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ACT SUMMARY

Aggravated vehicular homicide, vehicular homicide, and vehicular assault in construction zones

- Subject to the notice-posting provision described below in the last dot point of this part of the **ACT SUMMARY**, expands the offense of aggravated vehicular homicide to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing the death of a person in the construction zone or the unlawful termination of the pregnancy of a person in the construction zone, as the proximate result of committing a reckless operation offense.
- Subject to the notice-posting provision described below in the last dot point of this part of the **ACT SUMMARY**, expands the offense of vehicular homicide to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing the death of a person in the construction zone or the unlawful termination of the pregnancy of a person in the construction zone, as the proximate result of committing a speeding offense.

- Subject to the notice-posting provision described below in the last dot point of this part of the **ACT SUMMARY**, expands the offense of vehicular assault to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing serious physical harm to a person in the construction zone or the unborn of a person in the construction zone, as the proximate result of committing a reckless operation offense or speeding offense.
- Requires the Director of Transportation to adopt rules governing the posting of signs giving notice to motorists of the new prohibitions described in the three preceding dot points that pertain to persons who commit a reckless operation offense or speeding offense in a construction zone and cause death or injury, and guidelines and design specifications regarding those signs; requires the Director, board of county commissioners, or board of township trustees to cause signs to be erected in construction zones advising motorists that those new prohibitions apply to persons who commit a reckless operation offense or speeding offense in the construction zone and, as a proximate result of that offense, cause death or injury; and specifies that those new prohibitions apply to persons who commit a reckless operation offense or speeding offense in a particular construction zone only when signs of that nature are erected in that construction zone in accordance with the guidelines and design specifications established by the Director.

Mandatory prison terms and mandatory commitments to Department of Youth Services for aggravated vehicular homicide, when victim is a peace officer or when offender is a repeat drunk driving offender

- Requires a court to impose a prison term of five years on an offender who is convicted of or pleads guilty to aggravated vehicular homicide and a specification that the victim of the offense is a peace officer.
- Requires a court to impose a prison term of three years on an offender who is convicted of or pleads guilty to aggravated vehicular homicide and a specification that the offender previously has been convicted of or pleaded guilty to three or more violations of state OVI, state OVUAC, or an equivalent offense or three or more violations of any combination of those offenses.

- Requires a juvenile court that adjudicates a child a delinquent child for an act that would be felony aggravated vehicular homicide if committed by an adult and determines that the child, if an adult, would be guilty of the repeat drunk driving specification, to commit the child to the Department of Youth Services (DYS) for a definite period of not less than one nor more than three years and to commit the child to DHS for the underlying delinquent act.
- Requires a juvenile court that adjudicates a child a delinquent child for an act that would be felony aggravated vehicular homicide if committed by an adult and determines that the child, if an adult, would be guilty of the peace officer specification, to commit the child to DHS for a definite period of not less than one nor more than five years and to commit the child to DHS for the underlying delinquent act.

Warning signs regarding increased penalties for certain traffic offenses in a construction zone

- Requires, instead of permits, the Director of Transportation, a board of county commissioners, or a board of township trustees to cause signs to be erected in construction zones advising motorists that increased penalties apply for certain traffic violations occurring on a street or highway in a construction zone.

Restitution as a sanction in a criminal case or a disposition in a delinquency or juvenile traffic offender case

- Modifies the provisions regarding restitution as a financial sanction that may be imposed upon a felony offender by: (1) clarifying that restitution is discretionary and repealing the language that pertains to the restitution order requiring that reimbursement be made to third parties, including governmental agencies or persons other than governmental agencies, for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss, (2) clearly stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see below) suffered by the victim as a result of the commission of the offense, and (3) replacing the language that specifies that a financial sanction of restitution imposed upon a felony offender is a "judgment" in favor of the victim of the offender's criminal act with language that specifies that such a financial sanction is an "order" in favor of the victim and specifying manners in which the restitution may be collected.

- In the provision that lists examples of financial sanctions that may be imposed upon a misdemeanor offender (e.g., restitution, a statutory fine, etc.), adds a specific statement indicating that the listed sanctions are examples of the sanctions that may be imposed if the court in its discretion imposes one or more financial sanctions.
- Modifies the provisions regarding restitution as a financial sanction that may be imposed upon a misdemeanor offender by: (1) limiting the application of the restitution provisions only to misdemeanors that are not minor misdemeanor violations and could not be handled by a Traffic Violations Bureau, and clarifying that restitution is discretionary, (2) repealing the language that pertains to the restitution order requiring that reimbursement be made to third parties, other than the offender's insurer, for amounts paid to the victim or any survivor of the victim for economic loss, (3) repealing the language authorizing the court to order the determination of the amount of restitution, instead of actually determining the amount itself, (4) clearly stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see below) suffered by the victim as a result of the commission of the offense, (5) adding language specifying that, if the court holds an evidentiary hearing, at the hearing the victim or survivor must demonstrate by a preponderance of the evidence the amount of restitution sought from the offender, and (6) replacing the language that specifies that a financial sanction of restitution imposed upon a misdemeanor offender is a "judgment" in favor of the victim of the offender's criminal act with language that specifies that such a financial sanction is an "order" in favor of the victim and specifying manners in which the restitution may be collected.
- Modifies the provisions regarding restitution as a disposition that may be imposed upon a delinquent child or juvenile traffic offender by: (1) clarifying that the restitution provision applies to both adjudicated juvenile traffic offenders and adjudicated delinquent children and that it is discretionary and limiting the application of the restitution provision only to delinquent acts or juvenile traffic offenses that would not be minor misdemeanors if committed by an adult and could not be handled by a Juvenile Traffic Violations Bureau, (2) repealing the language that pertains to the restitution disposition requiring that reimbursement be made to third parties, other than the child's insurer, for amounts paid to the victim or any survivor of the victim for economic loss, and (3) clearly

stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see below) suffered by the victim as a result of the commission of the offense.

- Modifies the definitions of "economic loss" that apply to the restitution provision described in the three preceding dot points in this part of the **ACT SUMMARY** to specify that economic loss must be a direct and proximate result of the act or offense in question, and that it does not include "non-economic loss" or any punitive or exemplary damages, and defines "non-economic loss" for purposes of those definitions as nonpecuniary harm suffered by a victim of an offense, delinquent act, or juvenile traffic offense, whichever is applicable, as a result of or related to the commission of the offense, or the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

Purposes of misdemeanor sentencing

- Specifies that the existing provisions that require a court sentencing an offender for a misdemeanor or minor misdemeanor to be guided by the overriding purposes of misdemeanor sentencing and set forth those purposes, and that require that a sentence imposed for a misdemeanor or minor misdemeanor be reasonably calculated to achieve those overriding purposes of misdemeanor sentencing, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim and consistent with sentences imposed for similar offenses committed by similar offenders, apply to misdemeanor ordinance offenses, and do not apply to any offense disposed of by a Traffic Violations Bureau of any court pursuant to Traffic Rule 13 and do not apply to any violation of any Revised Code provision that is a minor misdemeanor and is disposed of without a court appearance.

Changes related to Am. Sub. S.B. 123 of the 124th General Assembly

- Specifies that, if a court is permitted to grant limited driving privileges during a suspension of a person's driver's license imposed by the Bureau of Motor Vehicles, and the person under the suspension is not a resident of Ohio, the person may file a petition either in the Franklin County Municipal Court or in the municipal or county court located in the county

where the offense occurred; if the person who is not an Ohio resident is a minor, the person may file a petition either in the Franklin County Juvenile Court or in the juvenile court with jurisdiction over the offense.

