Dennis M. Papp *Legislative Service Commission*

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Sens. Austria, Jacobson

BILL SUMMARY

- Prohibits a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, if any amount of a controlled substance or a metabolite of a controlled substance is present in the person's whole blood, blood serum or plasma, or urine, subject to certain exceptions.

- Provides that: (1) in addition to the existing Implied Consent Law, any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio or who operates a vessel or uses any water skis, aquaplane, or similar device upon any waters in Ohio is deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, or urine to determine the presence of a controlled substance or a metabolite of a controlled substance in, the person's whole blood, blood serum or plasma, or urine if the person is involved in an accident or collision while operating the vehicle, streetcar, trackless trolley, vessel, etc., and the accident or collision results in death or physical harm to a person or physical harm to property, (2) the chemical test or tests must be administered at the request of a law enforcement officer who has probable cause to believe that the person was operating a vehicle, streetcar, or trackless trolley in violation of a prohibition contained in OVI, OVUAC, "having physical control of a vehicle while under the influence," a municipal OVI ordinance, R.C. 1547.11, or a substantially equivalent municipal ordinance at the time of the accident or collision, (3) the law enforcement officer may make this request only if the officer does not place the person under arrest, and (4) if the person refuses to submit upon request to the chemical test, the

police officer must employ whatever reasonable means are necessary to ensure that the person submits to the chemical test.

- Makes conforming changes in numerous provisions of existing law regarding various matters of law.

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CONTENT AND OPERATION

Introduction

Existing law contains provisions that prohibit a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, while the person is under the influence of alcohol, a drug of abuse, or a combination of them or while the person has a concentration of alcohol in a specified amount in the person's whole blood, blood serum or plasma, breath, or urine. The bill expands the provisions to also prohibit a person from operating or being in physical control of a vehicle, streetcar, trackless trolley, or vessel, or manipulating any water skis, aquaplane, or similar water device, while the person has any amount of a controlled substance or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine.

Operation of a vehicle, streetcar, or trackless trolley

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" (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. (R.C. 4511.19(A) and (G); see **COMMENT** 1 for the penalties.)

Existing law also prohibits a person under 21 years of age 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 has 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) the person has 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) the person has 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) the person has 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. A violation of the prohibition is the offense of "operating a vehicle after underage alcohol consumption" (OVUAC), 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. (R.C. 4511.19(B) and (H); see **COMMENT** 2 for the penalties.)

Operation of the bill

The bill expands the prohibitions that currently constitute the offense of OVI to also prohibit a person, subject to the exception described in the next sentence, from operating any vehicle, streetcar, or trackless trolley in Ohio, if, at the time of the operation, the person has any amount of a "controlled substance" (see **COMMENT** 3 for the applicable definition of the term) or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine. The bill specifies that this new prohibition does not apply to either of the following: (1) any person who injected, ingested, or inhaled the controlled substance involuntarily, including any person who was injected or made to ingest or inhale the controlled substance by another party against the person's will, or (2) any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and who injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions. (R.C. 4511.19(A)(10) and (K).)

The bill specifies that a person who violates the new prohibition is guilty of "operating a vehicle while having a controlled substance or metabolite of a controlled substance in the body." Under the bill, a person convicted of that offense is penalized in the same way as a person who is convicted of OVI in violation of R.C. 4511.19(A)(1), (2), (3), (4), or (5) is punished under existing law; those penalties are described in detail in **COMMENT** 1. (R.C. 4511.19(G).)

Physical control of a vehicle, streetcar, or trackless trolley

Existing law

Existing law prohibits a person from being in "physical control" (see below) of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in R.C. 4511.19(A)(2), (3), (4), or (5) for the offense of OVI. As used in this prohibition, "physical control" means being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device. A violation of the prohibition is the offense of "having physical control of a vehicle while under the influence," a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven 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)(7). (R.C. 4511.194(A)(2), (B), and (D).)

