UPDATED VERSION*

Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 338

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(As Passed by the General Assembly)

Reps. Book and Uecker, Evans, Domenick, Harwood, Okey, Bolon, Oelslager, Huffman, Mecklenborg, Coley, Stebelton, Blessing, Bubp, Carney, Chandler, Combs, Daniels, DeBose, DeGeeter, Derickson, Dodd, Garland, Gerberry, Harris, Hite, Koziura, Letson, Luckie, Mallory, Murray, Patten, Sayre, Wachtmann, Weddington, B. Williams, Yuko

Sens. Buehrer, Fedor, Goodman, Harris, Hughes, D. Miller, Morano, Patton, Sawyer, Schiavoni, Seitz, Smith, Strahorn, Turner, Niehaus

Effective date: September 17, 2010; certain provisions effective January 1, 2011

ACT SUMMARY

Court jurisdiction regarding driver's license matters

- Confers on any court whose jurisdiction is invoked regarding a driver's license matter, other than a matter involving a commercial driver's license, concurrent jurisdiction to adjudicate all issues and appeals regarding that driver's license matter and specifies the procedure for a holder of a driver's license to invoke the court's jurisdiction.

- Provides that if another court has obtained jurisdiction over any administrative driver's license suspension involving the same driver's license holder, that jurisdiction may not be divested by an action filed under the act unless that court transfers its jurisdiction.

- Grants the court whose jurisdiction is invoked under the act discretionary authority to issue a stay of any suspension pending resolution of the matters before the court and to order the Bureau of Motor Vehicles to renew the holder's driver's license pending resolution of the matters or in its final judgment if the license is not more than six months expired prior to the date of the renewal application.

* This version updates the effective date of the act.

- Generally provides that if jurisdiction is invoked under the act in a court of common pleas or county court, the county prosecuting attorney must represent the Registrar of Motor Vehicles in the case, and that if jurisdiction is invoked under the act in a municipal court, the Registrar generally must be represented by the city director of law, village solicitor, or similar chief legal officer.

- Declares that the intent of the provisions in the act as described in the preceding dot points is to allow all issues concerning driver's licenses to be litigated in a single forum, not to eliminate any forum venue in existence on the act's effective date.

Putnam County Municipal Court

- Effective January 1, 2011, abolishes the Putnam County County Court and its two part-time judgeships and creates in Ottawa the Putnam County Municipal Court with one full-time judge and with jurisdiction within Putnam County.

- Specifies that the judge of the Putnam County Municipal Court initially will be elected in 2011 and nominated only by petition, and provides that the part-time judge of the Putnam County County Court whose term commenced on January 1, 2007, will serve as the full-time judge of the Putnam County Municipal Court until December 31, 2011.

- Provides that the Clerk of Courts of Putnam County is the Clerk of the Putnam County Municipal Court.

- Provides that, in addition to the police officers of municipal corporations and police constables of townships within the territory of the Putnam County Municipal Court who serve as ex officio deputy bailiffs, deputy sheriffs of Putnam County also are deputy bailiffs of the Putnam County Municipal Court.

- Requires the Putnam County Prosecuting Attorney to prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County and authorizes the Prosecuting Attorney to enter into an agreement with any municipal corporation in Putnam County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation.

- Includes transition provisions upon the abolition of the Putnam County County Court and the establishment of the Putnam County Municipal Court.

Wrongfully imprisoned individuals

- Requires the Clerk of the Court of Claims, within 60 days after the date of the entry of a court of common pleas' determination that a person is a wrongfully imprisoned individual, to request that the Controlling Board pay 50% of a certain specified amount of money (statutory annual amount for each year of wrongful imprisonment) to that wrongfully imprisoned individual.

Criminal sentencing and pleas

- Permits a trial judge to do one or more of the following when a felon or misdemeanant violates a community control sanction: impose a prison term if the sanction was imposed for a felony or a jail term, extend the length of a community control sanction, or impose a more restrictive sanction.

- Provides that a court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time but provides that the court cannot reduce any mandatory jail term.

- Requires the court, if a prosecutor has filed notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, to notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case, allows the prosecutor to request a hearing regarding the court's consideration of the modification, and requires the court to hold a hearing if the prosecutor so requests.

- Provides that, when an accused pleads guilty to an offense, the court is not required to call for an explanation of the circumstances of the offense if the offense is a minor misdemeanor.

- Provides that a plea to a misdemeanor offense of "no contest" constitutes an admission of the truth of the facts alleged in the complaint and provides that, if the offense to which the accused is entering a plea of "no contest" is a minor misdemeanor, the judge or magistrate is not required to call for an explanation of the circumstances of the offense and may base a finding on the facts alleged in the complaint.

