



Aida S. Montano

Bill Analysis
Legislative Service Commission

Sub. S.B. 281*

126th General Assembly
(As Reported by S. Judiciary--Criminal Justice)

Sens. Stivers, Padgett, Mumper, Goodman, Austria, Spada

BILL SUMMARY

- Repeals the existing program administered by the Ohio Peace Officer Training Commission (OPOTC) for the reimbursement, out of the Law Enforcement Assistance Fund, of: (1) sheriffs, constables, and chiefs of police of municipal and township police departments, township police district police forces, and university and college police departments for the costs of peace officer basic training programs, advanced peace officer training programs, basic jailer training programs, and firearms requalification training programs successfully completed by them or by peace officers under their supervision, (2) the Superintendent of the State Highway Patrol and the Director of the Department of Natural Resources for the costs of peace officer basic training programs, advanced peace officer training programs, and basic jailer training programs successfully completed by them or the peace officers under their supervision, and (3) the Chief of the Adult Parole Authority and the chief probation officer of a county probation department, multicounty probation department, or municipal court department of probation for the costs of basic firearm training programs and firearms requalification programs successfully completed by them or by parole or probation officers under their supervision.
- Replaces the repealed program described in the preceding dot point with a program administered by OPOTC for the reimbursement, out of the Law Enforcement Assistance Fund, of public "appointing authorities" (i.e., any agency or entity that appoints a peace officer or trooper) for the

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

costs of continuing professional training programs that are successfully completed by the appointing authority's peace officers and troopers.

- Provides that a public appointing authority that applies for reimbursement as described in the preceding dot point is entitled to reimbursement for the training programs completed by all of its peace officers or troopers who have complied with the continuing professional training and other requirements and for the training programs completed by its peace officers or troopers who were granted by OPOTC an extension of time to comply with the training and other requirements and who complied with those requirements prior to the end of the extension period.
- Precludes withholding payment of any reimbursement to which a public appointing authority is entitled during the period of any extension granted to a peace officer or trooper and provides that failure by the peace officer or trooper to comply with the training and other requirements prior to the end of the extension period does not affect the reimbursement already made to the appointing authority.
- Requires every "appointing authority" (see third preceding dot point) to require each of its appointed peace officers and troopers to complete up to 24 hours of continuing professional training each calendar year, as directed by OPOTC and provides that no appointed peace officer or trooper who fails to complete the minimum required hours of continuing professional training in any calendar year or who fails to comply with the existing firearms requalification law or any other required training may carry a firearm during the course of official duties or perform the functions of a peace officer or trooper until evidence of the peace officer's or trooper's compliance with those requirements is filed with OPOTC.
- Prescribes procedures for an appointing authority to request OPOTC for a calendar year because of emergency circumstances an extension of the time within which one or more of its peace officers or troopers must complete the required minimum hours of continuing professional training and for the OPOTC Executive Director to review the application and either grant or deny the request.
- Provides that no peace officer or trooper who fails to complete the required minimum hours of continuing professional training prior to the



end of the extension period granted to the peace officer or trooper may carry a firearm during the course of official duties or perform the functions of a peace officer or trooper after the end of the extension period.

- Requires each agency or entity that appoints or employs one or more State Highway Patrol troopers annually to provide to OPOTC a roster of all persons who have been appointed to or employed by the agency or entity as troopers in any full-time, part-time, reserve, auxiliary, or other capacity and are serving, or during the year covered by the report have served, the agency or entity in any of those trooper capacities.
- Makes an appropriation of \$5 million for fiscal year 2007, to the credit of the General Services Fund Group, Attorney General, appropriation item 055-619, Law Enforcement Assistance Fund (Fund 5L5) and requires that on the act's effective date or as soon as practicable thereafter, the Director of Budget and Management must transfer \$5 million in cash from the Attorney General Claims Fund to the Law Enforcement Assistance Fund.
- Prohibits any person (1) from impersonating an investigator of the Bureau of Criminal Identification and Investigation (BCII), (2) from impersonating a BCII investigator, arresting or detaining any person, searching any person, or searching the property of any person, (3) with purpose to commit or facilitate the commission of an offense, impersonating a BCII investigator, or (4) from committing a felony while impersonating a BCII investigator.
- Imposes a mandatory prison term for aggravated vehicular homicide if the victim of the offense is a BCII investigator.

