



S.B. 69*

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

Sens. Herington, Dann, Fedor, Fingerhut, Mallory, Miller

BILL SUMMARY

- Provides that state OMVI is a felony of the fourth degree if the offender previously has been convicted of five or more offenses of state OMVI, a comparable municipal ordinance violation, state OMVUAC, or any of a list of specified vehicle-related and alcohol-related offenses (hereafter, collectively referred to as "predicate offenses"), regardless of when the prior convictions occurred.
- Provides an additional mandatory prison term of one, two, three, four, or five years for state OMVI 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 OMVI Five Prior Conviction Specification" changing prior convictions of five or more predicate offenses as enacted in the bill.
- Provides an additional mandatory term of imprisonment of up to six months for state OMVUAC when the offender also pleads guilty to or is convicted of a "State OMVUAC Five Prior Conviction Specification" changing prior convictions of five or more predicate offenses as enacted in the bill, and the court imposes a term of imprisonment for the underlying state OMVUAC offense.

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

CONTENT AND OPERATION

Introduction

The provisions that are discussed in this analysis as "existing law" are the provisions of the Revised Code that currently are in effect. They are set forth in Section 1 of the bill. The discussions in this analysis of the "operation of the bill" relate to the changes the bill makes in those provisions of existing law, and those changes also appear in Section 1 of the bill.

On January 1, 2004, pursuant to the enactment of Am. Sub. S.B. 123 of the 124th General Assembly, some of the provisions that are discussed in this analysis as "existing law" will be relocated to different Revised Code sections or will be amended in ways that are not discussed in this analysis. In general legislative terminology, these provisions are "future versions" of the Revised Code sections in question. These "future versions" of the Revised Code sections are set forth in Section 3 of the bill, and the bill makes changes in the future versions that are comparable to the changes that it makes in the existing versions of the sections and that are discussed in this analysis. This analysis does not specifically address the changes the bill makes in the future versions, but the changes have the effect of continuing the changes that the bill makes in the existing versions of the sections and that are discussed in this analysis.

State OMVI penalties

Background

Existing law prohibits a person from operating a vehicle, streetcar, or trackless trolley in Ohio if the person is under the influence of alcohol, a drug of abuse, or a combination of them or if the person has: (1) a concentration of .10 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 blood, (2) a concentration of .10 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (3) a concentration of .14 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (4) a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's blood, (5) a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (6) a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine (R.C. 4511.19(A)--not in the bill). This offense commonly is referred to as "state OMVI."

Under existing law, state OMVI 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 OMVI, a comparable municipal ordinance violation, state OMVUAC (see 'State OMVUAC 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") and whether the offender violated the "under the influence" prohibition or the prohibition described in clauses (1) to (3) of the preceding paragraph (hereafter, collectively referred to as "standard state OMVI") or violated the prohibition described in clauses (4) to (6) of that paragraph (hereafter, collectively referred to as "high-end state OMVI"). However, if the offender, within the preceding six years, previously has been convicted three or more times of any of the predicate offenses, state OMVI 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. If the offender, at any time in the past, previously has been convicted of state OMVI in circumstances in which it is a felony, state OMVI is a felony of the third degree, and the offender must be sentenced to a prison term. The court may impose a term of imprisonment, in addition to the mandatory term, under the general Misdemeanor Sentencing Law or Felony Sentencing Law. In addition to the terms of imprisonment imposed, the court sentencing an offender for state OMVI 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. (R.C. 4511.99(A) and 2929.13(G); and also 2929.14, 4507.16(B), 4503.233, and 4503.234, not in the bill.)

Operation of the bill

The bill changes the circumstances in which state OMVI is a felony of the fourth degree and provides an additional prison term or jail term for certain repeat state OMVI offenders.

Fourth degree felony state OMVI. Under the bill, subject to the provisions described below regarding third degree felony state OMVI, state OMVI 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, regardless of when any of the prior convictions occurred, 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*

OMVI 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 OMVI or 120 consecutive days for high-end state OMVI in accordance with R.C. 2929.13(G)(1) or a mandatory prison term of 60 consecutive days of imprisonment for standard state OMVI or 120 consecutive days for high-end state OMVI 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 OMVI violations. (R.C. 4511.99(A)(4)(a)(i) regarding standard state OMVI and 4511.99(A)(8)(a)(i) regarding high-end state OMVI; also R.C. 2929.01(Y) for conforming changes and R.C. 4511.99(A)(9) and (10).)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OMVI. 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 OMVI. Under the bill, as under existing law, state OMVI is a felony of the third degree if the offender previously has been convicted of state OMVI 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 OMVI 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 OMVI or 120 consecutive days for high-end state OMVI 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 OMVI violations. (R.C. 4511.99(A)(4)(a)(ii) regarding standard state OMVI and 4511.99(A)(8)(a)(ii) regarding high-end state OMVI; also R.C. 2929.01(Y) for conforming changes and R.C. 4511.99(A)(9) and (10).)

R.C. 2929.13(G)(1) and (2) are part of the Felony Sentencing Law, and apply specifically to persons convicted of state OMVI. 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 OMVI or third degree felony state OMVI, 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 OMVI *and if the offender has not pleaded guilty to and has not been convicted of a "State OMVI 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 OMVI, or if the offender is being sentenced for fourth degree felony state OMVI 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 OMVI 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. 4511.99(A)(4) or (A)(8) of that section 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.* 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 OMVI violation, the court cannot sentence the offender to a community control sanction, 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. 4511.99(A)(9)(b) and (10).)

State OMVI 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 OMVI, as described above, is precluded unless the indictment, count in the indictment, or information charging the felony state OMVI violation specifies that the offender 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.)

State OMVUAC 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 .10 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) a concentration of at least .02 of one gram but less than .10 of one gram by weight of alcohol per 210 liters of the person's breath, or (3) a concentration of at least .028 of one gram but less than .14 of one gram by weight of alcohol per 100 milliliters of the person's urine (R.C. 4511.19(B)--not in the bill). This offense commonly is referred to as "state OMVUAC."

Under existing law, state OMVUAC 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 OMVUAC; rather, under the general Misdemeanor Sentencing Law, a court sentencing an offender convicted of state OMVUAC must sentence the offender to a term of imprisonment, a fine, or both, and generally may suspend any term of imprisonment so imposed. (R.C. 4511.99(N); also, R.C. 2929.21, 2929.51, and 4507.16(E).)

Operation of the bill

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

Additional term of imprisonment for state OMVUAC. Under the bill, if an offender is convicted of or pleads guilty to state OMVUAC *and also is convicted of or pleads guilty to a "State OMVUAC 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 term of imprisonment of not more than six months. The additional term of imprisonment cannot be reduced pursuant to any provision of the Revised Code, and the offender must serve the additional term of imprisonment consecutively to and prior to the term of imprisonment imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense. (R.C. 2929.21(J).)

The bill does not otherwise change the penalty for state OMVUAC (R.C. 4511.99(N)).

State OMVUAC 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 OMVUAC, as described above, is precluded unless the information charging the state OMVUAC violation specifies that the offender 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.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-08-03	p. 253
Reported, S. Judiciary on Criminal Justice	---	---

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