



Judicial Impact Statement

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February 2016

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Looking for bill sponsor

JUDICIAL IMPACT STATEMENT: OVI AND TRAFFIC LAW CORRECTIONS

Title Information

To include “harmful intoxicants” in the definition of “drug of abuse” for purposes of establishing impairment in OVI cases; to correct an inconsistency regarding the maximum prison sentence possible for F3 OVIs; to extend the affirmative defense of “driving in an emergency” to two omitted offenses, Operating Motor Vehicle with Suspended License for Failing to Appear or Pay Fine or For Default in Payment of Child Support (RC 4510.111) and Operating Motor Vehicle While Under a 12-Point Suspension (RC 4510.037); and to specify that certain enhanced penalties for speeding violations apply regardless of whether the offender previously has been convicted of or pleaded guilty to speeding.

Background and Judicial Impact

The Traffic Law and Procedure Committee of the Ohio Judicial Conference has identified several inconsistencies, omissions, and oversights, which HB 446 seeks to correct.

“Harmful intoxicants”

The Ohio Judicial Conference and the Association of Municipal and County Judges of Ohio identified an inconsistency in the law where harmful intoxicants are not explicitly listed as an impairing substance that could lead to an OVI charge, which causes certain inconsistencies and inequities in the application of OVI laws. The judges of the Judicial Conference and the AMCJO believe this concern needs to be addressed and have made this a platform item for the 131st General Assembly. This clarification would allow drivers impaired by harmful intoxicants to be charged with an OVI offense, similar to other drivers impaired from drug or alcohol abuse. This change would create needed consistency for judges, and would promote a positive public perception in the court by treating similarly situated people equally. Further, this change will reduce confusion among law enforcement personnel and should prevent inaccurate charges that can cause judicial delays.

F3 OVI sentencing

The Revised Code currently provides judges with inconsistent sentencing guidelines for third-degree-felony OVIs. In R.C. 4511.19(G)(1)(e)(i) and (G)(1)(e)(ii), both of which address the penalties for an F3 OVI offense, the maximum prison term is listed as five years. This, however, is at odds with R.C.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

2929.14(A)(3)(b), which states prison terms for F3 offenses shall be limited to a maximum of 36 months. While the latter statute does list certain offenses as exceptions for which a five-year prison term may be imposed, F3 OVIs are not included. This conflict has left sentencing courts without clear guidance as to the legislature's intent in how to sentence these offenders, and the courts of appeals are split in their interpretation of the conflict. While the Supreme Court partially addressed this conflict in *State v. South* (2015-Ohio-3930), that decision was limited to instances in which there was also a repeat-offender specification, leaving the underlying inconsistency unresolved. The Ohio Judicial Conference would like clearer guidance from the General Assembly as to what the maximum prison sentence available is for an F3 OVI: five years or three years, and H.B. 446 would provide that.

Enhanced speeding penalties

Under current law, a violation of R.C. 4511.21 (speeding) is, generally, a minor misdemeanor. That penalty is enhanced to a fourth-degree misdemeanor if a person commits a speeding violation in a specified type of zone (school zone, business district, etc.) and the person "has not been previously convicted of or pleaded guilty to" a speeding violation. The statute, however, is silent as to the penalty for that offense when the person *does* have a prior speeding violation. This results in the unintended consequence of a person with no prior speeding violations who speeds in a special zone receiving a higher penalty (an M4) than someone who commits the same offense and *does* have prior speeding violations (defaulting to a minor misdemeanor). H.B. 446 would correct this oversight by eliminating the reference to past offenses when determining whether the enhanced M4 penalty applies to a person who speeds in a special zone.

"Driving in an emergency" affirmative defense

Current law provides an enumerated list of certain driving-under-suspension-related offenses for which a defendant may raise the affirmative defense of "driving in an emergency." Those offenses are: driving under suspension or in violation of license restriction (4510.11), driving under OVI suspension (4510.14), driving under financial responsibility law suspension and driving under nonpayment of judgment suspension (4510.16), and failure to reinstate license (4210.21). Current law does not, however, allow for the affirmative defense to be raised for two seemingly similar offenses: driving while under a 12-point suspension (4510.037), and driving with a suspended license for failing to appear or pay a fine or for default in payment of child support (4510.111). H.B. 466 would add these two offenses to the list of offenses for which a defendant may raise the affirmative defense of "driving in an emergency," thus correcting what appears to be an oversight in the revised code.

Recommendations

The Ohio Judicial Conference recommends passage of H.B. 466 to eliminate several inconsistencies and correct apparent omissions and oversights in Ohio's current traffic laws.