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Office

H.B. 56
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Reps. Plummer and White

Local Impact Statement Procedure Required: No

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Highlights

- The bill's penalty enhancement for eluding or fleeing a police officer may shift some misdemeanor cases from the jurisdiction of a municipal or county court to the jurisdiction of a court of common pleas to be tried as a felony, thus shifting workload and related adjudication and local sanctioning costs for those cases. There may also be a relatively small number of offenders, that if convicted of a felony, could be sentenced to longer periods of incarceration/supervision in a state correctional facility.
- Local law enforcement entities that do not currently have a motor vehicle pursuit policy in effect may incur one-time additional administrative costs to implement a new policy and to provide training for law enforcement.
- The bill's stunt driving and street takeover prohibitions may generate a minimal number of additional cases for local criminal justice systems to adjudicate and sanction annually, and may elevate the offense level and penalties, including possible jail time, for certain behavior charged under the bill instead of under existing law. The impact on any given local criminal justice system is not expected to exceed minimal annually.
- The bill adds utility vehicles and mini-trucks to the list of vehicles that can be used to commit a vehicular homicide or assault offense. As a result, there may be some increase in the number of vehicular homicide and assault charges filed for courts to adjudicate annually. Since these charges would likely be in lieu of, or in addition to, other criminal charges under existing law, the impact on courts, prosecutors, and public defenders is expected to be minimal.
- The bill adjusts the fines associated with failing to maintain financial responsibility. The Indigent Defense Support Fund (Fund 5DY0) will experience a \$40 or \$90 gain in revenue

for each second or subsequent conviction, respectively, for failing to maintain financial responsibility within five years of a first conviction.

- The bill specifies that any fees collected by a clerk serving as a third-party administrator for the standard motor vehicle skills test are required to be deposited into the county's existing Certificate of Title Administration Fund along with any fees that were collected by a clerk serving as a third-party administrator between April 12, 2021, and the bill's effective date.

Detailed Analysis

Related to certain driving offenses, the bill: (1) increases the penalties for fleeing from law enforcement, (2) requires law enforcement entities to have a specified policy governing the pursuit of a motor vehicle, (3) prohibits stunt driving and street takeovers, and (4) adds utility vehicles to the list of vehicles that can be used to commit a vehicular homicide or assault offense.

The bill also increases the portion of the license reinstatement fee associated with failure to maintain proof of financial responsibility that is distributed to the Indigent Defense Support Fund (Fund 5DY0) and authorizes a third party to administer the standard motor vehicle skills test.

Fleeing law enforcement

The bill increases the general penalty for a violation of willfully eluding or fleeing a police officer from a first degree misdemeanor to a fourth degree felony.¹ If the flight was immediately after the commission of a felony, the bill increases the penalty from a fourth degree felony to a third degree felony and applies the longer sentence range that exists under current law for certain third degree felony offenses. As a result, the bill may shift some misdemeanor cases from the jurisdiction of a municipal or county court to the jurisdiction of a court of common pleas, the court with jurisdiction over felony-level cases. This means that municipal and county courts may experience a minimal reduction in their annual criminal justice expenditures related to investigating, prosecuting, defending (if indigent), adjudicating, and sanctioning certain offenders. Conversely, county courts of common pleas may experience an increase in their annual criminal justice expenditures from those shifted cases, as felonies tend to be more time consuming and costly to adjudicate. Local sanctioning costs may be higher for those cases as well.

The number of these type of cases varies significantly by court, with urban and suburban courts seeing them more frequently than more rural areas. It should be noted that cases involving fleeing from law enforcement typically involve other charges, frequently other traffic offenses, which are generally misdemeanors, but may also include felonies. This effectively means that the number of cases that may be transferred from a municipal or county court under the bill to a court of common pleas may be reduced to some degree depending on the other charges against an individual. For example, if an individual were charged with fleeing law enforcement as well as

¹ The bill also increases the license suspension that is currently imposed for fleeing a police officer with a motor vehicle from a class 5 to a class 2 suspension. Presumably this will not impact the Bureau of Motor Vehicles (BMV), as the license reinstatement process is the same, regardless of the length of the suspension.

with theft of a motor vehicle, or drug possession/trafficking, which are felonies, that case is likely to end up in a court of common pleas, regardless of the bill's penalty enhancement.

