Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

Sub. H.B. 606*

129th General Assembly
(As Reported by S. Judiciary)

Reps. R. Hagan, Gerberry, Bubp, Blair, Blessing, Combs, DeVitis, Hottinger, Huffman, Martin, Murray, Ramos, Stebelton, Yuko, Batchelder

BILL SUMMARY

- Abolishes one of the three full-time judgeships of the Youngstown Municipal Court.
- Increases from more than 100 to more than 200 the population necessary for a municipal corporation to have a mayor's court and have jurisdiction over certain specified matters.
- Allows any municipal corporation located entirely on an island in Lake Erie to establish a mayor's court and to have jurisdiction over certain specified matters.
- Provides for the transfer to the appropriate municipal, county, or common pleas court of cases that prior to the effective date of the bill were under the jurisdiction of a mayor's court located in a municipal corporation with a population of 200 or less, except for any mayor's court located in a municipal corporation located entirely on an island in Lake Erie.
- Provides that a conviction or guilty plea to driving while writing, sending, or reading a text-based communication on a handheld electronic wireless communications device and a conviction or guilty plea to a substantially equivalent municipal ordinance for the same conduct are allied offenses of similar import.
- Provides that an adjudication for the offense that prohibits a person under 18 from using in any manner an electronic wireless communications device while driving and an adjudication for violating a substantially equivalent municipal ordinance for the same conduct are allied offenses of similar import.

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

CONTENT AND OPERATION

Elimination of one judgeship of Youngstown Municipal Court

Current law provides that the Youngstown Municipal Court has three full-time judges, one first elected in 1951 (and every six years thereafter), and two first elected in 1953 (and every six years thereafter). The bill abolishes one of the two judgeships first elected in 1953 (last elected in 2007) and specifies that one judge is to be elected in 2013.[1] It further provides that the judgeship of the Youngstown Municipal Court that is abolished by the bill is the judgeship whose term began on January 1, 2008. It also provides that the term of the judge elected in 2013 to succeed the judge whose term began on January 2, 2008, begins on January 1, 2014.[2]

Jurisdiction of mayor's courts

Mayor's courts are courts authorized by statute but are not courts of record. The General Assembly's authority to create and abolish mayor's courts is conferred by the Ohio Constitution. Currently, the mayor in Georgetown in Brown County, in Mount Gilead in Morrow County, and in all other municipal corporations having a population of more than one hundred, other than Batavia in Clermont County, not being the site of a municipal court nor a place where a judge of the Auglaize County, Crawford County, Jackson County, Miami County, Montgomery County, Portage County, or Wayne County municipal courts sits as required under R.C. 1901.021 or by designation of the judges pursuant to that section has jurisdiction to hear specified criminal and traffic cases. A mayor does not have to exercise this jurisdiction by establishing a mayor's court. *See State ex rel Boston Heights, vs. Petsche* (Summit 1985), 27 Ohio App. 3d 106.

Mayor's courts have limited criminal jurisdiction. Mayor's courts generally may hear and determine municipal ordinance violations, noncriminal parking violation cases not handled by a parking violations bureau or joint parking violations bureau, and all criminal causes involving any moving traffic violation occurring on a state highway located within the boundaries of the municipal corporation, subject to certain limitations. Mayor's courts also have jurisdiction, subject to certain limitations, to hear and determine prosecutions involving a violation of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them, or relating to operating a vehicle 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 (municipal OVI), and to hear and

[1] R.C. 1901.08.

[2] Section 3.

determine criminal causes involving a violation of R.C. 4511.19 (state OVI) that occur on a state highway located within the boundaries of the municipal corporation, subject to certain specified limitations. Mayor's courts lack jurisdiction over certain repeat OVI offender cases and certain repeat cases involving the operation of a motor vehicle while a driver's or commercial driver's license or permit or a nonresident's operating privilege was suspended or revoked.[3]

The bill increases the population necessary for a municipal corporation to have a mayor's court and to have jurisdiction over the matters described in the preceding paragraph from more than 100 to more than 200. The bill also allows any municipal corporation located entirely on an island in Lake Erie to establish a mayor's court and have jurisdiction over the matters described in the preceding paragraph. Put-in-Bay village currently has a population of 138 (according to the 2010 census) and is located entirely on South Bass Island.[4]

