

OHIO CRIMINAL SENTENCING COMMISSION

65 South Front Street · Second Floor · Columbus · 43215 · Telephone: (614) 387-9305 · Fax: (614) 387-9309

Chief Justice Thomas J. Moyer
Chairman

David J. Diroll
Executive Director

H.B. 329 **(Traffic Law Refinements)**

AS INTRODUCED
10-1-05

This bill would refine certain statutes relating to traffic in light of concerns from judges, other practitioners, and interested parties.

SECTION-BY-SECTION SUMMARY

§109.66 **p. 1** **Certifying Electronic Monitoring Devices**

H.B. 490 (effective January 1, 2004) inadvertently removed the authority of the Bureau of Criminal Identification and Investigation to certify types and brands of electronic devices used to monitor offenders. The bill resuscitates this authority.

§1905.033 **p. 2** **Annual Mayor's Court Registration**

H.B. 490 required mayor's courts to register annually with the Ohio Supreme Court. The registration must be done by January 15. The deadline snuck up on some mayor's, particularly those just sworn in. The bill would move the deadline to February 15. Quarterly reporting deadlines would not change.

§2903.08 **p. 3** **Vehicular Assault**

Aggravated vehicular assault carries a mandatory prison term if the offense is the proximate result of violating the OVI statute (operating a motor vehicle under the influence of alcohol and/or a drug), §4511.19(A). Generally, the offense is an F-3, carrying a mandatory term of 1, 2, 3, 4, or 5 years. The offense is an F-2 (subject to a mandatory 2, 3, 4, 5, 6, 7, or 8 years) if the offender were driving under suspension or had certain related prior offenses.

The bill would no longer mandate a prison term for F-3 violations, provided the offender does not have a prior OVI-related conviction (div. (D)(1)). The bill carries over the current definition of "OVI-related offense" (div. (F)(5)).

§2921.331 **p. 9** **Fleeing, Eluding, & Failing to Heed**

S.B. 123 (effective January 1, 2004) imposed a hard suspension of three years to life for fleeing and eluding a peace officer and for failing to heed the lawful order of an officer (*i.e.*, while directing traffic). These acts carry a life suspension with no driving privileges on a subsequent offense. The likely intent was to deal with situations regarded as the most dangerous, such as car chases. Although failure to heed can present a dangerous

situation, it does not usually carry the same stakes as fleeing and eluding. In fact, it did not even carry a suspension under former law.

The bill would keep the harsher penalties for fleeing and eluding and for failure to heed if there's a significant risk of physical harm or death. Otherwise, the failure to heed suspension would fall into Class 5 (6 months to 3 years) (div. (E)(1)).

§4509.101 p. 12 Financial Responsibility Suspensions

Under S.B. 123, a driver under an FR “noncompliance” (no insurance) suspension receives a 90 day suspension with possible driving privileges for the first conviction, a one year suspension with optional privileges on second conviction, and a two year suspension with no privileges on third conviction. The bill would authorize optional driving privileges on the third conviction, provided the person shows that he or she now has FR, thereby increasing the number of insured offenders (div. (A)(2)(c)).

Separately, it is unclear who represents BMV when an offender requests privileges in “noncompliance” cases. The bill clarifies that BMV would be represented by (div. (M)):

- The county prosecutor of the person’s residence, if the petition is filed in a juvenile court or county court;
- The city law director or village solicitor, if the person lives in a municipality;
- If the petition is filed in a municipal court, the registrar would be represented under §1901.34, which authorizes the city law director, village solicitor, or similar chief legal officer to prosecute cases in municipal courts.

§4510.037 p. 27 Driving Under a Points Suspension

There is uncertainty about the penalty for driving under a 12 points suspension. The offense is an M-1, with a mandatory three-day jail term, but the prohibition uses non-standard language and the penalty is buried deep inside the points law (div. (J)), rather than prominently listed with other DUS offenses. The bill strikes the penalty from this section and moves it to new §4510.18 below. Current div. (K) becomes (J).

§4510.10 p. 32 Mayor’s Court Payment Plans

S.B. 123 authorizes payment plans or extensions to help drivers pay the reinstatement fees required to restore one’s operator’s license after a suspension. The result: more fees get paid. This authority extends to courts of record, but not to mayor’s courts, arguably making the law unfair to defendants who are found guilty in those courts. The bill would specifically allow mayor’s courts to use payment plans, extended timeframes, and related tools to foster payment of reinstatement fees (divs (C) & (D)).

§4510.11 p. 34 Driving Under Suspension: Class 7 Suspension

Class 7 suspensions last for “up to one year” in the judge’s discretion. While many Class 7 suspensions are optional, some are mandatory. There is uncertainty regarding what a “mandatory” period of “up to” one year means. The DUS suspension was optional before S.B. 123, and the Sentencing Commission believes the intent was to keep that flexibility. The bill makes the Class 7 suspension for DUS optional, but requires any court imposing the suspension to specify a definite period (div. (C)(1)).

