



# OVI

## **INTERDICTION HANDBOOK**







- Bureau of Motor Vehicles
- Emergency Management Agency
- Emergency Medical Services
- Office of Criminal Justice Services
- Ohio Homeland Security
- Ohio Investigative Unit
- Ohio State Highway Patrol

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Dear Criminal Justice Partner,

The Ohio Department of Public Safety is pleased to present you with the "OVI Interdiction Handbook." This handbook provides a general overview of Ohio's operating while intoxicated (OVI) laws, as well as a detailed look at the OVI procedural and prosecutorial processes from initial observation of impaired driving to sanctions and sentencing.

Crash statistics show that impaired drivers were involved in almost 44 percent of all motor vehicle fatalities in Ohio in 2012. This number represents 494 OVI-related deaths out of a total of 1,122 vehicular fatalities.

We know that Ohio's criminal justice partners all work together to reduce the number of impaired drivers on Ohio's roads; no single agency can do the job alone. The Ohio State Highway Patrol made 24,529 OVI arrests during 2012, and along with each of our partners, we remain committed to the arrest and prosecution of all OVI drivers.

I hope that you will find this handbook informative and useful. On behalf of the entire Department of Public Safety, I wish to thank you for your partnership and dedication as we continue to fight to keep Ohio's roadways safe.

Sincerely,

Director John Born  
Ohio Department of Public Safety

**Mission Statement**

*"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."*

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## **Disclaimer**

This manual is intended to be used as an informational resource only. The “OVI Handbook” does not supplant the NHTSA manual, local procedural requirements, or training materials provided to law enforcement officers from their respective agencies. Cited case law within the manual is intended to provide additional insight and guidance in the decision making process.

Please contact your county or city prosecutor with questions regarding local rules, applicable case law, and preferred procedurals.

The Department of Public Safety’s goal is to provide an overview of Ohio’s OVI laws from the initial stop by law enforcement, through the arrest, pre-trial, trial, and ultimate conviction of an OVI offender. This Handbook is intended to be a reference for law enforcement officers, the legal community, and all persons involved in driving while intoxicated offenses.

The Department of Public Safety is committed to tracking and reviewing OVI legislation in Ohio, as well as changing standards and parameters implemented at the federal level through NHTSA in order to provide readers with the most recent updates and information available.

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## GLOSSARY OF ABBREVIATIONS AND TERMS

### Abbreviations

|      |   |       |  |
|------|---|-------|--|
| ALS  | Administrative License Suspension       | OVI   | Operating a Vehicle Impaired                   |
| BMV  | Bureau of Motor Vehicles                | OVUAC | Operating a Vehicle After Underage Consumption |
| CDL  | Commercial Driver's License             | PBT   | Portable Breath Test                           |
| CMV  | Commercial Motor Vehicle                | SCRAM | Secure Continuous Remote Alcohol Monitoring    |
| CFR  | Code of Federal Regulations             | SFST  | Standardized Field Sobriety Test               |
| R.C. | Ohio Revised Code                       |       |  |
| OMWI | Operating Motorized Watercraft Impaired |       |  |

### Definitions

**“ALS suspension”** is a suspension imposed by the BMV for an offender who either refuses a chemical test or who submits to a chemical test and the results indicate a concentration at or above the per se levels prescribed in R.C. §4511.19.

**“Articulate”** means capable of being expressed clearly, without ambiguity.

**“Department”** means a municipal police department, a sheriff's office, or a state law enforcement agency.

**“Disqualification”** means any of the following:

- The suspension, revocation, or cancellation of a person's privileges to operate a commercial motor vehicle;
- Any withdrawal of a person's privileges to operate a commercial motor vehicle as the result of a violation of state or local law relating to motor vehicle, traffic control other than parking, vehicle weight, or vehicle defect violations.
- A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391.

**“Interested Party”** includes the registered owner of the seized vehicle, all lien holders, the OVI offender, the owner of a storage facility holding a seized vehicle, or the person or entity that caused the vehicle to be removed from the site of arrest.

**“License”** refers to a person's license, commercial driver's license, permit, and nonresident operating privileges.

**“Operate”** means to cause or have caused movement of a vehicle, streetcar, or trackless trolley. R.C. §4511.01(HHH).

**“OVI offender”** means a person arrested and charged with an OVI offense.

**“OVI offense”** means a violation of R.C. §4511.19(A) or (B), or equivalent municipal OVI ordinances.

**“Physical control”** means being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device. R.C. 4511.194(A)(2).

**“Suspend” or “suspension”** means the permanent or temporary withdrawal, by action of a court or the bureau of motor vehicles, of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of the suspension or the permanent or temporary withdrawal of the privilege to obtain a license, permit, or privilege of that type for the period of the suspension.