Data obtained from the Ohio State Highway Patrol from 2017 through 2021 indicates that troopers were involved in a total of 2,308 cases that involved charges for fleeing law enforcement. Of those, 1,561, or 67.6%, were charged as felonies. It is unclear how many of the remaining 747 charges may have also involved the commission of a separate felony. Based on that data, while these charges are not uncommon, it appears that the number of cases that may be impacted by the bill (specifically those elevating from a misdemeanor to felony) is likely to be relatively small within the context of any given court's overall caseload. Any resulting impact is not likely to exceed minimal.

Penalty enhancement

As a result of the bill's penalty enhancement, a relatively small number of offenders may be sentenced to a state prison or juvenile correctional facility, or may be required to serve a longer term of incarceration, than would have otherwise been the case under existing law. This may result in increased annual incarceration/supervision expenditures for the Department of Rehabilitation and Correction and care and custody costs for the Department of Youth Services. Under current law, in the case of fourth and fifth degree felonies, there is a presumption generally in favor of a community control rather than the imposition of a prison term. The table below shows the existing penalties for fleeing law enforcement as well as the penalty enhancements under the bill.

Table 1. Felony and Misdemeanor Sentences and Fines for Fleeing Law Enforcement		
Offense Level	Fine	Term of Incarceration
Felony, 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
		12, 18, 24, 30, 36, 42, 48, 54, or 60 months definite prison term*
Felony, 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Misdemeanor, 1 st degree	Up to \$1,000	Jail, not more than 180 days

*The longer sentence range applies to aggravated vehicular homicides and assaults, sexual battery, gross sexual imposition, sex with a minor, and robbery or burglary with two or more separate aggravated or nonaggravated robberies or burglaries.

Fines, court costs, and fees

As a result of shifting some misdemeanor cases to felony cases, municipalities may lose some amount of court cost, fine, and fee revenue that may otherwise have been collected and counties may gain court cost, fine, and fee revenue from cases that may not otherwise have been under their jurisdiction. The amount of state court costs collected for those cases shifted from a misdemeanor to a felony will increase as well. The table below lists the financial penalties imposed for convictions generally, as well as the recipients of that revenue.

Table 2. Fines, Court Costs, and Fees		
Financial Penalty Component	Amount Paid by Violator	Recipient of Amount
Fine	Varies by offense	<ul style="list-style-type: none"> ▪ Retained by county if violation of state law ▪ Retained by municipality if violation of local ordinance ▪ Credited to the state Security, Investigations, and Policing Fund (Fund 8400) if violator is cited by the Ohio State Highway Patrol
Local court costs and fees	Varies by local jurisdiction	Generally retained by the county or municipality with jurisdiction over the violation
State court costs	\$29	<p style="text-align: center;">Misdemeanor</p> <p>Deposited in the State Treasury as follows:</p> <ul style="list-style-type: none"> ▪ \$20 to the Indigent Defense Support Fund (Fund 5DY0) ▪ \$9 to the Victims of Crime/Reparations Fund (Fund 4020)
State court costs	\$60	<p style="text-align: center;">Felony</p> <p>Deposited in the State Treasury as follows:</p> <ul style="list-style-type: none"> ▪ \$30 to the Indigent Defense Support Fund (Fund 5DY0) ▪ \$30 to the Victims of Crime/Reparations Fund (Fund 4020)