- Establishes a look-back period of five years during which courts must enhance the penalties for persons who are guilty of driving under financial responsibility law suspension or cancellation and who have previously been convicted of or pleaded guilty to driving under a financial responsibility law suspension or cancellation.
- Specifies that: (1) if a person files a motion with the sentencing court for modification or termination of a Class 1 suspension (a definite period of life) or a Class 2 suspension when the period of suspension is in excess of 15 years (a Class 2 suspension can be a definite period of between three years and life), the court may deny a motion without a hearing but cannot grant such a motion without a hearing, (2) if the court denies such a motion without a hearing, the court may consider a subsequent motion filed by the person for modification or termination of such a suspension, and (3) if a court denies such a motion after a hearing, the court is barred from considering subsequent motions for that same person.
- When a person pleads guilty to or is convicted of street racing, requires a court, in addition to any other sanctions, to suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for not less than 30 days or more than three years, instead of the current suspension requirement of not less than 30 days or more than one year.
- Modifies the definition of "operate" so that it means to cause or have caused movement of a vehicle, streetcar, or trackless trolley (currently, it means 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).
- Modifies the penalties for the offense of operating a motor vehicle without a valid license so that if a trier of fact finds that an offender never has held a valid driver's or commercial driver's license issued in Ohio or another jurisdiction, the offense is a misdemeanor of the first degree.
- Revises the law governing license suspensions for reckless operation offenses to allow a court to impose a Class 5 suspension upon any person

found guilty of operating a motor vehicle in violation of an Ohio law or municipal ordinance relating to reckless operation.

- Increases the penalty for discharging a firearm upon or over a public road or highway.

Emergency measure

- Declares an emergency.

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CONTENT AND OPERATION

Aggravated vehicular homicide, vehicular homicide, and vehicular assault in a construction zone

Aggravated vehicular homicide in a construction zone

Continuing law. Continuing 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: (1) as the proximate result of committing state OVI (a violation of R.C. 4511.19(A)) or a substantially equivalent municipal offense, (2) as the proximate result of committing state watercraft OVI in violation of R.C. 1547.11(A) or a substantially equivalent municipal offense, (3) as the proximate result of committing state aircraft OVI in violation of R.C. 4561.15(A)(3) or a substantially equivalent municipal offense, or (4) recklessly. A person who violates any of these prohibitions is guilty of aggravated vehicular homicide. (R.C. 2903.06(A)(1) and (2) and (B)(1).)

Generally, aggravated vehicular homicide committed as the proximate result of committing state OVI, state watercraft OVI, state aircraft OVI, or a substantially equivalent municipal offense is a felony of the second degree. But it is a felony of the first degree if, at the time of the offense, the offender was driving



under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter; any traffic-related homicide, manslaughter, or assault offense (see **Definitions--construction zone offenses**," below); three or more prior violations of R.C. 4511.19 (state OVI and state OVUAC) or of a substantially equivalent municipal ordinance within the previous six years; three or more prior violations of R.C. 1547.11(A) or of a substantially equivalent municipal ordinance within the previous six years; three or more prior violations of R.C. 4561.15(A)(3) or of a substantially equivalent municipal ordinance within the previous six years; three or more prior violations of any combination of the offenses in R.C. 4511.19, 1547.11(A), and 4561.15(A)(3); or a second or subsequent state OVI felony violation. The court is required to impose a mandatory prison term on the offender. In addition to any other sanctions imposed, 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). (R.C. 2903.06(B)(2)(a), (B)(2)(b), and (E).)

Generally, aggravated vehicular homicide committed recklessly is a felony of the third degree. But it is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or any traffic-related homicide, manslaughter, or assault offense. In addition to any other sanctions imposed, the court must impose upon the offender a Class 2 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of three years to life). (R.C. 2903.06(B)(3).) The court must impose a mandatory prison term on the offender if either of the following applies (R.C. 2903.06(E)):

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

(2) At the time of the offense, the offender was driving under suspension under R.C. Chapter 4510. or any other statute.

Operation of the act. The act expands the prohibitions comprising aggravated vehicular homicide to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a "construction zone" (see **Definitions--construction zone offenses**," below), from causing the death of another or the unlawful termination of the pregnancy of another as the proximate result of committing a "reckless operation offense" (see **Definitions--construction zone offenses**," below) while so operating the motor

vehicle or motorcycle in the construction zone; however, the act specifies that this additional prohibition applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in that zone and that it does not apply in a particular construction zone unless warning signs regarding the prohibition are posted in that construction zone in accordance with the provisions described in "Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions," below (R.C. 2903.06(A)(2)(b) and (F)).

A person who violates this new prohibition is guilty of aggravated vehicular homicide. The penalties for violating this new prohibition parallel those provided under continuing law for aggravated vehicular homicide committed recklessly. Generally, a violation of the new prohibition is a felony of the third degree. But it is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter or any traffic-related homicide, manslaughter, or assault offense.

The act requires the court to impose a mandatory prison term on the offender if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault or if the offender was driving under suspension at the time of the offense. In addition to any other sanctions imposed, the court must impose a Class 2 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of between three years and life). (R.C. 2903.06(B)(3) and (E).)

The act states that the failure to erect signs of the type described in "Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions," below in a particular construction zone in accordance with the applicable guidelines and design specifications does not limit or affect the application of the existing prohibitions contained in R.C. 2903.06, regarding aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter, in that construction zone or the prosecution of any person who violates any of those prohibitions in that construction zone (R.C. 2903.06(F)).

Vehicular homicide in a construction zone

Continuing law. Continuing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft from negligently causing the death of another or

the unlawful termination of another's pregnancy. A person who violates this prohibition is guilty of vehicular homicide. (R.C. 2903.06(A)(3)(a) and (C).)

Generally, vehicular homicide is a misdemeanor of the first degree. However, vehicular homicide is a felony of the fourth degree if at the time of the offense, the offender was driving under a suspension or has previously been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter or any traffic-related homicide, manslaughter, or assault offense. The court is required to impose a mandatory prison term on an offender convicted of vehicular homicide if either: (1) the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault or vehicular assault, or (2) at the time of the offense, the offender was driving under a suspension. In addition to any other sanctions imposed, a court is required to impose a Class 4 suspension of the offender's license, permit, or privilege (a definite period of between one and five years) or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter or any traffic-related homicide, manslaughter, or assault offense, a Class 3 suspension (a definite period of between two and ten years). (R.C. 2903.06(C) and (E).)

Operation of the act. The act expands the prohibition comprising vehicular homicide to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing the death of another or the unlawful termination of the pregnancy of another as the proximate result of committing a "speeding offense" (see "**Definitions-- construction zone offenses,**" below) while so operating the motor vehicle or motorcycle in the construction zone; however, the act specifies that this additional prohibition applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in that zone and that it does not apply in a particular construction zone unless warning signs regarding the prohibition are posted in that construction zone in accordance with the provisions described in "**Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions,**" below (R.C. 2903.06(A)(3)(b) and (F)).

A person who violates this new prohibition is guilty of vehicular homicide. Generally, vehicular homicide committed in violation of the new prohibition is a misdemeanor of the first degree. But it is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or has previously been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter or any traffic-related homicide, manslaughter,

or assault offense. The court is required to impose a mandatory prison term on an offender who is convicted of or pleads guilty to a felony violation of this new prohibition if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or vehicular assault or was driving under suspension at the time of the offense. The court is required to impose a mandatory jail term of at least 15 days on an offender who is convicted of or pleads guilty to a misdemeanor violation of this new prohibition, and may impose upon the offender a longer jail term as authorized under the Misdemeanor Sentencing Law. In addition to any other sanctions imposed, a court is required to impose a Class 4 suspension (a definite period of between one to five years) of the offender's license, permit, or privilege or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter or any traffic-related homicide, manslaughter, or assault offense, a Class 3 suspension (a definite period of between two and ten years). (R.C. 2903.06(C) and (E).)

The act states that the failure to erect signs of the type described in "**Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions**," below in a particular construction zone in accordance with the applicable guidelines and design specifications does not limit or affect the application of the existing prohibitions contained in R.C. 2903.06, regarding aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter, in that construction zone or the prosecution of any person who violates any of those prohibitions in that construction zone (R.C. 2903.06(F)).

Vehicular assault in a construction zone

Continuing law. Continuing law prohibits a 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 (R.C. 2903.08(A)(2)).

