



H.B. 253

126th General Assembly
(As Introduced)

Reps. Webster, Wolpert, Wagner, C. Evans, Kearns, Calvert, Flowers, Raga, Hoops, Setzer, Schaffer, D. Evans, White, Combs, Latta, Hartnett, Law, Collier, Taylor

BILL SUMMARY

- Replaces the current penalties for driving under a suspension (DUS) or driving under a financial responsibility law suspension (driving under a FR suspension) with a penalty structure that is similar to the penalties for low-end state OVI.
- Provides that if an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension is involved in an accident while operating a motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition and the accident results in serious physical harm to any person, the offender is guilty of a felony of the third degree, regardless of whether the operation of the motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition was the cause of the accident.
- Provides that if an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension is involved in an accident while operating a motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition and the accident results in the death of any person, the offender is guilty of a felony of the second degree, regardless of whether the operation of the motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition was the cause of the accident.
- Allows an affirmative defense for a defendant who is prosecuted for a DUS or driving under a FR suspension violation that is based upon the alleged offender's operation of a motor vehicle or motorcycle at a time when the alleged offender's driver's license is under a suspension imposed by the Bureau of Motor Vehicles or by an administrative agency

of another state that the person had no actual knowledge of the suspension.

- Creates the Ohio State University Extension Service Young Person Safe Driving Fund, which receives a portion of fine dollars imposed because of a DUS or FR suspension violation, for the use of The Ohio State University Extension Service to pay the expenses it incurs in developing and conducting a safe driving program for young persons in the 4-H program of the Extension Service.
- Expands the offense of "operating a motor vehicle without a valid license" to additionally specify that if the offender is involved in an accident while operating a motor vehicle or motorcycle without a valid license and the accident results in serious physical harm to any person, the offense is a felony of the third degree, regardless of whether the operation of the motor vehicle or motorcycle was the cause of the accident, and if the accident results in the death of any person, the offense is a felony of the second degree, regardless of whether the operation of the motor vehicle or motorcycle was the cause of the accident.

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CONTENT AND OPERATION

Driving under a suspension or driving under a financial responsibility law suspension

Current law: the offense of driving under a suspension or in violation of a license restriction

DUS prohibitions. Under continuing law, unchanged by the bill, a person whose driver's or commercial driver's license or permit or nonresident operating privilege (collectively referred to as a "driver's license" throughout this analysis) has been suspended under any provision of the Revised Code, other than the Financial Responsibility Law, or under any applicable law in any other jurisdiction in which the person's license or permit was issued is prohibited from operating any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within Ohio during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges. Additionally, a person is prohibited from operating any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state in violation of any restriction of the person's driver's license imposed under R.C. 4506.10(D) or R.C. 4507.14. A violation of either of these prohibitions is the offense of "driving under suspension or in violation of a license restriction" ("DUS"). (R.C. 4510.11(A), (B), and (C).)

The current penalty for DUS. Under current law, DUS is a misdemeanor of the first degree. Additionally, the court must impose a Class 7 suspension on the offender's driver's license (a definite period of not more than one year). If the vehicle involved in the offense is registered in the offender's name, the court must order the immobilization of the vehicle and impoundment of the license plates for 30 days on a first offense and 60 days if the offender previously has been convicted of or pleaded guilty to DUS or a substantially similar municipal ordinance. If the offender previously has been convicted of or pleaded guilty to DUS or a substantially similar municipal ordinance two or more times, the court must order the criminal forfeiture of the vehicle involved in the offense if the vehicle is registered in the offender's name. The order of criminal forfeiture must be issued and enforced under R.C. 4503.234. Neither the Registrar of Motor Vehicles nor a deputy registrar may accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial is five years, unless the court having jurisdiction of the offense terminates the forfeiture and notifies the Registrar of the termination. (R.C. 4510.11(C), (D), and (E).)

Current law: driving under financial responsibility law suspension or cancellation

Driving under FR suspension prohibitions. Continuing law, unchanged by the bill, prohibits any person whose driver's license has been suspended or cancelled under the Financial Responsibility Law from operating any motor vehicle in Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of suspension or cancellation, except as specifically authorized in the Financial Responsibility Law. In addition, continuing law prohibits a person from operating a motor vehicle in Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period in which the person is required to file and maintain proof of financial responsibility because the person operated a motor vehicle without proof of financial responsibility as prohibited by R.C. 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle. A violation of either of these prohibitions is the offense of "driving under financial responsibility law suspension or cancellation" ("driving under a FR suspension"). (R.C. 4510.16(A) and (B).)

