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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Patton

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SUMMARY

- Modifies the penalties for the offense of “failure to comply with an order or signal of a police officer” involving the offender’s operation of a motor vehicle.
- Expressly provides that a motor vehicle used in the offense of “failure to comply with an order or signal of a police officer” is subject to possible seizure and forfeiture under the state’s Forfeiture Law.

DETAILED ANALYSIS

Offense of “failure to comply with an order or signal of a police officer”

Prohibitions

Currently, there are two prohibitions under the offense of “failure to comply with an order or signal of a police officer.” The first prohibition, unchanged by the bill, prohibits a person from failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic (hereafter, the general prohibition). The second prohibition currently prohibits a person from operating a motor vehicle so as willfully to elude or flee a police officer, after receiving a visible or audible signal from a police officer to bring the person’s motor vehicle to a stop. The bill modifies this second prohibition to specify that the police officer whom the offender is willfully eluding or fleeing through the operation of the motor vehicle must be in the performance of the officer’s duties (hereafter, the motor vehicle-related prohibition).¹

¹ R.C. 2921.331(A) and (B).

Penalties

A violation of either prohibition described above is the offense of “failure to comply with an order or signal of a police officer.”² A violation of the general prohibition, unchanged by the bill, currently is a first degree misdemeanor.³ The bill modifies the penalty for a violation of the motor vehicle-related prohibition, as described below.

Standard penalties for a violation of the motor vehicle-related prohibition, under the bill

Under the bill, a violation of the motor vehicle-related prohibition is penalized as follows:⁴

1. Except as otherwise described in (2), (3), and (4), below, it is a first degree misdemeanor and the court must impose a mandatory jail term as described below in (5).
2. Except as otherwise described in (3) and (4), below, it is a fourth degree felony and the court must impose a mandatory prison term as described below in (5) if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, while the offender was committing the offense, any two or more of the following applied:
 - a. The offender was operating the motor vehicle by speeding in excess of 15 miles per hour over the legal speed limit.
 - b. The offender was operating the motor vehicle in violation of the state’s OVI or OVUAC law.⁵
 - c. The offender was operating the motor vehicle in violation of the state’s reckless operation law.⁶
 - d. The offender was operating the motor vehicle negligently and that negligent operation was a proximate cause of an accident that caused property damage or physical harm to any person.
 - e. The offender was operating the motor vehicle while under a suspension or cancellation imposed under state law,⁷ or while the offender did not have a valid driver’s license, commercial driver’s license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for

² R.C. 2921.331(C)(1).

³ R.C. 2921.331(C)(2).

⁴ R.C. 2921.331(C)(3) to (6) and (D); conforming changes in R.C. 2929.01(T) and 2929.13(F)(4).

⁵ R.C. 4511.19, not in the bill.

⁶ R.C. 4511.20 and 4511.201, not in the bill.

⁷ R.C. Chapter 4510, not in the bill, or any other R.C. provision.

- renewal of the offender's driver's license or commercial driver's license without examination under a specified provision of state law.⁸
- f. The offender was operating the motor vehicle in a school safety zone in excess of the posted speed limit in the school safety zone.
 - g. The offender passed a stopped school bus.
 - h. The offender was operating the motor vehicle with one or more children under age 12 in the vehicle.
3. It is a third degree felony and the court must impose a mandatory prison term as described below in (5) if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the offender's operation of the motor vehicle was a proximate cause of the death of another or of serious physical harm to persons or property or that it caused a substantial risk of serious physical harm to persons or property.
 4. It is a second degree felony and the court must impose a mandatory prison term as described below in (5) if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the offender's operation of the motor vehicle was a proximate cause of the death of another and that, while committing the offense, any two or more of the factors described in (2)(a) to (h), above, applied to the offender.
 5. The bill's required mandatory jail and prison terms must be imposed as follows: (a) when the offense is a first degree misdemeanor, the court must impose as the mandatory jail term a term in jail authorized under the Misdemeanor Sentencing Law⁹ for a first degree misdemeanor, (b) when the offense is a fourth degree felony, the court must impose as the mandatory prison term a definite term from the range of prison terms provided in the Felony Sentencing Law¹⁰ for a fourth degree felony, (c) when the offense is a third degree felony, the court must impose as the mandatory prison term a definite term from the range of prison terms provided in the Felony Sentencing Law for a third degree felony, and (d) when the offense is a second degree felony, the court must impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed under the Felony Sentencing Law for a second degree felony.
 6. An offender sentenced to a prison term for a violation of the motor vehicle-related prohibition must serve the prison term consecutively to any other prison term or mandatory prison term imposed on the offender.

⁸ R.C. 4507.10, not in the bill.

⁹ R.C. 2929.24, not in the bill.

¹⁰ R.C. 2929.14, not in the bill.

