



**H.B. 52**

125th General Assembly  
(As Introduced)

Reps. Hughes, Latta, Gilb, Grendell, DePiero, Seaver, Redfern, Young

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**BILL SUMMARY**

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

- 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 working in the construction zone or the unlawful termination of the pregnancy of a person working in the construction zone as the proximate result of committing a reckless operation or speeding offense.
- 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 physical harm to a person working in the construction zone or the unborn of a person working in the construction zone as the proximate result of committing a reckless operation or speeding offense.

**Specification terms for committing aggravated vehicular homicide**

- 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 violations of state OVI, state OVUAC, or an equivalent offense.

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

**Penalty warning signs**

- Authorizes 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 of the stringent penalties for committing the new prohibitions under the bill for causing death or injury in a construction zone as a result of a reckless operation or speeding offense.
- Specifies that, if the Director of Transportation or a board fails to cause any sign to be erected, the failure does not limit or restrict the application of the new prohibitions to a person operating a motor vehicle or motorcycle within the construction zone, the enforcement of those prohibitions, or the prosecution of a person who violates either of those prohibitions.
- Authorizes the Director of Transportation to adopt rules specifying the advice to be set forth on the signs described in the second preceding dotpoint and to adopt rules governing the posting of signs of that type and requires the Director to formulate design specifications for the signs.

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## CONTENT AND OPERATION

### Aggravated vehicular homicide in a construction zone

#### Existing law

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 either of the following ways: (1) as the proximate result of committing state OVI or a substantially equivalent municipal offense, or (2) recklessly. A person who violates either of these prohibitions is guilty of aggravated vehicular homicide. (R.C. 2903.06(A)(1) and (2) and (B)(1); see **COMMENT 1**.)

Generally, aggravated vehicular homicide committed as the proximate result of committing state 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," below); three prior violations of R.C. 4511.19 (state OVI and state OVUAC) or of a substantially equivalent municipal ordinance within the previous six years; 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 permanently revoke the offender's driver's license, commercial driver's license, temporary

instruction permit, probationary license, or nonresident operating privilege.<sup>1</sup> (R.C. 2903.06(B)(1)(a) and (C).)

Generally, aggravated vehicular homicide committed recklessly is a felony of the third degree. 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 suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of three years to life.<sup>2</sup> (R.C. 2903.06(B)(1)(b).) The court must impose a mandatory prison term on the offender if either of the following applies (R.C. 2903.06(C)):

(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 4507.

### **Operation of the bill**

The bill additionally prohibits 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 working in the construction zone or the unlawful termination of the pregnancy of a person working in the construction zone as the proximate result of committing a reckless operation or speeding offense (see "Definitions," below) in the construction zone (R.C. 2903.06(A)(2)(a)).

A person who violates this new prohibition is guilty of aggravated vehicular homicide. Other than the criteria for imposing a mandatory prison term, as described below, the penalties for violating this new prohibition parallel those of aggravated vehicular homicide committed as the proximate result of committing

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<sup>1</sup> *On and after January 1, 2004, in addition to any other sanction imposed, the court is required to 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).*

<sup>2</sup> *On and after January 1, 2004, in addition to any other sanctions imposed, the court is required to 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).*

state OVI. Generally, a violation of the new prohibition 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; three prior violations of R.C. 4511.19 (state OVI and state OVUAC) or of a substantially equivalent municipal ordinance within the previous six years; or a second or subsequent felony state OVI violation.

The court must 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 (unlike OVI-related aggravated vehicular assault, for which a mandatory prison term is always required). In addition to any other sanctions imposed, the court must permanently revoke the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege.<sup>3</sup> (R.C. 2903.06(B)(1)(a) and (C).)

### **Vehicular assault in a construction zone**

#### **Existing law**

Existing 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); see **COMMENT 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 4507. 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**," below). In addition to any other sanctions imposed, the court must suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of one to five years or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or any traffic-related homicide,

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<sup>3</sup> *On and after January 1, 2004, the court is required to 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).*

manslaughter, or assault offense, for a definite period of two to ten years.<sup>4</sup> (R.C. 2903.08(B)(2).)

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

(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.

### **Operation of the bill**

The bill additionally prohibits a person, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, from causing *physical harm* to a person working in the construction zone or the unborn of a person working in the construction zone as the proximate result of committing a reckless operation or speeding offense (see "**Definitions**," below) in the construction zone (R.C. 2903.08(A)(2)(a)).

A person who violates this new prohibition is guilty of vehicular assault. Other than the criteria for imposing a mandatory prison term, the penalties for violating the new prohibition are the same as in existing law for vehicular assault. Under the bill, 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. (R.C. 2903.06(B)(2) and (C).)

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<sup>4</sup> *On and after January 1, 2004, 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).*

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

Under existing law, unchanged by the bill, for the purposes of the offenses of aggravated vehicular homicide and vehicular assault (and vehicular homicide, 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(D)(2) and 2903.08(E)).

**Specification terms for committing aggravated vehicular homicide**

**Peace officer specification**

Under the bill, if an offender is convicted of or pleads guilty to aggravated vehicular homicide 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," 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 bill 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.)

**Repeat drunk driving specification**

Under the bill, if an offender is convicted of or pleads guilty to aggravated vehicular homicide 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 offenses of state OVI, state OVUAC, or an equivalent offense (see "Definitions," below), 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 bill 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**

If a mandatory prison term is imposed upon an offender pursuant to 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 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, the term to be served is the aggregate of all the terms imposed. (R.C. 2929.14(E)(5) and (6).)