The current penalty for driving under a FR suspension. Currently, driving under a FR suspension is a misdemeanor of the first degree, and the court must impose a Class 7 suspension (a definite period of not more than one year) of the offender's driver's license. If the vehicle is registered in the offender's name, the court, in addition to or independent of any other sentence that it imposes upon the offender, must do one of the following (R.C. 4510.16(B)(2)):

(1) Except as otherwise provided in paragraphs (2) and (3), below, order the immobilization for 30 days of the vehicle involved in the offense and the impoundment for 30 days of the license plates of that vehicle;

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of driving under a FR suspension or a substantially similar municipal ordinance, order the immobilization for 60 days of the vehicle involved in the offense and impoundment of the license plates of that vehicle for 60 days;

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to two or more violations of driving under a FR suspension or a substantially similar municipal ordinance, order the criminal forfeiture to the state of the vehicle involved in the offense. If title to a motor vehicle that is subject to an order of criminal forfeiture is assigned or transferred and another person has an interest in the car, as discussed in R.C. 4503.234(B)(2) and (3), in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National

Auto Dealers Association. The proceeds of this fine must be distributed as provided in the Vehicle Forfeiture Law.

The court cannot release a vehicle from immobilization orders unless the court is presented with current proof of financial responsibility with respect to that vehicle (R.C. 4510.16(C)).

Operation of the bill: penalties for DUS and driving under a FR suspension

The bill repeals the existing penalties for DUS and for driving under a FR suspension and enacts a new penalty structure for both offenses that is similar to the existing penalty structure for low-end state OVI (R.C. 4510.11(C), (D), and (E), 4510.16(B)(1) and (2) and (C), and 4510.111) (see **COMMENT**). Under the bill, when sentencing an offender for the offense of DUS or driving under a FR suspension, the court, generally, must sentence the offender under the Criminal Sentencing Law, except as otherwise authorized or required by the bill.

(1) Generally. Generally, DUS or driving under a FR suspension is a misdemeanor of the first degree, and the court must sentence the offender to a mandatory jail term of three consecutive days (which means 72 consecutive hours), a fine of not less than \$250 and not more than \$1,000, and a Class 5 license suspension (a definite period of between six months and three years), the first six months of which may not be suspended. The court may impose a jail term in addition to the three-day mandatory jail term, the cumulative term of which cannot exceed six months. After the first 15 days of the suspension, the court may grant limited driving privileges relative to the suspension.¹ (R.C. 4510.111(A)(2) and 4510.13(A)(2)(a) and (7)(a).)

(2) One prior offense in previous six years. Unless paragraph (5), (6), or (7), below, applies, an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension and who, within six years of the offense, previously has been convicted of or pleaded guilty to one violation of DUS or driving under a FR suspension or a substantially similar municipal ordinance is guilty of a misdemeanor of the first degree, and the court must sentence the offender to a mandatory jail term of ten consecutive days. The court must impose the ten-day mandatory jail term unless, as discussed below in "**Alternative to a mandatory jail**

¹ A judge or mayor is prohibited from granting limited driving privileges for employment as a driver of commercial vehicles to an offender whose driver's license has been suspended because of a DUS or driving under a FR suspension violation if the offender is disqualified from operating a commercial motor vehicle or whose license has been suspended because of default on a child support order or driving a commercial motor vehicle while under the influence (R.C. 4510.13(A)(4)).

term," it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term, the cumulative jail term of which cannot exceed six months. The court must impose upon the offender a fine of not less than \$350 and not more than \$1,500. Also, the court must impose a Class 4 license suspension on the offender (a definite period between one year and five years), the first year of which may not be suspended. After the first 30 days of the suspension, the court may grant limited driving privileges relative to the suspension, if otherwise permitted. If the vehicle is registered in the offender's name, the court must order the immobilization of the vehicle involved in the offense and impoundment of the license plates for 90 days. (R.C. 4507.164(D)(1), 4510.111(A)(3), and 4510.13(A)(2)(b) and (7)(b).)

(3) Two prior offenses in previous six years. Unless paragraph (5), (6), or (7) applies, below, an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension and who, within six years of the offense, previously has been convicted of or pleaded guilty to two violations of DUS or driving under a FR suspension or a substantially similar municipal ordinance is guilty of a misdemeanor. The court must sentence the offender to all of the following (R.C. 4707.164(D)(1), 4510.111(A)(4), and 4510.13(A)(2)(b) and (7)(c)):

(a) A mandatory jail term of 30 consecutive days, unless, as discussed below in "Alternatives to a mandatory jail term," it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring. The court may impose a jail term in addition to the 30-day mandatory jail term, which additional jail term cannot exceed one year, and the cumulative jail term imposed for the offense cannot exceed one year.

