



Sub. S.B. 141

126th General Assembly
(As Passed by the Senate)

Sens. Hottinger, Jacobson, Gardner, Clancy, Dann, Zurz, Goodman, Cates, Coughlin

BILL SUMMARY

- In the provision that requires the suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is arrested for the offense of state OVI, the offense of state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of an equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance, and who refuses to submit to the test (hereafter, a "refusal suspension"): (1) increases, from six years to 20 years, the "look back period" during which prior refusals are considered in determining the length of the suspension, (2) provides for consideration of prior related convictions in determining the length of the suspension, and (3) revises the length of the suspension as follows: (a) except as provided in clause (3)(b), (c), or (d) of this paragraph, the suspension is a Class C suspension (a period of one year), (b) if the person, within 20 years of the date of the refusal, had refused one previous request to consent to a chemical test or had been convicted of one state OVI, state OVUAC, or equivalent offense, the suspension is a Class A suspension (a period of three years), (c) if the person, within 20 years of the date of the refusal, had refused two previous requests to consent to a chemical test, had been convicted of two offenses identified in clause (3)(b) of this paragraph, or had refused one previous request and also had been convicted of offenses identified in clause (3)(b) of this paragraph, the suspension is for seven years, and (d) if the person within 20 years of the date of the refusal, had refused a number of previous requests to consent to a chemical test that is in excess of the number of times specified in clause (3)(c) of this paragraph, had been convicted of a number of offenses identified in clause (3)(b) that is in excess of the number of times specified in clause

- (3)(c) of this paragraph, or had refused a number of previous requests and also had been convicted of a number of offenses identified in clause (3)(b), that in combination are in excess of the number of times specified in clause (3)(c) of this paragraph, the suspension is for seven years plus three years for each such refusal or conviction in excess of the number of times specified in clause (3)(c) of this paragraph.
- Changes the period of time that must be served under a "refusal suspension" described in the preceding dot point before the person whose license, permit, or operating privilege is suspended may be granted limited driving privileges to be used during the suspension so that the court cannot grant privileges to such a person during any of the following periods of time: (1) the first 60 days of a refusal suspension imposed upon a person with no prior refusal, and no prior conviction of any specified offense, within the preceding 20 years, (2) the first 180 days of suspension imposed upon a person with one or more prior refusals, or one or more prior convictions of any specified offense, within the preceding 20 years, (3) the first year of suspension imposed upon a person with a cumulative total of two prior refusals, prior convictions of a specified offense, or combinations of such refusals and convictions within the preceding 20 years, or (4) the first three years of suspension imposed upon a person with a cumulative total of three or more prior refusals, prior convictions of a specified offense, or combinations of such refusals and convictions within the preceding 20 years.
 - Modifies an existing provision that, apparently inconsistently with the existing provision modified as described in clause (4) of the preceding dot point, prohibits a court from granting limited driving privileges to a person whose license has been suspended under a "refusal suspension" and who, within the preceding six years, has refused three previous requests to consent to a chemical test to instead prohibit a court from granting limited driving privileges to a person whose license has been suspended under a "refusal suspension" and who, within 20 years of the date of the refusal, had a cumulative total of four or more prior refusals, prior convictions of a specified offense, or combinations of such refusals and convictions.
 - In the provision that requires the suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is arrested for an offense as described in the first dot point, who is

requested to submit to a chemical test of a bodily substance, who submits to the test, and who is found to have a prohibited concentration of alcohol in the bodily substance (hereafter, a "prohibited concentration suspension"), increases, from six years to 20 years, the "look-back period" during which prior convictions are considered in determining the length of the suspension.

- Modifies an existing provision that, apparently inconsistently with a separate existing provision regarding limited driving privileges, prohibits a court from granting limited driving privileges to a person whose license has been suspended under a "prohibited concentration suspension" and who, within the preceding six years, has been convicted of three or more specified offenses to instead prohibit a court from granting limited driving privileges to a person whose license has been suspended under a "prohibited concentration suspension" and who, within the preceding 20 years, had been convicted of four or more of the specified offenses.
- In the provision that requires the suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is convicted of or pleads guilty to the offense of state OVI or municipal OVI (hereafter, a "post-conviction OVI suspension"), increases from six to 20 years, the "look-back period" during which prior convictions are considered in determining the length of the suspension.
- Provides that, if an offender is convicted of the offense of state OVI or municipal OVI and the offender's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under a "refusal suspension" or a "prohibited concentration suspension," as described above, as a result of the same incident or the same set of facts and circumstances that resulted in the conviction, when the sentencing court imposes the "post-conviction OVI suspension" required as a result of the conviction, the period of the "post-conviction OVI suspension" imposed cannot be less than the greater of either the minimum suspension period specified by law for "post-conviction OVI suspensions" for the category applicable to the offender or the period of time remaining in the "refusal suspension" or "prohibited concentration suspension" imposed on the offender on the date the court sentences the offender.
- Modifies an existing provision that, apparently inconsistently with a separate existing provision regarding limited driving privileges, prohibits

a court from granting limited driving privileges to a person whose license has been suspended under a "post-conviction OVI suspension" and who, within the preceding six years, had been convicted of three or more specified offenses to instead prohibit a court from granting limited driving privileges to a person whose license has been suspended under a "post-conviction OVI suspension" and who, within the preceding 20 years, had been convicted of four or more of the specified offenses.

- In an existing provision that requires the Registrar of Motor Vehicles to suspend the driver's or commercial driver's license or permit or nonresident operating privilege of a person whose license or permit has been suspended for a conviction in another jurisdiction of an OVI offense or OVUAC offense and that permits a grant of limited driving privileges to the person after the person has served a specified period of time under the suspension, extends from six years to 20 years the look-back period during which prior convictions are considered in determining the length of the period during which the privileges cannot be granted.
- In addition to the "look-back period" extensions described in preceding dot points, extends the "look-back period" that applies in various contexts and during which a person's conduct that occurred during the period is relevant in determining a particular type of sanction to be imposed upon the person as follows: (1) extends, from six years to 20 years, the look-back period during which prior convictions of the offender are considered in determining the length of the suspension to be imposed upon a person who is convicted of or pleads guilty to the offense of "driving under OVI suspension," (2) extends, from six years to 20 years, the look-back period during which prior convictions of an offender convicted of municipal OVI are considered in determining whether the sentencing court must order sanctions of immobilization and impoundment, or criminal forfeiture, of the vehicle, (3) extends, from six years to 20 years, the look-back period during which prior convictions of a person arrested for state OVI or municipal OVI are considered in determining whether provisions regarding the pretrial seizure of the vehicle used in the alleged violation apply, and (4) modifies the "look-back period" during which prior convictions, guilty pleas, or juvenile court adjudications of certain juvenile offenders are considered in determining whether a prohibition against granting limited driving privileges applies to the person by removing the current six-year limitation of the period.



- Modifies the definition of "delinquent child" that applies in the Delinquent Child Law to clarify and reaffirm that it includes any child, except a juvenile traffic offender, who violates any law of Ohio or the United States, or any ordinance of an Ohio political subdivision, that would be a minor misdemeanor if committed by an adult.
- Enacts a "presumptive disposition" provision for children adjudicated delinquent for committing a violation that would be the offense of "trafficking in marihuana" or the offense of "possession of marihuana" if committed by an adult, pursuant to which the court generally must make an order of disposition for the child that does either or both of the following: (1) places the child in a detention facility or district detention facility for at least a minimum period of time specified in the bill (3, 14, 30, or 60 days, depending upon the circumstances present) or (2) places the child on community control that includes a requirement of drug assessment or counseling, or a period in a drug treatment program, together with a requirement of basic or intense probation supervision.
- Specifies that a court is not required to impose an order of disposition under the presumptive disposition provisions described in the preceding dot point if the court determines that such an order is not in the interests of justice.