### **Juvenile delinquency dispositions**

Under the bill, a juvenile court may commit a delinquent child to the Department of Youth Services (DYS) if the child is "convicted" of the peace officer specification or the repeat drunk driving specification created by the bill. 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. 2941.1413(B) and 2941.1414(B)).

Under the bill, if a child is adjudicated a delinquent child for committing an act that would be 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.

Existing law, unchanged by the bill and applicable regarding the new peace officer specification term and the new repeat drunk driver specification term created by the bill, prohibits the juvenile court from committing a child to DYS'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 Juvenile Delinquency 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).)

### **Penalty warning signs**

Under the bill, the Director of Transportation, a board of county commissioners, or a board of township trustees may cause signs to be erected in construction zones advising motorists of the stringent penalties for committing a violation of the new prohibitions under the bill for causing death or injury in a construction zone as a result of a reckless operation or speeding offense. If the Director or a board fails to cause any sign to be erected, the failure does not limit or restrict the application of the new prohibitions to a person operating a motor vehicle or motorcycle within the construction zone, the enforcement of those prohibitions, or the prosecution of a person who violates either of those prohibitions.

The bill also authorizes the Director of Transportation to adopt rules specifying the advice to be set forth on these signs and to adopt rules governing the posting of signs of that type. If the Director adopts rules of this nature, all signs posted as authorized in the provision described in the preceding paragraph must comply with those rules. The Director must formulate design specifications for the signs advising motorists of the illegal conduct identified in the preceding paragraph. For purposes of traffic violation penalties, the bill states that nothing in this paragraph is intended to conflict with any standard set forth in the Federal Manual of Uniform Traffic Control Devices for Streets and Highways. (R.C. 4511.98(B) and 5501.27(A)(2) and (3).)

### **Definitions**

#### **Construction zone**

As used in the bill for the offenses of aggravated vehicular homicide and vehicular assault, "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. 2903.06(D)(1)(c) and 2903.08(D)(3), by reference to R.C. 5501.27(B)).

#### **Equivalent offense**

As used in the bill's provisions relating to the repeat drunk driving specification, "equivalent offense" means one of the following:

(1) Until January 1, 2004, "equivalent offense" means (enacted in R.C. 2941.1414(C)(1) and referenced in R.C. 2929.14(D)(6)):

(a) A municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(b) A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(c) Involuntary manslaughter in a case in which the offender was subject to certain OVI-related sanctions;

(d) Aggravated vehicular homicide when it is OVI-related or aggravated vehicular assault or a municipal ordinance that is substantially similar to either of those offenses;



(e) Aggravated vehicular homicide that is not OVI-related, vehicular homicide, vehicular manslaughter, vehicular assault, or the former version of the offense of vehicular homicide, or a municipal ordinance that is substantially similar to any of those offenses or the former version of that offense, in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(f) A statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to state OVI or state OVUAC.

(2) On and after January 1, 2004, "equivalent offense" means any of the following (R.C. 2941.1414(C)(2) by reference to R.C. 4511.181(A) and (C)):

(a) State OVI or state OVUAC;

(b) 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);

(c) A violation of involuntary manslaughter in a case in which the offender was subject to certain OVI-related sanctions;

(d) Aggravated vehicular homicide when it is OVI-related or aggravated vehicular assault or a municipal ordinance that is substantially equivalent to either of those offenses;

(e) Aggravated vehicular homicide that is not OVI-related, vehicular homicide, vehicular manslaughter, vehicular assault, or 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;

(f) 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;

(g) A violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC.



### **Peace officer**

As used in existing law and the bill, "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 police force employed by a regional transit authority; state university law enforcement officer; designated enforcement agent of the Department of Public Safety; designated employee of the Department of Natural Resources 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; special police officer employed by a port authority; police constable of any township; 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 superintendent and troopers of the State Highway Patrol (R.C. 2929.14(D)(5) and 2941.1412(C), by reference to R.C. 2935.01(B) which is not in the bill).

### **Reckless operation or speeding offense**

As used in the bill for the new prohibitions in the offenses of aggravated vehicular homicide and vehicular assault, "reckless operation or speeding offense" means a violation of R.C. 4511.20 (reckless operation) or 4511.21 (speeding) or a municipal reckless operation or speeding ordinance (enacted by the bill in R.C. 2903.06(D)(1)(d) and referenced in 2903.08(D)(4)).

### **Traffic-related homicide, manslaughter, or assault offense**

As used in existing law and the bill for the offenses of aggravated vehicular homicide and vehicular assault (and vehicular homicide, vehicular manslaughter, and aggravated vehicular assault), "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(D)(1)(b) and 2903.08(D)(2)).

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## **COMMENT**

1. Related to this provision, existing law, unchanged by the bill, also prohibits a person, while operating or participating in the operation of a motor

vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in either of the following ways: (a) negligently, or (b) as the proximate result of committing a violation of any provision in the Motor Vehicle Laws 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 those Laws that is a minor misdemeanor. A person who violates the prohibition set forth in clause (a) is guilty of vehicular homicide, which is a misdemeanor of the first degree or a felony of the fourth degree, depending upon the circumstances present, and a person who violates the prohibition set forth in clause (b) is guilty of vehicular manslaughter, which is a misdemeanor of the second degree or a misdemeanor of the first degree, depending upon the circumstances present. (R.C. 2903.06(A)(3), (A)(4), (B)(2), and (B)(3).)

2. Related to this, existing law, unchanged by the bill, also prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn as the proximate result of committing state OVI or a substantially equivalent municipal offense. A person who violates this prohibition is guilty of aggravated vehicular assault, which is a felony of the third degree or a felony of the second degree, depending upon the circumstances present. (R.C. 2903.08(A)(1) and (B)(1).)

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## HISTORY

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