Diana C. Talarek *Legislative Service Commission*

Sub. S.B. 17

127th General Assembly
(As Passed by the Senate)

Sens. Grendell, Harris, Gardner, Schuring, Schaffer, Mason, Carey, Cates, Cafaro, Fedor, Goodman, Jacobson, Mumper, Niehaus, Padgett, Roberts, Sawyer, Faber, Spada, Stivers, Wilson, Boccieri, Morano, Buehrer

BILL SUMMARY

- Expands to include all "equivalent offenses" in the list of relevant prior convictions used in the prohibition against a person refusing to submit to a chemical test under the Vehicle Implied Consent Law if the person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both and if within the preceding 20 years the person has certain relevant prior convictions.

- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, previously has been convicted of one state OVI offense, state OVUAC offense (a violation of R.C. 4511.19(B)), or other equivalent offense by requiring the sentencing court to do the following: (1) in addition to the required jail term or the term of house arrest with monitoring and jail term, require the offender to attend a drivers' intervention program (existing law authorizes the court to require attendance at such a program), (2) if the vehicle used in the offense is registered in the offender's name, order immobilization of that vehicle and the impoundment of its license plates for one year (increased from 90 days), (3) irrespective of whether the vehicle involved in the offense is registered in the offender's name, order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, and (4) require the offender to wear a monitor that provides continuous alcohol monitoring that is remote.

- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, previously has been

convicted of two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses and for an offender who previously has been convicted of felony state OVI, by: (1) requiring that, in addition to ordering criminal forfeiture of the vehicle used in the offense if registered in the offender's name (as under existing law), the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, whether or not the vehicle involved in the offense is registered in the offender's name, (2) expanding the existing alcohol and drug addiction program sanctions to require the operator of the program to determine and assess the degree of the offender's alcohol dependency and use and treat the offender accordingly, and (3) requiring the court to require the offender to wear a monitor that provides continuous alcohol monitoring that is remote.

- Revises the vehicle immobilization, impoundment, and forfeiture provisions that apply to a person who is convicted of a violation of a municipal OVI ordinance and who, within the preceding six years, has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, by: (1) for an offender who, within the preceding six years, has been convicted of one such offense, if the vehicle used in the offense is registered in the offender's name, requiring the court to order immobilization of that vehicle and the impoundment of its license plates for one year (increased from 90 days); and requiring the court to order the immobilization for one year of all motor vehicles not used in the offense and owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles, whether or not the vehicle the offender was operating at the time of the offense is registered in the offender's name, and (2) for an offender who, within the preceding six years, has been convicted of two or more such offenses or who previously has been convicted of state OVI when it was a felony, as under existing law, requiring that, if the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles.

- Authorizes a court that otherwise would be required to issue a vehicle immobilization order as part of the sentence of a person convicted of

state OVI or as a sanction for a person convicted of a municipal OVI violation to waive the vehicle immobilization upon making specified findings regarding the substantial injustice of the order to a spouse or driving-age child of the offender.

- Extends to one year the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state or municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other equivalent offenses.

- Specifies that, if a court grants bail to a person who is alleged to have committed state OVI or a violation of a substantially equivalent municipal ordinance and who would be sentenced as a repeat offender if convicted of that offense, the court as a condition of bail must: (1) prohibit the person from consuming any beer or intoxicating liquor, and (2) require the person to wear a monitor that provides continuous alcohol monitoring that is remote until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed.

- In the provisions that establish and pertain to the offense of wrongful entrustment of a motor vehicle: (1) removes from the prohibition that constitutes the offense the current element that requires that the person who permits the motor vehicle to be driven by another must know or have reasonable cause to believe that: (a) the other person does not have a valid license or operating privilege, (b) the other person's license or operating privilege is under suspension, (c) the other person's driving the vehicle would violate R.C. Chapter 4509., or (d) the other person's driving the vehicle would be a state OVI offense, a state OVUAC offense, or a violation of any substantially equivalent municipal ordinance, (2) expands the prohibition so that it also prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if the vehicle is the subject of an immobilization waiver order issued under the bill and the other person is prohibited from operating the vehicle under that order, (3) repeals three factors that are specified as prima-facie evidence of a vehicle lender's knowledge or reasonable cause to believe that the other person is not entitled to operate a vehicle, (4) provides that it is an affirmative defense

to a charge that a person violated the prohibition that constitutes the offense that, at the time the person charged permitted the vehicle to be driven by the other person, the person charged did not have knowledge, after reasonably diligent inquiry or in reasonable reliance on his or her observation of the other person's condition or on his or her knowledge of the other person's status or qualifications, of any fact specified in clause (1) or (2) of this dot point regarding the other person that, if known, would have made entrustment of the motor vehicle to the other person an offense under the prohibition, and (5) specifies that the intent of the General Assembly is that the offense of wrongful entrustment of a motor vehicle is a strict liability offense.

- Revises the sentencing provisions for an offender convicted of state OMWI (a violation of R.C. 1547.11(A) or (B)) by replacing the list of prior convictions that are relevant in determining the penalty with a new, expanded list of "equivalent offenses."

- Provides that, in any criminal prosecution or juvenile court proceeding charging state OMWI or an "equivalent offense that is watercraft-related": (1) the court may admit evidence of the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's bodily substance if a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under the Watercraft Implied Consent Law or if a blood or urine sample is obtained pursuant to a search warrant, and (2) the result of any test of any blood or urine withdrawn and analyzed at a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency pharmacy, emergency facility, or health care practitioner may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the defendant's guilt or innocence.

- In the provision of the Vehicle Implied Consent Law that requires the suspension of the driver's license or permit or nonresident operating privilege of a person who is arrested for state OVI, state OVUAC, "having physical control of a vehicle while under the influence" or a substantially equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance and is read specified required notices, and who refuses to submit to the test, expands the factors used in determining the length of the suspension to include all of the following that occurred within six

years of the refusal: (1) prior convictions of the person of state OVI, state OVUAC, or another "equivalent offense" (this factor is added by the bill), and (2) prior refusals to submit to a chemical test (retained from existing law).

- Adds a new provision to both the Vehicle Implied Consent Law and the Watercraft Implied Consent Law that specifies that: (1) if a person is arrested for any of the list of offenses that subjects a person to either of those Laws and the person has two or more prior convictions of state OVI, state OVUAC, state OMWI, or "equivalent offenses," the arresting law enforcement officer must request the person to submit, and the person must submit, to a chemical test 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, (2) the officer is not required to advise the person of the consequences of refusing to submit to the test and is not required to give the person the warning form otherwise required to be given under the particular Implied Consent Law, (3) if the person refuses to submit to a chemical test upon request of the officer, 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, (4) the officer is immune from criminal and civil liability based upon any claim for acts taken under the provision described in clause (3) unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner, and (5) if 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 as a "prohibited concentration suspension."

- Explicitly extends an existing qualified immunity from criminal or civil liability to the persons who withdraw blood from a person pursuant to the Watercraft Implied Consent Law or the Vehicle Implied Consent Law.

- Expands the definition of "equivalent offense" that applies to R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law to additionally include (1) state OMWI,

(2) a violation of a municipal ordinance that is substantially equivalent to state OMWI, (3) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI, and (4) a violation of a former Ohio law that was substantially equivalent to state OMWI.

- Replaces the watercraft-related definition of "equivalent violation" with the redefined OVI-related "equivalent offense" definition.

- Defines the term "equivalent offense that is vehicle-related" for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law.

- Defines the term "equivalent offense that is watercraft-related" for purposes of state OMWI and the Watercraft Implied Consent Law.

- Modifies the provisions that govern the requirements for an immobilizing or disabling device that is an ignition interlock device to additionally (1) require the manufacturer of the device to submit to the Department of Public Safety a certificate from an independent testing laboratory indicating that the device meets or exceeds the standards of the federal National Highway Traffic Safety Administration, and (2) require the device to have operating and functional features that make circumvention difficult and that do not interfere with the normal use of the vehicle.

