



Sub. H.B. 163*

125th General Assembly
(As Reported by S. Judiciary)

Reps. Oelslager, Olman, Hagan, Raussen, Williams, Barrett, D. Evans, C. Evans, Fessler, Latta, McGregor, Perry, Hollister, Willamowski, Brown, Allen, Aslanides, Beatty, Boccieri, Buehrer, Calvert, Carmichael, Cates, Chandler, Cirelli, Clancy, Core, DeBose, DePiero, Distel, Domenick, Flowers, Gibbs, Gilb, Harwood, Hoops, Hughes, Husted, Jerse, Jolivette, Key, Koziura, Martin, Mason, Niehaus, Otterman, S. Patton, T. Patton, Price, Reidelbach, Reinhard, Schaffer, Schlichter, Schmidt, Schneider, Setzer, Skindell, D. Stewart, J. Stewart, Strahorn, Taylor, Trakas, Wagner, Webster, White, Widener, Wilson

BILL SUMMARY

- Enacts an additional prohibition within the section that contains state OVI that prohibits a person who, within 20 years of the conduct described in clause (2), previously has been convicted of or pleaded guilty to state OVI, state OVUAC or a municipal OVI offense, from doing both of the following: (1) operating any vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (1), being asked by a law enforcement officer to submit to a chemical test or tests under the vehicle-related Implied Consent Law, and being advised by the officer in accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests.
- Specifies that a violation of the new prohibition described in the preceding dot point is the offense of state OVI, and provides that the punishment for a violation of the new prohibition is the same as the

** This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

punishment provided under existing law, with modifications made by the bill, for a violation of a high-end state OVI prohibition.

- Provides that state OVI is a felony of the fourth degree if the offender previously has been convicted of five or more offenses of state OVI, a comparable municipal ordinance violation, state OVUAC, or any of a list of specified vehicle-related and alcohol-related offenses (hereafter, collectively referred to as "predicate offenses"), within 20 years of the offense.
- Provides an additional mandatory prison term of one, two, three, four, or five years for state OVI when it is a felony of the third degree or a felony of the fourth degree, if the offender also pleads guilty to or is convicted of a "State OVI Five Prior Conviction Specification" charging prior convictions, within 20 years of committing the offense, of five or more predicate offenses as enacted in the bill.
- Provides that, when a court imposes a mandatory term of local incarceration for a fourth degree felony OVI offense, the court imposes any additional community control sanction, and the offender violates any condition of the sanction, the court may take any action prescribed in R.C. 2929.15(B) relative to the offender's violation of the sanction, including imposing a prison term on the offender pursuant to that provision.
- Provides that, when a court imposes a prison sentence for a felony OVI offense, the court also may sentence the offender to community control sanctions.
- Except when the person's OVI offense was "high-end state OVI" or a comparable municipal OVI provision, eliminates the requirement that a court must require a person to display restricted license plates as a condition of granting limited driving privileges when a license has been suspended for state or municipal OVI if the person has not been convicted of one or more prior state OVI or municipal OVI offenses or "equivalent offenses" within the previous six years and has not been convicted of felony state OVI any time previously; the bill's elimination of this requirement does not apply when the person's OVI offense was "high-end state OVI" or a comparable municipal OVI provision.

- Provides an additional mandatory term of imprisonment of up to six months for state OVUAC when the offender also pleads guilty to or is convicted of a "State OVUAC Five Prior Conviction Specification" charging prior convictions, within 20 years of committing the offense, of five or more predicate offenses as enacted in the bill, and the court imposes a term of imprisonment for the underlying state OVUAC offense.
- Lowers from 60,000 to 50,000 the threshold population that gives township police officers and township constables authority to make arrests for specified types of Traffic Law violations on highways included as part of the interstate highway system that are within the township.
- Requires the clerk of each municipal court, county court, and court of common pleas notwithstanding the Revised Code's other records retention and destruction provisions, to retain documentation regarding each criminal conviction and plea of guilty involving a case that is or was before the court; requires the documentation to be in a form that is admissible as evidence in a criminal proceeding as evidence of a prior conviction; requires the clerk to retain this documentation for a period of 50 years after the entry of judgment in the case; and specifies that these provisions apply to records currently retained and to records created on or after the bill's effective date, and makes other changes in the retention provisions.
- Increases from a felony of the fourth degree to a felony of the third degree the penalty for vehicular assault if, in the same course of conduct that resulted in the vehicular assault, the offender also committed a specified "failure to stop after an accident" offense.
- Changes the prohibited concentration of alcohol in the person's blood serum or plasma from .96% or more by weight per unit volume to .096% or more by weight per unit volume of alcohol in the state watercraft OVI and OVUAC law.
- Expands the authorization to petition for limited driving privileges to also apply to an Ohio resident (including a juvenile) who is convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to any drug offense prohibited by R.C. 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12,

2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 and whose license, permit, or privilege has been suspended by the Registrar (a Class D suspension, a definite period of six months).

- Modifies when the Registrar is required to terminate an ALS suspension for state or municipal OVI or OVUAC so that the Registrar is required to terminate a suspension upon receipt of notice that the person has entered a guilty plea to or that person has been convicted after entering a plea of no contest under Criminal Rule 11 to state OVI or OVUAC or municipal OVI.
- Adds three exceptions to the prospective nature of changes made by Am. Sub. S.B. 123 so that, under the bill, the following apply to conduct or an offense committed prior to January 1, 2004: (1) a person whose driver's or commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege was suspended by a court may apply to the sentencing court for limited driving privileges pursuant to R.C. 4510.021(A), (2) a person whose license, permit, or privilege was suspended by the Registrar of Motor Vehicles may apply for limited driving privileges under R.C. 4510.021(B) if limited driving privileges are expressly authorized by a section of the Revised Code for the type of conduct or offense that caused the suspension, and (3) a person whose license, permit or privilege was suspended, canceled, or revoked for life may file a motion for modification or termination of the suspension, cancellation, or revocation in accordance with R.C. 4510.54. Finally, the bill requires that the terms and conditions of any limited driving privileges granted under these three provisions are to be governed by the law in effect on and after January 1, 2004.
- Amends several sections that refer to R.C. 4511.194, which is the offense of having physical control of a vehicle while under the influence, to also include references to a substantially equivalent municipal ordinance.
- Removes references to "special" license plates in favor of the term "restricted" license plates.
- Requires that, when a person with a temporary instruction permit and identification card drives a motor vehicle, the eligible adult or person over 21 years of age who occupies the seat beside the person driving the

motor vehicle not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine.

- Defines "continuous alcohol monitoring" and specifically authorizes it as a community control sanction in criminal and delinquent child cases, either as an independent sanction or in conjunction with electronic monitoring as a sanction.