Operation of the bill

The bill expands the prohibitions that currently constitute the offense of "having physical control of a vehicle while under the influence" to also prohibit a person from being in physical control of a vehicle, streetcar, or trackless trolley while the person's whole blood, blood serum or plasma, or urine contains any amount of a controlled substance (see **COMMENT** 3) or a metabolite of a controlled substance. A violation of the prohibition also is the offense of "having physical control of a vehicle while under the influence." The existing definition of "physical control" and the existing penalties for the offense apply regarding the new prohibition. (R.C. 4511.194(A)(2), (B), and (D).)

Operation or physical control of a vessel or manipulation of water skis, aquaplane, or similar water device

Existing law

Existing law prohibits a person from "operating" (see below) or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, any of the following applies: (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 by weight of alcohol per unit volume in the person's whole blood, (3) the person has a concentration of .96 of one per cent 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 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (5) the person has a concentration of .08 of one gram or more by weight of alcohol per 210 liters of the person's breath. A violation of the prohibition is a misdemeanor of the first degree, and the penalty provided varies, depending upon the number of times the person previously has been convicted of a violation of the prohibition or a similar municipal ordinance (R.C. 1547.11(A) and 1547.99(G); see **COMMENT** 4 for the penalties).

Existing law also prohibits a person under 21 years of age from "operating" (see below) or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, any of the following applies: (1) the person has 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) the person has a concentration of at least .03 of one per cent but less than .96 of one per cent 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 of one gram, but less than .11 of one gram by weight of alcohol per 100 milliliters of the

person's urine, or (4) the person has 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. (R.C. 1547.11(B) and 1547.99(G); see **COMMENT** 4 for the penalties.)

As used in these provisions, "operate" means that a vessel is being used on the waters in Ohio when the vessel is not securely affixed to a dock or to shore or to any permanent structure to which the vessel has the right to affix or that a vessel is not anchored in a designated anchorage area or boat camping area that is established by the United States Coast Guard, Ohio, or a political subdivision and in which the vessel has the right to anchor (R.C. 1547.11(H)(3)).

Operation of the bill

The bill expands the prohibitions that currently constitute the offense described above under "***Existing law***" regarding the operation, control, or manipulation of a vessel, water skis, aquaplane, or similar device while under the influence or while having a prohibited concentration of alcohol in one's system to also prohibit a person from "operating" or being in physical control of any vessel underway and from manipulating any water skis, aquaplane, or similar device on the waters in Ohio, if, at the time of the operation, control, or manipulation, the person has any amount of a controlled substance or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine. The bill specifies that this new prohibition does not apply to either of the following: (1) any person who injected, ingested, or inhaled the controlled substance involuntarily, including any person who was injected or made to ingest or inhale the controlled substance by another party against the person's will, or (2) any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and who injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions. (R.C. 1547.11(A)(6) and (H).)

Under the bill, a person convicted of a violation of the new prohibition is penalized in the same way as a person who is convicted of a violation of R.C. 1547.11 is punished under existing law; those penalties are described in detail in **COMMENT** 4 (R.C. 1547.99(G)).

Implied consent law

Existing law provides that any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio or who is in physical control of a vehicle, streetcar, or trackless trolley is deemed to have given consent to a chemical test or tests 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 arrested for OVI,

OVUAC, "having physical control of a vehicle while under the influence," or a municipal OVI ordinance (R.C. 4511.191). Existing law provides procedures that the arresting officer must follow relative to a request that the person arrested submit to the test or tests (including warnings of the possible license suspension sanctions), procedures for the administration of the test or tests, driver's or commercial driver's license or permit or nonresident operating privilege suspension sanctions that apply to a person who refuses to submit to the test or tests or (except for a person arrested for the "physical control offense") who submits to the test or tests and has a prohibited concentration of alcohol in his or her system, and appeal procedures. If a person refuses to submit to a test or tests, no test is administered. (R.C. 4511.191, and R.C. 4511.192 and 4511.197--not in the bill.)