- Requires the Department of Public Safety to establish a State Registry of Ohio's Habitual OVI/OMWI Arrestees and an Internet database, both of which are public records, containing specified information about persons who, within the preceding 20 years, have five or more Ohio arrests for state OVI, state OVUAC, municipal OVI, having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance, state OMWI, a violation of a municipal ordinance substantially equivalent to state OMWI, or another "equivalent offense," and requires law enforcement officers who arrest a person for any of those offenses to send to the Department of Public Safety a sworn report containing specified information regarding the arrested person and the arrest and prior arrests for similar offenses occurring within the preceding 20 years.

- Specifies that its changes take effect on July 1, 2007, or at the earliest time permitted by law, whichever is later.

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CONTENT AND OPERATION

State OVI prohibitions

Existing law, unchanged by the bill, prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (5) the person has a concentration of .11 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (6) the person has a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (7) the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, (9) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (10) the person has a concentration of any of a list of controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds a specified concentration of the controlled substance or metabolite, as described in **COMMENT** 1. (R.C. 4511.19(A)(1).)

Existing law also prohibits a person who, within 20 years of the conduct described in clause (1) of this paragraph, previously has been convicted of or pleaded guilty to a violation of the prohibition described in this paragraph, the prohibition described in the preceding paragraph, R.C. 4511.19(B) (state OVUAC, see **COMMENT** 2), or a *municipal OVI offense* from doing both of the following: (1) operating any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (1), being asked by a law enforcement officer to submit to a chemical test or tests under R.C. 4511.191 (the Vehicle Implied Consent Law), and being advised by the officer in accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests. (R.C. 4511.19(A)(2).) The bill changes the reference to "a municipal OVI offense" in this prohibition to "any other equivalent offense." This change expands the number of offenders potentially subject to this prohibition.

A violation of any of the prohibitions in clauses (1) to (9) of the second preceding paragraph or the prohibition described in the preceding paragraph is the offense of "operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them." A violation of the prohibition described in clause (10) of the second preceding paragraph is the offense of "operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance." Hereafter, both of the offenses are referred to as "state OVI." In subsequent portions of this analysis, references to "high-amount state OVI" mean violations of a prohibition set forth in clause (6), (7), (8), or (9) of the second preceding paragraph, and references to "division (A)(2) state OVI" mean violations of the prohibition set forth in the preceding paragraph. The offense of state OVI is punished as described below in "***State OVI penalties***."

State OVI penalties

Operation of the bill

The existing penalties for state OVI are described below in "***Existing law***." The bill changes the definition of "equivalent offense" that is used in determining the penalty for state OVI and state OVUAC (see "***Definition of "equivalent offense" as used in OVI and OMWI laws***," below). Offenders with one or more prior convictions of the offenses listed within that definition are subject to more stringent penalties than offenders with no such prior conviction. The bill also modifies some of the existing penalties for repeat state OVI offenders, as follows:

(1) It does not change the penalties described below in paragraph (1) under "***Existing law***" for an offender who previously has not been convicted of state

OVI, state OVUAC, or another "equivalent offense" (see "***Definition of "equivalent offense" as used in OVI and OMWI laws***,") and is subject to those penalties (R.C. 4511.19(G)(1)(a)).

(2) For an offender who, within six years of the offense, previously has been convicted of one state OVI offense, one state OVUAC offense, or one other equivalent offense, the bill retains the existing offense classification as a misdemeanor of the first degree, and retains the existing jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (2) under "***Existing law***." But the bill provides that, in addition to the jail term or the term of house arrest with monitoring and jail term, the court *must require* the offender to attend a drivers' intervention program (existing law authorizes the court to require attendance at such a program).

The bill also changes the existing vehicle immobilization provisions. Under the bill, if the vehicle is registered in the offender's name, the court must order immobilization of the vehicle involved in the offense for one year (90 days under existing law) and impoundment of the license plates of that vehicle for one year (90 days under existing law). In addition, irrespective of whether the vehicle involved in the offense is registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. All immobilizations must be in accordance with R.C. 4503.233. The bill also specifies that, in all cases, the court must sentence the offender to a requirement that the offender wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the offender to wear the monitor until the conclusion of all community control sanctions imposed upon the offender, and the offender must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.19(G)(1)(b), and conforming changes in R.C. 4507.164(B)(2).)

(3) For an offender who, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or other equivalent offenses, the bill retains the existing offense classification as a misdemeanor, and retains the existing jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (3) under "***Existing law***." But the bill changes the existing vehicle forfeiture provisions. Under the bill, if the vehicle is registered in the offender's name, the court must order criminal forfeiture of the vehicle involved in the offense (as under existing law) and, in addition, must order the immobilization for one year of all other motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of

all such vehicles. The bill provides that, if the vehicle involved in the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. All immobilizations must be in accordance with R.C. 4503.233. The bill expands the existing alcohol and drug addiction program provisions to require the operator of the program to determine and assess the degree of the offender's alcohol dependency and use and treat the offender accordingly. The bill specifies that, in all cases, the court must sentence the offender to a requirement that the offender wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the offender to wear the monitor until the conclusion of all community control sanctions imposed upon the offender, and the offender must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.19(G)(1)(c), and conforming changes in R.C. 4507.164(B)(3).)

(4) For an offender who, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of five or more violations of that nature, the bill retains the existing offense classification as a felony of the fourth degree, and retains the existing prison term/jail term/house arrest provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (4) under "***Existing law***." The bill changes the sentencing provisions regarding such an offender, though, in the same manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(d), and conforming changes in R.C. 4507.164(B)(3).)

(5) For an offender who previously has been convicted of or pleaded guilty to state OVI when the offense was a felony, the bill retains the existing offense classification as a felony of the third degree, and retains the existing prison term provisions, the existing fine provisions, and the existing license suspension provisions, as described below in paragraph (5) under "***Existing law***." The bill changes the sentencing provisions regarding such an offender, though, in the same manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(e), and conforming changes in R.C. 4507.164(B)(3).)

Existing law

Under existing law, a person who is convicted of the offense of state OVI is sentenced under R.C. Chapter 2929., the general Criminal Sentencing Law, except as otherwise authorized or required by the provisions described in paragraphs (1) to (5), below (R.C. 4511.19(G)):

(1) First conviction. Except as otherwise described in paragraphs (2) to (5), below, the offender is guilty of a misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of three consecutive days. The court may sentence an offender to both an intervention program and a jail term and may impose a jail term in addition to the three-day mandatory jail term or intervention program, provided that the cumulative jail term imposed cannot exceed six months. The court may suspend the execution of some or all of the three-day jail term and, instead, place the offender under a community control sanction for the suspended portion, require the offender to attend, for the suspended portion, a drivers' intervention program, and sentence the offender to a jail term for the non-suspended portion. The court also may require the offender to attend and complete any treatment or education programs that the operators of the drivers' intervention program determine that the offender should attend, and may impose on the offender any other conditions of community control that it considers necessary.

(b) If the offense is high-amount state OVI or division (A)(2) state OVI, except as otherwise described in this paragraph, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program. If the court determines that the offender is not conducive to treatment in such a program, if the offender refuses to attend such a program, or if the jail at which the offender is to serve the jail term imposed can provide such a program, the court must sentence the offender to a mandatory jail term of at least six consecutive days. The court may require the offender to attend and complete any treatment or education programs that the operators of the drivers' intervention program determine that the offender should attend, and may impose any other conditions of community control on the offender that it considers necessary.

(c) In all cases, a fine of not less than $250 and not more than $1,000 and a Class 5 license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "***Limited driving privileges under an OVI suspension***," below).

(2) One prior conviction within preceding six years. Except as otherwise described in paragraph (5), below, an offender who, within six years of the offense, previously has been convicted of one state OVI offense, one state OVUAC offense, or one other "equivalent offense" (see "***Definition of "equivalent offense" as used in OVI and OMWI laws***," below) is guilty of a

misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of ten consecutive days. In specified circumstances, the court may instead impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term, provided that the cumulative jail term imposed cannot exceed six months. In addition to the jail term or the term of house arrest with monitoring and jail term, the court may require the offender to attend a drivers' intervention program. If the operator of the program determines that the offender is alcohol dependent, the program must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, except as otherwise described in this paragraph, a mandatory jail term of 20 consecutive days. In specified circumstances, the court may instead impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 20-day mandatory jail term, provided that the cumulative jail term imposed cannot exceed six months. In addition to the jail term or the term of house arrest with monitoring and jail term, the court may require the offender to attend a driver's intervention program. If the operator of the program determines that the offender is alcohol dependent, the program must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(c) In all cases, a fine of not less than $350 and not more than $1,500; a Class 4 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; and, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 90 days and impoundment of the license plates of that vehicle for 90 days. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "***Limited driving privileges under an OVI suspension***," below).