Policies – pursuit of a motor vehicle

The bill requires law enforcement entities to adopt a written policy governing the pursuit of a motor vehicle that considers pursuit policy standards and best practice recommendations from the Ohio Collaborative Community-Police Advisory Board (Ohio Collaborative) or a similar accrediting entity, and to ensure its officers are trained on the policy.²

All law enforcement entities are currently required to have a policy regarding motor vehicle pursuits but existing law does not specify what the policy should contain. According to a 2022 annual report issued by the Ohio Collaborative, around 300 of Ohio’s 877 law enforcement agencies have already either voluntarily adopted the Collaborative vehicle pursuit standard or are in the process of doing so. This means that there may be more than 500 local law enforcement entities statewide that may experience a one-time increase in administrative costs in order to

² The Collaborative, which is comprised of a multidisciplinary group of Ohioans that include law enforcement, community members, elected officials, academia, and the faith-based community, was created by executive order in 2015 to improve community-police relations and was charged with creating uniform minimum standards for all law enforcement agencies.

adopt the required motor vehicle pursuit policy.³ In addition, costs may be incurred to provide training for law enforcement on the new policy as necessary. The costs incurred by any given law enforcement entity to adopt the bill's new policy are expected to be minimal.

Stunt driving and street takeovers

The bill prohibits a person from knowingly participating in stunt driving (performing or engaging in burnouts, doughnuts, drifting, or wheelies; or allowing passengers to ride partially or fully outside of the motor vehicle) or a street takeover (blocking or impeding the regular flow of vehicle or pedestrian traffic for the purpose of street racing or stunt driving) on a public road, street, or highway or on private property that is open to the general public. The bill classifies both offenses as a first degree misdemeanor and subjects a violator to the same penalties that apply for street racing under current law, including a possible driver's license suspension of 30 days to three years and assessment of six points on the offender's license. The bill also expands the locations for which street racing is prohibited to include private property that is open to the public, thus making those locations consistent with stunt driving and street takeover.

Based on conversations with statewide associations that represent local criminal justice systems, including law enforcement, as well as the Ohio State Highway Patrol, stunt driving and street takeover behavior can already be charged under existing law. As a result, the bill's prohibitions are not likely to result in the generation of additional cases for courts to adjudicate but may elevate the offense level and possible penalties in certain cases. The table below compares the bill's offenses with the existing offenses for which such behavior has been charged under existing law by offense level. It should be noted that such behavior has also been charged under disturbing the peace, a local ordinance, the penalties for which vary by jurisdiction.

Offense Level	Offense	Fine	Incarceration
1 st degree misdemeanor	Stunt driving (new offense) Street takeover (new offense)	Up to \$1,000	Jail, not more than 180 days
	Street racing (<i>R.C. 4511.251</i>)		
Minor misdemeanor	Disorderly conduct* (<i>R.C. 2917.11</i>)	Up to \$150	Citation issued; No jail
	Reckless operation of a motor vehicle* (<i>R.C. 4511.20</i>)		
	Riding outside of a vehicle* (<i>R.C. 4511.51</i>)		

*These offenses, based on circumstances present, can elevate to a fourth or third degree misdemeanor, subject to a fine of up to \$250 or \$500, respectively, and a jail term of not more than 30 or 60 days, respectively.

³ All seven state law enforcement agencies, including the Ohio State Highway Patrol, have adopted the Collaborative standard.

As seen in the table, the practical effect of creating specific prohibitions against stunt driving and street takeovers is that under the bill, the penalty for certain offenses could elevate from a minor misdemeanor to a first degree misdemeanor, meaning that instead of a potential fine of up to \$150, an offender convicted under the bill could face a possible jail term in a locally operated jail not to exceed 180 days, a potential fine of up to \$1,000, or both.