Motor vehicle offense penalties

- Modifies the penalties for repeat offenders under "operating a motor vehicle without a valid license" who never have held a valid driver's or commercial driver's license or permit and the penalties for offenders under the offense who have never held a valid license as a motorcycle operator.

- Clarifies the manner of sentencing for "operating a motor vehicle without a valid license," "driving under suspension," "permitting the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license," and "driving under financial responsibility law suspension or cancellation" when the offense is an unclassified misdemeanor.

- Modifies the condition for increased penalties for the offenses of failure to stop after an accident and failure to stop after a nonpublic road accident so that the increased penalties apply when the accident or collision (rather than the failure to stop) results in serious physical harm or death.

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CONTENT AND OPERATION

Court jurisdiction to adjudicate all issues and appeals involving driver's license matter

Grant of jurisdiction

The act provides that, notwithstanding any provision of the Revised Code to the contrary, any court whose jurisdiction has been invoked under R.C. Chapter 4510. (Driver's License Suspension, Cancellation, and Revocation Law) or any other chapter of the Revised Code regarding a driver's license matter, other than a matter involving a commercial driver's license, is conferred concurrent jurisdiction to adjudicate all issues and appeals regarding that driver's license matter, including issues of validity, suspension, and, with regard to any suspension imposed by the Bureau of Motor Vehicles, driving privileges. Nothing in the act's provisions may be construed as applying to any issue involving a commercial driver's license, except that a court may adjudicate an issue that does not relate to a commercial driver's license but involves a holder of a commercial driver's license so long as the court does not alter the status of that holder's commercial driver's license. In the event that another court has obtained jurisdiction over one or more driver's license suspensions imposed by the Bureau involving the same driver's license holder, that jurisdiction may not be divested by an action filed under the act's provisions unless that court transfers its jurisdiction over that holder's driver's license issue by issuance of a court order.

The court's jurisdiction over a particular driver's license issue may be invoked by a motion, appeal, or petition filed by a holder of a driver's license. Any such motion, appeal, or petition must state the issue with respect to which the court's jurisdiction is invoked. When a court's jurisdiction over a driver's license issue is properly invoked, that court must adjudicate all issues and appeals brought before the court regarding that issue, unless the motion, appeal, or petition is withdrawn. (R.C. 4510.73(B) and (C).)

Court's discretionary authority

The act provides that any court whose jurisdiction is invoked under its provisions has the discretionary authority to issue a stay of any suspension pending resolution of the matters before the court. This provision does not alter or eliminate any automatic stay provision provided for elsewhere in the Revised Code.

Any court whose jurisdiction is invoked under the act, in its discretion, may order the Bureau of Motor Vehicles to renew the holder's driver's license pending resolution of the matters before the court, provided that the license is not more than six

months expired prior to the date of application for renewal. The court, in its discretion, also may order the Bureau to renew the holder's driver's license in its final judgment, provided that the license is not more than six months expired prior to the date of application for renewal. (R.C. 4510.73(D) and (E).)

Representation of Registrar of Motor Vehicles

Under the act, if jurisdiction is invoked under its provisions in a court of common pleas or county court, the prosecuting attorney of the county in which the case is pending must represent the Registrar of Motor Vehicles in the proceedings; provided, that if the driver's license holder resides in a municipal corporation that lies within the jurisdiction of a county court, the city director of law, village solicitor, or similar chief legal officer of the municipal corporation must represent the Registrar in the proceedings. In a municipal court, the Registrar must be represented in the resulting proceedings as provided in continuing R.C. 1901.34 (see **COMMENT** 1). At the election of the Registrar, the Attorney General may enter the proceedings at any time and henceforth represent the Registrar in the case. (R.C. 4510.73(F).)

Appeal of judgment

The act provides that either party may appeal the final judgment of the court. Any such appeal must be taken as provided in continuing R.C. 1901.30 or 1907.30 (see **COMMENT** 2) and must conform with continuing R.C. Chapter 2505. (Appeals Law) (R.C. 4510.73(G)).

Intent clause

The act provides that it is the intent of its provisions described above to allow all issues concerning driver's licenses to be litigated in a single forum, not to eliminate any forum venue in existence on the effective date of the provisions (R.C. 4510.73(A)).

Putnam County Municipal Court

Creation, judges, jurisdiction, and operation

Under the preexisting County Courts Law, the Putnam County County Court has two part-time judges, with one being most recently elected in 2004 and the other being most recently elected in 2006 (R.C. 1907.11(A)).

The act abolishes the Putnam County County Court and creates the Putnam County Municipal Court to be established in Ottawa effective January 1, 2011. In the Putnam County Municipal Court, one full-time judge initially will be elected in 2011. Beginning January 1, 2011, the part-time judge of the Putnam County County Court that existed prior to that date whose term commenced on January 1, 2007, will serve as the

full-time judge of the Putnam County Municipal Court until December 31, 2011. (R.C. 1901.01(A), 1901.02(A)(28), 1901.08, and 1907.11(A).)