A person who violates this prohibition is guilty of vehicular assault. Generally, vehicular assault is a felony of the fourth degree. But it 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 4510. or any other provision of the Revised Code or previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or any "traffic-related homicide, manslaughter, or assault offense" (see "**Definitions--construction zone offenses**," below). In addition to any other sanctions imposed, the court is required to impose upon the offender a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of one to five years) or, if the offender previously has been convicted of or pleaded guilty to a aggravated vehicular

assault, vehicular assault, or any traffic-related homicide, manslaughter, or assault offense, a Class 3 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of two to ten years). (R.C. 2903.08(C).)

The court must impose a mandatory prison term on the offender if either of the following applies (R.C. 2903.08(D)):

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

(2) At the time of the offense, the offender was driving under suspension under R.C. Chapter 4510. or any other statute.

Operation of the act. The act expands the prohibition comprising vehicular assault to additionally prohibit a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing serious physical harm to another or the unborn of another as the proximate result of committing a "reckless operation offense" or "speeding offense" (see "**Definitions--construction zone offenses,**" below) while so operating the vehicle or motorcycle in the construction zone; however, the act specifies that these additional prohibitions apply only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation or speeding offense in that zone and that they do not apply in a particular construction zone unless warning signs regarding the prohibition are posted in that construction zone in accordance with the provisions described in "**Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions,**" below (R.C. 2903.08(A)(2)(a), and (A)(3), and (E)).

A person who violates either of these new prohibitions is guilty of vehicular assault, and is punished as follows:

(1) With respect to vehicular assault committed in a construction zone as a proximate result of a *reckless operation offense*, the penalties are generally the same as in existing law for vehicular assault committed recklessly: a felony of the fourth degree or a felony of the third degree in specified circumstances, and a Class 4 suspension (or Class 3 suspension for a felony of the third degree) of the offender's license, permit, or privilege. Under the act, the court must impose a mandatory prison term on the offender for a violation of the new prohibition if the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated

vehicular assault, or vehicular assault or was driving under suspension at the time of the offense. (R.C. 2903.06(C)(1) and (2) and (D)(3).)

(2) With respect to vehicular assault committed in a construction zone as a proximate result of a *speeding offense*, the act classifies the offense generally as a misdemeanor of the first degree. The offense is a felony of the fourth degree if, at the time of the offense, the offender was driving under suspension or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault or any traffic-related homicide, manslaughter, or assault offense. The court is required to impose a mandatory prison term on an offender who is convicted of or pleads guilty to a felony violation of this new prohibition if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter. The court is required to impose a mandatory jail term of at least seven days on an offender who is convicted of or pleads guilty to a misdemeanor violation of this new prohibition, and may impose upon the offender a longer jail term as authorized under the Misdemeanor Sentencing Law. In addition to any other sanctions imposed, a court is required to impose upon the offender a Class 4 suspension of the offender's license, permit, or privilege (a definite period of between one to five years) or, when the offense is a felony of the fourth degree, a Class 3 suspension (a definite period of between two to ten years). (R.C. 2903.08(C)(1) and (3) and (D)(3).)

The act states that the failure to erect signs of the type described in "Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions," below in a particular construction zone in accordance with the applicable guidelines and design specifications does not limit or affect the application of the existing prohibitions contained in R.C. 2903.08, regarding aggravated vehicular assault in that construction zone or the prosecution of any person who violates any of those prohibitions in that construction zone (R.C. 2903.08(E)).

Warning signs, regarding the new aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions

Background. Continuing law described below in "Warning signs, regarding increased penalties for speeding in a construction zone" requires the Director of Transportation to adopt rules governing the posting of signs advising motorists that increased penalties apply for certain traffic violations occurring in a "construction zone," and permits specified public officials to cause the signs to be erected advising motorists of the increased penalties. The rules must include certain guidelines, and the Director must formulate design specifications for the signs. The increased penalties are effective only when signs are erected in accordance with guidelines and design specifications established by the Director

and when a violation occurs during hours of actual work within the construction zone. (R.C. 4511.98 and 5501.27.)

Operation of the act. The act expands the continuing provisions to require the Director of Transportation to adopt rules governing the posting of signs giving notice to motorists of the special aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions it enacts, as described above, regarding the death of or injury to any person in a construction zone as a proximate result of a reckless operation offense or speeding offense. The act includes provisions similar to those under prior and continuing law regarding the increased speeding penalties:

(1) The rules must include guidelines to determine which areas are appropriate to the posting of the signs.

(2) The guidelines may include consideration of the duration of the work and the volume of traffic on the street or highway, the proximity of workers to moving traffic, the existence of any unusual or hazardous conditions, and any other appropriate factors.

(3) The Director must formulate design specifications for the signs advising motorists of the special aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions that it enacts.

(4) The act specifies that nothing in these provisions is intended to conflict with any standard set forth in the federal Manual of Uniform Traffic Control Devices for Streets and Highways. (R.C. 5501.27(A)(2) and (B).)

The act requires the Director of Transportation, board of county commissioners, or board of township trustees to cause signs to be erected in construction zones notifying motorists of the special aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions it enacts regarding the death of or injury to any person in a construction zone as a proximate result of a reckless operation offense or speeding offense in the construction zone. The special aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibitions with stringent penalties the act enacts, as described above in "**Aggravated vehicular homicide in a construction zone,**" "**Vehicular homicide in a construction zone,**" and "**Vehicular assault in a construction zone,**" apply to persons who commit a reckless operation offense or speeding offense in a particular construction zone only when signs of that nature are erected in that construction zone in accordance with the guidelines and design specifications established by the Director as described in the preceding paragraph. The failure to erect signs of that nature in a particular construction zone in accordance with the applicable guidelines and design specifications does not limit

or affect the application of the existing prohibitions contained in R.C. 2903.06 and 2903.08, regarding aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault in that construction zone or the prosecution of any person who violates any of those prohibitions in that construction zone (R.C. 2903.06(F)). (R.C. 2903.081; also R.C. 2903.06(F) and 2903.08(E).)

Definitions--construction zone offenses

The following definitions apply to the act's provisions regarding the construction zone offenses, as described above:

Construction zone means that lane or portion of street or highway open to vehicular traffic and adjacent to a lane, berm, or shoulder of a street or highway within which lane, berm, or shoulder construction, reconstruction, resurfacing, or any other work of a repair or maintenance nature, including public utility work, is being conducted, commencing with the point where the first worker or piece of equipment is located and ending where the last worker or piece of equipment is located (R.C. 5501.27, and referenced in R.C. 2903.06(G)(1)(c), 2903.08(F)(3), and 2903.081(A)(1)).

Mandatory jail term means the term in a jail that a sentencing court is required to impose pursuant to: (1) R.C. 1547.99(G), 4510.14(B), or 4511.19(G), (2) the vehicular homicide or vehicular assault prohibitions with stringent penalties the act enacts, as described above in "**Vehicular homicide in a construction zone**" and "**Vehicular assault in a construction zone**" (added by the act), or (3) any other Revised Code provision that requires a term in a jail for a misdemeanor conviction (R.C. 2929.01(U), and referenced in R.C. 2903.06(G)(1) and 2903.08(F)(1)).

Mandatory prison term means any of the following: (1) subject to clause (2), the term in prison that must be imposed for the offenses or circumstances set forth in R.C. 2929.13(F)(1) to (8) or (F)(12) and R.C. 2929.14(D)--relevant to the act, within the specified provisions is R.C. 2923.13(F)(4), which requires a sentencing court to impose a prison term for a felony offense of aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault when R.C. 2903.06 or 2903.08 requires the imposition of a prison term for the offense, (2) the term of 60 or 120 in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to R.C. 2929.13(G)(2) and R.C. 4511.19(G)(1)(d) or (e), or (3) the term in prison imposed pursuant to R.C. 2971.03 for the offenses and in the circumstances described in R.C. 2929.13(F)(11) and that term as modified or terminated pursuant to R.C. 2971.05 (R.C. 2929.01(Y), and referenced in R.C. 2903.06(G)(1) and 2903.08(F)(1)).