TABLE OF CONTENTS

Background	4
Law Enforcement Assistance Fund	5
Existing law.....	5
Operation of the bill	5
Continuing professional training for peace officers and troopers	8
Provision of reports regarding, and roster of, peace officers	11
Existing law.....	11
Operation of the bill	11

Appropriation	12
Impersonation of BCII investigator.....	12
Penalty for aggravated vehicular homicide against BCII investigator	13
Existing law.....	13
Operation of the bill	14

CONTENT AND OPERATION

Background

Under existing law, no person may receive an appointment on a permanent basis to any of a list of specified law enforcement positions unless the person has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission (OPOTC) attesting to the person's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources (DNR) peace officer basic training program. The provision applies regarding: a "peace officer" (see **COMMENT 1**) of a county, township, municipal corporation, regional transit authority, or metropolitan housing authority; a DNR natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer; an employee of a specified type of park district; a specified type of employee of a conservancy district; a state university law enforcement officer; a Department of Mental Health or Department of Mental Retardation and Developmental Disabilities special police officer; a Department of Public Safety enforcement agent in a designated position; a port authority special police officer; and a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility of a specified nature. A similar training requirement applies regarding the continued employment of a person appointed on a temporary basis, for a probationary term, or on other than a permanent basis to any of the specified law enforcement positions, other than a state university law enforcement officer. Law enforcement officers serving in certain of the specified positions prior to a specified date are exempt from the training requirements. The provision also imposes certain training requirements regarding veterans' home police officers, bailiffs and deputy bailiffs of a court of record, and State Public Defender criminal investigators. (R.C. 109.77.)

Existing law specifies that OPOTC's Executive Director has certain specified powers and duties, which must be exercised with the general advice of OPOTC and only in accordance with specified statutory provisions and rules. The powers and duties include, among others, consulting and cooperating with state, county, and municipal peace officer training schools *for the development of advanced in-service training programs for peace officers* (R.C. 109.75).

Existing law provides that, each year, any person serving in any of a list of specified law enforcement positions must complete successfully a firearms requalification program approved by OPOTC's Executive Director in accordance with rules adopted by the AG. The provision applies to: any sheriff, deputy sheriff, marshal, deputy marshal, township constable, chief of police or member of an organized police department of a municipal corporation or township, chief of police or member of a township police district police force, Superintendent, trooper, or special police officer of the State Highway Patrol, enforcement agent employed under R.C. 5502.14, or chief of police of a university or college police department or state university law enforcement officer; any parole or probation officer who carries a firearm in the course of official duties; any DNR natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer who carries a firearm in the course of official duties; the House of Representatives Sergeant at Arms if he or she has arrest authority; any assistant House of Representatives Sergeant at Arms; any Department of Youth Services employee designated as being authorized to carry a firearm while on duty; and any special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility. No person included in that list may carry a firearm during the course of official duties if the person does not comply with the training requirements described in this paragraph. (R.C. 109.801.)

Law Enforcement Assistance Fund

Existing law

Existing law creates in the state treasury the Law Enforcement Assistance Fund. The Fund is used to pay reimbursements for law enforcement training as described in **COMMENT 2**, the compensation of any AG employees required to administer those provisions, and any other administrative costs the AG incurs to administer those provisions. (R.C. 109.802.)

Operation of the bill

In general. The bill retains the Law Enforcement Assistance Fund in the state treasury but replaces the current uses that may be made of the Fund and the current reimbursement program with a new use and a new reimbursement program (see **COMMENT 2** for a discussion of the replaced uses and program). Under the bill, the Fund may be used to pay reimbursements for continuing professional training programs for "peace officers" and "troopers" (see **"Peace officer," "trooper," and "appointing authority" definitions,** below) as provided in this part of the analysis and the provisions described below in **"Continuing professional training for paid peace officers,"** the compensation of any AG employees required to administer those provisions, and any other administrative

costs the AG incurs to administer those provisions. The AG must adopt rules in accordance with the Administrative Procedure Act establishing application procedures, standards, and guidelines, and prescribing an application form, for the reimbursement of public appointing authorities for the cost of continuing professional training programs for their peace officers and troopers. The rules must include, but are not limited to, all of the following: (1) a requirement that applications for reimbursement be submitted on a calendar-year basis, (2) the documentation required to substantiate any costs for which the applicant seeks reimbursement, (3) procedures for submitting applications for reimbursement for the cost of continuing professional training programs completed by a peace officer or trooper for whom the OPOTC Executive Director granted an extension of the time for compliance with the continuing professional training requirement described below in "Continuing professional training for peace officers and troopers," and who complied with the requirement prior to the date on which the extension ends, and (4) any other requirements necessary for the proper administration of the reimbursement program. (R.C. 109.802(A) and (B).)