(3) Two prior convictions within preceding six years. Except as otherwise described below in paragraph (5), an offender who, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or equivalent offenses is guilty of a misdemeanor, and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of 30 consecutive days. In specified circumstances, the court instead may impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 30-day mandatory jail term, provided that the additional jail term cannot exceed one year and the cumulative jail term imposed cannot exceed one year.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory jail term of 60 consecutive days. In specified circumstances, the court instead may impose a sentence consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the 60-day mandatory jail term, provided that the additional jail term cannot exceed one year and the cumulative jail term imposed cannot exceed one year.

(c) In all cases, a fine of not less than $550 and not more than $2,500; a Class 3 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "***Limited driving privileges under an OVI suspension***," below).

(4) Three or four prior convictions within preceding six years or five or more prior convictions within preceding 20 years. Except as otherwise described below in paragraph (5), an offender who, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of five or more violations of that nature is guilty of a felony of the fourth degree and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or, in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 60-day mandatory term, the cumulative total

of the mandatory term and the jail term cannot exceed one year, and, generally, no prison term is authorized for the offense. If the court imposes a mandatory prison term, it also may sentence the offender to a definite prison term that must be not less than six months and not more than 30 months. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of a specification of the type described in R.C. 2941.1413 or, in the discretion of the court, either a mandatory term of local incarceration of 120 consecutive days or a mandatory prison term of 120 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 120-day mandatory term, the cumulative total of the mandatory term and the jail term cannot exceed one year, and, generally, no prison term is authorized for the offense. If the court imposes a mandatory prison term, it also may sentence the offender to a definite prison term that must be not less than six months and not more than 30 months. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(c) In all cases, a fine of not less than $800 nor more than $10,000; a Class 2 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege; if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. If the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court may impose a term of house arrest with electronic monitoring, to commence after the offender has served the mandatory term of local incarceration. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code (see "***Limited driving privileges under an OVI suspension***," below).

(5) Prior felony state OVI conviction. An offender who previously has been convicted of state OVI when the offense was a felony, regardless of when the

violation and the conviction occurred, is guilty of a felony of the third degree and the court must sentence the offender to all of the following:

(a) Unless the offense is high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or a mandatory prison term of 60 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term, provided that the cumulative total of a 60-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(b) If the sentence is being imposed for high-amount state OVI or division (A)(2) state OVI, a mandatory prison term of one, two, three, four, or five years if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1413 or a mandatory prison term of 120 consecutive days if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term, provided that the cumulative total of a 120-day mandatory prison term and the additional prison term for the offense cannot exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction, but the offender must serve all of the prison terms so imposed prior to serving the community control sanction.

(c) In all cases, a fine of not less than $800 nor more than $10,000; a Class 2 license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, if the vehicle is registered in the offender's name; criminal forfeiture of the vehicle involved in the offense; and participation in an alcohol and drug addiction program. The court may grant limited driving privileges relative to the suspension under R.C. 4510.021 and 4510.13 (see "***Limited driving privileges under an OVI suspension***," below).

Vehicle immobilization waiver order

Issuance of vehicle immobilization waiver order

Under the bill, if R.C. 4511.19(G) or R.C. 4511.193(B) requires a court, as part of the sentence for state OVI or as a sanction for a violation of a municipal

OVI ordinance, to order the immobilization of a vehicle for a specified period of time, notwithstanding the requirement, the court in its discretion may determine not to order the immobilization of the vehicle if both of the following apply: (1) prior to the issuance of the immobilization order, a spouse or a "driving-age child" (defined in the bill as a child who is 16 years of age or older) of the offender files a motion identifying the vehicle and requesting that the immobilization order not be issued because the spouse or driving-age child who files the motion or the spouse who files the motion and one or more driving-age children of the offender are completely dependent on the vehicle for the necessities of life and the immobilization of the vehicle would be an undue hardship on the spouse, the driving-age child, or the spouse and the driving-age child or children, and (2) the court determines that the spouse or driving-age child who files the motion or the spouse who files the motion and one or more driving-age children of the offender are completely dependent on the vehicle for the necessities of life and that the immobilization would be an undue hardship to the spouse, the driving-age child, or the spouse and the driving-age child or children.

If a court pursuant to the above-described provision determines not to order the immobilization of a vehicle that otherwise would be required, 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 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 R.C. 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 spouse or driving-age child 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.

If a court issues an immobilization waiver order, the order must identify the spouse or driving-age child who requested the order and the vehicle to which it applies, must identify the spouse and/or the driving-age child or children who are permitted to operate the vehicle, and must identify the offender and specify that the offender is not permitted to operate the vehicle. The immobilization waiver order must require that the spouse and/or the driving-age child or children who are permitted to operate the vehicle must display on the vehicle to which the order applies restricted license plates issued under R.C. 4503.231 (see "***Restricted license plates***," below) for the entire period for which the immobilization of the vehicle otherwise would have been required if the immobilization waiver order had not been issued.

If R.C. 4511.19(G) or R.C. 4511.193(B) requires a court, as part of the sentence for state OVI or as a sanction for a violation of a municipal OVI ordinance, to order the immobilization of more than one vehicle for a specified period of time, the court cannot issue an immobilization waiver order under the provisions described above for more than one of those vehicles.

A spouse or a driving-age child who is permitted to operate a vehicle under an immobilization waiver order issued under the provisions described above cannot permit the offender to operate the vehicle. If the spouse or driving-age child permits the offender to operate the vehicle, both of the following apply: (1) the court that issued the immobilization waiver order must terminate that order and issued an immobilization order in accordance with R.C. 4503.233 that applies to the vehicle, and the immobilization order is in effect for the remaining period of time for which the immobilization of the vehicle otherwise would have been required if the immobilization waiver order had not been issued, and (2) the conduct of the spouse or driving-age child in permitting the offender to operate the vehicle is a violation of the offense of wrongful entrustment of a motor vehicle (see "***Wrongful entrustment***," below). (R.C. 4503.235, and a reference in R.C. 4503.233.)

Restricted license plates

Existing law. Existing law contains provisions regarding the issuance of restricted license plates. Among the provisions, R.C. 4503.231 specifies that no motor vehicle registered in the name of a person whose vehicle registration and license plates have been impounded as provided in R.C. 4507.02(B)(1) may be operated on any highway in Ohio unless the vehicle displays restricted license plates that are a different color from those regularly issued and carry a special serial number that may be readily identified by law enforcement officers. The Registrar of Motor Vehicles is required to designate the color and serial number to be used on restricted license plates. The section provides an exception to the requirement, for certain employment-related purposes. The section prohibits a person operating a motor vehicle displaying restricted license plates as described in this paragraph from knowingly disguising or obscuring the color of the restricted plate. A person who violates the section is guilty of a minor misdemeanor. (R.C. 4503.231.)

Operation of the bill. The bill also specifies that no vehicle that may be operated pursuant to an immobilization waiver order issued under the bill's provisions described above in "***Issuance of vehicle immobilization waiver order***" may be operated on any highway in Ohio unless the vehicle displays restricted license plates that are a different color from those regularly issued and carry a special serial number that may be readily identified by law enforcement officers. The bill does not change the existing provisions regarding the duties of the

Registrar of Motor Vehicles and the Bureau of Motor Vehicles. The existing prohibition and penalty apply to the expansion enacted in the bill. (R.C. 4503.231.)

Municipal OVI license suspensions and vehicle immobilizations and forfeitures

Municipal OVI license suspensions

Existing R.C. 4510.07, not in the bill, specifies that the court imposing a sentence upon an offender for any municipal OVI ordinance also must impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. 4510.02(B) that is equivalent in length to the suspension required for a state OVI offense under similar circumstances. As used in this provision, "municipal OVI ordinance" means any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine (existing R.C. 4510.01, not in the bill, by reference to R.C. 4511.181).

