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## Final Analysis

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**Primary Sponsors:** Reps. Johnson and K. Miller

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### SUMMARY

#### Aggravated vehicular homicide penalties

- Establishes a new, tiered-system, based on the number of prior offenses and the nature of the offense, to trigger increased minimum mandatory prison terms for aggravated vehicular homicide that is the proximate result of operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them (OVI) offense.
- Increases the possible financial penalties for aggravated vehicular homicide committed as the proximate result of an OVI offense by raising the maximum fine to \$25,000.

#### Oral fluid testing

- Authorizes law enforcement to collect an oral fluid sample from a person arrested for OVI.
- Authorizes the testing of that oral fluid sample for the presence of a drug of abuse or a metabolite of a drug of abuse.
- Authorizes the oral fluid sample and its test results to be used as evidence related to OVI charges.
- Specifies that any person who operates a vehicle or who is in physical control of a vehicle has given consent to have that person's oral fluid collected and tested if arrested for OVI ("implied consent").
- Makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and the release of drug test records in criminal cases.

#### OVI penalties

- Increases the minimum criminal fines for OVI by an additional \$190, while lowering the related driver's license reinstatement fees by \$160, resulting in a net increase of \$30 in OVI minimum financial penalties.

- Modifies when a court must condition the granting of limited driving privileges to an OVI offender on the use of an ignition interlock device.

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## DETAILED ANALYSIS

### Aggravated vehicular homicide penalties

#### Introduction

The act increases the penalties, in particular the financial penalties and the prison term, for an offender who commits an aggravated vehicular homicide as the proximate result of operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them (OVI) offense. For the sake of brevity, the following discussion uses certain shorthand phrases to replace longer phrases that are used within the Revised Code. Specifically:

“OVI offense” means a violation of operating a vehicle under the influence, operating a watercraft under the influence, operating an aircraft under the influence, or any substantially equivalent municipal ordinance.<sup>1</sup>

“Prior offense” includes any violation of a municipal ordinance, former law of Ohio, current or former law of another state, or current or former federal law that is substantially equivalent to an OVI offense.<sup>2</sup>

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<sup>1</sup> R.C. 2903.06(G)(1)(h).

<sup>2</sup> R.C. 2903.06(G)(2).

## Financial penalties

The act increases the maximum possible financial penalty for aggravated vehicular homicide that is the proximate result of an OVI offense to \$25,000 for all offenders. Under prior law, the court generally could impose a maximum financial penalty of \$15,000 for that offense if the offender had no prior offenses (second degree felony) or \$20,000 if the offender had certain prior offenses (first degree felony).<sup>3</sup>

## Prison terms and decrease in required priors

The act increases the minimum mandatory prison terms for aggravated vehicular homicide that is the proximate result of an OVI offense when the offender has committed certain other prior offenses. Additionally, it decreases the number of those other prior offenses that an offender must have committed in order for a court to impose the increased prison terms.<sup>4</sup>

Under law unchanged by the act, an offender who commits aggravated vehicular homicide as the proximate result of an OVI offense with no prior conditions or offenses is guilty of a second degree felony. This second degree felony offense carries with it a minimum mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years.<sup>5</sup> An offender who commits that offense while under a driver's license suspension or without a valid driver's license, or who has committed specified prior offenses is guilty of a first degree felony.<sup>6</sup> The act's penalty changes primarily impact these offenders. Under prior law the prison term for those offenders was typically a minimum mandatory term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years.<sup>7</sup> If the offender had a significant number of prior offenses (three or more) within ten years, the prison term was typically a minimum mandatory term of 10, 11, 12, 13, 14, or 15 years.<sup>8</sup> Prior offenses included prior OVI offenses, vehicular homicide involving OVI, vehicular assault involving OVI, involuntary manslaughter involving OVI, or a combination of those offenses.

The act creates, instead, a new tiered-system that gradually increases the minimum mandatory prison term for the offender based on the number and nature of the prior offenses. It also alters the prior offenses that lead to enhanced penalties for aggravated vehicular homicide that proximately results from an OVI offense; adds a lookback period of 20 years for prior offenses in the second tier listed below; and expands the lookback period for the third and fourth tier listed below from ten to 20 years. The following table describes the tiers and the minimum mandatory prison term imposed under the act for an offender at each tier.

