

H.B. 5 Summary

I have received questions about HB 5 which goes into effect today, September 23, 2011. If you have not already received one, a copy of a new DUS sentencing chart is included.

Also, the following is a summary of the key points of the bill as well as a brief discussion of the issues that have been raised:

1. The penalties and points for driving under an OVI suspension (which includes a court OVI suspension or an administrative license suspension) have **not** changed.
2. The penalties and points for driving under a 12-point suspension have **not** changed.
3. The penalties for ordinary driving under suspension under RC 4510.11 have changed somewhat: (a) It is now a **two-point** offense rather than a six-point offense. (b) The look-back period for prior offenses is three years. The look-back period **includes** priors under RC 4510.11, RC 4510.111, and RC 4510.16. (c) The offense remains a first-degree misdemeanor. (d) There is **no** immobilization for the defendant's vehicle for a **first** offense within three years. As such, where the defendant is the owner of the subject vehicle it should be released with proof of insurance and the defendant's ownership **if** it is the defendant's first offense within the three-year look-back period. (e) The immobilization and forfeiture penalties for second or greater offenses are now **optional** with the court. Thus, for these offenses, the subject vehicle if owned by the defendant should be seized in order for the court to make further determination at the defendant's initial appearance.
4. A **new** code offense has been created for driving under suspension due to (a) a license forfeiture for the defendant's failure to appear in court or pay fines and costs, or (b) failure to pay child support. It appears in **new RC 4510.111**.
5. The offenses of driving under a suspension for license forfeiture or child support and driving under an FRA suspension or cancellation have been changed to be harmonized with one another. (a) Driving under an FRA suspension now includes **nonpayment of a judgment**. (b) All of these offenses will now be **two-point** offenses rather than six-point offenses. (c) The look-back period for prior offenses is three years. The look-back period **includes** priors under RC 4510.11, RC 4510.111, and RC 4510.16. (d) There is **no** immobilization for the defendant's vehicle for a first offense within three years. As such, where the defendant is the owner of the subject vehicle it should be released with proof of insurance and defendant's ownership **if** it is the defendant's first offense within the three-year look-back period. (e) Immobilization and forfeiture penalties for subsequent offenses are now **optional** with the court. Thus, for these offenses, the

subject vehicle if owned by the defendant should be seized in order for the court to make further determination at the defendant's initial appearance. (f) The first and second of these offenses will be treated as "unclassified misdemeanors" **if** written under **state** code. (g) A court can impose a fine up to \$1,000 and up to 500 hours of community service. Although the defendant cannot be sentenced to serve a jail sentence for one of these unclassified misdemeanors, the court can penalize the defendant's failure to perform community service as indirect criminal contempt. (h) A class 7 suspension is **optional**.

6. Failure to reinstate has also changed. (a) It will now be a **two-point** offense rather than a six-point offense. (a) **If** written under state code, a first or second offense within three years is an unclassified misdemeanor. (b) A third offense is a first-degree misdemeanor. (c) There is **no** vehicle immobilization or forfeiture for any offense under this section. (d) A class 7 suspension is **optional**.
7. No operator's license has changed somewhat. (a) It will now be a **zero-point** offense. (b) Where written under state code, the penalty provisions have been reorganized within the statute but are basically unchanged. (c) As before, there is **no** vehicle immobilization or forfeiture for any offense.
8. Wrongful entrustment, although not a DUS offense, has changed significantly. (a) It remains a **zero-point** violation. (b) The look-back period for prior offenses is three years. (c) Immobilization for first and second offense and/or forfeiture penalties for subsequent offenses are now **optional** with the court. The subject vehicle should be seized in order for the court to make further determination at the defendant's initial appearance. (d) The severity of these offenses, **if** written under state code, will vary depending upon how they are written. (d) First and second offenses written under the (A)(1),(2), of (3) sections of the code will be treated as "unclassified misdemeanors." (e) All offenses written under the (A)(4) and (5) sections of the code are first-degree misdemeanors. (f) A class 7 suspension is **optional** in all cases.
9. Some departments have asked whether the defendant may still be **arrested** for a DUS offense and **bond** required. The answer to this will depend upon how the defendant is charged. The following are all first-degree misdemeanors **if** written under state law, and are therefore arrestable offenses for which bond should be required: (a) any driving under an OVI suspension, (b) any driving under a 12-point suspension, (c) any ordinary DUS under RC 4510.11, (d) a third or greater driving under a license forfeiture or child support suspension, (e) a third or greater driving under an FRA suspension, cancellation or nonpayment of judgment, (f) a second or greater offense of operating without a license, (g) a third or greater failure to reinstate, and (h) certain wrongful entrustment

offenses depending upon the number of the offense and the section under which they are written as discussed in section 8 above.

Also, depending upon how your own **local ordinances** are written, **any** DUS or wrongful entrustment offense under local ordinance are likely first-degree misdemeanors and therefore arrestable offenses for which bond should be required.

10. Some departments have asked how the offenses should be charged – that is – under state ordinance or local code. That is up to the individual chief and/or prosecutor for the municipality.
11. It has also been asked whether these provisions affect offenses written before September 23, 2011 or after that date. House Bill 5 is silent on that issue. Some judges are of the opinion that rules of statutory construction would require that the lesser penalties would apply. However, there is no official opinion on that point.

This summary is provided for your convenience only and is not intended to supersede or replace a careful reading of the statutes in question. Consult the statutes directly and seek the advice of your prosecuting attorney.

Judge Jennifer P. Weiler