



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 446 of the 131st G.A.

Date: April 5, 2016

Status: As Introduced

Sponsor: Rep. Manning

Local Impact Statement Procedure Required: No

Contents: Operating a vehicle while intoxicated (OVI), driving under a suspended driver's license, and speeding violation penalties

State Fiscal Highlights

- **Court cost and license reinstatement fee revenues.** Nine non-GRF state funds that receive court costs and/or license reinstatement fees may each realize a minimal annual gain in revenue from additional OVI convictions.
- **Incarceration costs.** The bill's "harmful intoxicant" provision may result in a relatively small increase in the number of OVI offenders sentenced to prison each year. The additional incarceration costs to the Department of Rehabilitation and Correction will be minimal annually.

Local Fiscal Highlights

- **County and municipal criminal justice expenditures.** The bill will likely result in a small number of additional OVI cases statewide and a corresponding increase in expenditures related to the arrest, prosecution, possible indigent defense, adjudication, and sanctioning in these cases. Since the potential number of new cases in any jurisdiction is expected to be small, the expenditure increase will be minimal annually.
- **Local revenues.** The additional OVI convictions stemming from the bill will likely result in local courts collecting increased fine and court cost revenue that is, depending upon the circumstances of the violation, distributed between: (1) county and municipal general funds, (2) county and municipal indigent drivers alcohol treatment funds, (3) county and municipal special court funds, (4) local indigent drivers interlock and alcohol monitoring funds, and (5) local law enforcement agency enforcement and education funds. The revenue gain for any of these local funds is expected to be minimal annually.

Detailed Fiscal Analysis

For the purposes of this fiscal analysis, the bill most notably:

- Expands the scope of the laws governing OVI by including "harmful intoxicant" within the definition of "drug of abuse."
- Clarifies the specific prison term that may be imposed for a third degree felony OVI offense.
- Allows an emergency situation or a "family necessity" to be used as an affirmative defense to a charge of driving under a suspended license.
- Specifies that the "enhanced penalty" for specified speeding infractions applies regardless of whether the offender previously has been convicted of or pleaded guilty to a speeding offense.

OVI

According to data provided by the Department of Public Safety's Bureau of Motor Vehicles (BMV), in recent years more than 40,000 individuals were convicted annually of an OVI-related violation in Ohio. The bill's "harmful intoxicant" provision may result in a relatively small increase in that number for the following two reasons:

1. Over the previous five years, the Ohio State Highway Patrol has issued around 100 traffic citations for abusing harmful intoxicants, or an average of about 20 per year statewide. Although there are no comparable traffic law violation statistics readily available for local jurisdictions, any increase in OVI-related arrests and convictions under the jurisdiction of counties and municipalities will be relatively small.
2. In OVI cases involving a drug of abuse where there is no physical evidence such as urine or blood results to establish the presence of a drug of abuse, the court is limited to circumstantial evidence. This suggests that securing an OVI conviction where use of a harmful intoxicant may be present generally may be problematic.

State fiscal effects

Revenues

The vast majority of OVI-related convictions are misdemeanors. In addition to any mandatory fines, state court costs totaling \$29 are also imposed on an offender convicted of or pleading guilty to a misdemeanor, \$20 of which is directed to the Indigent Defense Support Fund (Fund 5DY0) and \$9 is directed to the Victims of Crime/Reparations Fund (Fund 4020). If the statewide number of additional OVI convictions resulting from offenders driving under the influence of "harmful intoxicants" is relatively small, the additional court cost revenue collected by the state would be no more than minimal annually.

Under current law, those convicted of an OVI-related offense face a one-year administrative license suspension (ALS) of their driver's license. The reinstatement fee for a suspended driver's license resulting from an OVI-related offense is \$475. The reinstatement fee revenue is distributed across eight state funds, which are listed in the table below. Given the expectation that the bill would yield a relatively small number of new OVI convictions, the likely revenue gain for any given fund would be no more than minimal per year.

