Dennis M. Papp *Legislative Service Commission*

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Reps. Hughes, Latta, Gilb, Grendell, DePiero, Seaver, Redfern, Young, Willamowski, D. Evans, Barrett, Brown, Buehrer, Carano, Carmichael, Chandler, Cirelli, DeGeeter, DeWine, Distel, Domenick, Driehaus, C. Evans, Flowers, Hagan, Hartnett, Husted, Jolivette, McGregor, Oelslager, Olman, Otterman, T. Patton, Perry, Reidelbach, Schaffer, Schlichter, Schmidt, Sferra, Skindell, D. Stewart, Walcher, Widener, Wilson, Wolpert, Woodard

BILL SUMMARY

Aggravated vehicular homicide, 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 offense.

- 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 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 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 offense or speeding offense.

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 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

- Requires 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.

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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 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); see **COMMENT** 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***," 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 bill

The bill 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, 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 offense" (see "***Definitions***," below) in the construction zone (R.C. 2903.06(A)(2)(b)).

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 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 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 recklessly related aggravated vehicular assault, for which a mandatory prison term is also required when 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).)

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 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); see **COMMENT** 1.)

Operation of the bill

The bill 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 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 "speeding offense" (see "***Definitions***," below) in the construction zone (R.C. 2903.06(A)(3)(b)).

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. However, the bill requires a court to impose upon the offender a term of imprisonment of at least 15 days; the court may impose a longer term in accordance with the Misdemeanor Sentencing Law. The offense 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. 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).)

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 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***," 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 bill

The bill 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 *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

offense" or "speeding offense" (see "***Definitions***," below) in the construction zone (R.C. 2903.08(A)(2)(a) and (3)).

A person who violates either of these new prohibitions is guilty of vehicular assault:

(1) With respect to vehicular assault committed in a construction zone as a proximate result of a *reckless operation offense*, with one exception, 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. The difference in the penalties is that, 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(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 bill classifies the offense generally as a misdemeanor of the first degree with a requirement that a court impose upon the offender a term of imprisonment of at least seven days; the court may impose a longer term in accordance with the Misdemeanor Sentencing Law. 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. A court is required to impose a mandatory prison term on an offender who is convicted of or pleads guilty to a 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. 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).)

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, 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 bill enacts provisions requiring 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 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.)

Mandatory terms and commitments based upon 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 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 bill's provisions or the provisions of existing 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 Youth Services

Under the bill, a juvenile court must commit a delinquent child to the Department of Youth Services (DYS) if the child's delinquent act would be a felony 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 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. 2152.17(A), 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 a felony 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 (including, apparently, an adjudication that the delinquent act would be aggravated vehicular homicide if committed by an adult), 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 DYS 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 DYS 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 DYS 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 DYS 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 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).)

Penalty warning signs

Existing law

Existing law permits 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; see **COMMENT** 3). 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.)

Existing 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 "***Definitions***," 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. (R.C. 5501.27.)

Operation of the bill

The bill *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 bill retains, without change, the existing 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 (see **COMMENT** 4). (R.C. 4511.98.)

The bill also retains, without change, the existing 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).

Definitions

Construction zone

As used in the bill for the offenses of aggravated vehicular homicide and vehicular assault, and as used in the existing provision described above in "***Penalty warning signs***," "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(F)(1)(c), 2903.08(E)(3), 4511.98, and 5501.27).

Equivalent offense

As used in the bill's provisions relating to the repeat drunk driving specification, "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 offense

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

Speeding offense

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

Traffic-related homicide, manslaughter, or assault offense

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

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 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 this prohibition 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)(4) and (D).)

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, state watercraft OVI, or state aircraft 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).)

3. Existing R.C. 4511.21, not in the bill, contains the state's speed limits, prohibitions against violating any of the speed limits, and penalties for violating any of the prohibitions. It also includes an "increased penalty" provision regarding speeding in a construction zone. The "increased penalty" provision specifies that, notwithstanding the standard specified fines for the violations, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with R.C. 4511.98, the court, in addition to all other penalties provided

by law, must impose upon the offender a fine of two times the usual amount imposed for the violation. No court can impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine. (R.C. 4511.21(O)(3).)

4. The effect of the bill's retention of the existing provision that specifies that increased penalties for certain "traffic violations" that occur within construction zones are effective only when signs warning of the increased penalties are erected in accordance with the guidelines and design specifications established by the Director of Transportation is unclear regarding the bill's changes to the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular assault. Although the validity of the arguments cannot be determined with certainty, both of the following arguments regarding the effect could be made:

(a) The bill's changes to those offenses involve new, or expanded, prohibitions that involve conduct occurring in a construction zone, and not merely an increase in penalties for a violation of an existing prohibition that occurs in a construction zone. Also, the bill's changes to those offenses do not involve "traffic offenses," since the offenses are not located in R.C. Title XLIV, which generally is considered to set forth the traffic laws and offenses. Thus, it is arguable that the bill's retention of the "warning sign" limitation regarding "increased penalties for traffic offenses occurring in a construction zone" would have no effect on the application of the bill's changes to the offenses.

(b) However, it also is arguable that, notwithstanding the two arguments presented above in (3)(a), the true effect of the bill's changes to those offenses is to increase penalties for offenses that involve a motor vehicle or motorcycle (i.e., a traffic offense) that occur in a construction zone and that, as a result, the existing "warning sign" limitation retained by the bill would apply to the "increased penalties" resulting from the bill's changes to those offenses.

HISTORY

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