



Ohio Legislative Service Commission

Bill Analysis

Bill Rowland

Sub. H.B. 191

128th General Assembly
(As Reported by H. Criminal Justice)

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

BILL SUMMARY

- Modifies the penalty for the offense of "street racing" by requiring the immobilization and impoundment of the license plates of or the criminal forfeiture of the vehicle involved in the offense, and imposing increased penalties for street racing involving nitrous oxide, involving harm to persons and property, and in which the offender has been previously convicted of or pleaded guilty to street racing or other specified offenses.
- Creates the offense of street racing manslaughter, a felony of the second degree.
- Adds the offense of street racing or a substantially equivalent municipal ordinance to the list of offenses concerning which law enforcement authorities have the authority to arrest and detain until a warrant can be obtained when there is reasonable cause to believe the offense occurred and the arrested person committed the offense.
- Requires every retailer who sells nitrous oxide to conspicuously post a sign that contains a warning regarding the illegality of street racing and the fact that using nitrous oxide during a street race will result in increased penalties.
- Requires the Department of Public Safety to make the above mentioned sign available at no charge on its internet web site.
- 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 repeals the provision in current law that provides that persons rendering assistance in any manner to the defined competitive use of vehicles must be equally charged as participants (R.C. 4511.251(A)(1)).

Penalties for street racing

The bill retains the basic penalty of a first degree misdemeanor for street racing except for the following situations (R.C. 4511.251(C)(3) to (7)):

--Street racing is a felony of the fifth degree if the offender knew or had reasonable cause to believe that a device or apparatus was connected to any vehicle participating in the street race so as to inject nitrous oxide into the fuel or the combustion chambers of the engine of the vehicle during the street race.

--Street racing is a felony of the fourth degree if: (a) the offender previously has been convicted of or pleaded guilty to one or more offenses of reckless operation (R.C. 4511.20), street racing, or a municipal ordinance that is substantially equivalent to reckless operation or street racing, or (b) the violation caused physical harm to property in an amount exceeding \$1,000 or physical harm to any person, whether or not the physical harm was caused directly by the offender.

--Street racing is a felony of the third degree if the offender knew or had reasonable cause to believe that a device or apparatus was connected to any vehicle participating in the street race so as to inject nitrous oxide into the fuel or the combustion chambers of the engine of the vehicle during the street race and if (a) the offender previously has been convicted of or pleaded guilty to one or more offenses of reckless operation (R.C. 4511.20), street racing, or a municipal ordinance that is substantially equivalent to reckless operation or street racing, or (b) the violation caused physical harm to property in an amount exceeding \$1,000 or physical harm to any person, whether or not the physical harm was caused directly by the offender.

--Street racing is a felony of the third degree if the violation caused serious physical harm to any person, whether or not the serious physical harm was caused directly by the offender.

--Street racing is a felony of the second degree if the offender knew or had reasonable cause to believe that a device or apparatus was connected to any vehicle participating in the street race so as to inject nitrous oxide into the fuel or the combustion chambers of the engine of the vehicle during the street race and the

violation caused serious physical harm to any person, whether or not the serious physical harm was caused directly by the offender.

No suspension of license suspension

The bill eliminates the provision that specifies that a judge may not suspend the first 30 days of any suspension of an offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege imposed for street racing (R.C. 4511.251).

Criminal forfeiture--street racing

Under the bill, in addition to any other sanctions and in accordance with succeeding paragraphs, the court must order the immobilization and impoundment of the license plates of or 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 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 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 court must order the immobilization of the vehicle involved in the offense for a period of 180 days in accordance with the law governing immobilization orders (R.C. 4503.233) and the impoundment of the license plates of that vehicle for a period of 180 days in any case in which the penalty for street racing is a misdemeanor of the first degree. In all other cases, the court must order the criminal forfeiture of the vehicle.

Any forfeiture of a motor vehicle 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 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. 4511.251(E).)

Street racing manslaughter

Offense and degree of felony and license suspension

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 or

motorcycle, from causing the death of 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, street racing or a violation of a substantially equivalent municipal ordinance. Every operator of every motor vehicle and motorcycle involved in the violation is criminally culpable for the offense, whether or not the operator's motor vehicle or motorcycle made contact with any other motor vehicle or motorcycle or any person. (R.C. 2903.06(A)(5).)

Whenever violates the above described prohibition is guilty of street racing manslaughter, 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(E)(1).)

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 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. (R.C. 2903.06(E)(2).)

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

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.

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)(3).)

Technical change

The bill amends the definition of "mandatory jail term" to change a cross reference to existing R.C. 2903.06(E) to a cross reference to R.C. 2903.06(F) as a result of the bill's enactment of new R.C. 2903.06(E) (R.C. 2929.01(T)).

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.

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

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.

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.)

Authority to arrest without a warrant

Continuing law provides for several circumstances in which specified law enforcement authorities must or may arrest and detain a person without first obtaining a warrant. The bill makes no changes to the existing provisions but adds the offense of street racing or a substantially equivalent municipal ordinance to the list of offenses concerning which law enforcement authorities have the authority to arrest and detain a person until a warrant can be obtained when there is reasonable ground to believe that the offense has been committed within the law enforcement authority's jurisdiction and has reasonable cause to believe the person is guilty of the offense. (R.C. 2935.03(B)(1).)

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 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 every retailer who sells at retail nitrous oxide to conspicuously post a sign that contains the following language: "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. Violators of Ohio's prohibition on street racing are subject to increased penalties if the motor vehicle operated by the individual in an illegal street race is enhanced by the use of nitrous oxide." The sign is required to be of sufficient size to be clearly legible to a person of normal vision. The Department of Public Safety must make the sign available at no charge on its internet web site. (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 to the list of offenses preventing the person from receiving limited driving privileges. (R.C. 4510.17(E)(1)(e).)

HISTORY

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