**“Underlying charge”** refers to the charge that resulted in an offender being requested to take a chemical test and either testing positive or refusing the test.

**“Vehicle”** means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that “vehicle” does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power. R.C. §4511.01(A).

**“Vehicle owner”** means either of the following:

- The registered owner of a vehicle at the time the vehicle is seized.
- A person holding an assigned certificate of title to the seized vehicle who has not yet obtained a certificate of title in his name, but who is deemed by the court to be the owner of the seized vehicle. R.C. §4511.195(A).

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## PRE-ARREST

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### STOPPING A MOTOR VEHICLE

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The foundation of every OVI case begins with the stop of a motor vehicle.

There are 6 primary causes to stop a vehicle:

1. Reasonable Articulate Suspicion;
2. Probable Cause;
3. Anonymous Tips;
4. Tips;
5. Community Caretaking Function; and
6. Checkpoints.

#### 1. Reasonable Articulate Suspicion

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An officer may stop a vehicle if the officer has a reasonable suspicion based upon specific, articulable facts that criminal activity has been or is occurring.

“Reasonable [articulable] suspicion requires that the officer, ‘point to specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.’” *Terry v. Ohio* (1968), 392 U.S. 1, 20.

Reasonable articulable suspicion is evaluated on the totality of circumstances surrounding the stop to determine if the officer had a particularized and objective basis. *State v. Freeman* (1986), 64 Ohio St. 2d 291.

Reasonable articulable suspicion is viewed in the totality of the surrounding circumstances as viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training. *State v. Cochran* (12th Dist. 2007), 2007 Ohio 3353.

Reasonable and articulable suspicion is an objective standard based on the particular circumstances of the case. *State v. Ramey* (1988), 129 Ohio App. 3d 409; See also, *State v. Andrews* (1991), 57 Ohio St. 3d 86; *United States v. Sokolow* (1989), 490 U.S. 1.

“A reasonable [articulable] suspicion represents something less than probable cause, but more than an ‘inchoate [shapeless] and un-particularized suspicion or hunch’.” *Delaware v. Prouse* (1979), 440 U.S. 648, 654-655.

There are 3 categories of cues for Reasonable Suspicion:

- A. Visual Detection of Impaired Motorists Cues;
- B. Post Stop Cues; and
- C. Motorcycle Impaired Driving Detection Cues.

#### A. Visual Detection of Impaired Motorists Cues

A 2009 National Highway Traffic Safety Association (NHTSA) study has found 24 driving cues that are predictors of impaired driving.

This study also listed post-stop cues to detection of impaired drivers.

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For further explanation, see *The Visual Detection of DWI Motorists* at <http://www.nhtsa.dot.gov/people/injury/alcohol/dwi/dwihtml/>

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**STOPPING A MOTOR VEHICLE**

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The 24 driving cues are separated into 4 sections:

1. Problems in Maintaining Proper Lane Position;
  2. Speed and Breaking Problems;
  3. Vigilance Problems; and
  4. Judgment Problems.
- 
1. Problems in Maintaining Proper Lane Position:
    - › Weaving and/or Weaving across lane lines;
    - › Straddling a lane line;
    - › Drifting;
    - › Swerving;
    - › Almost striking a vehicle or other object;
    - › Turning with a wide radius or drifting during a curve.
  2. Speed and Braking Problems:
    - › Stopping problems (too far, too short, too jerky);
    - › Accelerating for no reason;
    - › Varying speed;
    - › Slow speed.
  3. Vigilance Problems:
    - › Driving without headlights at night;
    - › Failure to signal a turn or lane change, or signaling inconsistently with actions;
    - › Driving in opposing lanes or the wrong way on a one-way street;
    - › Slow response to traffic signals;
    - › Slow or failure to respond to officer's signals;
    - › Stopping in the lane for no apparent reason.
  4. Judgment Problems:
    - › Following too close;
    - › Improper or unsafe lane change;
    - › Illegal or improper turn (too fast, jerky, sharp, etc.);
    - › Driving on other than the designated roadway;
    - › Stopping inappropriately in response to an officer;
    - › Inappropriate or unusual behavior;
    - › Appearing to be impaired.