TABLE OF CONTENTS

State OVI prohibitions	6
Existing law.....	6
Operation of the bill	7
Penalties for state OVI	8
Existing law.....	8
Operation of the bill	10
Restricted license plates as a condition of limited driving privileges under an OVI suspension.....	13
State OVUAC penalties.....	14
Background	14
Operation of the bill	14
Arrest authority of township police officers over interstate highways	15
Existing law.....	15
Operation of the bill	16
Retention of evidence of criminal convictions	16
Existing law.....	16
Operation of the bill	17
Vehicular assault.....	18
Operation of the bill	18
Existing law--vehicular assault offenses	18
State watercraft OVI and OVUAC.....	22
Existing law.....	22
Operation of the bill	24
Limited driving privileges for violations of certain federal statutes or other states' statutes	24
Operation of the bill	25
Termination of an ALS suspension upon a guilty plea or plea of no contest to state OVI or OVUAC or municipal OVI	25
Retroactive application of S.B. 123 and the bill.....	26
Statutory references to the offense of having physical control of a vehicle while under the influence.....	27
Terminology for restricted plates	27

Sobriety of accompanying adult for a person who holds a temporary instruction permit and identification card.....	27
Current law.....	27
Operation of the bill.....	28
Continuous alcohol monitoring as a sanction in criminal and delinquent child cases	28
Existing law.....	28
Operation of the bill.....	29

CONTENT AND OPERATION

State OVI prohibitions

Existing law

Existing law prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio, if, at the time of the operation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (5) the person has a concentration of .11 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (6) the person has a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (7) the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (9) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. A violation of the prohibition is the offense of "operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them" (state OVI), and the punishment for the violation varies, depending upon the number of times the person previously has been convicted of a violation of the prohibition or any of a list of related prohibitions and whether the person violated a prohibition described in clauses (1) to (5) of the preceding sentence (hereafter, these prohibitions are collectively referred to as "standard state OVI") or violated a "high amount" prohibition described in clauses (6) to (9) of that sentence (hereafter, these prohibitions are collectively referred to as "high-end state OVI"). (R.C. 4511.19(A) and (G).)

Operation of the bill

The bill enacts an additional prohibition within the section that contains the offense of state OVI. The new prohibition prohibits a person who, within 20 years of the conduct described in clause (2), previously has been convicted of or pleaded guilty to state OVI, state OVUAC (see "State OVUAC penalties," below), or a municipal OVI offense (as defined in existing R.C. 4511.181, not in the bill), from doing both of the following: (1) operating any vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (1), being asked by a law enforcement officer to submit to a chemical test or tests under the vehicle-related Implied Consent Law contained in R.C. 4511.191, and being advised by the officer in accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests (R.C. 4511.19(A)(2)).

A violation of the new prohibition also is the offense of state OVI. The punishment for a violation of the new prohibition is the same as the punishment provided under existing law, with modifications made by the bill, for a violation of a high-end state OVI prohibition as described in clauses (6) to (9) of the first sentence under "Existing law." (R.C. 4511.19(G).) The penalties are described below in "Penalties for state OVI" and **COMMENT 1**.

The bill requires the officer who arrests a person for state OVI, state OVUAC, the offense of "having physical control of a vehicle while under the influence," or a municipal OVI ordinance and who requests the person to submit to a chemical test or tests to determine the alcohol or drug content of the persons blood, breath, or urine, to warn the person, in addition to the warnings required under existing law, that if the person has a prior OVI or OVUAC conviction under state or municipal law within the preceding 20 years, the person is under arrest for state OVI and, if the person refuses to take a chemical test or tests, the person will face increased penalties if he or she subsequently is convicted of state OVI (R.C. 4511.192(B)).

Related to the enactment of the new prohibition in R.C. 4511.19(A)(2), the bill relocates all the existing prohibitions that are within the offense of state OVI. Currently, the prohibitions are designated as R.C. 4511.19(A)(1) to (9) and the bill relocates them as R.C. 4511.19(A)(1)(a) to (i). The bill changes numerous existing divisional references to those prohibitions to conform them to the relocation (R.C. 4123.54(B)(1), 4510.54(A)(4), 4511.19(C), (D)(2), (E)(1), and (G), 4511.191(C)(1), and 4511.194(B)).

Penalties for state OVI

Existing law

Under existing law, state OVI generally is a misdemeanor of the first degree or an unclassified misdemeanor, and the offender generally must be imprisoned in a local correctional facility for a specified period of time. The length of the mandatory jail term varies, depending upon the number of times that the offender, within the preceding six years, previously has been convicted of state OVI, a comparable municipal ordinance violation, state OVUAC (see "State OVUAC penalties," below), or any of a list of specified vehicle-related and alcohol-related offenses (hereafter, these offenses collectively are referred to as "predicate offenses")¹ and whether the offender violated a "standard state OVI" prohibition or a "high-end state OVI" prohibition. The general misdemeanor penalties for state OVI are described in detail in **COMMENT 1**. However, if the offender, within the preceding six years, previously has been convicted three or more times of any of the predicate offenses, state OVI is a felony of the fourth degree, and the offender must be imprisoned for a specified period of time in either a local jail or in prison (60 days for standard state OVI and 120 days for high-end state OVI) and may be sentenced to a longer term. If the offender, at any time in the past, previously has been convicted of state OVI in circumstances in which it is a felony, state OVI is a felony of the third degree, and the offender must be sentenced to a prison term (60 days for standard state OVI and 120 days for high-end state OVI) and may be sentenced to a longer term. The court may impose a term of imprisonment, in addition to the mandatory term, under the general Felony Sentencing Law. In addition to the terms of imprisonment

¹ For the purposes of state OVI and state OVUAC, the predicate offenses include all of the following (R.C. 4511.19(G) and (H), and R.C. 4511.181): (1) state OVI and state OVUAC, (2) 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, (3) a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, (4) involuntary manslaughter in a case in which the offender was subject to certain OVI-related sanctions, (5) OVI-related aggravated vehicular homicide or aggravated vehicular assault, and a municipal ordinance that is substantially equivalent to either of those offenses, (6) recklessness-related aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, vehicular assault, and former R.C. 2903.07, and a municipal ordinance that is substantially equivalent to any of those offenses or that former section, 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, and (7) 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. The bill expands the predicate offenses to also include a violation of the new state OVI prohibition it enacts.

imposed, the court sentencing an offender for felony state OVI must impose a mandatory fine, a mandatory driver's license suspension, and, in specified circumstances for repeat offenders, an order that impounds and immobilizes or criminally forfeits to the state the vehicle used in the offense. The amount of the fine and the duration of the suspension varies, depending upon the number of prior convictions of the offender (see **COMMENT 1** for a description of the sanctions for felony state OVI that do not relate to incarceration). (R.C. 4511.99(A) and R.C. 2929.13(G) and 2929.14.)

Existing law also specifies that, in addition to the mandatory term of local incarceration or the mandatory prison term required for a third or fourth degree felony OVI offense, as described above, the court must impose upon the offender a specified mandatory fine and may impose whichever of the following is applicable: (1) for a fourth degree felony OVI offense for which a mandatory term of local incarceration is imposed, an additional community control sanction or combination of community control sanctions under R.C. 2929.16 or 2929.17, as described below, or (2) for a third or fourth degree felony OVI offense for which a mandatory prison term is imposed, an additional prison term under R.C. 2929.14(D)(4), as described below (R.C. 2929.13(A)).

Existing R.C. 2929.16 and 2929.17 provide that, if an offender is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense under R.C. 2929.13(G), in addition to the mandatory term of local incarceration, the court may impose one or more community residential sanctions or nonresidential sanctions, to be served or satisfied after the offender has served the mandatory term of local incarceration (R.C. 2929.16(A) and 2929.17; also R.C. 2929.15(A), 2929.19(C)(1), and 4511.19(G)(1)(d)).

Existing R.C. 2929.14(D)(4) provides that, if an offender is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense under R.C. 2929.13(G), in addition to the mandatory prison term, the court may sentence the offender to a definite prison term of not less than six months and not more than 30 months if the offense is a fourth degree felony OVI offense, and may sentence the offender to an additional prison term of any duration specified under R.C. 2929.14(A)(3) if the offense is a third degree felony OVI offense. In either case, the additional prison term imposed must be reduced by the 60 or 120 days imposed as the mandatory prison term, and other provisions govern the service of the terms. The court cannot sentence the offender to a community control sanction under R.C. 2929.16 or 2929.17. (R.C. 2929.14(D)(4); also R.C. 2929.15(A)(1), 2929.19(C)(2), and 4511.19(G)(1)(d) and (e).)