TABLE OF CONTENTS

Vehicle Implied Consent Law suspensions	6
Operation of the bill	6
Post-conviction OVI suspensions	9
Existing law.....	9
Operation of the bill	11
Limited driving privileges during an Implied Consent Law suspension or a suspension imposed as a result of an OVI or OVUAC conviction	12
In general	12
For a person whose license has been suspended under an "Implied Consent Law refusal suspension"	12
For a person whose license has been suspended under an "Implied Consent Law prohibited concentration suspension"	14
For a person whose license has been suspended under a post-conviction OVI or OVUAC suspension	16
For a person whose license has been suspended for a conviction in another jurisdiction of an OVI offense or OVUAC offense	17

Extension of "look-back periods" in various vehicle-related provisions	18
Delinquent child definition.....	22
Existing law.....	22
Operation of the bill	22
Disposition of child adjudicated delinquent for trafficking in marihuana or possession of marihuana	23
Existing law.....	23
Operation of the bill	25

CONTENT AND OPERATION

Vehicle Implied Consent Law suspensions

The existing Vehicle Implied Consent Law provides, in relevant part, for suspensions of the driver's or commercial driver's license or permit or nonresident operating privilege of persons who are arrested for the offense of state OVI (see **COMMENT 1**), the offense of state OVUAC (see **COMMENT 2**), the offense of "having physical control of a vehicle while under the influence" (see **COMMENT 3**) or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance (see **COMMENT 4**), who are requested in accordance with specified procedures to submit to a chemical test of a specified bodily substance to determine the alcohol or drug content of the bodily substance, and who refuse to submit to the requested test or who submit to the requested test and are determined to have a specified concentration of alcohol in the bodily substance. The length of the suspension varies, depending upon the number of times within the preceding six years that: (1) for a suspension imposed upon a person who refuses to submit to the test, the person has refused previous requests to submit to a chemical test made under that Law, or (2) for a person who submits to a test and has a prohibited concentration of alcohol in the bodily substance, the person has been convicted of state OVI, state OVUAC, or another equivalent offense. A detailed discussion of the Vehicle Implied Consent Law is set forth in **COMMENT 5**.

Operation of the bill

Implied Consent Law refusal suspension. The bill increases, in most circumstances, the length of the suspension that is imposed under the Vehicle Implied Consent Law upon a person who is arrested for the offense of state OVI, the offense of state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance and is read the required notices of possible ramifications of refusing or of taking the test, and who refuses to submit to the test (i.e., an "Implied Consent Law refusal suspension"). It also increases, from six

years to 20 years, the "look-back period" during which prior refusals are considered in determining the length of the suspension and provides for consideration of prior related convictions in determining the length of the suspension.

Under the bill, the "Implied Consent Law refusal suspension" is for whichever of the following periods applies:

(1) Except as provided in paragraph (2), (3), or (4), the suspension remains as under existing law a Class C suspension (a period of one year) under R.C. 4510.02(B);

(2) If the arrested person, *within 20 years of the date of the refusal*, had refused one previous request to consent to a chemical test *or had been convicted of or pleaded guilty to one state OVI, state OVUAC, or equivalent offense*, the suspension is a Class A suspension (a period of three years) under R.C. 4510.02(B) (existing law requires a Class B suspension, which is for a period of two years, for one refusal within the prior six years);

(3) If the arrested person, *within 20 years of the date of the refusal*, had refused two previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to two state OVI, state OVUAC, or equivalent offenses, or had refused one previous request to consent to a chemical test and also had been convicted of or pleaded guilty to one state OVI, state OVUAC, or equivalent offense*, the suspension is for seven years (existing law requires a Class A suspension, which is for a period of three years, for two refusals within the prior six years);

(4) If the arrested person *within 20 years of the date of the refusal*, had refused a number of previous requests to consent to a chemical test that is in excess of the number of times specified in paragraph (3), *had been convicted of or pleaded guilty to a number of state OVI, state OVUAC, or equivalent offenses that is in excess of the number of times specified in paragraph (3), or had refused a number of previous requests to consent to a chemical test and also had been convicted of or pleaded guilty to a number of state OVI, state OVUAC, or equivalent offenses, each of which violations or offenses arose from an incident other than an incident that led to any of the refusals, that in combination are in excess of the number of times specified in paragraph (3)*, the suspension is for seven years plus three years for each such refusal, conviction, or guilty plea in excess of the number of times specified in paragraph (3) (existing law requires a five year suspension for three or more refusals within the prior six years). (R.C. 4511.191(B)(1).)

The bill does not change the existing provisions regarding the immediate effect of the suspension, the termination of the suspension subsequent to a guilty plea or conviction of a related offense resulting from the same incident, or the crediting against a judicial suspension imposed subsequent to a guilty plea or conviction of a related offense resulting from the same incident any time during which the person serves a related "refusal suspension" (see **COMMENT 5**) (R.C. 4511.191(B)(2) and (D)).

Implied Consent Law prohibited concentration suspension. The bill increases, from six years to 20 years, the "look-back period" during which prior convictions are considered in determining the length of the suspension that is imposed under the Vehicle Implied Consent Law upon a person who is arrested for the offense of state OVI, the offense of state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance and is read the required notices of possible ramifications of refusing or of taking the test, who submits to the test, and who is found to have a prohibited concentration of alcohol in his or her whole blood, blood serum or plasma, breath, or urine (i.e., an "Implied Consent Law prohibited concentration suspension"). It does not change the length of the suspension that is imposed upon the person, depending upon the number of prior convictions of the person for any of the specified offenses during the applicable look-back period.

Under the bill, the "Implied Consent Law prohibited concentration suspension" is determined as follows (R.C. 4511.191(C)(1)):

(1) Except as provided in paragraph (2), (3), or (4), the suspension remains as under existing law a Class E suspension (a period of three months) under R.C. 4510.02(B);

(2) If, *within 20 years of the date the test was conducted*, the person has been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense, the suspension is a Class C suspension (a period of one year) under R.C. 4510.02(B) (existing law also requires a Class C suspension, but the look-back period is six years);

(3) If, *within 20 years of the date the test was conducted*, the person has been convicted of or pleaded guilty to two violations constituting any offense listed in paragraph (2), the suspension is a Class B suspension (a period of two years) under R.C. 4510.02(B) (existing law also requires a Class B suspension, but the look-back period is six years);

(4) If, *within 20 years of the date the test was conducted*, the person has been convicted of or pleaded guilty to three or more violations constituting any offense listed in paragraph (2), the suspension is a Class A suspension (a period of three years) under R.C. 4510.02(B) (existing law also requires a Class A suspension, but the look-back period is six years).

The bill does not change the existing provisions regarding the immediate effect of the suspension, the termination of the suspension subsequent to a guilty plea or conviction of a related offense resulting from the same incident, or the crediting against a judicial suspension imposed subsequent to a guilty plea or conviction of a related offense resulting from the same incident any time during which the person serves a related "prohibited concentration suspension" (R.C. 4511.191(C)(2) and (D)).

Post-conviction OVI suspensions

Existing law

Under existing law, if a person is convicted of or pleads guilty to the offense of state OVI, the court imposing sentence upon the offender, as part of the sentence, must suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a specified period of time (i.e., a "post-conviction OVI suspension"). The length of the suspension varies, depending upon the number of times the offender, within the preceding six years, has been convicted of or pleaded guilty to state OVI, state OVUAC, or another equivalent offense. The post-conviction OVI suspension imposed for a state OVI conviction is for whichever of the following periods applies (R.C. 4511.19(G)):

(1) Except as provided in paragraph (2), (3), (4), or (5), the suspension is a Class 5 suspension (a definite period of six months to three years) under R.C. 4510.02(A)(5);

(2) If the offender, within six years of the offense, previously has been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense, the suspension is a Class 4 suspension (a definite period of one to five years) under R.C. 4510.02(A)(4);

(3) If the offender, within six years of the offense, previously has been convicted of or pleaded guilty to two offenses listed in paragraph (1), the suspension is a Class 3 suspension (a definite period of two to ten years) under R.C. 4510.02(A)(3);

(4) If the offender, within six years of the offense, previously has been convicted of or pleaded guilty to three or four offenses listed in paragraph (1), or,

within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more such offenses, the suspension is a Class 2 suspension (a definite period of three years to life) under R.C. 4510.02(A)(2);

(5) If the offender previously has been convicted of or pleaded guilty to state OVI in circumstances in which it was a felony, regardless of when the offense and the conviction or guilty plea occurred, the suspension is a Class 2 suspension (a definite period of three years to life) under R.C. 4510.02(A)(2).