The Putnam County Municipal Court has jurisdiction within Putnam County and is included within the definition of "county-operated municipal court." In the Putnam County Municipal Court, the judge will be nominated only by petition, which must be signed by at least 50 electors of the territory of the court and conform to the provisions of law pertaining to the nomination of municipal court judges. (R.C. 1901.02(B), 1901.03(F), and 1901.07(C)(6).)

Clerk of court and assistant clerks

The Clerk of Courts of Putnam County is the Clerk of the Putnam County Municipal Court and may appoint a chief deputy clerk for each branch office that is established pursuant to continuing R.C. 1901.311 (not in the act), and assistant clerks as the judge of the Court determines are necessary, all of whom will receive the compensation that the Court's legislative authority prescribes (see **COMMENT** 3). The Clerk of Courts of Putnam County, acting as the Clerk of the Putnam County Municipal Court and assuming the duties of that office, receives compensation payable from the Putnam County Treasury in semimonthly installments at ¼ the rate that is prescribed for the clerks of courts of common pleas as determined in accordance with the population of the county and the rates set forth in continuing R.C. 325.08 (salary schedules for clerks of courts of common pleas; not in the act) and 325.18 (salary increases for county elected officials; not in the act). (R.C. 1901.31(A)(2)(c) and (C)(1).) The act provides that the continuing law on group health care coverage for clerks, deputy clerks, and their spouses and dependents does not apply to the Clerk of the Putnam County Municipal Court if health care coverage is provided to the Clerk by virtue of the Clerk's employment as the Clerk of the Court of Common Pleas of Putnam County (R.C. 1901.312(D)).

Bailiff and deputy bailiffs

Generally, a municipal court appoints a bailiff who receives the annual compensation that the court prescribes payable in either biweekly or semimonthly installments as determined by the payroll administrator. This provision in continuing law applies to the Putnam County Municipal Court. (R.C. 1901.32(A)(1).) Under continuing law, every police officer of any municipal corporation and police constable of a township within the territory of the municipal court is ex officio a deputy bailiff of the court in and for the municipal corporation or township in which commissioned as a police officer or police constable and must perform any duties in respect to cases within the officer's or constable's jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation (R.C.

1901.32(A)(5)). The act provides that, in Putnam County, in addition to the persons who are ex officio deputy bailiffs under the preceding provision, every deputy sheriff of Putnam County is ex officio a deputy bailiff of the Putnam County Municipal Court and must perform without additional compensation any duties in respect to cases within the deputy sheriff's jurisdiction that are required by a judge of the Court, by the Clerk of the Court, or by a bailiff or deputy bailiff of the Court (R.C. 1901.32(A)(6)).

Criminal prosecutions

Under the act, the Putnam County Prosecuting Attorney must prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County. The Prosecuting Attorney of Putnam County may enter into an agreement with any municipal corporation in the County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. For prosecuting cases under an agreement as described in the preceding sentence, the Prosecuting Attorney and the municipal corporation may agree upon a fee to be paid by the municipal corporation, which fee must be paid into the Putnam County Treasury, to be used to cover expenses of the Office of the Prosecuting Attorney. (R.C. 1901.34(B) and (D).)

Transition provisions and effective date

The act provides that effective January 1, 2011, the Putnam County County Court is abolished. All causes, executions, and other proceedings pending in the Putnam County County Court at the close of business on December 31, 2010, must be transferred to and proceed in the Putnam County Municipal Court on January 1, 2011, as if originally instituted in the Putnam County Municipal Court. Parties to those causes, judgments, executions, and proceedings may make any amendments to their pleadings that are required to conform them to the rules of the Putnam County Municipal Court. The Clerk of the Putnam County County Court or other custodian must transfer to the Putnam County Municipal Court all pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files, moneys, property, and persons that belong to, are in the possession of, or are subject to the jurisdiction of the Putnam County County Court, or any officer of that Court, at the close of business on December 31, 2010, and that pertain to those causes, judgments, executions, and proceedings. All employees of the Putnam County County Court must be transferred to and become employees of the Putnam County Municipal Court on January 1, 2011. Effective January 1, 2011, the part-time judgeship in the Putnam County County Court is abolished. (Section 3.)

The act provides that the Revised Code sections pertaining to the Putnam County Municipal Court, as amended by the act and as described above, take effect January 1, 2011 (Section 4).