Municipal OVI vehicle immobilizations and forfeitures

Existing law. Existing law provides that, if a person is convicted of a violation of a municipal OVI ordinance (see "***Municipal OVI license suspensions***," above), if the vehicle the offender was operating at the time of the offense is registered in the offender's name, and if, within six years of the current offense, the offender has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, the court, in addition to and independent of any sentence that it imposes upon the offender for the offense, must do whichever of the following is applicable: (1) except as otherwise described in clause (2), if, within six years of the current offense, the offender has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense, the court must order the immobilization for 90 days of that vehicle and the impoundment for 90 days of the license plates of that vehicle, or (2) if, within six years of the current offense, the offender has been convicted of or pleaded guilty to two or more violations described in clause (1), or if the offender previously has been convicted of a state OVI offense under circumstances in which the offense was a felony and regardless of when the violation and the conviction occurred, the court must order the criminal forfeiture to the state of that vehicle. All immobilizations must be in accordance with R.C. 4503.233.

Existing law specifies that the requirements and sanctions described in the preceding paragraph are an adjunct to and derive from the state's exclusive

authority over the registration and titling of motor vehicles and do not comprise a part of the criminal sentence to be imposed upon a person who violates a municipal OVI ordinance. (R.C. 4511.193(B).)

Operation of the bill. The bill modifies the vehicle immobilization, impoundment, and forfeiture provisions that apply to a person convicted of a violation of a municipal OVI ordinance who, within the preceding six years, has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses. Under the bill (R.C. 4511.193(B) and conforming changes in R.C. 4507.164(B)(2) and (3)):

(1) If, within the preceding six years, the offender has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense and if the vehicle the offender was operating at the time of the offense is registered in the offender's name, the court must order the immobilization for one year (90 days under current law) of that vehicle and the impoundment for one year (90 days under current law) of its license plates. In addition, the court must order the immobilization for one year of all other motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. As under existing law, all immobilizations must be in accordance with R.C. 4503.233. If the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles.

(2) If, within the preceding six years, the offender has been convicted of two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, or if the offender previously has been convicted of state OVI when it was a felony and regardless of when the violation and the conviction occurred and if the vehicle the offender was operating at the time of the offense is registered in the offender's name, as under existing law, the court must order the criminal forfeiture to the state of that vehicle. But the bill provides an additional sanction that specifies that, if the vehicle the offender was operating at the time of the offense is not registered in the offender's name, the court must order the immobilization for one year of all motor vehicles owned by or registered in the name of the offender and the impoundment for one year of the license plates of all such vehicles. All immobilizations must be in accordance with R.C. 4503.233.

The bill also affects the application of these provisions by replacing the list of "equivalent offenses" that are classified as prior convictions with a new list of "equivalent offenses," as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***." The probable result of

this change is to expand the number of offenders who will be subject to these provisions. (R.C. 4511.181.)

"Hard suspensions" under an OVI suspension

Existing law

Existing law generally authorizes a court that imposes a suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege to grant the person limited driving privileges during the period of the suspension, unless expressly prohibited by any Revised Code section (R.C. 4510.021--not in the bill). Existing law specifies that, in any case in which a judge or mayor (serving as judge of a mayor's court) grants limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a conviction of a state OVI offense or a "municipal OVI offense" (see "***Municipal OVI vehicle immobilizations and forfeitures***," above for the definition), other than when the offender has no prior state OVI, state OVUAC, or equivalent offense convictions within the preceding six years and the offense for which the suspension was imposed is not high-amount state OVI, the judge or mayor generally must impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates. (R.C. 4510.13(A)(7).)

Among the limited driving privilege prohibitions contained in the Revised Code are restrictions that specify a period of time, for specified types of suspensions, during which a court cannot grant limited driving privileges for the person who is subject to the suspension (the periods of time during which limited driving privileges cannot be granted generally are referred to as "hard suspensions"). For example, existing law provides that no judge or mayor may grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction during any of the following periods of time (R.C. 4510.13(A)(5)):

(1) Except as otherwise described in paragraph (2), (3), or (4), below, the first 15 days of the suspension. On or after the 16th day of the suspension, the court may grant limited driving privileges, but the court may require that the offender not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in R.C. 4510.43(C) (that provision provides a limited exception to immobilizing or disabling device orders for persons who operate a vehicle in employment).

(2) The first 30 days of the suspension, when the offender, within six years of the offense, previously has been convicted of one state OVI offense, state OVUAC offense, or other equivalent offense. On or after the 31st day of suspension, the court may grant limited driving privileges, but the court may require that the offender not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in R.C. 4510.43(C).

(3) The first 180 days of the suspension, when the offender, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or other equivalent offenses. The judge may grant limited driving privileges on or after the 181st day of the suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender, while exercising the privileges during the period commencing with the 181st day of suspension and ending with the first year of suspension, from operating any motor vehicle unless it is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption. After the first year of the suspension, the court may authorize the offender to continue exercising the privileges in vehicles that are not equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption, except as provided in R.C. 4510.43(C). If the offender does not petition for limited driving privileges until after the first year of suspension, the judge may grant limited driving privileges without requiring the use of an immobilizing or disabling device that monitors the offender's alcohol consumption.

(4) The first three years of the suspension, when the offender, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or other equivalent offenses or previously has been convicted of state OVI when it was a felony. The judge may grant limited driving privileges after the first three years of suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender from operating any motor vehicle, for the period of suspension following the first three years of suspension, unless the motor vehicle is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption, except as provided in R.C. 4510.43(C).

Operation of the bill

The bill extends the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other

equivalent offenses. Under the bill, no judge or mayor may grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction during the first year of the suspension, when the offender, within six years of the offense, previously has been convicted of one or two state OVI offenses, state OVUAC offenses, or other equivalent offenses. The judge may grant limited driving privileges after the first year of suspension and, at the time of granting the privileges, also may issue an order prohibiting the offender from operating any motor vehicle for the period of suspension following the first year of suspension unless the motor vehicle is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption, except as provided in R.C. 4510.43(C). (R.C. 4510.13(A)(5)(b), (d), and (e).)

Grant of bail to a person charged with a state or municipal OVI offense--prohibition against consuming alcohol and required wearing of monitor

The bill specifies that, if a court grants bail to a person who is in any category described in the next paragraph and who is alleged to have committed state OVI or a violation of a substantially equivalent municipal ordinance, the court as a condition of bail must prohibit the person from consuming any beer or intoxicating liquor and must require the person to wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the person to wear the monitor until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed. Any consumption by the person of beer or intoxicating liquor prior to that time is grounds for revocation by the court of the person's bail. The person must pay all costs associated with the monitor, including the cost of remote monitoring.

The provisions described in the preceding paragraph apply to the following persons: (1) a person who is alleged to have committed state OVI and who, if convicted of the alleged violation, is required to be sentenced under the sentencing provisions that apply to a person who, within the preceding six years, previously has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, and (2) a person who is alleged to have committed a violation of a municipal ordinance that is substantially equivalent to state OVI and who, if the law enforcement officer who arrested and charged the person with the violation of the municipal ordinance instead had charged the person with state OVI, would be required to be sentenced under the sentencing provisions that apply to a person who, within the preceding six years, previously has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses. (R.C. 4511.198.)

Wrongful entrustment of a motor vehicle

Prohibition

Existing law prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply: (1) the *offender knows or has reasonable cause to believe that the* other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges, (2) the *offender knows or has reasonable cause to believe that the* other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under any provision of the Revised Code, (3) the *offender knows or has reasonable cause to believe that the* other person's act of driving the motor vehicle would violate any prohibition contained in R.C. Chapter 4509., or (4) the *offender knows or has reasonable cause to believe that the* other person's act of driving would be a state OVI offense, a state OVUAC offense, or a violation of any substantially equivalent municipal ordinance. The bill removes the italicized language from the above prohibition but provides an affirmative defense, described in the second succeeding paragraph, for certain innocent conduct.