(b) A fine of not less than \$550 and not more than \$2,500;

(c) A Class 3 license suspension (a definite period of between two and ten years) of the offender's license, of which the first year may not be suspended. After the first 180 days of the suspension, the court may grant limited driving privileges relative to the suspension.

(d) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense.

(4) Three or four prior offenses in the previous six years or five or more offenses in the previous 20 years. Unless paragraph (5), (6), or (7), below, applies, an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension and who, within six years of the offense, previously has been convicted of or pleaded guilty to three or four violations of DUS or driving under a FR suspension or a substantially similar municipal ordinance or an offender who, within 20 years of the offense, previously has been convicted of or pleaded

guilty to five or more violations of DUS or driving under a FR suspension is guilty of a felony of the fourth degree. The court must sentence the offender to all of the following (R.C. 2929.13(A) and (G), 2929.14(D)(4), 2929.15, 2929.16, 2929.17, 2929.19(C), 2941.1413(B), 4707.164(D)(2), 4510.111(A)(5), and 4510.13(A)(2)(c) and (7)(d)):

(a) A mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification that the offender, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of DUS or driving under a FR suspension or a substantially similar municipal ordinance, or in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type.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, provided that the cumulative total of the mandatory term and the jail term for the offense does not exceed one year, and, except as provided in R.C. 2929.13(A)(1), no prison term is authorized for the offense. If the court imposes a mandatory prison term, it also may sentence the offender to a definite prison term that cannot be less than six months and not more than 30 months. If the court imposes a mandatory prison term or a mandatory prison term and an additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) A fine of not less than \$800 nor more than \$10,000;

(c) A Class 2 license suspension (a definite period of between three years and life) of the offender's driver's license, the first three years of which may not be suspended. After three years, the court may grant limited driving privileges relative to the suspension.

(d) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense.

(e) 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

² *Just like a third or fourth degree felony OVI offender, a person sentenced to a mandatory prison term for a third or fourth degree felony violation of DUS or driving under a FR suspension may be placed in the intensive prison program if the person qualifies for the program (R.C. 5120.033).*

house arrest with electronic monitoring. The term cannot commence until after the offender has served the mandatory term of local incarceration.

(5) Prior felony offense. Unless paragraph (6) or (7), below, applies, an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension and who previously has been convicted of or pleaded guilty to a felony violation of DUS or driving under a FR suspension 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 (R.C. 2929.13(A) and (G), 2929.14(D)(4), 2929.15, 2929.16, 2929.17, 2929.18(C), 2941.1413(B), 4507.164(D)(2), 4510.111(A)(6), 4510.13(A)(2)(c) and (7)(d)):

(a) A mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification that the offender, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of DUS or driving under a FR suspension or a substantially similar municipal ordinance, or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the 60-day mandatory prison term, but the cumulative total of a 60-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) A fine of not less than \$800 nor more than \$10,000;

(c) A Class 2 license suspension (a definite period of between three years and life) of the offender's driver's license, the first three years of which may not be suspended. After three years, the court may grant limited driving privileges relative to the suspension.

(d) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved.

(6) Involvement in an accident that causes serious physical harm. Unless paragraph (7), below, applies, if an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension is involved in an accident while operating a motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition and the accident results in serious physical harm to any person, the offender is guilty of a felony of the third degree, regardless of whether the operation of the motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition was the cause of the accident. In addition to any other sanctions imposed, the court must impose upon the offender a Class 3 suspension

(a definite period of between two to ten years) of the offender's driver's license, or, if the offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense, a Class 2 suspension (a definite period of between three years to life) of the offender's driver's license.³ The first 30 days of either of these suspensions may not be suspended. (R.C. 4510.111(A)(7) and 4510.13(C)(3).)

(7) Involvement in an accident that causes death. If an offender who is convicted of or pleads guilty to DUS or driving under a FR suspension is involved in an accident while operating a motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition and the accident results in the death of any person, the offender is guilty of a felony of the second degree, regardless of whether the operation of the motor vehicle or motorcycle in violation of the DUS or FR suspension prohibition was the cause of the accident. In addition to any other sanctions imposed, the court must impose upon the offender a Class 1 suspension (a definite period of life) of the offender's driver's license, no part of which may be suspended. (R.C. 4510.111(A)(8) and 4510.13(C)(3).)

