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Grendell's Bill to Strengthen the State's DUI Laws Headed to Governor

Columbus - State Senator Tim Grendell (R-Chesterland) is pleased to announce that SB 17 was passed with overwhelming support in the Ohio House. Subsequently, the members of the Senate voted unanimously to send the bill to the Governor for his signature. SB 17 includes provisions that will repeat drunk drivers off Ohio roads, including one that will require offenders with two or more prior convictions to submit to breath tests. The bill also permits the Department of Public Safety to publish its registry of habitual offenders.

"Drunk driving claims the lives of countless innocent bystanders each year. SB 17 is a comprehensive bill that will get drunk drivers off of the roads. It will ensure that those who need treatment for addiction have the opportunity to get treatment. But for those who refuse to get treatment and for those who continue to put lives at risk, we are going to hold them accountable," Grendell said.

SB 17 increases the penalties for repeat drunk driving offenses. It also subjects offenders to mandatory treatment and will require increased use of interlock and continuous alcohol monitoring. Penalties and restrictions in the bill increase depending on the number of offenses committed.

SB 17 also provides that offenders with two or more convictions cannot attempt to circumvent the law by refusing to submit to a blood alcohol level test. Under SB 17, law enforcement will be permitted to require offenders to take a test.

For the most serious of offenders, the SB 17 will also require the Ohio Department of Public Safety to maintain a public registry of habitual offenders who have been arrested for drunk driving five or more times in the last 20 years. The registry will be posted on the Internet and will include the offenders' names, addresses, dates of birth and the number of arrests on their records.

Grendell commented, "I wish we did not have to pass this legislation. But there are more than 33,000 people with more than 5 DUI arrests on the road today. That is not acceptable."

Senator Grendell introduced SB 17 following the tragic deaths of two 18-year-old Hiram College students, Grace Chamberlain and Andrew Hopkins, who were killed in an accident caused by a drunk driver with 11 prior convictions.

A synopsis of SB 17 follows.

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SB 17 Analysis

Compliance with Federal Guideline

License Suspension: Current federal law prohibits a court from granting limited driving privileges for one year for second and third time offenders in a 6 year period. Federal legislation that was signed by the President (H.R. 1195) prohibits a court from granting driving privileges for 45 days for repeat offenders. In order to comply with that change, the sub bill prohibits driving privileges for 45 days for second time offenders (from 30 days under current law), and maintains the 180-day suspension without driving privileges for third time offenders.

Impoundment/Immobilization: Requires a vehicle registered to a second time or subsequent offender to be immobilized, and the license plates to be impounded for one year. Pending federal legislation amends this section to require the each vehicle owned by the offender to be impounded, immobilized, or equipped with an ignition interlock system.

Treatment: Requires alcohol assessment and treatment for repeat offenders and requires the court to order the offender to follow treatment recommendations.

Prohibit Refusal of Chemical Test

- Requires a person who has been arrested for an alleged OVI violation to submit to a chemical test if the person has two prior OVI violations. A law enforcement officer may use whatever reasonable means are necessary to ensure that the person submits to the test.
- Requires the officer to advise the person at the time of arrest that the officer may use whatever reasonable means are necessary to ensure that the person submits to the test.
- Provides immunity from criminal and civil liability to a law enforcement officer who uses reasonable means to ensure that an offender submits to a chemical test unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

Habitual Offender Registry

- Not later than 90 days after the effective date, requires DPS to establish and maintain a public registry that lists offenders who have been convicted of OVI five or more times in the last 20 years. The Habitual OVI Offender Registry shall include the offenders' name, address, date of birth, number of convictions, and dates of conviction. The registry is a public record and is available on the Internet.
- Offenders convicted of a fifth or subsequent OVI on or after the bill's effective date are included on the registry.

Fines/Court Costs/License Reinstatement Fee

- Increases minimum fines imposed for OVI offenses by \$50:
 - 1st offense: increases from \$325 to \$375
 - 2nd offense in 6 yrs.: increases from \$475 to \$525
 - 3rd offense in 6 yrs: increases from \$800 to \$850
 - 4th or 5th offense in 6 yrs, 6th and subsequent offenses in 20 yrs., or prior felony OVI: increases from \$1,300 to \$1,350
- The \$50 is to be deposited in the court's special projects fund to be used to cover the cost of immobilizing or disabling and alcohol monitoring devices for indigent offenders. If the court does not have a special projects fund, the money is deposited into the indigent drivers interlock and alcohol monitoring fund.
- Requires the court to impose a \$2.50 court cost on an offenders who is granted limited driving privileges with ignition interlock or a continuous alcohol monitor. The court cost shall be credited to the state highway safety fund to be used by DPS to cover costs associated with the habitual offender registry (above). The court may impose an additional \$2.50 court cost on those offenders to be deposited in the court's special projects fund.
- Increases license reinstatement fees from \$425 to \$475. The additional \$50 is credited to a new indigent drivers interlock and alcohol monitoring (IDAM) fund. The fund is distributed by public DPS to county IDAM funds and shall be used only to pay the cost of immobilizing or alcohol monitoring devices for indigents.

Waiver of Counsel (State v. Brooke)

Places the burden of proving a constitutional defect in a prior conviction on the defendant. The defendant has the burden of proving the defect by a preponderance of the evidence. This change is in response to a recent Ohio Supreme Court case that held that the State has the burden of proving a waiver of counsel in a prior OVI case if the defendant submits an affidavit that a prior conviction resulted in incarceration and was without the benefit of counsel. Under this decision, prosecutors must locate records from prior cases that are often destroyed or lost- if the prosecutor cannot locate the records, a guilty plea that has never been appealed may be null and void.

Wrongful Entrustment

- Maintains current provisions that require a person who is allowing another person to drive their car to know or have reasonable cause to believe that the driver is be violating the law by driving.
- Expands the offense to include persons who know or have reasonable cause to believe that allowing a person to drive a car that is subject to an immobilization waiver if the driver is prohibited from driving the car.

Indigency Standard

For purposes of determining whether an offender has the means to pay for attendance at an a treatment program and use of the IDAT fund, the sub bill requires the court to use indigent client eligibility guidelines and the standards of indigency established by the state public defender to make the determination.

IDAT Fund/Treatment Program Certification Assistance

- Allows a court to use IDAT funds to purchase alcohol-monitoring devices only if IDAM funds are exhausted.
- Requires a court to identify and refer any alcohol and drug addiction program that is not certified and that is interested in receiving surplus IDAT funds in order to become certified. ODADAS shall keep a record of applicant referrals and shall submit an annual report to the General Assembly. Of a program makes an application, the program is eligible to receive surplus funds as long as the application is pending. ODADAS must offer technical assistance to applicants.