Dennis M. Papp *Legislative Service Commission*

Sub. H.B. 215*

127th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Reps. Collier, Evans, Latta, Brown, Chandler, Stebelton, Combs, Setzer, Aslanides, Bacon, Batchelder, Blessing, Book, Boyd, Core, Daniels, DeBose, DeGeeter, Dodd, Domenick, Dyer, Flowers, Gibbs, J. Hagan, R. Hagan, Mallory, Patton, Schindel, Schlichter, Sears, Wagner, B. Williams, S. Williams, Yuko

BILL SUMMARY

- Includes *Salvia divinorum* and salvinorin A as controlled substances, in Schedule 1.

- Requires the Executive Director of the State Board of Pharmacy to adopt rules that specify prohibited concentrations of *Salvia divinorum* and salvinorin A for purposes of the prohibitions against a person operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters, or operating any vehicle, streetcar, or trackless trolley within Ohio, while having a prohibited concentration of the specified controlled substance in the person's system.

- Makes clarifying, conforming, and technical changes in the court cost add-on for indigent drivers alcohol treatment and in certain provisions of, or that relate to, Am. Sub. S.B. 17 of the 127th General Assembly.

- Authorizes the sheriff of a county that lacks a sufficient jail or staff to convey a person who has been charged with an offense and is being held pending trial to a jail in a contiguous county in an adjoining state if the sheriff considers that jail most convenient and secure.

* 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.

- Provides that a sheriff who conveys a prisoner to another county and the county commissioners of the county that employs the conveying sheriff are immune from civil liability for damages suffered or caused by the prisoner while the prisoner is in the custody of the receiving sheriff.

- Prohibits the sheriff of an Ohio county from transferring prisoners to a contiguous county in an adjoining state under the bill unless there is deposited weekly with the sheriff of the contiguous county an amount equal to the actual cost of keeping and feeding each prisoner.

- Provides that the minimum standards for jails applicable for jails in an adjoining state apply to a jail in that adjoining state that receives Ohio prisoners under the bill and that all other terms of the transfer of a prisoner from a county in Ohio to a contiguous county in an adjoining state be as agreed upon by the board of county commissioners, any applicable governmental entity in the receiving county, and the sheriffs involved in the transfer.

- Provides that the penalty enhancement for aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter for driving under a license suspension and the requirement for a mandatory prison term in certain cases of aggravated vehicular homicide and vehicular homicide for driving under suspension also apply to driving under cancellation and driving without a license.

- Waives from commercial driver's license requirements under Ohio law the operation of police vehicles used to transport prisoners.

- Provides for suspension of the eligibility for Medicaid of certain persons confined in a state or local correctional facility.

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CONTENT AND OPERATION

Inclusion of Salvia in controlled substance Schedule 1

Background

Existing law defines a controlled substance as any drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of Ohio's controlled substances law (R.C. 3719.01, not in the bill). Schedules I, II,

III, IV, and V are established by R.C. 3719.41, as amended pursuant to R.C. 3719.43 or 3719.44 (see **COMMENT** 1 and 2). Schedule I contains controlled substances that generally are considered to be the most dangerous (e.g., heroin, LSD, marihuana, mescaline, peyote, psilocybin, hashish, methaqualone, etc.), whereas Schedule V contains controlled substances that generally are considered to be less potent but still dangerous (e.g., not more than specified small amounts of codeine or opium in medicinal usage, ephedrine unless exempted pursuant to R.C. 3719.44 as described in **COMMENT** 2, etc.). Schedules II, III, and IV controlled substances fit in a continuum between Schedules I and V.

The sale and distribution of controlled substances is regulated pursuant to R.C. Chapters 3719 and 4729., and a series of criminal offenses contained in those Chapters and R.C. Chapter 2925. prohibit the sale, distribution, possession, use, manufacture, etc., of controlled substances other than in accordance with the regulatory provisions of R.C. Chapters 3719. and 4729. The criminal penalties for certain drug offenses differ, depending on whether the drug involved in the offense is a Schedule I, II, III, IV, or V controlled substance, with the penalties for offenses involving a Schedule I or II controlled substance generally being classified as a higher degree of misdemeanor or felony than the same offenses involving Schedule III, IV, or V controlled substances.

