Dennis M. Papp *Legislative Service Commission*

Sub. H.B. 461*

126th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

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 OVI-related vehicular homicide to a mandatory term of 10, 11, 12, 13, 14, or 15 years when the offender has: (1) three or more prior OVI convictions involving a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft within the previous six years, (2) three or more prior OVI-related aggravated vehicular homicide, aggravated vehicular assault, or alcohol and vehicle-related involuntary manslaughter convictions within the previous six years, (3) three or more violations of any combination of the offenses listed in clause (1) or (2) of this dot point within the previous six years, or (4) two or more prior felony state OVI convictions.

- Requires the imposition of a Class 1 license suspension (a definite period of life) of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of aggravated vehicular homicide that is not based on OVI-related conduct if the offender previously has been convicted of or pleaded guilty to a "traffic-related murder, felonious assault, or attempted murder offense" (defined in the bill).

* *This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires the imposition of a Class 2 suspension (a definite period of three years to life) of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of vehicular homicide if the offender previously has been convicted of or pleaded guilty to a "traffic-related murder, felonious assault, or attempted murder offense."

- Requires the imposition of a Class 4 suspension (a definite period of one to five years) of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of vehicular manslaughter if the offender previously has been convicted of or pleaded guilty to a "traffic-related murder, felonious assault, or attempted murder offense."

- Requires the imposition of either a Class 2 suspension (provided under existing law) or a Class 1 suspension (added by the bill) of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of aggravated vehicular assault if the offender previously has been convicted of aggravated vehicular assault or vehicular assault (included as a criterion under existing law), any "traffic-related homicide, manslaughter, or assault offense" (defined in existing law; included as a criterion under existing law), or any "traffic-related murder, felonious assault, or attempted murder offense" (added as a criterion by the bill).

- Requires the imposition of a Class 3 suspension (a definite period of two to ten years) of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of vehicular assault if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault (included as a criterion under existing law), any "traffic-related homicide, manslaughter, or assault offense" (included as a criterion under existing law), or any "traffic-related murder, felonious assault, or attempted murder offense"(added as a criterion by the bill).

- Requires the imposition of a Class 2 suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of an offender convicted of aggravated murder or murder, if the offender used a motor vehicle as the means to commit the offense.

- Requires the imposition of a Class 1 judicial driver's license suspension upon an offender who is convicted of or pleads guilty to "felonious assault" when the offense is based on the offender's knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance and the deadly weapon used in the commission of the offense is a motor vehicle.

- Requires the imposition of a Class 2 judicial driver's license suspension upon an offender who is convicted of or pleads guilty to an attempt to commit aggravated murder or murder if the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

- Prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for life under a Class 1 judicial driver's license suspension imposed under its provisions described above for aggravated vehicular homicide or aggravated vehicular assault from operating any motor vehicle upon the public roads or highways within Ohio during the remaining life of the person and provides that a violation of the prohibition is the offense of "driving under specified lifetime suspension," a felony of the third degree.

- Prohibits the issuance of a temporary instruction permit or driver's license to, or the retention of such a permit or license by, any person who is: (1) under a Class 1 or Class 2 judicial driver's license suspension imposed under its provisions described in the preceding dot points for aggravated murder, murder, felonious assault, attempted aggravated murder, or attempted murder, or (2) under a Class 1 or Class 2 suspension imposed under an existing provision upon an offender who is convicted of or pleads guilty to "failure to comply with an order or signal of a police officer."

- Prohibits a judge or mayor from suspending any portion of a Class 1 judicial driver's license suspension imposed under its provisions described above for aggravated vehicular homicide or under an existing provision for failure to comply with an order or signal of a police officer, or a Class 2 suspension imposed under its provision described above for aggravated murder, murder, felonious assault, attempted aggravated murder, or attempted murder.

- Specifies that the existing mechanism for modification or termination of a Class 1 or other lifetime judicial driver's license suspension or a Class 2 suspension of more than 15 years does not apply regarding any Class 1 judicial driver's license suspension imposed under its provisions described in the preceding dot points for aggravated vehicular homicide or aggravated vehicular assault or a Class 2 suspension imposed under its provisions for vehicular homicide or for an offense described in the preceding dot point.

- 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.

- Allows a qualifying claimant to file a claim for an award of reparations under the Crime Victims Reparations Law if the person suffers economic loss from conduct that caused serious physical harm to a person and constituted a violation of either the offense of "failure to stop after an accident" or "failure to stop after a nonpublic road accident."

- Provides that if the type of conduct described in the previous dot point occurred on or after July 1, 2000, an application for an award of

reparations must be filed within two years after the effective date of the bill or as provided under current law, whichever is later.

- Modifies the Terrorism Law provisions that pertain to the required completion and use of Declarations of Material Assistance/Nonassistance to Terrorist Organizations by: (1) requiring a licensing entity that denies a license or renewal because of the disclosure of providing material assistance to send written notice of the denial to the applicant, providing a limitations period on the right to request a review, and requiring the licensing entity to notify the Department of Public Safety of the denial, (2) specifying that the existing disclosure requirements for licensure do not apply to certain specified federally insured depository institutions or their subsidiaries or, in specified circumstances, their officers and employees, their affiliates, or their affiliates' officers and employees, (3) establishing a centralized procedure for precertification for doing business with or receiving funding from a public entity, modifying the precertification mechanism, requiring certain forms and lists to be available on the Department of Public Safety and Office of Budget and Management web sites, and providing an entity that discloses material assistance with notice of the prohibition against it doing business or receiving funding and of the right to a review of the prohibition, (4) changing the formulas for calculating whether an entity contracting to do business with, or receive funding from, a public entity receives the threshold amount of money to be subject to the certification requirement, (5) adding a penalty for failing to provide certification, (6) exempting from the requirement to disclose the provision of material assistance/nonassistance when contracting with, or receiving funding from, a public entity, certain federally insured depository institutions, contracts between government entities, and persons or entities providing necessary, nonelective healthcare services, and (7) modifying the procedures by which a public entity notifies an individual that the individual is being denied employment due to the disclosure of providing material assistance.

- Extends, from December 31, 2006, until March 31, 2007, the date by which the Task Force on Implementing the Federal Domestic Violence Option in the Ohio Works First Program created in Am. Sub. S.B. 238 of the 126th General Assembly must prepare and submit its report to the Governor and specified leadership of the General Assembly.

- Makes immobilization of a vehicle and impoundment of its license plates for the offense of "driving under financial responsibility law suspension or cancellation" or for a violation of a substantially equivalent municipal ordinance discretionary rather than mandatory when the offender has no previous violation in the preceding five years.

- Authorizes the imposition of a fine equal to the value of the vehicle when title to a vehicle that is subject to an immobilization order is assigned or transferred without court approval.

- Authorizes an offender who cannot reasonably pay the fees required to reinstate suspended driving privileges to petition for a court-ordered payment plan.

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Aggravated vehicular homicide based on OVI-related conduct

Existing law. Under existing law 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" (see **COMMENT** 1) 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."

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 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** 2).

