Dennis M. Papp *Legislative Service Commission*

Am. Sub. H.B. 461

126th General Assembly
(As Passed by the House)

Reps. Wolpert, Yuko, Ujvagi, Otterman, Healy, Latta, D. Evans, Gilb, Hughes, Barrett, Bubp, Cassell, Chandler, Collier, Combs, Core, Daniels, DeGeeter, Distel, Domenick, C. Evans, Faber, Fende, Fessler, Flowers, Gibbs, Hagan, Hartnett, Harwood, Kilbane, Law, Martin, Mason, J. McGregor, R. McGregor, Oelslager, T. Patton, Raussen, Reidelbach, Schaffer, Schlichter, Schneider, G. Smith, J. Stewart, Taylor, Wagner, Wagoner, Webster, White, Widener, Williams

BILL SUMMARY

- Increases the mandatory prison term for aggravated vehicular homicide to a mandatory term of 10, 11, 12, 13, 14, or 15 years when the offender has three or more prior OVI convictions or guilty pleas involving a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft within the previous six years, or two or more prior felony state OVI convictions.

- Allows as proof of prior conviction, for an offense for which the Registrar of Motor Vehicles maintains a record, a certified copy of the record that shows the name, date of birth, and Social Security number of the accused but allows the accused to offer evidence to rebut the evidence of the accused's identity or of the prior conviction.

- Permits a court to admit evidence of the concentration of alcohol, drugs of abuse, or a combination of them in a defendant's bodily substance if (1) a law enforcement officer, through an existing procedure set forth in R.C. 2317.022, has obtained from a health care provider a laboratory report containing the results of any test administered by the health care provider on its own initiative and not at the request of a law enforcement officer to determine the presence or concentration of alcohol or a drug of abuse in the person's bodily substance, or (2) a person submits to a blood, breath, urine, or other bodily substance test at the request of a law

enforcement officer under the Implied Consent Law or if a blood or urine sample is obtained pursuant to a search warrant.

- Conforms certain existing provisions regarding laboratory reports that provide information as to the concentration of alcohol, a drug of abuse, or a combination of them in a person's bodily substance to the provision it adds that is described in clause (1) of the preceding dot point.

CONTENT AND OPERATION

Aggravated vehicular homicide

Prohibition involving OVI-related conduct

Under existing law, unchanged by the bill, one of the ways in which a person commits the offense of aggravated vehicular homicide is 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 as the proximate result of committing a violation of R.C. 4511.19(A) ("state OVI"), 1547.11(A) ("state watercraft OVI"), 4561.15(A)(3) ("state aircraft OVI"), or a violation of a municipal ordinance that is substantially equivalent to one of these violations (R.C. 2903.06(A)(1)). For purposes of this analysis this offense will be termed "OVI-related aggravated vehicular homicide." (See **COMMENT** 2 for an explanation of the other manners in which a person commits aggravated vehicular homicide.)

Penalty for OVI-related aggravated vehicular homicide

Current law. Under current law, OVI-related aggravated vehicular homicide generally is a felony of the second degree. However, OVI-related aggravated vehicular homicide is a felony of the first degree (a possible prison term of 3, 4, 5, 6, 7, 8, 9, or 10 years) if any of the following applies (R.C. 2903.06(B)(2)(a)):

(1) At the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4510. or any other provision of the Revised Code.

(2) The offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter.

(3) The offender previously has been convicted of or pleaded guilty to any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 3).

(4) The offender previously has been convicted of or pleaded guilty to three or more prior state OVI violations or violations of a substantially equivalent municipal ordinance within the previous six years;

(5) The offender previously has been convicted of or pleaded guilty to three or more prior state watercraft OVI violations or violations of a substantially equivalent municipal ordinance within the previous six years;

(6) The offender previously has been convicted of or pleaded guilty to three or more prior state aircraft OVI violations, or violations of a substantially equivalent municipal ordinance within the previous six years;

(7) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in paragraph (4), (5), or (6), above;

(8) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OVI violations.

A court must impose a mandatory prison term (from the range of terms authorized by law for a felony of the first or second degree, as applicable) upon an offender who is convicted of or pleads guilty to OVI-related aggravated vehicular homicide. Also, in addition to any other sanction imposed upon an offender for aggravated vehicular homicide, the court must impose a class one suspension (a definite period of life) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. (R.C. 2903.06(B)(2)(b) and (E).)

Operation of the bill. The bill revises the penalty for OVI-related aggravated vehicular homicide by adding a new penalty tier that, in certain circumstances, requires an increased mandatory prison term for an offender who is convicted of or pleads guilty to the offense. Under the bill, the penalty for OVI-related aggravated vehicular homicide is as follows:

(1) As under existing law, but subject to the provisions described below in paragraphs (2) and (3), it generally remains a felony of the second degree, and the court must impose a mandatory prison term (from the range of terms authorized for a felony of the second degree) (R.C. 2903.06(B)(2)(a) and (E)).

