



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Celeste, Murray, Hagan, Fende, Harris, Boyd, Okey, Chandler, Domenick, Heard, Brown

BILL SUMMARY

- Modifies the offense of "street racing" by expanding the definition of "street racing," requiring the criminal forfeiture of the vehicle involved in the offense, and imposing increased penalties for repeat offenders.
- Creates the offense of street racing manslaughter, a felony of the second degree.
- Imposes a mandatory prison term for the offense of aggravated vehicular homicide when the offense is committed under specified circumstances and the offender's committing of the offense caused the death of the other person or the unlawful termination of the other person's pregnancy.
- Specifies that when there is reasonable ground to believe that a person has committed the prohibition against street racing or a substantially equivalent municipal ordinance, a peace officer with authority to enforce the prohibition or ordinance may stop or detain the person whom the officer has reasonable cause to believe was operating the vehicle in violation of the prohibition or ordinance and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.
- Requires a retailer who sells at retail nitrous oxide to require every person who purchases nitrous oxide in Ohio from the retailer to sign a nitrous oxide purchase statement, and requires a retail seller to retain every nitrous oxide purchase statement for a period of not less than two years from the date of the retail sale that generated the purchase statement.

- Provides that any person who purchases nitrous oxide at retail in Ohio who uses nitrous oxide in a motor vehicle that the person operates on a public road, street, or highway in Ohio is guilty of falsification, a misdemeanor of the first degree.
- Expands the definition of "OVI violation" and "equivalent offense" for use in specified sections of the Revised Code.

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CONTENT AND OPERATION

Street racing

Current law

Current law prohibits any person from participating in "street racing" upon any public road, street, or highway in this state. "Street racing" means (1) the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other, or (2) the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds. *Persons rendering assistance in any manner to such competitive use of vehicles must be equally charged as the participants.* The operation of two or more vehicles side by side either at speeds in excess of prima-facie lawful speeds or rapidly accelerating from a common starting point to a speed in excess of such prima-facie lawful speeds is prima-facie evidence of street racing.

Whoever violates the prohibition against street racing is guilty of the offense of street racing, a misdemeanor of the first degree. In addition to any other sanctions, the court must suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for not less than 30 days or more than three years. A judge may not suspend the first 30 days of any suspension of an offender's license, permit, or privilege imposed for street racing. (R.C. 4511.251.)

Operation of the bill

Offense

The bill expands the definition of "street racing" to also include "any exhibition of speed or acceleration that is inconsistent with the normal operation of a vehicle on a public road, street, or highway." In addition, the bill provides that persons rendering assistance *or encouragement* in any *form or* manner to the defined competitive use of vehicles must be equally charged as participants (bill's additions to existing law are in italics).

The bill also modifies the penalty for street racing as follows:

First offense

Except as provided in the succeeding paragraphs, street racing is a misdemeanor of the first degree. In addition to any other sanctions, if the offender previously has not been convicted of or pleaded guilty to street racing or a substantially equivalent municipal ordinance, the court must impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a period of one year. If the trier of fact finds that in violating the street racing prohibition the offender caused physical harm to any other person or caused damage to the property of any other person, the court, in addition to any other sanctions, must impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of three years.

If the trier of fact finds that in committing street racing the offender caused serious physical harm to any other person, except as otherwise provided in paragraph (3) below, street racing is a felony of the fourth degree, and the court must impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of five years.

Subsequent offense

If the offender previously has been convicted of or pleaded guilty to one or more street racing violations or violations of a substantially equivalent municipal ordinance, all of the following apply:

(1) Except as provided in paragraph (2) or (3) below, street racing is a misdemeanor of the first degree, and the court must impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of three years to life.

(2) If the trier of fact found one or more times in any of those prior cases that the offender caused physical harm to any other person or caused damage to the property of any other person and if the trier of fact finds that in the current street racing offense the offender caused physical harm to any other person or caused damage to the property of any other person, street racing is a felony of the fifth degree, and the court must impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of three years.

(3) If the trier of fact found one or more times in any of those prior cases that the offender caused serious physical harm to any other person and if the trier of fact finds that in the current street racing offense the offender caused serious physical harm to any other person, street racing is a felony of the third degree, and the court must impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of five years.

