



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 37
135th General Assembly

Bill Analysis

[Click here for H.B. 37's Fiscal Note](#)

Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Johnson and K. Miller

Margaret E. Marcy, Attorney

SUMMARY

- Establishes a new, tiered-system, based on the number of prior offenses and the nature of the offense, in order to trigger increased minimum mandatory prison terms for aggravated vehicular homicide that is the proximate result of an 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.
- Increases the minimum financial penalties for operating a vehicle while under the influence of alcohol, drugs, or a combination of them (OVI) by an additional \$375.
- Modifies when a court must condition the granting of limited driving privileges to an OVI offender on use of an ignition interlock device.

DETAILED ANALYSIS

Aggravated vehicular homicide penalties

Introduction

The bill increases the penalties, particular the financial penalties and the prison term, for an offender who commits an aggravated vehicular homicide as the proximate result of an 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, and any substantially equivalent municipal ordinance.¹

¹ R.C. 2903.06(A)(1).

“Low tier OVI offense” means an OVI offense with a vehicle when the offender’s alcohol level was the standard level (whole blood measures at 0.08% to 0.17% by weight per unit volume, or the equivalent blood serum or plasma, breath, or urine concentration), the offender violated the prohibited concentration level for drugs, or the offender committed an OVI offense with a watercraft or aircraft.²

“High tier OVI offense” means an OVI offense with a vehicle when the offender’s alcohol level was the higher level (whole blood measures at more than 0.17% by weight per unit volume or the equivalent blood serum or plasma, breath, or urine concentration).³

“Prior offense” includes any violation of a substantially equivalent municipal ordinance, former law of Ohio, current or former law of another state, or current or former federal law.⁴

Financial penalties

The bill increases the maximum possible financial penalty for aggravated vehicular homicide that is the proximate result of an OVI offense to \$25,000. Under current law, the court may impose a maximum financial penalty of \$15,000 for that offense on an offender with no prior offenses (second degree felony). Similarly, a court may impose a maximum financial penalty of \$20,000 for that offense on an offender with prior offenses (first degree felony).⁵

Prison terms and decrease in required priors

The bill alters the parameters under which certain prior offenses result in a higher penalty for aggravated vehicular homicide that is the proximate result of an OVI offense. The bill also 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, the bill 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.⁶

Under current law, 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.⁷ 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.⁸ The prison term for those offenders is typically a

² R.C. 2903.06(G)(1)(h).

³ R.C. 2903.06(G)(1)(i).

⁴ R.C. 2903.06(G)(2).

⁵ R.C. 2903.06(B)(2)(h); R.C. 2929.18, not in the bill, specifies default felony financial penalties.

⁶ R.C. 2903.06(B)(2) and 2929.142.

⁷ R.C. 2903.06(B)(2)(a) and 2929.14.

⁸ R.C. 2903.06(B)(2)(b) and (c).

minimum mandatory term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years.⁹ If the offender has a significant number of prior offenses (three or more), the prison term is typically a minimum mandatory term of 10, 11, 12, 13, 14, or 15 years.¹⁰ Prior offenses include prior OVI offenses, vehicular homicide involving OVI, vehicular assault involving OVI, involuntary manslaughter involving OVI, or a combination of those offenses.

The bill 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. The following table describes the tiers and the minimum mandatory prison term imposed under the bill for an offender at each tier.

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 a low tier 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) and (c)	None – offender commits aggravated vehicular homicide as the proximate result of a high tier OVI offense; or None – offender commits aggravated vehicular homicide as the proximate result of a low tier 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 a low tier OVI offense and has one prior low tier OVI offense or a reckless operation offense that involved	Default minimum mandatory term for first degree felony under R.C. 2929.14: 3, 4, 5, 6, 7, 8, 9, 10, or 11 years

⁹ R.C. 2929.14(A)(1)(a); the maximum term is determined based on a formula in R.C. 2929.144, not in the bill.

¹⁰ R.C. 2903.06(B)(2)(c) and 2929.142.