Existing law also provides that any person who operates or is in physical control of any vessel underway or manipulates any water skis, aquaplane, or similar device on the waters in Ohio is deemed to have given consent to a chemical test or tests to determine the alcohol, drug of abuse, or alcohol and drug of abuse content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of R.C. 1547.11 (R.C. 1547.111). Existing law provides procedures that the arresting officer must follow relative to a request that the person arrested submit to the test or tests (including warnings of the possible consequences of a refusal), procedures for the administration of the test or tests, sanctions regarding vessel, water ski, aquaplane, and similar water device privileges and registration suspensions that apply to a person who refuses to submit to the test or tests, and appeal procedures. If a person refuses to submit to a test or tests, no test is administered. (R.C. 1547.111.)

The two laws described in this part of the analysis generally are referred to as "Implied Consent Laws."

Operation of the bill

By their terms, the existing Implied Consent Laws described above under "***Existing law***" apply to persons arrested for a violation of any of the new prohibitions the bill enacts, as described above in "***Operation of a vehicle, streetcar, or trackless trolley***," "***Physical control of a vehicle, streetcar, or trackless trolley***," and "***Operation or physical control of a vessel or manipulation of water skis, aquaplane, or similar water device***." The bill includes, in the listing of substances for which the person "impliedly consents" to testing, references to controlled substances and metabolites of controlled substances. (R.C. 1547.111 and 4511.191.)

The bill enacts separate provisions that expand the Implied Consent Laws relative to persons who operate a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio and are involved in an accident resulting in death or physical harm to a person or physical harm to property and to persons who operate a vessel or uses any water skis, aquaplane, or similar device upon any waters in Ohio and are involved in an accident or collision resulting in death or physical harm to a person or physical harm to property:

(1) ***Vehicles, streetcars, and trackless trolleys***. Regarding the operation of a vehicle, streetcar, and trackless trolley, the bill provides that, in addition to the existing implied consent provisions, any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio is deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, or urine to determine the presence of a controlled substance or a metabolite of a controlled substance in, the person's whole blood, blood serum or plasma, or urine if the person is involved in an accident or collision while operating the vehicle, streetcar, or trackless trolley, and the accident or collision results in death or physical harm to a person or physical harm to property. The chemical test or tests must be administered at the request of a law enforcement officer who has probable cause to believe that the person was operating a vehicle, streetcar, or trackless trolley in violation of a prohibition contained in OVI, OVUAC, "having physical control of a vehicle while under the influence," or a municipal OVI ordinance at the time of the accident or collision. The law enforcement officer may make this request only if the officer does not place the person under arrest. The law enforcement agency that employs the officer must designate whether the person's whole blood, blood serum or plasma, or urine is to be tested or whether all of them are to be tested. If the person refuses to submit upon request to the chemical test, the police officer must employ whatever reasonable means are necessary to ensure that the person submits to the chemical test. If the chemical test to be performed is a blood test, R.C. 4511.191(D)(1), which is a part of the existing vehicle Implied Consent Law, applies to the procedure for performing the test. As used in these provisions, "physical harm to a person" and "physical harm to property" have the same meanings as in existing R.C. 2901.01, which is not in the bill (R.C. 4511.191(I).)

(2) ***Vessels, water skis, aquaplanes, and similar devices***. Regarding the operation of a vessel or the use of any water skis, aquaplane, or similar device, the bill provides that, in addition to the existing implied consent provisions, any person who operates a vessel or uses any water skis, aquaplane, or similar device upon any waters in Ohio is deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, or urine to determine the presence of a controlled substance or a metabolite of a controlled substance in, the

person's whole blood, blood serum or plasma, or urine if the person is involved in an accident or collision while operating a vessel or using any water skis, aquaplane, or similar device upon any waters in Ohio, and the accident or collision results in death or physical harm to a person or physical harm to property. The chemical test or tests must be administered at the request of a law enforcement officer who has probable cause to believe that the person was operating a vessel or using any water skis, aquaplane, or similar device in violation of R.C. 1547.11 or a substantially equivalent municipal ordinance at the time of the accident or collision. The law enforcement officer may make this request only if the officer does not place the person under arrest. The law enforcement agency that employs the officer must designate whether the person's whole blood, blood serum or plasma, or urine is to be tested or whether all of them are to be tested. If the person refuses to submit upon request to the chemical test, the police officer must employ whatever reasonable means are necessary to ensure that the person submits to the chemical test. If the chemical test to be performed is a blood test, R.C. 1547.11(D)(1), which is a part of the existing watercraft Implied Consent Law, applies to the procedure for performing the test. As used in these provisions, "physical harm to a person" and "physical harm to property" have the same meanings as in existing R.C. 2901.01, which is not in the bill (R.C. 1547.111(J)).