(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 or state OVUAC 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 1 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 retains without change the existing OVI-related aggravated vehicular homicide prohibitions and retains the existing Class 1 license suspension requirement for OVI-related aggravated vehicular homicide (R.C. 2903.06(A)(1) and (B)(2)(d)), but it revises the other parts of the penalty for the offense 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 (other than the license suspension) 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) 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** 2) (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--this is an increase from the mandatory term required under existing law) if any of the following circumstances apply (R.C. 2903.06(B)(2)(c) and (E), 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 prior OVI-related aggravated vehicular homicide violations within the previous six years;

(e) The offender previously has been convicted of or pleaded guilty to three or more prior aggravated vehicular assault violations (see "***Aggravated vehicular assault***," below) within the previous six years;

(f) The offender previously has been convicted of or pleaded guilty to three or more prior "involuntary manslaughter" violations under R.C. 2903.04 within the previous six years, in circumstances in which division (D) of that section applied regarding the violations (see **COMMENT** 3);

(g) The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in paragraph (3)(a), (b), (c), (d), (e), or (f), above, within the previous six years;

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

Aggravated vehicular homicide not based on OVI-related conduct

Existing law. Under existing law, another way 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" (see **COMMENT** 1) in one of the following ways (R.C. 2903.06(A)(2) and (F)): (1) recklessly, or (2) 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.

Aggravated vehicular homicide committed in violation of either prohibition described in the preceding paragraph generally is a felony of the third degree (a possible prison term of 1, 2, 3, 4, or 5 years), but it is a felony of the second degree (a possible prison term of 2, 3, 4, 5, 6, 7, or 8 years) 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** 2). The court must impose a mandatory prison term if the offender previously was convicted of or pleaded guilty to aggravated vehicular

homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault or if the offender was driving at the time of the offense under suspension, and, in addition to any other sanction imposed, must impose a Class 2 suspension (a definite period of three years to 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)(3) and (E).)

Operation of the bill. The bill retains without change the existing aggravated vehicular homicide prohibitions that are not based on OVI-related conduct and, except for the license suspension sanction which is changed as described below, retains without change the existing penalties for aggravated vehicular homicide that is not based on OVI-related conduct (R.C. 2903.06(A)(2), (B)(3), and (E)). Regarding the license suspension sanction, under the bill, in addition to any other sanction imposed, the court must impose a Class 2 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege *or, if the offender previously has been convicted of or pleaded guilty to a "traffic-related murder, felonious assault, or attempted murder offense"* (see "***Definition of traffic-related murder, felonious assault, or attempted murder offense***," below) *a Class 1 suspension* of the offender's license, permit, or privilege (R.C. 2903.06(B)(3); see "***Restrictions regarding Class 1 and 2 suspensions***," below).

Vehicular homicide

Existing law. Under existing law, a person commits the offense of 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" (see **COMMENT** 1) in one of the following ways (R.C. 2903.06(A)(3) and (F)): (1) negligently, or (2) as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding 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.

Vehicular homicide generally is a misdemeanor of the first degree, but it is a felony of the fourth 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** 2).

The court must impose a mandatory jail term of at least 15 days on an offender convicted of the offense when it is based on the construction zone prohibition and is a misdemeanor, and must impose a mandatory prison term on an offender convicted of the offense when: (1) it is based on the construction zone prohibition and is a felony or is based on the negligence prohibition, and (2) the offender previously was convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault or if the offender was driving at the time of the offense under suspension. In addition to any other sanction imposed, the court must impose a Class 4 suspension (a definite period of one to five years) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender 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," a Class 3 suspension (a definite period of two to ten years) of the license, permit, or privilege. (R.C. 2903.06(C) and (E).)

Operation of the bill. The bill retains without change the existing vehicular homicide prohibitions and, except for the license suspension sanction which is changed as described below, retains without change the existing penalties for vehicular homicide (R.C. 2903.06(A)(3), (C), and (E)). Regarding the license suspension sanction, under the bill, in addition to any other sanction imposed, the court must impose: (1) a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, (2) if the offender 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** 2), a Class 3 suspension of the license, permit, or privilege, *or (3) if the offender previously has been convicted of or pleaded guilty to a "traffic-related murder, felonious assault, or attempted murder offense"* (see "***Definition of traffic-related murder, felonious assault, or attempted murder offense***," below), *a Class 2 suspension* of the license, permit, or privilege. (R.C. 2903.06(C); see "***Restrictions regarding Class 1 and 2 suspensions***," below.)

Vehicular manslaughter

Existing law. Under existing law, a person commits the offense of vehicular manslaughter 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" (see **COMMENT** 1) as the proximate result of committing a violation of any provision of any section contained in R.C. Title XLV that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by the

ordinance, is substantially equivalent to any provision of any section contained in R.C. Title XLV that is a minor misdemeanor (R.C. 2903.06(A)(4)).

Vehicular manslaughter generally is a misdemeanor of the second degree, but it is a misdemeanor of the first 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** 2). In addition to any other sanction imposed, the court must impose a Class 6 suspension (a definite period of three months to two years) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender 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," a Class 4 suspension of the license, permit, or privilege. (R.C. 2903.06(D).)

Operation of the bill. The bill retains without change the existing vehicular manslaughter prohibitions and, except for the license suspension sanction which is changed as described below, retains without change the existing penalties for vehicular manslaughter (R.C. 2903.06(A)(4), (D), and (E)). Regarding the license suspension sanction, under the bill, in addition to any other sanction imposed, the court must impose: (1) a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (2) if the offender 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** 2) *or a "traffic-related murder, felonious assault, or attempted murder offense"* (see "***Definition of traffic-related murder, felonious assault, or attempted murder offense***," below), a Class 4 suspension of the license, permit, or privilege. (R.C. 2903.06(D).)

Definition of traffic-related murder, felonious assault, or attempted murder offense

The bill defines "traffic-related felonious assault or attempted murder offense" for purposes of its changes to R.C. 2903.06, as described above, as a violation of R.C. 2903.01 or 2903.02 (see the next paragraph) in circumstances in which the offender used a "motor vehicle" as the means to commit the violation, a violation of division (A)(2) of R.C. 2903.11 (see the next paragraph) in circumstances in which the deadly weapon used in the commission of the violation is a "motor vehicle," or an attempt to commit aggravated murder or murder in violation of R.C. 2923.02 (see the next paragraph) in circumstances in which the offender used a "motor vehicle" as the means to attempt to commit the offense

(R.C. 2903.06(G)(1)(f) and 2903.08(F)(2)). The bill specifies that, as used in these provisions, "motor vehicle" has the same meaning as in section 4501.01 (R.C. 2903.06(G)(1)(g); see **COMMENT** 4).

R.C. 2903.11(A)(2), described below in "***Felonious assault--license suspension requirement***," prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. R.C. 2923.02, which, in this context, is described below in "***Attempted aggravated murder or attempted murder--license suspension requirement***," prohibits a person from purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense.

