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Bill Analysis
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Sens. Grendell, Harris, Gardner, Schuring, Schaffer

BILL SUMMARY

- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, previously has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense by requiring the sentencing court to do the following: (1) in addition to the required jail term or the term of house arrest with monitoring and jail term, require the offender to attend a drivers' intervention program (existing law authorizes the court to require attendance at such a program), (2) if the vehicle used in the offense is registered in the offender's name, order immobilization of that vehicle and the impoundment of its license plates for one year (increased from 90 days), (3) irrespective of whether the vehicle involved in the offense is registered in the offender's name, order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, and (4) require the offender to wear a monitor that provides continuous alcohol monitoring that is remote.
- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, previously has been convicted of two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses and for an offender who previously has been convicted of felony state OVI, by: (1) requiring that, in addition to ordering criminal forfeiture of the vehicle used in the offense if registered in the offender's name (as under existing law), the court order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, whether or not the vehicle involved in the offense is registered in the offender's name, (2) expanding the

existing alcohol and drug addiction program sanctions to require the operator of the program to determine and assess the degree of the offender's alcohol dependency and use and treat the offender accordingly, and (3) requiring the court to require the offender to wear a monitor that provides continuous alcohol monitoring that is remote.

- Revises the vehicle immobilization and forfeiture provisions that apply to a person who is convicted of a violation of a municipal OVI ordinance and who, within the preceding six years, has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, by: (1) for an offender who, within the preceding six years, has been convicted of one such offense, if the vehicle used in the offense is registered in the offender's name, requiring the court to order immobilization of that vehicle and the impoundment of its license plates for one year (increased from 90 days); and requiring the court to order the immobilization for one year of all motor vehicles not used in the offense and owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, whether or not the vehicle the offender was operating at the time of the offense is registered in the offender's name, and (2) for an offender who, within the preceding six years, has been convicted of two or more such offenses or who previously has been convicted of state OVI when it was a felony, as under existing law, requiring that, if the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles.
- Extends to one year the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other equivalent offenses.
- Specifies that, if a court grants bail to a person who is alleged to have committed state OVI or a violation of a substantially equivalent municipal ordinance and who would be sentenced as a repeat offender if convicted of that offense, the court as a condition of bail must: (1) prohibit the person from consuming any beer or intoxicating liquor, and

(2) require the person to wear a monitor that provides continuous alcohol monitoring that is remote until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed.

- Removes from the prohibition that constitutes the offense of wrongful entrustment of a motor vehicle the current element that requires that the person who permits the motor vehicle to be driven by another must know or have reasonable cause to believe that: (1) the other person does not have a valid license or operating privilege, (2) the other person's license or operating privilege is under suspension, (3) the other person's driving the vehicle would violate R.C. Chapter 4509., or (4) the other person's driving the vehicle would be a state OVI offense, a state OVUAC offense, or a violation of any substantially equivalent municipal ordinance.

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CONTENT AND OPERATION

State OVI prohibitions

Existing law, unchanged by the bill, prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a

concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (5) the person has a concentration of .11 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (6) the person has a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (7) the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, (9) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (10) the person has a concentration of any of a list of controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds a specified concentration of the controlled substance or metabolite, as described in **COMMENT 1**. (R.C. 4511.19(A)(1).)

Finally, existing law prohibits a person who, within 20 years of the conduct described in clause (1) of this paragraph, previously has been convicted of or pleaded guilty to a violation of the prohibition described in this paragraph, the prohibition described in either of the two preceding paragraphs, R.C. 4511.19(B), or a municipal OVI offense from doing both of the following: (1) operating any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (1), being asked by a law enforcement officer to submit to a chemical test or tests under 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. (R.C. 4511.19(A)(2).)