OPOTC reimbursement program. The bill repeals the existing OPOTC reimbursement program (repeal of R.C. 109.803 in Section 2) and replaces the repealed program with a new OPOTC reimbursement program. The bill requires OPOTC to administer a program for reimbursing public "appointing authorities" for the costs of continuing professional training programs that are successfully completed by the appointing authority's "peace officers" or troopers (see "Peace officer," "trooper," and "appointing authority" definitions," below). OPOTC must administer the reimbursement program in accordance with rules adopted by the AG as described in the preceding paragraph. The bill authorizes each public appointing authority to apply each calendar year to OPOTC for reimbursement for the costs of continuing professional training programs that are successfully completed by the appointing authority's peace officers or troopers. Each application must be made in accordance with, on an application form prescribed in, and be supported by the documentation required by, rules adopted by the AG. (R.C. 109.802(C) and (D).)

OPOTC, in accordance with rules of the AG, must review each application for reimbursement to determine if the applicant is entitled to reimbursement for the training programs for which the applicant seeks it. Except as described in the following paragraph, a public appointing authority that applies for reimbursement is entitled to it only if all of the appointing authority's peace officers or troopers comply with the continuing professional training requirement described in the first paragraph in "Continuing professional training for peace officers and troopers," below, by completing the minimum number of hours of training directed by OPOTC (hereafter "required minimum hours of continuing professional training")

and with the other requirements described in that paragraph (hereafter, "other specified requirements").

If a public appointing authority applies for reimbursement, if one or more of its peace officers or troopers have not complied with the continuing professional training requirement by completing the required minimum hours of continuing professional training, and if the OPOTC Executive Director granted an extension of the time within which each of those peace officers or troopers who have not complied with the continuing professional training requirement must comply with that requirement (see extension of time provisions described in "Continuing professional training for peace officers and troopers," above), both of the following apply: (1) if each peace officer or trooper of the public appointing authority for whom the OPOTC Executive Director did not grant an extension has complied with the continuing professional training requirement and with the other specified requirements, the public appointing authority is entitled to reimbursement for the training programs completed by all of its peace officers or troopers who have so complied with the continuing professional training requirement and the other specified requirements, and (2) if a peace officer or trooper of the public appointing authority for whom the OPOTC Executive Director granted an extension complies prior to the date on which the extension ends with the continuing professional training requirement, and if the peace officer or trooper also has complied with the other specified requirements, the public appointing authority is entitled to reimbursement for the training programs completed by that peace officer or trooper. An application for reimbursement of this type must be made in accordance with rules adopted by the AG. (R.C. 109.802(E)(1) and (2).)

If a public appointing authority that applies for reimbursement is entitled to reimbursement for each peace officer and trooper who successfully completes a training program, OPOTC must approve reimbursing the appointing authority for the cost of that program. The actual amount of reimbursement for each authorized training program must be determined by rules adopted by the AG.

If the public appointing authority is entitled to reimbursement as described in clause (1) in the second preceding paragraph, payment of the reimbursement cannot be withheld during the period of the extension granted to the other peace officers or troopers of the authority, pending their compliance with the requirement. If the public appointing authority is entitled to that reimbursement and if one or more of its peace officers or troopers who were granted an extension fails to complete prior to the date on which the extension ends the required minimum hours of continuing professional training, the failure does not affect the reimbursement made to the public appointing authority, and the appointing

authority is not required to return the reimbursement or any portion of it. (R.C. 109.802(E)(3).)

Each public appointing authority that receives funds under the bill's reimbursement program is required to keep those funds separate from any other funds of the appointing authority. The appointing authority must use those funds only for paying the cost of continuing professional training programs. (R.C. 109.802(F).)

"Peace officer," "trooper," and "appointing authority" definitions. As used in the provisions described above in **"In general"** and **"OPOTC reimbursement program,"** "peace officer" has the same meaning as in R.C. 109.71 (see **COMMENT 1**); "trooper" means an individual appointed as a State Highway Patrol trooper under R.C. 5503.01; and "appointing authority" means any agency or entity that appoints a peace officer or trooper (R.C. 109.802(G)).

Continuing professional training for peace officers and troopers

The bill requires every "appointing authority" (see below) to require each of its appointed "peace officers" and "troopers" (see below) to complete up to 24 hours of continuing professional training each calendar year, as directed by OPOTC, subject to the extension provisions described below. The number of hours directed by OPOTC, up to 24 hours, is intended to be a minimum requirement, and appointing authorities are encouraged to exceed the number of hours OPOTC directs as the minimum. OPOTC must set the required minimum number of hours based upon available funding for reimbursement. If no funding for reimbursement is available, no continuing professional training will be required.

An appointing authority may submit a written request to OPOTC that requests for a calendar year because of emergency circumstances an extension of the time within which one or more of its appointed peace officers or troopers must complete the required minimum hours of continuing professional training. A request for an extension must set forth the name of each of the appointing authority's peace officers or troopers for whom an extension is requested, identify the emergency circumstances related to that peace officer or trooper, include documentation of those emergency circumstances, and set forth the date on which the request is submitted to OPOTC. Such a request must be made not later than December 15 in the calendar year for which the extension is requested.