Other changes

The bill amends numerous existing provisions that include references to the existing offense of OVI, the existing offense of "having physical control of a vehicle while under the influence," and the existing watercraft, water ski, aquaplane, and similar device offense contained in R.C. 1547.11, to conform them, and include references to, the new prohibitions that it enacts in those offenses and that section. A summary of the existing provisions, and the amendments, follows:

(1) Existing provisions in the watercraft, water ski, etc., offense contained in R.C. 1547.11 specify certain evidentiary rules regarding the use of evidence on the concentration of alcohol, drugs of abuse, or both, and identify who may give a blood test for the purpose of determining the alcohol, drugs of abuse, or alcohol and drug content of a person's system. The bill expands the provisions to also refer to the concentration of controlled substances or metabolites of controlled substances. (R.C. 1547.11(D) and (F).)

(2) Existing R.C. 1547.99(G) sets forth the penalties for a violation of R.C. 1547.11, described in **COMMENT** 4. The penalty varies, depending upon the number of times the offender previously has been convicted of certain specified offenses. Among the offenses for which prior convictions are so considered is any violation of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited

concentration of alcohol in the person's system. The bill expands this provision to also include as an offense for which prior convictions are so considered a violation of any municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with any amount of a controlled substance or a metabolite of a controlled substance in the person's system. (R.C. 1547.99(G).)

(3) Existing R.C. 1905.01 imposes limitations on the jurisdiction of a mayor's court to hear and determine prosecutions involving the violation of an ordinance of the municipal corporation they serve relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or relating to operating a vehicle with a prohibited concentration of alcohol in the person's system, and to hear and determine OVI and OVUAC cases involving violations that occur on a state highway located within the boundaries of that municipal corporation. The bill includes in the limitations prosecutions involving the violation of an ordinance of the municipal corporation they serve relating to operating a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the person's system. (R.C. 1905.01.)

(4) Existing R.C. 1905.201 requires a mayor's court to suspend the driver's or commercial driver's license or nonresident operating privilege of a person who is convicted of OVI, or a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the person's system that is substantially equivalent to OVI. The bill includes in the requirement convictions of a municipal ordinance relating to operating a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the person's system. (R.C. 1905.201.)

(5) The existing Crime Victims Reparation Law, contained in R.C. Chapter 2743., provides in certain cases for an award to a victim of "an OVI violation." The Law defines "OVI violation" as any of the following (R.C. 2743.51(P)): (a) OVI, OVUAC, or a violation of any municipal ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or both, or of any municipal ordinance prohibiting the operation of a vehicle with a prohibited concentration of alcohol in the person's system, (b) A violation of R.C. 2903.06(A)(1), (c) a violation of R.C. 2903.06(A)(2), (3), or (4) or of a municipal ordinance substantially similar to any of those divisions, if the offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense, or (d) for purposes of any person described in R.C. 2743.51(A)(2), a violation of any law of the state, district, territory, or foreign country in which the criminally injurious conduct occurred, if that law is substantially similar to a violation described in clause (a) or (b) of this paragraph or if that law is substantially similar to a violation described in clause (c) of this paragraph and the

offender was under the influence of alcohol, a drug of abuse, or both, at the time of the commission of the offense. The bill includes in the language described in clause (a) of the preceding sentence a reference to a violation of any municipal ordinance prohibiting the operation of a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the person's system. (R.C. 2743.51(P).)

