



*Synopsis of House Committee Amendments**

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Legislative Service Commission

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(H. Criminal Justice Committee)

The House committee adopted amendments to the Senate-passed version of the bill that do the following:

1. Increase the minimum mandatory fine by \$50 that a person convicted of state OVI is required to pay and direct this \$50 increase to the court's special projects fund (to be used only for ignition interlock devices and alcohol monitoring devices for indigent offenders) if the court has one and, if the court does not have one, to the Indigent Drivers Interlock and Alcohol Monitoring Fund that the bill creates.

2. Remove the provisions of the Senate-passed version that for repeat state or municipal OVI offenders required the court (a) to 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 all license plates of all such vehicles, whether or not the vehicle involved in the offense is registered in the offender's name and (b) to require the repeat offender to wear a continuous remote alcohol monitor and to pay all associated costs.

3. Replace the provision of the Senate-passed version that required an offender convicted of state OVI and who has one prior OVI-related offense in six years to attend a certified driver's intervention program with a provision requiring the court to (a) require an offender who commits low end or high end OVI to be assessed by an authorized alcohol and drug treatment program and (b) require the offender to follow the treatment recommendations and, upon the request of the court, requiring the program to submit the results of the assessment to the court.

4. Modify provisions in the Senate-passed version requiring an OVI offender with two or more prior OVI convictions in a specified period of time to participate in an authorized alcohol and drug addiction program by requiring the court to order the offender to follow the treatment recommendations of the program at the time the court

* This synopsis does not address amendments that may have been adopted on the House floor.

orders the offender to participate in the program and by requiring the program to submit the results of the assessment to the court upon the request of the court.

5. Allow expenditures from a local indigent drivers alcohol treatment fund to be made upon the order of a county, juvenile, or municipal court judge for the payment of the cost of an assessment at an alcohol and drug addiction treatment program of a person who is convicted of, or found to be a juvenile traffic offender by reason of, a state OVI violation or a substantially similar municipal ordinance and who is ordered by the court to attend the assessment and is determined by the court to be unable to pay the cost of the assessment and require the Alcohol and Drug Addiction Services Board or Board of Alcohol, Drug, and Mental Health Services to determine which program is suitable to meet the needs of the offender or juvenile offender.

6. Require that, for the purpose of determining whether an offender does not have the means to pay for the alleged offender's attendance at an alcohol and drug addiction treatment program or whether an alleged offender or delinquent child is unable to pay for treatment or the cost of purchasing continuous alcohol monitoring devices used in conjunction with treatment, the court must use the indigent client eligibility guidelines and the standards of indigency established by the State Public Defender to make the determination.

7. Increase from 30 days to 45 days the length of the suspension of a person's driver's or commercial driver's license or nonresident operating privilege when the results of a chemical test following an arrest for OVI or OVUAC indicate prohibited a concentration of alcohol or drugs and the person has had one prior conviction for OVI, OVUAC, or an equivalent offense within the prior six years.

8. Decrease the period of hard license suspension from one year (in Senate-passed version) to 45 days for a person convicted of a state or municipal OVI offense and who has one prior OVI conviction in the past six years.

9. Decrease the period of hard license suspension from one year (in Senate-passed version) to 180 days for a person who has two prior OVI convictions in the past six years.

10. Require that if a court grants a repeat OVI offender limited driving privileges and the offender's underlying offense is alcohol related (as opposed to drug related), the offender must not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device for the remainder of the period of suspension and that if the underlying offense is drug related, the court *may* require the vehicles the offender operates to be equipped with a certified ignition interlock device.

11. Provide that in any case in which an offender has been granted limited driving privileges and is prohibited from exercising the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device, if the offender operates a vehicle that is not equipped with an ignition interlock device, circumvents the device,

tampers with the device, or the device prevents the offender from starting the vehicle due to a prohibited concentration of alcohol in the offender's breath, the following applies:

(a) If the offender had one prior OVI offense in preceding six years: on a first instance, the court may require the offender to wear a remote alcohol monitor that provides continuous alcohol monitoring, on a second instance, the court must require the offender to wear a remote alcohol monitor for a minimum of 40 days, and on a third instance or more, the court must require the offender to wear a remote alcohol monitor for a minimum of 60 days.

(b) If the offender had two or more prior offenses in a specified number of years: on a first instance, the court must require the offender to wear a remote alcohol monitor for a minimum of 40 days, and on a second instance or more, the court must require the offender to wear a remote alcohol monitor for a minimum of 60 days.

12. Provide that in any case in which a court issues an order prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device or requires an offender to wear a monitor that provides continuous alcohol monitoring that is remote, the court must impose a court cost of \$2.50 upon the offender to be credited to the State Highway Safety Fund to be used by the Department of Public Safety to cover the cost associated with maintaining the Habitual OVI/OMWI Offender Registry, and the court may impose an additional court cost of \$2.50 upon the offender for deposit into the court's special projects fund.