No suspension of license suspension

A judge may not suspend any portion of any suspension of an offender's license, permit, or privilege imposed as described in the preceding paragraphs. (R.C. 4511.251(A), (B), (C), (D), (E), and (F).)

Criminal forfeiture--street racing

Under the bill, in addition to any other sanctions, the court must order the criminal forfeiture of the motor vehicle the offender was operating at the time the offender committed street racing if either of the following applies: (1) the motor vehicle the offender was operating at the time of such violation is registered in the offender's name, or (2) the motor vehicle the offender was operating at the time of such violation is not registered in the offender's name but is registered in the name of another person,

and the person in whose name the motor vehicle is registered or the person in control of the motor vehicle permitted the offender to operate the motor vehicle and that person knew or had reasonable cause to believe that the offender would operate the motor vehicle in violation of the street racing prohibition or a substantially equivalent municipal ordinance. Any forfeiture of a motor vehicle under this paragraph must be in accordance with R.C. 4503.234 (see "**Criminal forfeiture of a vehicle**," below). If title to a motor vehicle that is subject to an order of criminal forfeiture under this paragraph is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, the court, in addition to any other sanctions, may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. The proceeds of any fine so imposed must be distributed in accordance with R.C. 4503.234(C). (R.C. 4511.151(G).)

Street racing manslaughter

Offense and penalty

The bill creates the offense of street racing manslaughter. The bill prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death or another or the unlawful termination of another's pregnancy as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle upon a public road, street, or highway in this state, or a violation of a substantially equivalent municipal ordinance. Every operator of every motor vehicle and motorcycle involved in the street race is criminally culpable for the offense, irrespective of whether or not such an operator's motor vehicle or motorcycle made contact with any other motor vehicle or motorcycle. (R.C. 2903.06(A)(5).)

Street racing manslaughter is a felony of the second degree. In addition to any other sanctions, the court must impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a definite period of not less than five years. (R.C. 2903.06.)

Criminal forfeiture

In addition to any other sanctions, the court must order the criminal forfeiture of the motor vehicle the offender was operating at the time the offender committed street racing manslaughter if either of the following applies: (1) the motor vehicle the offender was operating at the time of the violation is registered in the offender's name, or (2) the motor vehicle the offender was operating at the time of the violation is not registered in the offender's name but is registered in the name of another person, and the person in whose name the motor vehicle is registered or the person in control of the motor vehicle permitted the offender to operate the motor vehicle and that person knew

or had reasonable cause to believe that the offender would operate the motor vehicle in violation of the street racing prohibition or a substantially equivalent municipal ordinance.

The bill specifies that any forfeiture of a motor vehicle under the preceding paragraph must be in accordance with R.C. 4503.234 (discussed below, in "**Criminal forfeiture of a vehicle**"). If title to a motor vehicle that is subject to an order of criminal forfeiture for a violation of street racing manslaughter¹ is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies,² the court, in addition to any other sanctions, may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. The proceeds of any fine so imposed must be distributed in accordance with the current criminal forfeiture law.³ (R.C. 2903.06(E)(2) and (3).)

Criminal forfeiture of a vehicle

The bill applies existing provisions regarding criminal forfeiture of a vehicle to the street racing prohibition discussed above, under "**Street racing**," and also to the prohibition against street racing manslaughter that the bill creates, discussed above, under "**Street racing manslaughter**" (R.C. 4503.234). Below is an overview of R.C. 4503.234 ("the criminal forfeiture statute").

An order of criminal forfeiture authorizes an appropriate law enforcement agency to seize the vehicle ordered criminally forfeited upon the terms and conditions that the court determines proper. A vehicle ordered criminally forfeited is not considered contraband for purposes of Chapter 2981. of the Revised Code, but the law enforcement agency that employs the officer who seized it must hold the vehicle for disposal in accordance with procedures discussed in this paragraph and the following paragraphs. A forfeiture order may be issued only after the offender has been provided with an opportunity to be heard. The prosecuting attorney must give the offender written notice of the possibility of forfeiture by sending a copy of the relevant uniform traffic ticket or other written notice to the offender not less than seven days prior to the date of issuance of the criminal forfeiture.

¹ The bill states that if title to a motor vehicle is subject to an order of criminal forfeiture under R.C. 2903.06 is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, the court may fine the offender the value of the vehicle. R.C. 2903.06 includes aggravated vehicular homicide, vehicular homicide, and vehicular homicide. It is not clear whether this provision is intended to apply to those offenses.