Salvia divinorum

According to the U.S. Drug Enforcement Agency (DEA), *Salvia divinorum* is a perennial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. The herb can be chewed or smoked to induce illusions and hallucinations. Currently, *Salvia divinorum* is not listed in the federal Controlled Substances Act but is considered a "drug of concern" by the DEA. According to the DEA, salvinorin A (also called Divinorin A) has been identified to be the active constituent of *Salvia divinorum* that is responsible for the hallucinogenic effects of the herb.[1]

Currently, *Salvia divinorum* and salvinorin A are not included in any of the controlled substance Schedules set forth in R.C. 3719.41 and are not otherwise classified as controlled substances in Ohio. The bill includes *Salvia divinorum* and salvinorin A as Schedule I controlled substances (R.C. 3719.41, Schedule 1 (C)(33) and (34)). Consequently, all of the Revised Code provisions pertaining to controlled substances (such as the drug offenses) will apply to *Salvia divinorum* and salvinorin A.

[1] See http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm.

Prohibited concentration of Salvia for purposes of R.C. 1547.11 and 4511.19

Existing law

Existing law prohibits a person from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if the person is under the influence of alcohol, a drug of abuse, or a combination of them, if the person has at least a specified concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine, or if the person has at least a specified concentration of a specified controlled substance or of a metabolite of a specified controlled substance in the person's urine, whole blood, or blood serum or plasma (R.C. 1547.11(A); a violation of this prohibition is the offense of OMWI).

Existing law also prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio if the person is under the influence of alcohol, a drug of abuse, or a combination of them, if the person has at least a specified concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine, or if the person has at least a specified concentration of a specified controlled substance or of a metabolite of a specified controlled substance in the person's urine, whole blood, or blood serum or plasma (R.C. 4511.19(A); a violation of this prohibition is the offense of OVI).

Operation of the bill

The bill requires the Executive Director of the State Board of Pharmacy, as soon as possible after the necessary and appropriate scientific evidence is available and with the Board's approval, to adopt rules that do the following: (1) specify the amount of *Salvia divinorum* and the amount of salvinorin A that constitute concentrations of *Salvia divinorum* and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state, and (2) specify the amount of *Salvia divinorum* and the amount of salvinorin A that constitute concentrations of *Salvia divinorum* and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating any vehicle, streetcar, or trackless trolley within this state (R.C. 4729.041).

The bill expands the existing "prohibited concentration prohibitions" contained in R.C. 1547.11 and 4511.19 so that, in addition to the substances that they currently cover, the prohibitions also prohibit a person from operating or being in physical control of any vessel underway or manipulating any water skis,

aquaplane, or similar device on Ohio waters, and from operating any vehicle, streetcar, or trackless trolley within Ohio, if the State Board of Pharmacy has adopted rules setting a prohibited concentration of *Salvia divinorum* or salvinorin A pursuant to the provision described in the preceding paragraph, the rule is in effect, and the person has a concentration of *Salvia divinorum* or salvinorin A of at least that amount so specified by rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma (R.C. 1547.11(A)(5)(h) and 4511.19(A)(1)(j)(xi)).

Chemical tests--warnings to repeat offenders

Existing law

Existing law provides that:

(1) If a law enforcement officer arrests a person for operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of the state's OMWI prohibitions or a substantially equivalent municipal ordinance and if the person previously has been convicted of or pleaded guilty to two or more violations of the state's OMWI prohibitions or other equivalent offenses, the law enforcement officer must request the person to submit, and the person must submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes such a request must advise the person at the time of the arrest that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. The officer must also advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. The advice must be in written form prescribed by the chief of the division of watercraft and must be read to the person. The form must contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. The reading of the form must be witnessed by one or more persons, and the witnesses must certify to this fact by signing the form. (R.C. 1547.111(B)(1), (C), and (D).)

(2) If a law enforcement officer arrests a person for state OVI, a violation of R.C. 4511.19(B), a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, or a violation of a municipal OVI ordinance and if the person is required to be sentenced under R.C. 4511.19(G)(1)(c), (d), or (e) for previously being convicted of or pleading guilty to two, three, or four state OVI offenses, state OVUAC offenses, or other equivalent offenses within six years of the

offense, within 20 years of the offense being convicted of or pleading guilty to five or more violations of that nature, or previously being convicted of or pleading guilty to felony OVI, the law enforcement officer must request the person to submit, and the person must submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes a request pursuant to this provision must advise the person that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to the chemical test. The officer must also advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. (R.C. 4511.191(A)(5)(a) and 4511.191(A) to (C).)