Under another provision of existing law, if a person is convicted of or pleads guilty to municipal OVI, the court imposing sentence upon the offender must impose a 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 that is equivalent in length to the suspension required for a state OVI violation under similar circumstances (R.C. 4510.07; also referred to in this part of the analysis as a "post-conviction OVI suspension").

Under provisions of the existing Vehicle Implied Consent Law, if a person is arrested for a specified vehicle-related and alcohol-related offense, including state OVI and municipal OVI, is requested in accordance with specified procedures to submit to a chemical test of a specified bodily substance to determine the alcohol or drug content of the bodily substance, and refuses to submit to the requested test or submits to the requested test and is determined to have a specified concentration of alcohol in the bodily substance, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended for a specified period of time (respectively, an "Implied Consent Law refusal suspension" and an "Implied Consent Law prohibited concentration suspension"). The length of the suspension varies, depending upon: (1) regarding a refusal suspension, the number of times the arrested person, within six years of the date of the refusal, had previously refused to submit to a requested chemical test under the Implied Consent Law or (2) regarding a prohibited concentration suspension, the number of times the arrested person, within six years of the date the test was conducted, previously has been convicted of or pleaded guilty to state OVI, state OVUAC, or another equivalent offense.

Existing law provides that, if a person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended under an "Implied Consent Law refusal suspension" or under an "Implied Consent Law prohibited concentration suspension," the Registrar of Motor Vehicles must terminate the suspension upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, state OVI or municipal OVI, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial. The Registrar also must credit against any "post-conviction OVI

suspension" imposed upon a person for a state OVI or municipal OVI conviction any time during which the person serves a related "Implied Consent Law refusal suspension" or "Implied Consent Law prohibited concentration suspension." (R.C. 4511.191(B)(2) and (C)(2); see **COMMENT 7** for examples illustrating three potential outcomes resulting from the application of these provisions.)

Operation of the bill

Extension of look-back period. The bill increases, *from six years to 20 years*, the "look-back period" during which prior convictions are considered in determining the length of the suspension that is imposed upon a person who is convicted of or pleads guilty to the offense of state OVI or municipal OVI. It does not change the length of the suspension that is imposed upon the person, depending upon the number of prior convictions of the person for any of the specified offenses during the applicable look-back period, and does not otherwise substantively change the provisions governing the sentence for the person. (R.C. 4511.19(G)(1)(a) to (d); by reference, R.C. 4510.07.)

Mandatory minimum period for a post-conviction OVI suspension--linkage to remaining period of offender's Implied Consent Law refusal suspension or prohibited concentration suspension. The bill provides that, if an offender is convicted of or pleads guilty to the offense of state OVI or municipal OVI (when substantially equivalent to state OVI) and the offender's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under an "Implied Consent Law refusal suspension" or an "Implied Consent Law prohibited concentration suspension" as a result of the same incident or the same set of facts and circumstances that resulted in the conviction or guilty plea, when the sentencing court imposes the required "post-conviction OVI suspension" upon the offender for the conviction of the state OVI or municipal OVI offense, the period of the "post-conviction OVI suspension" the court imposes cannot be less than the greater of either the minimum suspension period specified for post-conviction OVI suspensions in R.C. 4510.02(A)(2), (3), (4), or (5) for the category applicable to the offender or the period of time remaining in the "Implied Consent Law refusal suspension" or "Implied Consent Law prohibited concentration suspension" imposed on the offender on the date the court sentences the offender. The period of the "post-conviction OVI suspension" the court imposes cannot exceed the maximum period specified in R.C. 4510.02(A)(2), (3), (4), or (5), for the category applicable to the offender. (R.C. 4510.07(B) and 4511.19(G)(1)(a)(iv), (b)(iv), (c)(iv), (d)(iv), and (e)(iv).)



Limited driving privileges during an Implied Consent Law suspension or a suspension imposed as a result of an OVI or OVUAC conviction

In general

Existing law, unchanged by the bill, provides that, unless expressly authorized by a Revised Code section, a court may not grant limited driving privileges during any suspension imposed by the Bureau of Motor Vehicles. To obtain limited driving privileges during a Bureau-imposed suspension, the person under suspension may file a petition in a specified court of record. If a court grants limited driving privileges as described in this division, the privileges may be for any of the limited purposes described below. Existing law also provides that, unless expressly prohibited by R.C. 2919.22, R.C. 4510.13, or any other Revised Code section, a court may grant limited driving privileges for any purpose described below during any suspension imposed by the court. In granting the privileges, the court must specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges may be for any of the following limited purposes: (1) occupational, educational, vocational, or medical purposes, (2) taking the driver's or commercial driver's license examination, (3) attending court-ordered treatment, or (4) during the suspension of the temporary instruction permit or probationary driver's license of a person under 18, for practicing driving with the person's parent, guardian, or other custodian.

When the use of an immobilizing or disabling device is not otherwise required by law, the court, as a condition of granting privileges, generally may require that the person's vehicle be equipped with an immobilizing or disabling device. When the use of restricted license plates is not otherwise required by law, the court, as a condition of granting limited driving privileges, generally may require that the person's vehicle be equipped with restricted license plates. Before granting limited driving privileges, the court must require the offender to provide proof of financial responsibility. (R.C. 4510.021--not in the bill.)

For a person whose license has been suspended under an "Implied Consent Law refusal suspension"

Existing law. Existing law provides that a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under an "Implied Consent Law refusal suspension" may file a petition requesting limited driving privileges during the suspension in the court that has jurisdiction over the place of arrest and that, subject to specified exceptions, the court may grant the person the privileges during the period of the suspension. The court cannot grant such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a

commercial motor vehicle. The court cannot grant privileges to such a person who, within the preceding six years, has refused three previous requests to consent to a chemical test of a bodily substance (but see the next sentence). Additionally, the court cannot grant privileges to such a person during any of the following periods of time: (1) the first 30 days of suspension imposed under R.C. 4511.191(B)(1)(a) upon a person with no prior refusal within the preceding six years, (2) the first 90 days of suspension imposed under R.C. 4511.191(B)(1)(b) upon a person with one prior refusal within the preceding six years, (3) the first year of suspension imposed under R.C. 4511.191(B)(1)(c) upon a person with two prior refusals within the preceding six years, or (4) the first three years of suspension imposed under R.C. 4511.191(B)(1)(d) upon a person with three or more prior refusals within the preceding six years. (R.C. 4510.13(A)(3), (A)(4), (A)(6), and (B).)

Operation of the bill. The bill changes the period of time that must be served under the suspension before a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under an "Implied Consent Law refusal suspension" may be granted limited driving privileges to be used during the suspension, as described in the preceding paragraph. Because this provision is linked to the Revised Code provisions under which the suspension is imposed, the bill, in effect, also incorporates the changes it makes to those provisions into the limited driving privileges provision.

Under the bill, the court cannot grant privileges to such a person during any of the following periods of time:

(1) The first 60 days of suspension imposed under R.C. 4511.191(B)(1)(a) upon a person with no prior refusal, and no prior conviction of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years (existing law bars the grant of privileges during the first 30 days of suspension imposed upon a person with no prior refusals within the preceding six years);

(2) The first 180 days of suspension imposed under R.C. 4511.191(B)(1)(b) upon a person with one prior refusal, or one prior conviction of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years (existing law bars the grant of privileges during the first 90 days of suspension imposed upon a person with one prior refusal within the preceding six years);

(3) The first year of suspension imposed under R.C. 4511.191(B)(1)(c) upon a person with a cumulative total of two prior refusals, prior convictions of state OVI, state OVUAC, or equivalent offenses, or combinations of such refusals and convictions within the preceding 20 years (existing law bars the grant of privileges during the first year of suspension imposed upon a person with two prior refusals within the preceding six years);

(4) The first three years of suspension imposed under R.C. 4511.191(B)(1)(d) upon a person with a cumulative total of three or more prior refusals, prior convictions of state OVI, state OVUAC, or equivalent offenses, or combinations of such refusals and convictions within the preceding 20 years (existing law bars the grant of privileges during the first three years of suspension imposed upon a person with three or more prior refusals within the preceding six years).