Reckless operation offense means a violation of R.C. 4511.20 (reckless operation) or a municipal reckless ordinance substantially equivalent to that section (enacted by the act in R.C. 2903.06(G)(1)(d), and referenced in 2903.08(F)(4) and 2903.081(A)(2)).

Speeding offense means a violation of R.C. 4511.21 or a municipal ordinance pertaining to speed (enacted by the act in R.C. 2903.06(G)(1)(e), and referenced in R.C. 2903.08(F)(4) and 2903.081(A)(2)).

Traffic-related homicide, manslaughter, or assault offense means involuntary manslaughter in certain OVI-related circumstances, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault, or the former versions of the offenses of aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault as they existed prior to March 23, 2000 (R.C. 2903.06(G)(1)(b) and 2903.08(F)(2)).

Penalty enhancements for aggravated vehicular homicide and vehicular assault--substantially equivalent laws and ordinances

Under continuing law, for the purposes of the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular assault (and vehicular manslaughter and 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. 2903.06(F)(2) and 2903.08(F)).

Mandatory prison terms for committing aggravated vehicular homicide, when victim is a peace officer or when offender is repeat drunk driving offender; mandatory commitments to Department of Youth Services for comparable conduct

The act requires mandatory prison terms, or Department of Youth Services commitments, for aggravated vehicular homicide when the victim is a peace officer or when the offender is a repeat drunk driving offender.

Mandatory terms and commitments based upon peace officer specification

Under the act, if an offender is convicted of or pleads guilty to aggravated vehicular homicide (in violation of either the existing prohibitions, or the new prohibition added by the act, that constitute that offense) and also is convicted of

or pleads guilty to a specification that charges that the victim of the offense is a "peace officer" (see "Definitions--additional prison terms or commitments," below), the court is required to impose on the offender a prison term of five years. If a court imposes such a prison term on an offender, the prison term may not be reduced pursuant to judicial release, earned credits, or any other provision of the Pardon, Parole, and Probation Law or the Department of Rehabilitation and Correction Law. A court is prohibited from imposing more than one prison term on an offender under this provision for felonies committed as part of the same act. The act prescribes the form of the specification. (R.C. 2929.01(Y)(1), 2929.13(F)(13), 2929.14(A), (B), and (D)(5), and 2941.1413.)

Mandatory terms and commitments based upon repeat drunk driving specification

Under the act, if an offender is convicted of or pleads guilty to aggravated vehicular homicide (in violation of either the existing prohibitions, or the new prohibition added by the act, that constitute that offense) and also is convicted of or pleads guilty to a specification that charges that the offender previously has been convicted of or pleaded guilty to three or more offenses of state OVI, state OVUAC, or an "equivalent offense" (see "Definitions," below), or three or more violations of any combination of those offenses, the court is required to impose on the offender a prison term of three years. If a court imposes such a prison term on an offender, the prison term may not be reduced pursuant to judicial release, earned credits, or any other provision of the Pardon, Parole, and Probation Law or the Department of Rehabilitation and Correction Law. A court may not impose more than one prison term on an offender under this provision for felonies committed as part of the same act. The act prescribes the form of the specification. (R.C. 2929.01(Y)(1), 2929.13(F)(14), 2929.14(A), (B), and (D)(6), and 2941.1414.)

Interaction of specification terms and all other terms

If a mandatory prison term is imposed upon an offender pursuant to either of the two preceding specification provisions, the offender must serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying aggravated vehicular homicide conviction under the general Felony Sentencing Law provisions. If a mandatory prison term is imposed upon an offender pursuant to both of the two preceding specification provisions in relation to the same aggravated vehicular homicide, the offender must serve the mandatory prison term imposed as a result of the peace officer specification consecutively to and prior to the mandatory prison term imposed as a result of the repeat drunk driving specification and consecutively to and prior to any prison term imposed for the underlying aggravated vehicular homicide. If consecutive specification terms are imposed under the act or other continuing law regarding mandatory prison

terms for certain specifications (e.g., having a firearm, wearing body armor, engaging in gang-related conduct, etc.), the term to be served is the aggregate of all the terms imposed. (R.C. 2929.14(E)(5) and (6).)

Mandatory juvenile delinquency commitments to Department of Youth Services

Under the act, a juvenile court must commit a delinquent child to the Department of Youth Services (DYS) if the child's delinquent act would be felony aggravated vehicular homicide if committed by an adult and if the child is "convicted" of the peace officer specification or the repeat drunk driving specification created by the act. The provisions creating the new peace officer specification and the new repeat drunk driving specification expressly state that the specification may be used in the manner and for the purpose described below (R.C. 2152.17(A), 2941.1413(B), and 2941.1414(B)).

Under the act, if a child is adjudicated a delinquent child for committing an act that would be felony aggravated vehicular homicide if committed by an adult and if the court determines that, if an adult, the child would be guilty of a peace officer or repeat drunk driving specification, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, both of the following apply (R.C. 2152.17(A)(2) and (3)):

(1) If the court determines that the child would be guilty of the repeat drunk driving specification, the court must commit the child to DHS for the specification for a definite period of not less than one and not more than three years and also must commit the child to DHS for the underlying delinquent act under the existing Delinquent Child Law.

(2) If the court determines that the child would be guilty of the peace officer specification, the court must commit the child to DHS for the specification for a definite period of not less than one and not more than five years and also must commit the child to DHS for the underlying delinquent act under the existing Delinquent Child Law.

Continuing law, unchanged by the act and applicable regarding the new peace officer specification commitment and the new repeat drunk driver specification commitment created by the act, prohibits the juvenile court from committing a child to DHS's legal custody for a specification for a period that exceeds five years for any one delinquent act, and the total of all the periods of commitment imposed for any specification and for the underlying offense may not exceed the child's attainment of 21 years of age. Any commitment imposed for a specification must be in addition to, and must be served consecutively with and prior to, a period of commitment ordered under the Delinquent Child Law for the



underlying delinquent act, and each commitment for a specification is in addition to, and must be served consecutively with, any other period of commitment for a specification. If a commitment is imposed for a peace officer specification, repeat drunk driving specification, firearm specification, a drive by shooting specification, or as an accomplice subject to a firearm specification and a commitment also is imposed for a gang specification, the period imposed for the former type of specification must be served prior to the period imposed for the latter specification. In each case in which a court makes a specification commitment, the court retains control over the commitment for the entire period of the commitment.

If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to DYS's legal custody for institutionalization in a secure facility, the court may order that all of the periods of commitment imposed for those acts be served consecutively in DYS's legal custody, provided that those periods of commitment must be in addition to and commence immediately following the expiration of a period of commitment for a specification. A court is prohibited from committing a delinquent child to DYS's legal custody under this provision for a period that exceeds the child's attainment of 21 years of age. (R.C. 2152.17(E) and (F).)

Definitions--additional prison terms or commitments

The following definitions apply to the act's provisions regarding the additional prison terms or DYS commitments related to convictions of the peace officer specification or repeat drunk driving specification, as described above:

Equivalent offense means any of the following (R.C. 2941.1414(C)(2) by reference to R.C. 4511.181(A) and (C)): (1) state OVI or state OVUAC, (2) a violation of a municipal OVI ordinance (any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine), (3) involuntary manslaughter in a case in which the offender was subject to certain OVI-related sanctions, (4) aggravated vehicular homicide when it is based on state OVI, state watercraft OVI, or state aircraft OVI, aggravated vehicular assault, or a municipal ordinance that is substantially equivalent to either of those offenses, (5) aggravated vehicular homicide that is not based on state OVI, state watercraft OVI, or state aircraft OVI, vehicular homicide, vehicular manslaughter, vehicular assault, the former version of the offense of vehicular homicide, or a municipal ordinance that is substantially equivalent to any of those offenses or the former version of that offense, in a case

in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them, (6) 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 state OVUAC, or (7) a violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC.