Aggravated vehicular assault and vehicular assault--license suspension changes

Aggravated vehicular assault

Existing law. Under existing law, a person commits the offense of aggravated vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, causes serious physical harm to another person or another's unborn as the proximate result of committing a violation of R.C. 4511.19(A) ("state OVI"), 1547.11(A) ("state watercraft OVI"), or 4561.15(A)(3) ("state aircraft OVI"), or a violation of a municipal ordinance that is substantially equivalent to one of those violations (R.C. 2903.08(A)(1).

Aggravated vehicular assault generally is a felony of the third degree, but it is a felony of the second degree if any of the following apply (R.C. 2903.08(B)(1)): (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 assault or vehicular assault, (3) the offender previously has been convicted of or pleaded guilty to any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 2), (4) within the previous six years, the offender previously has been convicted of or pleaded guilty to three or more prior state OVI or state OVUAC violations ("state OVUAC" is the name given to a violation of R.C. 4511.19(B)), state watercraft OVI violations, state aircraft OVI violations, or municipal ordinance violations that are substantially equivalent to any of them, (5) the offender previously has been convicted of or pleaded guilty to three or more prior violations of any combination of the violations listed in clause (4), or (6) the offender previously has been convicted of or pleaded guilty to a second or subsequent felony state OVI violation.

A court must impose a mandatory prison term (from the range of terms authorized by law for a felony of the second or third degree) upon an offender who is convicted of or pleads guilty to aggravated vehicular homicide. Also, in addition to any other sanction imposed, the court must impose a Class 3 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to a aggravated vehicular assault or vehicular assault or any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 2), a Class 2 suspension of the license, permit, or privilege. (R.C. 2903.08(B)(2) and (D)(1).)

Operation of the bill. The bill retains without change the existing aggravated vehicular assault prohibitions and, except for the license suspension sanction which is changed as described below, retains without change the existing penalties for aggravated vehicular assault (R.C. 2903.08(A)(1), (B)(1), and (D)(1)). Regarding the license suspension sanction, under the bill, in addition to any other sanction imposed, the court must impose: (1) a Class 3 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (2) if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault, any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 2), *or any "traffic-related murder, felonious assault, or attempted murder offense"* (see "***Definition of traffic-related murder, felonious assault, or attempted murder offense***," under "***Aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter***," above), *either a Class 2 suspension or a Class 1 suspension* of the license, permit, or privilege (R.C. 2903.08(B)(2) and (F)(2); see "***Restrictions regarding Class 1 and 2 suspensions***," below).

Vehicular assault

Existing law. Under existing law, a person commits the offense of vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, causes serious physical harm to another person or another's unborn in any of the following ways (R.C. 2903.08(A)(2), (A)(3), and (E)): (1) 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 or speeding offense, provided that this provision only applies if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused 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, or (2) recklessly.

Vehicular assault based on a violation of the reckless-a-in-a construction-zone prohibition or the recklessness prohibition generally is a felony of the fourth degree, but it is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 2), or if, in the same course of conduct that resulted in the violation, the offender also violated R.C. 4549.02, 4549.021, or 4549.03. Vehicular assault based on a violation of the speeding-in-a-construction-zone prohibition generally is a misdemeanor of the first degree, but it is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or any "traffic-related homicide, manslaughter, or assault offense."

The court must impose a mandatory jail term of at least 7 days on an offender convicted of the offense when it is based on the speeding-in-a-construction-zone prohibition and is a misdemeanor, and must impose a mandatory prison term on an offender convicted of the offense when: (1) it is based on the speeding-in-a-construction-zone prohibition and is a felony or is based on the reckless-zone-in-a-construction-zone prohibition or the recklessness prohibition, and (2) the offender previously was convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault or if the offender was driving at the time of the offense under suspension. In any case, in addition to any other sanctions imposed, the court must impose upon the offender a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault, or any "traffic-related homicide, manslaughter, or assault offense" (see **COMMENT** 2), a Class 3 suspension of the license, permit, or privilege. (R.C. 2903.08(C) and (D)(2).)

Operation of the bill. The bill retains without change the existing vehicular assault prohibitions and, except for the license suspension sanction which is changed as described below, retains without change the existing penalties for aggravated vehicular assault (R.C. 2903.08(A)(2) and (3), (C)(1) to (3), and (D)(2)). Regarding the license suspension sanction, under the bill, in addition to any other sanction imposed, the court must impose: (1) a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (2) if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault, any "traffic-related homicide, manslaughter,

or assault offense" (see **COMMENT** 2), *or any "traffic-related murder, felonious assault, or attempted murder offense"* (see "***Definition of traffic-related murder, felonious assault, or attempted murder offense***," under "***Aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter***," above), a Class 3 suspension of the license, permit, or privilege. (R.C. 2903.08(C)(2), (C)(3), and (F)(2).)

Aggravated murder and murder--license suspension requirement

Existing law

Existing law prohibits a person from doing any of the following: (1) purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, (2) purposely causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape, (3) purposely causing the death of another who is under 13 years of age at the time of the commission of the offense, (4) if the person is under detention as a result of having been found guilty of or having pleaded guilty to a felony or breaks that detention, purposely causing the death of another, or (5) purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either the victim, at the time of the commission of the offense, is engaged in the victim's duties, or it is the offender's specific purpose to kill a law enforcement officer. A violation of the prohibition is the offense of "aggravated murder," and the offender is punished as provided in R.C. 2929.02, as described below. (R.C. 2903.01, which is not in the bill.)

Existing law, in a separate provision, also prohibits a person from doing any of the following: (1) purposely causing the death of another or the unlawful termination of another's pregnancy, or (2) causing the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not the offense of "voluntary manslaughter" or the offense of "involuntary manslaughter." A violation of the prohibition is the offense of "murder," and the offender is punished as provided in R.C. 2929.02, as described below. (R.C. 2903.02, which is not in the bill.)

Existing law provides that a person who is convicted of or pleads guilty to aggravated murder must suffer death or be imprisoned for life, as determined pursuant to R.C. 2929.022, 2929.03, and 2929.04, none of which are in the bill, except that no person who raises the matter of age pursuant to R.C. 2929.023,

which is not in the bill, and who is not found to have been 18 years of age or older at the time of the commission of the offense may suffer death. In addition, an offender who is convicted of or pleads guilty to aggravated murder may be fined an amount fixed by the court, but not more than $25,000. A person who is convicted of or pleads guilty to murder must be imprisoned for an indefinite term of 15 years to life, except that, if the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court must impose upon the offender a term of life imprisonment without parole that must be served pursuant to the Sexually Violent Predator Sentencing Law. In addition, an offender who is convicted of or pleads guilty to murder may be fined an amount fixed by the court, but not more than $15,000. The court cannot impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death. (R.C. 2929.02.)

Operation of the bill

The bill requires a license suspension in specified circumstances for a person who is convicted of or pleads guilty to aggravated murder or murder. It provides that, in addition to any other sanctions imposed for aggravated murder or murder, if the offender used a motor vehicle as the means to commit the offense, the court must impose upon the offender a Class 2 suspension (see "***Restrictions regarding Class 1 and 2 suspensions***," below) of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The bill specifies that, as used in this provision, "motor vehicle" has the same meaning as in R.C. 4501.01, as described in **COMMENT** 4. (R.C. 2929.02(D).)