(3) If a person refuses to submit to a chemical test upon a request made pursuant to the provision described in either paragraph (1) or (2), above, the law enforcement officer who made the request may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma (R.C. 1547.111(B)(2) and 4511.191(A)(5)(b)).

(4) If a law enforcement officer asks a person under arrest as described above in paragraph (2) to submit to a chemical test or tests under that provision and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended. (R.C. 4511.191 and 4511.192(D).)

Operation of the bill

The bill modifies the provisions described above in (1) and (2) under "***Existing law***" to clarify that a law enforcement officer who makes a request pursuant to either provision that a person submit to a chemical test is not required to advise the person of the consequences of refusing to submit to the test or tests and is not required to give the person a "warning form" that must be given to a person in other circumstances in which an officer requests the person to submit to a chemical test (R.C. 1547.111(B)(1), (C), and (D), 4511.191(A)(5)(a), and 4511.192(A) and (B)).

It also reiterates that a person under arrest as described above in (2) under "***Existing law***" must be notified of the person's right to have an independent chemical test taken at the person's own expense (R.C. 4511.19(D)(3)).

Court cost add-on for specified criminal justice purposes

Existing law requires the court in which any person is convicted of or pleads guilty to any moving violation to impose an additional court cost of ten dollars upon the offender. The clerk of the court must transmit 35% of all additional court costs so collected during a month on or before the 23rd day of the following month to the Division of Criminal Justice Services, and the Division must deposit the money so transmitted into the drug law enforcement fund created under R.C. 5502.68. The clerk must transmit 15% of all additional court costs so collected during a month on or before the 23rd day of the following month to the state treasury to be credited to the state Indigent Drivers Alcohol Treatment Fund created under R.C. 4511.191(F) and to be distributed by the Department of Alcohol and Drug Addiction Services as provided in division (H) of that section. The clerk must transmit 50% of all additional court costs so collected during a month on or before the 23rd day of the following month to the state treasury to be credited to the indigent defense support fund created pursuant to R.C. 120.08. Similar provisions require the charging of a similar court-cost add on, and distribution, in juvenile courts and the charging of a similar court-cost add on, and distribution, for persons who post bail. (R.C. 2949.094.)

The bill revises the mechanism for the distribution of the 15% of the court cost add-on to the indigent drivers alcohol treatment fund. Under the bill, the clerk must transmit that 15% to the county, municipal, or county juvenile indigent drivers alcohol treatment fund, whichever is applicable, under the control of the court in question as created by the county or municipal corporation in question under division (H) of R.C. 4511.191 (R.C. 2949.094.)

The bill makes conforming changes in existing provisions that govern the state Indigent Drivers Alcohol Treatment Fund and the manner in which moneys from the court cost add-on are to be distributed to the county and municipal funds (R.C. 4511.191(H).)

Transmittal of certain fees to the Indigent Drivers Alcohol Treatment Fund

Existing law

Existing law provides that, if a court pursuant to R.C. 4503.235(A) determines not to order the immobilization of a vehicle that otherwise would be required pursuant to R.C. 4511.19(G) or 4511.193(B), the court must issue an order that waives the immobilization that otherwise would be required pursuant to either of those divisions. The immobilization waiver order generally will be in effect for the period of time for which the immobilization of the vehicle otherwise would have been required under R.C. 4511.19(G) or 4511.193(B) if the immobilization waiver order had not been issued. The immobilization waiver

order must specify the period of time for which it is in effect. The court must provide a copy of an immobilization waiver order to the offender and to the family or household member of the offender who filed the motion requesting that the immobilization order not be issued and must place a copy of the immobilization waiver order in the record in the case. The court must impose an immobilization waiver fee in the amount of $50. The court must determine whether the fee is to be paid by the offender or by the family or household member. The clerk of the court must deposit the fee in the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund, created under R.C.4511.191(F). (R.C. 4503.235(B).)

Operation of the bill

The bill modifies the clerk transmittal provisions to require that the clerk of the court must transmit all of the fees collected during a month on or before the 23rd day of the following month to the state treasury to be credited to the Indigent Drivers Alcohol Treatment Fund, created under R.C.4511.191(F). (R.C. 4503.235(B).)

Hard suspension period under an Implied Consent Law prohibited concentration suspension

Existing law specifies that, if a person's driver's or commercial driver's license or permit is suspended under the state's Vehicle Implied Consent Law for having a prohibited concentration of alcohol, a drug of abuse, or a specified controlled substance or metabolite of a specified controlled substance in the person's system, after the expiration of a specified period of time that the person serves the suspension, the court generally may grant the person limited driving privileges. The specified period of time that a person must serve a suspension generally is referred to as a "hard suspension period." Under existing law, the hard suspension periods are internally inconsistent. The bill amends the hard suspension periods to make them internally consistent (R.C. 4510.13(A)(5)).