Operation of the bill

The bill provides a penalty for the new state OVI prohibition it enacts, as described above, changes the circumstances in which state OVI is a felony of the fourth degree, provides an additional prison term or jail term for certain repeat state OVI offenders, and modifies the law governing the imposition of additional prison terms or community control sanctions for felony OVI.

Violation of the new state OVI prohibition. The bill provides that the penalties for a violation of the new state OVI prohibition it enacts are the same as the punishment provided under existing law, with modifications made by the bill, for a violation of a high-end state OVI prohibition (R.C. 4511.19(G); see **COMMENT 1** and the remaining parts of this portion of the analysis).

Fourth degree felony state OVI. Under the bill, subject to the provisions described below regarding third degree felony state OVI, state OVI is a felony of the fourth degree if, within six years of the offense, the offender previously has been convicted of *three or four* of the predicate offenses *or if, within 20 years of the offense, the offender previously has been convicted of five or more predicate offenses*. The offender may be sentenced to a definite prison term of not less than six months and not more than 30 months. The court must sentence the offender in accordance with the Felony Sentencing Law (R.C. 2929.11 to 2929.19), *must impose as part of the sentence a mandatory prison term of one, two, three, four, or five years as required by and in accordance with R.C. 2929.13(G)(2) if the offender also pleads guilty to or also is convicted of a "State OVI Five Prior Conviction Specification" as enacted in the bill* (see below), and must impose as part of the sentence either a mandatory term of local incarceration of 60 consecutive days of imprisonment for standard state OVI or 120 consecutive days for high-end state OVI in accordance with R.C. 2929.13(G)(1) or a mandatory prison term of 60 consecutive days of imprisonment for standard state OVI or 120 consecutive days for high-end state OVI in accordance with R.C. 2929.13(G)(2) *if the offender does not plead guilty to and is not convicted of a specification of that type*. The bill does not change the existing house arrest, mandatory fine, license suspension, and vehicle immobilization or forfeiture provisions that apply regarding fourth degree felony state OVI violations. (R.C. 4511.19(G)(1)(d)(i) regarding standard state OVI and 4511.19(G)(1)(d)(ii) regarding high-end state OVI; also R.C. 2929.01(Y) for conforming changes.)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OVI. The bill modifies them consistent with the provisions described in the preceding paragraph, as described below under **"R.C. 2929.13(G) sentencing provisions."**

Third degree felony state OVI. Under the bill, as under existing law, state OVI is a felony of the third degree if the offender previously has been convicted of state OVI under circumstances in which the violation was a felony, regardless of when the prior violation and the prior conviction occurred. But under the bill, the court must sentence the offender in accordance with the Felony Sentencing Law, *must impose as part of the sentence a mandatory prison term of one, two, three, four, or five years as required by and in accordance with R.C. 2929.13(G)(2) if the offender also pleads guilty to or also is convicted of a "State OVI Five Prior Conviction Specification" as enacted in the bill* (see below), and must impose as part of the sentence a mandatory prison term of 60 consecutive days of imprisonment for standard state OVI or 120 consecutive days for high-end state OVI in accordance with R.C. 2929.13(G)(2) *if the offender does not plead guilty to and is not convicted of a specification of that type.* The bill does not change the existing house arrest, mandatory fine, license suspension, and vehicle immobilization or forfeiture provisions that apply regarding fourth degree felony state OVI violations. (R.C. 4511.19(G)(1)(e)(i) regarding standard state OVI and 4511.19(G)(1)(e)(ii) regarding high-end state OVI; also R.C. 2929.01(Y) for conforming changes.)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OVI. The bill modifies them consistent with the provisions described in the preceding paragraph, as described below under "**R.C. 2929.13(G) sentencing provisions.**"

R.C. 2929.13(G) sentencing provisions. Existing R.C. 2929.13(G), unchanged by the bill in this regard, provides that, notwithstanding the general Felony Sentencing Law, if an offender is being sentenced for fourth degree felony state OVI or third degree felony state OVI, the court must impose upon the offender a mandatory term of local incarceration or a mandatory prison term determined in accordance with R.C. 2929.13(G)(1) and (2). The bill, though, modifies R.C. 2929.13(G)(1) and (2).

Under the bill, R.C. 2929.13(G)(1) provides that, if an offender is being sentenced for fourth degree felony state OVI *and if the offender has not pleaded guilty to and has not been convicted of a "State OVI Five Prior Conviction Specification" as enacted in the bill*, (see below), the court *may impose* upon the offender a mandatory term of local incarceration of 60 days or 120 days, as specified in R.C. 4511.99(A)(4) or (A)(8), as described above. As under existing law, the court cannot reduce the term pursuant to any provision of the Revised Code, the court must specify whether the term is to be served in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility, and the offender must serve the term in the specified type of facility. (R.C. 2929.13(G)(1).)

Under the bill, R.C. 2929.13(G)(2) provides that, if an offender is being sentenced for third degree felony state OVI, or if the offender is being sentenced for fourth degree felony state OVI and the court does not impose a mandatory term of local incarceration under R.C. 2929.13(G)(1), *the court must impose upon the offender a mandatory prison term of one, two, three, four, or five years if the offender also pleads guilty to or also is convicted of a "State OVI Five Prior Conviction Specification" as enacted in the bill or must impose upon the offender a mandatory prison term of 60 days or 120 days as specified in R.C. 4511.19(G)(1)(d) or (e) if the offender has not pleaded guilty to and has not been convicted of a specification of that type.* The court cannot reduce the term pursuant to any provision of the Revised Code. *The bill requires that the offender serve the one-, two-, three-, four-, or five-year mandatory prison term imposed under this provision consecutively to and prior to the prison term imposed for the underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense and expressly prohibits a grant of work release from the mandatory term.* As under existing law, in no case may an offender who once has been sentenced to a mandatory term of local incarceration pursuant to R.C. 2929.13(G)(1) be sentenced to another mandatory term of local incarceration under that division for any state OVI violation and the Department of Rehabilitation and Correction may place an offender sentenced to a mandatory prison term under this provision in an intensive program prison in specified circumstances. (R.C. 2929.13(G)(2); also R.C. 2929.01(Y).)

State OVI Five Prior Conviction Specification. The bill provides that imposition of a mandatory additional prison term of one, two, three, four, or five years upon an offender under R.C. 2929.13(G)(2) for felony state OVI, as described above, is precluded unless the indictment, count in the indictment, or information charging the felony state OVI violation specifies that the offender, within 20 years of committing the offense, previously has been convicted of or pleaded guilty to five or more predicate offense violations. The specification must be stated at the end of the body of the indictment, count, or information, in a specified form set forth in the bill. (R.C. 2941.1413.)

