic-related homicide, manslaughter, or assault offense;<sup>2</sup> three prior state OMVI or state OMVUAC offenses or violations of a substantially equivalent municipal ordinance within the previous six years; or a second or subsequent state OMVI felony violation. The court was required to permanently revoke the offender's driver's license, commercial driver's license, temporary instruction

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<sup>1</sup> Under preexisting law, unchanged by the act, 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), redesignated by the act as division (F)(2)).

<sup>2</sup> Under preexisting law, unchanged by the act, "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)(1), redesignated by the act as division (F)(1)).

permit, probationary license, or nonresident operating privilege.<sup>3</sup> The court also was required to impose a mandatory prison term on the offender. (R.C. 2903.06(B)(1)(a) and (C).)

Formerly, aggravated vehicular homicide committed based on the offender acting recklessly, as described in (2) under "**Formerly**"--"**Aggravated vehicular homicide prohibitions**," above, generally was a felony of the third degree. But, the violation was a felony of the second degree if any of the following applied: (1) at the time of the offense, the offender was driving under a suspension, or (2) the offender previously had been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense. The court was required to suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a definite period of three years to life (a Class 2 suspension on and after January 1, 2004). When the offense was a felony of the second degree, the court was required to impose a mandatory prison term on the offender. (R.C. 2903.06(B)(1)(b) and (C).)

**New penalty added by the act for aggravated vehicular homicide committed as the proximate result of committing an OMVI offense.** The act reorganizes the penalty provisions for aggravated vehicular homicide committed as the proximate result of committing state OMVI or a violation of a substantially equivalent municipal ordinance and expands the circumstances in which the penalty for the offense so committed is enhanced. It retains the first set of circumstances specified in prior law in which aggravated vehicular homicide is a felony of the first degree, as described above in clause (1) in the first paragraph under "**Formerly**"--"**Aggravated vehicular homicide penalties**," and, with one exception, retains the second set of circumstances in which the offense is a felony of the first degree, as described above in clause (2) in the first paragraph under that part of the analysis. In the one change, the act changes the reference to *three prior* state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years to a reference to *three or more prior* state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years. (R.C. 2903.06(B)(2)(a)(i) to (iv) and (viii).)

Regarding the expansion of the circumstances, under the act, in addition to the circumstances specified in prior law, aggravated vehicular homicide

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<sup>3</sup> On and after January 1, 2004, the court must impose a "Class 1" suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period for the life of the person subject to the suspension).

committed as the proximate result of committing state OMVI or a violation of a substantially equivalent municipal ordinance also is a felony of the first degree if any of the following apply (R.C. 2903.06(B)(2)(a)(v) to (vii)):

(1) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 1547.11(A), not in the act, which prohibits a person from operating or being in physical control of a vessel, etc., 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 within the previous six years.

(2) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from 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.

(3) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the following offenses: state OMVI, state OMVUAC, R.C. 1547.11(A) as described in (1), above, R.C. 4561.15(A)(3) as described in (2), above, or a municipal ordinance substantially equivalent to any of those offenses.

The act retains the license suspension and mandatory prison term provisions of prior law that apply to aggravated vehicular homicide committed as the proximate result of committing an OMVI offense (R.C. 2903.06(B)(2)(b) and (E), as redesignated by the act). The act does not change the penalties for aggravated vehicular homicide committed based on the offender acting recklessly, as described above (R.C. 2903.06(B)(3) and (E), as redesignated by the act).

**Penalties for new prohibitions added by the act.** The penalties for violating either of the new prohibitions added by the act parallel the penalties in prior law, as modified by the act, 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. But, the violation is a felony of the first degree if any of the following apply (R.C. 2903.06(B)(2)(a)):

(1) At the time of the offense, 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 or more prior state OMVI or state OMVUAC offenses or violations of a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 1547.11(A), not in the act, which prohibits a person from operating or being in physical control of a vessel, etc., 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 within the previous six years.

(6) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from 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 three or more violations of any combination of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, R.C. 1547.11(A) as described in (5), above, R.C. 4561.15(A)(3) as described in (6), above, or a municipal ordinance violation substantially equivalent to any of those offenses.