Additional court costs, regarding immobilizing or disabling device use during limited driving privileges

Existing law

Existing law provides that, in any case in which a court issues an order prohibiting an offender convicted of OVI from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, or requires an offender to wear a monitor that provides continuous alcohol monitoring that is remote, the court must impose an additional court cost of $2.50 upon the offender. The court cannot waive the payment of the $2.50 unless the

court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. The clerk of court must retain 100% of this court cost. The clerk must transmit 100% of this court cost collected during a month on the first business day of the following month to the state treasury to be credited to the State Highway Safety Fund created under R.C. 4501.06, to be used by the Department of Public Safety to cover costs associated with maintaining the Habitual OVI/OMWI Offender Registry created under R.C. 5502.10. In its discretion the court may impose an additional court cost of $2.50 upon the offender. The clerk of court must retain this $2.50 court cost, if imposed, and must deposit it in the court's special projects fund that is established under R.C. 2303.201(E)(1), regarding courts of common pleas, or 1901.26(B)(1), regarding municipal courts. (R.C. 4510.13(A)(9).)

Operation of the bill

The bill modifies this provision regarding the distribution of the court costs. Regarding the first $2.50 court cost referred to in the provision, the mandatory court cost, the bill eliminates the statement that the clerk of the court retain 100% of the cost and specifies that the clerk must transmit 100% of this mandatory court cost collected during a month on or before the 23rd day of the following month to the state treasury to be credited to the State Highway Safety Fund created under R.C. 4501.06, to be used by the Department of Public Safety to cover costs associated with maintaining the Habitual OVI/OMWI Offender Registry created under R.C. 5502.10. Regarding the second $2.50 court cost referred to in the provision, the discretionary court cost, the bill requires the clerk of court to retain this discretionary court cost, if imposed, and to deposit it in the court's special projects fund that is established under R.C. 2303.201(E)(1), regarding courts of common pleas, R.C. 1901.26(B)(1), regarding municipal courts, or R.C. 1907.24(B)(1), regarding county courts. (R.C. 4510.13(A)(9).)

Distribution of fine money, under fine imposed for OVI conviction

Existing law

Existing law provides for the distribution of fine money collected for fines imposed for violations of R.C. 4511.19(A), the offense of OVI, to many specified entities and funds. Each of the specified entities and funds is to be provided a specified portion of the fine money. One of the funds that is to be provided a portion of the fine money is the special projects fund of the court in which the offender was convicted and that is established under R.C. 2303.201(E)(1), regarding courts of common pleas, or R.C. 1901.26(B)(1), regarding municipal courts. (R.C. 4511.19(G)(5).)

Operation of the bill

The bill modifies the provision that currently specifies that a portion of the money is to be provided to the special projects fund of the court in which the offender was convicted and that is established under R.C. 2303.201(E)(1), regarding courts of common pleas, or R.C. 1901.26(B)(1), regarding municipal courts, so that the provision also specifies that a similar portion of the money is to be provided to court's special projects fund that is established under R.C. 1907.24(B)(1), regarding county courts. (R.C. 4511.19(G)(5)(e).)

Appeal of an ALS license suspension

Existing law

Existing law provides that, if a person is arrested for a violation of R.C. 4511.19(A), the offense of OVI, a violation of R.C. 4511.919(B), a violation of a municipal OVI ordinance, or for being in physical control of a vehicle, streetcar, or trackless trolley in violation of R.C. 4511.194 or a substantially equivalent municipal ordinance and if the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended under R.C. 4511.191, the Vehicle Implied Consent Law Administrative License provisions, the person may appeal the suspension at the person's initial appearance on the charge resulting from the arrest or within the period ending 30 days after the person's initial appearance on that charge, in the court in which the person will appear on that charge. A person must file an appeal under this provision in the municipal court, county court, juvenile court, mayor's court, or court of common pleas that has jurisdiction over the charge in relation to which the person was arrested.