In an existing provision that specifies that, whenever a driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any of a list of specified statutes, the judge of the court or mayor's court that suspended the license, permit, or privilege must cause the offender to deliver the license or permit to the court and then must forward the license or permit to the Registrar of Motor Vehicles, the bill includes a reference to a suspension imposed under the provision described in the preceding paragraph. Thus, the existing provision will apply when a suspension is imposed under the provision described in the preceding paragraph. (R.C. 4510.13(C).)

Felonious assault--license suspension requirement

Existing law

Existing law prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. A violation of this prohibition is the offense of "felonious assault." The offense generally is a felony of the second degree, but it is a felony of the first degree if the victim is a peace officer. If the victim is a peace officer and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the first degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2903.11.) A person can commit felonious assault in other manners, but those prohibitions are not relevant to the bill and are not discussed in this analysis.

Operation of the bill

The bill provides that, in addition to any other sanctions imposed for felonious assault committed as described above in "***Existing law***," if the deadly weapon used in the commission of the violation is a "motor vehicle" (see below), the court must impose upon the offender a Class 2 suspension (see "***Restrictions regarding Class 1 and 2 suspensions***," below) of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The bill specifies that, as used in this provision, "motor vehicle" has the same meaning as in section 4501.01, as described in **COMMENT** 4. (R.C. 2903.11(D)(2) and (E)(2).)

In an existing provision that specifies that, whenever a driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any of a list of specified statutes, the judge of the court or mayor of the mayor's court that suspended the license, permit, or privilege must cause the offender to deliver the license or permit to the court and then must forward the license or permit to the Registrar of Motor Vehicles, the bill includes a reference to a suspension imposed under the provision described in the preceding paragraph. Thus, the existing provision will apply when a suspension is imposed under the provision described in the preceding paragraph. (R.C. 4510.13(C).)

Attempted aggravated murder or attempted murder--license suspension requirement

Existing law

Existing law prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense. It is no defense to a charge of a violation of this prohibition that, in retrospect, commission of the offense that was the object of the attempt was factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be. A person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an offense cannot be convicted of an attempt to commit the same offense. It is an affirmative defense to a charge of a violation of this prohibition that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose.

A person who violates the prohibition described in the preceding paragraph is guilty of an attempt to commit an offense. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree. Special penalty provisions apply regarding an attempt to commit certain drug abuse offenses, an offense that is not specifically classified, or a violation of any provision of R.C. Chapter 3734. relating to hazardous wastes. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense. (R.C. 2923.02.)

Operation of the bill

The bill provides that, in addition to any other sanctions imposed for an attempt to commit aggravated murder or murder in violation of the prohibition described above under "***Existing law***," if the offender used a "motor vehicle" (see below) as the means to attempt to commit the offense, the court must impose upon the offender a Class 2 suspension (see "***Restrictions regarding Class 1 and 2 suspensions***," below) of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The bill specifies that, as used in this provision, "motor vehicle" has the same meaning as in section 4501.01, as described in **COMMENT** 4. (R.C. 2923.02(E)(2) and (F)(2).)

In an existing provision that specifies that, whenever a driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any of a list of specified statutes, the judge of the court or mayor

of the mayor's court that suspended the license, permit, or privilege must cause the offender to deliver the license or permit to the court and then must forward the license or permit to the Registrar of Motor Vehicles, the bill includes a reference to a suspension imposed under the provision described in the preceding paragraph. Thus, the existing provision will apply when a suspension is imposed under the provision described in the preceding paragraph. (R.C. 4510.13(C).)

New offense of "driving under specified lifetime suspension"

The bill prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for life under a Class 1 suspension imposed for a conviction of aggravated vehicular homicide or aggravated vehicular assault under the bill's provisions described above from operating any "motor vehicle" (see **COMMENT** 4) upon the public roads or highways within Ohio during the remaining life of the person. A violation of the prohibition is the offense of "driving under specified lifetime suspension," a felony of the third degree (see **COMMENT** 5). (R.C. 4510.18.)

Restrictions regarding Class 1 and 2 suspensions

Classes of judicial suspensions

Existing law provides that, when a court elects or is required to suspend the driver's or commercial driver's license or permit or nonresident operating privilege of any offender from a specified suspension class, for each of the following suspension classes, the court must impose a definite period of suspension from the range specified for the suspension class: (1) for a Class 1 suspension, a definite period for the life of the person subject to the suspension, (2) for a Class 2 suspension, a definite period of three years to life, (3) for a Class 3 suspension, a definite period of two to ten years, (4) for a Class 4 suspension, a definite period of one to five years, (5) for a Class 5 suspension, a definite period of six months to three years, (6) for a Class 6 suspension, a definite period of three months to two years, and (7) for a Class 7 suspension, a definite period not to exceed one year (R.C. 4510.02(A), not in the bill).

Class 1 and 2 suspensions

Prohibition against issuance or retention of license or permit. Existing law prohibits the issuance of a temporary instruction permit or driver's license to, or the retention of such a permit or license by, any person who is under a Class 1 or 2 suspension imposed for a violation of R.C. 2903.04 (a Class 1 suspension imposed for involuntary manslaughter), 2903.06 (a Class 1 or 2 suspension imposed for aggravated vehicular homicide), or 2903.08 (a Class 2 suspension imposed for aggravated vehicular assault) or whose driver's or commercial driver's

license or permit was permanently revoked prior to January 1, 2004, for a substantially equivalent violation pursuant to former R.C. 4507.16 (R.C. 4507.08(D)(6)).

The bill expands this prohibition so that it also applies regarding the Class 1 and 2 suspensions imposed under its provisions for aggravated murder, murder, felonious assault, attempted aggravated murder, or attempted murder (see "***Aggravated murder and murder--license suspension requirement***, "***Felonious assault--license suspension requirement***," and "***Attempted aggravated murder or attempted murder--license suspension requirement***," above), and, because of the existing prohibition's references to R.C. 2903.06 and 2903.08, it also applies to the Class 1 and 2 suspensions the bill enacts in those sections (see "***Aggravated vehicular homicide and vehicular homicide--license suspensions changes***" and "***Aggravated vehicular assault and vehicular assault--license suspension changes***," above).

The bill also expands the prohibition so that it also applies regarding a Class 1 or 2 suspension imposed under an existing provision, not in the bill, upon an offender who is convicted of or pleads guilty to the offense of "failure to comply with an order or signal of a police officer" under R.C. 2921.331 (R.C. 4507.08(D)(6)).

Prohibition against suspension of the suspension. Existing law prohibits a judge or mayor from suspending any Class 1 suspension, or any portion of any Class 1 suspension, required by R.C. 2903.04 (for involuntary manslaughter) or 2903.06 (for aggravated vehicular homicide).

Existing law also prohibits a judge or mayor from suspending the first 30 days of any Class 2, 3, 4, 5, or 6 suspension imposed under R.C. 2903.06 (for aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter) or 2903.08 (for aggravated vehicular assault or vehicular assault). (R.C. 4510.13(C)(3).)