Upon receipt of that written request, the OPOTC Executive Director must review it and the submitted documentation. If satisfied that emergency circumstances exist for any peace officer or trooper for whom a request was made, the Executive Director may approve the request for that peace officer or trooper

and grant an extension of the time within which that peace officer or trooper must complete the required minimum hours of continuing professional training. An extension may be for any period of time the Executive Director believes to be appropriate, and the Executive Director must specify in the notice granting the extension the date on which the extension ends. Not later than 30 days after the date on which a request is submitted to OPOTC, for each peace officer and trooper for whom an extension is requested, the Executive Director either must approve the request and grant an extension or deny the request and deny an extension, and must send to the appointing authority that submitted the request written notice of the decision. If the Executive Director grants an extension of the time within which a particular appointed peace officer or trooper of an appointing authority must complete the required minimum hours of continuing professional training, the appointing authority must require that peace officer or trooper to complete the required minimum hours of training not later than the date on which the extension ends. (R.C. 109.803(A)(1) and (2).)

If a public appointing authority complies with the above training requirements by requiring each of its appointed peace officers and troopers to complete the number of hours of training the OPOTC directs as the minimum and with the roster-provision requirement described below in "Provision of reports regarding, and roster of, peace officers" and if the appointed peace officers and troopers of the public appointing authority comply with the existing firearms requalification law (see "Background," above) to the extent that they are subject to that law and comply with all other training mandated by the General Assembly or the AG, *the AG must reimburse the public appointing authority* for the successful training costs of each of its appointed peace officers and troopers as provided in the bill's provisions described above in "OPOTC reimbursement program" (note that those provisions specify that OPOTC is to administer the reimbursement program). If the OPOTC Executive Director grants an extension of the time within which one or more appointed peace officers or troopers of a public appointing authority must complete the required minimum hours of continuing professional training, and if the criteria described in the preceding sentence are satisfied regarding each appointed peace officer or trooper of the public appointing authority for whom such an extension was not granted, the AG must reimburse the public appointing authority for the successful training costs of each of its appointed peace officers and troopers for whom such an extension was not granted, as described above in "OPOTC reimbursement program." If an appointed peace officer or trooper of a public appointing authority for whom the Executive Director granted such an extension completes prior to the date on which the extension ends the minimum hours of continuing professional training, if the officer or trooper also has complied with the existing firearms requalification law (see "Background," above) to the extent that the officer or trooper is subject to that law and has complied with all other training mandated by the General

Assembly or the AG, and if the public appointing authority has complied with the roster-provision requirement described below in "Provision of reports regarding, and roster of, peace officers," the AG must reimburse the public appointing authority for the successful training costs of that peace officer or trooper as described above in "OPOTC reimbursement program." (R.C. 109.803(A)(3).)

The bill specifies that no appointed peace officer or trooper of an appointing authority who fails to complete in any calendar year the required minimum hours of continuing professional training or who fails to comply with the existing firearms requalification law (see "Background," above) or any other required training may carry a firearm during the course of official duties or perform the functions of a peace officer or trooper until evidence of the peace officer's or trooper's compliance with those requirements is filed with OPOTC's Executive Director. If the OPOTC Executive Director grants an extension of the time within which an appointed peace officer or trooper of an appointing authority must complete the required minimum hours of continuing professional training, during the period of the extension, the prohibition described in the preceding sentence does not apply to a peace officer or trooper for whom such an extension was granted, provided that peace officer or trooper has complied with the existing firearms requalification law (see "Background," above) to the extent that the officer or trooper is subject to that law and has complied with all other required training. If a peace officer or trooper of an appointing authority for whom such an extension was granted fails to complete prior to the date on which the extension ends the required minimum hours of continuing professional training, the prohibition applies to that officer or trooper after the date on which the extension ends. (R.C. 109.803(B).)

The bill requires the AG, with the advice of OPOTC, to adopt in accordance with the Administrative Procedure Act rules setting forth minimum standards for continuing professional training for peace officers and troopers and governing the administration of the continuing professional training programs for peace officers and troopers. The AG must transmit a certified copy of any rule adopted under this provision to the Secretary of State. (R.C. 109.803(C).)

As used in the provisions described in the preceding paragraphs, "peace officer" has the same meaning as in R.C. 109.71 (see **COMMENT 1**); "trooper" means an individual appointed as a State Highway Patrol trooper under R.C. 5503.01; and "appointing authority" means any agency or entity that appoints a peace officer or trooper (R.C. 109.802(G)).