(8) 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 who violates either of the new prohibitions.<sup>4</sup> The court also must impose a mandatory prison term on the offender. (R.C. 2903.06(B)(2)(b) and (E) and 4507.16(D)(1).)

### **Background--vehicular homicide and vehicular manslaughter**

Preexisting law, unchanged by the act, also 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

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<sup>4</sup> On and after January 1, 2004, the court must impose a "Class 1" suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period for the life of the person subject to the suspension).

manners: (1) negligently, or (2) as the proximate result of committing a violation of any provision of any section contained in the Traffic Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in the Traffic Code that is a minor misdemeanor.

A violation of the prohibition described in clause (1) of the preceding paragraph is the offense of vehicular homicide. Vehicular homicide generally is a misdemeanor of the first degree, but the offense is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or revocation or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense. When the offense is a felony of the fourth degree, the court is required to impose a mandatory prison term on the offender. A violation of the prohibition described in clause (2) of the preceding paragraph is the offense of vehicular manslaughter. Vehicular manslaughter generally is a misdemeanor of the second degree, but the offense is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4507. or if the offender previously was convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense. For either offense, the court is required to impose a mandatory license suspension of a specified length (R.C. 2903.06(A)(3), (A)(4), (B)(2), (B)(3), and (C)--substantively unchanged by the act but redesignated as R.C. 2903.06(A)(3), (A)(4), (F), (G), and (H)).

### **Aggravated vehicular assault**

Preexisting law, expanded by the act as described below, prohibited 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 two specified manners. Depending upon the provision violated, a person who violated either of the prohibitions was guilty of the offense of "aggravated vehicular assault," which is discussed in this part of the analysis and is modified by the act, or the offense of "vehicular assault," which is discussed below in "**Background--vehicular assault**" and is retained by the act without change.

### **Aggravated vehicular assault prohibitions**

**Formerly.** Formerly, the law prohibited 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 violated this prohibition was guilty of aggravated vehicular assault. (R.C. 2903.08(A)(1) and (B)(1).)

**New prohibitions added by the act.** The act expands the activities that constitute aggravated vehicular assault. In addition to the conduct prohibited under prior law, the act also 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 violating preexisting R.C. 1547.11(A), not in the act, which prohibits a person from 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 violating a substantially equivalent municipal ordinance;

(2) As the proximate result of violating preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or of violating a substantially equivalent municipal ordinance.

### **Aggravated vehicular assault penalties**

**Formerly.** Formerly, aggravated vehicular assault generally was a felony of the third degree. But, aggravated vehicular assault was a felony of the second degree if any of the following applied:<sup>5</sup> (1) at the time of the offense, the offender was driving under a suspension, or (2) the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault; any traffic-related homicide, manslaughter, or assault offense; three prior state OMVI or state OMVUAC offenses or violations of a substantially equivalent municipal ordinance within the previous six years; or a second or subsequent felony state OMVI violation. The court was required to suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of two to ten years or, if the

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<sup>5</sup> *Under preexisting law, unchanged by the act, in 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), redesignated by the act as division (F)).*

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.<sup>6</sup> The court also was required to impose a mandatory prison term on the offender. (R.C. 2903.08(A)(1), (B)(1), and (C).)

**New penalty added by the act for aggravated vehicular assault committed as the proximate result of committing an OMVI offense**

The act reorganizes the penalty provisions for aggravated vehicular assault and expands the circumstances in which the penalty for the offense is enhanced. It retains the first set of circumstances specified in prior law in which aggravated vehicular assault is a felony of the second degree, as described above in clause (1) under "**Formerly**"--"**Aggravated vehicular assault penalties**," and, with one exception, retains the second set of circumstances in which the offense is a felony of the second degree, as described above in clause (2) under that part of the analysis. In the one change, the act changes the reference to *three prior* state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years to a reference to *three or more prior* state OMVI or state OMVUAC offenses or violations of substantially equivalent municipal ordinances within the previous six years. (R.C. 2903.08(B)(1)(a) to (d) and (h).)

Regarding the expansion of the circumstances, under the act, in addition to the circumstances specified in prior law, aggravated vehicular assault also 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 or more prior violations of preexisting R.C. 1547.11(A), not in the act, which prohibits a person from 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 within the previous six years.