The bill also expands the above prohibition so that it applies in an additional set of circumstances. Under the bill, in addition to the prohibited conduct described in the preceding paragraph, the prohibition prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if the vehicle is the subject of an immobilization waiver order issued under the bill (see "***Vehicle immobilization waiver order***," above) and the other person is prohibited from operating the vehicle under that order. (R.C. 4511.203(A).)

Prima-facie evidence of knowledge of status of offender

Existing law specifies that, without limiting or precluding the consideration of any other evidence in determining whether a violation of the existing prohibition described in the preceding paragraph has occurred, it is *prima-facie* evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in clause (1), (2), (3), or (4) of the preceding paragraph if any of the following applies: (1) regarding an operator allegedly in the category described in clause (1) or (3) of the preceding paragraph, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity, (2) regarding an operator allegedly in the category described in clause (2) of the preceding paragraph, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of

any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege, or (3) regarding an operator allegedly in the category described in clause (4) of the preceding paragraph, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

The bill repeals the three existing factors described above that are *prima-facie* evidence of the lender's knowledge or reasonable cause to believe that the other person is in a category described in the preceding paragraph. (R.C. 4511.203(B).)

Affirmative defense

Under the bill, it is an affirmative defense to a charge that a person violated the wrongful entrustment of a motor vehicle prohibition, as modified and expanded by the bill, that, at the time that the person charged permitted the motor vehicle to be driven by the other person, the person charged did not have knowledge, after reasonably diligent inquiry or in reasonable reliance on his or her observation of the other person's condition or on his or her knowledge of the other person's status or qualifications, of any of the facts specified in "***Prohibition***," above, regarding the other person that, if known, would have made entrustment of the motor vehicle to the other person an offense under the prohibition (R.C. 4511.203(B)(1)).

Strict liability

The bill includes a statement that specifies that it is the intent of the General Assembly that the offense of wrongful entrustment of a motor vehicle is a strict liability offense (R.C. 4511.203(B)(2)).

Penalty, exemptions, and miscellaneous provisions--unchanged by the bill

Under existing law, a violation of the prohibition described above in "***Prohibition***" is the offense of "wrongful entrustment of a motor vehicle," a misdemeanor of the first degree. In addition to the penalties imposed under the general Criminal Sentencing Law Code, the court must impose a Class 7 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and, if the vehicle involved in the offense is registered in the name of the offender, the court must order one of the following: (1) except as otherwise provided in clause (2) or (3) of this paragraph, it must order, for 30 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates, (2) if the offender previously has been convicted of one

wrongful entrustment of a motor vehicle offense or a violation of a substantially equivalent municipal ordinance, it must order, for 60 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates, or (3) if the offender previously has been convicted of two or more wrongful entrustment of a motor vehicle offenses or violations of a substantially equivalent municipal ordinance, it must order the criminal forfeiture to the state of the vehicle involved in the offense. The bill does not change the penalties for wrongful entrustment. (R.C. 4511.203(C).)

Under existing law, the above wrongful entrustment provisions do not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in R.C. 4549.65. Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for wrongful entrustment or a substantially similar municipal ordinance is not admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle. As used in the above wrongful entrustment provisions, a vehicle is owned by a person if, at the time of the wrongful entrustment, the vehicle is registered in the person's name. The bill does not change any of the provisions described in this paragraph. (R.C. 4511.203(E), (F), and (G).)

State OMWI prohibitions

Existing law, unchanged by the bill, 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, at the time of the operation, control, or manipulation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .11 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, (5) the person has a concentration of .08 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (6) the person has a concentration of any of a list of controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds a specified concentration of the controlled substance or metabolite (the concentrations of the controlled substances and metabolites are similar to the concentrations described in **COMMENT** 1 regarding the offense of state OVI). (R.C. 1547.11(A)(1).)

Existing law, unchanged by the bill, also prohibits a person under 21 years of age from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if, at the

time of the operation, control, or manipulation, any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person has a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine, or (4) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath (R.C. 1547.11(B)).

Hereafter, the offenses described in the two preceding paragraphs are referred to as "state OMWI." The offense of state OMWI is punished as described below in "***State OMWI penalties***."

State OMWI penalties

Operation of the bill

The existing penalties for state OMWI are described below in "***Existing law***." The bill changes the existing penalties for state OMWI only by replacing the list of prior offenses, other than state OMWI, that are classified as prior convictions that are relevant in determining the penalty with a reference to "equivalent offenses," as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***." Offenders with one or more relevant prior convictions are subject to more stringent penalties than offenders with no relevant prior convictions. (R.C. 1547.99(G).)

Existing law

Under existing law, state OMWI is a misdemeanor of the first degree and an offender convicted of the offense is punished as follows (R.C. 1547.99(G)):

(1) Except as otherwise described in paragraphs (2) or (3), below, the court must sentence the offender to a jail term of three consecutive days and may sentence the offender to a longer jail term. In addition, the court must impose a fine of not less than $150 nor more than $1,000. The court may suspend the execution of some or all of the three-day jail term and, instead, place the offender under a community control sanction for the suspended portion and require the offender to attend, for the suspended portion, a drivers' intervention program, and sentences the offender to a jail term for the non-suspended portion. The court also may require the offender to attend and complete any treatment or education programs that the operators of the drivers' intervention program determine that the

offender should attend, and may impose on the offender any other conditions of community control that it considers necessary.

(2) If, within six years of the offense, the offender has been convicted of one state OMWI offense, *one violation of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or a combination of them or relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, of R.C. 2903.06(A)(1), or of R.C. 2903.06(A)(2), (3), or (4) or R.C. 2903.06 or 2903.07 as they existed prior to March 23, 2000, in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them* (replaced with "equivalent offense" by the bill), the court must sentence the offender to a jail term of ten consecutive days and may sentence the offender to a longer jail term. In addition, the court must impose a fine of not less than $150 nor more than $1,000, and may require the offender to attend a drivers' intervention program.

(3) If, within six years of the offense, the offender has been convicted of more than one violation identified in paragraph (2), above, the court must sentence the offender to a jail term of 30 consecutive days and may sentence the offender to a longer jail term of not more than one year. In addition, the court must impose a fine of not less than $150 nor more than $1,000, and may require the offender to attend a drivers' intervention program.

Admission of evidence on the concentration of alcohol or a drug of abuse in a state OMWI case

Ways in which admissible evidence may be obtained

Existing law. Current law provides that, in any criminal prosecution or juvenile court proceeding charging state OMWI or an "equivalent violation" (defined as a violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OMWI), the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within two hours of the time of the alleged violation.

Current law specifies that, when a person submits to a blood test at the request of a law enforcement officer under R.C. 1547.111 (the Watercraft Implied

Consent Law), only a physician, registered nurse, or qualified technician, chemist, or phlebotomist may withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the blood. This limitation does not apply to the taking of breath or urine specimens. The bodily substance withdrawn must be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to R.C. 3701.143.

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis. The person tested may have a physician, registered nurse, or qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, in addition to any administered at the request of a law enforcement officer, and must be so advised. (R.C. 1547.11(D).)

Operation of the bill. Under the bill, in any criminal prosecution or juvenile court proceeding charging state OMWI or an "equivalent offense that is watercraft-related" (note that the bill replaces the existing term "equivalent violation" with the term "equivalent offense that is watercraft-related," as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***"), the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them "in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation" (the bill states "as described in this division") when a person submits to a blood, *breath, urine, or other bodily substance* test at the request of a law enforcement officer under the Watercraft Implied Consent Law *or when a blood or urine sample is obtained pursuant to a search warrant* (this is a modification of existing law, with the bill adding the language in italics).

The bill additionally specifies that, in any criminal prosecution or juvenile court proceeding for a state OMWI violation or an "equivalent offense that is watercraft-related," the result of any test of any blood or urine withdrawn and analyzed at any hospital, ambulatory care facility, long-term care facility, pharmacy, emergency pharmacy, emergency facility, or health care practitioner (health care provider as defined in R.C. 2317.02) may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

The bill specifies that the requirement for an analysis in accordance with Director of Health standards and for allowing the person tested to have another chemical test administered by a qualified technician, chemist, or phlebotomist of

the person's own choosing, discussed above in "***Existing law***," apply only to the manners described in the second preceding paragraph by which a court may admit evidence of the alcohol, drug, controlled substance, or metabolite content of a person's bodily substance. (R.C. 1547.11(D)(1) and (3).)