Additional prison term or community control sanction for felony OVI. The bill modifies the existing provisions that prohibit the imposition of a prison term on an offender who is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense and that prohibit the imposition of a community control sanction on an offender who is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense:

(1) Under the bill, if a person is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense, if the court imposes upon the offender any community control sanction, and if the offender violates any

condition of the sanction, the court may take any action prescribed in R.C. 2929.15(B) relative to the offender, including imposing a prison term on the offender pursuant to that provision. Existing R.C. 2929.15(B), unchanged by the bill, specifies that, if the conditions of a community control sanction are violated or if the offender violates a law or leaves Ohio without permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit for community control sanctions, may impose a more restrictive community control sanction, or may impose a prison term under R.C. 2929.14. Any prison term so imposed on a violator under this provision must be within the range of prison terms available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time, the more restrictive sanction, or the prison term imposed under this provision by the time the offender successfully spent under the sanction that initially was imposed. (R.C. 2929.13(A)(1) and (G)(1), 2929.14(A) and (D)(4), 2929.15(A)(1), 2929.19(C)(1), and 4511.19(G)(1)(d).)

(2) Under the bill, if a person is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense, in addition to the mandatory prison term and any other prison terms imposed on the offender for the offense, the court may sentence the offender to a community control sanction under R.C. 2929.16 or 2929.17, but the offender must serve the mandatory prison term and all other prison terms imposed on the offender for the offense prior to serving the community control sanction. (R.C. 2929.13(A)(2) and (G)(2), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), 2929.17(A), 2929.19(C)(2), and 4511.19(G)(1)(d) and (e).)

Restricted license plates as a condition of limited driving privileges under an OVI suspension

Provisions of existing law enacted in S.B. 123 generally require that when a court grants limited driving privileges to an offender whose driver's or commercial driver's license has been suspended for a state or municipal OVI conviction, the court must require the offender to display restricted plates (currently these plates are yellow with scarlet lettering) on the vehicle that is driven subject to the limited privileges (R.C. 4510.13(A)(7) and 4511.19(G)(4)).

Unless the person's OVI offense was "high-end state OVI" or a comparable municipal OVI provision, the bill eliminates the requirement that a court must require a person to display restricted license plates as a condition of granting limited driving privileges, when the person's license has been suspended for state or municipal OVI and the person previously has not been convicted of or pleaded guilty to one or more prior state OVI, municipal OVI, or "equivalent offense" violations within the previous six years and has not been convicted of or pleaded

guilty to felony state OVI any time previously. This change does not apply when the person's OVI offense was "high-end state OVI" or a comparable municipal OVI provision. The bill makes no change to the mandatory display of restricted plates as a condition of granting limited driving privileges to an individual who has been convicted of or pleaded guilty to one or more prior state OVI, municipal OVI, or equivalent offense violations within the previous six years or who previously has been convicted of or pleaded guilty to felony of state OVI. (R.C. 4510.13(A)(7) and 4511.19(G)(4).)

State OVUAC penalties

Background

Existing law prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley in Ohio if the person has: (1) a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (4) a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine (R.C. 4511.19(B)). This offense commonly is referred to as "state OVUAC."

Under existing law, state OVUAC generally is a misdemeanor of the fourth degree, provided that if, within the preceding year, the offender previously has been convicted of any of the predicate offenses, it is a misdemeanor of the third degree. In addition to any other sanction imposed, the court must suspend the offender's driver's license for a specified period of time. Existing law does not require a mandatory term of imprisonment for state OVUAC; rather, under the general Misdemeanor Sentencing Law, the court may sentence an offender convicted of state OVUAC to any sanction or sanctions authorized under that Law. (R.C. 4511.19(H); also, R.C. 2929.21 to 2929.28.)

Operation of the bill

The bill provides an additional term of imprisonment for certain repeat state OVUAC offenders.

Additional term of imprisonment for state OVUAC. Under the bill, if an offender is convicted of or pleads guilty to state OVUAC *and also is convicted of or pleads guilty to a "State OVUAC Five Prior Conviction Specification" as enacted in the bill* (see below), *and if the court imposes a term of imprisonment for the underlying offense, the court must impose upon the offender an additional*

definite jail term of not more than six months. The additional jail term cannot be reduced pursuant to any provision of the Revised Code, and the offender must serve the term consecutively to and prior to the term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense. The bill does not otherwise change the penalty for state OVUAC. (R.C. 2929.01(V), 2929.24(E), and 4511.19(H).)

State OVUAC Five Prior Conviction Specification. The bill provides that imposition of a mandatory, additional, definite term of up to six months upon an offender under R.C. 2929.21(J) for state OVUAC, as described above, is precluded unless the information charging the state OVUAC violation specifies that the offender, within 20 years of committing the offense, previously has been convicted of or pleaded guilty to five or more predicate offense violations. The specification must be stated at the end of the body of the information, in a specified form set forth in the bill. (R.C. 2941.1414.)

Arrest authority of township police officers over interstate highways

Existing law

Existing law authorizes a member of the police force of a township police district and a township constable who has received a certificate from the Ohio Peace Officer Training Council under R.C. 109.75 (apparently, certifying the member's or constable's satisfactory completion of a basic training program) to exercise the power to make arrests for violations of specified Traffic Laws (see **COMMENT 2**) as follows (R.C. 4513.39(B)):

(1) If the population of the township is 60,000 or less, the member or constable is authorized to exercise that power on those portions of all state highways, *except those highways included as part of the interstate system*, that are located within the township police district, in the case of a member of a township police district police force, or within the unincorporated territory of the township, in the case of a township constable;

(2) If the population of the township is greater than 60,000, the member or constable is authorized to exercise that power on those portions of all state highways *and highways included as part of the interstate highway system* that are located within the township police district, in the case of a member of a township police district police force, or within the unincorporated territory of the township, in the case of a township constable.

Existing law specifies that, *except as described in (1) or (2) above*, except within municipal corporations, and except as specified in R.C. 2935.03(E) regarding arrests by specified peace officers for specified violations occurring on a

portion of a street or highway immediately adjacent to the officer's employing subdivision, the State Highway Patrol, and sheriffs or their deputies, to the exclusion of all other peace officers, have the power to make arrests for violations on state highways of the specified Traffic Laws or, additionally, for violations of R.C. 4513.33 or 4513.34 (R.C. 4513.39(A)).

Operation of the bill

The bill lowers from 60,000 to 50,000 the threshold population that gives township police officers and township constables authority to make arrests for violations of the specified Traffic Laws on highways included as part of the interstate highway system (R.C. 4513.39(B)).

Retention of evidence of criminal convictions

Existing law

Municipal courts. Under existing law, notwithstanding the provisions in the City Records Commission Law, each municipal court, by rule, may order the destruction or other disposition of the files of cases that have been finally disposed of by the court for at least five years as follows (R.C. 1901.41(A) and (B)):

(1) If a case has been finally disposed of for at least five years, but less than 15 years prior to the adoption of the rule of court for destruction or other disposition of the files, the court may order the files destroyed or otherwise disposed of only if the court first complies with the requirements described in this paragraph. Generally, all of these files must be copied or reproduced prior to their destruction or disposition in the manner and according to specified statutory procedures. The copies or reproductions of the files must be retained and preserved by the court for a period of ten years after the destruction of the original files, after which the copies or reproductions themselves may be destroyed or otherwise disposed of. Files so destroyed or otherwise disposed of that are solely concerned with criminal prosecutions for minor misdemeanor offenses or that are concerned solely with traffic prosecutions do not have to be copied or reproduced in any manner or under any procedure prior to their destruction or disposition.

(2) If a case has been finally disposed of for 15 years or more prior to the adoption of the rule of court for destruction or other disposition of the files, the court may order the files destroyed or otherwise disposed of without having copied or reproduced the files prior to their destruction.

The court must retain and preserve all court dockets, indexes, journals, and cash books for at least 25 years unless they are reproduced in a statutorily specified manner under R.C. 9.01, in which case the court must retain and

preserve the reproductions at least until the expiration of the 25-year period for which the originals would have had to have been retained. Court dockets, indexes, journals, and cash books, and all other court records also are subject to destruction or other disposition under the City Records Commission Law. (R.C. 1901.41(D).)