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<sup>3</sup> R.C. 2903.06(B)(2)(f); R.C. 2929.18, not in the act, specifies default felony financial penalties.

<sup>4</sup> R.C. 2903.06(B)(2) and 2929.142.

<sup>5</sup> R.C. 2903.06(B)(2)(a) and 2929.14.

<sup>6</sup> R.C. 2903.06(B)(2)(b) and (c).

<sup>7</sup> R.C. 2929.14(A)(1)(a); the maximum term is determined based on a formula in R.C. 2929.144, not in the act.

<sup>8</sup> R.C. 2903.06(B)(2)(c) and 2929.142.

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
First Tier R.C. 2903.06(B)(2)(a)	None – offender commits aggravated vehicular homicide as the proximate result of an OVI offense.	Default minimum mandatory term for second degree felony under R.C. 2929.14: 2, 3, 4, 5, 6, 7, or 8 years
Second Tier R.C. 2903.06(B)(2)(b)	Offender commits aggravated vehicular homicide as the proximate result of an OVI offense while the offender’s driver’s license is suspended or while offender was driving without a license; or Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has one prior OVI offense within the previous 20 years; or Offender commits the aggravated vehicular homicide as the proximate result of an OVI offense and has one prior traffic-related homicide, manslaughter, or assault offense within the previous 20 years.	Default minimum mandatory term for first degree felony under R.C. 2929.14: 3, 4, 5, 6, 7, 8, 9, 10, or 11 years
Third Tier R.C. 2903.06(B)(2)(c)	Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has either: Two prior OVI offenses within the previous 20 years; or Two prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years; or	First degree felony with an increased minimum mandatory term under R.C. 2929.142(A): 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 15 years

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
	Two prior offenses of any combination of the prior two parameters listed above within the previous 20 years.	
Fourth Tier R.C. 2903.06(B)(2)(d)	Offender commits aggravated vehicular homicide as the proximate result of an OVI offense and has either: Three or more prior OVI offenses within the previous 20 years; or Three or more prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years; or Three or more prior offenses of any combination of the prior two parameters listed above within the previous 20 years.	First degree felony with an increased minimum mandatory term under R.C. 2929.142(B): 12, 13, 14, 15, 16, 17, 18, 19, or 20 years

## Oral fluid testing

Continuing law prohibits a person from operating any vehicle, streetcar, trackless trolley, watercraft (in various forms), or aircraft while under the influence of alcohol, a drug of abuse, or a combination of them, or with a prohibited concentration of alcohol, a drug of abuse, or a metabolite of that drug (“OVI”).<sup>9</sup> The enforcement of the OVI Law relies, in part, on chemical tests of either a person’s breath, urine, whole blood, blood serum, or plasma. The act adds another type of chemical test – of oral fluid – for purposes of OVI enforcement.

While the chemical tests of oral fluid, under the act, cannot specify the concentration of a drug of abuse or a metabolite of a drug of abuse, it can detect the presence and type of drug of abuse or its metabolite. As such, the act authorizes the chemical tests of oral fluid to be used as evidence related to charges that a person operated a vehicle while “under the influence of alcohol, a drug of abuse, or a combination of them” (the general OVI prohibition). Evidence of the presence of alcohol or a drug of abuse in the oral fluid would potentially need to be paired with other evidence to demonstrate that the person was impaired. The chemical tests of oral

<sup>9</sup> R.C. 4511.19(A)(1) (vehicles), supported by R.C. 1547.11 (watercraft) and 4561.15 (aircraft).

fluid would *not* be used as evidence related to a per se violation of the OVI Law (i.e., the person had a *concentration* of alcohol, a drug of abuse, or a metabolite of that drug that was above the legal limit).<sup>10</sup> Similar to the other chemical tests, a court may order an OVI offender to reimburse a law enforcement agency for the costs of the oral fluid test.<sup>11</sup>

Related to the authorization to collect and use oral fluid as evidence, the act specifies that any person who operates a vehicle or who is in physical control<sup>12</sup> of a vehicle has given consent to have that person’s oral fluid collected and tested if arrested for OVI (“implied consent”). The same implied consent is given for collection and testing of breath, urine, whole blood, blood serum, and plasma. As such, the act also applies the penalties for refusing to allow law enforcement to collect and test the relevant substance to the collection and testing of oral fluid.<sup>13</sup>

