

# OHIO CRIMINAL SENTENCING COMMISSION

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## **Vehicular Homicides & Assaults After H.B. 461**

By David Diroll  
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Late last year, the General Assembly finalized House Bill 461, sponsored by Rep. Larry Wolpert. The bill increases penalties for vehicular homicides and assaults for offenders with certain prior alcohol-related convictions. It takes effect April 4, 2007.

Since 2000, there have been myriad changes in the law governing vehicular homicides, manslaughter, and assault, as well as in related statutes covering involuntary manslaughters and crimes in which a motor vehicle is used as a weapon. In short, this narrow area of law has become very complex. Unless you're in Mensa, we don't suggest that you memorize the statutes, an elephantine task. Rather, this summary should help you understand and apply the law.

We first outline the relevant statutes and then provide three "cheat sheet" tables. Sadly, the tables needed numerous footnotes to feel complete. The materials come from our revised Traffic Law Primer, which should appear on our webpage in the coming months.

### **VII. VEHICULAR HOMICIDES, MANSLAUGHTERS, & ASSAULTS**

#### **A. AGGRAVATED VEHICULAR HOMICIDE (AVH) – 3 kinds of AVHs:**

**1. OVI-Based.** If the driver is impaired by alcohol &/or drugs (§2903.06(A)(1)), AVH carries the following *mandatory* penalties:

- **F-2.** Generally, impaired AVH is an F-2 with a mandatory prison term from the F-2 range (§2903.06 (B)(2)(a) & (E)).
- **F-1 for DUS or Prior.** It is an F-1 with a mandatory prison term from the F-1 range when committed:
  - While DUS; or

- With a prior “traffic-related homicide, manslaughter, or assault” (§2903.06(B)(2)(b)(i)-(iii) & (E)). §2903.06(G)(1)(b) defines the quoted phrase.
- **F-1+ for Multiple Priors.** It is an F-1 with a mandatory prison term of 10, 11, 12, 13, 14, or 15 years if the offender has (§2903.06(B)(2)(c)(i)-(viii) & (E) & §2929.142):
  - In the past 6 years, 3 or more prior: OVIs; OVI-related AVHs, AVAs, involuntary manslaughters; or *any combination of them*; or
  - Has two or more prior felony OVIs at any time.
- **Note:** This can work as a multiple enhancement when coupled with the specification triggering a mandatory 3 year surpenalty for 3 or more prior OVIs described in **4**, below (§2941.1415).
- **Suspension.** Impaired AVH carries a mandatory lifetime (Class 1) driver’s license suspension (§2903.06(B)(2)(d)).
  - **Can’t Modify.** The suspension cannot be later reduced or modified (§§4510.13(C)(3) & 4510.54(F)), although it seems that driving privileges can be granted.

**2. Reckless Generally.** If the driver recklessly causes a death, AVH carries the following penalties (§2903.06(A)(2)(a), (B)(3), & (E)):

- **F-3.** Generally, reckless AVH is an F-3, with a *discretionary* prison term from the F-3 range.
- **F-2 for DUS or Prior.** It becomes an F-2, with a *mandatory* prison term from the F-2 range, when committed:
  - While DUS; or
  - With a prior traffic-related homicide, manslaughter, or assault.
- **Suspensions.** Under §2903.06(B)(3):
  - **Class 2.** Generally, reckless AVH carries a mandatory Class 2 (3 years to life) suspension.
    - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
  - **Class 1.** A Class 1 (lifetime) suspension must be imposed if the offender has a prior “traffic-related murder, felonious assault, or attempted murder.”

- The quoted phrase covers when a motor vehicle is used as the means or weapon in the listed crimes (§2903.06(G)(1)(f)).
- **Can't Modify.** The suspension period cannot be later reduced or modified (§§4510.13(C)(3) & 4510.54(F)), although it seems that driving privileges can be granted.

**3. “Reckless Operation” in Construction Zone.** If the death occurs as the proximate result of committing a “reckless operation offense” while the victim was in a clearly-marked “construction zone,” AVH carries the same penalties as reckless AVH, above (§2903.06(A)(2)(b) & (B)(3), & (E)).