Standard penalties for a violation of the motor vehicle-related prohibition, currently

Under existing law, changed by the bill as described above, a violation of the motor vehicle-related prohibition is penalized as follows:¹¹

1. Except as otherwise described in (2) and (3), below, it is a first degree misdemeanor.
2. Except as otherwise described in (3), below, it is a fourth degree felony if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony.
3. It is a third degree felony if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the offender's operation of the motor vehicle was a proximate cause of the death of another or of serious physical harm to persons or property or that it caused a substantial risk of serious physical harm to persons or property. If a police officer pursues an offender who is violating the motor vehicle-related prohibition and this penalty provision applies, the sentencing court, in determining the seriousness of the offender's conduct for purposes of imposing sentence, must consider, in addition to the factors that must be considered under specified provisions of the Felony Sentencing Law,¹² all of the following: (a) the duration and distance of the pursuit, (b) the rate of speed at which the offender operated the motor vehicle during the pursuit, (c) whether the offender, during the pursuit, failed to stop for traffic lights or stop signs during the pursuit, operated the motor vehicle without lighted lights during a time when lighted lights are required, or committed a moving violation, (d) during the pursuit, the number of traffic lights or stop signs for which the offender failed to stop, and the number of moving violations the offender committed, and (e) any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

License suspensions

Current law provides that, in addition to any other sanction imposed for a violation of either prohibition under the offense of "failure to comply with an order or signal of a police officer," the court must suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a specified period of time. The bill generally retains the provisions, but modifies them in certain circumstances, as follows:¹³

1. Under the bill and unchanged from current law, for a violation of the general prohibition, the court must impose a Class Five suspension from the range specified by

¹¹ Current R.C. 2921.331(C)(3) to (5).

¹² R.C. 2929.13 and R.C. 2929.12, not in the bill.

¹³ R.C. 2921.331(E).

law for that class of suspension (a definite period of six months to three years;¹⁴ currently, this provision also applies with respect to a misdemeanor violation of the motor vehicle-related prohibition);

2. Under the bill, for a misdemeanor violation of the motor vehicle-related prohibition, the court must impose a Class Four suspension from the range specified by law for that class of suspension (a definite period of one to five years;¹⁵ currently, the court must impose a suspension of the duration described in (1), above, on such an offender);
3. Under the bill, for a felony violation of the motor vehicle-related prohibition, the court must impose a Class One suspension from the range specified by law for that class of suspension (a definite period of the offender's life;¹⁶ currently, the court must impose a Class Two suspension from the range specified by law for that class of suspension, which is a definite period of two to ten years¹⁷);
4. Under the bill and unchanged from current law, if the offender previously has been found guilty of the offense of "failure to comply with an order or signal of a police officer," the court must impose a Class One suspension from the range specified by law for that class of suspension (see (3), above);
5. Under the bill and unchanged from current law, the court may not grant limited driving privileges to an offender on a suspension imposed for a felony offense of "failure to comply with an order or signal of a police officer," but may grant limited driving privileges to an offender on a suspension imposed for the offense when it is a misdemeanor, as provided in the general law regarding limited driving privileges.¹⁸
6. Under the bill and unchanged from current law, no judge may suspend any portion of the suspension under a Class One suspension of an offender's license, permit, or privilege (current law also bars a judge from suspending the first three years of suspension under a Class Two suspension, but the bill eliminates Class Two suspensions for the offense).

Forfeiture of vehicle used in violation of motor vehicle-related prohibition

Under the state's existing Forfeiture Law,¹⁹ specified property that is contraband involved in a crime, that is proceeds derived from or acquired through the commission of a crime, or that is an instrumentality that is used in or intended to be used in the commission or

¹⁴ R.C. 4510.02(A)(5), not in the bill.

¹⁵ R.C. 4510.02(A)(4), not in the bill.

¹⁶ R.C. 4510.02(A)(1), not in the bill.

¹⁷ R.C. 4510.02(A)(2), not in the bill.

¹⁸ R.C. 4510.021, not in the bill.

¹⁹ R.C. Chapter 2981, not in the bill.

facilitation of a specified crime is subject to forfeiture to the state or a political subdivision under a specified criminal or delinquency process.²⁰

The bill specifies that²¹ a motor vehicle used in a violation of the motor vehicle-related prohibition under the offense of “failure to comply with an order or signal of a police officer” is contraband, and is an instrumentality under the definition of that term applicable to the Forfeiture Law, that is subject to seizure and forfeiture under that Law.²² Currently, for purposes of the Forfeiture Law, “instrumentality” means property otherwise lawful to possess that is used in or intended to be used in an offense; an “instrumentality” may include, but is not limited to, a firearm, a mobile instrumentality, a computer, a computer network, a computer system, computer software, a telecommunications device, money, and any other means of exchange.²³

The “instrumentality portion” of the Forfeiture Law provision described in the second preceding paragraph applies with respect to any felony, to any misdemeanor when forfeiture is specifically authorized by the statute or municipal ordinance setting forth the offense and penalty for it, and to any attempt to commit, complicity in committing, or conspiracy to commit any of the preceding offenses, provided that, in any case, the use or intended use of the instrumentality must be sufficient to warrant forfeiture under the process.²⁴ The Forfeiture Law provides criteria to be used in determining whether an alleged instrumentality was used in or was intended for use in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture.²⁵

HISTORY

Action	Date
Introduced	04-20-22

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²⁰ R.C. Chapter 2981, not in the bill.

²¹ R.C. 2921.331(F) and (G) and 2927.21.

²² R.C. Chapter 2981, not in the bill.

²³ R.C. 2981.01(B)(6), not in the bill.

²⁴ R.C. 2981.02(A)(1), not in the bill.

²⁵ R.C. 2981.02(A)(2), not in the bill.