If a person appeals a suspension under this provision, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable ground to believe the arrested person was committing the violation in question, (2) whether the law enforcement officer requested the arrested person to submit to the chemical test or tests designated pursuant to R.C. 4511.191(A), (3) whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test or tests; and (4) whether the arrested person refused to submit to the chemical test or tests requested by the officer; or whether the arrest was for a violation of R.C. 4511.19(A) or (B) or a municipal OVI ordinance and, if it was, whether the chemical test results indicate that the arrested person's whole blood contained a prohibited concentration of alcohol.

A person who appeals a suspension under this provision has the burden of proving, by a preponderance of the evidence, that one or more of the conditions

specified in division (C) of this section has not been met. If, during the appeal, the judge or magistrate of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, magistrate, or mayor must uphold the suspension, continue the suspension, and notify the Registrar of Motor Vehicles of the decision. If, during the appeal, the judge or magistrate of the trial court or the mayor of the mayor's court determines that one or more of the conditions specified in the preceding paragraph have not been met, the judge, magistrate, or mayor must terminate the suspension, subject to the imposition of a new suspension under R.C. 4511.196(B); must notify the Registrar of Motor Vehicles of the decision; and, except as provided in R.C. 4511.196(B), must order the Registrar to return the driver's or commercial driver's license or permit to the person or to take any other measures that may be necessary to permit the person to obtain a replacement license or permit. (R.C. 4511.197.)

Operation of the bill

The bill modifies the conditions that currently delimit the scope of a person's appeal under R.C. 4511.197. Under the bill, if a person appeals a suspension under the provision, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable ground to believe the arrested person was committing the violation in question (same as existing law), (2) whether the law enforcement officer requested the arrested person to submit to the chemical test or tests designated pursuant to R.C. 4511.191(A) (same as existing law), (3) if the person was under arrest as a repeat offender and was subject to being subjected to a chemical test even if he or she objected, under the existing provisions described above in "***Chemical tests--warnings to repeat offenders***," whether the arresting officer advised the person at the time of the arrest that if the person refused to take a chemical test, the officer could employ whatever means were reasonably necessary to ensure that the person submitted to the test; or if the person was under arrest in any other manner, whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test or tests (modified), and (4) if the suspension was imposed under the vehicle Implied Consent Law Administrative License provisions regarding a refusal to submit to a chemical test, whether the arrested person refused to submit to the chemical test or tests requested by the officer; or if the suspension was imposed under the vehicle Implied Consent Law Administrative License provisions regarding having a prohibited concentration of alcohol, a specified controlled substance, or a metabolite of a specified controlled substance in the person's system, whether the arrest was for a violation of R.C. 4511.19(A) or (B) or a municipal OVI ordinance and, if it was, whether the chemical test results indicate that at the time of the alleged offense the arrested person's whole blood contained at least a prohibited concentration of alcohol, a specified

controlled substance, or a metabolite of a specified controlled substance (modified). (R.C. 4511.197(C).)

Transfer of prisoners

Conveyance of jail detainee or prisoner to another county

Under existing law, the sheriff of a county that lacks a sufficient jail or staff must convey a person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process to a jail in "any county" that the sheriff considers most convenient and secure. The bill specifies that, in the case of a person who has been charged with an offense and is being held pending trial, "any county" includes a contiguous county in an adjoining state. The bill also prohibits the sheriff who receives a person under this provision from conveying the person to any county other than the one from which the person was removed. (R.C. 341.12.)

The bill repeals a statutory provision that prohibits sending a person as a prisoner to a place outside of Ohio for an offense committed in Ohio and giving a person who is imprisoned in violation of the prohibition a cause of action for false imprisonment. (R.C. 2725.25--repealed by Section 2 of the bill (a reference to this repeal was inadvertently omitted from the title of the bill)). Related to the repealed provision, Section 12, Article I, Ohio Constitution, provides that no person may be transported out of Ohio for any offense committed in Ohio.

Reception of person conveyed

Existing law *requires* that, on being furnished a copy of the process or commitment, the sheriff of the county to which a prisoner has been removed pursuant to R.C. 341.12 (see prior paragraph) must receive the prisoner into custody. The bill limits the requirement to receive such a prisoner to sheriffs of Ohio counties but provides that the sheriff of a contiguous county in an adjoining state *may* receive such a prisoner on being furnished a copy of the commitment. (R.C. 341.13.)