The bill expands these prohibitions as follows (R.C. 4510.13(C)(3): (1) it expands the first prohibition so that it also applies regarding a Class 1 suspension imposed under its provisions for aggravated vehicular homicide and regarding a Class 1 suspension imposed under existing R.C. 2921.331, which is not in the bill (see "***Prohibition against issuance or retention of license or permit***," above, for a summary of that section); and (2) it expands the second prohibition so that it also applies regarding a Class 2 suspension imposed under its provisions for aggravated murder, murder, felonious assault, attempted aggravated murder, or attempted murder (see "***Aggravated murder and murder--license suspension requirement***," "***Felonious assault--license suspension requirement***," and

"***Attempted aggravated murder or attempted murder--license suspension requirement***," above).

Modification or termination of a Class 1 or Class 2 suspension. Existing law specifies that a person whose driver's or commercial driver's license has been suspended for life under a Class 1 suspension or as otherwise provided by law or has been suspended for a period in excess of 15 years under a Class 2 suspension may file a motion with the sentencing court for modification or termination of the suspension. The person filing the motion must demonstrate all of the following: (1) that at least 15 years have elapsed since the suspension began, (2) that, for the past 15 years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, Ohio law, or the law of any Ohio political subdivision, or any violation of a suspension under R.C. Chapter 4510. or a substantially equivalent municipal ordinance, (3) that the person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standard set forth in R.C. 4509.51, or proof, to the satisfaction of the Registrar of Motor Vehicles, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in that section, and (4) if the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or combination of them at the time of the offense or because at the time of the offense the person's system contained a prohibited concentration of alcohol, that the person successfully completed an alcohol, drug, or alcohol and drug treatment program, has not abused alcohol or other drugs for a period satisfactory to the court, and, for the past 15 years, has not been found guilty of any alcohol-related or drug-related offense.

Upon receipt of a motion for modification or termination of a suspension filed under the provision described in the preceding paragraph, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but cannot grant it without a hearing. If the court denies a motion without a hearing, it may consider a subsequent motion filed by the person, but if it denies the motion after a hearing, it cannot consider a subsequent motion for the person. The court may hear only one motion filed by a person under the provision.

At any hearing on a motion for modification or termination of a suspension filed under the provision described in the second preceding paragraph, the person who seeks the modification or termination has the burden to demonstrate, under oath, that the person meets the requirements described in that paragraph. At the hearing, the court must afford the offender or the offender's counsel, the prosecuting attorney, and the victim or victim's representative an opportunity to present oral or written information relevant to the motion. Before ruling on the motion, the court must consider certain specified factors. The court may modify or terminate the suspension subject to any considerations it considers proper if it

finds that allowing the person to drive is not likely to present a danger to the public. If a court modifies a person's license suspension under this provision and the person subsequently is found guilty of any moving violation or of any substantially equivalent municipal ordinance that carries as a possible penalty the suspension of a person's driver's or commercial driver's license, the court may reimpose the Class 1 or 2 suspension, or other lifetime suspension, whichever is applicable. (R.C. 4510.54.)

The bill specifies that the existing mechanism for modification or termination of a Class 1 or 2 suspension that is described above does not apply to any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for life under a Class 1 suspension imposed under the bill's provisions for aggravated vehicular homicide or aggravated vehicular assault or a Class 2 suspension imposed under its provisions for vehicular homicide, aggravated murder, murder, felonious assault, attempted aggravated murder, or attempted murder (all of these suspensions are discussed in preceding parts of this analysis) (R.C. 4510.54(F)).

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

Existing law. Current law provides that, in any criminal prosecution or juvenile court proceeding charging state OVI, 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 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

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[1] *"Equivalent offense" means any of the following (R.C. 4511.181, which is not in the bill): (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).*

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** 6; 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

Existing 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)).

Expansion of the Crime Victims Reparations Law

Operation of the bill

The bill allows a qualifying claimant to file a claim for an award of reparations from the Reparations Fund if the person suffers economic loss from criminally injurious conduct that includes conduct arising out of the ownership, maintenance, or use of a motor vehicle when the person engaging in the conduct acted in a manner that caused serious physical harm to a person and constituted either the existing offense of "failure to stop after an accident" or the existing offense of "failure to stop after a nonpublic road accident" (see **COMMENT** 7 for an explanation of these offenses) or, if the conduct occurred in another jurisdiction, a substantially similar offense under the law of the other jurisdiction. If this type of criminally injurious conduct occurred on or after July 1, 2000, the bill provides that an application for an award of reparations must be filed within two years after the effective date of the bill or as provided under current law, whichever is later, as described below in "***Background: the Crime Victims Reparations Law***." (R.C. 2743.51(C)(1)(e) and (2)(e) and 2743.56(B)(3).)

Background: the Crime Victims Reparations Law

The Crime Victims Reparations Law, contained in R.C. 2743.51 to 2743.72, provides for the making of awards of reparations to crime "victims" or, in certain circumstances, their "dependents" or other specified persons ("claimants" under the Law), for "economic loss" arising from "criminally injurious conduct," if the victim, dependent, or other specified person files a claim for an award with the Attorney General (the AG) and if specified criteria are satisfied. A claim for an award must be filed as follows (R.C. 2743.56(B)): (1) if the victim of the conduct was a minor, within two years of the victim's 18th birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later, or (2) if the victim was an adult, within two years after the occurrence of the conduct.

Awards are made out of the Reparations Fund. The AG generally administers the program established under that Law, and eligibility for an award is determined, depending upon the circumstances present, by the AG, a panel of Court of Claims Administrators, or the Court of Claims itself.

Applicable Crime Victims Reparations Law definitions

"***Claimant***" means both of the following categories of persons (R.C. 2743.51(A)):

(1) Any of the following persons who claim an award of reparations:

(a) A victim who was one of the following at the time of the criminally injurious conduct: (i) a U.S. resident, or (ii) a resident of a foreign country the laws of which permit residents of Ohio to recover compensation as victims of offenses committed in that country.

(b) A dependent of a deceased victim who is described in (1)(a), above;

(c) A qualifying third person who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in (1)(a), above, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in (1)(a), (b), or (c);

(e) The estate of a deceased victim who is described in (1)(a), above.

(2) Any of the following persons who claim an award of reparations:

(a) A victim who had a permanent place of residence within Ohio at the time of the criminally injurious conduct and who, at the time of the criminally injurious conduct, complied with any one of the following: (i) had a permanent place of employment in Ohio, (ii) was a member of the regular armed forces of the United States or of the U.S. coast guard or was a full-time member of the Ohio organized militia or of the U.S. army reserve, naval reserve, or air force reserve, (iii) was retired and receiving social security or any other retirement income, (iv) was 65 years age or older, (v) was temporarily in another state for the purpose of receiving medical treatment, (vi) was temporarily in another state for the purpose of performing employment-related duties required by an employer located within Ohio as an express condition of employment or employee benefits, (vii) was temporarily in another state for the purpose of receiving occupational, vocational, or other job-related training or instruction required by an employer located within Ohio as an express condition of employment or employee benefits, (viii) was a full-time student at an academic institution, college, or university located in another state, or (ix) had not departed the geographical boundaries of Ohio for a period exceeding 30 days or with the intention of becoming a citizen of another state or establishing a permanent place of residence in another state.