Peace officer generally includes a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation; member of a police force employed by a metropolitan housing authority; member of a regional transit authority police force; state university law enforcement officer; designated Department of Public Safety enforcement agent; designated Department of Natural Resources employee who is a natural resources law enforcement staff officer, a designated forest officer, a designated preserve officer, a designated wildlife officer, a designated park officer, or a designated state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; Ohio Veterans' Home police officer; port authority special police officer; township police constable; police officer of a township or joint township police district; the House sergeant at arms if the House sergeant at arms has arrest authority; and an assistant House sergeant at arms; and, for certain purposes the State Highway Patrol's Superintendent and troopers (R.C. 2929.14(D)(5) and 2941.1412(C), by reference to R.C. 2935.01(B) which is not in the act).

Warning signs, regarding increased penalties for certain traffic offenses in a construction zone

Prior and continuing law

Prior law permitted the Director of Transportation, a board of county commissioners, or a board of township trustees to cause signs to be erected advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a "construction zone" (see "**Definitions**," below). Under prior and continuing law, the increased penalties are effective only when signs are erected in accordance with the guidelines and design specifications established by the Director under the provisions described in the next paragraph, and when a violation occurs during hours of actual work within the construction zone. (R.C. 4511.98.)

Continuing law requires the Director of Transportation to adopt rules governing the posting of signs advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a "construction zone" (see below). The rules must include guidelines to determine which areas are appropriate to the posting of such signs. The guidelines may include consideration

of the following: the duration of the work on the street or highway, the proximity of workers to moving traffic, the existence of any unusual or hazardous conditions, the volume of traffic on the street or highway, and any other appropriate factors. The Director must formulate design specifications for the signs advising motorists of the increased penalties. The provisions state that, for purposes of traffic violation penalties, nothing they contain is intended to conflict with any standard set forth in the federal Manual of Uniform Traffic Control Devices for Streets and Highways.

As used in the provisions described in the preceding two paragraphs, "construction zone" means that lane or portion of street or highway open to vehicular traffic and adjacent to a lane, berm, or shoulder of a street or highway within which lane, berm, or shoulder construction, reconstruction, resurfacing, or any other work of a repair or maintenance nature, including public utility work, is being conducted, commencing with the point where the first worker or piece of equipment is located and ending where the last worker or piece of equipment is located. (R.C. 5501.27.)

Operation of the act

The act *requires, instead of permits*, the Director of Transportation, board of county commissioners, or board of township trustees to cause signs to be erected advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a construction zone. The act retains, without change, the provision that specifies that the increased penalties are effective only when signs are erected in accordance with the guidelines and design specifications established by the Director under the existing provisions described above, and when a violation occurs during hours of actual work within the construction zone. (R.C. 4511.98.)

The act also retains, without substantive change, the provisions that require the Director of Transportation to adopt rules governing the posting of signs advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a construction zone, and that describe the content of the rules and guidelines (R.C. 5501.27).

Restitution as a sanction in a criminal case or a disposition in a delinquency or juvenile traffic offender case

Restitution in a felony case

Continuing and prior law. Continuing law provides a court that is sentencing an offender for a felony with a continuum of sanctions from which the court may impose the sentence. The sanctions available include prison terms,

community residential sanctions, nonresidential sanctions, and financial sanctions. Regarding the financial sanctions, continuing law provides that, in addition to imposing court costs pursuant to law, the court imposing a sentence upon an offender for a felony may sentence the offender to any authorized financial sanction or combination of financial sanctions, including, but not limited to, restitution, a fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense, a statutory fine in a specified amount, a state fine or costs, reimbursement by the offender of any or all of the costs of sanctions incurred by the government, or in specified cases a mandatory fine. (R.C. 2929.11 to 2929.19.)

Regarding restitution as a financial sanction for a felony, continuing law provides that the court may require the offender to make restitution to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's "economic loss" (see "Meaning of "economic loss" under the restitution sanction and disposition provisions," below). The court must order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. Under prior law, the order could include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense. If reimbursement to third parties was required, the reimbursement had to be made to any governmental agency to repay any amounts paid by the agency to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense before any reimbursement was made to any person other than a governmental agency. If no governmental agency incurred expenses for economic loss of the victim or any survivor of the victim resulting from the offense, the reimbursement had to be made to any person other than a governmental agency to repay amounts paid by that person to or on behalf of the victim or any survivor of the victim for economic loss of the victim resulting from the offense. The court could not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. Under continuing law, at sentencing, the court must determine the amount of restitution to be made by the offender. The court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information. The court must hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. The court may order that the offender pay a surcharge of not more than 5% of the amount of the restitution otherwise ordered to the entity

responsible for collecting and processing restitution payments. Under prior law, the victim or survivor could request that the prosecuting attorney file a motion, or, under continuing law, the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate. (R.C. 2929.18(A)(1).)

Under continuing law, except as otherwise provided in this paragraph, a financial sanction imposed on a felony offender is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located. A financial sanction of reimbursement imposed upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation and a financial sanction of reimbursement imposed upon an offender for costs incurred by a private provider of sanctions is a judgment in favor of the private provider. A financial sanction of restitution was, under prior law, a judgment in favor of the victim of the offender's criminal act. The offender subject to the sanction is the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring an action to: (1) obtain execution of the judgment through any available procedure, including an execution against the judgment debtor's property, an execution against the person of the judgment debtor, a proceeding in aid of execution, the attachment of the judgment debtor's property, or the garnishment of the judgment debtor's property, or (2) obtain an order for the assignment of wages of the judgment debtor under R.C. 1321.33. (R.C. 2929.18(D).)

A court that imposes a financial sanction upon a felony offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it. Each court imposing a financial sanction upon an offender may designate the clerk of the court or another person to collect the financial sanction, and the clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the financial sanction. If a court that imposes a financial sanction on a felony offender finds that the offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution ordered has been paid as ordered, the court may suspend any financial sanctions that were imposed and that have not been paid. No financial sanction imposed on a felony offender precludes a victim from bringing a civil action against the offender. (R.C. 2929.18(E) through (H).)

Operation of the act. The act clarifies that the imposition of restitution as a financial sanction is discretionary and modifies the provisions that pertain to restitution as a financial sanction that may be imposed upon a felony offender, as follows:

(1) It repeals all of the language that pertains to the restitution order requiring that reimbursement be made to third parties, including governmental agencies or persons other than governmental agencies, for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss (R.C. 2929.18(A)(1)).

(2) In the provision that specifies that the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, it adds language stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see "**Meaning of "economic loss" under the restitution sanction and disposition provisions,**" below) suffered by the victim as a direct and proximate result of the commission of the offense (R.C. 2929.18(A)(1)).

(3) It replaces the language that currently specifies that a financial sanction of restitution imposed upon a felony offender is a "judgment" in favor of the victim of the offender's criminal act with language that specifies that such a financial sanction is an "order" in favor of the victim and it specifies that the order can be collected in the same manners as other financial sanctions, as judgments, may be collected under existing law. Related to this, it relocates the language that specifies that "a felony offender subject to a financial sanction is the judgment debtor" so that the language does not apply regarding financial sanctions of restitution. (R.C. 2929.18(D).)

(4) In the provision regarding a request for modification of a restitution sanction, it changes the reference to "prosecuting attorney" to a reference to "prosecutor in the case"; prosecutor has the same meaning as in existing R.C. 2935.01, not in the act (R.C. 2929.01(XX) and 2929.18(A)(2)).

Restitution in a misdemeanor case

Continuing law. Continuing law provides a court that is sentencing an offender for a misdemeanor with a continuum of sanctions from which the court may impose the sentence. The sanctions available include jail terms, community residential sanctions, nonresidential sanctions, and financial sanctions. Regarding the financial sanctions, continuing law provides that, in addition to imposing court costs pursuant to law, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any

authorized financial sanction or combination of financial sanctions, including, but not limited to, restitution, a statutory fine in a specified amount, a state fine or costs, or reimbursement by the offender of any or all of the costs of sanctions incurred by the government. (R.C. 2929.21 to 2929.28.)