Wrongfully imprisoned individuals

Continuing law

Continuing law defines the term "wrongfully imprisoned individual." Under continuing law, once a court of common pleas has determined that a person is a wrongfully imprisoned individual, the court must provide the person with a copy of the Revised Code section that contains that law (R.C. 2743.48) and orally inform the person and the person's attorney of the person's right to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice. (R.C. 2743.48(A) and (B)(1).) The court must also notify the Clerk of the Court of Claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the right to commence a civil action and to have legal representation. The Clerk of the Court of Claims must maintain in the Clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this provision and must create files in the Clerk's office for each such individual. (R.C. 2743.48(B)(2).)

In a civil action of the type described in the preceding paragraph, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence is required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant is irrebuttably presumed to be a wrongfully imprisoned individual. (R.C. 2743.48(E)(1).) Upon presentation of requisite proof to the Court of Claims, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts (R.C. 2743.48(E)(2)):

(1) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement in the state correctional institution;

(2) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, $40,330 or the adjusted amount determined by the State Auditor pursuant to continuing R.C. 2743.49 (not in the act), and for each part of a year of being so imprisoned, a pro-rated share of $40,330 or the adjusted amount determined by the State Auditor;

(3) Any loss of wages, salary, or other earned income that directly resulted for the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(4) The amount of the following cost debts the Department of Rehabilitation and Correction recovered from the wrongfully imprisoned individual who was in custody of the Department or under the Department's supervision: (a) any user fee or copayment for services at a detention facility, including, but not limited to, a fee or copayment for sick call visits, (b) the cost of housing and feeding the wrongfully imprisoned individual in a detention facility, (c) the cost of supervision of the wrongfully imprisoned individual, and (d) the cost of any ancillary services provided to the wrongfully imprisoned individual.

If the Court of Claims determines in a civil action that the complainant is a wrongfully imprisoned individual, it must enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled, as described above. In determining that sum, the Court of Claims cannot take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services. (R.C. 2743.48(F)(1).)

Operation of the act

The act provides that, within 60 days after the date of the entry of a court of common pleas determination that a person is a wrongfully imprisoned individual, the Clerk of the Court of Claims must forward a preliminary judgment to the President of the Controlling Board requesting payment of 50% of the amount described in (2), above, under "**Continuing law**" (the amount so described is $40,330 or the adjusted amount determined by the State Auditor for each year so imprisoned, and for each part of a year of being so imprisoned, a pro-rated share of $40,330 or the adjusted amount determined by the state auditor) to the wrongfully imprisoned individual. The Board must take all actions necessary to cause the payment of that amount out of the Emergency Purposes Special Purpose Account of the Board. (R.C. 2743.48(B)(3).) The act requires the Court of Claims to reduce the sum it pays to the wrongfully imprisoned individual as a result of the judgment it enters for the wrongfully imprisoned individual by the amount of the

above-described "50% payment" to the wrongfully imprisoned individual (R.C. 2743.48(F)(1)).

Felony community control sanctions

Under continuing law, if in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more felony community control sanctions. There are three types of felony community control sanctions--community residential sanctions, nonresidential sanctions, and financial sanctions. The court must impose certain conditions for any nonresidential sanction and may impose any other conditions for any community control sanction. (R.C. 2929.15(A)(1).)

Formerly, the law specified that if the conditions of a community control sanction were violated or if the offender violated a law or left the state without permission of the court or the offender's probation officer, the sentencing court could impose (1) a longer time under the same sanction if the total time under the sanctions did not exceed the five-year limit specified in R.C. 2929.15(A), (2) a more restrictive sanction under R.C. 2929.16 (felony community residential sanctions), 2929.17 (felony nonresidential sanctions), or 2929.18 (felony financial sanctions), or (3) a prison term on the offender pursuant to R.C. 2929.14. The act provides that in such circumstances a sentencing court may impose upon the offender one *or more* of the penalties listed in (1) through (3) of the preceding sentence (the Revised Code provisions cited in the penalties are continuing law and, except for R.C. 2929.15(A), are not in the act). (R.C. 2929.15(B)(1).)

Misdemeanor community control sanctions

Under continuing law, except when a jail term is required by law or as otherwise provided by specified provisions of the Misdemeanor Sentencing Law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following (R.C. 2929.25(A)(1)):

(1) Directly impose a sentence that consists of one or more misdemeanor community control sanctions. There are three types of misdemeanor community control sanctions--community residential sanctions, nonresidential sanctions, and financial sanctions. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(2) Impose a jail term from the range of jail terms authorized for the offense, suspend all or a portion of the jail term imposed, and place the offender under a misdemeanor community control sanction or combination of misdemeanor community control sanctions.

Formerly, the law specified that if an offender violated any condition of a community control sanction, the sentencing court could impose upon the violator (1) a longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator did not exceed the five-year limit specified in R.C. 2929.25(A)(2), (2) a more restrictive community control sanction, or (3) a combination of community control sanctions, including a jail term. The act provides that in such circumstances the sentencing court may impose upon the offender one *or more* of the penalties described in (1) through (3) of the preceding sentence (R.C. 2929.25(A)(2) as cited in the penalties is continuing law). (R.C. 2929.25(C)(2) and (3).)