(6) Existing R.C. 2919.22(C), which is part of the section containing the offense of "endangering children," prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio in violation of any prohibition constituting OVI when one or more children under 18 years of age are in the vehicle, streetcar, or trackless trolley. The provision specifies that, notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this prohibition and state OVI that constitutes the basis of the charge of the violation of this prohibition. It also specifies that, for purposes of the vehicle Implied Consent Law and related provisions, a person arrested for a violation of this prohibition must be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine. The bill expands the last sentence to also specify that, for purposes of the vehicle Implied Consent Law and related provisions, a person arrested for a violation of this prohibition must be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for operating a vehicle with a prohibited concentration of alcohol or with any amount of a controlled substance or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine. (R.C. 2919.22(C).)

(7) Existing R.C. 2951.02(C) provides that, if an offender is convicted of OVI or OVUAC, a violation of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both, or a violation of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the person's system, the court may require, as a condition of a community control sanction, any suspension of a driver's or commercial driver's license or permit or nonresident operating privilege, and all other penalties provided by law or by ordinance, that the offender operate only a motor vehicle equipped with an ignition interlock device that is certified pursuant to R.C. 4510.43. The bill expands this provision to also apply to an offender convicted of a violation of a municipal ordinance relating to operating a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the person's system (the bill also replaces the existing reference to a person's "blood" with a reference to a person's "whole blood, blood serum, or blood plasma" to conform with language of other previously enacted acts). (R.C. 2951.02(C).)

(8) Existing R.C. 4506.17 provides that a person who drives a commercial motor vehicle in Ohio is deemed to have given consent to a test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the person's alcohol concentration or the presence of any controlled substance. The section contains procedures for the taking of the tests and sanctions for the refusal to submit to a test or tests. The bill expands the language in the "implied consent" statement that refers to the purposes of the test or tests so that the purposes also refer to the determination of the presence of a metabolite of a controlled substance, and makes conforming changes in the provision related to the procedures and sanctions. (R.C. 4506.17.)

(9) Existing R.C. 4510.03, not in the bill, provides for abstracts of certain convictions to be sent to the Registrar of Motor Vehicles, for purposes of the "points" law. R.C. 4510.032 provides that, if a person is charged with OVI, OVUAC, or a violation of any municipal OVI ordinance; if that charge is dismissed or reduced; if the person is convicted of or forfeits bail in relation to a violation of any other Revised Code section or of any ordinance that regulates the operation of vehicles, streetcars, and trackless trolleys on highways and streets but that does not relate to operating a vehicle while under the influence of alcohol, a drug of abuse, or both or to operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine; and if the violation of which the person was convicted or in relation to which the person forfeited bail arose out of the same facts and circumstances and the same act as did the charge that was dismissed or reduced, the abstract prepared under R.C. 4510.03 also must set forth the charge that was dismissed or reduced, indicate that it was dismissed or reduced, and indicate that the violation resulting in the conviction or bail forfeiture arose out of the same facts and circumstances and the same act as did the charge that was dismissed or reduced. The bill includes in the provision a reference to the conviction "not relating" to operating a vehicle with a prohibited concentration of alcohol <u>or</u> with any amount of a controlled substance or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine. (R.C. 4510.032(A).)

(10) Existing R.C. 4510.036, also part of the "points" law, provides for the assessment of specified "points" against persons convicted of specified offenses. If a person is convicted of OVI, a violation of any municipal ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or both, or a violation of a municipal ordinance substantially equivalent to OVI relating to operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine, the court must assess against the person six points. The bill expands this OVI-related point assessment provision to also require the assessment of six points against a person convicted of a violation of a municipal ordinance substantially equivalent to OVI relating to operating a vehicle with any amount of a controlled substance or a metabolite of a

controlled substance in the whole blood, blood serum or plasma, breath, or urine. (R.C. 4510.036(C)(6).)