A violation of any of the prohibitions in clauses (1) to (9) of the second preceding paragraph or the prohibition described in the preceding paragraph is the offense of "operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them." A violation of the prohibition described in clause (10) of the second preceding paragraph is the offense of "operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance." Hereafter, both of the offenses are referred to as "state OVI." In subsequent portions of this analysis, references to "high-amount state OVI" mean violations of a prohibition set forth in clause (6), (7), (8), or (9) of the second preceding paragraph, and references to "division (A)(2) state OVI" mean

violations of the prohibition set forth in the preceding paragraph. The offense of OVI is punished as described below in "Penalties."

State OVI penalties

Operation of the bill

The bill increases certain penalties for repeat state OVI offenders, as follows:

(1) It does not change the penalties described below in paragraph (1) under "Existing law" for an offender who previously has not been convicted of or pleaded guilty to state OVI, a violation of division (B) of R.C. 4511.19 (the offense of "state OVUAC"--see COMMENT 2), or another "equivalent offense" (see COMMENT 3) and is subject to those penalties (R.C. 4511.19(G)(1)(a)).

(2) For an offender who, within six years of the offense, previously has been convicted of one state OVI offense, one "state OVUAC" offense, or one other "equivalent" offense, the bill retains the existing offense classification as a misdemeanor of the first degree, and retains the existing jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (2) under "Existing law." But the bill provides that, in addition to the jail term or the term of house arrest with monitoring and jail term, the court *must require* the offender to attend a drivers' intervention program (existing law authorizes the court to require attendance at such a program).

The bill also changes the existing vehicle immobilization provisions. Under the bill, if the vehicle is registered in the offender's name, the court must order immobilization of the vehicle involved in the offense for one year and impoundment of the license plates of that vehicle for one year. In addition, irrespective of whether the vehicle involved in the offense is registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. The bill also specifies that, in all cases, the court must sentence the offender to a requirement that the offender wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the offender to wear the monitor until the conclusion of all community control sanctions imposed upon the offender, and the offender must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.19(G)(1)(b), and conforming changes in R.C. 4507.164(B)(2).)

(3) For an offender who, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or other

equivalent offenses, the bill retains the existing offense classification as a misdemeanor, and retains the existing jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (3) under "Existing law." But the bill changes the existing vehicle forfeiture provisions. Under the bill, if the vehicle is registered in the offender's name, the court must order criminal forfeiture of the vehicle involved in the offense (as under existing law) and, in addition, must order the immobilization for one year of all other motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. The bill provides that, if the vehicle involved in the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. The bill expands the existing alcohol and drug addiction program provisions to require the operator of the program to determine and assess the degree of the offender's alcohol dependency and use and treat the offender accordingly. The bill specifies that, in all cases, the court must sentence the offender to a requirement that the offender wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the offender to wear the monitor until the conclusion of all community control sanctions imposed upon the offender, and the offender must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.19(G)(1)(c), and conforming changes in R.C. 4507.164(B)(3).)

(4) For an offender who, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of five or more violations of that nature, the bill retains the existing offense classification as a felony of the fourth degree, and retains the existing prison term/jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (4) under "Existing law." The bill changes the sentencing provisions regarding such an offender, though, in the same manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(d), and conforming changes in R.C. 4507.164(B)(3).)

(5) For an offender who previously has been convicted of or pleaded guilty to state OVI when the offense was a felony, the bill retains the existing offense classification as a felony of the third degree, and retains the existing prison term provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (5) under "Existing law." The bill changes the sentencing provisions regarding such an offender, though, in the same

manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(e), and conforming changes in R.C. 4507.164(B)(3).)

Existing law

Under existing law, a person who is convicted of the offense of state OVI is sentenced under R.C. Chapter 2929., the general Criminal Sentencing Law, except as otherwise authorized or required by the provisions described in paragraphs (1) to (5), below (R.C. 4511.19(G)):

(1) Except as otherwise described in paragraphs (2) to (5), below, the offender is guilty of a misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of three consecutive days. The court may sentence an offender to both an intervention program and a jail term and may impose a jail term in addition to the three-day mandatory jail term or intervention program, provided that the cumulative jail term imposed cannot exceed six months. The court may suspend the execution of some or all of the three-day jail term and, instead, place the offender under a community control sanction for the suspended portion, require the offender to attend, for the suspended portion, a drivers' intervention program, and sentence the offender to a jail term for the non-suspended portion. The court also may require the offender to attend and satisfactorily complete any treatment or education programs that the operators of the drivers' intervention program determine that the offender should attend, and may impose on the offender any other conditions of community control that it considers necessary.