13. Require the Director of Public Safety to publish and make available to courts a list of licensed manufacturers of ignition interlock devices and require that a manufacturer that desires for its devices to be certified under R.C. 4510.43 and included on that list to, annually, obtain a license from the Department and provides procedures regarding the issuance of the license, including a \$100 application fee to be deposited in the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund, grounds to reject an application, an appeal process, and a requirement that every manufacturer of ignition interlock devices that is issued a license file an annual report with the Department on a form prescribed by the Department and on or before a date the Department prescribes; require the annual report to state the amount of net profit the manufacturer earned during a 12-month period specified by the Department that is attributable to the sales of that manufacturer's certified ignition interlock devices to purchasers in Ohio; require licensed manufacturers to pay a fee equal to 5% of the amount of the net profit included in its annual report; and require the Department to deposit the fees into the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund; and provide that the Director of Public Safety may make an assessment against any manufacturer that fails to file its annual report or to pay the required fee on net profit.

14. Provide that the Director of Public Safety must adopt Administrative Rules that provide for a penalty schedule setting forth monetary penalties to be imposed upon a manufacturer that is issued a license under R.C. 4510.45 as a manufacturer of ignition interlock devices and fails to file its annual report or pay the required fee on net profit in a timely manner; provide that no manufacturer of ignition interlock devices that is required to file an annual report with the Department of Public Safety or pay the required fee on net profit may fail to do so and that if a manufacturer fails to do either of those things, the Department must remove from the list of certified devices the ignition interlock devices manufactured by the manufacturer; and provide that no manufacturer of ignition interlock devices that is required to file an annual report with the Department may file a report that contains incorrect or erroneous information.

15. Provide that an entity that monitors certified ignition interlock devices for or on behalf of a court must inform the court whenever such a device that has been installed in a motor vehicle indicates that it has prevented an offender whose driver's license, permit, or operating privilege has been suspended under R.C. 4511.19(G)(1)(a), (b), (c), (d), or (e) (OVI) and who has been granted limited driving privileges from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the ignition interlock device from permitting the motor vehicle to be started.

16. Provide that upon receipt of the information described in the previous paragraph pertaining to a repeat offender who has been granted limited driving privileges, the court must send a notice to the offender stating that because of this instance: (1) the offender is required to wear a monitor that provides for continuous alcohol monitoring if required, (2) the court may increase the period of suspension of the offender's driver's license, permit, or operating privilege from that originally imposed by the court by a factor of two, and (3) the court may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

17. Specify that the notice described in the previous paragraph must state whether the court will impose the increases and, if so, that the increases will take effect 14 days from the date of the notice.

18. Provide that in any case in which the court issues an order prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, the court must notify the offender that if the court receives notice that the device prevented the offender from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method employed by the device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to

prevent the device from starting, the court may increase the period of suspension of the offender's driver's or commercial driver's license or permit or nonresidential operating privilege from that originally imposed by the court by a factor of two and may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

19. Regarding an alleged offender who is subject to mandatory chemical testing under the Watercraft Implied Consent Law, require the law enforcement officer who arrests the person to advise the person at the time of the arrest that if the person refuses to take a chemical test, the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma.

20. Regarding an alleged offender who is subject to the Vehicle Implied Consent Law, require the law enforcement officer who arrests the person to advise the person at the time of the arrest that if the person refuses to take a chemical test, the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma.

21. Remove the provision from the Senate-passed version that specified 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 or as a felon if convicted of that offense (state offense) or if convicted of a similar state offense (municipal 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.

22. In the provisions that establish and pertain to the offense of wrongful entrustment of a motor vehicle, remove from the Senate-passed version the changes that did the following:

(a) Removed from the prohibition that constitutes the offense 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: (i) the other person does not have a valid license or operating privilege, (ii) the other person's license or operating privilege is under suspension, (iii) the other person driving the vehicle would violate R.C. Chapter 4509., or (iv) the other person driving the vehicle would be a state OVI offense, a state OVUAC offense, or a violation of any substantially equivalent municipal ordinance;

(b) Repealed three factors that are specified as prima-facie evidence of a vehicle lender's knowledge or reasonable cause to believe that the other person is not entitled to operate a vehicle;

(c) Provided that it is an affirmative defense to a charge that a person violated the prohibition that constitutes the offense that, at the time the person charged permitted the vehicle to be driven by the other person, the person charged did not have knowledge, after reasonably diligent inquiry or in reasonable reliance on his or her observation of the other person's condition or on his or her knowledge of the other person's status or qualifications, of any fact specified in clause (a) or (b) of this dot point regarding the other person that, if known, would have made entrustment of the motor vehicle to the other person an offense under the prohibition;

(d) Specified that the intent of the General Assembly is that the offense of wrongful entrustment of a motor vehicle is a strict liability offense.