Modification of jail sentence

Under continuing law, except as otherwise provided by law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender, the court must impose a definite jail term that is one of the following (R.C. 2929.24(A)):

(1) For a misdemeanor of the first degree, not more than 180 days;

(2) For a misdemeanor of the second degree, not more than 90 days;

(3) For a misdemeanor of the third degree, not more than 60 days;

(4) For a misdemeanor of the fourth degree, not more than 30 days.

A court that sentences an offender to a jail term for a misdemeanor may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender for purposes of employment, family care, education, training, treatment, community service, etc.

The act provides that the court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but specifies that the court cannot reduce any mandatory jail term. (R.C. 2929.24(B)(1).) The act also provides that if a prosecutor, as defined in continuing R.C. 2935.01 (not in the act), has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court must notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's

consideration of modifying the jail sentence of the offender in that case. If the prosecutor requests a hearing, the court must notify the eligible offender of the hearing and the court must hold the hearing before considering whether or not to release the offender from the offender's jail sentence. (R.C. 2929.24(B)(2).)

Court action on pleas of guilty and no contest in misdemeanor cases

Under continuing law, if a person accused of a misdemeanor pleads guilty to the offense, the court or magistrate must receive and enter the plea unless the court or magistrate believes that it was made through fraud, collusion, or mistake. If the court or magistrate believes that the guilty plea was made through fraud, collusion, or mistake, the court or magistrate must enter a plea of not guilty and set the matter for trial. Formerly, upon receiving a plea of guilty, the court or magistrate was required to call for an explanation of the circumstances of the offense from the affiant or complainant or the affiant's or complainant's representatives. The act provides an exception to this former requirement. Under the act, upon receiving a plea of guilty, the court or magistrate is not required to call for an explanation of the circumstances of the offense if the offense to which the accused is pleading is a minor misdemeanor.

Formerly, after hearing the explanation of circumstances provided as described in the preceding paragraph, together with any statement of the accused, the court or magistrate was required to either proceed to pronounce the sentence or continue the matter for the purpose of imposing the sentence. The act modifies this former provision, to require that the court or magistrate must proceed to pronounce the sentence or must continue the matter for the purpose of imposing the sentence after hearing the explanation of circumstances, together with any statement of the accused or after receiving the plea of guilty if an explanation of the circumstances of the offense is not required. (R.C. 2937.07.)

Former law also provided that a plea to a misdemeanor offense of "no contest" or words of similar import constituted a stipulation that the judge or magistrate could make a finding of guilty or not guilty from the explanation of the circumstances of the offense. The act removes the term "stipulation" from this former provision and instead provides that a plea of "no contest" or words of similar import constitutes an admission of the truth of the facts alleged in the complaint and that the judge or magistrate may make the finding of guilty or not guilty. The act also provides that if the offense to which the accused is entering a plea of "no contest" is a minor misdemeanor, the judge or magistrate is not required to call for an explanation of the circumstances of the offense, and the judge or magistrate may base a finding on the facts alleged in the complaint. (R.C. 2937.07.)

Permitting operation by an unlicensed driver

Under continuing law, a person is prohibited from permitting the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license issued to the operator by the Registrar of Motor Vehicles or a valid commercial driver's license. Formerly, a person who violated this prohibition was guilty of an unclassified misdemeanor. The offender could be fined up to $1,000 and pursuant to R.C. 2929.27(B) additionally could be ordered to serve a term of community service of up to 500 hours. If the offender previously was convicted of or pleaded guilty to two or more violations of this prohibition or a substantially equivalent municipal ordinance within the past three years, the offense was a misdemeanor of the first degree. (R.C. 4507.02(A)(1).)

The act modifies the penalties for a violation of the prohibition described in the preceding paragraph. Under the act, a violation remains an unclassified misdemeanor generally and a misdemeanor of the first degree if the offender has two or more prior convictions of or pleas of guilty to a violation of the prohibition or a substantially equivalent municipal ordinance within a specified three-year period, but the act clarifies that the prior convictions or guilty pleas must have been *within three years of the offense* in order to be considered toward imposing the increased penalty. Under the act, when the offense is an unclassified misdemeanor, special sanctions apply (the Revised Code provisions cited in the special sanctions are continuing law and are not in the act). In this regard, the act provides that when the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to R.C. 2929.21 to 2929.28 (misdemeanor sentencing), except that the offender cannot be sentenced to a jail term; the offender cannot be sentenced to a community residential sanction pursuant to R.C. 2929.26; notwithstanding R.C. 2929.28(A)(2)(a) (fines for misdemeanors), the offender may be fined up to $1,000; and, notwithstanding R.C. 2929.27(A)(3) (misdemeanor nonresidential sanctions), the offender may be ordered pursuant to R.C. 2929.27(B) to serve a term of community service of up to 500 hours. (R.C. 4507.02(A)(1).)