² A lienholder, person with ownership interest, or person with an interest in the vehicle establishes to court that person neither knew or should have known the vehicle would be used for street racing.

³ Seizure, storage, maintenance, and security costs, then payment of value of lien or ownership interest, then to certain law enforcement trust funds and restitution, and then to the Reparations Fund, Drug Resistance Education Fund, and other specified funds.

Prior to the issuance of an order of criminal forfeiture under the criminal forfeiture statute, the law enforcement agency that employs the law enforcement officer who seized the vehicle must conduct or cause to be conducted a search of the appropriate public records that relate to the vehicle and must make or cause to be made reasonably diligent inquiries to identify any lienholder or any person or entity with an ownership interest in the vehicle. The court that is to issue the forfeiture order also must cause a notice of the potential order relative to the vehicle and of the expected manner of disposition of the vehicle after its forfeiture to be sent to any lienholder or person who is known to the court to have any right, title, or interest in the vehicle. The statute sets out in detail provisions regarding such lienholders.

The statute also provides that a vehicle ordered criminally forfeited to the state must be disposed of as follows:

(1) It must be given to the law enforcement agency that employs the law enforcement officer who seized the vehicle, if that agency desires to have it;

(2) If a vehicle is not disposed of pursuant to (1), above, the vehicle must be sold, without appraisal, if the value of the vehicle is \$2,000 or more as determined by publications of the National Auto Dealers Association, at a public auction to the highest bidder for cash. Prior to the sale, the prosecuting attorney in the case must cause a notice of the proposed sale to be given in accordance with law. The court must cause notice of the sale of the vehicle to be published in a newspaper of general circulation in the county in which the court is located at least seven days prior to the date of the sale. The proceeds of a sale must be applied in the order specified in R.C. 4503.234(C)(2).

With some exceptions, neither the Registrar of Motor Vehicles nor any Deputy Registrar may accept an application for the registration of any motor vehicle in the name of any person, or register any motor vehicle in the name of any person, if both of the following apply: (1) any vehicle registered in the person's name was criminally forfeited under the criminal forfeiture statute and specified sections of the Revised Code, and (2) less than five years have expired since the issuance of the most recent order of criminal forfeiture issued in relation to a vehicle registered in the person's name.

If the vehicle to be forfeited has an average retail value of less than \$2,000 as determined by publications of the National Auto Dealers Association, no public auction is required to be held. In such a case, the court may direct that the vehicle be disposed of in any manner that it considers appropriate, including assignment of the certificate of title to the motor vehicle to a salvage dealer or a scrap metal processing facility. The court may not transfer the vehicle to the person who is the vehicle's immediate previous owner. If the court assigns the motor vehicle to a salvage dealer or scrap metal

processing facility and the court is in possession of the certificate of title to the motor vehicle, it must send the assigned certificate of title to the motor vehicle to the clerk of the court of common pleas of the county in which the salvage dealer or scrap metal processing facility is located. The court must mark the face of the certificate of title with the words "FOR DESTRUCTION" and must deliver a photocopy of the certificate of title to the salvage dealer or scrap metal processing facility for its records. If the court is not in possession of title to the motor vehicle, the court must issue an order transferring ownership of the motor vehicle to a salvage dealer or scrap metal processing facility, send the order to the clerk of the court of common pleas of the county in which the salvage dealer or scrap metal processing facility is located, and send a photocopy of the order to the salvage dealer or scrap metal processing facility for its records. The clerk must make the proper notations or entries in the clerk's records concerning the disposition of the motor vehicle. (R.C. 4503.234.)

Mandatory prison term for aggravated vehicular homicide

Current law

Under current law, a person is guilty of aggravated vehicular homicide if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft causes 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), R.C. 1547.11(A), or R.C. 4561.15(A)(3) (OVI offenses), or of a municipal ordinance that is substantially equivalent to one of those sections, (2) recklessly, or (3) 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 specified circumstances apply.

The penalty for the offense of aggravated vehicular homicide varies depending on the circumstances. If the offense is committed in violation of provision (1), listed above, aggravated vehicular homicide is a felony of the first degree, and the court must sentence the offender to a mandatory prison term as provided in R.C. 2929.142 (10-15 years), if one is required under R.C. 2903.06(B)(2)(c).