Regarding restitution as a financial sanction for a misdemeanor, including a minor misdemeanor, continuing law provides that the court may require the offender to make restitution to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's "economic loss" (see *Meaning of "economic loss" under the restitution sanction and disposition provisions,* below). The court must order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim. Under prior but not continuing law, the order could include a requirement that reimbursement be made to third parties, other than the offender's insurer, for amounts paid to the victim or any survivor of the victim for economic loss resulting from the offense. If reimbursement to third parties was required, the offender had to make the reimbursement to any governmental agency to repay any amounts paid by the agency to the victim or survivor before the offender made any reimbursement to any other person. Under continuing law, the court must determine, or order to be determined, the amount of restitution to be paid by the offender. The court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information. The court must hold a hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. All restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. The court may order that the offender pay a surcharge, of not more than 5% of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments. The victim or survivor may request that the prosecuting attorney file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered; if the court grants the motion, it may modify the payment terms as it determines appropriate. (R.C. 2929.28(A)(1).)

Continuing law provides that, if the court determines a hearing is necessary, it may hold a hearing to determine whether the offender is able to pay the financial sanction imposed or court costs or is likely in the future to be able to pay the sanction or costs. If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court must consider imposing and may impose a term of community service in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service in lieu of or in addition to

imposing a financial sanction and in addition to imposing court costs. The court may order community service for a minor misdemeanor in lieu of or in addition to imposing a financial sanction and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs. (R.C. 2929.28(B).)

Under continuing law, except as otherwise described in this paragraph, a financial sanction imposed upon a misdemeanor offender is a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction. A financial sanction of reimbursement imposed upon a misdemeanor offender is a judgment in favor of the entity administering the community control sanction or operating the jail or residential facility, whichever is applicable. Under prior law, a financial sanction of restitution imposed upon a misdemeanor offender was a judgment in favor of the victim of the offender's criminal act. Under prior law, the offender subject to the financial sanction was the judgment debtor. Under continuing law (modified by the act), once the financial sanction is imposed as a judgment, the victim, private provider, state, or political subdivision may bring an action to obtain execution of the judgment through any available procedure, including any of the procedures identified above regarding felony financial sanctions, or obtain an order for the assignment of wages of the judgment debtor. The civil remedies so authorized for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence. (R.C. 2929.28(D) and (E).)

Continuing law permits each court imposing a financial sanction upon a misdemeanor offender to designate the clerk of the court or another person to collect the financial sanction, and the clerk, or another person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction, permit payment of all or any portion of the sanction in installments or, depending upon the type of court, by any of a list of specified methods of payment, or, to defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction. No financial sanction imposed upon a misdemeanor offender precludes a victim from bringing a civil action against the offender. (R.C. 2929.28(F) and (G).)

Operation of the act. The act modifies some of the provisions that pertain to financial sanctions that may be imposed upon a misdemeanor offender. In the provision that lists examples of financial sanctions (e.g., restitution, a statutory fine, etc.), it adds a specific statement indicating that the listed sanctions are examples of the sanctions that may be imposed *if the court in its discretion imposes one or more financial sanctions* (R.C. 2929.28(A)). Regarding the

provisions that pertain to restitution as a financial sanction that may be imposed, it makes the following changes:

(1) In the provision that identifies restitution as an example of a financial sanction that may be imposed, it adds language that limits the application of the restitution provision *only to misdemeanors that are not minor misdemeanors and that could not be disposed of by the Traffic Violations Bureau serving the court under Traffic Rule 13*, and it clarifies the imposition of restitution as a financial sanction is discretionary (R.C. 2929.28(A)(1)).

(2) It repeals all of the language that pertains to the restitution order requiring that reimbursement be made to third parties, other than the offender's insurer, for amounts paid to the victim or any survivor of the victim for economic loss (R.C. 2929.28(A)(1)).

(3) In the provision that requires the court to determine, *or order to be determined*, the amount of restitution to be paid by the offender, it repeals the language authorizing the court to order the determination of the amount (R.C. 2929.28(A)(1)).

(4) In the provision that specifies that the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, it adds language stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see "*Meaning of "economic loss" under the restitution sanction and disposition provisions*," below) suffered by the victim as a direct and proximate result of the commission of the offense (R.C. 2929.28(A)(1)).

(5) It adds language specifying that, if the court holds an evidentiary hearing (regarding the restitution), at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender (R.C. 2929.28(A)(1)).

(6) It replaces the language that specified that a financial sanction of restitution imposed upon a misdemeanor offender was a "judgment" in favor of the victim of the offender's criminal act with language that specifies that such a financial sanction is an "order" in favor of the victim, and it specifies that the order can be collected in the same manners as other financial sanctions, as judgments, may be collected under existing law. Related to this, it relocates the language that specifies that "a misdemeanor offender subject to a financial sanction is the judgment debtor" so that the language does not apply regarding financial sanctions of restitution. (R.C. 2929.28(D).)

(7) In the provision regarding a request for modification of a restitution sanction, it changes the reference to "prosecuting attorney" to a reference to "prosecutor in the case"; prosecutor has the same meaning as in existing R.C. 2935.01, not in the act (R.C. 2929.01(XX) and 2929.28(A)(2)).

Restitution in a delinquency or juvenile traffic offender case

Continuing law--delinquent child or juvenile traffic offender disposition.

Continuing law provides a court that is imposing a disposition upon a child who has been adjudicated a delinquent child or a juvenile traffic offender with a continuum of options from which the court may impose the disposition. The disposition options available include commitments to the Department of Youth Services if the child's act would be a felony if committed by an adult, temporary commitments to specified types of county, district, or private facilities, community control sanctions, driver's license or permit suspensions, and financial sanctions. Regarding the financial sanctions, existing law provides that, if a child is adjudicated a delinquent child or a juvenile traffic offender, the court, in addition to any other disposition authorized or required by R.C. Chapter 2152., may issue an order as a disposition that imposes a fine in accordance with a specified schedule, requires the child to pay costs, requires the child to make restitution or requires the child to reimburse any or all of the costs incurred for services or sanctions provided or imposed. (R.C. 2152.11 through 2152.21.)

Regarding restitution as a disposition, continuing law provides that the court may require a delinquent child or juvenile traffic offender to make restitution to the victim of the child's delinquent act or, if the victim is deceased, to a survivor of the victim in an amount based upon the victim's "economic loss" (see "**Meaning of 'economic loss' under the restitution sanction and disposition provisions,**" below) caused by or related to "the delinquent act." Restitution required under this division must be made directly to the victim in open court or to the probation department that serves the jurisdiction or the clerk of courts on behalf of the victim. Under prior but not continuing law, the restitution could include reimbursement to third parties, other than "the delinquent child's" insurer, for amounts paid to the victim or to any survivor of the victim for economic loss resulting from "the delinquent act." If reimbursement to a third party was required, the reimbursement had to be made to any governmental agency to repay any amounts the agency paid to the victim or any survivor of the victim before any reimbursement was made to any other person.

Restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the

previously described forms of restitution. The court may base the restitution order on an amount recommended by the victim or survivor of the victim, "the delinquent child," a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and any other information. If the amount of the restitution is disputed by the victim or survivor or by "the delinquent child," the court must hold a hearing on the restitution. The court must determine, or order the determination of, the amount of restitution to be paid by "the delinquent child." All restitution payments must be credited against any recovery of economic loss in a civil action brought by or on behalf of the victim against "the delinquent child" or the delinquent child's parent, guardian, or other custodian. The court may order that "the delinquent child" pay a surcharge, in an amount not exceeding 5% of the amount of restitution otherwise ordered, to the entity responsible for collecting and processing the restitution payments. The victim or the survivor of the victim may request that the prosecuting authority file a motion, or "the delinquent child" may file a motion, for modification of the payment terms of any restitution ordered; if the court grants the motion, it may modify the payment terms as it determines appropriate. (R.C. 2152.20(A)(3).)

