

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 17** DATE: **May 10, 2007**

STATUS: **As Re-reported by Senate Judiciary--
Criminal Justice** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **OVI prohibitions and penalties**

State Fiscal Highlights

STATE FUND	FY 2007*	FY 2008	FUTURE YEARS
Law Enforcement Reimbursement Fund (Fund 83R)			
Revenues	- 0 -	Gain of uncertain magnitude	Gain of uncertain magnitude
Expenditures	- 0 -	Increase, commensurate with available revenue	Increase, commensurate with available revenue

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

* For the purposes of this fiscal analysis, it is assumed that any of the bill's state fiscal effects would occur sometime after FY 2007.

- **Law Enforcement Reimbursement Fund (Fund 83R).** When a court issues an immobilization order, and the paperwork is properly filed with the BMV, the BMV returns a \$100 immobilization fee, an amount that is disbursed from the state's Law Enforcement Reimbursement Fund (Fund 83R). As a result of the bill, it is likely that additional vehicles will be immobilized and generate additional related revenues that would be deposited to the credit of Fund 83R and subsequently redistributed to the appropriate local jurisdiction. As of this writing, the magnitude of those revenues and related redistributed moneys are uncertain.
- **Uncertain state fiscal effects.** As of this writing, there are certain provisions of the bill that were added subsequent to its introduction that LSC fiscal staff has not had the opportunity to analyze for purposes of determining the magnitude of their fiscal effects, if any, on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007 – FUTURE YEARS
Counties, Municipalities, and Townships	
Revenues and Expenditures	Factors increasing and decreasing revenues and expenditures, with net fiscal effect on any given local government uncertain

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***Uncertain local fiscal effects.*** As of this writing, LSC fiscal staff has not had the opportunity to complete all of the research necessary to provide estimates of the net impact of all the bill's provisions on local government revenues and expenditures.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the As Introduced version of the bill most notably:

- Revises the sentencing provisions for an offender who is convicted of a state OVI and who, within six years of the offense, previously has been convicted of one or more state OVI offenses.
- 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.
- Specifies that, if a court grants bail to a person who is alleged to have committed a state OVI 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 case is properly adjudicated.
- 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 Chapter 4509. of the Revised Code, or (4) the other person's driving the vehicle would be an OVI offense.

As of this writing, however, there are certain provisions of the bill that were added subsequent to its introduction that LSC fiscal staff has not had the opportunity to analyze for purposes of determining the magnitude of their fiscal effects, if any, on the state and its political subdivisions. These provisions include, but are not limited to:

- Expanding, relative to persons arrested for an OVI offense, and who within the preceding 20 years have been convicted of certain specified offenses, the list of specified offenses that are classified as relevant prior convictions to include all "equivalent offenses."
- Revising the sentencing provisions for an offender who is convicted of the offense of state OVI by replacing the list of "equivalent offenses" that are classified as prior convictions that are relevant in determining the penalty with a new expanded list of "equivalent offenses."
- Specifying that the intent of the General Assembly is that the offense of wrongful entrustment of a motor vehicle is a strict liability offense.

- Expanding, relative to persons arrested for an OVI offense, and who refuse to submit to a chemical test of a bodily substance, the factors that are to be considered in determining the length of the suspension if they occurred within six years of the refusal.
- Replacing, relative to persons arrested for an OVI offense, and who submit to a chemical test of a bodily substance, and who are found to have a prohibited concentration of alcohol or other controlled substance in the bodily substance, the list of "equivalent offenses" that are classified as prior convictions that are relevant in determining the length of the suspension with a new list of "equivalent offenses."
- Adding a new provision to the Vehicle and Watercraft Implied Consent Law specifying that: (a) if a person is arrested for any OVI or related offense and has two or more prior convictions, the arresting officer must request the offender submit to a chemical test of bodily substances, (b) the officer is not required to advise the person of the consequences of refusing to submit to the chemical test, (c) if the person has refused the test, the officer may employ whatever reasonable means are necessary to ensure the person submits to the chemical test and the officer is immune from civil and criminal liability based on claims stemming from such enforcement actions unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner.
- Suspending a person's license to drive as a "prohibited concentration suspension" if the chemical test results indicate a prohibited concentration of alcohol or a controlled substance.
- Modifying an existing provision that explicitly grants a qualified immunity from criminal or civil liability to a physician, nurse, or other qualified medical personnel who withdraws blood from a person at a medical facility.
- Requiring the Department of Public Safety to establish a state registry of Ohio's habitual OVI/OMWI offenders and an Internet database containing specified information regarding each person who, within the preceding 20 years, has been arrested in Ohio five or more times for a vehicle OVI or watercraft OMWI offense.
- Requiring law enforcement officers who arrest a person for any of the OVI related offenses to send the Department of Public Safety a sworn report containing specified information regarding the arrested person and the arrest and prior arrests for similar offenses occurring within the preceding 20 years.
- Specifying the conditions under which a court may consider exceptions to the issuance of an order to immobilize a vehicle, and requiring that motor vehicles operated pursuant to an immobilization waiver order display restricted license plates that are a different color from those regularly issued and carry a special serial number that may be readily identified by law enforcement officers.