**STOPPING A MOTOR VEHICLE**

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**B. Post-Stop Cues**

- Difficulty with motor vehicle controls;
- Difficulty exiting the vehicle;
- Fumbling with driver's license or registration;
- Repeating questions or comments;
- Swaying, unsteady, or balance problems;
- Leaning on the vehicle or other object;
- Slurred speech;
- Slow to respond to officer/officer must repeat questions;
- Provides incorrect information or changes answers;
- Odor of alcoholic beverage from the driver.

**C. Motorcycle Impaired Driving Detection Cues**

In 2007, National Highway Traffic Safety Administration (NHTSA) conducted several studies to determine which cues were the most effective in predicting whether a motorcyclist was impaired.

The cues were separated into two predictors of probability of impaired motorcyclist operation:

1. Excellent Cues with a 50% or greater predictive probability; and
2. Good Cues with a 30% to 50% predictive probability.

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See *The Detection of DWI Motorcyclists* at <http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/610DWIMotorcyWeb/pages/DetectionGuide.htm>.

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1. Excellent Cues (50% or greater predictive probability):
  - › Drifting during turn or curve;
  - › Trouble with dismount;
  - › Trouble with balance at a stop;
  - › Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle);
  - › Inattentive to surroundings;
  - › Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.);
  - › Weaving.
2. Good Cues (30%–50% predictive probability):
  - › Erratic movements while going straight;
  - › Operating without lights at night;
  - › Recklessness;
  - › Following too closely;
  - › Running stop light or sign;
  - › Evasion;
  - › Wrong way.

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## PRE-ARREST

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### STOPPING A MOTOR VEHICLE

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#### 2. Probable Cause

An officer has probable cause to stop a vehicle if he or she believes that a traffic offense has occurred.

“Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or is occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop such as a suspicion that the violator was engaging in more nefarious criminal activity.” *City of Dayton v. Erickson* (1996), 76 Ohio St. 3d 3.

The officer must have a reasonable belief that an offense was committed. Any possible legal defense that a defendant might have is irrelevant to the validity of the stop.

Check your local appellate district, but see also, *City of Bowling Green v. Barger* (2006), 2006 Ohio 6187; *City of Bowling Green v. Godwin* (2006), 110 Ohio St. 3d 58; *State v. Acord* (2006), 2006 Ohio 1616.

#### 3. Anonymous Tips

An anonymous tip can create a reasonable suspicion of criminal activity when the tip has sufficient indicia of reliability. *Maumee v. Weisner* (1999), 87 Ohio St. 3d 295.

If there is not sufficient indicia of reliability then the officer must do independent police work to corroborate the tip. *Alabama v. White* (1990), 110 S.Ct. 2412.

Factors to consider when determining sufficient indicia of reliability:

- Whether the tip is based on personal observation;
- Whether the tip is being made contemporaneously with the criminal activity;
- The anonymous tipster’s motive for calling can also support reliability;
- Informant’s veracity, reliability, and basis of knowledge are highly relevant factors in determining the value of the tip;

Check your local appellate court, but see also, *State v. Herbst* (2004), 2004 Ohio 3157 and *State v. Stricker* (2007), 2007 Ohio 4074 (list of supporting federal cases).

#### 4. Tips

An identified citizen may be highly reliable and thus serve as a sufficient indicia of reliability. The belief is that, “[if] an unquestionably honest citizen comes forward with a report of criminal activity (which if fabricated would subject him to criminal liability), rigorous scrutiny of the basis of his knowledge is unnecessary.” *Illinois v. Gates* (1983), 462 U.S. 213, 233-234.

#### 5. Community Caretaking Function

The performance of a legitimate “community caretaking function” substitutes for identifying a reasonable articulable suspicion. “Police officers without reasonable suspicion of criminal activity are allowed to intrude on a person’s privacy to carry out ‘community caretaking functions’ to enhance public safety.” *State v. Norman* (1999), 136 Ohio App. 3d 46, 54, and *Brigham City v. Stuart*, 547 U.S. 398 (2006).

This exception is very limited in both application and scope. The officer must have a reasonable belief and must be “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Cady v. Dombrowski* (1973), 413 U.S. 433, 441.

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## PRE-ARREST

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### STOPPING A MOTOR VEHICLE

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#### 6. Checkpoints

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The United States Supreme Court has held that OVI checkpoints are constitutional. *Michigan Dept. of State Police, et al., v. Sitz* (1990), 496 U.S. 444.