Alternatives to a mandatory jail term. If an offender is sentenced to a jail term under paragraph (2) or (3), above, and if, within 60 days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing, the court may impose an alternative sentence that includes a term of house arrest with electronic monitoring.

As an alternative to a mandatory jail term of ten consecutive days required by paragraph (2), above, the court may sentence the offender to five consecutive days in jail and not less than 18 consecutive days of house arrest with electronic monitoring. The cumulative total of the five consecutive days in jail and the period of house arrest with electronic monitoring cannot exceed six months. The five consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to a mandatory jail term of 30 consecutive days required by paragraph (3), above, the court may sentence the offender to 15 consecutive days in jail and not less than 55 consecutive days of house arrest with electronic monitoring. The cumulative total of the 15 consecutive days in jail and the period of house arrest with electronic monitoring cannot exceed one year. The 15

³ "Traffic-related homicide, manslaughter, or assault offense" means a violation of R.C. 2903.04 in circumstances in which R.C. 2903.04(D) applies, R.C. 2903.06 or 2903.08, or R.C. 2903.06, 2903.07, or 2903.08 as they existed prior to March 23, 2000 (R.C. 4510.111(F)(2), referencing R.C. 2903.06, not in the bill).

consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest. (R.C. 4510.111(B).)

Fine distribution. DUS or driving under a FR suspension fines must be distributed as follows (R.C. 4510.111(D)):

(1) \$25 of the fine imposed under paragraph (1), \$35 of the fine imposed under paragraph (2), \$123 of the fine imposed under paragraph (3), and \$210 of the fine imposed under paragraphs (4) or (5) must be paid to an enforcement and education fund established by the legislative authority of the Ohio law enforcement agency that primarily was responsible for the arrest of the offender, as determined by the court that imposes the fine. The agency must use this share to pay only those costs it incurs in enforcing violations of DUS or driving under a FR suspension or a substantially similar municipal ordinance and in informing the public of the laws governing the operation of a vehicle while under suspension.

(2) \$50 of the fine imposed under paragraph (1) must be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. If the offender was confined as a result of a DUS or driving under a FR suspension prior to being sentenced for the offense but is not sentenced to a term of incarceration, the \$50 must be paid to the political subdivision that paid the cost of housing the offender during that period of confinement. The political subdivision must use the share to pay or reimburse incarceration costs it incurs in housing persons who violate the DUS or FR suspension prohibitions or a substantially similar municipal ordinance, costs of any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate the DUS or FR suspension prohibitions.

(3) \$25 of the fine imposed under paragraph (1) and \$50 of the fine imposed under paragraph (2) must be deposited into the state treasury to the credit of the Ohio State University Extension Service Young Person Safe Driving Fund, discussed below in "**Ohio State University Extension Service Young Person Safe Driving Fund.**"

(4) \$115 of the fine imposed under paragraph (2), \$277 of the fine imposed under paragraph (3), and \$440 of the fine imposed under paragraph (4) or (5) must be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. The political subdivision must use this share to pay or reimburse incarceration costs it incurs in housing persons who violate the DUS or FR suspension prohibitions or a substantially similar municipal ordinance, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate the DUS or FR suspension prohibitions.

(5) The balance of the fine imposed under paragraph (1), (2), (3), (4), or (5) must be disbursed as otherwise provided by law.

In addition, if title to a motor vehicle that is subject to an order of criminal forfeiture under paragraph (3), (4), or (5) is assigned or transferred and another person has an interest in the car, as discussed in R.C. 4503.234(B)(2) and (3), in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. The proceeds of this fine must be distributed as provided in the Vehicle Forfeiture Law. (R.C. 4510.111(E).)

Ohio State University Extension Service Young Person Safe Driving Fund. The bill creates the Ohio State University Extension Service Young Person Safe Driving Fund. Funds deposited in the Fund include those portions of a fine imposed because of a DUS or driving under a FR suspension violation, as discussed above in "**Fine distribution.**" The Ohio State University Extension Service must use the money in the Fund only to pay the expenses it incurs in developing and conducting a safe driving program for young persons in the 4-H program of the Extension Service. (R.C. 3335.361.)