(b) A dependent of a deceased victim who is described in (2)(a), above;

(c) A qualifying third person who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in (2)(a), above, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in (2)(a), (b), or (c), above;

(e) The estate of a deceased victim who is described in (2)(a), above.

"***Criminally injurious conduct***" means one of the following (R.C. 2743.51(C)):

(1) For the purposes of any person described in paragraph (1) of the definition of "claimant," any conduct that occurs or is attempted in Ohio; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. For the purposes of any person described in paragraph (2) of the definition of "claimant," any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted.

"Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies: (a) the person engaging in the conduct intended to cause personal injury or death, (b) the person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of Ohio, (c) the person engaging in the conduct was using the vehicle in a manner that constitutes an OVI violation, (d) the conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of R.C. 2903.08 (vehicular assault offenses).

(2) For the purposes of any person described in (1), above, terrorism that occurs within or outside the territorial jurisdiction of the United States.

"***Dependent***" means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after the victim's death (R.C. 2743.51(D)).

"***Economic loss***" means economic detriment consisting only of allowable expense, work loss, funeral expense, unemployment benefits loss, replacement services loss, cost of crime scene cleanup, and cost of evidence replacement. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. (R.C. 2743.51(E).)

Terrorism Law changes

Declaration of Material Assistance/Nonassistance--existing law

Existing law requires specified persons to declare that they have not provided material assistance to an organization listed in the United States Department of State Terrorist Exclusion List. The declaration is made on a form the Director of Public Safety prepares, entitled "Declaration Regarding Material Assistance/Nonassistance to Terrorist Organization." The form generally is required of persons applying for a license of the type the Director of Public Safety identifies pursuant to rule; by any person, company, affiliated group, or organization that is entering into a contract to conduct business or receive funding from a state agency, instrumentality or political subdivision (subject to exceptions); and a person under final consideration for employment with the state or an instrumentality or subdivision of the state. Existing law provides a review procedure under which any person denied a license, a contract, or employment due to the disclosure of providing material assistance may receive a review of that decision by the Department of Public Safety. (R.C. 2909.32, 2909.33, and 2909.34.)

Changes to procedures for denial of license

The bill requires any licensing entity that denies a license or renewal because of the disclosure of providing material assistance to send written notice of the denial to the applicant within three business days of the decision to deny. The bill provides a limitations period on the right to request a review by requiring the notice to inform the applicant of the right to have the Department of Public Safety review the denial if the applicant request that review within 60 days after the mailing date of the notice. The bill also requires the licensing entity to provide the department of public safety with a copy of any notice of any denial of a license for disclosure of material assistance. (R.C. 2909.32(C)(3) and (D).)

Exemption from disclosure requirements for licensing

The bill specifies that the disclosure requirements for licensure do not apply to either of the following (R.C. 2909.32(I)):

(1) A federally insured depository institution that is subject to anti-money laundering and antiterrorism requirements under federal law, any subsidiary of such a depository institution, or an officer or employee of such a depository institution or subsidiary when that license is related to the persons duties as an officer or employee;

(2) Any affiliate of an entity described in paragraph (1), other than an affiliate that is a subsidiary, when that affiliate is subject to anti-money laundering and antiterrorism requirements under federal law, or an officer or employee of such an affiliate when that license is related to the person's duties as an officer or employee.

Precertification for doing business with or receiving funding from a public entity

Under existing law, the state, or a political subdivision of the state is responsible for providing the Declaration of Material Assistance/Nonassistance form to entities with which it does business or provides funding. Existing law permits each public entity to establish its own system of precertification so that an entity doing business or receiving funding need certify only once a year with that public entity. (R.C. 2909.33(A)(3) and (D).)

The bill establishes a centralized procedure for precertification that requires a single certification that is effective up to two years, with a uniform date on which all certifications expire. The bill directs the Office of Budget and Management to act as a centralized repository for all certification forms (submitted for the purpose of doing business or receiving funding from a public entity) and directs the Director of the Office of Budget and Management (OBM) to maintain a centralized database of all declarations. The precertification is good for up to two years. With all precertifications expiring on June 30 of the second year of each state biennium period. Any entity must submit a new declaration to remain certified for the ensuing two-year period. (R.C. 2909.33(A)(1), (A)(3), (D), and (E).)

The bill also requires the Director of Public Safety and the Director of OBM to make the form and the Terrorist Exclusion List available on their respective department web sites, and by any other means the Director of Public Safety deems appropriate. If an entity discloses providing material assistance, the Director of OBM sends the declarant a written notice of prohibition against doing

business or receiving funding. The notice informs the declarant of the right to a review of the prohibition by the Department of Public Safety if the declarant requests that review within 60 days after the notice of prohibition was mailed. The Director of OBM is to send a copy of any notice to the Department of Public Safety. (R.C. 2909.33(A)(2) and (E).)

Exception to certification

Existing law requires certification by an entity contracting to do business only if the entity does business with or receives funding in an aggregate amount greater than $100,000, excluding the amount of any personal benefits, annually from the state, an instrumentality, or political subdivision of the state. The bill changes the time frame from "annually" to a time certain of July 1 to June 30 of each year. (R.C. 2909.33(C).)

Penalty

Existing law establishes that any person that knowingly providing false certification is permanently banned from conducting business with public entities and is guilty of a felony of the fifth degree. The bill adds a penalty for failing to certify, in the amount of a fine of $1,000 for each day of doing business or receiving funding without required certification. The amendment provides an exemption during the first 30 days of a contract that first brings the entity above the $100,000 threshold. (R.C. 2909.33(G)(2).)

Exempt from disclosure

The bill exempts the following from the requirement to disclose the provision of material assistance/nonassistance when contracting with, or receiving funding from a public entity (R.C. 2909.33(H)):

(1) Financial services provided by or through either of the following: (a) a federally insured depository institution that is subject to anti-money laundering and antiterrorism requirements under federal law or any subsidiary of such a depository institution, or (b) an affiliate of a depository institution defined in (a). Under the bill, "financial services" include, but are not limited to, services related to currency, payment instruments, other financial securities, funds, and transfer of funds.

(2) Contracts between state agencies, instrumentalities, or political subdivisions of the state;

(3) Any person, company, affiliated group, or organization providing necessary, nonelective healthcare services.

Disclosure by new public employees

Under existing law, only those under final consideration for public employment are required to file a declaration of material assistance/nonassistance. The bill modifies the procedures under which a public entity notifies an individual that employment is being denied due to the disclosure of providing material assistance. The bill requires the public entity to send written notice of that denial to the applicant within three business days of the decision to deny, along with notice of the applicant's right to a review of the denial by the Department of Public Safety if the applicant request that review within 60 days of the mailing date of the notice. An entity that denies employment due to the disclosure of material assistance must send a copy of any notice of denial of employment to the Department of Public Safety. (R.C. 2909.34(C).)