- **Signage.** Construction zone penalties apply only if there is appropriate signage at the site (§§2903.06 (F), 2903.08(E), 2903.081(B), 4511.98, & 5501.27)).
  - Note: The lack of signage does not limit the application of other aspects AVH, VH, VM, AVA, or VA provisions (§2903.081(B), last sentence).
- **Definitions.** The statute refers to definitions of (§2903.06(G)(1)):
  - “Construction zone” (§2903.06(G)(1)(c));
  - “Reckless operation offense” (willful or wanton disregard of safety under §4511.20 or similar municipal ordinance (§2903.06(G)(1)(d)) & §2903.08(F)(4)).

**4. Additional AVH Mandatory Prison Terms.** Besides the 3 ways AVH can be committed and the penalties for them, the Code allows for these additional mandatory prison terms:

- a. **Peace Officer Victim.** An offender convicted of any AVH must serve an additional 5 year prison term if also found guilty of a specification that the victim is a “peace officer” (§§2941.1414, 2929.14(D)(5), *etc.*).
  - **Prior & Consecutive.** As with other specs, the 5 years must be served prior to, and consecutive to, the term imposed for the underlying AVH (§2929.14(E)).
  - **Juveniles.** For a juvenile offender, the court selects a definite mandatory DYS term between 1 and 5 years (§2152.17(A)(3)).
  - **“Peace Officer.”** Defined in §2935.01(B).

**b. Prior OVIs.** An offender convicted of any AVH must serve an additional 3 year prison term if the person is also found guilty of a specification that the offender previously committed three or more OVIs under §4511.19(A) or (B) or equivalent offenses (§§2941.1415, 2929.14(D)(6), 2152.17(A)(2), etc.).

- **Prior & Consecutive.** The 3 year spec term must be served prior to, and consecutive to, the term imposed for the underlying AVH (§2929.14(E)).
- **No Look Back.** There is no limit to the time a court may look back to find prior OVIs for this spec.
- **Juveniles.** For a juvenile offender, the court selects a definite mandatory DYS term between 1 and 3 years (§2152.17(A)(2)).
- **Note:** This works as a multiple enhancement when coupled with the additional penalty for 3 or more prior offenses discussed in A.1, above. The differences are:
  - The spec applies only to prior OVIs, while the sentencing provision applies to other OVI-related homicides and assaults; and
  - The spec has a no look back time limit, while the sentencing clause applies to priors within 6 years.
- **Only One of Each.** Only one peace officer victim spec and one prior OVI spec may be imposed for offenses committed as part of the same act (§2929.14(D)(5) & (6)).

**TABLE 17 LAYS OUT AGGRAVATED VEHICULAR HOMICIDE PENALTIES.  
TABLE 18 LAYS OUT AVH'S ADDITIONAL MANDATORY PRISON TERMS.**

**B. VEHICULAR HOMICIDE – 2 ways to commit VH:**

**1. Negligence.** Driving negligently and causing a death subject to these penalties (§2903.06(A)(3)(a), (C), & (E)):

- **M-1.** Generally, negligent VH is an M-1; jail term is optional.
- **F-4 for DUS or Prior.** Negligent VH is an F-4, with a mandatory prison term from the F-4 range, when committed:
  - While DUS; or
  - With a prior traffic-related homicide, manslaughter, or assault (defined in §2903.06(G)(1)(b)).

- **Suspensions.** Under §2903.06(C), 2<sup>nd</sup> ¶:
  - **Class 4.** Generally, VH carries a mandatory Class 4 (1 to 5 years) suspension.
    - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
  - **Class 3.** The mandatory suspension moves to Class 3 (2 to 10 years), if the offender has a prior traffic-related homicide, manslaughter, or assault. Note: DUS isn't mentioned.
    - **30 Days Hard.** 30 day rule (above) applies here.
  - **Class 2.** The mandatory suspension falls under Class 2 (3 years to life) if the offender has a prior “traffic-related murder, felonious assault, or attempted murder” (see definition under Reckless AVH, above).
    - **30 Days Hard.** 30 day rule (above) applies here.
- **Note on §2903.07:** S.B. 107 repealed §2903.07 when it merged VH into §2903.06 in 2000.