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The Supreme Court upheld the constitutionality by using the following factors in a balancing test:

- The State's grave and legitimate interest in curbing drunk driving;
  - The fact that checkpoints are generally effective; and
  - The subjective intrusion on individual liberties was not substantial.
- 

State Courts in Ohio have routinely followed the precedent set by the Supreme Court in *Sitz* with the Ohio Supreme Court also finding that driver's license checkpoints are constitutional. *State v. Orr* (2001), 91 Ohio St. 3d 389. The Court in *Orr* used the same balancing test used in *Sitz*, to uphold the constitutionality of driver's license checkpoints.

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The Ohio Supreme Court also considered the following factors:

- The checkpoint did not greatly intrude upon traveler's sense of privacy;
- It was aimed at serving the vital State interest of identifying unlicensed drivers so as to protect citizens from drivers who either were not qualified to drive or were forbidden to drive because of a record of driving offenses; and
- Was effective in advancing the State's interest.

Ohio courts have held that all check points must have the following characteristics:

- A checkpoint location selected for its safety and visibility to oncoming motorists;
- Location must have an area which allows vehicles to be diverted without creating a safety issue or a traffic backup;
- Adequate advance warning signs, illuminated at night, timely informing approaching motorists of the nature of the impending checkpoint;
  - › signs,
  - › barrels,
  - › flashers.
- Media notice;
- Uniformed officers and official vehicles in sufficient quantity with visibility to "show the police power of the community;" and
- A predetermination by policy-making administrative officers of the location, time, and procedures to be employed, pursuant to carefully formulated standards and neutral criteria including:
  - › Standards based on the history of alcohol related crashes,
  - › Location,
  - › Time.
- If there are deviations from the formulated criteria and standards, there must be a neutral and rational basis for doing so;
- All those present and working the checkpoint shall be briefed as to the procedures to be employed.

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## PRE-ARREST

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### STANDARDIZED FIELD SOBRIETY TESTING

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The *Standardized Field Sobriety Test (SFST)* is a battery of tests systematically administered and evaluated in a standardized manner to obtain validated indicators of impairment and establish probable cause for arrest.

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See Appendix A.

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The SFST is comprised of three tests:

1. Horizontal Gaze Nystagmus (HGN);
2. Walk and Turn; and
3. One Leg Stand (OLS).

#### 1. Horizontal Gaze Nystagmus (HGN)

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HGN is an involuntary jerking of the eye. Through a series of tests, the trained officer looks for three clues in each eye:

1. Lack of smooth pursuit;
  2. Distinct and sustained nystagmus at maximum deviation;
  3. Onset of nystagmus prior to 45°.
- 

Although not recognized in Ohio as a scientific test, “HGN results are admissible in Ohio without expert testimony, as long as the proper foundation has been shown both as to the officer’s training and ability to administer the test and as to the actual technique used by the officer in administering the test.” *State v. Boczar* (2007), 113 Ohio St. 3d 148.

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The HGN is considered “objective in nature and thus does not require expert interpretation” in Ohio. *State v. Nagel* (1986), 506 N.E. 2d 285.

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“The HGN test is the single most accurate field test to use in determining whether a person is alcohol impaired.” *State v. Bresson* (1990), 51 Ohio St. 3d 123, 124-125.

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HGN can be used to establish probable cause to arrest and as substantive evidence of a defendant’s guilt or innocence in a trial for DUI, but not to determine a defendant’s actual blood alcohol content level.

#### 2. Walk and Turn (WAT)

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This is a divided attention test that requires the subject to take nine steps, heel-to-toe, along a straight line.

After taking the nine steps the subject must turn on one foot and return in the same manner.

The subject is required to follow directions and the demonstration by the officer.

The officer looks for eight clues:

1. Subject cannot balance while listening to the instructions;
2. Starts before the instructions are finished;
3. Stops while walking;
4. Does not touch heel-to-toe;
5. Steps off the line;
6. Uses arms to balance;
7. Improper turn;
8. Incorrect number of steps.

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## PRE-ARREST

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### STANDARDIZED FIELD SOBRIETY TESTING

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#### 3. One Leg Stand (OLS)

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The OLS test is another divided attention test which requires the subject to stand on one foot while holding the other approximately six inches off the ground and count aloud by thousands until told to stop.

The officer demonstrates the test and times the subject for 30 seconds.