Based on the addition of oral fluid to the OVI Law, the act also makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and to the laws governing the release of drug test records in criminal cases.<sup>14</sup>

## OVI penalties

### Financial penalties

The act increases the overall minimum financial penalties for an offender who operates a vehicle while under the influence by \$30. It does so by increasing the minimum criminal fines for OVI by \$190 and lowering the related reinstatement fee for a driver’s license suspension associated with the OVI by \$160. To account for these changes in financial penalties, the act adjusts the distributions of revenue derived from reinstatement fees and criminal fines.

### Criminal fines

The following table describes the general increase to the minimum criminal fines.

OVI criminal fines <sup>15</sup>			
Offense	Prior law minimum fine	Under the act minimum fine	Maximum fine (unchanged by the act)
1 <sup>st</sup> time offender	\$375	\$565	\$1,075
2 <sup>nd</sup> time offender (within 10 years)	\$525	\$715	\$1,625

<sup>10</sup> R.C. 3701.143 and 4511.19(D).

<sup>11</sup> R.C. 4511.19(G)(8).

<sup>12</sup> See footnote 25, below.

<sup>13</sup> R.C. 4511.191 and 4511.192.

<sup>14</sup> R.C. 1547.11, 1547.111, 2317.02, 2317.022, and 4506.17.

<sup>15</sup> R.C. 4511.19(G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), and (e)(iii).

OVI criminal fines <sup>15</sup>			
Offense	Prior law minimum fine	Under the act minimum fine	Maximum fine (unchanged by the act)
3 <sup>rd</sup> time offender (within 10 years)	\$850	\$1,040	\$2750
4 <sup>th</sup> or 5 <sup>th</sup> time offender (within 10 years); or 6 <sup>th</sup> time offender (within 20 years)	\$1,350	\$1,540	\$10,500
Prior felony-OVI offender (no time limitation)	\$1,350	\$1,540	\$10,500

The act specifies that \$75 of the additional \$190 in fine revenue must be deposited into the special projects fund of the sentencing court if the court has such a fund. Under prior law, \$50 of the collected criminal fines were allocated to that fund; thus, the act raises its total allocation to \$125. The money collected for OVI that goes into the special projects fund must be used exclusively to cover the cost of immobilizing or disabling devices, including certified ignition interlock devices, and remote alcohol monitoring devices for indigent offenders who are required to use those devices.<sup>16</sup>

If the court does not have a special projects fund, then the \$125 is allocated to the Indigent Drivers Interlock and Alcohol Monitoring Fund (IDIAMF). The IDIAMF is used at a state, county, and municipal level to pay the cost of an immobilizing or disabling device (including a certified ignition interlock device or alcohol monitoring device) when the offender cannot pay for use of that device.<sup>17</sup> Under prior law, \$50 of the OVI driver's license reinstatement fee was allocated to the IDIAMF. The act eliminates the \$50 allocation from the reinstatement fee and also allocates an additional \$25 of the increased fine revenue, to equal the \$75 increase.

The remaining \$115 from the fine increase must be deposited into the existing Statewide Treatment and Prevention Fund. That fund is managed by the Department of Mental Health and Addiction Services to provide financial support to the local boards of alcohol, drug addiction, and mental health services.<sup>18</sup> This portion of the increase is also balanced by a removal from the prior

<sup>16</sup> R.C. 4511.19(G)(5)(e).

<sup>17</sup> R.C. 4511.191(I).

<sup>18</sup> R.C. 4511.19(G)(5)(g); R.C. 4301.30 and 5119.22, not in the act.

law allocation of the OVI reinstatement fee of \$112.50 to that fund. The act also includes a slight increase of \$2.50 from fine revenue to that fund.<sup>19</sup>

The act otherwise does not change the specific dollar amounts from OVI-related fines that must be distributed to any of the following funds or political subdivisions:

- The local enforcement and education fund applicable for the location of the offense;
- The local political subdivision to offset the costs of the incarceration/treatment of the offender or the equipment for the offender (e.g., interlock device, home monitoring systems, etc.);
- The local county and municipal indigent drivers' alcohol treatment fund; and
- The state Indigent Defense Support Fund.<sup>20</sup>

### Reinstatement fee

The following table describes the general decrease to the OVI driver's license reinstatement fee.