Driving under suspension

Under continuing law, a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Revised Code, other than R.C. Ch. 4509. (financial responsibility law), or under any applicable law in any other jurisdiction in which the person's license or permit was issued is prohibited 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 (R.C. 4510.11(A)). Formerly, a person

who violated this prohibition generally was guilty of driving under suspension, a misdemeanor of the first degree. However: (1) if the offender's driver's or commercial driver's license or permit or nonresident operating privilege had been suspended under R.C. 3123.58 or 4510.22, a violation of this prohibition was an unclassified misdemeanor, and the offender could be fined up to $1,000 and pursuant to R.C. 2929.27(B) additionally could be ordered to serve a term of community service of up to 500 hours, and (2) if the offender previously was convicted of or pleaded guilty to two or more violations of this prohibition or a substantially equivalent municipal ordinance within the past three years, the offense was a misdemeanor of the first degree. (R.C. 4510.11(C)(1).)

The act modifies the penalties for a violation of the prohibition described in the preceding paragraph, when the offender's license, permit, or operating privilege has been suspended under R.C. 3123.58 or 4510.22 (those provisions are continuing law and are not in the act). Under the act, a violation in those circumstances remains an unclassified misdemeanor generally and a misdemeanor of the first degree if the offender has two or more prior convictions of or pleas of guilty to a violation of the prohibition or a substantially equivalent municipal ordinance within a specified three-year period, but the act clarifies that the prior convictions or guilty pleas must have been *within three years of the offense* in order to be considered toward imposing the increased penalty. Under the act, when the offense is an unclassified misdemeanor, special sanctions apply (the Revised Code provisions cited in the special sanctions are continuing law and are not in the act). In this regard, the act provides that when the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to R.C. 2929.21 to 2929.28 (misdemeanor sentencing), except that the offender cannot be sentenced to a jail term; the offender cannot be sentenced to a community residential sanction pursuant to R.C. 2929.26; notwithstanding R.C. 2929.28(A)(2)(a) (fines for misdemeanors), the offender may be fined up to $1,000; and, notwithstanding R.C. 2929.27(A)(3) (misdemeanor nonresidential sanctions), the offender may be ordered pursuant to R.C. 2929.27(B) to serve a term of community service of up to 500 hours. (R.C. 4510.11(C)(1)(b).)

Operating a motor vehicle without a valid license

Continuing law prohibits a person, except one expressly exempted under R.C. 4507.03, 4507.04, and 4507.05, from operating a motor vehicle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio unless the person has a valid driver's license or commercial driver's license (R.C. 4510.12(A)(1)). Continuing law also prohibits a person, except one expressly exempted under R.C. 4507.03, 4507.04, and 4507.05, from operating a motorcycle upon a public road or highway or any public or private property used by

the public for purposes of vehicular travel or parking in Ohio unless the person has a valid license as a motorcycle operator that was issued upon application by the Registrar (R.C. 4510.12(A)(2)).

Formerly, a person who violated either of the prohibitions described in the preceding paragraph was guilty of operating a motor vehicle without a valid license and was penalized as follows: (1) if the trier of fact found that the offender never had held a valid driver's or commercial driver's license issued by Ohio or any other jurisdiction, the offense was an unclassified misdemeanor, and the offender could be fined up to $1,000 and pursuant to R.C. 2929.27(B) additionally could be ordered to serve a term of community service of up to 500 hours, (2) if the offender's driver's or commercial driver's license or permit was expired at the time of the offense, the offense was a minor misdemeanor, except that if the offender previously was convicted of or pleaded guilty to three or more violations of either prohibition or a substantially equivalent municipal ordinance within the past three years, it was a misdemeanor of the first degree (it appears that this penalty increase did not apply if the offender never held a valid license), and (3) if the offender's driver's or commercial driver's license or permit was expired for more than six months at the time of the offense and the offender was convicted of or pleaded guilty to one or more violations of either prohibition or a substantially equivalent municipal ordinance within the past three years, the court was required to impose a Class 7 suspension of the offender's license, permit, or nonresident operating privilege.