Vehicle Implied Consent Law suspensions

Existing law

The existing Vehicle Implied Consent Law provides, in relevant part, for administrative suspensions of the driver's or commercial driver's license or permit or nonresident operating privilege of persons who are arrested for the offense of state OVI, the offense of state OVUAC, the offense of "having physical control of a vehicle while under the influence" (see **COMMENT** 3) or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance (see **COMMENT** 4), who are requested in accordance with specified procedures to submit to a chemical test of a specified bodily substance to determine the alcohol or drug content of the bodily substance, and who refuse to submit to the requested test (a "Vehicle Implied Consent Law refusal suspension") or who submit to the requested test and are determined to have a specified concentration of alcohol in the bodily substance (a "Vehicle Implied Consent Law prohibited concentration suspension"). The length of the suspension varies, depending upon the number of times within the preceding six years that: (1) for a refusal suspension, the person has refused previous requests to submit to a chemical test made under that Law, or (2) for a prohibited concentration suspension, the person has been convicted of state OVI, state OVUAC, or another equivalent offense. (R.C. 4511.191.)

Operation of the bill--Vehicle Implied Consent Law refusal suspensions

The bill provides for consideration of prior related convictions in determining the length of a Vehicle Implied Consent Law refusal suspension. The bill does not change the length of the suspensions.

Under the bill, a "Vehicle Implied Consent Law refusal suspension" is determined as follows (the changes made by the bill are indicated in italics):

(1) Except as provided in paragraph (2), (3), or (4), below, the suspension remains as under existing law a Class C suspension (a period of one year) under R.C. 4510.02(B);

(2) If the arrested person, within six years of the date of the refusal, had refused one previous request to consent to a chemical test *or had been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense (as defined in the bill and as described below in "**Definition of "equivalent offense"***

as used in OVI and OMWI laws"), the suspension is a Class B suspension (a period of two years) under R.C. 4510.02(B);

(3) If the arrested person, within six years of the date of the refusal, had refused two previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to two state OVI, state OVUAC, or other equivalent offenses, or had refused one previous request to consent to a chemical test and also had been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense*, the suspension is a Class A suspension (a period of three years);

(4) If the arrested person within six years of the date of the refusal, had refused three or more previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses, or had refused a number of previous requests to consent to a chemical test and also had been convicted of or pleaded guilty to a number of state OVI, state OVUAC, or other equivalent offenses that cumulatively total three or more such refusals, convictions, and guilty pleas, each of which violations or offenses arose from an incident other than an incident that led to any of the refusals*, the suspension is for five years. (R.C. 4511.191(B)(1).)

The bill does not change the existing provisions regarding the immediate effect of the suspension, the termination of the suspension subsequent to a guilty plea or conviction of a related offense resulting from the same incident, or the crediting against a judicial suspension imposed subsequent to a guilty plea or conviction of a related offense resulting from the same incident any time during which the person serves a related "refusal suspension" (R.C. 4511.191(B)(2) and (D)).

Operation of the bill--Vehicle Implied Consent Law prohibited concentration suspensions

The bill replaces the list of "equivalent offenses," other than state OVI and state OVUAC, that are classified as prior convictions used in determining the length of a Vehicle Implied Consent Law prohibited concentration suspension with a new list of "equivalent offenses," as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***."

The bill does not change the length of the suspensions or any of the other existing provisions governing the suspensions, other than an erroneous cross-reference that is corrected in division (C)(1) of R.C. 4511.191. (R.C. 4511.191(C) and (D).)

Mandatory testing under the Vehicle Implied Consent Law or the Watercraft Implied Consent Law for a person with at least two prior convictions

Existing law

Vehicle Implied Consent Law. The existing Vehicle Implied Consent Law, in general, provides that any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio or who is in physical control of a vehicle, streetcar, or trackless trolley is deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine 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 if arrested for state OVI, state OVUAC, having physical control of a vehicle while under the influence, or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance. The chemical test or tests must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley while committing any of the specified offenses or violations.

Before the arrested person may be requested to submit to the test, the arresting officer must read a statutorily specified form to the person that advises the person as to the ramifications of refusing to submit to a requested test and of taking a requested test and having a prohibited concentration of alcohol in the tested bodily substance. If an arrested person refuses to submit to the requested test, no test is administered. If an arrested person who is read the form refuses to submit to a requested test or, unless the arrest is for the offense of having physical control of a vehicle while under the influence or a violation of a substantially equivalent municipal ordinance, submits to a requested test and the test results indicate a prohibited concentration of alcohol in the tested bodily substance, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately and the suspension lasts at least until the person's initial appearance at which time the person may appeal the suspension. The length of the suspension varies, as described in "***Vehicle Implied Consent Law suspensions***," above. The arresting officer must send to the Registrar of Motor Vehicles (hereafter, the Registrar) a report concerning the matter. (R.C. 4511.191 and 4511.192.)

Watercraft Implied Consent Law. The existing Watercraft Implied Consent Law, in general, provides that any person who operates or is in physical control of a vessel or manipulates any water skis, aquaplane, or similar device upon any waters in Ohio is deemed to have given consent to a chemical test or tests to determine 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 if arrested 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. The chemical test or tests must be administered at the direction of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vessel or manipulating any water skis, aquaplane, or similar device while committing the specified violation.

Before the arrested person may be requested to submit to the test, the arresting officer must read a specified form prescribed by the Chief of the Division of Watercraft to the person that advises the person as to the ramifications of refusing to submit to a requested test. If an arrested person refuses to submit to the requested test, no test is administered. If an arrested person who is read the form refuses to submit to a requested test, the person is prohibited from operating or being in physical control of a vessel, from manipulating any water skis, aquaplane, or similar device, and from registering any watercraft for one year following the date of the alleged violation, subject to review in accordance with specified procedures. The arresting officer must send to the Chief of the Division of Watercraft a report concerning the matter. (R.C. 1547.111.)

Operation of the bill

The bill adds a new provision to both the Vehicle Implied Consent Law and the Watercraft Implied Consent Law that requires a person who is arrested for any of the list of offenses that subjects a person to either of those Laws and who has two or more prior convictions of specified offenses to submit upon request to a chemical test or test under the applicable Law. Specifically, under the bill:

(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" (as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***"), the law enforcement officer is required to 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 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 the form otherwise required to be given under the

Watercraft Implied Consent Law, but the officer must advise the person at the time of the arrest that the person may have an independent chemical test taken. Except for the provisions regarding the advice that must be given to the person and the right to refuse and effect of a refusal, procedures under existing law regarding the administration of a chemical test under the Watercraft Implied Consent Law apply to the administration of a chemical test or tests pursuant to this provision. (R.C. 1547.111(B)(1), (C), and (D).)

(2) If a law enforcement officer arrests a person for state OVI, state OVUAC, 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 previously has been convicted of or pleaded guilty to two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses (as defined in the bill and as described below in "***Definition of "equivalent offense" as used in OVI and OMWI laws***"), the law enforcement officer is required to 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 is not required to advise the person of the consequences of submitting to, or refusing to take, the test or tests and is not required to give the person the form otherwise required to be given under the Vehicle Implied Consent Law, but the officer must 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. Except for the provisions regarding the advice that must be given to the person and the right to refuse and effect of a refusal, procedures under existing law regarding the administration of a chemical test under the Vehicle Implied Consent Law apply to the administration of a chemical test or tests pursuant to this provision. (R.C. 4511.191(A)(5)(a) and 4511.192(A) to (C), (E), and (F).)

