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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 37
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Johnson and K. Miller

Local Impact Statement Procedure Required: No

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Highlights

- The Ohio Department of Rehabilitation and Correction will likely experience an increase in costs to incarcerate and/or supervise certain operating a vehicle under the influence (OVI) offenders who may serve longer mandatory minimum terms under the bill. The magnitude of any increase will depend on the number of offenders who serve longer sentences, the additional length of the term, and the marginal cost per offender in each additional year of that term.
- The bill's increased OVI financial penalty and changes to the OVI license reinstatement fee distribution scheme will result in a net increase of \$30 per conviction that will be distributed to local special projects funds and state funds used by the Ohio departments of Mental Health and Addiction Services and Public Safety.
- Local entities may experience an increase in OVI fine revenue, which is distributed pursuant to a statutory formula for specified purposes to various local entities where the offense occurred. The magnitude of any increase will depend on the number of OVI convictions in a given jurisdiction as well as the amount of fine revenue that is ultimately collected.

Detailed Analysis

The bill changes the penalty structure of certain operating a vehicle under the influence (OVI) offenses, modifies certain fines and their uses, and makes various changes to actions that a court may or must take for OVI offenders including when a court may grant limited driving privileges to an OVI offender.

Mandatory minimum prison term

The bill increases the mandatory minimum prison term for OVI-related aggravated vehicular homicide, from between two to 15 years under current law, to up to 20 years based on circumstances present. The bill establishes a tiered system based on the number and nature of prior offenses. The bill also extends the lookback period for prior offenses when sentencing an offender for OVI-related aggravated vehicular homicide from ten to 20 years.

As a result of the bill's changes, certain OVI offenders may receive a mandatory minimum prison term that is longer than the current mandatory minimum prison term for OVI-related aggravated vehicular homicide based on the circumstances present, or due to the increased lookback period for prior offenses. In calendar year 2023, there were a total of ten convictions involving noncommercial motor vehicles statewide for OVI-related aggravated vehicular homicide.¹ Of those convictions, it is unknown how many offenders had a prior conviction.

In 2024, the marginal cost for the Ohio Department of Rehabilitation and Correction (ODRC) to house an offender was \$13.47 per day.² Marginal costs are those that increase or decrease directly on a per-person basis with changes in prison population. Such costs include medical care, food service, clothing and bedding (for inmates), and mental health services. Using the 2024 daily marginal cost, it costs ODRC \$4,916.55 (\$13.47 x 365) to house an additional individual for one year. The actual increase in costs for ODRC will depend on the number of offenders who ultimately serve longer sentences under the bill than they otherwise would have under existing law, the additional length of the term, and the marginal cost per offender in each additional year of that term.

Fines and other penalties

OVI-related aggravated vehicular homicide

The bill imposes a fine of not more than \$25,000 in addition to any other sanctions for OVI-related aggravated vehicular homicide. The bill does not specify how this fine is to be distributed. Presumably it would be treated and distributed in the same manner as other fine revenue for such cases, which would either be retained by the county or municipality in which the offense occurred, or be forwarded for deposit into the state Security, Investigations, and Policing Fund (Fund 8400)³ if the violator was cited by the Ohio State Highway Patrol. The magnitude of any increase will depend on the number of OVI convictions in a given jurisdiction as well as the amount of fine revenue that is ultimately collected.

¹ There were no OVI-related aggravated vehicular homicide convictions involving commercial vehicles in 2023.

² See Ohio Department of Rehabilitation and Correction's 2023 Annual Report, which is available on the Department's website via key word search "Annual Report": drc.ohio.gov.

³ Fund 8400 is used to provide security for the Governor, other officials and dignitaries, the capitol square, and other state property; undertake major criminal investigations that involve state property interests; provide traffic control and security for the Ohio Expositions Commission on a full-time, year-round basis; and perform nonhighway-related duties of the State Highway Patrol at the Ohio State Fair.

OVI financial penalty increase

The bill increases the overall minimum financial penalties for an OVI offender by \$30. The bill does so by increasing the minimum criminal fines by \$190 and lowering the related OVI license reinstatement fee by \$160. To account for these changes in financial penalties, the bill adjusts the distribution of revenue derived from reinstatement fees and criminal fines. The \$30 net increase in financial penalty per OVI conviction is broken down as follows: (1) \$27.50 from changes to criminal fines and (2) \$2.50 from license reinstatement revenue distribution changes.