The act modifies the penalties for a violation of either of the prohibitions described in the second preceding paragraph in several ways (R.C. 4510.12(B) and (D)):

(1) Under the act, except as otherwise described in this paragraph, the offense remains an unclassified misdemeanor if the trier of fact finds that the offender never has held a valid driver's or commercial driver's license issued by Ohio or another state. Under the act, except as otherwise described in this paragraph, the offense also is an unclassified misdemeanor in a case involving the operation of motorcycle by the offender if the offender has never held a valid license as a motorcycle operator, either in the form of an endorsement upon a driver's or commercial driver's license or in the form of a restricted license. Under the act, when the offense is an unclassified misdemeanor, special sanctions apply (the Revised Code provisions cited in the special sanctions are continuing law and are not in the act). In this regard, the act provides that when the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to R.C. 2929.21 to 2929.28 (misdemeanor sentencing), except that the offender cannot be sentenced to a jail term; the offender cannot be sentenced to a community residential sanction pursuant to R.C. 2929.26; notwithstanding R.C. 2929.28(A)(2)(a) (fines for misdemeanors), the offender may be fined up to $1,000; and, notwithstanding

R.C. 2929.27(A)(3) (misdemeanor nonresidential sanctions), the offender may be ordered pursuant to R.C. 2929.27(B) to serve a term of community service of up to 500 hours. Under the act, if the offender previously was convicted of or pleaded guilty to any violation of either of the above-described prohibitions or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) Under the act, except as otherwise described in this paragraph, the offense remains a minor misdemeanor if the offender's driver's or commercial driver's license or permit was expired at the time of the offense. Under the act, except as otherwise described in this paragraph, the offense also is a minor misdemeanor in a case involving the operation of a motorcycle by the offender if the offender's driver's or commercial driver's license bearing the motorcycle endorsement or the offender's restricted license was expired at the time of the offense. Under the act, the offense is a misdemeanor of the first degree if, *within three years of the offense*, the offender previously was convicted of or pleaded guilty to three or more violations of either of the above-described prohibitions or a substantially equivalent municipal ordinance.

(3) Under the act, the court must impose the mandatory Class 7 suspension if the offender's driver's or commercial driver's license or permit was expired for more than six months at the time of the offense and, *within three years of the offense*, the offender previously was convicted of or pleaded guilty to one more violations of either of the above-described prohibitions or a substantially equivalent municipal ordinance.

Driving under financial responsibility law suspension or cancellation

Continuing law prohibits a person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or canceled pursuant to R.C. Ch. 4509., from operating any motor vehicle within Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of the suspension or cancellation, except as specifically authorized by R.C. Ch. 4509. Continuing law also prohibits a person from operating a motor vehicle within Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period in which the person is required by R.C. 4509.45 to file and maintain proof of financial responsibility 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).) Formerly, a person who violated either of these prohibitions generally was guilty of driving under financial responsibility law suspension or cancellation, an unclassified misdemeanor. The offender could be fined up to $1,000 and pursuant to R.C. 2929.27(B) additionally could be ordered to serve a term of community service of up to 500 hours. If the offender previously was convicted of or pleaded guilty to two or more violations

of this prohibition or a substantially equivalent municipal ordinance within the past three years, the offense was a misdemeanor of the first degree. (R.C. 4510.16(B)(1).)

The act modifies the penalties for a violation of either of the prohibitions described in the preceding paragraph. Under the act, the offense remains an unclassified misdemeanor generally and a misdemeanor of the first degree if the offender has two or more prior convictions of or pleas of guilty to a violation of the prohibition or a substantially equivalent municipal ordinance within a specified three-year period, but the act clarifies that the prior convictions or guilty pleas must have been *within three years of the offense* in order to be considered toward imposing the increased penalty. Under the act, when the offense is an unclassified misdemeanor, special sanctions apply (the Revised Code provisions cited in the special sanctions are continuing law and are not in the act). In this regard, the act provides that when the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to R.C. 2929.21 to 2929.28 (misdemeanor sentencing), except that the offender cannot be sentenced to a jail term; the offender cannot be sentenced to a community residential sanction pursuant to R.C. 2929.26; notwithstanding R.C. 2929.28(A)(2)(a) (fines for misdemeanors), the offender may be fined up to $1,000; and, notwithstanding R.C. 2929.27(A)(3) (misdemeanor nonresidential sanctions), the offender may be ordered pursuant to R.C. 2929.27(B) to serve a term of community service of up to 500 hours. (R.C. 4510.16(B)(1).)

Failure to stop after an accident and failure to stop after a nonpublic road accident

Occurring upon the public roads or highways

Under continuing law, 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 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, 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 information required to be given, 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. (R.C. 4549.02(A).)

Formerly, a person who violated this prohibition was guilty of failure to stop after an accident, which generally was a misdemeanor of the first degree. If the violation resulted in serious physical harm or death to a person, failure to stop after an accident is a felony of the fifth degree. If the violation resulted in the death of a person, failure to stop after an accident was a felony of the third degree. The court, in addition to any other penalties provided by law, was required to impose upon the offender a Class 5 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. No judge could suspend the first six months of suspension of an offender's license, permit, or privilege required by this provision. (R.C. 4549.02(B).)