Provision of reports regarding, and roster of, peace officers

Existing law

Under existing law, each agency or entity that appoints or employs one or more "peace officers" (see **COMMENT 1**) must report to OPOTC all of the following that occur on or after February 20, 2002: (1) the appointment or employment of any person to serve the agency or entity as a peace officer in any full-time, part-time, reserve, auxiliary, or other capacity, and (2) the termination, resignation, felony conviction, or death of any person who has been appointed to or employed by the agency or entity as a peace officer in any full-time, part-time, reserve, auxiliary, or other capacity and is serving the agency or entity in any of those peace officer capacities. An agency or entity must make each such report not later than ten days after the occurrence of the event being reported, and must make it in the manner and format prescribed by OPOTC's Executive Director.

Existing law also requires each agency or entity that appoints or employs one or more peace officers annually to provide to OPOTC a roster of all persons who have been appointed to or employed by the agency or entity as peace officers in any full-time, part-time, reserve, auxiliary, or other capacity and are serving, or during the year covered by the report have served, the agency or entity in any of those peace officer capacities. The agency or entity must provide the roster in the manner and format, and by the date, prescribed by OPOTC's Executive Director.

Existing law requires OPOTC to prescribe the manner and format of making reports and providing annual rosters under the provisions described in the two preceding paragraphs and to prescribe the date by which the annual rosters must be provided. (R.C. 109.761.)

Operation of the bill

The bill expands the roster-provision requirement that applies under existing law to each agency or entity that appoints or employs one or more peace officers so that the requirement also applies to agencies and entities that appoint or employ any State Highway Patrol trooper (i.e., the State Highway Patrol). Specifically, under the bill, the provision requires each agency or entity that appoints or employs one or more peace officers or *State Highway Patrol troopers* annually to provide to OPOTC a roster of all persons who have been appointed to or employed by the agency or entity as peace officers *or troopers* in any full-time, part-time, reserve, auxiliary, or other capacity and are serving, or during the year covered by the report have served, the agency or entity in any of those peace officer *or trooper* capacities. As under existing law, the agency or entity must provide the roster in the manner and format, and by the date, prescribed by OPOTC's Executive Director. (R.C. 109.761(B).)

Appropriation

The bill makes an appropriation of \$5 million for fiscal year 2007 out of any moneys in the state treasury to the credit of the General Services Fund Group of the Attorney General. The appropriation item is 5L5 055-619, Law Enforcement Assistance Fund. The appropriation is in addition to any other appropriations made for the 2005-2007 biennium. The bill requires that, notwithstanding R.C. 109.081 (Attorney General Claims Fund), on the act's effective date or as soon as practicable thereafter, the Director of Budget and Management must transfer \$5 million in cash from the Attorney General Claims Fund (Fund 419) to the Law Enforcement Assistance Fund (Fund 5L5). The appropriation item 5L5 055-619, Law Enforcement Assistance Fund, must be used by the Attorney General pursuant to the provisions of the bill described above in "**Law Enforcement Assistance Fund**," under "**In general**."

The bill requires the Director of Budget and Management, within the limits set forth in the bill, to establish accounts indicating the source and amount of money for each appropriation made in the act and to determine the form and manner in which appropriation accounts must be maintained. Expenditures from appropriations contained in the act must be accounted for as though made in Am. Sub. H.B. 66 of the 126th General Assembly.

The bill further provides that these uncodified sections (this paragraph and the preceding two paragraphs) and the items of law of which these uncodified sections are composed are not subject to referendum. Therefore, under Ohio Constitution, Article II, Section 1d and R.C. 1.471, these uncodified sections and the items of law of which these uncodified sections are composed take effect on the 91st day after the act is filed with the Secretary of State. (Sections 3, 4, and 5.)

Impersonation of BCII investigator

The bill extends the offenses pertaining to impersonation¹ of a peace officer to impersonation of an "investigator of the Bureau of Criminal Identification and Investigation (BCII)" (see below). It prohibits any person from doing any of the following:

- (1) Impersonating a BCII investigator;

¹ Existing R.C. 2921.51(A)(3) defines "impersonate" as to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons. This definition applies to the bill's provisions.

(2) By impersonating a BCII investigator, arresting or detaining any person, searching any person, or searching the property of any person;

(3) With purpose to commit or facilitate the commission of an offense, impersonating a BCII investigator;

(4) Committing a felony while impersonating a BCII investigator.

It is an affirmative defense to a charge of impersonating a BCII investigator as described in (1), above, that the impersonation of the investigator was for a lawful purpose.

A violation of the prohibition described in (1), above, is a misdemeanor of the fourth degree. A violation of the prohibition described in (2) or (3), above, is a misdemeanor of the first degree. If the purpose of a violation of the prohibition in (3), above, is to commit or facilitate the commission of a felony, a violation of that prohibition is a felony of the fourth degree. A violation of the prohibition described in (4), above, is a felony of the third degree. (R.C. 2921.51(B), (C), (D), (E), (F), and (G).)