(b) If the offense is high-amount state OVI or division (A)(2) state OVI, except as otherwise described in this paragraph, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program. If the court determines that the offender is not conducive to treatment in such a program, if the offender refuses to attend such a program, or if the jail at which the offender is to serve the jail term imposed can provide such a program, the court must sentence the offender to a mandatory jail term of at least six consecutive days. The court may require the offender to attend and satisfactorily complete any treatment or education programs that the operators of the drivers' intervention program determine that the offender should attend, and may impose any other conditions of community control on the offender that it considers necessary.

(c) In all cases, a fine of not less than \$250 and not more than \$1,000 and a Class 5 license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "Limited driving privileges under an OVI suspension," below).

(2) Except as otherwise described in paragraph (5), below, an offender who, within six years of the offense, previously has been convicted of one state OVI offense, one violation of division (B) of R.C. 4511.19 (the offense of "state OVUAC"--see **COMMENT 2**), or one other "equivalent offense" (see **COMMENT 3**) is guilty of a misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of ten consecutive days. In specified circumstances, the court may instead impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term, provided that the cumulative jail term imposed cannot exceed six months. In addition to the jail term or the term of house arrest with monitoring and jail term, the court may require the offender to attend a drivers' intervention program. If the operator of the program determines that the offender is alcohol dependent, the program must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, except as otherwise described in this paragraph, a mandatory jail term of 20 consecutive days. In specified circumstances, the court may instead impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 20-day mandatory jail term, provided that the cumulative jail term imposed cannot exceed six months. In addition to the jail term or the term of house arrest with monitoring and jail term, the court may require the offender to attend a driver's intervention program. If the operator of the program determines that the offender is alcohol dependent, the program must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(c) In all cases, a fine of not less than \$350 and not more than \$1,500; a Class 4 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; and, if the vehicle is registered in the offender's name,

immobilization of the vehicle involved in the offense for 90 days and impoundment of the license plates of that vehicle for 90 days. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "Limited driving privileges under an OVI suspension," below).

(3) Except as otherwise described below in paragraph (5), an offender who, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or equivalent offenses is guilty of a misdemeanor, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of 30 consecutive days. In specified circumstances, the court instead may impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 30-day mandatory jail term, provided that the additional jail term cannot exceed one year and the cumulative jail term imposed cannot exceed one year.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of 60 consecutive days. In specified circumstances, the court instead may impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 60-day mandatory jail term, provided that the additional jail term cannot exceed one year and the cumulative jail term imposed cannot exceed one year.

(c) In all cases, a fine of not less than \$550 and not more than \$2,500; a Class 3 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "Limited driving privileges under an OVI suspension," below).

(4) Except as otherwise described below in paragraph (5), an offender who, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of five or more violations of that nature is guilty of a felony of the fourth degree and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or, in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 60-day mandatory term, the cumulative total of the mandatory term and the jail term cannot exceed one year, and, generally, no prison term is authorized for the offense. If the court imposes a mandatory prison term, it also may sentence the offender to a definite prison term that must be not less than six months and not more than 30 months. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of a specification of the type described in R.C. 2941.1413 or, in the discretion of the court, either a mandatory term of local incarceration of 120 consecutive days or a mandatory prison term of 120 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 120-day mandatory term, the cumulative total of the mandatory term and the jail term cannot exceed one year, and, generally, no prison term is authorized for the offense. If the court imposes a mandatory prison term, it also may sentence the offender to a definite prison term that must be not less than six months and not more than 30 months. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(c) In all cases, a fine of not less than \$800 nor more than \$10,000; a Class 2 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. If the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court may impose a term of house arrest with electronic monitoring, to commence after the offender

has served the mandatory term of local incarceration. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code (see "Limited driving privileges under an OVI suspension," below).

