



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** S.B. 138 of the 131st G.A.

**Date:** September 30, 2015

**Status:** As Introduced

**Sponsor:** Sens. Hughes and Cafaro

**Local Impact Statement Procedure Required:** Yes

**Contents:** Wrong-way driving on a divided interstate freeway

### State Fiscal Highlights

- **Incarceration expenditures.** As a result of the bill's penalty changes, a relatively small number of additional offenders/juveniles may be sentenced to a state prison/juvenile correctional facility, the results of which may be a no more than minimal annual increase in the institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.
- **Court cost revenues.** There may be a negligible annual gain in the amount of the locally collected court cost that is credited to the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

## Local Fiscal Highlights

- **Incarceration expenditures.** The bill's new offense of driving under a license suspended for wrong-way driving on a divided interstate highway may result in increased expenditures for local jails to incarcerate certain offenders who would be required to spend at least six more months in jail than they would be required to spend under current law.
- **Local expenditures generally.** The bill may shift a relatively small number of misdemeanor cases from a municipal court or a county court to a court of common pleas. As a result, municipalities may experience a minimal annual reduction in their criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties could experience a minimal annual increase in their criminal and juvenile justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.
- **Local court cost and fine revenues generally.** As the result of the enhancement of a relatively small number of cases from a misdemeanor to a felony, municipalities may lose a minimal amount of revenue (court costs, fees, and fines) that might otherwise have been collected from offenders and counties may gain a minimal amount of that revenue annually from cases that might otherwise not have been under their subject matter jurisdiction.

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## Detailed Fiscal Analysis

The bill increases the penalties for wrong-way driving on a divided interstate highway by: (1) requiring a person charged under certain circumstances to appear in court, (2) elevating the offense from a minor misdemeanor to a felony of the fourth degree under certain circumstances, and (3) requiring a sentencing court to impose a mandatory driver's license suspension for a specified period of time depending on the offense. The bill also creates the offense of "driving under a license suspension imposed for driving the wrong way on an interstate freeway."

The practical effect of these increased penalties and the new offense is that the local criminal and juvenile justice systems will in all likelihood have to spend additional time and effort to dispose of certain wrong-way driving cases, and some offenders may be sentenced to, or spend more time in, jail or prison, depending on the violation, than would otherwise have been the case under current law.

The number of citations issued statewide for wrong-way driving on a divided interstate highway is not readily available. However the number of citations issued strictly by the Ohio State Highway Patrol is available and has averaged approximately 270 annually over the course of calendar years 2010-2014.

### **Mandatory court appearance**

The bill requires that a person who receives a ticket, citation, or summons for wrong-way driving under certain conditions appear in the appropriate court to answer the charge. The Supreme Court of Ohio's current rules permit a person who receives a citation for certain traffic violations to pay the amount of fines, fees, and court costs to the office of the clerk of the court in person or by mail thereby avoiding having to appear in court. Many individuals take advantage of this option. As a result of the bill, certain wrong-way driving violations that might otherwise have been disposed of quickly and easily through existing rules will require a court appearance. Clearing these cases will require additional work be performed by the court (judge and clerk of courts), the prosecutor, and possibly the law enforcement officer that issued the violation. The frequency with which these mandatory court appearances will occur in any given county, municipal, or juvenile court is uncertain. The likely costs are difficult to quantify and are probably best viewed as opportunity costs, meaning when typically finite local criminal and juvenile justice system resources (people, time, and money) are being expended they are unavailable, at least for some period of time, for alternative uses.

### **Wrong-way driving penalty enhancement**

Under current law, wrong-way driving on a divided interstate highway is generally a minor misdemeanor, but may be a misdemeanor of the third or fourth degree, depending on certain prior traffic offense convictions. Under the bill,

wrong-way driving on a divided interstate highway is a felony of the fourth degree if the offender also committed a state or municipal OVI offense, or if the offender was operating a commercial motor vehicle and that vehicle was involved in a collision that resulted in the physical harm to, or death of, another person.

In these situations, the driver has already violated existing prohibitions against operating a vehicle while under influence or vehicle-related assault or homicide, and, if convicted, will be serve time in local or state incarceration. Whether this criminal conduct constitutes a misdemeanor or felony depends on the circumstances present, including the driver's prior record of criminal and traffic violations.

That said, as a result of this penalty enhancement, it is possible that a relatively small number of misdemeanor cases that are adjudicated in a municipal or county court under current law may become felony cases and shift to the jurisdiction of a court of common pleas. In the case of a municipal criminal justice system, this means a possible minimal annual savings effect in terms of the costs to prosecute, defend (if the offender is indigent), adjudicate, and sanction violators, and a related minimal annual revenue loss in court-imposed costs, fees, and fines.