Operation of the bill

The bill provides that the court must also sentence an offender who is convicted of or pleads guilty to aggravated vehicular homicide to a mandatory prison term as provided in R.C. 2929.142 (10-15 years) if the offender is convicted of, or pleads guilty to a violation described in provision (1), described above in "**Current law**," and the offender's committing of the violation was the proximate cause of the death of the other

person or the unlawful termination of the other person's pregnancy, as prohibited by R.C. 2903.06(A).⁴ (R.C. 2903.06.)

Authority to arrest without a warrant

Continuing law provides for several circumstances in which specified law enforcement authorities must or may detain or arrest a person without first obtaining a warrant. The bill makes no changes to the existing provisions but adds another such provision: the bill states that when there is reasonable ground to believe that a violation of the street racing prohibition described above under "**Street racing**," or of a substantially equivalent municipal ordinance has been committed by a person operating a motor vehicle on a public road, street, or highway in this state, a peace officer with authority to enforce the street racing prohibition or the substantially equivalent municipal ordinance may stop or detain the person whom the officer has reasonable cause to believe was operating the motor vehicle in violation of the street racing prohibition or the substantially equivalent municipal ordinance and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person. (R.C. 2935.03(G).)

Seizure of vehicle and license plates

The bill applies existing provisions regarding seizure of a vehicle and its license plates to a person convicted of the street racing prohibition discussed above, in "**Street racing**," and to the prohibition against street racing manslaughter that the bill creates, discussed above in "**Street racing manslaughter**" (R.C. 4510.41(A)(1), (B)(1), (C), (D), and (E)). The following is a summary of those existing provisions, contained in R.C. 4510.41, "the seizure statute":

If a person is arrested for a violation of R.C. 4510.14 (driving under OVI suspension) or 4511.203 (wrongful entrustment of a motor vehicle) or a substantially equivalent municipal ordinance or if a person is arrested for a violation of R.C. 4510.16 (driving under financial responsibility law suspension or cancellation) or a substantially equivalent municipal ordinance and if R.C. 4510.16(B)(2) or (3) applies, the arresting officer or another officer of the law enforcement agency that employs the arresting officer, must seize the vehicle that the person was operating at the time of, or that was involved in, the alleged offense if the vehicle is registered in the arrested person's name and its license plates. If the vehicle is rented or leased, specified provisions apply. At the time of the seizure of the vehicle, the law enforcement officer who made the arrest

⁴ The bill should probably be amended to include R.C. 2929.142, as that section lists all of the circumstances in which a mandatory prison term applies for the offense of aggravated vehicular homicide.

must give the arrested person written notice that the vehicle and its license plates have been seized; that the vehicle either will be immobilized at least until the person's initial appearance on the charge of the offense for which the arrest was made; that, at the initial appearance, the court in certain circumstances may order that the vehicle and license plates be released to the arrested person until the disposition of that charge; that, if the arrested person is convicted of that charge, the court generally must order the immobilization of the vehicle and the impoundment of its license plates or the forfeiture of the vehicle; and that the arrested person may be charged specified expenses or charges.

The seizure statute contains provisions that require the arresting officer or other specified officer to give written notice of the seizure to the court that will conduct the initial appearance of the arrested person on the charges arising out of the arrest. The court must then promptly determine whether the arrested person is the vehicle owner. If the court determines that the arrested person is not the vehicle owner, the court must send written notice of the seizure to the vehicle's registered owner according to specified procedures. The statute also specifies procedures regarding what motions the vehicle owner may file at, before, or after the initial appearance.

A vehicle seized under the seizure statute either must be towed to a place specified by the law enforcement agency that employs the arresting officer to be safely kept by the agency at that place for the time and in the manner specified in the seizure statute or must be otherwise immobilized for the time and in the manner specified in the seizure statute. A law enforcement officer of that agency must remove the identification license plates of the vehicle, and they must be safely kept by the agency for the time and in the manner specified by the seizure statute. A vehicle that is seized and either towed or immobilized pursuant to this paragraph is considered contraband for purposes of Chapter 2981. of the Revised Code. The vehicle may not be immobilized at any place other than a commercially operated private storage lot, a place owned by a law enforcement or other government agency, or another place specified in the seizure statute.