(5) An offender who previously has been convicted of or pleaded guilty to state OVI when the offense was a felony, regardless of when the violation and the conviction occurred, is guilty of a felony of the third degree and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term, provided that the cumulative total of a 60-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or a mandatory prison term of 120 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term, provided that the cumulative total of a 120-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(c) In all cases, a fine of not less than \$800 nor more than \$10,000; a Class 2 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, if the vehicle is registered in the offender's name; criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "Limited driving privileges under an OVI suspension," below).

Municipal OVI license suspensions and vehicle immobilizations and forfeitures

Municipal OVI license suspensions

Existing R.C. 4510.07, not in the bill, specifies that the court imposing a sentence upon an offender for any municipal OVI ordinance also must impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. 4510.02(B) that is equivalent in length to the suspension required for a state OVI offense under similar circumstances. As used in this provision, "municipal OVI ordinance" means 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 (existing R.C. 4510.01, by reference to existing R.C. 4511.181, neither of which is in the bill).

Municipal OVI vehicle immobilizations and forfeitures

Existing law. Existing law provides that, if a person is convicted of a violation of a municipal OVI ordinance (see "**Municipal OVI license suspensions**," above), if the vehicle the offender was operating at the time of the offense is registered in the offender's name, and if, within six years of the current offense, the offender has been convicted of one or more state OVI offenses, state OVUAC offenses (see **COMMENT 2**), or other equivalent offenses (see **COMMENT 3**), the court, in addition to and independent of any sentence that it imposes upon the offender for the offense, must do whichever of the following is applicable: (1) except as otherwise described in clause (2), if, within six years of the current offense, the offender has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense, the court must order the immobilization for 90 days of that vehicle and the impoundment for 90 days of the license plates of that vehicle, or (2) if, within six years of the current offense, the offender has been convicted of or pleaded guilty to two or more violations described in clause (1), or if the offender previously has been convicted of a state OVI offense under circumstances in which the offense was a felony and regardless of when the violation and the conviction occurred, the court must order the criminal forfeiture to the state of that vehicle.

Existing law specifies that the requirements and sanctions described in the preceding paragraph are an adjunct to and derive from the state's exclusive authority over the registration and titling of motor vehicles and do not comprise a part of the criminal sentence to be imposed upon a person who violates a municipal OVI ordinance. (R.C. 4511.193(B).)

Operation of the bill. The bill modifies the vehicle immobilization and impoundment provisions that apply to a person convicted of a violation of a municipal OVI ordinance who, within the preceding six years, has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses. Under the bill (R.C. 4511.193(B) and conforming changes in R.C. 4507.164(B)(2) and (3)):

(1) If, within the preceding six years, the offender has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense and if the vehicle the offender was operating at the time of the offense is registered in the offender's name, the court must order the immobilization for one year of that vehicle and the impoundment for one year of the license plates of that vehicle. In addition, the court must order the immobilization for one year of all other motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. If the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles.

(2) If, within the preceding six years, the offender has been convicted of two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, or if the offender previously has been convicted of state OVI when it was a felony and regardless of when the violation and the conviction occurred and if the vehicle the offender was operating at the time of the offense is registered in the offender's name, as under existing law, the court must order the criminal forfeiture to the state of that vehicle. But the bill provides an additional sanction that specifies that, if the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles.

"Hard suspensions" under an OVI suspension

Existing law

Existing law generally authorizes a court that imposes a suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege to grant the person limited driving privileges during the period of the suspension, unless expressly prohibited by any Revised Code section (R.C. 4510.021). Existing law specifies that, in any case in which a judge or mayor (serving as judge of a mayor's court) grants limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a conviction of a state OVI

offense or a municipal OVI offense (see "*Municipal OVI vehicle immobilizations and forfeitures*," above for the definition), other than when the offender has no prior state OVI, state OVUAC, or equivalent offense convictions within the preceding six years and the offense for which the suspension was imposed is not high-amount state OVI, the judge or mayor generally must impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates. (R.C. 4510.13(A)(7).)