Distribution of \$475 License Reinstatement Fee	
Fund	Portion of Fee
State Bureau of Motor Vehicles Fund (Fund 4W40)	\$30.00
Indigent Drivers Alcohol Treatment Fund (Fund 7490)	\$37.50
Victims of Crime/Reparations Fund (Fund 4020)	\$75.00
Statewide Treatment and Prevention Fund (Fund 4750)	\$112.50
Services for Rehabilitation Fund (Fund 4L10)	\$75.00
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	\$75.00
Trauma & Emergency Medical Services Grants Fund (Fund 83P0)	\$20.00
Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0)	\$50.00
TOTAL Reinstatement Fee	\$475.00

Expenditures

As a result of the likely small number of additional OVI-related convictions stemming from the bill, LSC fiscal staff estimates that very few, if any, additional offenders might be sentenced to prison annually. This means that the potential increase in the Department of Rehabilitation and Correction's annual incarceration costs would be minimal at most. The marginal cost of adding a few offenders to the state's prison system is estimated at \$3,000 to \$4,000 per offender per year.

Local revenues

Fines

The amount of the mandatory fine for an OVI violation depends on certain specified circumstances, such as the number of prior OVI convictions, and ranges from \$375 to \$10,500.¹ As the number of additional OVI convictions is likely to be relatively small and those convicted are not expected to have many, if any, prior OVI convictions, the amount of fine revenue that would be generated annually for any given governmental entity and/or fund would be minimal at most.

The disposition of the fine generally can be described as follows:

- \$25 of the fine imposed for a first offense and \$50 of the fine imposed for a second offense are deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the court. The court is

¹ R.C. 4511.19(G).

permitted to use this money to pay the cost of offender assessments (including transportation) and alcohol and drug addiction services.

- \$50 of the fine imposed is deposited into special projects funds under the control of the court to be used to cover the cost of immobilizing or disabling devices, including ignition interlock devices and remote alcohol monitoring devices. If no special projects fund exists, the \$50 is deposited into the indigent drivers interlock and alcohol monitoring fund of the county where the conviction occurred.
- Between \$75 and \$500, depending on the number of prior convictions, is transmitted to the state treasury for deposit into the Indigent Defense Support Fund (Fund 5DY0). Fund 5DY0 is used by the Ohio Public Defender Commission to support the state and county criminal indigent defense service delivery systems.
- Between \$25 and \$210, depending on the number of prior convictions, is paid into an enforcement and education fund established by the legislative authority of the law enforcement agency that was primarily responsible for the arrest of the offender. Such funds are to be used to support enforcement and public information efforts by the law enforcement agency.
- Between \$50 and \$440, depending on the number of prior convictions, is paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration.

The balance of the fine imposed is distributed as provided by law, which generally means the county or municipal general fund depending on the court where the conviction occurred.

Expenditures

The bill will likely result in a small number of additional OVI cases statewide and a corresponding increase in expenditures related to the arrest, prosecution, possible indigent defense, adjudication, and sanctioning in these cases. Since the potential number of new cases in any jurisdiction is expected to be small, any additional local expenditure would not likely exceed minimal annually.

Prison term for a third degree felony OVI offense

The bill clarifies the prison term that may be imposed for a third degree felony OVI offense and is not expected to generate any discernible fiscal effect on the state or any of its political subdivisions.

Speeding and suspended license violations

The bill's driving under a suspended license provision may increase the amount of time that a court has to spend on certain cases to determine what constitutes a "family necessity" when "family necessity" has been used as an affirmative defense for driving under a suspended driver's license, as the bill does not define the term. The potential impact on any given court is likely to be minimal, at most, and will decrease over time once a precedent is established.

The bill's speeding violations provision generally makes technical corrections and clarifications to Ohio's traffic laws and is not expected to have any readily discernible fiscal effect on the state or any of its political subdivisions.