Extension of date of preparation and submission of report of Task Force on Implementing the Federal Domestic Violence Option in the Ohio Works First Program

Existing law

Amended Substitute Senate Bill 238 of the 126th General Assembly created the Task Force on Implementing the Federal Domestic Violence Option in the Ohio Works First Program. The act took effect on September 21, 2006. The act specified that the Task Force consists of the following members: (1) three members of the Senate, appointed by the President of the Senate, not more than two of whom may belong to the same political party as the President, (2) three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may belong to the same political party as the Speaker, (3) the Director of Job and Family Services, or the Director's designee, (4) the following individuals, appointed by the Governor: (a) two individuals representing the Ohio Empowerment Coalition, (b) two individuals representing domestic violence prevention organizations, (c) one individual who has been a victim of domestic violence, (d) one individual from a county department of job and family services, and (e) one prosecuting attorney. Initial appointments to the Task Force were required to be made not later than 45 days after the act's effective date, and vacancies are to be filled in the manner provided for initial appointments.

The Task Force was required to convene for its first meeting not later than 90 days after the act's effective date. A majority of the members constitutes a quorum for the conduct of meetings and transaction of business. The Task Force is required to do all of the following:

(1) Study issues surrounding the implementation of the "federal domestic violence option" as an exemption to the work and time limit requirements for benefits under the Ohio Works First Program, as authorized by the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996;"

(2) Assess the current status of domestic violence services in each county, including counseling and screening;

(3) Review the application and implementation of the "federal domestic violence option" in other states;

(4) Conduct public meetings in different parts of the state throughout its existence.

(5) Not later than December 31, 2006, prepare and submit to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives, a report that must include recommendations on how to implement the federal domestic violence option within the Ohio Works First Program. On submission of the report, the Task Force will cease to exist. (Section 6 of Am. Sub. S.B. 238 of the 126th General Assembly.)

Operation of the bill

The bill extends, from December 31, 2006, until March 31, 2007, the date by which the Task Force on Implementing the Federal Domestic Violence Option in the Ohio Works First Program must prepare and submit its report to the Governor and the specified leadership of the General Assembly (Section 3 of the bill, amending Section 6 of Am. Sub. S.B. 238 of the 126th General Assembly).

Vehicle immobilization, impoundment, and forfeiture provisions

Existing law

Suspension of driving privileges for financial responsibility violations. Chapter 4509. of the Revised Code deals with the financial responsibility of motor vehicle owners and operators. Among other things, R.C. 4509.101 prohibits a person from operating or permitting the operation of a motor vehicle in Ohio unless proof of financial responsibility is maintained continuously throughout the vehicle's registration period or with respect to the driver's operation of another's vehicle. Proof of responsibility usually takes the form of liability insurance. The chapter also provides for the suspension or cancellation of the driving privileges of a person who violates specified motor vehicle laws. A person whose driving privileges are suspended for not maintaining proof of financial responsibility can have the privileges reinstated on certain conditions, one of which is that the person

file and maintain proof of financial responsibility with the Bureau of Motor Vehicles (BMV) for three or five years from the date of suspension, depending on the duration of the suspension (R.C. 4509.101, 4509.31, and 4509.45--not in the bill).

Immobilization of motor vehicles for financial responsibility violations. Existing law: (1) prohibits a person whose driver's or commercial driver's license, temporary instruction permit, or nonresident's operating privilege has been suspended or canceled pursuant to Chapter 4509. from operating any motor vehicle in Ohio, or knowingly permitting any motor vehicle the person owns to be operated by another person in Ohio, during the period of the suspension or cancellation, except as specifically authorized by Chapter 4509., and (2) prohibits a person from operating a motor vehicle within this state, or knowingly permitting any motor vehicle owned by the person to be operated by another person in the state, during the period in which the person is required to file and maintain proof of financial responsibility with the BMV for a violation of R.C. 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle (R.C. 4510.16(A)).

A violation of the foregoing provisions is the offense of "driving under financial responsibility law suspension or cancellation," a misdemeanor of the first degree. As part of the sentence, the court must impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a definite period of time not exceeding one year. (R.C. 4510.16(B)(1).)

Immobilization and impoundment. In addition to or independently of any other sentence the court imposes, if the vehicle is registered in the offender's name, the court must do one of the following (R.C. 4510.16(B)(2)):

(1) Except as otherwise provided in paragraph (2) or (3), order the immobilization of the vehicle, and impoundment of the vehicle's license plates, for 30 days;

(2) If within five years of the offense, the offender has been convicted of or pleaded guilty once to "driving under financial responsibility law suspension or cancellation" or a substantially similar municipal ordinance, order the immobilization of the vehicle, and impoundment of the vehicle's license plates, for 60 days;

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty two or more times to "driving under financial responsibility law suspension or cancellation" or a substantially similar municipal ordinance, order the criminal forfeiture of the vehicle to the state. If title to a motor vehicle that is

subject to an order for criminal forfeiture is assigned or transferred and certain lienholders or other persons interested in the vehicle neither knew nor had reason to know that the vehicle would be used in the violation (R.C. 4503.234(B)(2) and (3)--not in the bill), in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. The proceeds from any fine must be applied to the costs of seizing, storing, and selling the vehicle, the payment of liens and other ownership interests in the vehicle, and designated public funds (not exceeding $1,000) with the remainder going to other designated public funds, in accordance with R.C. 4503.234(C)(2) (not in the bill).

The court may not release a vehicle from immobilization orders issued for "driving under financial responsibility law suspension or cancellation" unless it is presented with current proof of financial responsibility with respect to that vehicle (R.C. 4510.16(C)).

Existing law further provides that if a person is convicted of or pleads guilty to a municipal ordinance that is substantially equivalent to "driving under financial responsibility law suspension or cancellation" (see the first paragraph of this section, above) and if the vehicle the offender was operating at the time of the offense is registered in the offender's name, the court, in addition to and independent of any sentence that it imposes upon the offender, must do whichever of the following is applicable (R.C. 4510.161(B)):

(1) If, within five years of the current offense, the offender was not convicted of or did not plead guilty to "driving under financial responsibility law suspension or cancellation" or a municipal ordinance that is substantially equivalent to that offense, order the immobilization of the vehicle and impoundment of the vehicle's license plates for 30 days;

(2) If, within five years of the current offense, the offender was convicted of or pleaded guilty once to "driving under financial responsibility law suspension or cancellation" or a municipal ordinance that is substantially equivalent to that offense, order the immobilization of the vehicle and impoundment of the vehicle's license plates for 60 days;

(3) If, within five years of the current offense, the offender was convicted or pleaded guilty two or more times to "driving under financial responsibility law suspension or cancellation" or a municipal ordinance that is substantially equivalent to that offense, order the criminal forfeiture of the vehicle to the state in accordance with R.C. 4503.234.