The bill defines "investigator of the Bureau of Criminal Identification and Investigation" as an investigator of BCII who is commissioned by the Superintendent of BCII as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under R.C. 109.541. "Investigator" means an officer or employee of BCII described in R.C. 109.34 (BCII--intergovernmental cooperation; drug investigations; elections investigations; recording and televising equipment for child sex offense victims; list of persons to question sex offense victims). (R.C. 2921.51(A)(4), by reference to R.C. 2903.11, not in the bill.)

Penalty for aggravated vehicular homicide against BCII investigator

Existing law

Continuing law prohibits any person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways: (1) as the proximate result of committing a violation of R.C. 4511.19(A) or of a substantially equivalent municipal ordinance, a violation of R.C. 1547.11(A) or of a substantially equivalent municipal ordinance, or a violation of R.C. 4561.15(A)(3) or of a substantially equivalent municipal ordinance, or (2) in one of the following ways: recklessly, as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless

operation offense, provided that this provision applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply under certain circumstances. The above offense is designated aggravated vehicular homicide. (R.C. 2903.06(A)(1) and (2)--not in the bill.)

Under existing law, if an offender is convicted of or pleads guilty to aggravated vehicular homicide and also is convicted of or pleads guilty to a specification that charges that the victim of the offense is a peace officer, the court must impose on the offender a prison term of five years. If a court imposes such a prison term on an offender, the prison term cannot be reduced pursuant to R.C. 2929.20, R.C. 2967.193, or any other provision of R.C. Chapter 2967. or Chapter 5120. A court cannot impose more than one prison term on an offender under this provision for felonies committed as part of the same act. Imposition of this five-year mandatory prison term upon an offender is precluded unless the offender is convicted of or pleads guilty to aggravated vehicular homicide and unless the indictment, count in the indictment, or information charging the offense specifies that the victim of the offense is a peace officer. (R.C. 2929.13(F)(13), 2929.14(D)(5), and 2941.1414.)

Operation of the bill

The bill extends the above provisions in existing law to the offense of aggravated vehicular homicide against a BCII investigator. It provides that if an offender is convicted of or pleads guilty to aggravated vehicular homicide and also is convicted of or pleads guilty to a specification that charges that the victim of the offense is a BCII investigator (see above definition), the court must impose on the offender a prison term of five years. If a court imposes such a prison term on an offender, the prison term cannot be reduced pursuant to R.C. 2929.20, R.C. 2967.193, or any other provision of R.C. Chapter 2967. or Chapter 5120. A court cannot impose more than one prison term on an offender under this provision for felonies committed as part of the same act. Imposition of this five-year mandatory prison term upon an offender is precluded unless the offender is convicted of or pleads guilty to aggravated vehicular homicide and unless the indictment, count in the indictment, or information charging the offense specifies that the victim of the offense is a BCII investigator. (R.C. 2929.13(F)(13), 2929.14(D)(5), and 2941.1414.)

COMMENT

1. Existing R.C. 109.71 provides that, as used in R.C. 109.71 to 109.77, "peace officer" means:



(a) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), or township constable, who is commissioned and employed as a peace officer by an Ohio political subdivision or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(b) A police officer employed by a railroad company and appointed and commissioned under R.C. 4973.17 to 4973.22;

(c) Employees of the Department of Taxation engaged in the enforcement of R.C. Chapter 5743. and designated by the Tax Commissioner for peace officer training for the delegation of investigation powers under R.C. 5743.45;

(d) An undercover drug agent;

(e) Enforcement agents of the Department of Public Safety whom the Director of Public Safety designates under R.C. 5502.14;

(f) A DNR natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer designated under R.C. 1501.013, 1541.10, 1503.29, 1517.10, 1531.13, or 1547.521, whichever is applicable;

(g) An employee of a park district designated under R.C. 511.232 or 1545.13;

(h) An employee of a conservancy district designated under R.C. 6101.75;

(i) A police officer employed by a hospital that employs and maintains its own proprietary police department or security department, who is appointed and commissioned under R.C. 4973.17 to 4973.22;

(j) Veterans' homes police officers designated under R.C. 5907.02;

(k) A police officer employed by a qualified nonprofit corporation police department under R.C. 1702.80;

(l) A state university law enforcement officer appointed under R.C. 3345.04;



(m) A special police officer employed by the Department of Mental Health or Department of Mental Retardation and Developmental Disabilities under R.C. 5119.14 or 5123.13, whichever is applicable;

(n) A member of a campus police department appointed under R.C. 1713.50;

(o) A member of a police force employed by a regional transit authority under R.C. 306.35(Y);

(p) Investigators appointed by the Auditor of State under R.C. 117.091 and engaged in the enforcement of R.C. Chapter 117.;