§4510.12 p. 36 No Valid Operator’s License

An error in S.B. 123 erased the penalty for driving without a valid license when the driver never had a license. That gap was filled by H.B. 52 last summer, which made the offense an M-1. But it is difficult for the prosecution to prove that the person *never* had a valid license in any jurisdiction. The bill instead simply defines driving without a license issued “by this state or another jurisdiction” as the M-1 version of the offense (div. (A)(1) & (2) & (B)(1)), thereby not requiring the prosecuting to prove a negative.

Additionally, the bill makes clear that any Class 7 suspension imposed for driving without a valid license when the offender has one or more prior offenses within three years or when the license expired more than six months ago is for a definite period (div. (D)). [See the discussion under §4510.11.]

§4510.14 p. 38 Driving Under an OVI Suspension

DUOVIS carries a “mandatory” Class 7 (“up to one year”) suspension. The mandatory remains, but to give some precision to it, the bill clarifies that the suspension be for at least 30 days (div.(E)).

§4510.15 p. 43 “Reckless Driving” Suspension

Before S.B. 123, a court could suspend a license for up to one year for various traffic offenses when it found an offender reckless (old §4507.34). S.B. 123 rephrased the section, but inadvertently failed to clarify that the suspension is available for other egregious moving violations. H.B. 52 resuscitated the discretionary suspension for a reckless operation offense (§4510.15), but used wording that may rule out certain dangerous moving violations. Moreover, the bill placed the suspension in Class 5 (6 months to 3 years) rather than in the predecessor up to one year range (now Class 7). It is odd to require a six month minimum on a purely optional suspension.

The bill would rephrase the conduct leading to the potential suspension. Rather than require a “violation of any law or ordinance relating to reckless operation” (which implies a specific offense), the bill instead allows the suspension for driving in “a manner that creates a significant risk to public safety.” The offense would be placed in Class 7 (up to one year).

§4510.16 p. 44 Driving Under an FR Suspension

As noted under §4510.10 above, a handful of optional suspensions were made into “mandatory Class 7” suspensions, lending confusion as to what period must be imposed. The bill would again make the suspension optional, but clarify that, if imposed, it must be for a definite period (div.(B)(1)).

§4510.17 p. 46 Out-of-State Drug Suspension Privileges

Only “occupational” driving privileges are available for those given administrative suspensions for violating the drug laws of another jurisdiction. Several practitioners ask that the section be made consistent with the “limited driving privileges” lingo of §4510.021 which applies to comparable suspensions imposed in Ohio courts.

The bill would apply the “limited” privileges rules to BMV suspensions imposed for out-of-state drug violations (div.(E)), making the law consistent with in-state drug convictions and with other suspensions.

§4510.18 p. 54 Driving Under a Points Suspension

As noted under §4510.037, above, because of the uncertainty over the penalty for driving under 12 points suspensions, the bill would create a new section to feature the penalty, which move from current §4510.037(J) to this new section. The offense would remain an M-1, with a mandatory three-day jail term, but the prohibition would use standard language.

§4511.191 **p. 55** **OVI: Implied Consent; Terminating ALSs**

§4511.197(D) says that a *refusal* ALS continues even if the driver is later found not guilty of OVI, while the *positive test* ALS terminates if the person is found not guilty. But §4511.191 inadvertently fails to terminate the positive test ALS on a not guilty finding. The bill would make the two consistent again (div. (C)(2)) by terminating the positive test ALS on a not guilty verdict.

§4511.203 **p. 68** **Wrongful Entrustment**

While eliminating third party (“innocent owner”) vehicle forfeitures, S.B. 123 beefed up the offense of wrongfully entrusting one’s vehicle to a person who is impaired, unlicensed, uninsured, etc. S.B. 123 called for a “mandatory” Class 7 suspension. As noted earlier, there is no clear minimum term in Class 7, lending confusion. The bill would retain the mandatory suspension and make clear that it must be for a definite period of at least 30 days.

§4549.02 **p. 72** **Hit/Skip Law**
§4549.021 **p. 73** **Hit/Skip Law on Private Road**

Failure to stop and disclose one’s identity at a crash scene on a public way (§4549.02) or at any other public or private place (§4549.021) is an M-1. However, the penalty increases to an F-5 “if the violation results in serious physical harm or death.” As written, since the violation is the skipping, not the hitting, arguably, one must cause the injury while leaving the scene, rather than the collision itself.

The bill would correct these sections to make clear that the offense becomes an F-5 if *either* the hitting (the accident or collision) or the skipping results in serious injury or death (div. (B) of each).

Section 3. **p. 75** **Harmonization**