(2) As under existing law, but subject to the provisions described below in paragraph (3), it is a felony of the first degree, and the court must impose a mandatory prison term (from the range of terms authorized for a felony of the first degree, which is 3, 4, 5, 6, 7, 8, 9, or 10 years) if: (a) at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4510. or

any other provision of the Revised Code, (b) the offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, or (c) the offender previously has been convicted of or pleaded guilty to any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 3) (R.C. 2904.06(B)(2)(b) and (E));

(3) As modified by the bill, it is a felony of the first degree (as under existing law) and the court must impose a mandatory prison term of 10, 11, 12, 13, 14, or 15 years upon the offender (added by the bill) if any of the following circumstances apply (R.C. 2903.06(B)(2)(c), 2929.14(L), and 2929.142, with conforming changes in R.C. 2929.01(Y) and (GG), 2929.13(F), 2929.14(A) to (C), (E)(5), and (H), 2929.18(A)(5)(a)(ii) and (C)(1), 2929.19(B)(2), and 2953.08(A)(1)):

(a) The offender previously has been convicted of or pleaded guilty to three or more prior state OVI violations or violations of a substantially equivalent municipal ordinance within the previous six years;

(b) The offender previously has been convicted of or pleaded guilty to three or more prior state watercraft OVI violations or violations of a substantially equivalent municipal ordinance within the previous six years;

(c) The offender previously has been convicted of or pleaded guilty to three or more prior state aircraft OVI violations, or violations of a substantially equivalent municipal ordinance within the previous six years;

(d) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in paragraph (1), (2), or (3), above.

(e) The offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OVI violation.

The existing license suspension requirement for OVI-related aggravated vehicular homicide convictions remains applicable to an offender convicted of the offense in any circumstance described above in paragraph (1), (2), or (3) (R.C. 2903.06(B)(2)(d)).

Proof of prior conviction

Current law provides that, whenever in any case it is necessary to prove a prior conviction, a certified copy of the entry of judgment in the prior conviction together with evidence sufficient to identify the defendant named in the entry as the offender in the case at bar, is sufficient to prove any prior conviction (R.C. 2945.75(B)).

The bill additionally allows in any case as proof of prior conviction, for an offense for which the Registrar of Motor Vehicles maintains a record, a certified copy of the record that shows the name, date of birth, and Social Security number of the accused. This record is prima-facie evidence of the identity of the accused and prima-facie evidence of all prior convictions shown on the record. The accused may offer evidence to rebut the prima-facie evidence of the accused's identity and the evidence of prior convictions. The bill also states that proof of a prior conviction of an offense for which the Registrar maintains a record may also be proved as provided under the existing provision described in the preceding paragraph. (R.C. 2945.75(B)(2).)

Admission of evidence on the concentration of alcohol or a drug of abuse

Ways in which admissible evidence may be obtained

Current law. Current law provides that, in any criminal prosecution or juvenile court proceeding charging state OVI, a violation of division of (B) of R.C. 4511.19 ("state OVUAC"), or an equivalent offense,[1] the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within two hours of the time of the alleged violation.

Current law specifies that, when a person submits to a blood test at the request of a law enforcement officer under R.C. 4511.191 (the Vehicle Implied Consent Law), only a physician, registered nurse, or qualified technician, chemist, or phlebotomist may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the blood. This limitation does not apply to the taking of breath or urine specimens. The bodily substance withdrawn must be analyzed in accordance with methods approved by the Director of Health by an

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[1] *"Equivalent offense" means any of the following (R.C. 4511.181): (1) a violation of R.C. 4511.19(A) or (B), (2) a violation of a municipal OVI ordinance, (3) a violation of R.C. 2903.04 in a case in which the offender was subject to the sanctions described in R.C. 2903.04(D), (4) a violation of R.C. 2903.06(A)(1) or 2903.08(A)(1) or a municipal ordinance that is substantially equivalent to either of those divisions, (5) a violation of R.C. 2903.06(A)(2), (3), or (4), R.C. 2903.08(A)(2), or former R.C. 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them, (6) a violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to R.C. 4511.19(A) or (B), or (7) a violation of a former Ohio law that was substantially equivalent to R.C. 4511.19(A) or (B).*

individual possessing a valid permit issued by the Director pursuant to R.C. 3701.143.

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis. The person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. (R.C. 4511.19(D).)

Operation of the bill. The bill modifies the existing provision regarding a court's admission of evidence on the concentration of alcohol, drugs of abuse, or a combination of them in a bodily substance of the defendant and the related provision governing the withdrawal of a blood sample for the purpose of determining that concentration, and merges the two provisions. Under the bill, in any criminal prosecution or juvenile court proceeding charging state OVI, state OVUAC, or an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within two hours of the time of the alleged violation when either of the following apply (R.C. 4511.19(D)(1)):

(1) A law enforcement officer has obtained from a health care provider a laboratory report containing the results of any test administered by the health care provider on its own initiative and not at the request of a law enforcement officer to determine the presence or concentration of alcohol, a drug of abuse, or a combination of them in the person's bodily substance pursuant to existing R.C. 2317.022 (see **COMMENT** 4; this is new language added by the bill);

(2) A person submits to a blood, *breath, urine, or other bodily substance* test at the request of a law enforcement officer under the Implied Consent Law *or if a blood or urine sample is obtained pursuant to a search warrant* (this is a modification of an existing provision, with the bill adding the language in italics).