(11) Existing R.C. 4510.17(E) pertains to the authority of a court to grant limited driving privileges to a person whose driver's license or permit has been suspended for an out-of-state conviction of an offense similar to OVI or OVUAC. The section specifies period of "hard suspension" during which a grant of limited driving privileges may not be made. The period of "hard suspension" varies, depending upon the number of prior convictions of specified offenses the person has. The specified offenses for which prior convictions are considered include OVI, OVUAC, a violation of any municipal ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or both, and a violation of a municipal ordinance substantially equivalent to OVI relating to operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine. The bill expands this provision to also include as an offense for which prior convictions are considered a violation of a municipal ordinance relating to operating a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine (the bill also replaces the existing reference to a person's "blood" with a reference to a person's "whole blood, blood serum, or blood plasma" to conform with language of other previously enacted acts). (R.C. 4510.17(E).)

(12) R.C. 4510.54 pertains to the authority of a court to terminate a class one license suspension or a class two license suspension that is in excess of 15 years that have been imposed on a convicted offender, if certain criteria are satisfied. One of the criteria is that, if the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or both at the time of the offense or because at the time of the offense the person's whole blood, blood serum or plasma, breath, or urine contained a prohibited concentration of alcohol, the person must demonstrate that he or she has received treatment, has not abused alcohol or drugs for a period of time satisfactory to the court, and has not been convicted in the past 15 years of any alcohol-related or drug-related offense. The bill expands this criterion to also make it apply when the suspension was imposed because at the time of the offense the person's whole blood, blood serum or plasma, breath, or urine contained any amount of a controlled substance or a metabolite of a controlled substance. (R.C. 4510.54(A)(4).)

(13) Existing R.C. 4511.181 defines "municipal OVI ordinance" and "municipal OVI offense" as any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or both or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine. The bill expands this definition so that it also includes a municipal ordinance

prohibiting a person from operating a vehicle with any amount of a controlled substance or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine. (R.C. 4511.181(C).)

(14) Existing provisions in the OVI and OVUAC provisions contained in R.C. 4511.19 specify certain evidentiary rules regarding the use of evidence on the concentration of alcohol, drugs of abuse, or both, and identify who may give a blood test for the purpose of determining the alcohol, drugs of abuse, or alcohol and drug content of a person's system. The bill expands the provisions to also refer to the concentration of controlled substances or metabolites of controlled substances. (R.C. 4511.19(D) and (E).)

COMMENT

1. R.C. 4511.19(G) sets forth the penalties for an OVI conviction. It 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 R.C. 4511.19(A)(1), (2), (3), (4), or (5), 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 R.C. 4511.19(A)(6), (7), (8), or (9), 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 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 OVI or 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 R.C. 4511.19(A)(1), (2), (3), (4), or (5), 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 R.C. 4511.19(A)(6), (7), (8), or (9), 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 driver's 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 OVI or 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 R.C. 4511.19(A)(1), (2), (3), (4), or (5), 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 division (A)(6), (7), (8), or (9), 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 OVI or OVUAC offenses or other "equivalent offenses" is guilty of a felony of the fourth degree. The court must sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of R.C. 4511.19(A)(1), (2), (3), (4), or (5), in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days in accordance with R.C. 2929.13(G)(1) or a mandatory prison term of 60 consecutive days in accordance with R.C. 2929.13(G)(2). If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 60-day mandatory term, but the cumulative total of the mandatory term and the jail term cannot exceed one year, and no prison term is authorized for the offense; if it imposes a mandatory prison term, it also may sentence the offender to a definite prison term that cannot be less than six months or more than 30 months, the prison terms must be imposed as described in R.C. 2929.13(G)(2), and no term of local incarceration, community residential sanction, or nonresidential sanction is authorized. If the sentence is being imposed for a violation of R.C. 4511.19(A)(6), (7), (8), or (9), in the discretion of the court, either a mandatory term of local incarceration of 120 consecutive days in accordance with R.C. 2929.13(G)(1) or a mandatory prison term of 120 consecutive days in accordance with R.C. 2929.13(G)(2). If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 120-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense cannot exceed one year, and no prison term is authorized for the offense; if it imposes a mandatory prison term, it also may sentence the offender to a definite prison term that cannot be less than six months or more than 30 months, the prison terms must be imposed as described in R.C. 2929.13(G)(2), and no term of local incarceration, community residential sanction, or nonresidential sanction is authorized.