Related to its provision described in preceding paragraph (4), the bill modifies the existing provision that, apparently inconsistently with the existing provision modified by the bill as described in that clause, prohibits a court from granting limited driving privileges to a person whose license has been suspended under an "Implied Consent Law refusal suspension" and who, within the preceding six years, has refused three previous requests to consent to a chemical test. Under the bill, the provision is amended to prohibit a court from granting limited driving privileges to a person whose license has been suspended under an "Implied Consent Law refusal suspension" and who, *within 20 years of the date of the refusal* that resulted in the suspension, had refused *four or more* previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to four or more* state OVI, state OVUAC, or other equivalent offenses, or had refused a number of previous requests to consent to a chemical test and also *had been convicted of or pleaded guilty to* a number of state OVI, state OVUAC, or other equivalent offenses, each of which offenses arose from an incident other than an incident that led to any of the refusals, *that in combination consists of a total of four or more such refusals, conviction, and guilty pleas.*

The bill does not change the existing provisions that prohibit a court from granting a person whose license, permit, or privilege is suspended under a refusal suspension driving privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a commercial motor vehicle. (R.C. 4510.13(A)(3), (A)(4), (A)(6), and (B).)

For a person whose license has been suspended under an "Implied Consent Law prohibited concentration suspension"

Existing law. Existing law provides that a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under an "Implied Consent Law prohibited concentration suspension" may file a petition requesting limited driving privileges during the suspension in the court that has jurisdiction over the place of arrest and that, subject to specified exceptions, the court may grant the person the privileges during the period of the suspension. The court cannot grant such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a commercial motor vehicle. The court cannot grant privileges to such a

person who, within the preceding six years, has been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses (but see the next sentence). Additionally, the court cannot grant privileges to such a person during any of the following periods of time: (1) the first 15 days of suspension imposed under R.C. 4511.191(C)(1)(a) upon a person with no prior state OVI, state OVUAC, or equivalent offense convictions or guilty pleas within the preceding six years, (2) the first 30 days of suspension imposed under R.C. 4511.191(C)(1)(b) upon a person with one prior state OVI, state OVUAC, or equivalent offense convictions or guilty pleas within the preceding six years, (3) the first 180 days of suspension imposed under R.C. 4511.191(C)(1)(c) upon a person with two prior state OVI, state OVUAC, or equivalent offense convictions or guilty pleas within the preceding six years, or (4) the first three years of suspension imposed under R.C. 4511.191(C)(1)(d) upon a person with three or more prior state OVI, state OVUAC, or equivalent offense convictions or guilty pleas within the preceding six years. (R.C. 4510.13(A)(3), (A)(4), (A)(5), and (B).)

Operation of the bill. The bill retains the existing provisions described in the last sentence of the preceding paragraph that specify periods of time during which a court cannot grant limited driving privileges to a person whose license or permit or nonresident operating privilege has been suspended under an "Implied Consent Law prohibited concentration suspension" (but note that, because these provisions are linked to the Revised Code provisions under which the suspension is imposed, the bill, in effect, also incorporates the changes it makes to those provisions (e.g., the extension to 20 years of the "look-back period" during which prior convictions are considered in determining the length of the suspension), as described above in **"Implied Consent Law prohibited concentration suspension"** under **"Vehicle Implied Consent Law suspensions,"** into the limited driving privileges provision). However, related to the provision described in clause (4) of the last sentence in the preceding paragraph, the bill modifies the existing provision that, apparently inconsistently with the existing provision as described in that clause, prohibits a court from granting limited driving privileges to a person whose license has been suspended under an "Implied Consent Law prohibited concentration suspension" and who, within the preceding six years, has been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses. Under the bill, the provision is amended to prohibit a court from granting limited driving privileges to a person whose license has been suspended under an "Implied Consent Law prohibited concentration suspension" and who, *within the preceding 20 years*, has been convicted of or pleaded guilty to *four or more* state OVI, state OVUAC, or other equivalent offenses. The bill does not change the existing provisions that prohibit a court from granting a person whose license, permit, or privilege is suspended under a prohibited concentration suspension driving privileges for employment as a driver of commercial vehicles

if the person otherwise is disqualified from operating a commercial motor vehicle. (R.C. 4510.13(A)(3), (A)(4), (A)(5), and (B).)

For a person whose license has been suspended under a post-conviction OVI or OVUAC suspension

Existing law. Existing law, contained in R.C. 4511.19(G), 4511.19(H), and 4510.07, requires the court that is sentencing a person who has been convicted of or pleaded guilty to the offense of state OVI, the offense of state OVUAC, or a municipal OVI offense to suspend the driver's or commercial driver's license or permit or nonresident operating privilege of the offender (i.e., a "post-conviction OVI or OVUAC suspension"; the OVI-related provisions generally are described above in "**Post-conviction OVI suspensions**"). Existing law provides that a person whose license, permit, or privilege has been suspended under a post-conviction OVI or OVUAC suspension may file a petition requesting limited driving privileges during the suspension in the court that has jurisdiction over the place of arrest and that, subject to specified exceptions, the court may grant the person the privileges during the period of the suspension. The court cannot grant such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a commercial motor vehicle. The court cannot grant privileges to such a person who, within the preceding six years, has been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses (but see the next sentence). Additionally, the court cannot grant privileges to such a person during the following periods of time: (1) for a suspension imposed under a state OVI conviction or under a municipal OVI conviction comparable to state OVI, periods of time that are the same as the periods during which a grant of limited driving privileges are prohibited under an "Implied Consent Law prohibited concentration suspension," as described above in "**For a person whose license has been suspended under an Implied Consent Law prohibited concentration suspension**," or (2) for a suspension imposed under a state OVUAC conviction or under a municipal OVI conviction comparable to state OVUAC, the first 60 days of the suspension. (R.C. 4510.13(A)(3), (A)(4), (A)(5), and (B) and 4511.19(G).)

Operation of the bill. The bill retains the existing provisions described in the last sentence of the preceding paragraph that specify periods of time during which a court cannot grant limited driving privileges to a person whose license or permit or nonresident operating privilege has been suspended under a "post-conviction OVI or OVUAC suspension" (but note that, because these provisions are linked to the Revised Code provisions under which the suspension is imposed, the bill, in effect, also incorporates the changes it makes to those provisions (e.g., the extension to 20 years of the "look-back period" during which prior convictions are considered in determining the length of the suspension), as described above in

"Post-conviction OVI suspensions," into the limited driving privileges provision). However, related to the provision described in clause (1) of the last sentence in the preceding paragraph, the bill modifies the existing provision that, apparently inconsistently with the existing provision as described in that clause, prohibits a court from granting limited driving privileges to a person whose license has been suspended under a "post-conviction OVI or OVUAC suspension" and who, within the preceding six years, has been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses. Under the bill, the provision is amended to prohibit a court from granting limited driving privileges to a person whose license has been suspended under a "post-conviction OVI or OVUAC suspension" and who, *within the preceding 20 years*, has been convicted of or pleaded guilty to *four or more* state OVI, state OVUAC, or other equivalent offenses. The bill does not change the existing provisions that prohibit a court from granting a person whose license, permit, or privilege is suspended under a post-conviction OVI or OVUAC suspension driving privileges for employment as a driver of commercial vehicles if the person otherwise is disqualified from operating a commercial motor vehicle. (R.C. 4510.13(A)(3), (A)(4), (A)(5), and (B).)

For a person whose license has been suspended for a conviction in another jurisdiction of an OVI offense or OVUAC offense

Existing law. Existing law requires the Registrar of Motor Vehicles to impose a Class D suspension (a period of six months) under R.C. 4510.02(B)(4) of the driver's or commercial driver's license or permit or nonresident operating privilege of a person (including a child) who is an Ohio resident and who is convicted of or pleads guilty to a violation of a statute of any other state or any federal statute that is substantially similar to any of a list of specified Ohio controlled substance offenses, to state OVI, or to state OVUAC. Upon receipt of a report of the conviction or guilty plea from an official of the other jurisdiction, the Registrar must mail notice of the suspension to the person whose license, permit, or privilege is being suspended (the suspension takes effect 21 days after the date of the notice) and, upon request of the person, must grant a hearing regarding the suspension.