The City Records Commission Law, contained in R.C. 149.39 (not in the bill), creates in each municipal corporation a records commission. Each commission provides rules for retention and disposal of municipal corporation records and reviews applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices.

County courts and courts of common pleas. Existing law, contained in R.C. 149.38 (not in the bill), creates in each county a county records commission. Each commission provides rules for retention and disposal of county records and reviews applications for one-time records disposal and schedules of records retention and disposition submitted by county offices. Also, R.C. 2303.14 requires the clerk of the court of common pleas to keep journals, records, books, and papers appertaining to the court and record its proceedings.

Supreme Court Rules. Existing Rule 26.05 of the Rules of Superintendence for the Courts of Ohio (not in the bill) establishes minimum records retention schedules for Ohio courts. The rule requires municipal and county courts to maintain an index, docket, journal, and case files. The index, docket, and journal must be retained for 25 years. Driving under the influence of alcohol or drug (OVI) case files must be retained for seven years after the date of the final order of the municipal or county court. Except for OVI case files, first through fourth degree misdemeanor traffic and criminal case files must be retained for five years after the date of the final order of the municipal or county court or one year after the issuance of an audit report by the Auditor of State, whichever is later. Minor misdemeanor traffic and minor misdemeanor criminal case files must be retained for two years after the final order of the municipal or county court or one year after the issuance of an audit report by the Auditor of State, whichever is later.

Operation of the bill

The bill provides that, notwithstanding the Revised Code's other records retention and destruction provisions described above under **Existing law,** each clerk of a municipal court, county court, and court of common pleas must retain documentation regarding each criminal conviction and plea of guilty involving a case that is or was before the court. The documentation must be in a form that is admissible as evidence in a criminal proceeding as evidence of a prior conviction and may be in any form authorized by existing R.C. 9.01. The bill requires the clerk to retain this documentation for a period of 50 years after the entry of

judgment in the case. These provisions apply to records currently retained and to records created on or after the bill's effective date. (R.C. 1901.41(A) and (E), 1907.231, and 2301.141.)

The bill also modifies the portion of the existing provision described above in (1) under "**Existing law**" that currently specifies that files destroyed or otherwise disposed of under the provision that are concerned solely with criminal prosecutions for minor misdemeanor offenses or that are concerned solely with traffic offenses do not have to be copied or reproduced in any manner or under any procedure prior to their destruction or disposition under that provision. Under the bill, the language specifies that files destroyed or otherwise disposed of under the provision that are concerned solely with criminal prosecutions for minor misdemeanor offenses *or that are concerned solely with minor misdemeanor traffic offenses* do not have to be copied or reproduced in any manner or under any procedure prior to their destruction or disposition under that provision. (R.C. 1901.41(B)(1).)

Vehicular assault

Operation of the bill

The bill increases the penalty for the offense of "vehicular assault" (see "**Existing law--vehicular assault offenses**," below) from a felony of the fourth degree to a felony of the third degree if the offender, in the same course of conduct that resulted in the vehicular homicide, also committed a violation of any of three specified provisions relating to failure to stop after an accident as described below in "**Existing law--failure to stop after an accident**" (R.C. 2903.08(B)(2)).

Existing law--vehicular assault offenses

Vehicular assault. A person commits the offense of vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, recklessly causes serious physical harm to another person or another's unborn (R.C. 2903.08(A)(2)).

Generally, vehicular assault is a felony of the fourth degree. Vehicular assault is a felony of the third 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 aggravated vehicular assault, vehicular assault, or any traffic-related homicide, manslaughter, or assault offense.²

² "*Traffic-related homicide, manslaughter, or assault offense*" means involuntary manslaughter when the underlying violation is state OVI or OVUAC or a substantially similar municipal violation, aggravated vehicular homicide, vehicular homicide,

The court must impose a mandatory prison term on an offender who is convicted of or pleads guilty to vehicular assault 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 assault, vehicular assault, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, or (2) at the time of the offense, the offender was driving under suspension.

In addition to any other sanctions imposed, the court must impose upon the offender a Class 4 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege 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 Class 3 suspension of the offender's license, permit, or privilege. (R.C. 2903.08(C).)

Aggravated vehicular assault. A person commits the offense of aggravated vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, causes serious physical harm to another person or another's unborn as the proximate result of (R.C. 2903.08(A)(1)): (a) committing a state OVI or of a substantially equivalent municipal ordinance, (b) violating R.C. 1547.11(A), not in the bill, which prohibits a person from operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol or a drug of abuse or with a prohibited concentration of alcohol in the person's system, or of violating a substantially equivalent municipal ordinance, or (c) violating R.C. 4561.15(A)(3), not in the bill, which prohibits a person from operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or of violating a substantially equivalent municipal ordinance.

Generally, aggravated vehicular assault is a felony of the third degree. Aggravated vehicular assault is a felony of the second degree if any of the following apply (R.C. 2903.08(B)(1)):

- (1) At the time of the offense, the offender was driving under a suspension.
- (2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault.

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.2303.08(E)(2), by reference to R.C. 2903.06, not in the bill).

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

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

(5) The offender previously has been convicted of or pleaded guilty to three or more prior violations of 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 or more prior violations of 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 three or more prior violations of any combination of the offenses listed in paragraph (4), (5), or (6), above.

(8) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony OVI violation.

The court must impose a mandatory prison term on an offender who is convicted of or pleads guilty to aggravated vehicular assault. In addition to any other sanctions imposed, the court must impose upon the offender a Class 3 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to a specified offense, a Class 2 suspension of the license, permit, or privilege. (R.C. 2903.08(B)(2) and (D).)

Failure to stop after an accident. Under existing law unchanged by the bill, 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, immediately must stop the motor vehicle at the scene of the accident or collision and remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

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

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle must securely attach the information required to be given, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

A person who fails to comply with the preceding requirements is guilty of failure to stop after an accident, a misdemeanor of the first degree. If the violation results in serious physical harm or death to a person, failure to stop after an accident is a felony of the fifth degree. The court, in addition to any other penalties provided by law, is required to impose upon the offender a Class 5 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. No judge may suspend the first six months of the suspension. (R.C. 4549.02, not in the bill.)

Failure to stop after a nonpublic road accident. Under existing law unchanged by the bill, 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, and, upon request of the person injured or damaged, or any other person, is required to give that person the driver's or operator's name and address, and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that 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 the damaged property is not furnished such information, the driver of the motor vehicle involved in the accident or collision, within 24 hours after the accident or collision, is required to forward to the police department of the city or village in which the accident or collision occurred or if it occurred outside the corporate limits of a city or village to the sheriff of the county in which the accident or collision occurred the same information required to be given to the owner or person in control of the 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 who collides with the motor vehicle must securely attach the information required to be given, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

A person who fails to comply with the preceding requirements is guilty of failure to stop after a nonpublic road accident, a misdemeanor of the first degree. If the violation results in serious physical harm or death to a person, failure to stop after a nonpublic road accident is a felony of the fifth degree. The court, in addition to any other penalties provided by law, must impose upon the offender a Class 5 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. No judge may suspend the first six months of the suspension. (R.C. 4549.021, not in the bill.)