Rendering assistance to stunt driving or street takeover

The bill specifies that a person who renders assistance in any manner to stunt driving or street takeover must be charged the same as a participant in the same manner that a person who renders assistance to street racing must be charged the same as a participant under existing law. This means that municipal and county courts may experience some increase in cases to adjudicate if people are charged under the bill for rendering assistance to stunt driving or street takeover. The magnitude of any increase in cases and corresponding additional workload will vary by court. Since such behavior is more prevalent in urban areas, courts that are located in those areas may be more likely to see these types of cases. However, the impact experienced by any given court is not expected to exceed minimal annually.

License suspensions

The bill makes several changes that could impact license reinstatement fee revenue, including subjecting a stunt driving or street takeover offender to a possible driver's license suspension of 30 days to three years. As a result, there may be an increase in driver's license suspensions or certain license suspensions may be suspended for longer periods than may otherwise have been the case.

Driver's license reinstatement fees are collected by the Bureau of Motor Vehicles (BMV) and credited to the Public Safety – Highway Purposes Fund (Fund 5TM0), which in part supports the BMV's operating expenses. Generally, suspensions lasting 89 days and longer, or are indefinite at setup time, have a reinstatement fee of \$40. To the extent that more licenses may be suspended and additional license reinstatement fee revenue generated, there may be an indeterminate gain in revenue for Fund 5TM0.

Vehicular homicide and assault offenses

The bill adds utility vehicles and mini-trucks to the list of vehicles that can be used to commit a vehicular homicide or assault offense. As a result, there may be some increase in the number of vehicular homicide and assault charges filed for courts to adjudicate annually. Since these charges would likely be in lieu of, or in addition to, other criminal charges under existing law, the impact on courts, prosecutors, and public defenders is expected to be minimal.

In the case of OVI offenses involving a utility vehicle or mini-truck that resulted in the serious physical harm or death of another, the bill would allow the offender to be charged with both OVI (generally a first degree misdemeanor) and felony charges of aggravated vehicular assault or aggravated vehicular homicide, whereas under current law, they can only be charged with OVI. In the event that this situation occurs, the misdemeanor OVI charge would be heard in a court of common pleas with the aggravated vehicular assault or aggravated vehicular homicide charge instead of in a municipal or county court. This may result in some additional caseload and workload for certain county prosecutors who would not otherwise prosecute a misdemeanor OVI charge.

Financial responsibility license reinstatement fees

The bill restores a provision from prior law by increasing the portion of the license reinstatement fee associated with failure to maintain proof of financial responsibility that is distributed to the Indigent Defense Support Fund (Fund 5DY0) from \$10 regardless of the number of prior convictions, to \$50 for a second conviction within five years (\$300 reinstatement fee) or \$100 for a third or subsequent conviction (\$600 reinstatement fee) within five years.

As a result, Fund 5DY0 will experience a gain in revenue of \$40 or \$90 for each offender who is convicted of a second or third or subsequent failure to maintain financial responsibility offense, respectively, within five years of the first conviction. The magnitude of revenue gain will depend on the number of individuals whose license is suspended for failure to maintain proof of financial responsibility that also have at least one prior conviction. In FY 2022, there were 95,868 Bureau of Motor Vehicles (BMV) noncompliance suspensions; the portion of repeat offenders is unknown.

Third-party driver's exam administrators

Under existing law, the Director of Public Safety can authorize a third party to administer the standard motor vehicle skills test. The bill specifies that a third-party administrator may be: (1) any person, (2) any Ohio agency, or (3) any agency, department, or instrumentality of local government including a clerk of the court of common pleas. The bill also specifies that any fees collected by a clerk serving as a third-party administrator are required to be deposited into the county's existing Certificate of Title Administration Fund along with any fees that were collected by a clerk serving as a third-party administrator between April 12, 2021, and the bill's effective date.

Around ten clerks are currently offering these services and current law does not specify where fees collected for administering the standard motor vehicle skills test are to be deposited. By specifying that these fees are to be deposited into the Certificate of Title Administration Fund, the bill will allow clerks serving as a third-party administrator to deposit and subsequently use those fees.