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
	<p>alcohol, a drug of abuse, or a combination of them within the previous 20 years;</p> <p>or</p> <p>Offender commits the aggravated vehicular homicide as the proximate result of a low tier OVI offense and has one prior traffic-related homicide, manslaughter, or assault offense within the previous 20 years.</p>	
<p>Third Tier R.C. 2903.06(B)(2)(d)</p>	<p>Offender commits aggravated vehicular homicide as the proximate result of a low or high tier OVI offense and has either:</p> <p>One prior high tier OVI offense within the previous 20 years;</p> <p>or</p> <p>Two prior low tier OVI offenses within the previous 20 years;</p> <p>or</p> <p>Two prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years;</p> <p>or</p> <p>Two prior offenses of any combination of the prior two parameters listed above within the previous 20 years.</p>	<p>First degree felony with an increased minimum mandatory term under R.C. 2929.142(A):</p> <p>5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 15 years</p>
<p>Fourth Tier R.C. 2903.06(B)(2)(e)</p>	<p>Offender commits aggravated vehicular homicide as the proximate result of a low or high tier OVI offense and has either:</p> <p>One prior low tier and one prior high tier OVI offense within the previous 20 years;</p>	<p>First degree felony with an increased minimum mandatory term under R.C. 2929.142(B):</p> <p>10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20 years</p>

Aggravated vehicular homicide (proximate result: OVI)		
Tier	Prior offense(s)	Prison term
	<p>or</p> <p>Three prior low tier OVI offenses within the previous 20 years;</p> <p>or</p> <p>Three prior traffic-related homicide, manslaughter, or assault offenses within the previous 20 years;</p> <p>or</p> <p>Three prior offenses of any combination of the prior two parameters listed above within the previous 20 years.</p>	
<p>Fifth Tier</p> <p>R.C. 2903.06(B)(2)(f)</p>	<p>Offender commits aggravated vehicular homicide as the proximate result of a low or high tier OVI offense and has either:</p> <p>Two prior high tier OVI offenses within the previous 20 years;</p> <p>or</p> <p>Two prior low tier OVI offenses and one prior high tier OVI offense within the previous 20 years.</p>	<p>Increased minimum mandatory term under R.C. 2929.142(C):</p> <p>15, 16, 17, 18, 19, or 20 years</p>

OVI penalties

Financial penalties

The bill increases the minimum financial penalties for an offender who operates a vehicle while under the influence of alcohol, drugs, or a combination of them (OVI) by \$375. The following table describes those increases.

Table 1: OVI financial penalties ¹¹		
Offense	Current law	Under the bill
1 st time offender	\$375 - \$1,075	\$750 - \$1,075
2 nd time offender (within 10 years)	\$525 - \$1,625	\$900 - \$1,625
3 rd time offender (within 10 years)	\$850 - \$2,750	\$1,225 - \$2,750
4 th or 5 th time offender (within 10 years); or 6 th time offender (within 20 years)	\$1,350 - \$10,500	\$1,725 - \$10,500
Prior felony-OVI offender (no time limitation)	\$1,350 - \$10,500	\$1,725 - \$10,500

The bill specifies that the additional \$375 must be deposited into the existing Indigent Drivers Interlock and Alcohol Monitoring Fund.¹² That fund is used at a state, county, and municipal level to pay the cost of an immobilizing or disability device (including a certified ignition interlock device or alcohol monitoring device) when the offender cannot pay for use of that device.¹³ The bill 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 indigent drivers' alcohol treatment fund;
- The local special projects fund; and

¹¹ R.C. 4511.19(G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), and (e)(iii).

