Dennis M. Papp *Legislative Service Commission*

Sub. S.B. 215*

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(As Reported by S. Judiciary)

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, at the time of the operation, physical control, or manipulation, there is present in the person's whole blood, blood serum or plasma, or urine a concentration of amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite (morphine), heroin metabolite (6-monoacetyl morphine), L.S.D., marihuana, marihuana metabolite, methamphetamine, or phencyclidine that equals or exceeds a concentration specified by statutory provisions enacted in the bill.

- Specifies that the new prohibitions described in the preceding dot point do not apply to a person who is operating or in physical control of a vehicle, streetcar, trackless trolley, or vessel, or is manipulating water skis, an aquaplane, or a similar water device, while the person has a concentration of a listed controlled substance, or of a listed metabolite of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified by the statutory provisions enacted in the bill, if the person obtained the listed controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the listed controlled substance in accordance with the health professional's directions.

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* *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.*

- Modifies existing provisions regarding the use of chemical test results as evidence by providing that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the offense of OVI, "watercraft OVI," an equivalent offense, or the new prohibitions enacted in the bill, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of controlled substances,* or a combination of them in the person's whole blood, blood serum or plasma, breath, or urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation* (increased from two hours of the time of the alleged violation).

- Related to the provisions described in the preceding dot point, specifies in the vehicle and watercraft Implied Consent Laws that, if an arresting law enforcement officer requests that a person under arrest for the offense of OVI, "watercraft OVI," an equivalent offense, or the new prohibitions enacted in the bill submit to a chemical test or tests, the person must submit to the chemical test or tests, subsequent to the request, within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests, and specifies that the three-hour time limit described in the preceding dot point regarding the admission of evidence does not extend or affect this two-hour time limit specified as the maximum period of time during which a person may consent to a chemical test or tests.

- 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 a concentration of a controlled substance, or of a metabolite of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds an amount specified by the bill in statute.

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. Existing law also prohibits a person who, within the preceding 20 years, previously has been convicted of or pleaded guilty to a prohibition described in the preceding sentence, this prohibition, a municipal OVI offense, or the prohibition described in the next paragraph, from: (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 the operation described in clause (1) of this sentence, being asked by a law enforcement officer to submit to a chemical test or tests under the Implied Consent Law (see "***Implied Consent Laws***," below), and being advised in accordance with that Law of the consequences of refusing to submit or submitting to the test or tests, refuse to submit to the test or tests. A violation of either 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.)

Existing law provides that, in any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in either of the two preceding paragraphs or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the

substance *withdrawn within two hours of the time of the alleged violation* (R.C. 4511.19(D)(1)).

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 below, from operating any vehicle, streetcar, or trackless trolley in Ohio, if, at the time of the operation, the person has a concentration in the person's whole blood, blood serum or plasma, or urine of any of the following controlled substances, or metabolites of a controlled substance, that equals or exceeds any of the following (R.C. 4511.19(A)(1)(j)):

(1) The person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma;

(2) The person has a concentration of "cocaine" (see **COMMENT** 3) in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma;

(3) The person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma;

(4) The person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma;

(5) The person has a concentration of heroin metabolite (morphine) in the person's urine of at least 2,000 nanograms of heroin metabolite (morphine) per milliliter of the person's urine or a concentration of heroin metabolite (morphine) in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin metabolite (morphine) per milliliter of the person's whole blood or blood serum or plasma;

(6) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma;

(7) The person has a concentration of "L.S.D." (see **COMMENT** 3) in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma;

(8) The person has a concentration of "marihuana" (see **COMMENT** 3) in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma;

(9) The person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 20 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma;

(10) The person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma;

(11) The person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

The bill specifies that this new prohibition does not apply to a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or of a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested,

or inhaled the controlled substance in accordance with the health professional's directions (R.C. 4511.19(K)).