(q) A special police officer designated by the Superintendent of the State Highway Patrol under R.C. 5503.09;

(r) A special police officer employed by a port authority under R.C. 4582.04 or 4582.28;

(s) A special police officer employed by a municipal corporation who has been awarded a certificate by OPOTC's Executive Director for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, at a municipal airport, or other municipal air navigation facility, that has scheduled operations and that is required to be under a security program and is governed by aviation security rules of the U.S. Transportation Security Administration;

(t) A police officer employed by an owner or operator of an amusement park that has an average yearly attendance in excess of 600,000 guests and that employs and maintains its own proprietary police department or security department, who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to R.C. 4973.17;

(u) A police officer employed by a bank; savings and loan association; savings bank; credit union; or association of banks, savings and loan associations, savings banks, or credit unions and appointed and commissioned under R.C. 4973.17 to 4973.22.

2. Existing law provides for the use of the Law Enforcement Assistance Fund to pay reimbursements for law enforcement training. The provisions governing the use of the Fund for the purpose are as follows:

(a) **AG rules for reimbursement for training**. The AG is required to adopt rules under the Administrative Procedure Act establishing application procedures, standards, and guidelines, and prescribing an application form, for the

reimbursement of sheriffs, constables, chiefs of police of organized municipal and township police departments, chiefs of police of township police district police forces, and chiefs of police of university or college police departments for the costs of "peace officer" (see "**COMMENT 2(c)** "Peace officer" definition," below) basic training programs, *advanced peace officer training programs*, basic jailer training programs, and firearms requalification programs successfully completed by them or the peace officers under their supervision, for the reimbursement of the Superintendent of the State Highway Patrol and DNR's Director for the costs of peace officer basic training programs, *advanced peace officer training programs*, and basic jailer training programs successfully completed by them or the peace officers under their supervision, and for the reimbursement of the Chief of the Adult Parole Authority (the APA) and the chief probation officer of a county probation department, multicounty probation department, and municipal court department of probation for the costs of basic firearm training programs and firearms requalification programs successfully completed by them or by parole or probation officers under their supervision. The rules must include, but are not limited to, all of the following: (i) a requirement that applications for reimbursement be submitted on a fiscal year basis, (ii) the documentation required to substantiate any costs for which the applicant seeks reimbursement, (iii) the procedure for prorating reimbursements if the amount of money appropriated for reimbursement for any fiscal year is not sufficient to pay all of the costs approved for reimbursement for that fiscal year, and (iv) any other requirements necessary for the proper administration of the reimbursement program.

Each sheriff, constable, and chief of police of an organized municipal or township police department, township police district police force, or university or college police department may apply each fiscal year to OPOTC for reimbursement for the costs of peace officer basic training programs, *advanced peace officer training programs*, basic jailer training programs, and firearms requalification training programs that are successfully completed by the sheriff, constable, or chief or a peace officer under the sheriff's, constable's, or chief's supervision. The Superintendent of the State Highway Patrol and DNR's Director may apply each fiscal year to OPOTC for reimbursement for the costs of peace officer basic training programs, *advanced peace officer training programs*, and basic jailer training programs successfully completed by them or the peace officers under their supervision. The APA's Chief and each chief probation officer of a county probation department, multicounty probation department, or municipal court department of probation may apply each fiscal year to OPOTC for reimbursement for the costs of basic firearm training programs and firearms requalification programs successfully completed by that chief or by parole or probation officers under the chief's supervision. Each application must be made in accordance with, on an application form prescribed in, and be supported by the

documentation required by, the rules adopted by the AG, as described above. (R.C. 109.802(A) to (C).)

(b) ***OPOTC reimbursement program.*** Existing law requires OPOTC to administer a program for reimbursing sheriffs, constables, and chiefs of police of organized municipal and township police departments, township police district police forces, and university and college police departments for the costs of "peace officer" (see "**COMMENT 2(c) *Peace officer definition,***" below) basic training programs, *advanced peace officer training programs*, basic jailer training programs, and firearms requalification training programs that are successfully completed by them or by peace officers under their supervision, for reimbursing the Superintendent of the State Highway Patrol and DNR's Director for the costs of peace officer basic training programs, *advanced peace officer training programs*, and basic jailer training programs that are successfully completed by them or the peace officers under their supervision, and for reimbursing the APA's Chief and the chief probation officer of a county probation department, multicounty probation department, or municipal court department of probation for the costs of basic firearm training programs and firearms requalification programs that are successfully completed by them or by parole or probation officers under their supervision. OPOTC must administer the reimbursement program in accordance with rules adopted by the AG.