Affirmative defense to a DUS or driving under a FR suspension charge

The bill provides an affirmative defense for a defendant who is being prosecuted for a DUS or driving under a FR suspension violation that is based upon the alleged offender's operation of a motor vehicle or motorcycle at a time when the alleged offender's driver's license is under a suspension imposed by the Bureau of Motor Vehicles or by an administrative agency of another state. In this circumstance the alleged offender may offer the affirmative defense that the alleged offender did not have actual knowledge that the alleged offender's license was under that suspension. (R.C. 4510.10(C).)

Operating a motor vehicle without a valid license

The prohibition

Continuing law, unchanged by the bill, generally prohibits a person from operating any motor vehicle or motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio unless the person has a valid driver's license or commercial driver's license.⁴ A violation of this prohibition is the offense of "operating a motor vehicle without a valid license." (R.C. 4510.12(A) and (B).)

⁴ Continuing law contains exemptions to this license requirement which are described in R.C. 4507.03, 4507.04, and 4507.05, not in the bill (for example nonresidents, certain

Current law

The current penalty for operating a motor vehicle without a valid license is as follows (R.C. 4510.12(B)):

(1) If the trier of fact finds that the offender never has held a valid driver's or commercial driver's license issued by Ohio or any other jurisdiction, the offense is a misdemeanor of the first degree.

(2) If the offender's driver's or commercial driver's license or permit was expired at the time of the offense for no more than six months, the offense is a minor misdemeanor and if the offender's driver's or commercial driver's license or permit was expired at the time of the offense for more than six months, the offense is a misdemeanor of the fourth degree. However, if the offender previously was convicted of or pleaded guilty to operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is as follows:

(a) A misdemeanor of the third degree if the offender previously was convicted of or pleaded guilty to one violation of operating a motor vehicle without a valid license during that time;

(b) A misdemeanor of the second degree if the offender previously was convicted of or pleaded guilty to two violations of operating a motor vehicle without a valid license during that time;

(c) A misdemeanor of the first degree if the offender previously was convicted of or pleaded guilty to three or more violations of operating a motor vehicle without a valid license during that time.

With respect to license suspensions, current law prohibits the court from imposing a license suspension for a first violation or if more than three years have passed since the offender's last violation. However, if the offender was convicted of or pleaded guilty to one or more violations within the past three years, and if the offender's license was expired for more than six months at the time of the offense, the court must impose a Class 7 suspension (a definite period of not more than one year) of the offender's driver's license. (R.C. 4510.10(C) and (D).)

military personnel, persons with temporary instruction permits, and persons using farm or road machinery temporarily on the roads).

Operation of the bill

The bill adds the following two penalties for the offense of operating a motor vehicle without a valid license (R.C. 5120.12(B)(3) and (4) and (D)(2) and (3)):

(1) If the offender is involved in an accident while operating a motor vehicle or motorcycle without a valid license and the accident results in serious physical harm to any person, the offense of operating a motor vehicle without a valid license is a felony of the third degree regardless of whether the operation of the motor vehicle or motorcycle was the cause of the accident. In addition to any other sanctions imposed, the court must impose upon the offender a Class 3 license suspension (a definite period of between two and ten years), or if the offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense, a Class 2 license suspension (a definite period of between three years and life).

(2) If the offender is involved in an accident while operating a motor vehicle or motorcycle while operating a motor vehicle without a valid license and the accident results in the death of any person, the offense of operating a motor vehicle without a valid license is a felony of the second degree regardless of whether the operation of the motor vehicle or motorcycle was the cause of the accident. In addition to any other sanctions imposed, the court must impose upon the offender a Class 1 license suspension (a definite period of life).

Technical changes

The bill includes the following sections of the Revised Code to amend references to sections changed or enacted by the bill: R.C. 2929.01(U) and (Y), 4503.233, 4503.234, 4507.164, 4510.41, and 4511.19.

COMMENT

A person commits low-end state OVI ("operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them") if the person operates any vehicle, streetcar, or trackless trolley within this state, and if, at the time of the operation, the person is under the influence of alcohol, a drug of abuse, or a combination of them; the person has a concentration of .08 of 1% or more but less than .17 of 1% by weight per unit volume of alcohol in the person's whole blood; the person has a concentration of .096 of 1% or more but less than .204 of 1% by weight per unit volume of alcohol in the person's blood serum or plasma; 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; or 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 (R.C. 4511.19(A)(1)(a), (b), (c), (d), and (e)). The court must sentence the offender under the Criminal Sentencing Law, except as otherwise authorized or required by the following (R.C. 4511.19(G)(1)):