The bill specifies that a person who violates the new prohibition is guilty of "operating a vehicle while under the influence of a controlled substance or metabolite of a controlled substance." 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)(a), (b), (c), (d), or (e) is punished under existing law; those penalties are described in detail in **COMMENT** 1. (R.C. 4511.19(G).)

The bill modifies the existing provision regarding the use of chemical test results as evidence. It provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the offense of OVI or an equivalent offense or the new prohibition enacted in the bill, as described above, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of controlled substances,* or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation*. However, the bill specifies that the three-hour time limit specified in this provision regarding the admission of evidence, as expanded by the bill, does not extend or affect the two-hour time limit the bill includes in the Implied Consent Law as the maximum period of time during which a person may consent to a chemical test or tests as described in the Law. (R.C. 4511.19(D)(1).)

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)(1)(b), (c), (d), or (e) 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, subject to the exception described below, from being in physical control of a vehicle, streetcar, or trackless trolley if, at the time of the physical control, the person has a concentration in the person's whole blood, blood serum or plasma, or urine of a listed controlled substance or listed metabolite of a controlled substance that equals or exceeds for the listed controlled substance or the listed metabolite of a controlled substance the concentration that is prohibited under the offense of "operating a vehicle while under the influence of a controlled substance or metabolite of a controlled substance" that is enacted under the bill (see "***Operation of a vehicle, streetcar, or trackless trolley***," above). The bill specifies that this new prohibition does not apply to a person who is in physical control of a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or of a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and the person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions. 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), (D), and (E).)

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 .096 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 .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 .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.)

Existing law provides that, in any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in either of the two preceding paragraphs (a "watercraft OVI offense") or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, or urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within two hours of the time of the alleged violation* (R.C. 1547.11(D)(1)).

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, subject to the exception described below, 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 a concentration in the person's

whole blood, blood serum or plasma, or urine of amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite (morphine), heroin metabolite (6-monoacetyl morphine), L.S.D., marihuana, marihuana metabolite, methamphetamine, or phencyclidine that equals or exceeds the concentration specified above for OVI in "***Operation of the bill***" under "***Operation of a vehicle, streetcar, or trackless trolley***." The bill specifies that this new prohibition does not apply to a person who operates or is in physical control of a vessel underway or manipulates any water skis, aquaplane, or similar device while the person has a concentration of a listed controlled substance, or of a listed metabolite of a controlled substance, in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that prohibition, if the person 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)).

The bill modifies the existing provision regarding the use of chemical test results as evidence. It provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes the "watercraft OVI offense" or an equivalent offense or the new prohibition enacted in the bill, as described above, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of a controlled substance*, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation*. However, the bill specifies that the three-hour time limit specified in this provision regarding the admission of evidence, as expanded by the bill, does not extend or affect the two-hour time limit the bill includes in the Implied Consent Law as the maximum period of time during which a person may consent to a chemical test or tests as described in the Law. (R.C. 1547.11(D)(1).)

Implied Consent Laws

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 4511.192, and R.C. 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, 4511.191, and 4511.192.)

As stated above, the bill modifies existing provisions regarding the use of chemical test results as evidence, by extending from two to three hours after an alleged violation the time within which the chemical test must occur in order for the chemical analysis of the results to be used as evidence. Specifically, the bill provides that, in any criminal prosecution or juvenile court proceeding for a violation of any existing prohibition that constitutes OVI, the "watercraft OVI offense," an equivalent offense, or the new OVI and watercraft prohibitions enacted in the bill, the court may admit evidence on the concentration of alcohol, drugs of abuse, *controlled substances, metabolites of a controlled substance*, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance *withdrawn within three hours of the time of the alleged violation*. (R.C. 1547.11(D)(1) and 4511.19(D).)