When a person is convicted of or pleads guilty to "driving under financial law suspension or cancellation" or a substantially equivalent municipal ordinance

and the above immobilization, impoundment, or forfeiture penalties apply, the trial judge of the court of record or the mayor of the mayor's court that imposes sentence: (1) when applicable is required to order the immobilization of the vehicle used in the offense and impoundment of the identification license plates in accordance with existing R.C. 4503.233 and 4510.16(B)(2) or (3) or 4510.161(B)(1) or (2) and may impound the identification license plates of other vehicles registered in the offender's name, and (2) when applicable is required to order the criminal forfeiture to the state of that vehicle in accordance with existing R.C. 4503.234 and 4510.16(B)(4) or 4510.161(B)(3) and may impound the identification license plates of other vehicles registered in the offender's name (R.C. 4507.164(D)).

Operation of the bill

Elimination of mandatory immobilization. The bill eliminates the mandatory immobilization of a vehicle and impoundment of its license plates when an offender to whom the vehicle involved is registered and who violates R.C. 4510.16(A) or a substantially similar municipal ordinance has no previous violation of that type in the preceding five years. Under the bill, if the offender has no previous violation of that type within that time, the court *may* order immobilization and impoundment for *not more than* 30 days. The bill retains mandatory immobilization and impoundment for 60 days if the offender has one previous violation of that type within that time. The bill also retains mandatory criminal forfeiture of the vehicle for two or more violations of that type within five years of the offense, but it clarifies that the vehicle involved must be registered in the offender's name and that forfeiture is in addition to or independent of any other sentence. The bill makes similar changes to the existing provisions regarding immobilization, impoundment, and forfeiture for convictions of violations of a municipal ordinance substantially equivalent to R.C. 4510.16. (R.C. 4510.16(B), 4510.161, and 4510.41.)

Fine for improper transfer of immobilized vehicle. The bill authorizes the court to fine an offender who, without court approval, assigns or transfers the title to a motor vehicle that is subject to an immobilization order the value of the vehicle as determined by publications of the National Auto Dealers Association. The fine is in addition to or independent of any other penalty established by law and is distributed in the same manner as the proceeds of the sale of a forfeited vehicle are distributed pursuant to R.C. 4503.234(C)(2). (R.C. 4503.233(D)(6).)

Payment plan for payment of reinstatement fees. Under existing law, when a municipal or county court determines in a pending case involving an offender that the offender cannot reasonably pay the fees required under various provisions of the Revised Code in order to reinstate suspended driving privileges, the court may establish a payment plan under which the offender pays in

installments of at least $50 per month or it may grant the offender limited driving privileges until some future date at which the fees must be paid in full. The bill eliminates the reference to pending cases and authorizes an offender who cannot reasonably pay the fees to file a petition for an order establishing one of the authorized payment plans. The petition may be filed in the municipal court, county court, or, if the offender is under 18, the juvenile division of the court of common pleas in whose jurisdiction the person resides or, if the person is not a resident of Ohio, in the Franklin County Municipal Court or the Juvenile Division of the Franklin County Court of Common Pleas. (R.C. 4510.10(C).)

Miscellaneous. The bill amends several sections of the Revised Code to conform them to the changes discussed above (R.C. 4503.233(A)(1), 4503.234(A) and (E), 4507.02(B)(1), and 4507.164(C)(1) and (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 (existing R.C. 2903.09, which is not in the bill).

2. 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 (existing R.C. 2903.06(G), which is not in the bill).

3. Existing R.C. 2903.04, which is not in the bill, prohibits a person from causing the death of another or the unlawful termination of another's pregnancy in either of the following manners: (a) as a proximate result of the offender's committing or attempting to commit a felony, or (b) as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in R.C. Title XLV that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in R.C. Title XLV that is a minor misdemeanor. A violation of the prohibition is the offense of "involuntary manslaughter," which is a felony of the first degree if the violation is of clause (a) of the preceding sentence and is a felony of the third degree if the violation is of clause (b) of the preceding sentence.

Division (D) of the section provides that, if an offender is convicted of or pleads guilty to involuntary manslaughter and if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's offense was state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance or included, as an element of that felony, misdemeanor, or regulatory offense, the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the following apply: (a) the court must impose a Class 1 suspension (a definite period for life) of the offender's driver's or commercial driver's license or permit or nonresident operating privilege, and (b) the court must impose a mandatory prison term for the offense from the range of prison terms authorized for the level of the offense.

4. Existing R.C. 4501.01, not in the bill, specifies that, as used in R.C. Chapter 4501., 4503., 4505., 4507., 4509., 4510., 4511., 4513., 4515., and 4517., and in the penal laws, except as otherwise provided:

(a) "Motor vehicle" means any vehicle (see the next paragraph), including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires. "Motor vehicle" does not include utility vehicles as defined in R.C. 4501.01(VV), motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of 25 miles per hour or less, threshing machinery, hay-baling machinery, corn sheller, hammermill and agricultural tractors, machinery used in the production of horticultural, agricultural, and vegetable products, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

(b) "Vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

5. Existing R.C. 4510.11, not in the bill, prohibits a person whose driver's license or permit or nonresident operating privilege has been suspended under any

Revised Code provision, other than R.C. Chapter 4509., or under any applicable law in any other jurisdiction in which the person's license or permit was issued, from operating any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within Ohio during the period of suspension, unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges. A violation of this prohibition is the offense of "driving under suspension or in violation of a license restriction," a misdemeanor of the first degree. The sentencing court must impose a Class 7 judicial license suspension of the person's license, permit, or privilege. Existing R.C. 4510.14, not in the bill, includes a separate prohibition and penalties regarding a person whose license, permit, or privilege has been suspended under R.C. 4511.19, 4511.196, or 4510.07, for an OVI-related conviction or under R.C. 4511.191, which is the state's Vehicle Implied Consent Law.

6. 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.

R.C. 4549.02 provides that in case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately must stop the driver's or operator's motor vehicle at the scene of the accident or collision and must remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision. In the event the injured person is unable to comprehend and record the required information, the other driver involved in the

accident or collision forthwith must notify the nearest police authority concerning the location of the accident or collision, and the driver's name, address, and the registered number of the motor vehicle the driver was operating, and then remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance. If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle must securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle. A violation of this provision is the offense of "failure to stop after an accident," the penalty for which ranges from a misdemeanor of the first degree to a felony of the third degree depending on whether serious physical harm or death results.

R.C. 4549.021 provides that in case of accident or collision resulting in injury or damage to persons or property upon any public or private property other than public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, must stop, and, upon request of the person injured or damaged, or any other person, must give that person the driver's or operator's name and address, and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, and, if available, exhibit the driver's or operator's driver's or commercial driver's license. If the owner or person in charge of the damaged property is not furnished such information, the driver of the motor vehicle involved in the accident or collision, within 24 hours after the accident or collision, must forward to the appropriate law enforcement agency the same information required to be given to the owner or person in control of the damaged property and give the date, time, and location of the accident or collision. If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle must securely attach the required information, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle. A violation of this provision is the offense of "failure to stop after a nonpublic road accident," the penalty for which ranges from a misdemeanor of the first degree to a felony of the third degree depending on whether serious physical harm or death results.

HISTORY

ACTION	DATE
Introduced	12-29-05
Reported, H. Criminal Justice	05-10-06
Passed House (90-0)	05-16-06
Reported, S. Judiciary - Criminal Justice	---

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