Under existing law, a sheriff who receives a prisoner who is removed under R.C. 341.12 is liable for escapes or other neglect of duty in relation to the prisoner, as in other cases, and the sheriff receives from the treasury of the county from which the prisoner was removed such fees as are allowed in other cases. The bill retains these provisions but exempts the conveying sheriff and the county commissioners of the county that employs the conveying sheriff from civil damage liability for injury, death, or loss to person or property suffered or caused by the prisoner while the prisoner is in the custody of the receiving sheriff. The bill makes the escape and neglect liability provision and the fee payment provision

apply to "each receiving sheriff," and, as described above, under the bill sheriffs in contiguous counties in adjoining states as well as sheriffs of Ohio counties may be a receiving sheriff. (R.C. 341.13.)

Costs of housing and testing prisoners

Under existing law, the sheriff of an adjoining county may not receive prisoners as provided in R.C. 341.12 unless an amount equal to the actual cost of keeping and feeding each such prisoner is deposited weekly, or for any time less than a week, with the sheriff. If a prisoner is discharged before the expiration of the term for which he or she was committed, any excess of the amount advanced must be refunded. The board of county commissioners of a county that receives a convicted prisoner under R.C. 341.12 for confinement in its jail may require the prisoner to reimburse the county for its expenses incurred by reason of the confinement. The board may establish a policy that requires a received convicted prisoner who is not indigent to pay a reception fee, a fee for medical treatment or service requested by and provided to that prisoner, or the fee for a random drug test assessed under R.C. 341.26(E) (random drug testing under a multicounty agreement). If a county receives a person under R.C. 341.12 who has been convicted of or pleaded guilty to an offense and has been sentenced to a term in a jail or a person who has been arrested for an offense, who has been denied bail or has had bail set and has not been released on bail, and who is confined in jail pending trial, the sheriff or other person in charge of the operation of the jail may cause the convicted or accused offender to be examined and tested for tuberculosis, HIV infection, hepatitis, and other contagious diseases. (R.C. 341.14.)

The bill limits all of the foregoing to counties, and officials of counties, in Ohio (R.C. 341.14). However, in a new section, the bill prohibits the sheriff of a county in Ohio from transferring a prisoner to a contiguous county in an adjoining state under R.C. 341.12 unless there is deposited weekly with the sheriff of the contiguous county an amount equal to the actual cost of keeping and feeding each prisoner committed to the custody of that sheriff for the use of the jail of that county, and the same amount for a period of time less than one week. If a prisoner is discharged before the expiration of a week for which the cost of keeping and feeding the prisoner has been deposited, any excess must be refunded. (R.C. 341.141(A).)

The bill further provides that the minimum standards for jails that are applicable for jails in the adjoining state apply to a jail in that adjoining state that receives prisoners as provided in R.C. 341.13 and that all other terms of the transfer of a prisoner from a county in Ohio to a contiguous county in an adjoining state be as agreed upon by the board of county commissioners, any applicable

governmental entity in the receiving county, and the sheriffs involved in the transfer. (R.C. 341.141(B) and (C).)

The bill specifies that, if a prisoner is transferred to a contiguous county of an adjoining state as provided in the provision described above in "***Conveyance of jail detainee or prisoner to another county***," jurisdiction over the transferred prisoner remains with the Ohio governmental agencies and entities that would have jurisdiction over the prisoner if the prisoner had not been so transferred, including the Ohio court to which the prisoner's case is assigned (R.C. 341.141(D)).

Accounting for money received

Existing law requires a sheriff, at the end of each quarter of each calendar year, to account for and pay to the county treasurer all money received for transferred prisoners under R.C. 341.13 and 341.14. The bill expressly limits this requirement to sheriffs in Ohio. (R.C. 341.15.)

Technical amendments

The bill amends a statutory provision dealing with forfeitures under the habeas corpus law by correcting a reference to R.C. 2725.25, which the bill repeals (R.C. 2725.27).

Penalties for aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter

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" 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," (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 state OVI violations, three or more aggravated vehicular assault violations, or three or more involuntary manslaughter violations that are subject to R.C. 2903.04(D) within the preceding six years, (8) 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), (6), or (7), above, or (9) 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 first or second degree, or in accordance with R.C. 2941.142, 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, but it revises the penalties for OVI-related aggravated vehicular homicide in one way. It expands the provision that currently makes OVI-related aggravated vehicular homicide a felony of the first degree and requires a mandatory prison term if, 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, so that the provision also apples if, at the time of the offense, the offender was driving under a cancellation imposed under R.C. Chapter 4510. or any other provision, or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's or commercial

driver's license or permit without examination under R.C. 4507.10 (R.C. 2903.06(B)(2)(b)(i)).