Failure to stop after an accident involving the property of others. Under existing law unchanged by the bill, the driver of any vehicle involved in an accident resulting in damage to real property, or personal property attached to real property, legally upon or adjacent to a public road or highway is required to immediately stop and take reasonable steps to locate and notify the owner or person in charge of the property of that fact, of the driver's name and address, and of the registration number of the vehicle the driver is driving and, upon request and if available, must exhibit the driver's or commercial driver's license. If the owner or person in charge of the property cannot be located after reasonable search, the driver of the vehicle involved in the accident resulting in damage to the property, within 24 hours after the accident, is required to forward to the police department of the city or village in which the accident or collision occurred, or if it occurred outside the corporate limits of a city or village to the sheriff of the county in which the accident or collision occurred, the same information required to be given to the owner or person in control of the property and give the location of the accident and a description of the damage insofar as it is known.

A person who fails to comply with these requirements is guilty of failure to stop after an accident involving the property of others, a misdemeanor of the first degree. (R.C. 4549.03, not in the bill.)

State watercraft OVI and OVUAC

Existing law

Prohibitions. Current law prohibits a person from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if at the time of the operation, control,

or manipulation, any of the following applies (state watercraft OVI--R.C. 1547.11(A)):

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person has a blood alcohol concentration of .08% or more in the person's whole blood.

(3) The person has a concentration of .96% or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(4) The person has a concentration of .11 grams or more by weight of alcohol per 100 milliliters in the person's urine.

(5) The person has a concentration of .08 grams or more by weight of alcohol per 210 liters of the person's breath.

Additionally, current law prohibits a person under 21 years of age from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters if at the time of operation, control, or manipulation, one of the following applies (state watercraft OVUAC--R.C. 1547.11(B)³):

(1) The person has a blood alcohol concentration of at least .02% but less than .08% in the person's whole blood.

(2) The person has a concentration of at least .03% but less than .96% by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least .028 but less than .11 grams or more by weight of alcohol per 100 milliliters in the person's urine.

(4) The person has a concentration of at least .02 but less than .08 grams or more by weight of alcohol per 210 liters of the person's breath.

Penalties. A violation of either of the prohibitions described above is a misdemeanor of the first degree, and the law specifies mandatory terms of imprisonment and mandatory fines that must be imposed on the offender (see **COMMENT 3**) (R.C. 1547.99(G)).

³ *The prohibited levels of alcohol in a person's whole blood, blood serum or plasma, breath, or urine specified for state watercraft OVI and for state watercraft OVUAC were enacted by Am. Sub. H.B. 87 of the 125th General Assembly.*

Operation of the bill

For state watercraft OVI, the bill changes the prohibited concentration of alcohol in the person's blood serum or plasma from .96% or more by weight per unit volume to .096% or more by weight per unit volume of alcohol. For state watercraft OVUAC, it changes the upper limit of the prohibited range of concentration of alcohol in the person's blood serum or plasma from .96% by weight per unit volume to .096% by weight per unit volume of alcohol. (R.C. 1547.11(A)(3) and (B)(2).) This correction aligns state watercraft OVI and OVUAC with the state OVI and OVUAC law, which also specifies that the prohibited concentration of alcohol in a person's blood serum or plasma is .096% (R.C. 4511.19(A)(1)(c) and (B)(2), not substantively changed by the bill).

Limited driving privileges for violations of certain federal statutes or other states' statutes

Provisions of existing law enacted in Am. Sub. S.B. 123 of the 124th General Assembly (hereafter, S.B. 123) require the Registrar of Motor Vehicles to impose a Class D suspension (a definite period of six months) of an Ohio resident's driver's or commercial driver's license or permit or nonresident operating privilege when the person (including a juvenile) has been convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to the following Ohio drug offenses: corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marihuana, illegal assembly or possession of chemicals for the manufacture of drugs, funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, possession of drugs, possessing drug abuse instruments, permitting drug abuse, illegal use or possession of drug paraphernalia, selling drug paraphernalia to juveniles, illegal advertising of drug paraphernalia, deception to obtain a dangerous drug, illegal processing of drug documents, abusing harmful intoxicants, trafficking in harmful intoxicants, improperly dispensing or distributing nitrous oxide, illegal dispensing of drug samples, possession of counterfeit controlled substances, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising. (R.C. 4510.17(A) and (C).) Additionally, the Registrar is required to impose a Class D suspension upon an Ohio resident (including a juvenile) who is convicted of or pleads guilty to federal law or the law of another state that is substantially similar to state OVI or OVUAC. (R.C. 4510.17(B) and (D).)

Other existing provisions enacted in S.B. 123 allows a person (including a juvenile) who pleads guilty or is convicted of another state's OVI or OVUAC law to petition the municipal court, county court, or juvenile court in whose jurisdiction the person resides for limited driving privileges during the suspension.

The court is prohibited, however, from granting limited driving privileges during the following "hard" part of the suspension:

(1) The first 15 days of the suspension if the person has not been convicted within six years of the date of the offense giving rise to the suspension of state OVI or OVUAC or municipal OVI, a municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, involuntary manslaughter in violation of R.C. 2903.04 when the proximate cause of the offense was a violation of state OVI or OVUAC, aggravated vehicular homicide involving state OVI or aggravated vehicular assault, or another specified current or former alcohol-related and vehicle-related homicide offense (collectively "qualifying prior offenses");

(2) The first 30 days of the suspension if the person has been convicted of a qualifying prior offense once within six years of the offense giving rise to the suspension;

(3) The first 180 days of such a suspension if the person has been convicted of or pleaded guilty to two prior qualifying offenses within the preceding six years;

(4) No limited driving privileges are permitted if the person has been convicted of or pleaded guilty to three or more qualifying prior offenses in the prior six years (R.C. 4510.17(E)).

Operation of the bill

The bill expands the existing authorization to petition for limited driving privileges that currently applies regarding other states' OVI convictions so that it also applies to a person (including a juvenile) who is convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to the drug offenses listed above. The bill does not include any provisions mandating a "hard" suspension for limited driving privileges granted under the expansion, as it does for violations of another jurisdiction's OVI or OVUAC law. (R.C. 4510.17(E).)

Termination of an ALS suspension upon a guilty plea or plea of no contest to state OVI or OVUAC or municipal OVI

Existing law requires an arresting law enforcement officer to suspend the license, permit, or privilege of a person who refuses to take a chemical test of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath or urine if that person is arrested for state OVI or

OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194, or municipal OVI. (R.C. 4511.191(B)(1).) Additionally, an arresting law enforcement officer must suspend the license, permit, or privilege of a person who is arrested for state OVI or OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194, or municipal OVI if the person submits to a chemical test and the results of that test indicate a prohibited level of alcohol. (R.C. 4511.191(C)(1).) The Registrar of Motor Vehicles is then required to enter the suspension and the period of the suspension in the Registrar's records.

Provisions of existing law enacted in S.B. 123 specify that the Registrar must terminate the administrative (ALS) suspension of the offender's license, permit, or privilege upon receiving notice that the person has entered a guilty plea or has been convicted of state OVI or OVUAC or municipal OVI on the basis of the same incident that led to the arresting officer's suspension.

The bill modifies when the Registrar is required to terminate the ALS suspension so that the Registrar must terminate a suspension upon receipt of notice that the person has entered a guilty plea to, or that the person has been convicted after entering a plea of no contest to, state OVI or OVUAC or municipal OVI that arose from the same incident that led to the suspension. (R.C. 4511.191(B)(2) and (C)(2).)