Existing law provides that a person whose license or permit has been suspended under this provision may file a petition in a specified court requesting limited driving privileges. Upon the satisfaction of specified criteria and subject to specified exceptions, the judge may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. The court cannot grant such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise would be disqualified under Ohio law from operating a commercial motor vehicle if the violation had occurred

in Ohio. The court cannot grant privileges to a person whose license or permit was suspended as a result of a statute substantially similar to state OVI or state OVUAC during the following periods of time: (1) the first 15 days of the suspension, if the person has not been convicted *within six years of the date of the offense for which the suspension was imposed* of state OVI, state OVUAC, municipal OVI, or another specified alcohol-related and vehicle-related offense, (2) the first 30 days of the suspension, if the person has been convicted one time *within six years of the date of the offense for which the suspension was imposed* of an offense listed in clause (1) of this paragraph, (3) the first 180 days of the suspension, if the person has been convicted two times *within six years of the date of the offense for which the suspension was imposed* of an offense listed in clause (1) of this paragraph, or (4) at any time during the suspension, if the person has been convicted three or more times *within six years of the date of the offense for which the suspension was imposed* of an offense listed in clause (1) of this paragraph. (R.C. 4510.17.)

Operation of the bill. The bill retains the existing provisions described in the last sentence of the preceding paragraph that specify periods of time during which a court cannot grant limited driving privileges to a person whose license or permit has been suspended for a conviction in another jurisdiction of an OVI offense or OVUAC offense, but *extends from six years to 20 years* the "look-back period" during which prior convictions are considered in determining the length of the period during which the privileges cannot be granted (R.C. 4510.17(E)).

Extension of "look-back periods" in various vehicle-related provisions

The bill extends the "look-back period" that applies in various contexts and during which a person's conduct that occurred during the period is relevant in determining a particular type of sanction to be imposed upon the person for current conduct. In all but one case, the extension of the look-back period is from six years to 20 years; in the last case, the extension is from six years to an indefinite period. Four of the extensions are discussed in preceding portions of this analysis. A description of all of the extensions follows:

(1) As previously discussed, the bill extends from six years to 20 years the look-back period during which prior refusals of the person to submit to a chemical test under the Implied Consent Law (and prior convictions, as added by the bill) are considered in determining the length of a suspension to be imposed upon a person who is arrested for state OVI, state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance, is requested to submit to a chemical test of the person's breath under the Implied Consent Law, and refuses to submit to the test (R.C. 4511.191(B)(1); see **Implied**

Consent Law refusal suspension" under **Vehicle Implied Consent Law suspensions**," above);

(2) As previously discussed, the bill extends from six years to 20 years the look-back period during which prior state OVI, state OVUAC, or other equivalent offense convictions of the person are considered in determining the length of a suspension to be imposed upon a person who is arrested for state OVI, state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance, is requested to submit to a chemical test of the person's breath under the Implied Consent Law, submits to the test, and is found to have a prohibited concentration of alcohol in the bodily substance tested (R.C. 4511.191(C)(1); see **Implied Consent Law prohibited concentration suspension**" under **Vehicle Implied Consent Law suspensions**," above);

(3) As previously discussed, the bill extends from six years to 20 years the look-back period during which prior state OVI, state OVUAC, or other equivalent offense convictions of the person are considered in determining the length of the suspension to be imposed upon a person who is convicted of or pleads guilty to the offense of state OVI or municipal OVI (R.C. 4511.191(G)(1)(a) to (d); see **Post-conviction OVI suspensions**," above).

(4) As previously discussed, the bill extends from six years to 20 years the look-back period during which prior state OVI, state OVUAC, or other equivalent offense convictions of the person, or prior refusals of the person to submit to a chemical test under the Implied Consent Law (regarding an Implied Consent Law refusal suspension), are considered in determining whether the ban against granting limited driving privileges to multiple repeat offenders applies to the person (R.C. 4510.13(A)(3); see **For a person whose license has been suspended under an Implied Consent Law refusal suspension**," **For a person whose license has been suspended under an Implied Consent Law prohibited concentration suspension**," and **For a person whose license has been suspended under a post-conviction OVI or OVUAC suspension**," under **Limited driving privileges during an Implied Consent Law suspension or a suspension imposed as a result of an OVI or OVUAC suspension**," above).

(5) As previously discussed, the bill extends from six years to 20 years the look-back period during which prior convictions of the person are considered in determining the period of time during which limited driving privileges cannot be granted to a person whose driver's or commercial driver's license or permit has been suspended for a conviction in another jurisdiction of an offense substantially similar to state OVI or state OVUAC (R.C. 4510.17(E); see **For a person whose license has been suspended for a conviction in another jurisdiction of an OVI offense or OVUAC offense**" under **Limited driving privileges during an Implied**



Consent Law suspension or a suspension imposed as a result of an OVI or OVUAC suspension," above).

(6) Existing law prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for a conviction of state OVI, state OVUAC, or another equivalent offense (see **'Post-conviction OVI suspensions,**" above), under the Implied Consent Law (see **"Vehicle Implied Consent law suspensions,**" above), or under R.C. 4511.196 from operating any motor vehicle upon the public roads or highways in Ohio during the period of the suspension. A violation of the prohibition is the offense of "driving under OVI suspension." The penalties for the offense vary, depending upon the number of times, *within six years of the offense*, that the offender previously has been convicted of "driving under OVI suspension" or an equivalent offense. The bill extends, *from six years to 20 years*, the look-back period during which prior convictions of the offender are considered in determining the length of the suspension to be imposed upon a person who is convicted of or pleads guilty to the offense of "driving under OVI suspension." (R.C. 4510.14.)

(7) Existing law provides that, if a person is convicted of or pleads guilty to municipal OVI, if the vehicle used in the offense is registered in the offender's name, and if, *within six years of the offense*, the offender has been convicted of or pleaded guilty to one or more state OVI, state OVUAC, or other equivalent offenses, depending upon the number of prior convictions or guilty pleas, the sentencing court must order either the immobilization for 90 days of the vehicle and impoundment for 90 days of its license plates or the criminal forfeiture to the state of the vehicle. The provisions parallel penalty provisions, in R.C. 4511.19(G), that apply to persons who are convicted of or plead guilty to state OVI. The bill extends, *from six years to 20 years*, the look-back period during which prior convictions of the offender are considered in determining whether the sentencing court must order the immobilization and impoundment, or criminal forfeiture, of the vehicle under the provision. (R.C. 4511.193.)

(8) Existing law provides that, if a person is arrested for committing state OVI or municipal OVI and if either the person, *within six years of the alleged violation*, previously was convicted of or pleaded guilty to one or more state OVI, state OVUAC, or other equivalent offenses or the person previously has been convicted of or pleaded guilty to a state OVI offense that was a felony, the arresting officer or another officer of the arresting officer's agency must seize the vehicle the person was operating at the time of the alleged violation and its license plates if the vehicle is registered in the arrested person's name. The seizure is related to the potential immobilization and impoundment, or criminal forfeiture, of the vehicle under the provision described in the preceding paragraph regarding municipal OVI or under R.C. 4511.19(G) regarding state OVI. The provision

specifies procedures that apply subsequent to the seizure, and related to the potential immobilization and impoundment, or criminal forfeiture, of the vehicle. The bill extends, *from six years to 20 years*, the look-back period during which prior convictions of the arrested person are considered in determining whether the pretrial seizure provisions apply regarding the vehicle used in the alleged violation. (R.C. 4511.195.)