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" 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, but it is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4510. or any other provision of law 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." 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, but it revises the penalties for aggravated vehicular homicide that is not based on OVI-related conduct in one way. It expands the provision that currently makes aggravated vehicular homicide that is not based on OVI-related conduct a felony of the second degree and provides for a mandatory prison term in the same circumstances as under existing law for such a violation if, 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, so that the provision also applies if, at the time of the offense, the offender was driving under a cancellation

imposed under R.C. Chapter 4510. or any other provision, or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's or commercial driver's license or permit without examination under R.C. 4507.10 (R.C. 2903.06(B)(3) and (E)).

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" 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." 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, but it revises the penalties for vehicular homicide in one way. It expands the provision that currently makes vehicular homicide a felony of the fourth degree and provides for a mandatory prison term in the same circumstances as under existing law for such a violation if, 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, so that the provision also applies if, at the time of the offense, the offender was driving under a cancellation imposed under R.C. Chapter 4510. or any other provision, or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's or commercial driver's license or permit without examination under R.C. 4507.10 (R.C. 2903.06(C) and (E)).

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" 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." 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, but it revises the penalties for vehicular manslaughter in one way. It expands the provision that currently makes vehicular manslaughter

a misdemeanor of the first degree if, 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, so that the provision also applies if, at the time of the offense, the offender was driving under a cancellation imposed under R.C. Chapter 4510. or any other provision, or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's or commercial driver's license or permit without examination under R.C. 4507.10 (R.C. 2903.06(C)).

Commercial driver's license exemption--transport of prisoners

Existing law

Existing law provides that, except as described in the next two paragraphs, the following shall apply: (1) no person may drive a commercial motor vehicle on a highway in Ohio unless the person holds, and has in the person's possession, a valid commercial driver's license with proper endorsements for the motor vehicle being driven, issued by the Registrar of Motor Vehicles, a valid examiner's commercial driving permit issued under R.C. 4506.13, a valid restricted commercial driver's license and waiver for farm-related service industries issued under R.C. 4506.24, or a valid commercial driver's license temporary instruction permit issued by the Registrar and is accompanied by an authorized state driver's license examiner or tester or a person who has been issued and has in the person's immediate possession a current, valid commercial driver's license with proper endorsements for the motor vehicle being driven, (2) no person may be issued a commercial driver's license until the person surrenders to the Registrar of Motor Vehicles all valid licenses issued to the person by another jurisdiction recognized by this state (the Registrar must report the surrender of a license to the issuing authority, together with information that a license is now issued in Ohio, and must destroy any such license that is not returned to the issuing authority), and (3) no person who has been a resident of Ohio for 30 days or longer may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. A violation of this prohibition is a misdemeanor of the first degree.

Nothing in the provisions described in the preceding paragraph applies to any qualified person when engaged in the operation of any of the following: (1) a farm truck, (2) fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district, (3) a public safety vehicle used to provide transportation or emergency medical service for ill or injured persons, (4) a recreational vehicle, (5) a commercial motor vehicle within the boundaries of an eligible unit of local government, if the person is employed by the eligible unit of

local government and is operating the commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, but only if either the employee who holds a commercial driver's license issued under this chapter and ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle, or the employing eligible unit of local government determines that a snow or ice emergency exists that requires additional assistance, (6) a vehicle operated for military purposes by any member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio national guard (this exception does not apply to United States reserve technicians), (7) a commercial motor vehicle operated for nonbusiness purposes ("operated for nonbusiness purposes" means that the commercial motor vehicle is not used in commerce as "commerce" is defined in 49 C.F.R. 383.5 and is not regulated by the Public Utilities Commission pursuant to R.C. Chapter 4919., 4921., or 4923.), (8) a motor vehicle designed primarily for the transportation of goods and not persons, while that motor vehicle is being used for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise, or (9) a SWAT team vehicle.

Nothing contained in the provisions described in clause (5) of the preceding paragraph may be construed as preempting or superseding any law, rule, or regulation of this state concerning the safe operation of commercial motor vehicles. (R.C. 4506.03.)

Operation of the bill

Under the bill, in addition to the exemptions specified under existing law, nothing in the existing commercial driver's license requirement applies to any qualified person when engaged in the operation of a police vehicle used to transport prisoners (R.C. 4506.03(B)(10).) It is unclear how this provision will relate to federal statutes and regulations, generally contained in 49 U.S.C. §31301 and 49 C.F.R. §383.3. that impose commercial driver's license requirements and restrictions.