(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. A law enforcement officer who acts pursuant to this provision to ensure that a person submits to a chemical test of the person's whole blood or blood serum or plasma is immune from criminal and civil liability based upon a claim for assault and battery or any other claim for the acts, unless the officer so acted with malicious purpose, in bad faith, or in a wanton or reckless manner. (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 officer must do all of the following: (a) on behalf of the Registrar, notify the person that, independent of any other penalties or sanctions, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance, (b) seize the person's license or permit and immediately forward it to the Registrar (if the person is not in possession of the license or permit, the officer must order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the person is given notice of the suspension and it then is forwarded to the Registrar), (c) verify the person's current residence and, if it differs from that on the person's license or permit, notify the Registrar of the change, and (d) send to the Registrar, within 48 hours after the arrest, a sworn report that states that the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, that the person was arrested and charged with committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, that the person was under arrest as described above in paragraph (2), that the chemical test or tests were performed in accordance with that provision, and that test results indicated 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. (R.C. 4511.192(D).)

The officer also must 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. 4511.19(D)(3)).

Upon receipt of a law enforcement officer's report as described in the second preceding paragraph, the Registrar must enter into the Registrar's records the fact that the person's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension. The suspension is a Vehicle Implied Consent Law prohibited concentration suspension (as described in "***Vehicle Implied Consent Law suspensions***," above, and the period is that of Vehicle Implied Consent Law prohibited concentration suspension. (R.C. 4511.191(C).)

Immunity for withdrawal of blood

Existing law

Existing law provides that, except as otherwise described in this paragraph, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to R.C. 1547.11 (state OMWI) or 4511.19 (state OVI and state OVUAC), and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to R.C. 1547.11 or 4511.19, is immune from criminal or civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity is not available, though, to a person who withdraws blood if the person engages in willful or wanton misconduct. (R.C. 1547.11(G) and 4511.19(F).)

Operation of the bill

The bill modifies the language of the existing provision to ensure that it also applies to the specified persons who withdraw blood from a person pursuant to the Watercraft Implied Consent Law or the Vehicle Implied Consent Law. Specifically, under the bill, except as otherwise described in this paragraph, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to R.C. 1547.11, 1547.111, 4511.19, or 4511.191, and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to R.C. 1547.11, 1547.111, 4511.19, or 4511.191 is immune from criminal or civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. As under existing law, the immunity is not available to a person who withdraws blood if the person engages in willful or wanton misconduct. (R.C. 1547.11(G) and 4511.19(F).)

Definition of "equivalent offense" as used in OVI and OMWI laws

Existing law

Existing law defines "equivalent violation" for purposes of the offense of OMWI and the Watercraft Implied Consent Law as a violation of a municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to the offense of state OMWI (R.C. 1547.11(I)).

Existing law defines "equivalent offense" for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, as any of the following:

(1) State OVI or state OVUAC;

(2) A violation of a municipal OVI ordinance (see **COMMENT** 4);

(3) A violation of R.C. 2903.04 (involuntary manslaughter) in a case in which the offender was subject to the sanctions described in division (D) of that section;

(4) A violation of division (A)(1) of R.C. 2903.06 or 2903.08 (aggravated vehicular homicide based on an OVI violation and aggravated vehicular assault) or a municipal ordinance that is substantially equivalent to either of those divisions;

(5) A violation of R.C. 2903.06(A)(2), (3), or (4), R.C. 2903.08(A)(2), or former R.C. 2903.07 (all the vehicular homicide type offenses and vehicular assault type offenses not covered by paragraph (4)), or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

(6) A violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OVI or state OVUAC;

(7) A violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC (R.C. 4511.181).

Operation of the bill

Equivalent offense. The bill expands the existing R.C. 4511.181 definition of the term "equivalent offense" and replaces the existing R.C. 1547.11 definition of the term "equivalent violation" with the expanded R.C. 4511.181 definition of the term "equivalent offense." Under the bill, as used in state OMWI, the Watercraft Implied Consent Law, and R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, "equivalent offense" means any of the following (R.C. 1547.11(I) and 4511.181(A)):

(1) Any offense listed in paragraph (1), (2), (3), (4), (5), (6), or (7) of the existing definition (see "***Existing law***," above);

(2) State OMWI;

(3) A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on

Ohio waters with 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, or urine;

(4) A violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI;

(5) A violation of a former Ohio law that was substantially equivalent to state OMWI.

Equivalent offense that is vehicle-related. Under the bill, for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, "equivalent offense that is vehicle-related" means an equivalent offense that is any of the following (R.C. 4511.181(F)): (1) a violation that is listed in paragraphs (1) to (5), above, under the existing law definition of "equivalent offense," (2) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OVI or state OVUAC, or (3) a violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC.

The bill substitutes this term for the current term of "equivalent offense" that is used in provisions of the statute containing the offense of OVI that pertain to the charging of a person with a vehicle-related offense or the trial of a person charged with a vehicle-related offense but that do involve any consideration of any prior convictions of the person of other offenses (R.C. 4511.19(D)(1)(a) and (b) and (D)(2)).

Equivalent offense that is watercraft-related. Under the bill, for purposes of state OMWI and the Watercraft Implied Consent Law, "equivalent offense that is watercraft-related" means an equivalent offense that is any of the following (R.C. 1547.11(I)(6)): (1) a violation that is listed in paragraph (2) or (3), above, under the bill's modified definition of "equivalent offense," (2) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI, or (3) a violation of a former Ohio law that was substantially equivalent to state OMWI.

The bill substitutes this term for the current term of "equivalent violation" that is used in provisions of the statute containing the offense of OMWI that pertain to the charging of a person with a watercraft-related offense or the trial of a person charged with a watercraft-related offense but that do involve any consideration of any prior convictions of the person of other offenses (R.C. 1547.11(D)(1)(b) and (D)(2)) and makes similar clarifying changes in a few other similar provisions (R.C. 1547.11(E)(1) and (F)(1)).

Certification of ignition interlock devices

Existing law

Existing law requires the Director of Public Safety, in consultation with the Director of Health and in accordance with the Administrative Procedure Act (the APA), to certify immobilizing and disabling devices and to publish and make available to the courts, without charge, a list of approved devices together with information about the manufacturers of the devices and where they may be obtained (immobilizing and disabling devices are used under certain motor vehicle-related provisions, including provisions related to a grant of limited driving privileges during the period of a license suspension--see, for example, the discussion under "***"Hard suspensions" under an OVI suspension***"). The manufacturer of an immobilizing or disabling device must pay the cost of obtaining the certification of the device to the Director of Public Safety, who must deposit the payment in the Drivers' Treatment and Intervention Fund established by R.C. 4511.19 and 4511.191.

The Director of Public Safety, in accordance with the APA, also must adopt and publish rules setting forth the requirements for obtaining certification of an immobilizing or disabling device. The Director cannot certify an immobilizing or disabling device under this provision unless it meets the requirements specified and published by the Director in those rules. A certified device may consist of an ignition interlock device, an ignition blocking device initiated by time or magnetic or electronic encoding, an activity monitor, or any other device that reasonably assures compliance with an order granting limited driving privileges. The Director also must adopt rules in accordance with the APA for the design of a warning label that must be affixed to each immobilizing or disabling device upon installation; the label must contain a warning that any person tampering, circumventing, or otherwise misusing the device is subject to a fine, imprisonment, or both and may be subject to civil liability.

The requirements for an immobilizing or disabling device that is an ignition interlock device must include provisions for setting a minimum and maximum calibration range and must include, but are not limited to, specifications that the device complies with all of the following: (1) it does not impede the safe operation of the vehicle, (2) it has features that make circumvention difficult and that do not interfere with the normal use of the vehicle, (3) it correlates well with established alcohol impairment measures, (4) it works accurately and reliably in an unsupervised environment, (5) it is resistant to tampering and shows evidence of tampering if attempted, (6) it is difficult to circumvent and requires premeditation to do so, (7) it minimizes inconvenience to a sober user, (8) it requires a proper, deep-lung breath sample or other accurate measure of the concentration by weight of alcohol in the breath, (9) it operates reliably over the range of automobile

environments, and (10) it is made by a manufacturer covered by product liability insurance.

