



Sub. H.B. 50

125th General Assembly
(As Reported by H. Criminal Justice)

Reps. Hughes, Latta, Flowers, J. Stewart, Gilb, McGregor, DePiero, Redfern, Allen, Seaver, Schaffer, Barrett, Young, Schmidt, Grendell, Mason, S. Smith, Brown, Jerse, Oelslager, D. Evans

BILL SUMMARY

- Enhances the penalties for an offender who fails to comply with certain statutory provisions regarding a person's duties at the scene of an accident or collision, when the accident or collision that is the basis of the violation results in death to a person.
- Enhances the penalty for aggravated vehicular homicide committed as the proximate result of committing an OMVI offense if, at the time of the offense, the offender previously has been convicted of or pleaded guilty to: (1) three prior violations of R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs) or of a substantially equivalent municipal ordinance within the previous six years, (2) any combination of three violations of state OMVI, state OMVUAC, operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or a municipal ordinance substantially equivalent to any of those offenses, or (3) a second or subsequent felony state OMVI violation.
- Expands the offense of aggravated vehicular homicide to additionally prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy: (1) as the proximate result of violating R.C. 1544.11(A) (operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system) or a

substantially equivalent municipal ordinance, or (2) as the proximate result of violating R.C. 4561.13(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs) or a substantially equivalent municipal ordinance.

- Enhances the penalty for committing aggravated vehicular assault as the proximate result of committing an OMVI offense if, at the time of the offense, the offender previously has been convicted of or pleaded guilty to: (1) three prior violations of R.C. 1547.11(A) (operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system) or a substantially equivalent municipal ordinance within the previous six years, (2) three prior violations of R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs) or a substantially equivalent municipal ordinance within the previous six years, or (3) any combination of three violations of state OMVI, state OMVUAC, R.C. 1547.11(A), R.C. 4561.15(A)(3), or a municipal ordinance substantially equivalent to any of those offenses.
- Expands the offense of aggravated vehicular assault to additionally prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn: (1) as the proximate result of violating R.C. 1547.11(A) (operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system) or a substantially equivalent municipal ordinance, or (2) as the proximate result of violating R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs) or a substantially equivalent municipal ordinance.

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CONTENT AND OPERATION

Penalty for leaving the scene of an accident

Operation of the bill

The bill enhances the penalties for an offender who fails to comply with the requirements described under "Existing law--duties regarding leaving the scene of an accident," below, that describe the duties of a person at the scene of an accident or collision. Under existing law, if a person violates these requirements and if the accident or collision that is the basis of the violation results in death to a person, the offender is guilty of a felony of the fifth degree. The bill raises this penalty to a felony of the third degree. (R.C. 4549.99(B) in Section 1 of the bill and R.C. 4549.02(B) and 4549.021(B) in Section 4 of the bill.)

Existing law--duties regarding leaving the scene of an accident

R.C. 4549.02. Under R.C. 4549.02, in case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, is required to immediately stop the motor vehicle at the scene of the accident or collision. The person must remain at the scene of the accident or collision until the person has given the person's name and address (and, if the person is not the owner, the name and address of the owner of the motor vehicle) and the registered number of the

motor vehicle, to (1) any person injured in the accident or collision, (2) to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or (3) to any police officer at the scene of the accident or collision.

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

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

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

If the owner or person in charge of damaged property is not furnished with this information, the driver involved in the accident or collision must, within 24 hours after the accident or collision, forward to the appropriate police department or sheriff the same information required to be given to the owner or person in control of the damaged property and give the date, time, and location of the accident or collision.

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

Existing law--penalties for leaving the scene of an accident

Generally, a person who violates either of the preceding provisions is guilty of a misdemeanor of the first degree. But, when the accident or collision that is the basis of the violation results in serious physical harm or death to a person, the offender is guilty of a felony of the fifth degree. (R.C. 4549.99(B).)

Background--vehicular homicide offenses

OMVI-related aggravated vehicular homicide. R.C. 2903.06(A)(1) 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 as the proximate result of committing state OMVI or of a substantially equivalent municipal ordinance. A person who violates this prohibition is guilty of aggravated vehicular homicide and, generally, is guilty of a felony of the second degree. The violation is a felony of the first degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to certain specified offenses. (R.C. 2903.06(B)(1)(a).)

Aggravated vehicular homicide committed recklessly. R.C. 2903.06(A)(2) prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from recklessly causing the death of another or the unlawful termination of another's pregnancy. A person who violates this prohibition is guilty of aggravated vehicular homicide and, generally, is guilty of a felony of the third degree. The violation is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to certain specified offenses. (R.C. 2903.06(B)(1)(b).)

Vehicular homicide. R.C. 2903.06(A)(3) 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 and, generally, is guilty of a misdemeanor of the first degree. The violation is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or revocation or if the offender previously has been convicted of or pleaded guilty to certain specified offenses. (R.C. 2903.06(B)(2).)