Related to these provisions, the bill specifies in the Implied Consent Laws that, if an arresting law enforcement officer requests that the person under arrest submit to a chemical test or tests, *the person must submit to the chemical test or tests, subsequent to the request of the officer, within two hours of the time of the alleged violation, and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests* (R.C. 1547.111(C) and 4511.192(A)). The bill specifies that the three-hour time limit specified in the provisions described in the preceding paragraph regarding the admission of evidence, as expanded by the bill, does not extend or affect this two-hour time limit specified as the maximum period of time during which a person may consent to a chemical test or tests. (R.C. 1547.11(D)(1) and 4511.19(D).)

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 a prohibited concentration 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 a prohibited concentration 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 a prohibited concentration 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 a prohibited concentration 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 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 a prohibited concentration 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 a prohibited concentration 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 a prohibited concentration 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 a prohibited concentration 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 at least the concentration of a controlled substance or a metabolite of a controlled substance prohibited under the bill's R.C. 4511.19(A)(1)(j). (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 a prohibited concentration 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).)

(15) Existing R.C. 3701.143 requires the Director of Health to determine or cause to be determined, techniques or methods for chemically analyzing a person's blood, urine, breath, or other bodily substance in order to ascertain the amount of alcohol or a drug of abuse in that substance, to approve satisfactory techniques or methods, ascertain the qualifications of individuals to conduct such analysis, and issue permits to qualified persons authorizing them to perform such analyses. The bill expands the provisions to refer to tests of a person's whole blood, blood serum or plasma, urine, breath, or other substance in order to ascertain the amount of alcohol, drugs of abuse, controlled substances, metabolites of controlled substances, or combination of them in the substance. It also adds references to R.C. 1547.11 and 4511.194. (R.C. 3701.143.)

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)(a), (b), (c), (c), or (e), 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)(1)(f), (g), (h), or (i) or (A)(2), 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)(a), (b), (c), (d), or (e), 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)(1)(f), (g), (h), or (i) or (A)(2), 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)(a), (b), (c), (d), or (e), 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)(1)(f), (g), (h), or (i) or (A)(2), 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)(a), (b), (c), (d), or (e), a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of an R.C. 2941.1413 repeat offender specification or, 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 offender is not convicted of such a specification. 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 and the prison terms must be imposed as described in R.C. 2929.13(G)(2). If the sentence is being imposed for a violation of R.C. 4511.19(A)(1)(f), (g), (h), or (i) or (A)(2), a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of an R.C. 2941.1413 repeat offender specification or, 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 offender is not convicted of such a specification. 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, generally, 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 and the prison terms must be imposed as described in R.C. 2929.13(G)(2).

(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), (b), (c), (d), or (e), a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of an R.C. 2941.1413

specification or a mandatory prison term of 60 consecutive days in accordance with R.C. 2929.13(G)(2) if the offender is not convicted of such a specification. 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. The court also may sentence the offender to a community residential sanction or nonresidential sanction. If the sentence is being imposed for a violation of R.C. 4511.19(A)(1)(f), (g), (h), or (i) or (A)(2), a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of an R.C. 2941.1413 repeat offender specification or a mandatory prison term of 120 consecutive days in accordance with R.C. 2929.13(G)(2) if the offender is not convicted of such a specification. 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. The court also may sentence the offender to a community residential sanction or nonresidential sanction.

(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 the new prohibitions the bill enacts in R.C. 1547.11, 4511.19, and 4511.194:

(1) "Cocaine" means any of the following (R.C. 1547.11(I)(5) and 4510.01(B), by reference to existing R.C. 2925.01(X)--not in the bill):

(a) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(b) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(c) A salt, compound, derivative, or preparation of a substance identified in (1)(a) or (b), above, that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

(2) "L.S.D." means lysergic acid diethylamide (R.C. 1547.11(I)(5) and 4510.01(B), by reference to existing R.C. 2925.01(Y)--not in the bill).

(3) "Marihuana" means all parts of a plant of the genus *cannabis*, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. (R.C. 1547.11(I)(4) and 4510.01(I), by reference to existing R.C. 3719.01(O)--not in the bill.)

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	
Introduced	03-25-04	p.	1667
Reported, S. Judiciary	---		---

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