The act modifies the former penalty provisions by stating that if the *accident or collision* (rather than the "violation," which is the failure to stop) results in serious physical harm to a person, failure to stop after an accident is a felony of the fifth degree and if the *accident or collision* (rather than the "violation," which is the failure to stop) results in death to the person, failure to stop after an accident is a felony of the third degree. (R.C. 4549.02(B).)

Occurring other than upon the public roads or highways

Continuing law 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 police department of the

city or village in which the accident or collision occurred or if it occurred outside the corporate limits of a city or village to the sheriff of the county in which the accident or collision occurred 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 information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle. (R.C. 4549.021(A).)

Formerly, a person who violated this prohibition was guilty of failure to stop after a nonpublic road accident, which generally was a misdemeanor of the first degree. If the violation resulted in serious physical harm to a person, failure to stop after a nonpublic road accident was a felony of the fifth degree. If the violation resulted in the death of a person, failure to stop after a nonpublic road accident was a felony of the third degree. The court, in addition to any other penalties provided by law, was required to impose upon the offender a Class 5 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. No judge could suspend the first six months of suspension of an offender's license, permit, or privilege required by this provision. (R.C. 4549.021(B).)

The act modifies the former penalty provisions by stating that if the *accident or collision* (rather than the "violation," which is the failure to stop) results in serious physical harm to a person, failure to stop after an accident is a felony of the fifth degree and if the *accident or collision* (rather than the "violation," which is the failure to stop) results in death to the person, failure to stop after an accident is a felony of the third degree. (R.C. 4549.02(B).)

Miscellaneous changes

The act makes technical changes to R.C. 1901.07 (election of municipal court judge) and 4507.02(B)(1) (permitting operation by unlicensed driver).

COMMENT

1. Continuing R.C. 1901.34(A), not in the act, provides that, except as described in the following two paragraphs, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court must prosecute all cases brought before the municipal court for criminal offenses occurring within the municipal corporation for which that person is the solicitor,

director of law, or similar chief legal officer. Except as described in the following paragraph, the village solicitor, city director of law, or similar chief legal officer of the municipal corporation in which a municipal court is located must prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory of the municipal court.

The Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, and Portage County prosecuting attorneys must prosecute in municipal court all violations of state law arising in their respective counties. The Carroll County, Crawford County, Hamilton County, Madison County, Wayne County, and Erie County prosecuting attorneys must prosecute all violations of state law arising within the unincorporated areas of their respective counties. The Columbiana County prosecuting attorney must prosecute in the Columbiana County Municipal Court all violations of state law arising in the county, except for violations arising in the municipal corporation of East Liverpool, Liverpool Township, or St. Clair Township. The Darke County prosecuting attorney must prosecute in the Darke County Municipal Court all violations of state law arising in the county, except for violations of state law arising in the municipal corporation of Greenville and violations of state law arising in the village of Versailles. The Greene County Board of County Commissioners may provide for the prosecution of all violations of state law arising within the territorial jurisdiction of any municipal court located in Greene County.

The prosecuting attorney of any county, other than Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County, may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the prosecuting attorney prosecutes all criminal cases brought before the municipal court that has territorial jurisdiction over that municipal corporation for criminal offenses occurring within the municipal corporation. The prosecuting attorney of Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the respective prosecuting attorney prosecutes all cases brought before the Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, or Portage County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. (Continuing R.C. 1901.34(B) and (D), not in the act.)

2. Continuing R.C. 1901.30, not in the act, provides that appeals from the municipal court may be taken to the court of appeals in accordance with the Rules of

Appellate Procedure and any relevant sections of the Revised Code, including, but not limited to, R.C. Chapter 2505. to the extent it is not in conflict with those rules. When an appeal is taken from the municipal court, the clerk of the municipal court must transmit, pursuant to the Rules of Appellate Procedure, the record on appeal to the clerk of the appellate court to be filed. In all appeal proceedings relating to judgments or orders of a municipal court, the reviewing courts must take judicial notice of all rules relating to pleadings, practice, or procedure of the municipal court.

Continuing R.C. 1907.30, not in the act, provides that appeals from the final judgments of a county court may be taken to the court of appeals for the county in which the judgment was rendered.

3. Continuing R.C. 1901.03(B) defines "legislative authority" regarding a county-operated municipal court as the board of county commissioners of the county in which the court is located.

HISTORY

ACTION	DATE
Introduced	10-28-09
Reported, H. Civil & Commercial Law	03-03-10
Passed House (97-0)	04-14-10
Reported, S. Judiciary - Civil Justice	06-02-10
Passed Senate (32-0)	06-03-10
House concurred in Senate amendments (94-4)	06-03-10

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