A court considering the use of a prototype device in a pilot program must advise the Director of Public Safety, 30 days before the use, of the prototype device and its protocol, methodology, manufacturer, and licensor, lessor, other agent, or owner, and the length of the court's pilot program. A prototype device cannot be used for state OVI or OVUAC, a violation of R.C. 4510.14, a violation of a municipal OVI ordinance, or in relation to a suspension imposed under the Vehicle Implied Consent Law. A court that uses a prototype device in a pilot program, periodically during the existence of the program and within 14 days after termination of the program, must report in writing to the Director regarding the effectiveness of the prototype device and the program. (R.C. 4510.43.)

Operation of the bill

The bill modifies the provisions that govern the requirements for an immobilizing or disabling device that is an ignition interlock device. Under the bill, the requirements for an immobilizing or disabling device that is an ignition interlock device *must require that the manufacturer of the device submit to the Department of Public Safety a certificate from an independent testing laboratory indicating that the device meets or exceeds the standards of the federal National Highway Traffic Safety Administration that are in effect at the time of the Director's certification of the device* (language in italics is added by the bill), must include provisions for setting a minimum and maximum calibration range, and must include, but are not limited to, specifications that the device complies with all of the following: (1) it does not impede the safe operation of the vehicle, (2) it has features that make circumvention difficult and that do not interfere with the normal use of the vehicle, *and the features are operating and functional* (language in italics is added by the bill), and (3) it complies with all of the criteria and requirements described above in clauses (3) to (10) of the second paragraph under "***Existing law***." (R.C. 4510.43(A)(2).)

State Registry of Ohio's Habitual OVI/OMWI Arrestees, and Internet database containing State Registry

Establishment of State Registry and Internet database

The bill requires the Department of Public Safety, not later than 90 days after the bill's effective date, to do all of the following (R.C. 5502.10(A)):

(1) Establish and maintain a State Registry, named "Ohio's Habitual OVI/OMWI Arrestees," that contains all of the information specified below regarding each person who, within the preceding 20 years, has been arrested in

Ohio five or more times for an OVI/OMWI violation (see "***Definition of "OVI/OMWI violation"***," below). The State Registry is a public record open for inspection under the state's Public Records Law. The Department is required to obtain the information to be included in the State Registry from the reports provided by law enforcement officers pursuant to the bill (see "***Law enforcement officer reports***," below). The State Registry must include at least the following information regarding each person who, within the preceding 20 years, has been arrested in Ohio five or more times for an OVI/OMWI violation:

(a) The person's name, date of birth, and residence address, including, but not limited to, the street address, municipal corporation or township, county, and ZIP code of the person's place of residence;

(b) The number of times within the preceding 20 years that the person has been arrested in Ohio for an OVI/OMWI violation, and, for each of those arrests, the date and location of the arrest, the law enforcement agency served by the law enforcement officer who made the arrest, the reason the law enforcement officer who made the arrest initially stopped the person, whether the person was asked to take a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine, whether the person, if asked to take a test or tests, submitted to the test or tests or refused to submit to the test or tests, and the results of the test or tests if the person submitted to a test or tests.

(2) Establish and operate on the Internet a database that contains for each person who, within the preceding 20 years, has been arrested in Ohio five or more times for an OVI/OMWI violation, all of the information regarding the person that is included in the State Registry of Ohio's Habitual OVI/OMWI Arrestees that is established and maintained under the provision described above in (1). The database is a public record open for inspection under the state's Public Records Law, and it must be searchable by a person's name, by county, and by ZIP code.

Updating of State Registry and Internet database

The bill requires the Department of Public Safety to update the State Registry of Ohio's Habitual OVI/OMWI Arrestees and the Internet database required under the provisions described above every month to ensure that the information they contain is accurate and current. At the time of each update, the Department must review all records it has received under the provision described below in "***Law enforcement officer reports***" for the preceding 20 years regarding each person who has been arrested for committing OVI/OMWI violations and for whom the Department has records to determine whether the person should, or should not, be subject to inclusion in the State Registry and database. (R.C. 5502.10(C).)

Law enforcement officer reports

The bill requires a law enforcement officer who arrests a person for an OVI/OMWI violation (see "***Definition of "OVI/OMWI violation"***," below) to send to the Department of Public Safety, within 48 hours after the arrest of the person, a sworn report that includes all of the following statements and information regarding the arrested person and the arrest (R.C. 1547.112, 4511.199, and 5502.10(B)):

(1) The arrested person's name, date of birth, and residence address, including, but not limited to, the street address, municipal corporation or township, county, and ZIP code of the person's place of residence;

(2) The date and location of the arrest the officer made, the offense for which the person was arrested, the law enforcement agency served by the officer, and the reason the officer initially stopped the person;

(3) A statement that the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was committing an OVI/OMWI violation;

(4) A statement that the arrested person was arrested and charged with an OVI/OMWI violation;

(5) Statements as to whether the officer asked the arrested person to take a designated chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine in accordance with R.C. 1547.11 and 1547.111, or R.C. 4511.19 and 4511.191, whether the arrested person, if asked to take a test or tests, submitted to the test or tests or refused to submit to the test or tests, and the results of the test or tests if the arrested person was asked to take a test or tests and submitted to the test or tests;

(6) For each previous arrest of the person for an OVI/OMWI violation that the officer is able to determine was made and that was made within the preceding 20 years, information of the type described in paragraphs (1), (2), and (4), above, and, if the officer submitting the report is able to determine the information, information as to whether the law enforcement officer who made the arrest in each of those cases asked the arrested person to take a designated chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine in accordance with R.C. 1547.11 and 1547.111, or R.C. 4511.19 and 4511.191, whether the arrested person, if asked to take a test or tests, submitted to the test or tests or refused to submit to the test or tests, and the results of the test or tests if the arrested person was asked to take a test or tests and submitted to the test or tests.

Definition of "OVI/OMWI violation"

The bill defines "OVI/OMWI violation," for purposes of the State Registry and Internet database provisions described above, as meaning any of the following (R.C. 5502.10(D)): (1) state OVI or state OVUAC or a violation of a "municipal OVI ordinance" (as used in this provision, "municipal OVI ordinance" has the same meaning as is described in **COMMENT** 4), (2) having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance, (3) state OMWI or a violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OMWI, or (4) any equivalent offense not listed in clauses (1) to (3) of this paragraph (as used in this provision, "equivalent offense" has the same meaning as is described above in "***Definition of "equivalent offense" as used in OVI and OMWI laws***").

Effective date of the bill

The bill specifies that its changes described above take effect on July 1, 2007, or at the earliest time permitted by law, whichever is later (Section 3 of the bill).

COMMENT

1. Existing R.C. 4511.19(A)(1)(j) prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, except as provided in R.C. 4511.19(K), the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following: (a) the person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma, (b) the person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma, (c) the person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma, (d) the person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the

person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma, (e) the person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma, (f) the person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma, (g) the person has a concentration of marihuana in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least 2 nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma, (h) either of the following applies: (i) the person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 5 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, or (ii) as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, (i) the person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma, or (j) the person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

2. Existing R.C. 4511.19(B) prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit

volume of alcohol in the person's whole blood, (2) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (4) the person has a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine.

A violation of the prohibition is the offense of "operating a vehicle after underage alcohol consumption," commonly referred to as "state OVUAC." The penalty for the offense is as follows: (a) except as otherwise described in clause (b) of this next paragraph, the offense is a misdemeanor of the fourth degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, (b) if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, the offense is a misdemeanor of the third degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (c) if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1416 and if the court imposes a jail term for the offense, the court must impose upon the offender an additional definite jail term pursuant to R.C. 2929.24(E).

3. Existing R.C. 4511.194 prohibits a person from being in "physical control" (defined as being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device) of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in R.C. 4511.19(A)(1)(b), (c), (d), or (e). A violation of the prohibition is the offense of "having physical control of a vehicle while under the influence." (R.C. 4511.194--not in the bill.)

4. Existing R.C. 4511.181(C) defines "municipal OVI ordinance" and "municipal OVI offense," for purposes of R.C. 4511.181 to 4511.197, as any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the

whole blood, blood serum or plasma, breath, or urine (R.C. 4511.181(C)--not in the bill).

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	04-19-07
Recommitted to S. Judiciary - Criminal Justice	04-24-07
Re-reported, S. Judiciary - Criminal Justice	05-09-07
Passed Senate (32-0)	05-10-07

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