The statute further provides that at the initial appearance or not less than seven days prior to the date of final disposition, the court must notify the arrested person that, if title to a motor vehicle that is subject to an order for criminal forfeiture under the seizure statute is assigned or transferred and the seizure statute applies, the court may fine the arrested person the value of the vehicle. If, at the initial appearance, the arrested person pleads guilty to specified offenses, or pleads no contest to and is convicted of the violation, specified sentencing provisions apply.

The statute also includes sentencing provisions instructing the court what to do with a vehicle and its license plates upon the final disposition of the charges against the

arrested person. Additionally, the statute includes provisions regarding payment of the expenses and charges incurred in the removal and storage of the immobilized vehicle. (R.C. 4510.41.)

Retail sale of nitrous oxide

The bill requires a retailer who sells at retail nitrous oxide to require every person who purchases nitrous oxide in this state from the retailer to complete and sign a nitrous oxide purchase statement. The Department of Public Safety must make a purchase statement available at no charge on its internet web site and also must furnish the purchase statement to retail sellers of nitrous oxide upon request. The Director of Public Safety must determine the form and contents of the purchase statement, which must include at a minimum the name and address of the retailer, the name and address of the purchaser, the date of the retail sale, the amount of nitrous oxide sold to the purchaser, and any other information the Director determines should be included on the statement. The statement also must include the following language in 12-point boldface type:

"I will not use nitrous oxide in any motor vehicle that I operate on any public road, street, or highway in the state of Ohio. I understand that street racing on the public roads, streets, and highways of Ohio is illegal and punishable by a fine, a jail term or prison term, suspension of a person's driver's or commercial driver's license, and criminal forfeiture of any vehicle involved in a street race."

The purchase statement language must conclude with the following 14-point boldface type:

"I understand that if I purchase nitrous oxide and use it in a motor vehicle that I operate on a public road, street, or highway in the state of Ohio, I may be subject to prosecution for the crime of falsification, a misdemeanor of the first degree, and may be subject to prosecution for other criminal offenses as well."

The bill requires a retail seller to retain every nitrous oxide purchase statement for a period of not less than two years from the date of the retail sale that generated the purchase statement.

The bill also prohibits a person who purchases nitrous oxide at retail in this state from using it in a motor vehicle that the person operates on a public road, street, or highway in this state. Whoever violates this prohibition is guilty of falsification, a misdemeanor of the first degree. (R.C. 4511.253.)

Definitions

The bill expands the definition of "OVI violation" as used in Revised Code sections 2743.51 through 2743.72 (Victims Reparations Law) to include a violation of R.C. 2903.06(A)(5) (the street racing manslaughter prohibition described above, in "**Street racing manslaughter**") or a substantially similar municipal ordinance, if the offender was under the influence of alcohol, a drug of abuse, or a combination of them, at the time of the commission of the offense (R.C. 2743.51(P)(3)).

The bill also expands the definition of the term "equivalent offense" as used in R.C. 4511.181 through 4511.198 to include a violation of R.C. 2903.06(A) (the street racing manslaughter prohibition described above, in "**Street racing manslaughter**") or a substantially equivalent municipal ordinance, 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 (R.C. 4511.181(A)(5)).

Limited driving privileges for persons convicted of certain out-of-state offenses

Existing law permits a judge to grant limited driving privileges to Ohio residents whose driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operation privilege is suspended for certain drug-related and OVI-related offenses under federal law or another state's law. The person whose license or permit has been suspended may file a petition in the appropriate court agreeing to pay the cost of the proceedings and alleging that the suspension would seriously affect the person's ability to continue the person's employment to the street racing manslaughter prohibition. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the judge may grant the person limited driving privileges during the period during which the suspension would be imposed, except the judge may not grant limited driving privileges for employment as a driver of a commercial motor vehicle to any person who would be disqualified from operating a commercial motor vehicle under R.C. 4506.16 if the violation occurred in this state or during the first 15 days of a suspension imposed under R.C. 4510.17(B) or (D), if the person has not been convicted within six years of the date of the offense giving rise to the suspension of certain offenses. The bill adds street racing manslaughter or a substantially similar municipal ordinance in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse the list of offenses preventing the person from receiving limited driving privileges.

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ACTION

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