No judge or mayor may grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction during any of the following periods of time (R.C. 4510.13(A)(5)):

(1) Except as otherwise described in paragraph (2), (3), or (4), below, the first 15 days of a suspension imposed as a result of a state OVI conviction or as a result of a municipal OVI conviction. On or after the 16th day of the suspension, the court may grant limited driving privileges, but the court may require that the offender not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in division (C) of R.C. 4510.43 (that provision provides a limited exception to immobilizing or disabling device orders for persons who operate a vehicle in employment).

(2) The first 30 days of a suspension imposed as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense. On or after the 31st day of suspension, the court may grant limited driving privileges, but the court may require that the offender not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in R.C. 4510.43(C).

(3) The first 180 days of a suspension imposed as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or other equivalent offenses. The judge may grant limited driving privileges on or after the 181st day of the suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender, while exercising the privileges during the period commencing with the 181st day of suspension and ending with the first year of suspension, from operating any motor vehicle unless it is equipped with an immobilizing or disabling device that

monitors the offender's alcohol consumption. After the first year of the suspension, the court may authorize the offender to continue exercising the privileges in vehicles that are not equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption, except as provided in R.C. 4510.43(C). If the offender does not petition for limited driving privileges until after the first year of suspension, the judge may grant limited driving privileges without requiring the use of an immobilizing or disabling device that monitors the offender's alcohol consumption.

(4) The first three years of a suspension imposed as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or previously has been convicted of state OVI when it was a felony. The judge may grant limited driving privileges after the first three years of suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender from operating any motor vehicle, for the period of suspension following the first three years of suspension, unless the motor vehicle is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption, except as provided in R.C. 4510.43(C).

Operation of the bill

The bill extends the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other equivalent offenses. Under the bill, no judge or mayor may grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction during the first year of a suspension, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other equivalent offenses. The judge may grant limited driving privileges after the first year of suspension and, at the time of granting the privileges, also may issue an order prohibiting the offender from operating any motor vehicle for the period of suspension following the first year of suspension unless the motor vehicle is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption, except as provided in R.C. 4510.43(C). (R.C. 4510.13(A)(5)(b), (d), and (e).)

**Grant of bail to a person charged with a state or municipal OVI offense--
prohibition against consuming alcohol and required wearing of monitor**

The bill specifies that, if a court grants bail to a person who is in any category described in the next paragraph and who is alleged to have committed state OVI or a violation of a substantially equivalent municipal ordinance, the court as a condition of bail must prohibit the person from consuming any beer or intoxicating liquor and must require the person to wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the person to wear the monitor until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed. Any consumption by the person of beer or intoxicating liquor prior to that time is grounds for revocation by the court of the person's bail. The person must pay all costs associated with the monitor, including the cost of remote monitoring.

The provisions described in the preceding paragraph will apply to the following persons: (1) a person who is alleged to have committed state OVI and who, if convicted of the alleged violation, is required to be sentenced under the sentencing provisions that apply to a person who, within the preceding six years, previously has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, and (2) a person who is alleged to have committed a violation of a municipal ordinance that is substantially equivalent to state OVI and who, if the law enforcement officer who arrested and charged the person with the violation of the municipal ordinance instead had charged the person with state OVI, would be required to be sentenced under the sentencing provisions that apply to a person who, within the preceding six years, previously has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses. (R.C. 4511.198.)

Wrongful entrustment of a motor vehicle

Existing law prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply: (1) the *offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges*, (2) the *offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under any provision of the Revised Code*, (3) the *offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in R.C. Chapter 4509.*, or (4) the *offender knows or has reasonable cause to believe that the other person's act of driving would be a state OVI offense, a state OVUAC offense, or a violation of any*

substantially equivalent municipal ordinance. The bill removes the italicized language from the above prohibition. (R.C. 4511.203(A).)