(ii) 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);

(iii) 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.

(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.

(vi) 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 or pleaded guilty to felony OVI, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of the third degree. The court must sentence the offender to all of the following:

(i) If the offender is being sentenced for a violation of R.C. 4511.19(A)(1), (2), (3), (4), or (5), a mandatory prison term of 60 consecutive days in accordance with R.C. 2929.13(G)(2). The court may impose a prison term in addition to the 60-day mandatory prison term, but the cumulative total of the mandatory prison term and the additional prison term cannot exceed five years; no term of local incarceration, community residential sanction, or nonresidential sanction is authorized. If the sentence is being imposed for a violation of R.C. 4511.19(A)(6), (7), (8), or (9), a mandatory prison term of 120 consecutive days in accordance with R.C. 2929.13(G)(2). The court may impose a prison term in addition to the 120-day mandatory prison term, but the cumulative total of the mandatory prison term and the additional prison term cannot exceed five years; no term of local incarceration, community residential sanction, or nonresidential sanction is authorized.

(ii) 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);

(iii) 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.

(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.

2. R.C. 4511.19(H) sets forth the penalties for an OVUAC conviction. It specifies that, except as otherwise provided in this paragraph, the offender is guilty of a misdemeanor of the fourth degree, and, in addition to any other sanction imposed, the court must impose a class six 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)(6). If, within one year of the offense, the

offender previously has been convicted of or pleaded guilty to one or more OVI or OVUAC offenses or other "equivalent offenses," the offender is guilty of a misdemeanor of the third degree, and, in addition to any other sanction imposed, the court must impose a class four 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).

3. As used in some of the bill's provisions described above in the **CONTENT AND OPERATION** portion of this analysis, "controlled substance" means a "drug" (see below), compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V. As used in this definition, "drug" means: (a) any article recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (b) any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (c) any article, other than food, intended to affect the structure or any function of the body of humans or animals, or (d) any article intended for use as a component of any article specified in clause (a), (b), or (c) of this sentence, but does not include devices or their components, parts, or accessories. (R.C. 4510.01(B) and 4511.19(K), by reference to existing R.C. 2925.01 and secondary reference to existing R.C. 3719.01 and 4729.01, which are not in the bill.) Other provisions of the bill make no reference to this definition, and, as a result, the definition apparently does not apply to them.

4. R.C. 1547.99(G) provides that a person convicted of a violation of R.C. 1547.11 is guilty of a misdemeanor of the first degree and must be punished as provided in (4)(a), (b), or (c), below:

(a) Except as otherwise provided in (4)(b) or (c), below, the court must sentence the offender to a jail term of three consecutive days and may sentence the offender pursuant to the Criminal Sentencing Law to a longer jail term. In addition, the court must impose upon the offender a fine of not less than $150 nor more than $1,000. The court may suspend the execution of some or all of the mandatory jail term of three consecutive days if the court, in lieu of the suspended part, 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. The court may require the offender, as a condition of community control, to attend and satisfactorily complete any treatment or education programs, 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. The court also may impose any other conditions of community control on the offender that it considers necessary.

(b) If, within six years of the offense, the offender has been convicted of or pleaded guilty to one violation of R.C. 1547.11, of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or a combination of them, of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine, of R.C. 2903.06(A)(1), or of R.C. 2903.06(A)(2), (3), or (4) or R.C. 2903.06 or 2903.07 as they existed prior to March 23, 2000, in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them, the court must sentence the offender to a jail term of ten consecutive days and may sentence the offender pursuant to the Criminal Sentencing Law to a longer jail term. In addition, the court must impose upon the offender 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 drivers' intervention program.

(c) If, within six years of the offense, the offender has been convicted of or pleaded guilty to more than one violation identified in (4)(b), above, the court must sentence the offender to a jail term of 30 consecutive days and may sentence the offender to a longer jail term of not more than one year. In addition, the court must impose upon the offender 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 drivers' intervention program.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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