OVI driver's license reinstatement fee <sup>21</sup>		
Fund	Allocated amount under prior law	Allocated amount under the act
Statewide Treatment and Prevention Fund	\$112.50	\$0 (Relocated to criminal fines)
Reparations Fund	\$75	Same
Indigent Drivers Alcohol Treatment Fund	\$37.50	\$40
Opportunities for Ohioans with Disabilities Agency	\$75	Same
Drug Abuse Resistance Education Programs Fund	\$75	Same
Public Safety – Highway Purposes Fund	\$30	Same

<sup>19</sup> R.C. 4511.191(F)(2)(a).

<sup>20</sup> R.C. 4511.19(G)(5)(a) to (h).

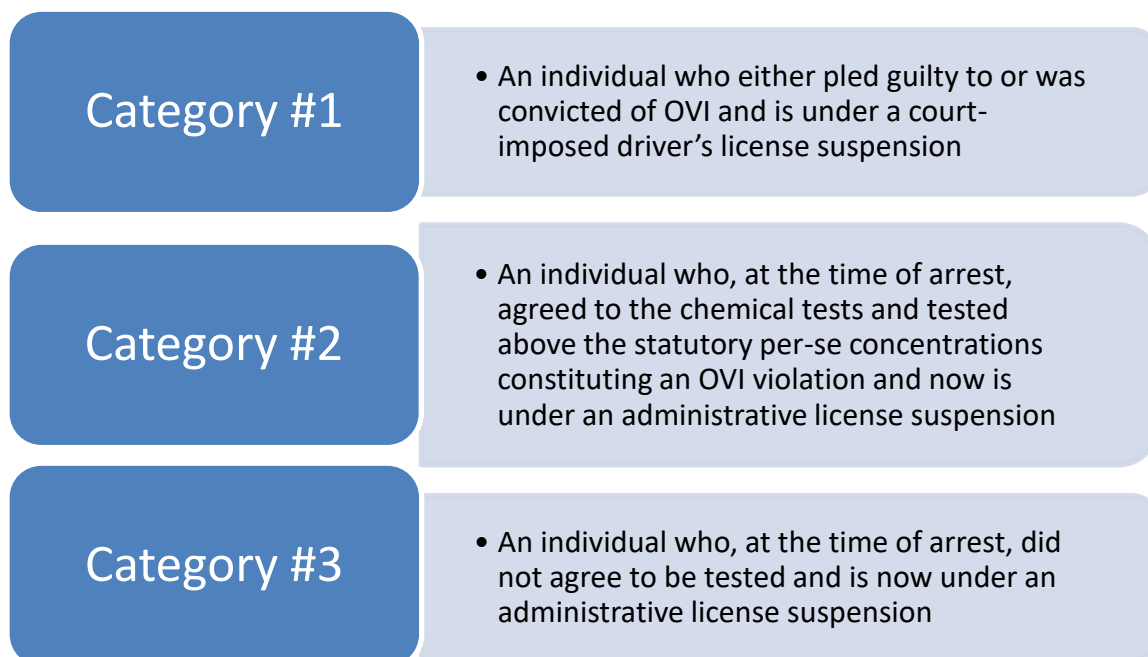
<sup>21</sup> R.C. 4511.191(F)(2).



OVI driver's license reinstatement fee <sup>21</sup>		
Fund	Allocated amount under prior law	Allocated amount under the act
Trauma and Emergency Medical Services Fund	\$20	Same
Indigent Drivers Interlock and Alcohol Monitoring Fund	\$50	\$0 (Reallocated to criminal fines)
<b>TOTAL AMOUNT</b>	<b>\$475</b>	<b>\$315</b>

### Limited driving privileges and ignition interlock devices

The act modifies when an OVI offender must agree to use of an ignition interlock device in order to be granted limited driving privileges, both for in-state and out-of-state offenses.<sup>22</sup> Continuing law separates OVI-offenders into three categories for purposes of driver's license suspensions:<sup>23</sup>



Continuing law treats the individuals in Category #1 and #2 above similarly for purposes of the hard suspension time period and the manner in which limited driving privileges may be granted to the individual after the period of hard suspension. The period of hard suspension

<sup>22</sup> R.C. 4510.13 and 4510.17.