Retroactive application of S.B. 123 and the bill

Uncodified law included in S.B. 123 mandates that the provisions of the act that amended or enacted Revised Code sections only apply to conduct and offenses committed on or after January 1, 2004; conduct and offenses committed prior to January 1, 2004, must be governed by the law in effect on the date the conduct or offense was committed. (Section 5 of S.B. 123.)

The bill adds the following three exceptions to the prospective nature of changes made by S.B. 123:

(1) A person whose driver's or commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege was suspended by a court may apply to the sentencing court for limited driving privileges pursuant to R.C. 4510.021(A).

(2) A person whose license, permit, or privilege was suspended by the Registrar of Motor Vehicles may apply for limited driving privileges under R.C. 4510.021(B), if limited driving privileges are expressly authorized by a section of the Revised Code for the type of conduct or offense that caused the suspension.

(3) A person whose license, permit, or privilege was suspended, canceled, or revoked for life may file a motion for modification or termination of the suspension, cancellation, or revocation in accordance with R.C. 4510.54.

The bill also requires that the terms and conditions of any limited driving privileges granted under these three provisions be governed by the law in effect on and after January 1, 2004. (Section 3.)

Statutory references to the offense of having physical control of a vehicle while under the influence

The bill amends several Revised Code sections that currently refer to the offense of having physical control of a vehicle in violation of R.C. 4511.194, which was enacted in S.B. 123, to also include references to a substantially equivalent municipal ordinance. (R.C. 4511.191(A)(2), (B)(1), (C)(1), and (D)(2), 4511.192(A), (D)(1), (D)(1)(d)(i), (D)(1)(d)(ii), (D)(1)(d)(iv), and (D)(2), 4511.196(A), and 4511.197(A) and (C)(1).)

Terminology for restricted plates

Generally, the term "restricted" license plate is used in the Revised Code to refer to the yellow and scarlet license plates issued to certain offenders as a condition of limited driving privileges. However, in one section of current law the term "special" license plate is also used to refer to these license plates. To avoid confusion, the bill replaces the term "special" with "restricted." (R.C. 4507.02(B)(2) and (3).)

Sobriety of accompanying adult for a person who holds a temporary instruction permit and identification card

Current law

Under current law, a person who is between the ages of 15 years and 6 months and 16 years and holds a temporary instruction permit and a temporary instruction permit identification card is prohibited from driving a motor vehicle upon the state's highways or public or private property used by the public for purposes of vehicular traffic or parking unless the person is accompanied by an eligible adult who actually occupies the seat beside the permit holder.⁴ Additionally, the permit holder must have the permit and identification card in the

⁴ An eligible adult is defined as a parent, guardian, or custodian of the permit holder or a person who is at least 21 years old who acts in loco parentis of the permit holder who holds a current valid driver's or commercial driver's license issued by Ohio. (R.C. 4507.05(H)(1), unchanged by the bill.)

holder's immediate possession, the total number of occupants of the vehicle may not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle must be wearing all of the available elements of a properly adjusted occupant restraining device. (R.C. 4507.05(A)(1).)

If a person is at least 16 years of age, current law allows the permit holder to drive with any licensed operator who is at least 21 years of age and is actually occupying the seat beside the driver. Otherwise, the requirements for operating a motor vehicle with a temporary permit and instruction permit are the same as for a driver between the ages of 15 and 6 months and 16 years. (R.C. 4507.05(A)(2).)

A violation of either of these provisions is a minor misdemeanor (R.C. 4507.05(I), unchanged by the bill).

Operation of the bill

The bill adds a requirement that the eligible driver or licensed operator who occupies the seat beside the permit holder must not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in R.C. 4511.19(A), which is the offense of state OVI. Otherwise, the bill does not modify a permit holder's obligations with respect to operating a motor vehicle. (R.C. 4507.05(A)(1)(b) and (2)(b) and (F)(2).)

Continuous alcohol monitoring as a sanction in criminal and delinquent child cases

Existing law

Existing law identifies numerous types of community control sanctions and generally authorizes a court that is sentencing an offender for a conviction of a misdemeanor or a felony to impose one or more of the sanctions as part of the offender's sentence. Existing law also permits a juvenile court that is making disposition of a delinquent child to impose in the order of disposition one or more sanctions that are similar in nature to community control sanctions. Among the sanctions so authorized for both criminal offenders and delinquent children are: a period of house arrest without electronic monitoring; a period of electronic monitoring without house arrest; or a period of house arrest with electronic monitoring. Separate provisions in the state OVI law specifically authorize a court, in certain circumstances, to impose a period of house arrest with electronic monitoring. (R.C. 2152.19(A)(4)(j) and (k), 2929.01(F), 2929.17(B), 2929.27(A)(2), and 4511.19(G)(1)(b), (1)(c), and (3).)

Operation of the bill

The bill modifies the existing provisions regarding the use of community control sanctions in sentencing an offender for a conviction of a misdemeanor or a felony and in ordering disposition of an adjudicated delinquent child to also include as a community control sanction, and permit the court to use in sentencing an offender for a conviction of a misdemeanor or a felony and in ordering disposition of an adjudicated delinquent child, "continuous alcohol monitoring" (see below). Specifically, under the bill, the sanctions so authorized for both criminal offenders and delinquent children are: a period of house arrest without electronic monitoring or continuous alcohol monitoring; a period of electronic monitoring or continuous alcohol monitoring without house arrest; or a period of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The separate provisions in the state OVI law that specifically authorize a court, in certain circumstances, to impose a period of house arrest with electronic monitoring are similarly modified to authorize the court in the specified circumstances to impose a period of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

The bill defines "continuous alcohol monitoring," for purposes of these provisions, as the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored. (R.C. 2152.19(A)(4)(j) and (k), 2929.01(F) and (WW), 2929.17(B), 2929.27(A)(2), and 4511.19(G)(1)(b), (1)(c), and (3).)

COMMENT

1. R.C. 4511.19(G) sets forth the penalties for a state OVI conviction. Generally, the offense is a misdemeanor of the first degree or an unclassified misdemeanor. The penalties for state OVI when it is a misdemeanor are described in this **COMMENT**. In certain circumstances, though, state OVI is a felony. The incarceration-related penalties for felony state OVI are described in the **CONTENT AND OPERATION** portion of this analysis, under 'Penalties for state OVI,' and the penalties for felony state OVI that do not relate to incarceration are described in this **COMMENT**. Regarding the penalties for misdemeanor state OVI and the nonincarceration-related penalties for state OVI, R.C. 4511.19(G) provides that the sentencing court must sentence the offender under the Criminal Sentencing Law, except as otherwise authorized or required as described in (1)(a) to (e), below:

(a) Except as otherwise provided in (1)(b) to (e), below, the offender is guilty of a misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of a standard state OVI prohibition, a mandatory jail term of three consecutive days (72 consecutive hours). The court may impose a jail term in addition to the three-day mandatory jail term or intervention program, but the cumulative jail term imposed cannot exceed six months; it may suspend the execution of all or part of the three-day jail term if, in lieu of the suspended part, it places the offender under a community control sanction pursuant to R.C. 2929.25 and requires the offender to attend, for the suspended part, a drivers' intervention program; and it may require the offender to attend and satisfactorily complete any treatment or education programs that comply with specified minimum standards that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs, and also may impose any other conditions of community control that it considers necessary. If the sentence is being imposed for a violation of a high-end state OVI prohibition, a mandatory jail term of at least three consecutive days (72 consecutive hours) and a requirement that the offender attend, for three consecutive days, a drivers' intervention program, but if the court determines the offender is not conducive to treatment in a drivers' intervention program, if the offender refuses to attend such a program, or if the jail at which the offender is to serve the jail term imposed can provide such a program, the court must sentence the offender to a mandatory jail term of at least six consecutive days. The court may require the offender, under a community control sanction imposed under R.C. 2929.25, to attend and satisfactorily complete any treatment or education programs that comply with specified minimum standards, in addition to the required attendance at a drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs; it also may impose any other conditions of community control on the offender that it considers necessary.