Criminal fines

The bill increases the minimum mandatory fine for all OVIs by \$190 and specifies that the increase be credited as follows:

- \$115 to the Statewide Treatment and Prevention Fund (Fund 4750) used by the Ohio Department of Mental Health and Addiction Services.
- \$75 to the special projects fund of the court in which the offender was convicted to pay for immobilizing or disabling devices, including certified ignition interlock devices and remote alcohol monitoring devices, for indigent offenders. If the court does not have a special projects fund, existing law specifies that the amount be credited to the existing Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0). Fund 5FF0 is used by the Ohio Department of Public Safety to pay for interlock and alcohol monitoring expenses for indigent adult and juvenile offenders.

These amounts offset the losses resulting from the bill's OVI license reinstatement fee distribution changes, resulting in a net gain of (1) \$2.50 for Fund 4750 and (2) \$25 for local special projects funds or Fund 5FF0.

OVI driver's license reinstatement fees

The bill reduces the OVI license reinstatement fee by \$160, from \$475 to \$315, and modifies distribution by reducing the number of funds that receive such revenue from eight to six. As a result, two funds will no longer receive OVI license reinstatement revenue. The bill also increases the allocation to the Indigent Drivers Alcohol Treatment Fund, administered by the Ohio Department of Mental Health and Addiction Services, by \$2.50.

The following table shows the current distribution of OVI license reinstatement fees collected by fund and the corresponding amounts that would be collected under the bill.

OVI License Reinstatement Fee Distribution		
Fund	Current Amount	H.B. 37 Amount
Statewide Treatment and Prevention Fund (Fund 4750)	\$112.50	\$0
Victims of Crime/Reparations Fund (Fund 4020)	\$75	\$75
Services for Rehabilitation Fund (Fund 4L10)	\$75	\$75
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	\$75	\$75

OVI License Reinstatement Fee Distribution		
Fund	Current Amount	H.B. 37 Amount
Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0) – if a court does not have a special projects fund	\$50	\$0
Indigent Drivers Alcohol Treatment Fund (Fund 7049)	\$37.50	\$40
Public Safety – Highway Purposes Fund (Fund 5TM0)	\$30	\$30
Trauma & Emergency Medical Services Grants Fund (Fund 83M0)	\$20	\$20
Total	\$475	\$315

Limited driving privileges

The bill requires, instead of authorizes as under current law, a court to order the use of a certified ignition interlock device as a condition of granting limited driving privileges for certain OVI and suspected OVI offenders. The bill also permits a court, in certain circumstances, to waive or reduce a period of hard suspension that otherwise must be served prior to being eligible for limited driving privileges. These changes are likely to have minimal impact on local courts and are not expected to result in additional costs.

Court warning to OVI offenders

The bill authorizes a court to warn anyone who pleads guilty to or who is convicted of an OVI offense of the penalties for an OVI-related aggravated vehicular homicide. Since the bill’s “warning” provision is permissive and a court can choose if and how to provide such notice, the impact on any given court that chooses to do so is likely to be minimal. For context, there were a total of 25,458 noncommercial convictions and 32 commercial convictions for OVI statewide in calendar year 2023.

Oral fluid testing

The bill authorizes law enforcement officers to collect an oral fluid sample from a person arrested for OVI. Such samples may then be tested for the presence of a drug of abuse or a metabolite of a drug of abuse in order to be used as evidence related to an OVI charge. Currently, chemical testing in Ohio may include a person’s whole blood, blood serum or plasma, breath, or urine. Oral fluids would be in addition to these possible other testing methods.

According to law enforcement representatives, this provision will largely be cost neutral. Testing costs for oral fluid are generally the same as those for blood and urine. Presumably, permitting the inclusion of oral fluids as a testing mechanism could create certain efficiencies for law enforcement agencies in terms of administering the tests (in the case of urine testing, gender considerations may be needed). However, for those agencies that opt to utilize this type of chemical test, there would likely be one-time costs for training, rule and policy updates, and then ongoing costs for the test kits. In CY 2022, the Ohio State Highway Patrol made 15,036 OVI arrests and 3,059 drug-impaired driving arrests. Prior to the COVID-19 pandemic, OVI convictions statewide by all law enforcement agencies averaged around 50,000 per year.