**2. Speeding in Construction Zone.** Proximately causing a death by “a speeding offense” in a clearly-marked construction zone also is VH, subject to the same penalties as negligent VH, above (§2903.06(A)(3)(b), (C), & (E)), except:

- **Mandatory Jail.** Unlike negligent VH, the construction zone speeding aspect also carries a mandatory jail term of at least 15 days for misdemeanor violations (§2903.06(E)).
- **“Speeding”.** “Speeding” means violating §4511.21 or similar municipal ordinances (§2903.06(G)(1)-(e)).
- **Signage, Etc.** See the bullets under construction zone AVH regarding signage & other definitions.

**TABLE 17 LAYS OUT VEHICULAR HOMICIDE PENALTIES.**

**C. VEHICULAR MANSLAUGHTER**

S.B. 107 created VM to cover MM violations of the Traffic Code (Title 45) or of equivalent local ordinances that lead to deaths (§2903.06(A)(4)).

- **M-2.** Generally, VM is an M-2, with an optional jail term (§2903.06(D)).
- **M-1 if DUS or Prior.** VM is an M-1, with an optional jail term, when committed (§2903.06(D)):

- While DUS;
- With a prior “traffic-related homicide, manslaughter, or assault” (§2903.06(G)(1)(b) defines the quoted phrase).
- **Suspensions.** Under §2903.06(D), 2<sup>nd</sup> ¶:
  - **Class 6.** VM generally carries a mandatory Class 6 (3 months to 2 years) driver’s license suspension.
    - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
  - **Class 4.** The suspension jumps to Class 4 (1 to 5 years) for the M-1 violation or if the offender has a prior “traffic-related murder, felonious assault, or attempted murder offense” (see definition under Reckless AVH, above).
    - **30 Days Hard.** The 30 day rule (above) applies here.

**TABLE 17 LAYS OUT VEHICULAR MANSLAUGHTER PENALTIES.**

**D. INVOLUNTARY MANSLAUGHTER**

With the creation of vehicular manslaughter, S.B. 107 amended the involuntary manslaughter statute (§2903.04) to:

- Eliminate bootstrapping MM traffic offenses into F-3 involuntary manslaughter when a death results, by placing those offenses under the new vehicular manslaughter law.
- Keep non-traffic MMs under IM law, as well as more serious offenses. It keeps the mandatory prison term for OVI-related IM.
- **Can’t Modify Suspension.** The lifetime suspension imposed for OVI-related IM cannot be later reduced or modified (§§4510.13(C)(3) & 4510.54(F)), although it seems that driving privileges can be granted.

**E. AGGRAVATED VEHICULAR ASSAULT**

AVA can only be committed if a driver is *impaired* by alcohol &/or drugs and causes serious physical harm to another while operating a motor vehicle (§2903.08(A)(1)). AVA carries the following penalties:

- **F-3.** Generally, AVA is an F-3 with a mandatory prison term from the F-3 range (§2903.08(A)(1), (B)(1), & (D)(1)).
- **F-2 for DUS or Priors.** AVA is an F-2 with a mandatory prison term from the F-2 range when committed (§2903.08(B)(1)(a)-(h) & (D)(1)):
  - While DUS;

- With a prior “traffic-related homicide, manslaughter, or assault” (§2903.06(G)(1)(b) defines the quoted phrase);
  - With 3 or more prior OVIs in the past 6 years;
  - With 3 or more violations of any combination of these offenses; or
  - With one or more prior felony OVI committed at any time.
  - **Note:** Unlike AVH’s F-1+ penalties, AVA does not contain an F-2+ category.
- **Suspensions.** Under (§2903.08(B)(2)):
    - **Class 3.** Generally, AVA carries a mandatory Class 3 (2 to 10 years) driver’s license suspension.
      - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
    - **Class 1 or 2.** AVA carries a mandatory suspension from Class 2 (3 years to life) or Class 1 (lifetime) if the offender has a prior:
      - Traffic-related homicide, manslaughter, or assault; or
      - “Traffic-related murder, felonious assault, or attempted murder offense.”
        - The quoted phrase is defined to cover when a motor vehicle is used as the means or deadly weapon in the listed crimes (§2903.06(G)(1)(f)).
      - **Can’t Modify.** If imposed, a lifetime suspension cannot be later reduced or modified, although it seems that driving privileges can be granted. The **30 Day Rule** applies if a Class 2 suspension is imposed. (§§4510.13(C)(3) & 4510.54(F).)