Continuing law provides that the court may hold a hearing if necessary to determine whether a delinquent child or juvenile traffic offender is able to pay a financial sanction. If a child who is adjudicated a delinquent child is indigent, the court must consider imposing a term of community service in lieu of imposing a financial sanction. If a child who is adjudicated a delinquent child is not indigent, the court may impose a term of community service in lieu of, or in addition to, imposing a financial sanction under this section. The court may order community service for an act that if committed by an adult would be a minor misdemeanor. If a child fails to pay a financial sanction, the court may impose a term of community service in lieu of the sanction. The clerk of the court, or another person authorized by law or by the court to collect a financial sanction imposed on a delinquent child or juvenile traffic offender may enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction, permit payment of all or any portion of the sanction in installments or by any of a list of specified methods of payment, or, to defray administrative costs, charge a reasonable fee to a child who elects a payment plan rather than a lump sum payment of a financial sanction. (R.C. 2152.20(C) through (E).)

Operation of the act--delinquent child or juvenile traffic offender disposition. The act modifies the provisions that pertain to restitution as a disposition that may be imposed upon a delinquent child or juvenile traffic offender, as follows (R.C. 2252.20(A)(3)):

(1) In the provision that identifies restitution as an example of a disposition sanction that may be imposed, it clarifies that the restitution provision applies to

both adjudicated juvenile traffic offenders and adjudicated delinquent children, it adds language that limits the application of the restitution provision *only to delinquent acts or juvenile traffic offenses that would not be minor misdemeanors if committed by an adult and that could not be disposed of by the Juvenile Traffic Violations Bureau serving the court under Traffic Rule 13.1 if the court has established such a bureau*, and it clarifies the imposition of restitution as a disposition is discretionary.

(2) It repeals all of the language that pertains to the restitution disposition requiring that reimbursement be made to third parties, other than the child's insurer, for amounts paid to the victim or any survivor of the victim for economic loss.

(3) In the provision that specifies that the court may base the amount of restitution it orders on an amount recommended by the victim, the child, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, it adds language stating that the amount the court orders as restitution cannot exceed the amount of the "economic loss" (see "*Meaning of "economic loss" under the restitution sanction and disposition provisions*," below) suffered by the victim as a direct and proximate result of the commission of the offense.

Continuing and prior law--separate juvenile traffic offender disposition.

In addition to the provisions described above that provide a court that is imposing a disposition upon a child who has been adjudicated a delinquent child or a juvenile traffic offender with a continuum of options from which the court may impose the disposition, existing law sets forth separate dispositional options that are available for children who have been adjudicated juvenile traffic offenders. The disposition options available include imposing costs and one or more financial sanctions under the provisions described above in "*Continuing law--delinquent child or juvenile traffic offender disposition*," suspending the child's driver's license or permit, placing the child on community control, requiring the child to make restitution for damages caused by the child's traffic violation modified by the act as described below in "*Operation of the act--separate juvenile traffic offender disposition*," or, if the child's act is an OVI violation, committing the child for not longer than five days to a detention facility or the temporary custody of a facility for children operated by a county, a district, or a private agency or organization. (R.C. 2152.21.)

Operation of the act--separate juvenile traffic offender disposition. The act modifies the separate provision that pertains to restitution as a disposition that may be imposed upon a juvenile traffic offender, by specifying that the restitution may be imposed under the provision of R.C. 2152.21, as described in the

preceding part of the analysis, and only for the juvenile traffic offenses described in that provision (R.C. 2152.21(A)(4)).

Meaning of "economic loss" under the restitution sanction and disposition provisions

Prior law. Prior law defined "economic loss," for purposes of the Felony Sentencing Law and Misdemeanor Sentencing Law, as any economic detriment suffered by a victim as a result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. Prior law similarly defined "economic loss," for purposes of the Delinquent Child Law and Juvenile Traffic Offender Law, as any economic detriment suffered by a victim of the delinquent act and includes any loss of income due to lost time at work because of any injury caused to the victim and any property loss, medical cost, or funeral expense incurred as a result of the act. (R.C. 2152.02(L) and 2929.01(M).)

Operation of the act. The act modifies both of the definitions of "economic loss" to specify that economic loss includes only the specified detriment suffered as a direct and proximate result of the act or offense in question, and that it does not include "non-economic loss" (see below) or any punitive or exemplary damages. It also clarifies in the definition that pertains to delinquent acts that the term also applies regarding juvenile traffic offenses. (R.C. 2152.02(L) and 2929.01(M).)

The act defines "non-economic loss," as used in both of the definitions of economic loss, as nonpecuniary harm suffered by a victim of an offense, delinquent act, or juvenile traffic offense, whichever is applicable, as a result of or related to the commission of the offense, or the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss (R.C. 2152.02(DD) and 2929.01(WW)).

Purposes of misdemeanor sentencing

Continuing law

Continuing law provides that (R.C. 2929.21):

(1) A court that sentences an offender for a misdemeanor or minor misdemeanor must be guided by the overriding purposes of misdemeanor sentencing; it specifies that the overriding purposes of misdemeanor sentencing

are to protect the public from future crime by the offender and others and to punish the offender and specifies that, to achieve those purposes, the sentencing court must consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(2) A sentence imposed for a misdemeanor or minor misdemeanor must be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in (1), above, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

(3) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor cannot base the sentence upon the race, ethnic background, gender, or religion of the offender.

Operation of the act

The act specifies that the provisions described in (1), (2), and (3) under "**Continuing law**" apply to any violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, and that the provisions described in (1) and (2) do not apply to any offense that is disposed of by a Traffic Violations Bureau of any court pursuant to Traffic Rule 13 and do not apply to any violation of any Revised Code provision that is a minor misdemeanor and that is disposed of without a court appearance. The provisions in (1), (2), and (3) do not affect any penalties established by a municipal corporation for a violation of its ordinances. (R.C. 2929.21(A) to (D).)

Changes related to Am. Sub. S.B. 123 of the 124th General Assembly

Am. Sub. S.B. 123 of the 124th General Assembly (hereafter, S.B. 123) enacted numerous traffic law revisions that were recommended by the Ohio Criminal Sentencing Commission and that were effective January 1, 2004. The act modifies a few of the provisions contained in S.B. 123 and corrects several errors in those provisions and other related provisions.

Petitioning for limited driving privileges under an administrative license suspension

Provisions of continuing law enacted in S.B. 123 generally restrict courts from granting limited driving privileges during any suspension imposed by the Bureau of Motor Vehicles unless a provision of the Revised Code allows a court to

do so (related provisions specify that "limited driving privileges" include occupational, educational, vocational, or medical purposes, taking the driver's or commercial driver's license examination, and attending court-ordered treatment; R.C. 4510.021(A), unaffected by the act). If a court is permitted to grant limited driving privileges, continuing provisions enacted in S.B. 123 require a petition to be filed in a court of record in the county in which the person who is under suspension resides. Under prior but not continuing law, if a person was not an Ohio resident, the person could file a petition for privileges in the Franklin county municipal court, or, if the non-resident was a minor, in the Franklin county juvenile court.

The act expands the available courts in which a non-resident may file a petition for limited driving privileges under a BMV suspension. Under the act, a non-resident may file such a petition either in the Franklin county municipal court or in the municipal or county court located in the county where the offense occurred. If the non-resident is a minor, the person may file a petition either in the Franklin county juvenile court or in the juvenile court with jurisdiction over the offense. (R.C. 4510.021(B).)

Five year look-back period for driving under an FR suspension or cancellation

S.B. 123. Provisions of continuing law enacted in S.B. 123 prohibit a person from operating a motor vehicle or knowingly permitting any motor vehicle owned by the person to be operated by another person in the state during the period when the person is required to file and maintain proof of financial responsibility because the person previously has operated or permitted the operation of a motor vehicle in Ohio without sufficient proof of financial responsibility as prohibited by R.C. 4509.101. A person who violates this prohibition is guilty of driving under financial responsibility suspension or cancellation, which is a misdemeanor of the first degree. (R.C. 4510.16(A) and (B)(1).)

Provisions of continuing and prior law enacted in S.B. 123 require, in addition to other applicable sanctions, the immobilization of the vehicle involved in the offense, if it is registered in the offender's name, as follows (R.C. 4510.16(B)(2)):

(1) Generally, a court must order the immobilization of the vehicle involved in the offense of driving under financial responsibility suspension or cancellation and the impoundment of the license plates of that vehicle for 30 days.