Termination and transfer of civil and criminal causes

The bill provides that, upon the effective date of the bill, within each municipal corporation with a population of 200 or less, except for any municipal corporation located entirely on an island in Lake Erie, the jurisdiction of the mayor in all civil and criminal causes that otherwise was granted under R.C. 1905.01 prior to the effective date of the bill terminates. Upon the effective date of the bill, all prosecutions, cases, criminal causes, and other proceedings then pending in a mayor's court of a municipal corporation that has a population of 200 or less and is not located entirely on an island in Lake Erie must be transferred to and proceed in the municipal court, county court, or court of common pleas with jurisdiction over the alleged violation that is the basis of the prosecution, case, cause, or proceeding, as if the prosecution, case, cause, or proceeding originally had been instituted in the municipal court, county court, or court of common pleas.[5]

Transfer of information

Under the bill, upon the transfer of a prosecution, case, criminal cause, or other proceeding to a municipal court, county court, or court of common pleas, the mayor of the municipal corporation before whom the prosecution, case, cause, or proceeding was pending upon the effective date of the bill must transfer to the municipal court, county court, or court of common pleas the pleadings, orders, entries, dockets, bonds, papers,

[3] R.C. 1905.01.

[4] R.C. 1905.01(A) and (B).

[5] Section 3(A).

records, books, exhibits, files, moneys, property, and persons that belong to, are in the possession of, or were subject to the jurisdiction of the mayor and that pertain to the transferred prosecution, case, cause, or proceeding.[6]

Using handheld electronic device while driving—allied offenses of similar import

Existing R.C. 4511.204 prohibits a person from driving a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication. There are several situations to which the above prohibition does not apply including a person using a handheld electronic wireless communications device for emergency purposes, a person driving a public safety vehicle who uses the electronic wireless communications device in the course of the person's duties, and a person using a device for navigation purposes.[7] Whoever violates the above prohibition is guilty of a minor misdemeanor.[8]

Existing law provides that the above prohibition is not to be construed as invalidating, preempting, or superseding a substantially equivalent municipal ordinance that prescribes penalties for violations of that ordinance that are greater than the penalties prescribed in the Revised Code for violations of the above prohibition. In addition, existing law provides that, notwithstanding any provision of law to the contrary, no law enforcement officer may cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of the above prohibition has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer may view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.[9]

The bill provides that a prosecution for a violation of the above prohibition does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads

---

[6] Section 3(B).

[7] R.C. 4511.204(A) and (B).

[8] R.C. 4511.204(D).

[9] R.C. 4511.204(C) and (E).

guilty to a violation of the above prohibition and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under R.C. 2941.25.[10] R.C. 2941.25 provides that where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one and where the defendant's conduct constitutes two or more offenses of dissimilar import, or where the defendant's conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.[11]

Existing R.C. 4511.205 prohibits the holder of a temporary instruction permit who has not attained the age of 18 and the holder of a probationary driver's license from driving a motor vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device. This prohibition does not apply to a person using an electronic wireless communications device for emergency purposes, a person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel, or a person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.[12]

Whoever violates the above prohibition must be fined $150. In addition, the court must impose a class seven suspension of the offender's driver's license or permit for a definite period of 60 days. If the offender previously has been convicted of a violation of the above prohibition, whoever violates the above prohibition must be fined $300. In addition, the court must impose a class seven suspension of the offender's person's driver's license or permit for a definite period of one year.[13]

The bill provides that the filing of a sworn complaint against a person for a violation of the above prohibition does not preclude the filing of a sworn complaint for a violation of a substantially equivalent municipal ordinance for the same conduct. However, if a person is adjudicated a delinquent child or a juvenile traffic offender for a violation of the above prohibition and is also adjudicated a delinquent child or a

[10] R.C. 4511.204(F).

[11] R.C. 2941.25.

[12] R.C. 4511.205(A) and (B).

[13] R.C. 4511.205(C).

juvenile traffic offender for a violation of a substantially equivalent municipal ordinance for the same conduct, the two offenses are allied offenses of similar import under R.C. 2941.25. The bill changes the references in existing law to "offender" to "person" and the references in existing law to "conviction" to "adjudicated a delinquent child or a juvenile traffic offender."[14]

Background − municipal court judgeships

All municipal court judges are elected for six-year terms. In a municipal court in which only one judge is to be elected in any one year, that judge's term commences on January 1 in the year after the election. In a municipal court in which two or more judges are to be elected in any one year, their terms commence on successive days beginning on January 1 in the year after the election, unless otherwise provided by R.C. 1901.08.[15]

HISTORY

ACTION	DATE
Introduced	11-21-12
Reported, H. Judiciary & Ethics	12-05-12
Passed House (87-12)	12-05-12
Reported, S. Judiciary	---

H0606-rs-129/ejs

[14] R.C. 4511.205(D).

[15] R.C. 1901.07.