<sup>23</sup> R.C. 4511.19(G) and 4511.191(B) and (C).

refers to the time during a suspension in which an OVI-offender is not eligible for limited driving privileges. Limited driving privileges refers to court-authorized driving privileges that may be granted to an OVI offender during a suspension for purposes such as employment, undertaking court-ordered treatment, or attending court proceedings.<sup>24</sup>

### **First-time offender**

A first-time offender (with no prior OVI offenses within ten years) in Category #1 and #2 generally may be granted limited driving privileges after a 15-day hard suspension. Under continuing law, the court may require the first-time offender to use an immobilizing or disabling device in order to obtain those limited driving privileges. The act authorizes the court to waive that 15-day hard suspension for a first-time offender who has no prior instances of pleading guilty to or being convicted of a physical control offense and who agreed to the chemical testing at the time of arrest on suspected OVI.<sup>25</sup>

Conversely, the act expands the penalties for a first-time offender who has pled guilty to or been convicted of a physical control offense within ten years of the current OVI offense. The act increases the 15-day hard suspension to a 45-day hard suspension for that offender and requires the court to mandate that the offender use an ignition interlock device in order to obtain limited driving privileges.<sup>26</sup>

### **Second-time offender**

A second-time offender under Category #2 above may be granted limited driving privileges after a 45-day hard suspension. Under prior law, a court permissively could condition those limited driving privileges on use of an immobilizing or disabling device. The act instead *requires* the court to condition limited driving privileges on the use of a certified ignition interlock device for such offenders if the underlying arrest is alcohol-related. If the underlying arrest is drug-related, then the use of a certified ignition interlock device is left to judicial discretion.<sup>27</sup> The change makes these second-time offenders consistent with the law for second-time offenders under Category #1, above.<sup>28</sup>

### **Category #3**

Continuing law specifies periods of hard suspension for an offender under Category #3 above that are longer than the hard suspensions for an offender under Category #1 or #2. However, under prior law, after that period of hard suspension there were no direct

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<sup>24</sup> R.C. 4510.13; R.C. 4510.02, not in the act.

<sup>25</sup> R.C. 4510.13(A)(5)(a)(i); A “physical control offense” is when a person is arrested for being in the driver’s position of the front seat of a vehicle and having possession of the ignition key or other ignition device while under the influence of alcohol, a drug of abuse, or a combination of them. While the person was not actively operating the vehicle at the time of the arrest, he or she was in a position to operate the vehicle while under the influence (R.C. 4511.194, not in the act).

<sup>26</sup> R.C. 4510.13(A)(5)(a).

<sup>27</sup> R.C. 4510.13(A)(5)(b).

<sup>28</sup> R.C. 4510.13(A)(5)(e).

requirements related to conditioning limited driving privileges on use of a certified ignition interlock device, beyond the broad authorization for a court to do so.<sup>29</sup> The act creates requirements for conditioning limited driving privileges on the use of a certified ignition interlock device that are parallel to the requirements for offenders under Category #1 and #2. Specifically:

Category #3: ALS suspension for refusal of chemical test <sup>30</sup>			
Offense # (within 10 years)	Period of hard suspension	Permissive for court to require use of ignition interlock device	Mandatory for court to require use of ignition interlock device
First-time	30 days	Yes	No
First-time offender with a prior physical control offense	90 days	No	Yes
Second-time	90 days	If underlying offense is drug-related	If underlying offense is alcohol-related
Third-time	One year	If underlying offense is drug-related	If underlying offense is alcohol-related
Fourth-time or subsequent	Three years	If underlying offense is drug-related	If underlying offense is alcohol-related

## Court warning

The act authorizes, but does not require, a court to warn any person who is convicted of or pleads guilty to an OVI offense of the penalties imposed for aggravated vehicular homicide, given the act's higher financial penalties and increased minimum mandatory prison term for that offense.<sup>31</sup>

<sup>29</sup> R.C. 4510.021(C), not in the act.

<sup>30</sup> R.C. 4510.13(A)(6).

<sup>31</sup> R.C. 4511.19(G)(9).

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## HISTORY

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Introduced	02-15-23
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