(2) If the offender previously (modified by the act--see "Operation of the act," below) has been convicted of or pleaded guilty to one violation of the

prohibition of driving under financial responsibility suspension or cancellation or a substantially similar municipal ordinance, the court must order the immobilization of the vehicle involved in the offense and the impoundment of the license plates of that vehicle for 60 days.

(3) If the offender previously (modified by the act--see "*Operation of the act*," below) has been convicted of or pleaded guilty to two or more violations of the prohibition of driving under financial responsibility suspension or cancellation or a substantially similar municipal ordinance, the court must order the criminal forfeiture to the state of the vehicle involved in the offense or fine the offender in an amount equal to the value of the vehicle in specified circumstances.

Operation of the act. The act establishes a look-back period of five years, for purposes of the immobilization and impoundment or criminal forfeiture penalties for persons who are guilty of driving under financial responsibility law suspension or cancellation, regarding the relevance of prior convictions or guilty pleas of driving under a financial responsibility law suspension or cancellation. Thus, only if a person has one or more prior convictions or guilty pleas to driving under financial responsibility law suspension or cancellation within the prior five years of the offense is the immobilization and impoundment penalty of 30 days enhanced, as discussed above. (R.C. 4510.16(B)(2)(b) and (c).)

Modification or termination of a Class 1 or 2 suspension

S.B. 123. Continuing and prior law, enacted in S.B. 123, permits a person to file a motion with the sentencing court for modification or termination of a Class 1 suspension (a definite period of life) or a Class 2 suspension (a definite period of between three years to life) when the period of suspension is in excess of 15 years. Prior law specified that such a motion could be heard only once, and continuing law requires that the person filing the motion must demonstrate all of the following (R.C. 4510.54(A)):

- (1) At least 15 years have elapsed since the suspension began;
- (2) For the past 15 years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, Ohio law, or the law of any political subdivision, or any violation of a suspension under R.C. Chapter 4510. or a substantially equivalent municipal ordinance;
- (3) The person has proof of financial responsibility, a policy of liability insurance in effect that meets certain minimum standards, or proof, to the satisfaction of the Registrar of Motor Vehicles, that the person is able to respond in damages in an amount at least equal to the minimum standards. (R.C. 4509.51(B) provides that the minimum standards of financial responsibility are as

follows: (1) \$12,500 for bodily injury to or death to one person in any one accident, (2) \$25,000 for bodily injury to or death to two or more persons in any one accident, and (3) \$7,500 because of injury to property of others in any one accident);

(4) If the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or a combination of them at the time of the offense or because the person had a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine, the person must demonstrate (a) the person successfully completed an alcohol, drug, or alcohol and drug treatment program, (b) the person has not abused alcohol or other drugs for a period satisfactory to the court, and (c) for the past 15 years, the person has not been found guilty of any alcohol or drug-related offense.

Operation of the act. The act specifies that a court may deny the motion without a hearing but cannot grant the motion without a hearing. If the court denies a motion without a hearing, the court may consider a subsequent motion filed by the person for modification or termination of such a suspension. However, if a court denies such a motion after a hearing, the court is barred from considering subsequent motions for that same person. (R.C. 4510.54(B).)

Suspensions for street racing

Continuing law prohibits a person from participating in street racing upon any public road, street, or highway in Ohio ("street racing" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds). A person who violates this prohibition is guilty of street racing, a misdemeanor of the first degree. When a person pleads guilty to or is convicted of street racing, provisions of existing law enacted in S.B. 123 require a court, in addition to any other available sanctions, to suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for not less than 30 days or, under prior but not continuing law, more than one year. In imposing such a suspension, a court is prohibited from suspending the first 30 days of any such suspension. (R.C. 4511.251.)

The act modifies the mandatory suspension provision. Under the act, a court is required to suspend the license, permit, or privilege of a person who is convicted of or pleads guilty to street racing for not less than 30 days or more than three years. The mandatory "hard" suspension of 30 days is unaffected by the act. (R.C. 4511.251(C).)



Definition of "operate" under Traffic Law

Previously, for purposes of the Traffic Law, "operate" meant 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. The act modifies the definition so that "operate" means to cause or have caused movement of a vehicle, streetcar, or trackless trolley. (R.C. 4511.01(HHH).)

Operating a motor vehicle without a valid license

Continuing law. Continuing law generally prohibits a person from operating a motor vehicle or motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio unless the person has a valid driver's license or commercial driver's license (R.C. 4510.12(A)). A person who violates this prohibition is guilty of operating a motor vehicle without a valid license and is punished as follows (R.C. 4510.12(B)):

(1) If the offender's license was expired at the time of the offense for no more than six months, the offense is a minor misdemeanor.

(2) If the offender's license was expired for more than six months then the offense is a misdemeanor of the fourth degree.

(3) If the offender previously was convicted of or pleaded guilty to operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the third degree.

(4) If the offender has two prior convictions or guilty pleas for operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the second degree.

(5) If the offender has three or more prior convictions or guilty pleas for operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the first degree.

Operation of the act. The act modifies the penalty for the offense of operating a motor vehicle without a valid license so that, if a trier of fact finds that an offender never has held a valid driver's license or commercial driver's license issued in Ohio or another jurisdiction, the offense is a misdemeanor of the first degree. It reorganizes, but does not otherwise change the existing penalty provisions. (R.C. 4510.12(B)(1).)

Class 5 suspension for reckless operation

The law in effect prior to S.B. 123 permitted a court to suspend a person's driver's or commercial driver's license or permit or nonresident operating privilege whenever the person was found guilty under the laws of Ohio or under an ordinance of a political subdivision of operating a motor vehicle in violation of such a law or ordinance relating to reckless operation (R.C. 4507.34). S.B. 123 changed this provision to read that a court may impose a Class 5 suspension (a definite period of between six months and three years) upon an offender who is found guilty of reckless operation of a motor vehicle under Ohio law or under any ordinance of an Ohio political subdivision (R.C. 4510.15). The act generally returns this provision to pre-S.B. 123 law: a court is allowed to impose a Class 5 suspension upon any person found guilty of operating a motor vehicle in violation of an Ohio law or a municipal ordinance relating to reckless operation (R.C. 4510.15).

Discharge of a firearm upon or over a public road or highway

Continuing law

A section of the existing Weapons Control Law contains a series of prohibitions that relate to the discharge of firearms upon, from, or near certain specified places. One of the prohibitions prohibits a person from discharging a "firearm" upon or over a "public road or highway." A violation of this prohibition is the offense of "discharge of a firearm on or near prohibited premises," and, except as modified by the act (see "Operation of the act," below), the violation is a misdemeanor of the first degree. (R.C. 2923.162(A)(3) and (C).)

The other prohibitions in the section prohibit a person from: (1) without permission from the proper officials, discharging a firearm upon or over a cemetery or within one hundred yards of a cemetery (this prohibition does not apply to a person who, while on the person's own land, discharges a firearm), or (2) discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution (this prohibition does not apply to a person who owns any type of property described in the prohibition division and who, while on the person's own enclosure, discharges a firearm). A violation of either of these prohibitions also is the offense of "discharge of a firearm on or near prohibited premises," but the violation is a misdemeanor of the fourth degree. (R.C. 2923.162(A)(1) and (2), (B), and (C).)

Operation of the act

The act increases the penalty for a violation of the prohibition against discharging a firearm upon or over a public road or highway. Under the act, a violation of the prohibition remains the offense of "discharge of a firearm on or near prohibited premises," but the penalty for the violation would be (R.C. 2923.162(A)(3) and (C)): (1) except as otherwise provided in clause (2), (3), or (4), a misdemeanor of the first degree (as under existing law), (2) except as otherwise provided in clause (3) or (4), if the violation created a substantial risk of physical harm to any person or caused serious physical harm to property, a felony of the third degree, (3) except as otherwise provided in clause (4), if the violation caused physical harm to any person, a felony of the second degree, and (4) if the violation caused serious physical harm to any person, a felony of the first degree.

HISTORY

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