**TABLE 19 LAYS OUT AGGRAVATED VEHICULAR ASSAULT PENALTIES**

**F. VEHICULAR ASSAULT – 3 ways to commit VA:**

1. **Reckless.** VA covers reckless (but not impaired) driving that causes serious physical harm to a person (§2903.08(A)(2)(b)).
  - **F-4.** Generally, reckless VA is an F-4 with an optional prison term (§2903.08(C)(2)).
  - **F-3.** Reckless VA is an F-3 when committed (§2903.08(C)(2)):
    - While DUS;
    - With a prior “traffic-related homicide, manslaughter, or assault” (§2903.08(G)(1)(b) defines the quoted phrase); or

- With a failure to stop and provide required information after an accident (under §§4549.02, 4549.021, & 4549.03).
- **Mandatory:** Reckless VA carries a mandatory prison term when DUS or with a prior vehicular homicide, manslaughter, or assault (§2903.08(D)(2)(a) & (b)). (It doesn't use the prior "traffic-related" phrase that also includes IM, etc.) The F-3 for failing to stop is not mandatory.
- **Suspensions.** Under (§2903.08(C)(2), 2<sup>nd</sup> ¶):
  - **Class 4.** Generally, reckless VA carries a mandatory Class 4 (1 to 5 years) driver's license suspension.
    - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
  - **Class 3.** Reckless VA carries a mandatory Class 3 (2 to 10 years) suspension if the offender has a prior:
    - Traffic-related homicide, manslaughter, or assault; or
    - "Traffic-related murder, felonious assault, or attempted murder offense" (see reckless AVH, above (§2903.06(G)(1)(f)).
  - **30 Days Hard.** The 30 day rule (above) applies here.

**2. "Reckless Operation" in a Construction Zone.** If the injury occurs as the proximate result of committing a "reckless operation offense" while the victim was in a clearly-marked "construction zone" (§2903.08(A)(2)(a)).

- **Penalties.** Construction zone reckless VA carries the same penalties as reckless VA, including the possible mandatory prison term (§2903.08(C)(2) & (D)(2)).
- **Signage, Etc.** See the bullets under AVH regarding signage & definitions. They also apply here (§2903.08(E) & (F)).

**3. Speeding in a Construction Zone.** Another type of VA is when the serious physical harm is caused by "a speeding offense" in a clearly-marked construction zone (§2903.08(A)(3)).

- **M-1.** Generally, construction zone speeding VA is an M-1 with a mandatory jail term of at least 7 days (§2903.08(C)(3) & (D)(2)).

- **F-4.** The offense jumps to an F-4 when committed (§2903.08(C)(3)):
  - While DUS; or
  - With a prior “traffic-related homicide, manslaughter, or assault” (§2903.08(G)(1)(b) defines the quoted phrase).
  - **Mandatory:** CZ speeding VA carries a mandatory prison term from the F-4 range when the offender is DUS or with a prior vehicular homicide, manslaughter, or assault (§2903.08(D)(2)(a) & (b)). (It doesn’t use the broader prior “traffic-related” phrase.)
  
- **Suspensions.** Under §2903.08(C)(3), 2<sup>nd</sup> ¶:
  - **Class 4.** Generally, construction zone speeding VA carries a Class 4 (1 to 5 years) suspension.
    - **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).
  - **Class 3.** The suspension moves to Class 3 (2 to 10 years) suspension if the offender has a prior:
    - Traffic-related homicide, manslaughter, or assault; or
    - “Traffic-related murder, felonious assault, or attempted murder offense” (see reckless AVH, above (§2903.06(G)(1)(f)).
    - **30 Days Hard.** 30 day rule (above) applies here.
  