The bill specifies that the requirement for an analysis in accordance with Director of Health standards and for allowing the person tested to have another chemical test administered by a qualified technician, chemist, or phlebotomist of the person's own choosing, discussed above in "***Existing law***," only apply to the manners described above in paragraph (2) by which a court may admit evidence of the alcohol or drug content of a person's bodily substance (R.C. 4511.19(D)(1) and (3)).

Required contents of a laboratory report

Current law. Under existing law, generally, in any criminal prosecution or juvenile court proceeding for a violation of one of the per se state OVI limits, state OVUAC limits, or limits for an equivalent offense, a laboratory report from any forensic laboratory certified by the Department of Health that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains the following specified information must be admitted as prima-facie evidence if the information and statements that the report contains all of the following (R.C. 4511.19(E)):

(1) The signature, under oath, of any person who performed the analysis;

(2) Any findings as to the identity and quantity of alcohol or a drug of abuse that was found;

(3) A copy of a notarized statement by the lab director that contains the name of each *certified* analyst or test performer involved with the report, the analyst's or performer's employment relationship with the laboratory, and a notation that performing this type of analysis is part of the analyst's or performer's regular duties;

(4) An outline of the analyst's or test performer's education, training, and experience in performing these types of tests and a certification that the laboratory satisfies appropriate quality control standards *in general and, in this particular analysis, under rules of the Department of Health*.

This type of laboratory report is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant. This type of laboratory report is not prima-facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice. (R.C. 4511.19(E)(2) and (3).)

Operation of the bill. The bill makes several changes to the existing laboratory report provisions described above, to conform them to its addition of the new method regarding tests obtained under R.C. 2317.022 by which a court may admit evidence on the concentration of alcohol, a drug of abuse, or a combination of them in a person's bodily substance (see paragraph (1) under the

"***Operation of the bill***" portion of "***Ways in which admissible evidence may be obtained***," above):

(1) It expands the provisions so that, generally, in any criminal prosecution or juvenile court proceeding for a violation of one of the specified types of limits, in addition to the types of reports referenced under existing law, *a laboratory report obtained pursuant to R.C. 2317.022* that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains the specified items of information also must be admitted as prima-facie evidence of the information and statements that the report contains. The existing provisions that restrict use of the reports when the prosecutor does not serve a copy on the defendant or the defendant's attorney and when the defendant or the defendant's attorney demands the testimony of the person who signed the report also apply to the types of reports referenced under this provision of the bill. (R.C. 4511.19(E)(1), (2), and (3).)

(2) In the provision that currently specifies that the laboratory report must contain a copy of a notarized statement by the laboratory director or a designee that contains the name of each *certified* analyst or test performer involved with the report, it removes the italicized language that refers to the analyst or test performer being *certified* (R.C. 4511.19(E)(1)(c)).

(3) In the provision that currently specifies that the laboratory report must contain a certification that the laboratory satisfies appropriate quality control standards *in general and, in the particular analysis in question, under rules of the Department of Health*, it removes the italicized language that refers to appropriate quality control standards *under Department of Health rules* being satisfied *in the particular analysis in question* and the italicized words "*in general*" (R.C. 4511.19(E)(1)(d)).

COMMENT

1. As used in the aggravated vehicular homicide prohibitions, "unlawful termination of another's pregnancy" means causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs (R.C. 2903.09).

2. Aggravated vehicular homicide also is committed by a person who, 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 one of the following ways (R.C. 2903.06(A)(2)): (a) recklessly, or (b) 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 that this provision only applies if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and specified signs are present in the construction zone warning of the penalty.

A violation of either prohibition described in the preceding paragraph generally is a felony of the third degree, but the violation is a felony of the second degree if the offender, at the time of the offense, was driving under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter or any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 3). The court must impose a mandatory prison term if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or 2903.08 or if the offender was driving at the time of the offense under suspension, and must impose a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (R.C. 2903.06(B)(3) and (E)).

3. As used in the aggravated vehicular homicide penalty provisions, "traffic-related homicide, manslaughter, or assault offense" means a violation of R.C. 2903.04 in circumstances in which division (D) of that section applies, a violation of R.C. 2903.06 or 2903.08, or a violation of R.C. 2903.06 or 2903.08, or of former R.C. 2903.07, as they existed prior to March 23, 2000 (R.C. 2903.06(G)).

4. Existing R.C. 2317.022, not in the bill, provides that if an official criminal investigation has begun regarding a person or if a criminal action or proceeding is commenced against a person, any law enforcement officer who wishes to obtain from any health care provider a copy of any records the provider possesses that pertain to any test or the result of any test administered to the person to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the person's blood, breath, or urine at any time relevant to the criminal offense in question must submit to the health care facility a written statement asserting that such an investigation has begun or such an action or proceeding has been commenced against the person, asserting that the officer believes that such a test has been administered to the person, and requesting the test results. Upon receipt of the statement, the health care provider must provide the records if the health care provider has them and if no state or federal law otherwise prohibits the release of the records.

HISTORY

ACTION	DATE
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