Existing law specifies that, without limiting or precluding the consideration of any other evidence in determining whether a violation of the prohibition described in the preceding paragraph has occurred, it is *prima-facie* evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in clause (1), (2), (3), or (4) of the preceding paragraph if any of the following applies: (1) regarding an operator allegedly in the category described in clause (1) or (3) of the preceding paragraph, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity, (2) regarding an operator allegedly in the category described in clause (2) of the preceding paragraph, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege, or (3) regarding an operator allegedly in the category described in clause (4) of the preceding paragraph, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense. The bill repeals the above factors that are *prima-facie* evidence of the lender's knowledge or reasonable cause to believe that the other person is in a category described in the preceding paragraph. (R.C. 4511.203(B).)

A violation of the prohibition described in the second preceding paragraph is the offense of "wrongful entrustment of a motor vehicle," a misdemeanor of the first degree. In addition to the penalties imposed under the general Criminal Sentencing Law Code, the court must impose a Class 7 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and, if the vehicle involved in the offense is registered in the name of the offender, the court must order one of the following: (1) except as otherwise provided in clause (2) or (3) of this paragraph, it must order, for 30 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates, (2) if the offender previously has been convicted of one wrongful entrustment of a motor vehicle offense or a violation of a substantially equivalent municipal ordinance, it must order, for 60 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates, or (3) if the offender previously has been convicted of two or more wrongful entrustment of a motor vehicle offenses or violations of a substantially equivalent municipal ordinance, it must order the criminal forfeiture to the state of the vehicle involved



in the offense. The bill does not change the penalties for wrongful entrustment. (Existing R.C. 4511.203(C).)

The above wrongful entrustment provisions do not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in R.C. 4549.65. Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for wrongful entrustment or a substantially similar municipal ordinance is not admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle. As used in the above wrongful entrustment provisions, a vehicle is owned by a person if, at the time of the wrongful entrustment, the vehicle is registered in the person's name. The bill does not change any of the provisions described in this paragraph. (Existing R.C. 4511.203(E), (F), and (G).)

COMMENT

1. Existing R.C. 4511.19(A)(1)(j) prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, except as provided in R.C. 4511.19(K), the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following: (a) the person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma, (b) the person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma, (c) the person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma, (d) the person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma, (e) the person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-

monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma, (f) the person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma, (g) the person has a concentration of marihuana in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least 2 nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma, (h) either of the following applies: (i) the person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 5 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, or (ii) as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, (i) the person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma, or (j) the person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

2. Existing R.C. 4511.19(B) prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (4) the person has a

concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine.

A violation of the prohibition is the offense of "operating a vehicle after underage alcohol consumption," commonly referred to as "state OVUAC." The penalty for the offense is as follows: (a) except as otherwise described in clause (b) of this next paragraph, the offense is a misdemeanor of the fourth degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, (b) if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, the offense is a misdemeanor of the third degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (c) if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1416 and if the court imposes a jail term for the offense, the court must impose upon the offender an additional definite jail term pursuant to R.C. 2929.24(E).

3. Existing R.C. 4511.181, not in the bill, provides that, as used in R.C. 4511.181 to 4511.197, "equivalent offense" means any of the following: (a) the offense of state OVI or state OVUAC, (b) a violation of a municipal OVI ordinance, (c) a violation of R.C. 2903.04 (the offense of involuntary manslaughter) in a case in which the offender was subject to the sanctions described in division (D) of that section, (d) a violation of division (A)(1) of R.C. 2903.06 or 2903.08 (the offense of aggravated vehicular homicide based on an OVI violation and the offense of aggravated vehicular assault) or a municipal ordinance that is substantially equivalent to either of those divisions, (e) a violation of R.C. 2903.06(A)(2), (3), or (4), R.C. 2903.08(A)(2) of section 2903.08, or former R.C. 2903.07 (all the vehicular homicide type offenses and vehicular assault type offenses not covered by clause (d)), or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them, (f) a violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to the offense of state OVI or state OVUAC, or (g) a violation of a former Ohio law that was substantially equivalent to the offense of state OVI or state OVUAC.

HISTORY

ACTION

DATE

Introduced

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