Vehicular manslaughter. R.C. 2903.06(A)(4) 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 as the proximate result of committing a violation of any provision of any section contained in the Traffic Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in the Traffic Code that is a minor misdemeanor. A person who violates this prohibition is guilty of vehicular manslaughter and, generally, is guilty of a misdemeanor of the second degree. The violation is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a R.C. Chapter 4507. suspension or if the offender previously has been convicted of or pleaded guilty to certain specified offenses. (R.C. 2903.06(B)(3).)

Aggravated vehicular homicide

Existing prohibitions

Existing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways (R.C. 2903.06(A)(1) and (2)):

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

New prohibition

The bill expands the activities that constitute aggravated vehicular homicide. It additionally prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in either of the following ways (R.C. 2903.06(A)(1)(b) and (c)):

- (1) As the proximate result of violating R.C. 1547.11(A) (operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system) or by violating a substantially equivalent municipal ordinance;
- (2) As the proximate result of violating R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs) or by violating a substantially equivalent municipal ordinance.

Existing penalties--generally

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

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

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

(1) The offender was driving under a suspension.

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

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

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

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

The court must permanently revoke the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident

¹ *In the offense of aggravated vehicular homicide, when a penalty is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, that reference includes any violation of any substantially equivalent municipal ordinance, former Ohio law, or current or former law of another state or the United States (R.C. 2903.06(D)(2)).*

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

operating privilege of a person committing aggravated vehicular homicide.³ The court also must impose a mandatory prison term on the offender. (R.C. 2903.06(B)(1)(a) and (C).)

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

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

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

(2) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, R.C. 4561.15(A)(3) (operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs), or a municipal ordinance substantially equivalent to any of those offenses.

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

Penalties for new prohibitions

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

(1) The offender was driving under a suspension.

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

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

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

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

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

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

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

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

The court must permanently revoke the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person who violates either of the new prohibitions.⁴ The court also must impose a mandatory prison term on the offender. (R.C. 2903.06(C), (D), and (H) and 4507.16(D)(1).)

Aggravated vehicular assault

Existing prohibition

Existing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or

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

aircraft, from causing serious physical harm to another person or another's unborn as the proximate result of committing state OMVI or of violating a substantially equivalent municipal ordinance. A person who violates this prohibition is guilty of aggravated vehicular assault. (R.C. 2903.08(A)(1) and (B)(1).)

New prohibitions

The bill expands the activities that constitute aggravated vehicular assault. The bill additionally prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn in either of the following ways (R.C. 2903.08(A)(1)(b) and (c)):

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

(2) As the proximate result of violating R.C. 4561.15(A)(3) by operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs or by violating a substantially equivalent municipal ordinance.

Existing penalties

Generally, aggravated vehicular assault is a felony of the third degree. But, aggravated vehicular assault is a felony of the second degree if, at the time of the offense, any of the following apply:⁵

(1) The offender was driving under a suspension.

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

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

⁵ For the purposes of the offense of aggravated vehicular assault, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former Ohio law, or current or former law of another state or the United States (R.C. 2903.08(E)).

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

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

The court must suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of a person committing aggravated vehicular assault for a definite period of two to ten years or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault or any traffic-related homicide, manslaughter, or assault offense, for a definite period of three years to life.⁶ The court also must impose a mandatory prison term on an offender who is convicted of or pleads guilty to aggravated vehicular assault. (R.C. 2903.08(A)(1), (B)(1), and (C).)

New penalties for existing prohibition

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

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

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

(3) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC,

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

R.C. 1547.11(A), R.C. 4561.15(A)(3), or a municipal ordinance violation substantially equivalent to any of those offenses.

Penalties for new prohibitions

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

- (1) The offender was driving under a suspension.
- (2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault.
- (3) The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.
- (4) The offender previously has been convicted of or pleaded guilty to three prior violations of state OMVI, state OMVUAC, or a substantially equivalent municipal ordinance within the previous six years.
- (5) The offender previously has been convicted of or pleaded guilty to three prior violations of operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system (R.C. 1547.11(A)) or of a substantially equivalent municipal ordinance within the previous six years.
- (6) The offender previously has been convicted of or pleaded guilty to three prior violations of operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs (R.C. 4561.15(A)(3)) or of a substantially equivalent municipal ordinance within the previous six years.
- (7) The offender previously has been convicted of or pleaded guilty to any combination of three of the following offenses: state OMVI, state OMVUAC, a substantially equivalent municipal ordinance, R.C. 1547.11(A), a substantially equivalent municipal ordinance, R.C. 4561.15(A)(3), or a substantially equivalent municipal ordinance.
- (8) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OMVI violation.

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

COMMENT

R.C. 2903.06(C)(8) in the bill is duplicative of R.C. 2903.06(C)(5) and should be removed.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-11-03	p. 140
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