(ii) In all cases, a fine of not less than \$250 and not more than \$1,000 (R.C. 4511.19(G)(5) specifies the manner in which OVI fines must be distributed);

(iii) In all cases, a class five license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(5). The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13.

(b) Except as otherwise provided in (1)(e), below, an offender who, within six years of the offense, previously has been convicted of one state OVI or state OVUAC offense or other "equivalent offense" (defined in existing R.C. 4511.181)

is guilty of a misdemeanor of the first degree. The court must sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of a standard state OVI prohibition, a mandatory jail term of ten consecutive days. The court must impose the ten-day mandatory jail term unless, subject to a specified restriction, it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring; it may impose a jail term in addition to the ten-day mandatory jail term, but the cumulative jail term imposed cannot exceed six months; and in addition to the jail term or the term of house arrest with electronic monitoring and jail term, it may require the offender to attend a drivers' intervention program. If the sentence is being imposed for a violation of a high-end state OVI prohibition, a mandatory jail term of 20 consecutive days. The court must impose the 20-day mandatory jail term unless, subject to a specified restriction section, it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring; it may impose a jail term in addition to the 20-day mandatory jail term, but the cumulative jail term imposed cannot exceed six months; and in addition to the jail term or the term of house arrest with electronic monitoring and jail term, it may require the offender to attend a drivers' intervention program.

(ii) In all cases, notwithstanding the fines set forth under the Criminal Sentencing Law, a fine of not less than \$350 and not more than \$1,500 (R.C. 4511.19(G)(5) specifies the manner in which OVI fines must be distributed);

(iii) In all cases, a class four license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(4). The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13.

(iv) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 90 days in accordance with R.C. 4503.233 and impoundment of the license plates of that vehicle for 90 days.

(c) Except as otherwise provided in (1)(e), below, an offender who, within six years of the offense, previously has been convicted of two state OVI or state OVUAC offenses or other "equivalent offenses" is guilty of a misdemeanor. The court must sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of a standard state OVI prohibition, a mandatory jail term of 30 consecutive days. The court must impose the 30-day mandatory jail term unless, subject to a specified restriction, it instead imposes a sentence consisting of both a jail term and a term of house arrest with



electronic monitoring; and it may impose a jail term in addition to the 30-day mandatory jail term, but the additional jail term cannot exceed one year, and the cumulative jail term cannot exceed one year. If the sentence is being imposed for a violation of a high-end state OVI prohibition, a mandatory jail term of 60 consecutive days. The court must impose the 60-day mandatory jail term unless, subject to a specified restriction, it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring; and it may impose a jail term in addition to the 60-day mandatory jail term, but the additional jail term cannot exceed one year, and the cumulative jail term cannot exceed one year.

(ii) In all cases, notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than \$550 and not more than \$2,500 (R.C. 4511.19(G)(5) specifies the manner in which OVI fines must be distributed);

(iii) In all cases, a class three license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(3). The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13.

(iv) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with R.C. 4503.234.

(v) In all cases, participation in an alcohol and drug addiction program authorized by R.C. 3793.02, subject to a specified restriction.

(d) Except as otherwise provided in (1)(e), below, an offender who, within six years of the offense, previously has been convicted of three or more state OVI or state OVUAC offenses or other "equivalent offenses" is guilty of a felony of the fourth degree, and the court must sentence the offender to incarceration as described in the **CONTENT AND OPERATION** portion of this analysis, under "*Penalties for state OVI.*" The other sanctions provided for fourth degree felony state OVI require the court to sentence the offender to all of the following:

(i) In all cases, notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than \$800 nor more than \$10,000 (R.C. 4511.19(G)(5) specifies the manner in which OVI fines must be distributed);

(ii) In all cases, a class two license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(2). The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13.

(iii) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with R.C. 4503.234.

(iv) In all cases, participation in an alcohol and drug addiction program authorized by R.C. 3793.02, subject to a specified restriction.

(v) In all cases, if the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court may impose a term of house arrest with electronic monitoring, but the term cannot commence until after the offender has served the mandatory term of local incarceration.

(e) An offender who previously has been convicted of felony state OVI, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of the third degree, and the court must sentence the offender to incarceration as described in the **CONTENT AND OPERATION** portion of this analysis, under **'Penalties for state OVI.'** The other sanctions provided for third degree felony state OVI require the court to sentence the offender to all of the following:

(i) In all cases, notwithstanding the Criminal Sentencing Law, a fine of not less than \$800 nor more than \$10,000 (R.C. 4511.19(G)(5) specifies the manner in which OVI fines must be distributed);

(ii) In all cases, a class two license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(2). The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13.

(iii) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with R.C. 4503.234.

(iv) In all cases, participation in an alcohol and drug addiction program authorized by R.C. 3793.02, subject to a specified restriction.

2. The violations for which the officers and constables are given the power to make arrests under the provision, and for which the State Highway Patrol and sheriffs or their deputies otherwise are given the power to make arrests when the violations occur on state highways, are violations of R.C. 4503.11, 4503.21, 4511.14 to 4511.16, 4511.20 to 4511.23, 4511.26 to 4511.40, 4511.42 to 4511.48, 4511.58, 4511.59, 4511.62 to 4511.71, 4513.03 to 4513.13, 4513.15 to 4513.22, 4513.24 to 4513.32, 4549.01, 4549.08 to 4549.12, and 4549.62 (R.C. 4513.39(A) and (B)).

3. Under existing law, a person convicted of state watercraft OVI or state watercraft OVUAC is guilty of a misdemeanor of the first degree, and the offender must be punished as follows (R.C. 1547.99(G)):

(a) Except as otherwise provided below in (1)(b) or (c), the court must sentence the offender to a jail term of three consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer jail term, and the court must impose a fine of not less than \$150 nor more than \$1,000. In specified circumstances, the court may suspend the execution of some or all of the mandatory jail term of three consecutive days in specified circumstances, or authorize work release from jail for the offender after the offender has served the mandatory three-day jail term.

(b) If, within six years of the offense, the offender has been convicted of one violation of the prohibition that constitutes state watercraft OVI or state watercraft OVUAC, of a similar municipal ordinance, of R.C. 2903.06(A)(1), or of R.C. 2903.06(A)(2), (3), or (4) or former R.C. 2903.06 or 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, the court must sentence the offender to a jail term of ten consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer jail term, and the court must impose a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence it imposes, the court may require the offender to attend a certified drivers' intervention program. In specified circumstances, the court may authorize work release from jail for the offender after the offender has served the mandatory ten-day jail term.

(c) If, within six years of the offense, the offender has been convicted of more than one violation identified above in (1)(b), the court must sentence the offender to a jail term of 30 consecutive days and may sentence the offender to a longer term of not more than one year, and the court must impose a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence it imposes, the court may require the offender to attend a certified drivers' intervention program. In specified circumstances, the court may authorize work release from jail for the offender after the offender has served the mandatory 30-day jail term.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-09-03	p. 340
Reported, H. Criminal Justice	10-08-03	pp. 1097-1098
Passed House (96-1)	10-14-03	pp. 1109-1111
Reported, S. Judiciary	---	---

H0163-rs-125.doc/jc