- **Signage, Etc.** See the bullets under AVH regarding signage & definitions. They also apply here (§2903.08(E) & (F)).
  
- **Note:** Unlike vehicular homicide, there is no negligent vehicular assault.

**TABLE 19 LAYS OUT VEHICULAR ASSAULT PENALTIES.**

**G. FELONIOUS ASSAULT**

- Suspension.** H.B. 461 (eff. 4.4.07) mandates a Class 2 (3 years to life) driver’s license suspension for felonious assault when the deadly weapon involved is a motor vehicle (§2903.11(D)(2)).
- **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).

## H. MURDERS & ATTEMPTED MURDERS

**Suspension.** Similarly, the Code mandates a Class 2 suspension aggravated murder, murder, or an attempt to commit either when a motor vehicle is used as the means to commit the offense (§§2929.02(D)(1) & 2923.02(E)(2)).

- **30 Days Hard.** The first 30 days is a hard suspension, although it seems that driving privileges can be granted during that period (§4510.13(C)(3)).

## VEHICULAR HOMICIDES & ASSAULTS

**Table 17: VEHICULAR DEATHS Under §2903.06**

OFFENSE	LEVEL	INCARCERATION	OPTIONAL FINE	LICENSE SUSPENSION	DRIVING PRIVILGS	RESTRICTED PLATES	IMPOUND PLATES	I or D DEVICE	DRIVING COURSE
<b>AGGRAVATED VEHICULAR HOMICIDE (AVH) - §2903.06(A)(1) &amp; (2)</b>									
AVH – OVI (A)(1)	F-2	Mandatory 2,3,4,5,6,7, or 8 year prison term	Up to \$7,500	Mandatory Class 1 (lifetime)	Optional under General Rule <sup>f</sup>	Optional \$4510.021(C)	Optional \$4507.164(A)	Optional \$4510.021 (C)	Optional \$4510.02 (C)
AVH – OVI if DUS &/or have a listed prior <sup>a</sup>	F-1	Mandatory 3,4,5,6,7,8,9, or 10 year prison term	Up to \$10,000						
AVH – OVI if 3 or more listed priors in 6 years <sup>a</sup>	F-1+	Mandatory 10,11,12,13,14, or 15 year prison term	Up to \$10,000						
AVH–Reckless <sup>e</sup> , including in CZ <sup>d</sup> (A)(2)(a) & (b)	F-3	Optional 1,2,3,4, or 5 year prison term <sup>e</sup>	Up to \$5,000	Mandatory: Class 2 (3 years to life);					
AVH–Reckless <sup>e</sup> , if DUS &/or with a listed prior <sup>b</sup>	F-2	Mandatory 2,3,4,5,6,7, or 8 year prison term	Up to \$7,500	Mandatory Class 1 with other priors <sup>h</sup>					
<b>VEHICULAR HOMICIDE (VH) - §2903.06(A)(3)</b>									
VH – Negligent (A)(3)(a)	M-1	Optional jail term up to 180 days	Up to \$1,000	Mandatory Class 4 (1 to 5 years), 30 days hard	Optional under General Rule <sup>f</sup>	Optional \$4510.021 (C)	Optional \$4507.164(A)	Optional \$4510.021 (C)	Optional \$4510.02 (C)
VH – CZ <sup>d</sup> speeding (A)(3)(b)		Mandatory 15 day jail term; Optional to 180 days							
VH – Negligent or CZ <sup>d</sup> speeding if DUS &/or with a listed prior <sup>b</sup>	F-4	Mandatory 6,7,8,9,10,11,12,13, 14,15,16,17, or 18 month prison term	Up to \$2,500	Mandatory Class 3 (2 to 10 yrs.) <sup>g</sup> ; Mandatory Class 2 with other priors <sup>h</sup>					
<b>VEHICULAR MANSLAUGHTER (VM) - §2903.06(A)(4)</b>									
VM – As proximate result of any other Title 45 MM (A)(4)	M-2	Optional jail term up to 90 days	Up to \$750	Mandatory Class 6 (3 mo. – 2 years); Mandatory Class 4 with other priors <sup>h</sup>	Optional Under General Rule <sup>f</sup>	Optional \$4510.021(C)	Optional \$4507.164(A)	Optional \$4510.021 (C)	Optional \$4510.02 (C)
VM . . . if DUS &/or with a listed prior <sup>b</sup>	M-1	Optional jail term up to 180 days	Up to \$1,000	Mandatory Class 4 (1 to 5 years)					

Note additional mandatory AVH terms in Table 18 below.