The annual operating costs of county criminal and juvenile justice systems may increase minimally, as it is typically more expensive to prosecute, defend, adjudicate, and sanction in a felony case than is generally the case for a misdemeanor. There may be a related minimal annual revenue gain from court costs, fees, and fines collected from offenders.

It is also possible that additional adult or juvenile offenders could be sentenced to prison or committed to the custody of the state, which would increase the annual incarceration or care and custody costs for the departments of Rehabilitation and Correction (DRC) and Youth Services (DYS), respectively. The annual magnitude of any cost increase for DRC and DHS is likely to be no more than minimal annually.<sup>1</sup>

## **License suspension**

### **Mandatory suspension**

The bill requires the sentencing court to impose a mandatory license suspension for wrong-way driving on a divided interstate highway under certain specified circumstances (reckless operation or collision causing harm or death). This mandatory suspension is in addition to any other penalty that the sentencing court is required or permitted to impose on the offender. It is likely that, under current law, a driver in these circumstances is already facing a license suspension, reckless operation, or vehicle-related assault or homicide.

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<sup>1</sup> The average annual cost for DRC to incarcerate an offender in prison is currently around \$22,836 (or \$62.57 per day), with the marginal annual cost of adding an offender estimated at around \$3,600. The daily cost of incarcerating a juvenile in a DHS facility in FY 2014 was \$561, with the marginal daily cost of adding an offender estimated at \$29.

As there is an existing license suspension system already in place, any additional annual operating costs for the court and the state Bureau of Motor Vehicles (BMV) to handle these additional suspensions will be negligible. The license reinstatement fee for this court-ordered suspension is likely to be \$40, to be paid to the BMV.

### **Prohibition against violating the suspension**

Currently, driving under suspension generally is a misdemeanor of the first degree and a violator is subject to up to six months in jail and a fine of up to \$1,000. Under the bill, if a person is convicted of driving under suspension imposed for wrong-way driving on a divided interstate the court, depending on the circumstances present, is: (1) required to impose a jail term of one year and may impose a fine of not more than \$1,000, or (2) required to impose a definite prison term of 3 years and may impose a fine of not more than \$10,000.

As a result of provision (1) described in the immediately preceding paragraph, a person will be required to spend at least six months more in a locally operated jail than might have been the case under current law. The cost to house an inmate in a full service jail is estimated at around \$65 per day. At that rate, an additional six months is estimated to cost \$11,700 (\$65/day x 6 months). The number of persons that will be sentenced to a prison term under provision (2) described in the immediately preceding paragraph will be extremely small in the context of an inmate population totaling more than 50,000. The marginal cost to DRC of adding an offender is estimated at around \$3,600 per year.

### **State and local revenues**

Any increase in criminal or juvenile cases and subsequent convictions may lead to a gain in related state and local revenues. The state revenues would be in the form of locally collected state court costs<sup>2</sup> that are forwarded for deposit to the credit of the Indigent Defense Support Fund (Fund 5DYO) and the Victims of Crime/Reparations Fund (Fund 4020). Counties and municipalities may gain revenues in the form of local court costs, fees, and fines that the sentencing court generally is required to impose on an offender. The amount of money that either of these state funds may gain annually, however, is likely to be negligible, as the number of affected criminal and juvenile cases will be relatively small. The annual gain in court costs and fines for any given county or municipality will be minimal.

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<sup>2</sup> "State court costs" are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. The court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DYO) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DYO and \$30 to Fund 4020.

## Sentences and fines

The table below summarizes the sentences and fines associated with violating the prohibition against wrong-way driving on a divided interstate highway. Depending upon the circumstances present, a violation is either a minor misdemeanor, a fourth- or third-degree misdemeanor, or a fourth-degree felony. Under any of those violations, the sentencing court is permitted to impose a fine, a term of incarceration, or both.

<b>Sentences and Fines for Wrong-Way Driving on a Divided Interstate Highway</b>		
<b>Offense Level</b>	<b>Possible Fine</b>	<b>Possible Term of Incarceration</b>
Felony 4th degree	Up to \$5,000	Prison, definite term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months
Misdemeanor 3rd degree	Up to \$500	Jail, not more than 60 days
Misdemeanor 4th degree	Up to \$250	Jail, not more than 30 days
Minor misdemeanor	Up to \$150	Citation issued; No arrest

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