23. Specify that for the offense of wrongful entrustment of a motor vehicle to apply to a person who allows another person to drive a motor vehicle that is subject to an immobilization waiver order, the person must know or have reasonable cause to believe that the vehicle is subject to the order and that the other person is prohibited from operating the vehicle.

24. Provide that whenever it is necessary to prove a prior conviction, if the defendant claims a constitutional defect in this prior conviction, the defendant has the burden of proving the defect by a preponderance of the evidence.

25. Remove from the Senate-passed version the provision establishing the State Registry of Ohio's Habitual OVI/OMWI Arrestees and replace it with a provision requiring the Department of Public Safety to establish a State Registry of Ohio's Habitual OVI/OMWI Offenders and an Internet database, both of which are public records, containing specified information about persons who on or after the effective date of the bill receive their fifth or subsequent conviction within the preceding 20 years for state OVI, state OVUAC, municipal OVI, having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance, state OMWI, a violation of a municipal ordinance substantially equivalent to state OMWI, or another "equivalent offense," and require a court that convicts a person for any of those offenses for a fifth or subsequent time to send to the Department of Public Safety specified information.

26. Allow a "family or household member" of the offender to obtain an immobilization waiver order (as opposed to a "spouse or driving-age child").

27. Provide that, if the court issues an immobilization waiver order, the court must impose a \$50 immobilization waiver fee and must determine whether the fee is to be paid by the offender or by the family or household member and that the clerk must deposit the fee to the credit of the Indigent Drivers Alcohol Treatment Fund.

28. Provide that an offender who operates a motor vehicle that is subject to an immobilization waiver order is guilty of "operating a motor vehicle in violation of an immobilization waiver order," a misdemeanor of the first degree.

29. Create the Indigent Drivers Interlock and Alcohol Monitoring Fund in the state treasury; specify that moneys in the fund be distributed by the Department of Public Safety to the County Indigent Drivers Interlock and Alcohol Monitoring Funds, the County Juvenile Indigent Drivers Interlock and Alcohol Monitoring Funds, and the Municipal Indigent Drivers Interlock and Alcohol Monitoring Funds that the bill creates; specify that money in the fund be used only to pay the cost of an immobilizing or disabling device or an alcohol monitoring device used by an offender or juvenile offender who is ordered to use the device by a county, juvenile, or municipal court judge and who is determined by the judge to not have the means to pay for the person's use of the device.

30. Increase by \$50 (from \$425 to \$475) the license reinstatement fee that a person is required to pay at the end of a suspension period under R.C. 4511.191, 4511.194, 4511.196, 4511.19(G), or 4510.07 and direct the \$50 increase to the Indigent Drivers Interlock and Alcohol Monitoring Fund, created by the bill.

31. Specify that a court may impose as a financial sanction on an offender the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use.

32. Regarding the provision in the implied consent license suspension section that provides that if the arrested person, within six years of the date on which the person had refused the request to consent to the chemical test, had refused three or more previous requests to consent to a chemical test, had been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or other equivalent offenses, or had refused a number of previous requests to consent to a chemical test and also had been convicted of or pleaded guilty to a number of violations of division (A) or (B) of section 4511.19 of the Revised Code or other equivalent offenses that cumulatively total three or more such refusals, convictions and guilty pleas, each of which violations or offenses arose from an incident other than the incident that led to any of the refusals, the suspension shall be for five years, remove the underlined language.

33. Provide that county, juvenile, and municipal courts must exhaust IDAM funds before IDAT money is used for electronic monitoring in conjunction with treatment.

34. Require the court to identify and refer any alcohol and drug addiction program that is not certified under R.C. 3793.06 and that is interested in receiving amounts from surplus IDAT money to the Department of Alcohol and Drug Addiction Services, and require the Department to keep a record of such applicant referrals and submit a report on the referrals each year to the General Assembly.

35. Provide that noncertified alcohol and drug addiction programs that apply to be certified pursuant to R.C. 3793.06 are eligible to receive surplus IDAT funds so long as the application is pending with the Department of Alcohol and Drug Addiction Services

and provide that, if the noncertified alcohol and drug addiction program withdraws the certification application, the Department of Alcohol and Drug Addiction Services must notify the court and the court may not provide the noncertified program with any further surplus funds.

36. Provide that, if a court grants limited driving privilege to a person who has formerly been convicted of a felony OVI offense and is alleged to have committed a state OVI offense or a violation of a substantially equivalent municipal ordinance, the court must prohibit the person from consuming any beer or intoxicating liquor and must require the person to wear a continuous alcohol monitor until the person is convicted of, pleads guilty to, is found not guilty of the alleged violation, or the charges in the case are dismissed.

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