All footnotes appear after the vehicular assault table (Table 19) below.

**Table 18: AVH – ADDITIONAL MANDATORY PRISON TERMS <sup>a</sup>**

SPECIFICATION	CITATIONS	ADDED PRISON TERM	CONDITIONS
AVH: Peace officer victim <sup>b</sup>	§§2903.06(A)(1) & (2), 2929.14(D)(5) & (E), & 2941.1413	Mandatory 5 years	Specified term is prior to & consecutive to underlying AVH
AVH: 3 or more prior OVI offenses (no look back limit) <sup>c</sup>	§§2903.06(A)(1) & (2), 2929.14(D)(6), & 2941.1414	Mandatory 3 years	

<sup>a</sup> For juvenile offenders, see §§2152.17(A)(2) & (3), 2941.1413(B), & 2941.1414(B) of H.B. 52. <sup>b</sup> "Peace officer" defined in §2935.01(B).

<sup>c</sup> Priors include §4511.19(A) or (B) or equivalent offenses (defined in §4511.181(A)). It seems that these can be the same priors that enhance the AVH penalty to F-1+.

**Table 19: VEHICULAR ASSAULTS Under §2903.08**

OFFENSE	LEVEL	INCARCERATION	OPTIONAL FINE	LICENSE SUSPENSION	DRIVING PRIVILEGES	RESTRICTD PLATES	IMPOUND PLATES	I or D DEVICE	DRIVING COURSE
<b>AGGRAVATED VEHICULAR ASSAULT (AVA) - §2903.08(A)(1)</b>									
AVA – OVI (A)(1)	F-3	Mandatory 1,2,3,4, or 5 year prison term	Up to \$5,000	Mand. Class 3 (2 to 10 years); Mand. Class 1 (life) or 2 (3 years to life) with other priors <sup>h</sup>	Optional Under General Rule <sup>f</sup>	Optional \$4510.021(C)	Optional \$4507.164 (A)	Optional \$4510.021 (C)	Optional \$4510.02(C)
AVA – OVI if DUS &/or have a listed prior <sup>a</sup>	F-2	Mandatory 2,3,4,5,6,7, or 8 year prison term	Up to \$7,500	Mandatory Class 2 (3 yrs-life) or Class 1 <sup>a &amp; h</sup>					
<b>VEHICULAR ASSAULT (VA) - §2903.08(A)(2) &amp; (A)(3)</b>									
VA – Reckless <sup>c</sup> including in CZ <sup>d</sup> (A)(2)	F-4	Optional 6,7,8,9,10,11,12, 13,14,15,16,17, or 18 month prison term <sup>e</sup>	Up to \$2,500	Mandatory Class 4 (1 to 5 years)	Optional Under General Rule <sup>f</sup>	Optional \$4510.021(C)	Optional \$4507.164 (A)	Optional \$4510.021 (C)	Optional \$4510.02(C)
VA – Reckless <sup>c</sup> Including in CZ <sup>d</sup> if DUS &/or have a listed prior <sup>b</sup>	F-3	Mandatory 1,2,3,4, or 5 year prison term; Optional if enhanced for failure to stop <sup>b</sup>	Up to \$5,000	Mandatory Class 3 (2 to 10 years) with priors <sup>b &amp; h</sup>					
VA – Construction Zone <sup>d</sup> Speeding (A)(3)	M-1	Mandatory 7 day jail term; Optional up to 180 days	Up to \$1,000	Mandatory Class 4 (1 to 5 years)					
VA – CZ <sup>4</sup> Speeding if DUS &/or a listed prior <sup>b</sup>	F-4	Mandatory 6,7,8,9,10,11,12, 13,14,15,16,17, or 18 month prison term	Up to \$2,500	Mandatory Class 3 (2 to 10 yrs) with priors <sup>b &amp; h</sup>					

See footnotes below.