(9) Existing law requires the Registrar of Motor Vehicles to suspend the driver's license or permit issued to any person when the person has been convicted of, pleaded guilty to, or been adjudicated in juvenile court of having committed, prior to the person's 18th birthday, any of the following: (a) three separate violations of any of a list of specified motor vehicle-related offenses or violations of substantially similar municipal ordinances (a Class C suspension under R.C. 4510.02(B)(3)), (b) one state OVI or state OVUAC offense, or violation of a substantially similar municipal ordinance (a Class D suspension under R.C. 4510.02(B)(4)), or (c) two separate violations of the offenses described in clause (a) of this paragraph or violations of substantially similar municipal ordinances (a Class E suspension under R.C. 4510.02(B)(5)). Existing law also requires the Registrar to impose a Class D suspension under R.C. 4510.02(B)(4) of the license or permit of any juvenile who has been adjudicated a delinquent child, unruly child, or juvenile traffic offender for an act that would be a drug abuse offense if committed by an adult, or for a violation of R.C. 2917.11(B). Existing law generally permits a person whose license has been suspended under clause (a) or (c) of the first sentence of this paragraph to request the court to grant the person limited driving privileges. Upon the satisfaction of specified criteria and subject to an exception, the judge may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. The court cannot grant the person limited driving privileges if the person, *within the preceding six years*, has been convicted of, pleaded guilty to, or adjudicated in juvenile court of having committed three or more state OVI, state OVUAC, municipal OVI, or other equivalent offenses. The bill modifies the look-back period during which prior convictions, guilty pleas, or juvenile court adjudications of the person are considered in determining whether the prohibition against granting limited driving privileges applies to the person by removing the six-year limitation. Under the bill, the court cannot grant the person limited driving privileges if the person *previously* has been convicted of, pleaded guilty to, or adjudicated in juvenile court of having committed three or more state OVI, state OVUAC, municipal OVI, or other equivalent offenses. (R.C. 4510.31.)

Delinquent child definition

Existing law

Existing law provides that, as used in the Delinquent Child Law (R.C. Chapter 2152.), "delinquent child" includes any of the following (R.C. 2152.02(F)): (1) any child, except a "juvenile traffic offender" (see below), who violates any law of Ohio or the United States, or any ordinance of a political subdivision of the state, *that would be an offense if committed by an adult* (see below), (2) any child who violates a lawful order of the court made under R.C. Chapter 2152. or R.C. Chapter 2151. (the Juvenile Court Law) other than an order issued under R.C. 2151.87 (that section includes prohibitions against a juvenile's possession, use, purchase, or receipt of cigarettes or tobacco products), (3) any child who violates R.C. 2923.211(A), which is the offense of "underage purchase of a firearm," (4) any child who is a "habitual truant" (see below) and who previously has been adjudicated an unruly child for being a habitual truant, or (5) any child who is a "chronic truant" (see below).

Existing R.C. 2901.02(A) provides that, as used in the Revised Code, *offenses include* aggravated murder, murder, felonies of the first, second, third, fourth, and fifth degrees, misdemeanors of the first, second, third, and fourth degrees, *minor misdemeanors*, and offenses not specifically classified.

R.C. 2152.02(N) provides that, as used in the Delinquent Child Law, "juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of Ohio, the United States, or any Ohio political subdivision, other than a resolution, ordinance, or regulation of an Ohio political subdivision the violation of which is required to be handled by a parking violations bureau pursuant to R.C. Chapter 4521. R.C. 2151.011(B)(17) provides that, as used in the Juvenile Court Law (and, pursuant to R.C. 2152.01(C), in the Delinquent Child Law), "habitual truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or 12 or more school days in a school year. R.C. 2152.02(D) provides that, as used in the Delinquent Child Law, "chronic truant" means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or 15 or more school days in a school year.

Operation of the bill

The bill modifies the definition of "delinquent child" that applies in the Delinquent Child Law to clarify and reaffirm that it includes any child, except a

juvenile traffic offender, who violates any law of Ohio or the United States, or any ordinance of an Ohio political subdivision, *that would be a minor misdemeanor if committed by an adult*. Under the bill, the definition provides that, as used in that Law, "delinquent child" includes any of the following: (1) any child, except a juvenile traffic offender, who violates any law of Ohio or the United States, or any ordinance of an Ohio political subdivision, that would be an offense if committed by an adult, *including a violation of any law or ordinance that would be a misdemeanor if committed by an adult*, or (2) any child in any of the categories set forth in clauses (2), (3), (4), or (5) of the definition as described above in "Existing law." (R.C. 2152.02(F).)

Disposition of child adjudicated delinquent for trafficking in marihuana or possession of marihuana

Existing law

Disposition of a delinquent child, in general. Under the existing Delinquent Child Law (R.C. Chapter 2152.), a court in which a child is adjudicated a delinquent child is provided numerous alternative "dispositions" that it may make of the child as a result of the adjudication. The dispositions include: (1) a serious youthful offender dispositional sentence under R.C. 2152.13, if the child is adjudicated a delinquent child for an act that would be a felony if committed by an adult and is determined to be a "serious youthful offender," (2) commitment of the child to the Department of Youth Services under R.C. 2152.16 or 2152.17 for secure confinement for a specified period of time, if the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, (3) issuance under R.C. 2152.19(A)(1) of any dispositional order authorized under R.C. 2151.353 for the care and protection of an abused, neglected, or dependent child, (4) commitment of the child under R.C. 2152.19(A)(2) to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district, or by a private agency or organization that is authorized and qualified to provide the care, treatment, or placement required, (5) *placing the child* pursuant to R.C. 2152.19(A)(3) *in a county detention facility or district detention facility* operated under R.C. 2152.41, *for up to 90 days*, (6) *placing the child* pursuant to R.C. 2152.19(A)(4) *on "community control"* (see the next paragraph) under any sanctions, services, and conditions that the court prescribes, with a condition in every case being that the court requires the child to abide by the law during the period of community control, (7) committing the child under R.C. 2152.19(A)(5) to the custody of the court, (8) requiring the child pursuant to R.C. 2152.19(A)(6) to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or 12 or more school days in a school year, (9) special types

of dispositions that are authorized under R.C. 2152.19(A)(7) for children determined to be a chronic truant or an habitual truant who previously has been adjudicated an habitual truant, or (10) making any further disposition, pursuant to R.C. 2152.19(A)(8), that the court finds proper, subject to specified exceptions except that the child cannot be placed in any state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held, or in any community corrections facility in specified circumstances.

Examples of community control sanctions for use in disposition of a delinquent child. Existing law specifies that, as used in the provision described in the preceding paragraph, community control includes, but is not limited to, the following sanctions and conditions (R.C. 2152.19(A)(4)): (1) *a period of basic probation supervision* in which the child is required to maintain contact with a person appointed to supervise the child in accordance with sanctions imposed by the court, (2) *a period of intensive probation supervision* in which the child is required to maintain frequent contact with a person appointed by the court to supervise the child while the child is seeking or maintaining employment and participating in training, education, and treatment programs as the order of disposition, (3) a period of day reporting in which the child is required each day to report to and leave a center or another approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center, (4) a period of community service of up to 500 hours for an act that would be a felony or a misdemeanor of the first degree if committed by an adult, up to 200 hours for an act that would be a misdemeanor of the second, third, or fourth degree if committed by an adult, or up to 30 hours for an act that would be a minor misdemeanor if committed by an adult, (5) a requirement that the child obtain a high school diploma, a certificate of high school equivalence, vocational training, or employment, (6) a period of drug and alcohol use monitoring, (7) *a requirement of alcohol or drug assessment or counseling, or a period in an alcohol or drug treatment program* with a level of security for the child as determined necessary by the court, (8) a period in which the court orders the child to observe a curfew that may involve daytime or evening hours, (9) a requirement that the child serve monitored time, (10) a period of house arrest without electronic monitoring or continuous alcohol monitoring, (11) a period of electronic monitoring or continuous alcohol monitoring without house arrest, or house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, that does not exceed the maximum sentence of imprisonment that could be imposed upon an adult who commits the same act, and (12) a suspension of the driver's license, probationary driver's license, or temporary instruction permit issued to the child for a period of time prescribed by the court, or a suspension of the registration of

all motor vehicles registered in the name of the child for a period of time prescribed by the court.