Suspension of Medicaid eligibility of certain prisoners

The bill provides that, if a person who is confined in a "state or local correctional facility" (see below) was a Medicaid recipient immediately prior to being confined in the facility, all of the following apply: (1) the person's eligibility for Medicaid while so confined is suspended due to the confinement, (2) except as described in the last sentence in this paragraph, no Medicaid payment may be made for any care, services, or supplies provided to the person during the suspension described in clause (1) of this paragraph, (3) the suspension described in clause (1) of this paragraph ends upon the release of the person from the

confinement, and (4) except in instances in which the person has been disenrolled from Medicaid after the person's release from confinement, the person cannot be required to reapply for Medicaid when the suspension described in clause (1) of this paragraph ends. Nothing in these provisions limits the authority of the Department of Job and Family Services or the county departments of job and family services from redetermining the eligibility of a person described above upon the person's release from confinement. The Department must take all the steps necessary to begin implementation of these provisions commencing on September 1, 2009.

As used in these provisions, "state or local correctional facility" means any of the following: (1) a "state correctional institution," as defined in R.C. 2967.01, (2) a "local correctional facility," as defined in R.C. 2901.13, or (3) a correctional facility that is privately operated pursuant to R.C. 9.06. "State or local correctional facility" does not include any facility operated by or at the direction of the Department of Youth Services. (R.C. 5111.0119.)

COMMENT

1. Existing R.C. 3719.43, which is not in the bill, provides that when, pursuant to the federal drug abuse control laws, the United States Attorney General adds a compound, mixture, preparation, or substance to a Schedule of the laws, transfers any of the same between one Schedule of the laws to another, or removes a compound, mixture, preparation, or substance from the Schedules of the laws, then that addition, transfer, or removal is automatically effected in the corresponding Schedule or Schedules in R.C. 3719.41, subject to amendment pursuant to R.C. 3719.44, as described below in **COMMENT** 2.

2. Existing R.C. 3719.44, which is not in the bill, provides that, pursuant to the provisions described in this **COMMENT**, and by rule adopted in accordance with the Administrative Procedure Act, the State Board of Pharmacy may do any of the following with respect to controlled substance Schedules I, II, III, IV, and V established in R.C. 3719.41: (a) add a previously unscheduled compound, mixture, preparation, or substance to any Schedule, (b) transfer a compound, mixture, preparation, or substance from one Schedule to another, provided the transfer does not have the effect under R.C. Chapter 3719. of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws, or (c) remove a compound, mixture, preparation, or substance from the Schedules where the Board had previously added the compound, mixture, preparation, or substance to the Schedules, provided that the removal cannot have the effect under R.C. Chapter 3719. of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws.

In making a determination to add, remove, or transfer as described in the preceding paragraph, the Board must consider the following: (a) the actual or relative potential for abuse, (b) the scientific evidence of the pharmacological effect of the substance, if known, (c) the state of current scientific knowledge regarding the substance, (d) the history and current pattern of abuse, (e) the scope, duration, and significance of abuse, (f) the risk to the public health, (g) the potential of the substance to produce psychic or physiological dependence liability, and (h) whether the substance is an immediate precursor.

The Board may add or transfer a compound, mixture, preparation, or substance to Schedule I when it appears that there is a high potential for abuse, that it has no accepted medical use in treatment in Ohio, or that it lacks accepted safety for use in treatment under medical supervision. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule II when it appears that there is a high potential for abuse, that it has a currently accepted medical use in treatment in Ohio, or currently accepted medical use in treatment with severe restrictions, and that its abuse may lead to severe physical or severe psychological dependence. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule III when it appears that there is a potential for abuse less than the substances included in Schedules I and II, that it has a currently accepted medical use in treatment in Ohio, and that its abuse may lead to moderate or low physical or high psychological dependence. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule IV when it appears that it has a low potential for abuse relative to substances included in Schedule III, that it has a currently accepted medical use in treatment in Ohio, and that its abuse may lead to limited physical or psychological dependence relative to the substances included in Schedule III. The Board may add or transfer a compound, mixture, preparation, or substance to Schedule V when it appears that it has lower potential for abuse than substances included in Schedule IV, that it has currently accepted medical use in treatment in Ohio, and that its abuse may lead to limited physical or psychological dependence relative to substances included in Schedule IV.

HISTORY

ACTION	DATE
Introduced	05-09-07
Reported, H. Criminal Justice	04-08-08
Passed House (95-0)	04-15-08
Reported, S. Judiciary - Criminal Justice	---

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