Repeat OVI offenders

According to the Bureau of Motor Vehicles within the Department of Public Safety, in calendar year 2006, there were 58,098 OVI convictions in Ohio. Of this total number of convictions, about 54,452 involved offenders that had at least one prior OVI conviction within the previous six years. Based on this preliminary data for just one year, the bill will affect the disposition of a large number of OVI cases annually.

OVI sentencing revisions

For individuals convicted of a state OVI or equivalent municipal offense and who, within six years of the offense, had previously been convicted of either one or more state OVI offenses, the bill would revise the existing sentencing provisions as described below.

Driver's intervention program

In addition to any jail term or house arrest that may be imposed under current law, the court must require the offender to attend a driver's intervention program. Current law authorizes, but does not require, a court to impose attendance at such a program as part of the sentence. As of this writing, LSC fiscal staff has not had the opportunity to complete the research necessary to determine the extent to which judges currently sentence offenders to such programs, as well as the costs associated with establishing new programs if necessary.

Immobilization and impoundment

The vehicle involved in the offense, if registered to the offender, as well as all other motor vehicles registered to the offender, shall be immobilized for one year and the license plates will be impounded for one year. Current law allows for only 90 days. This provision of the bill would increase the number of license plates that would be impounded in any given year, which would generate an increase in revenues collected by local jurisdictions from the state Bureau of Motor Vehicles (BMV) to cover the cost of impounding the plate.

The bill would also result in a larger number of vehicles being immobilized and stored for a one-year period, as compared to current law. When a vehicle is immobilized as a result of an OVI conviction, the owner pays the BMV a \$100 immobilization fee, which is deposited in the state treasury to the credit of the Law Enforcement Reimbursement Fund (Fund 83R). The BMV then disburses that fee back to the appropriate local law enforcement entity to reimburse that jurisdiction for the costs it incurs in immobilizing the vehicle.

The storage fees charged to the vehicle owner are approximately \$10 per day, which means a one-year immobilization would cost the offender approximately \$3,650 per vehicle. This should generate additional revenue for some local jurisdictions, however it could also create additional expenses. The larger storage fees would compound the problems of collecting what is owed, particularly from the more indigent offenders as well as from owners whose vehicle is worth less than the storage fees. If their owners essentially abandon a large number of immobilized vehicles, local jurisdictions would not likely collect any storage fees and would incur costs to dispose of the vehicles. Additionally, certain counties and/or municipalities may have to build or otherwise create more storage space for immobilized vehicles, which may involve a substantial expenditure for new construction or renovations.

As of this writing, LSC has not had the opportunity to complete the research necessary to determine the extent to which judges currently impose immobilization of vehicles and the impoundment

of license plates, as well as the net effect of the increased accumulation of fee revenue against the potential increased costs stemming from the additional nine months of immobilization.

Continuous monitoring

The bill also requires offenders, as well as those alleged to have committed an OVI-related offense and granted bail, to wear a device providing remote continuous monitoring, and further states the offender must pay all costs associated with the monitoring process. The bill is silent as to the issue of who pays these costs if the offender is indigent and cannot pay. To the extent that the financial responsibility for the monitoring may ultimately rest with the courts, local expenditures would increase. Again, the research to fully determine these costs is not yet complete.

Alcohol and drug addiction treatment

For those offenders who, within six years of the current OVI offense, have two or more prior OVI convictions, in addition to the above-mentioned sanctions, the bill also expands the existing alcohol and drug addiction program sanctions to require the operator of the program to determine and access the degree of the offender's alcohol dependency and treat the offender accordingly. As of this writing, LSC has not had the opportunity to complete the research necessary to determine the extent to which judges currently require OVI offenders with multiple priors to receive such alcohol and drug addiction programming, and whether there is currently enough of such programming to accommodate potentially more offenders as a result of this bill. We need to determine the potential cost of such additional programming as well as the jurisdiction that would pay these costs.

Wrongful entrustment of a motor vehicle

Lastly, the bill 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 Chapter 4509. of the Revised Code, or (4) the other person's driving the vehicle would be an OVI offense. The effect of this provision would likely be some reduction in the number of cases filed for wrongful entrustment. As of this writing, LSC has not had the opportunity to complete the research necessary to determine the approximate number of cases involving wrongful entrustment and specifically how the reduction in such cases would impact state and local expenditures.

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