Operation of the bill

Presumptive disposition, in general. The bill enacts a "presumptive disposition" provision for children adjudicated delinquent for committing a violation that would be the offense of "trafficking in marihuana" or the offense of "possession of marihuana" if committed by an adult. Specifically, the bill provides that, if a child is adjudicated a delinquent child for committing a violation of R.C. 2925.03 (drug trafficking offenses) or 2925.11 (drug possession offenses), if the drug involved in the violation is marihuana, and if the violation would be a minor misdemeanor or another misdemeanor if committed by an adult or the violation would be a felony if committed by an adult and the court does not commit the child to the Department of Youth Services under the Delinquent Child Law, in addition to any other disposition authorized or required under that Law, the juvenile court, subject to the exception described below, must make an order of disposition for the child that does either or both of the following (R.C. 2152.19(H)(1)):

(1) Places the child in a detention facility or district detention facility pursuant to the provision described above in clause (5) of the paragraph under "**Disposition of a delinquent child, in general**" for at least the minimum period of time specified in this paragraph. If the violation would be a minor misdemeanor or another misdemeanor if committed by an adult, the minimum period of time for which the child must be so placed is three days, except that if the child previously has been adjudicated a delinquent child for committing a violation of R.C. 2925.03 or 2925.11 in which the drug involved in the violation was marihuana, the minimum period of time for which the child must be so placed is 14 days. If the violation would be a felony if committed by an adult and the court does not commit the child to the Department of Youth Services, the minimum period of time for which the child must be so placed is 30 days, except that if the child previously has been adjudicated a delinquent child for committing a violation of R.C. 2925.03 or 2925.11 in which the drug involved in the violation was marihuana, the minimum period of time for which the child must be so placed is 60 days.

(2) Places the child on community control that includes a requirement of drug assessment or counseling, or a period in a drug treatment program, pursuant to the provision described above in clause (7) under "**Examples of community control sanctions for use in disposition of a delinquent child**" together with a requirement of basic or intense probation supervision pursuant to the provision described above in clause (1) or (2) under "**Examples of community control sanctions for use in disposition of a delinquent child.**"

Exception. The bill specifies that a court is not required to impose an order of disposition under the presumptive disposition provisions described above if the court determines that such an order is not in the interests of justice. It also provides that the presumptive disposition provisions described above do not apply regarding a violation of R.C. 2925.03 or 2925.11 that is classified a felony when the court commits the child to the Department of Youth Services under the Delinquent Child Law. (R.C. 2152.19(H)(2).)

COMMENT

1. Existing R.C. 4511.19(A) contains the following prohibitions, generally referred to as the offense of "operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them" or "state OVI" (R.C. 4511.19(A)--not in the bill):

(a) It 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: (i) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (ii) 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, (iii) 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, (iv) 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, (v) 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, (vi) 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, (vii) 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, (viii) 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 (ix) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine.

(b) It prohibits a person who, within 20 years of the conduct described in clause (ii) of this paragraph, previously has been convicted of or pleaded guilty to state OVI, state OVUAC, or a municipal OVI offense, from doing both of the following: (i) 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 (ii) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (i) of this paragraph, being asked by a law enforcement officer to submit to a chemical test or tests under the Vehicle Implied Consent Law contained in R.C. 4511.191, and being advised by the officer in

accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests.

2. Existing R.C. 4511.19(B), generally referred to as the offense of "operating a vehicle after underage alcohol consumption" or "state OVUAC," 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 (R.C. 4511.19(B)--not in the bill): (a) 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, (b) 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, (c) 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 (d) 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.

3. Existing R.C. 4511.194, generally referred to as the offense of "having physical control of a vehicle while under the influence," prohibits a person from being in "physical control" (defined as 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) 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) (R.C. 4511.194--not in the bill).

4. Existing R.C. 4511.181(C) defines "municipal OVI ordinance" and "municipal OVI offense," for purposes of R.C. 4511.181 to 4511.197, as any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine (R.C. 4511.181(C)--not in the bill).

5. The existing Vehicle Implied Consent Law, in general, 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 the offense of state OVI (see **COMMENT**

1), the offense of state OVUAC (see **COMMENT 2**), the offense of "having physical control of a vehicle while under the influence" (see **COMMENT 3**), or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance (see **COMMENT 4**). The chemical test or tests must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley while committing any of the specified offenses or violations.

Before the arrested person may be requested to submit to the test, the arresting officer must read a statutorily specified form to the person that advises the person as to the ramifications of refusing to submit to a requested test and of taking a requested test and having a prohibited concentration of alcohol in the tested bodily substance. If an arrested person refuses to submit to the requested test, no test is administered. If an arrested person who is read the form refuses to submit to a requested test or, unless the arrest is for the offense of having physical control of a vehicle while under the influence or a violation of a substantially equivalent municipal ordinance, submits to a requested test and the test results indicate a prohibited concentration of alcohol in the tested bodily substance, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately and the suspension lasts at least until the person's initial appearance at which time the person may appeal the suspension (the grounds for the appeal are very limited). The arresting officer must send to the Registrar of Motor Vehicles (hereafter, the Registrar) a report concerning the matter. (R.C. 4511.191(A), and R.C. 4511.192--not in the bill.)

Thereafter, the Law provides the following:

(a) Suspension of the license of a person who refuses to submit to a test.

Upon receipt of the sworn report of a law enforcement officer who arrested a person for any of the offenses or violations specified above in the first paragraph of this **COMMENT** in regard to a person who refused to submit to a chemical test, the Registrar must record the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension, determined as described below (hereafter, this suspension is referred to as an "Implied Consent Law refusal suspension"). The suspension is subject to appeal under R.C. 4511.197. The suspension is for whichever of the following periods applies: (1) except as provided in clause (2), (3), or (4), the suspension is a Class C suspension (a period of one year, under R.C. 4510.02(B)(3)), (2) if the person, within six years of the date of the refusal, had refused one previous request to consent to a chemical test, the suspension is a Class B suspension (a period of two years, under R.C. 4510.02(B)(2)), (3) if the person, within six years of the date of the refusal, had refused two previous requests to consent to a chemical test, the suspension is a Class A suspension (a

period of three years, under R.C. 4510.02(B)(1)), and (4) if the person, within six years of the date of the refusal, had refused three or more previous requests, the suspension is for five years. The suspension is effective immediately from the time the arresting officer serves the notice of suspension upon the arrested person, and any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not affect the suspension. The Registrar must terminate the suspension upon receipt of notice that the person has entered a plea of guilty to, or has been convicted after entering a plea of no contest to, state OVI, state OVUAC, or a violation of a municipal OVI ordinance, if the offense resulting in the conviction or plea arose from the same incident that led to the suspension or denial. The Registrar must credit against any judicial suspension of a person's license, permit, or privilege imposed as a result of the person's conviction of state OVI, state OVUAC, or a violation of a municipal OVI ordinance (see "Post-conviction OVI suspensions" in the **CONTENT AND OPERATION** portion of this analysis and **COMMENT 6**; if a person is convicted of state OVI, state OVUAC, or a violation of a municipal OVI ordinance, the sentencing court is required to suspend the person's license, permit, or privilege for a specified period of time, and the suspension is separate from, and independent of, the suspension described in this paragraph) any time during which the person serves a related suspension imposed as described in this paragraph. (R.C. 4511.191(B) and (D).)

(b) Suspension of the license of a person who takes a test and has a prohibited concentration of alcohol in the tested substance. Upon receipt of the sworn report of a law enforcement officer who arrested a person for any of the offenses or violations specified above in the first paragraph of this **COMMENT** in regard to a person who submitted to a chemical test and whose test results indicate that the bodily substance tested contained at least the concentration of alcohol specified as being prohibited in the offense of state OVI (see **COMMENT 1**), the Registrar must record the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension, determined as described below (hereafter, this suspension is referred to as an "Implied Consent Law prohibited concentration suspension"). The suspension is subject to appeal under R.C. 4511.197. The suspension does not apply to, and cannot be imposed upon, a person arrested for the offense of having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance who submits to a test. The suspension is for whichever of the following periods applies: (1) except as provided in clause (2), (3), or (4), the suspension is a Class E suspension (a period of three months under R.C. 4510.02(B)(5)), (2) if, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to one state OVI, state OVUAC, or equivalent offense, the suspension is a Class C suspension (a period of one year under R.C. 4510.02(B)(3)), (3) if, within six years of the date

the test was conducted, the person has been convicted of or pleaded guilty to two offenses listed in clause (1), the suspension is a Class B suspension (a period of two years under R.C. 4510.02(B)(2)), and (4) if, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to more than two offenses listed in clause (1), the suspension is a Class A suspension (a period of three years under R.C. 4510.02(B)(1)). The suspension is effective immediately from the time the arresting officer serves the notice of suspension upon the arrested person, and any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not affect the suspension. The Registrar must terminate the suspension upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, state OVI, state OVUAC, or a violation of a municipal OVI ordinance, if the offense resulting in the conviction or plea arose from the same incident that led to the suspension or denial. The Registrar must credit against any judicial suspension of a person's license, permit, or privilege imposed as a result of the person's conviction of state OVI, state OVUAC, or a violation of a municipal OVI ordinance (see "Post-conviction OVI suspensions" in the **CONTENT AND OPERATION** portion of this analysis and **COMMENT 6**; if a person is convicted of state OVI, state OVUAC, or a violation of a municipal OVI ordinance, the sentencing court is required to suspend the person's license, permit, or privilege for a specified period of time, and the suspension is separate from, and independent of, the suspension described in this paragraph), any time during which the person serves a related suspension imposed as described in this paragraph. (R.C. 4511.191(C) and (D).)