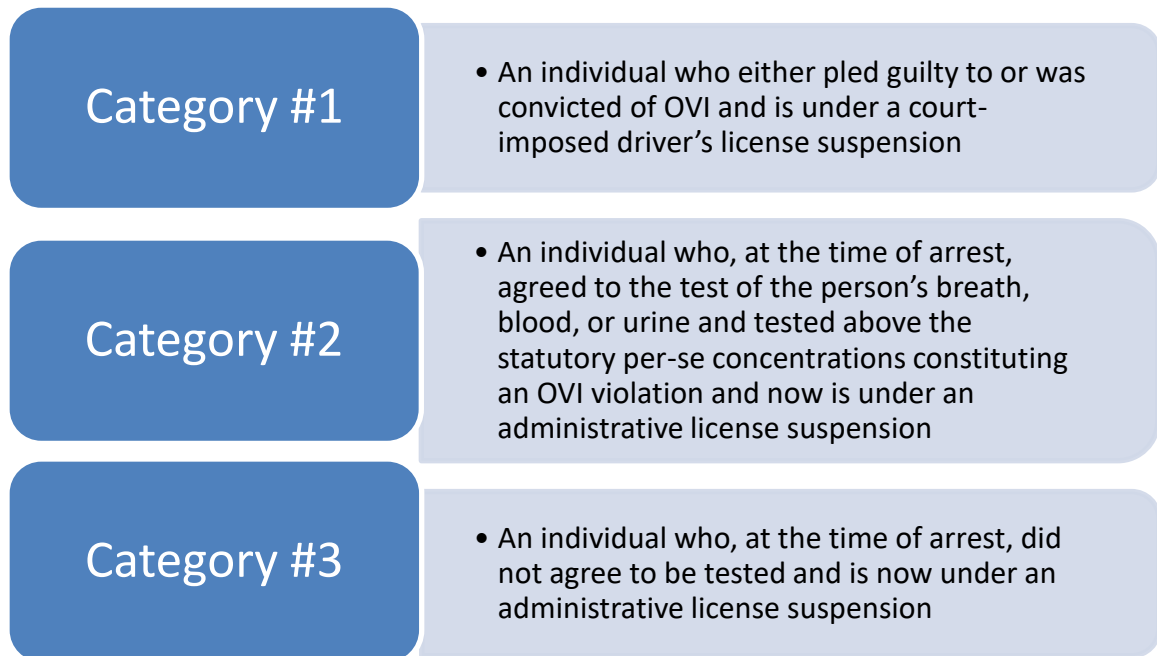
¹² R.C. 4511.19(G)(5)(g).

¹³ R.C. 4511.191(F)(2)(h), not in the bill.

- The state Indigent Defense Support Fund.¹⁴

Limited driving privileges and ignition interlock devices

The bill modifies when an OVI offender must agree to use of an ignition interlock device in order to be granted limited driving privileges. Current law separates OVI-offenders into three categories for purposes of driver's license suspensions:¹⁵



Current 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 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.¹⁶

First-time offender

A first-time offender (with no prior offenses within ten years) in Category #1 and #2 may be granted limited driving privileges after a 15-day hard suspension. Under current 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 bill retains that judicial discretion if, within ten years

¹⁴ R.C. 4511.19(G)(5)(a) to (f).

¹⁵ R.C. 4511.19(G); R.C. 4511.191(B) and (C), not in the bill.

¹⁶ R.C. 4510.13; R.C. 4510.02, not in the bill.

of the current offense, the offender *has not* been convicted of or pleaded guilty to a reckless operation offense that involved alcohol, a drug of abuse, or a combination of them.¹⁷ If the offender *does* have such a prior reckless operation offense, then the court *must* condition limited driving privileges on the use of a certified ignition interlock device (a type of immobilizing/disabling device).¹⁸

Second-time offender

A second-time offender under Category #2 above may be granted limited driving privileges after a 45-day hard suspension. Under current law, a court may condition those limited driving privileges on use of an immobilizing or disabling device. The bill 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.¹⁹ The change makes these second-time offenders consistent with the law for second-time offenders under Category #1, above.²⁰

Category #3

Current 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, after that period of hard suspension there are no direct 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.²¹ The bill 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:

¹⁷ A reckless operation offense that involved alcohol, a drug of abuse, or a combination of them typically is not a designated prior offense for purposes of increasing penalties under the OVI Law (i.e., it is not an “equivalent offense” under R.C. 4511.181). However, under certain circumstances, a person originally may be charged with an OVI-offense, but the final plea or conviction is adjudicated as a reckless operation offense (under R.C. 4511.20 or 4511.201).

¹⁸ R.C. 4510.13(A)(5)(a).

¹⁹ R.C. 4510.13(A)(5)(b).

²⁰ R.C. 4510.13(A)(5)(e).

²¹ R.C. 4510.021(C), not in the bill.

Category #3: ALS suspension for refusal of chemical test ²²			
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	If offender does not have a prior reckless operation offense involving alcohol, a drug of abuse, or a combination of them within the past 10 years	If offender <i>does</i> have a prior reckless operation offense involving alcohol, a drug of abuse, or a combination of them within the past 10 years
Second-time	180 days (increased from current law, which is 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 bill 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 that one prior OVI offense within 20 years may result in the higher financial penalties and increased minimum mandatory prison term.²³

HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Criminal Justice	05-08-24

ANHB0037RH-135/ks

²² R.C. 4510.13(A)(6).

²³ R.C. 4511.19(G)(9).