OPOTC, in accordance with the rules of the AG, must review each application for reimbursement to determine if the applicant is entitled to reimbursement for the programs for which the applicant seeks it. OPOTC must approve for reimbursement any program for which reimbursement is authorized in the AG's rules, if the program was successfully completed by the applicant or a peace officer, parole officer, or probation officer supervised by the applicant. The actual amount of reimbursement for each authorized program is determined pursuant to the provisions described in the next four paragraphs:

First, OPOTC is required to prepare a basic peace officer training reimbursement voucher for each applicant for whom it approves reimbursement for all or some of the peace officer basic training programs, basic jailer training programs, basic firearms training programs, and firearms requalification programs for which the applicant applied for reimbursement. To compute the amount of the voucher for each applicant, OPOTC must do all of the following: (i) for each application for reimbursement for a peace officer basic training program, approve an amount equal to 75% of the costs, not to exceed \$800, of each approved program successfully completed by the applicant or a peace officer under the applicant's supervision, (ii) for each application for reimbursement for a basic jailer training program, approve an amount equal to 75% of the costs, not to exceed \$400, for each approved program successfully completed by the applicant

or a peace officer under the applicant's supervision, (iii) for each application by a sheriff, constable, or chief of police for reimbursement for a firearms requalification program, approve an amount equal to the full amount of the costs, not to exceed \$50, for each approved program successfully completed by the applicant or a peace officer under the applicant's supervision, (iv) for each application by the APA's Chief or a chief probation officer of a county probation department, multicounty probation department, or municipal court department of probation for reimbursement for a basic firearm training program or a firearms requalification program, approve an amount equal to the full amount of the costs, not to exceed \$50, for each approved program successfully completed by the applicant or a parole or probation officer under the applicant's supervision, and (v) add the total of all amounts approved under clauses (i), (ii), (iii), and (iv) of this paragraph for all approved programs for each applicant and, subject to the provisions described the next paragraph, prepare a peace officer training reimbursement voucher for the applicant for that total amount.

Second, if the amount of money appropriated by the General Assembly in any fiscal year to reimburse the costs of basic peace officer training programs, basic jailer training programs, basic firearm training programs, and firearms requalification programs is not sufficient to pay all peace officer training reimbursement vouchers prepared pursuant to the provisions described in the preceding paragraph, OPOTC must reduce all of the vouchers by a *pro rata* amount.

Third, OPOTC is required to prepare an advanced peace officer training reimbursement voucher for each applicant for whom it approves reimbursement for all or some of the advanced peace officer training programs for which the applicant applied for reimbursement. To compute the amount of the voucher for each applicant, OPOTC must do all of the following: (i) determine the number of full-time peace officers, parole officers, or probation officers working for each applicant, (ii) for a 26-week period designated by the AG in the rules adopted as described above, determine the total number of hours worked by peace officers, parole officers, or probation officers who are under the supervision of the applicant, are not considered full-time peace officers, parole officers, or probation officers, and are not included under clause (i) of this paragraph and divide that number by 520, (iii) determine a total number of shares for each applicant by adding the two numbers determined for the applicant under clauses (i) and (ii) of this paragraph, (iv) determine the reimbursement amount to be paid per share by dividing the total amount of money appropriated in the fiscal year for the reimbursement of the costs of advanced training programs by the total number of all shares receivable by all applicants for the fiscal year, and (v) subject to the provision described in the next paragraph, determine the amount of the advanced peace officer training reimbursement voucher by multiplying the total number of

shares for each applicant determined under clause (iii) of this paragraph by the reimbursement amount per share determined under clause (iv) of this paragraph.

Fourth, the advanced peace officer training reimbursement voucher for each applicant cannot exceed 75% of the total costs expended by the applicant for all advanced peace officer training programs that were approved as described in the preceding paragraph and were successfully completed by the applicant and the peace officers under the applicant's supervision. (R.C. 109.803.)

(c) **"Peace officer" definition.** As used in the provisions described above in "COMMENT 2(a) **AG rules for reimbursement for training**" and "(b) **OPOTC reimbursement program,**" "peace officer" includes a sheriff, deputy sheriff, marshal, deputy marshal, chief of police and member of a municipal or township police department, chief of police and member of a township police district police force, chief of police of a university or college police department, state university law enforcement officer appointed under R.C. 3345.04, Superintendent or trooper of the State Highway Patrol, and DNR natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer. "Chief of police of an organized municipal police department" includes the chief of police of a village police department, "chief of police of a village police department" means the village marshal, and "chief of police of a university or college police department" means the person who has direct supervisory authority over the state university law enforcement officers who are appointed for the university or college by its board of trustees. (R.C. 109.802(D).)

HISTORY

ACTION	DATE
Introduced	03-02-06
Reported, S. Judiciary--Criminal Justice	---

S0281-RS-126.doc/jc