(a) ***Generally.*** Except as otherwise described below in (b), (c), (d), or (e), low-end state OVI is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(a) and 4510.13):

(i) A mandatory jail term of three consecutive days, which means 72 consecutive hours. The court may sentence an offender to both an intervention program and a jail term. The court may impose a jail term in addition to the three-day mandatory jail term or intervention program. However, in no case may the cumulative jail term imposed for the offense exceed six months. The court may suspend the execution of the three-day jail term if the court, in lieu of that suspended term, places the offender under a community control sanction and requires the offender to attend for three consecutive days a drivers' intervention program. The court also may suspend the execution of any part of the three-day jail term if it places the offender under a community control sanction for part of the three days, requires the offender to attend for the suspended part of the term a drivers' intervention program, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of community control and in addition to the required attendance at a drivers' intervention program, to attend and satisfactorily complete any treatment or education programs 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 on the offender any other conditions of community control that it considers necessary.

(ii) A fine of not less than \$250 and not more than \$1,000;

(iii) A Class 5 license suspension of the offender's driver's license (a definite period of six months to three years), the first six months of which may not be suspended. After 15 days, the court may grant limited driving privileges relative to the suspension.

(b) ***One prior offense in previous six years.*** If the offender, within six years of the offense, previously has been convicted of or pleaded guilty to one violation of state OVI or state OVUAC or one other equivalent offense, low-end state OVI is a misdemeanor of the first degree. The court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(b) and 4510.13):

(i) A mandatory jail term of ten consecutive days. The court must impose the ten-day mandatory jail term unless it instead imposes a sentence consisting of

both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term, but the cumulative jail term imposed for the offense cannot exceed six months. In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court may require the offender to attend a drivers' intervention program. If the operator of the program determines that the offender is alcohol dependent, the program must notify the court, and the court must order the offender to obtain treatment through an alcohol and drug addiction program.

(ii) A fine of not less than \$350 and not more than \$1,500;

(iii) A Class 4 license suspension (a definite period of one to five years) of the offender's driver's license, the first year of which may not be suspended. After 30 days, the court may grant limited driving privileges relative to the suspension.

(iv) If the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 90 days and impoundment of the license plates of that vehicle for 90 days.

(c) **Two prior offenses in the previous six years.** If the offender within six years of the offense previously has been convicted of or pleaded guilty to two violations of state OVI or state OVUAC or other equivalent offenses, low-end state OVI is a misdemeanor. The court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(c) and 4510.13):

(i) A mandatory jail term of 30 consecutive days. The court must impose the 30-day mandatory jail term unless it instead imposes a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court 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 imposed for the offense cannot exceed one year.

(ii) A fine of not less than \$550 and not more than \$2,500;

(iii) A Class 3 license suspension (a definite period of two to ten years) of the offender's driver's license, the first year of which may not be suspended. After 180 days the court may grant limited driving privileges relative to the suspension.

(iv) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense.

(v) Participation in an alcohol and drug addiction program.

(d) **Three or four prior violations in the previous six years.** If the offender, within six years of the offense, previously has been convicted of or pleaded guilty to three or four violations of state OVI or state OVUAC or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature, state OVI is a felony of the fourth degree. The court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(d) and 4510.13):

(i) A mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification that the offender, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more equivalent offenses, or in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 60-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 the court imposes a mandatory prison term it also may sentence the offender to a definite prison term that can be not less than six months and not more than 30 months. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) A fine of not less than \$800 nor more than \$10,000;

(iii) A Class 2 license suspension (a definite period of three years to life) of the offender's driver's license, the first three years of which may not be suspended. After three years, the court may grant limited driving privileges relative to the suspension.

(iv) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense.

(v) Participation in an alcohol and drug addiction program.

(vi) 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. The term cannot commence until after the offender has served the mandatory term of local incarceration.

(e) **Prior felony conviction.** If the offender previously has been convicted of or pleaded guilty to a felony violation of state OVI, regardless of when the

violation and the conviction or guilty plea occurred, state OVI is a felony of the third degree. The court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(e) and 4510.13):

(i) A mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification that the offender, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more equivalent offenses or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term, but the cumulative total of a 60-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) A fine of not less than \$800 nor more than \$10,000;

(iii) A Class 2 license suspension (a definite period of three years to life) of the offender's driver's license, the first three years of which may not be suspended. After three years, the court may grant limited driving privileges relative to the suspension.

(iv) If the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense.

(v) Participation in an alcohol and drug addiction program.

HISTORY

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