## NOTES for Tables 17 & 19:

\* Any Class 1 suspension imposed for AVH or AVA cannot be suspended or modified, even after 15 years (§§4510.13(C)(3) & 4510.54(F)). The first 30 days cannot be suspended of any Class 2, 3, 4, 5, or 6 suspension imposed for any vehicular homicide, manslaughter, or assault.

<sup>a</sup> In addition to being DUS at the time of the offense these prior offenses increase penalties for OVI AVH & OVI AVA: (1) Violation of §2903.06 or §2903.08; (2) Another traffic-related homicide, manslaughter, or assault; (3) 3 or more OVIs—or 2 or more felony OVIs—in prior 6 years; (4) 3 or more boating OVIs in prior 6 years (§1547.11(A)); (5) 3 or more aircraft OVIs (§4561.15(A)(3)); (6) 3 or more of any combination of (3), (4), or (5). Also municipal equivalent offenses also count as priors (§2903.06(B)(2)(a)). **Also see footnote <sup>h</sup> below.**

<sup>b</sup> In addition to being DUS at the time of the offense, these prior offenses increase incarceration for Reckless AVH and any VH, VM, & VA: Any prior traffic-related homicide, manslaughter, or assault offense (see, *e.g.*, §2903.06(B)(3)).

- Also, the VA statute adds that it is an enhancing prior when, in the same course of conduct as reckless VA, the driver violated §§4549.02, 4549.021, or 4549.03. These statutes cover the duty to stop, *et cetera*, after a collision with a vehicle or damaging real estate (§2903.08(C)).

<sup>c</sup> “Reckless” AVH & VA have 2 aspects carrying the same penalties: 1. Recklessly causing a death generally; 2. Causing the death as the proximate result of committing “a reckless operation offense” in a construction zone. The quoted phrase means a violation of §4511.20 or equivalent ordinance, which in turn means operating “in willful or wanton disregard of the safety of persons or property”, itself an M-3.

<sup>d</sup> CZ = “Construction zone” has the same meaning as in §5501.27. The prosecution must prove that the zone was clearly marked as element of the offense. H.B. 52 addresses signage in other provisions.

<sup>e</sup> The Code says (A)(2) AVH & AVA violations bear mandatory prison terms when the person was DUS at the time of the offense or has a prior equivalent offense. Since that’s the test for moving a reckless AVH from an F-3 to an F-2 (and its mandatory term), there does not appear to be a true mandatory in *this* box. Similarly, (E) expressly calls for a mandatory prison term for an (A)(3)(a) violation, but then qualifies it by saying that the person gets the mandatory only if he or she was DUS at the time of the offense or has a prior equivalent offense. Since those factors take the offense into higher box, there does not appear to be a mandatory in this box. Also, the inconsistent use of prior offenses—prior violations of §2903.06 & 2903.08 and/or more generic references to prior traffic homicides, *etc.*—may lead some to the unintended conclusion that the mandatory incarceration required by the former isn’t always required by the latter.

<sup>f</sup> As noted, the general rule is that a court may grant privileges during any suspension imposed by the court, unless a statute forbids them (§4510.021(A)). Here the statute mandates a suspension, but does not make it “hard”. While perhaps unintended, since the legislature took pains to say the longer suspensions can’t be modified, it seems that privileges may be granted.

<sup>g</sup> Oddly, the DUS enhancement was left out of the reasons for elevating the suspension to Class 3, presumably leaving VH while DUS in Class 4.

<sup>h</sup> AVH & VH suspension periods may also be enhanced when the offender has a prior “traffic-related murder, felonious assault,” or attempt at either. It’s defined in §2903.06(G)(1)(f) to cover when a motor vehicle is used as a weapon in the quoted crimes.