(2) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from operating an aircraft while under the influence of

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<sup>6</sup> On and after January 1, 2004, the court instead is required to impose a "Class 3" suspension (a definite period of two to ten years) and a "Class 2" suspension (a definite period of three years to life).

intoxicating liquor, controlled substances, or other habit-forming drugs, or of a substantially equivalent municipal ordinance within the previous six years.

(3) The offender previously has been convicted of or pleaded guilty to three or more prior violations of any combination of the following offenses: state OMVI, state OMVUAC, R.C. 1547.11(A) as described above in (1), R.C. 4561.15(A)(3) as described above in (2), or a municipal ordinance violation substantially equivalent to any of those offenses.

The act retains the existing license suspension and mandatory prison term provisions of prior law that apply to aggravated vehicular assault committed as the proximate result of committing an OMVI offense (R.C. 2903.08(B)(2) and (D), as redesignated by the act).

**Penalties for new prohibitions added by the act.** The penalties for violating either of the new prohibitions added by the act parallel the penalties in prior law, as modified by the act, for committing aggravated vehicular assault as a result of committing an OMVI offense. Generally, a violation of either of the new prohibitions is a felony of the third degree. But, the violation is a felony of the second degree if any of the following apply (R.C. 2903.08(B)(1)):

(1) At the time of the offense, 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 or more prior state OMVI or state OMVUAC offenses or violations of a substantially equivalent municipal ordinance within the previous six years.

(5) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 1547.11(A), not in the act, which prohibits a person from operating or being in physical control of a vessel, etc., 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 within the previous six years.

(6) The offender previously has been convicted of or pleaded guilty to three or more prior violations of preexisting R.C. 4561.15(A)(3), not in the act, which prohibits a person from 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 three or more prior violations of any combination of the following offenses: state OMVI, state OMVUAC, R.C. 1547.11(A) as described above in (5), R.C. 4561.15(A)(3) as described above in (6), or a municipal ordinance violation substantially equivalent to any of those offenses.

(8) 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 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).)

### **Background--vehicular assault**

Preexisting law, unchanged by the act, also 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 to another's unborn recklessly. A violation of the prohibition is the offense of vehicular assault. Vehicular assault generally is a felony of the fourth degree, but the offense is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4507. or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or a traffic-related homicide, manslaughter, or assault offense. The court is required to impose a mandatory prison term on the offender in the circumstances in which the offense is a felony of the third degree or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter. The court is required to impose a mandatory license suspension of a specified length (R.C. 2903.08(A)(2), (B)(2), and (C))--substantively unchanged by the act but redesignated as R.C. 2903.08(A)(2), (C), and (D)).

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## **COMMENT**

Preexisting law, not in the act, also provides that the driver of any vehicle involved in an accident resulting in damage to real property, or personal property attached to such real property, legally upon or adjacent to a public road or highway is required to immediately stop and take reasonable steps to locate and

notify the owner or person in charge of that property of that fact, of the driver's name and his or her address, and of the registration number of the vehicle he or she is driving and, upon request and if available, to exhibit his or her driver's or commercial driver's license. If the owner or person in charge of the property cannot be located after reasonable search, the driver of the vehicle involved in the accident resulting in damage to the property, within 24 hours after the accident, must forward to the police department of the city or village in which the accident or collision occurred or if it occurred outside the corporate limits of a city or village to the sheriff of the county in which the accident or collision occurred the same information required to be given to the owner or person in control of the property and give the location of the accident and a description of the damage insofar as it is known. Under preexisting law, unchanged by the act, a person who violates these requirements is guilty of a misdemeanor of the first degree (R.C. 4549.03--not in the act; and, regarding the penalty, R.C. 4549.99(B)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-11-03	p. 140
Reported, H. Criminal Justice	03-19-03	p. 266
Passed House (97-0)	03-25-03	p. 279
Reported, S. Judiciary		
on Criminal Justice	06-18-03	p. 497
Passed Senate (32-0)	06-18-03	pp. 504-505
House concurred in Senate		
amendments (99-0)	06-19-03	pp. 624-625

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