(c) Appeal of suspension; reinstatement at end of suspension period.

Existing law provides a person whose license is suspended under either of the above-described provisions of the Vehicle Implied Consent Law with a qualified right to appeal the suspension. The person may appeal the suspension at the initial appearance on the charge resulting from the arrest or within the period ending 30 days after the initial appearance on that charge, in the court in which the person will appear on the charge. The appeal itself does not stay the operation of the suspension. A continuance may be granted, but neither the request for, nor the granting of, a continuance stays the suspension, unless the court specifically grants a stay. The scope of the appeal is limited to determining whether any of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable grounds to believe the arrested person was committing the offense for which he or she was arrested and whether the arrested person was in fact placed under arrest, (2) whether the officer requested the person to submit to the chemical test or tests, (3) whether the officer informed the person of the consequences of refusing to be tested or of submitting to the test or tests, (4) whether the arrested person refused to submit to the chemical test or tests requested by the officer, or whether the arrest was for state OVI, state OVUAC, or

a municipal OVI ordinance and, if it was, whether the test results indicate that the bodily substance tested contained a concentration of alcohol specified as being prohibited under the offense of state OVI at the time of the alleged offense. (R.C. 4511.197--not in the bill.)

If a person's license is suspended under either of the above-described provisions of the Vehicle Implied Consent Law, at the end of a suspension period, upon the request of the person, the Registrar must return the license or permit to the person if the person otherwise is not subject to a suspension, if the person shows that he or she has proof of financial responsibility, a policy of liability insurance in effect that meets specified minimum standards, or proof that he or she is able to respond in damages in an amount at least equal to specified minimum amounts, and if the person pays a license reinstatement fee of \$425 to be deposited in the state treasury and credited to various specified funds. (R.C. 4511.191(F).)

6. Existing law provides for the suspension, by the sentencing court, of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is convicted of or pleads guilty to state OVUAC, or a violation of a municipal OVI ordinance, as follows:

(a) Existing R.C. 4511.19(H) provides that, if a person is convicted of or pleads guilty to state OVUAC, the sentencing court must suspend the person's license, permit, or privilege as follows (R.C. 4511.19(H)--not in the bill): (i) except as otherwise provided in clause (ii) of this paragraph, the court must impose a Class six suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(6), which is a definite period of three months to two years, and (ii) if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more offenses of state OVI, state OVUAC, or an equivalent offense, the court must impose a Class four suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(4), which is a definite period of one to five years.

(b) Existing R.C. 4510.07 provides that the court imposing a sentence upon an offender for any violation of a municipal ordinance that is substantially equivalent to a violation of R.C. 2903.06 or 2907.24, *or for any violation of a municipal OVI ordinance* also must impose a suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(B) that is equivalent in length to the suspension required for a violation of R.C. 2903.06 or 2907.24 or R.C. 4511.19(A) or (B) under similar circumstances (R.C. 4510.07--not in the bill).

7. The following examples illustrate three potential outcomes resulting from the application of the existing "Implied Consent Law refusal suspension" and "Implied Consent Law prohibited concentration suspension" termination



provisions of R.C. 4511.191(B)(2) and (C)(2) to a person with a valid Ohio driver's license who is arrested for state OVI, is requested to submit to a chemical test of the person's breath under the Implied Consent Law, and refuses to submit to the test:

(a) **Example 1.** The person in question has not previously refused to submit to a chemical test under the Implied Consent Law, and has not previously been convicted of or pleaded guilty to state OVI, state OVUAC, or another equivalent offense. Under R.C. 4511.191(B)(1)(a), the Registrar of Motor Vehicles suspends the person's license for one year, under a Class C suspension as specified in R.C. 4510.02(B)(3) regarding an Implied Consent Law refusal suspension. One month after the date of the arrest, the person pleads no contest to, and is convicted of, the state OVI for which the person was arrested. Under R.C. 4511.19(G)(1)(a), the court suspends the person's license for six months, under a Class 5 suspension as specified in R.C. 4510.02(A)(5) regarding a post-conviction OVI suspension. Note that the court could have suspended the license for any definite period from six months to three years but, for purposes of this example, assume the court chose six months. Applying R.C. 4511.191(B)(2), upon receipt of notice that the person has been convicted after entering a plea of no contest to the state OVI, which arose from the same incident that led to the Implied Consent Law refusal suspension, the Registrar must terminate the refusal suspension (which, in this example, has 11 months remaining as of the date of the conviction) and credit against the six-month post-conviction OVI suspension the time the person served under the refusal suspension (which, in this example, was one month). The person will be subject to the remaining post-conviction suspension of five months.

(b) **Example 2.** The person in question has not previously refused to submit to a chemical test under the Implied Consent Law, but previously has been convicted, in the preceding six years, of two state OVI offenses. Under R.C. 4511.191(B)(1)(a), the Registrar of Motor Vehicles suspends the person's license for one year, under a Class C suspension as specified in R.C. 4510.02(B)(3) regarding an Implied Consent Law refusal suspension. One month after the date of the arrest, the person pleads no contest to, and is convicted of, the state OVI for which the person was arrested. Under R.C. 4511.19(G)(1)(c), the court suspends the person's license for two years, under a Class 3 suspension as specified in R.C. 4510.02(A)(3) regarding a post-conviction OVI suspension. Note that the court could have suspended the license for any definite period from two to ten years but, for purposes of this example, assume the court chose two years. Applying R.C. 4511.191(B)(2), upon receipt of notice that the person has been convicted after entering a plea of no contest to the state OVI, which arose from the same incident that led to the Implied Consent Law refusal suspension, the Registrar must terminate the refusal suspension (which, in this example, has 11 months remaining

as of the date of the conviction) and credit against the two-year post-conviction OVI suspension the time the person served under the refusal suspension (which, in this example, was one month). The person will be subject to the remaining post-conviction suspension of 23 months.

(c) ***Example 3.*** The person in question had refused, in the preceding six years, two previous requests to submit to a chemical test under the Implied Consent Law, and previously has been convicted, within the preceding six years, of two state OVI offenses. Under R.C. 4511.191(B)(1)(c), the Registrar of Motor Vehicles suspends the person's license for three years, under a Class A suspension as specified in R.C. 4510.02(B)(1) regarding an Implied Consent Law refusal suspension. One month after the date of the arrest, the person pleads no contest to, and is convicted of, the state OVI for which the person was arrested. Under R.C. 4511.19(G)(1)(c), the court suspends the person's license for two years, under a Class 3 suspension as specified in R.C. 4510.02(A)(3) regarding a post-conviction OVI suspension. Note that the court could have suspended the license for any definite period from two to ten years but, for purposes of this example, assume the court chose two years. Applying R.C. 4511.191(B)(2), upon receipt of notice that the person has been convicted after entering a plea of no contest to the state OVI, which arose from the same incident that led to the Implied Consent Law refusal suspension, the Registrar must terminate the refusal suspension (which, in this example, has 35 months remaining as of the date of the conviction) and credit against the two-year post-conviction OVI suspension the time the person served under the refusal suspension (which, in this example, was one month). The person will be subject to the remaining post-conviction suspension of 23 months.

HISTORY

ACTION	DATE
Introduced	05-03-05
Reported, S. Judiciary on Criminal Justice	10-26-05
Passed Senate (28-3)	10-26-05

s0141-ps-126.doc/kl