There are four indicators of impairment on this test:

1. Sways while balancing;
2. Uses arms for balance;
3. Hopping;
4. Putting foot down.

#### SFST Accuracy

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There have been two separate studies (See Table 1) that have compared the accuracy of the SFST. Each of these studies has separate results as to the accuracy of the tests.

For further information, see *The Development of a Standardized Field Sobriety Test* at <http://www.nhtsa.dot.gov/people/injury/alcohol/SFST/>

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TABLE 1: SFST Accuracy

| STANDARDIZED FIELD SOBRIETY TEST ACCURACY |                                   |                        |
|---|-----------------------------------|------------------------|
|   | Tharp, Burns, & Moskowitz (1981)* | Stuster & Burns (1998) |
| BAC Level                                 | .10                               | .08                    |
| HGN (with 4 cues)                         | 77%                               | 88%                    |
| WAT (2 or more cues)                      | 68%                               | 79%                    |
| OLS (2 or more cues)                      | 65%                               | 83%                    |
| Combined (HGN & WAT)                      | 80%                               | 91%                    |

\*Results of this study are relied upon in the *Basic ADAP* manual.

#### The SFST and Substantial Compliance

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R.C. §4511.19(D)(4)(b) modified the standard of admissibility for field sobriety tests from strict compliance to substantial compliance.

“Substantial compliance is shown when the evidence demonstrates that, a failure to literally comply notwithstanding, the procedures actually employed accomplished the purposes or objects of the techniques or methods prescribed.” *State v. Steele* (1977), 52 Ohio St. 2d 187.

If an officer does not substantially comply or uses a non-scientific field sobriety test, “the arresting officer may not testify as to the results of the non-complying field sobriety tests but may testify as to his observations of the defendant’s performance on these tests.” *State v. Schmidt* (2004), 101 Ohio St. 3d 79.

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## PRE-ARREST

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### Portable Breath Test(s) (PBTs)

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Portable breath testing devices are not among the evidential breath-testing instruments approved by the Ohio Department of Health. As such, the results are not considered admissible in Ohio. See *State v. Shuler* (2006), 168 Ohio App. 3d 183.

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However, some jurisdictions allow the use of PBTs to determine probable cause. Please check with your local prosecutor to determine if the usage of PBTs is permissible in your jurisdiction.

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The Ohio Supreme Court was asked to address the issue of portable breathalyzer testing. The Court held that there was insufficient evidence on which to render a decision for or against the admissibility of the portable breath test. *State v. Derov* (2009), 121 Ohio St. 3d 269.

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### Probable Cause to Arrest

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“In determining whether the police had probable cause to arrest an individual for DUI, we consider whether, at the moment of arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence. In making this determination, we will examine the ‘totality’ of facts and circumstances surrounding the arrest.” *State v. Homan* (2000), 89 Ohio St. 3d 421. Please note, while Homan’s law on strict compliance was superseded by the legislature, other portions of the case remain good case law.

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“In our opinion, being ‘under the influence’ of alcohol or intoxicating liquor means that the accused must have consumed some intoxicating beverage, whether mild or potent, and in such a quantity, whether small or great, that the effect thereof on him was to adversely affect his actions, reactions, conduct, movements or mental processes, or to impair his reactions, under the circumstances then existing, so as to deprive him of the clearness of intellect and control of himself which he would otherwise possess.” *State v. Steele* (1952), 95 Ohio App. 107.

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An arrest for driving under the influence need only be supported by the arresting officer’s observations of indicia of alcohol consumption and operation of a motor vehicle while under the influence of alcohol.

In determining whether adequate indicia existed at the time of the arrest, the courts examine a number of factors.

Examples of facts that can support probable cause are:

- The time and day of the stop (Friday or Saturday night as opposed to a Tuesday morning);
- The location of the stop (whether near establishments selling alcohol);
- Any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding, weaving, unusual braking, etc.);
- Whether there is a cognizable report that the driver may be intoxicated;
- The condition of the suspect’s eyes (bloodshot, glassy, glazed, etc.);
- Impairments of the suspect’s ability to speak (slurred speech, overly deliberate speech, etc.);
- The odor of alcohol coming from the interior of the car, or more significantly, on the suspect’s person or breath;

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## PRE-ARREST

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### PROBABLE CAUSE TO ARREST

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- The intensity of that odor, as described by the officer (“very strong,” “strong,” “moderate,” “slight,” etc.);
- The suspect’s demeanor (belligerent, uncooperative, etc.);
- Any actions by the suspect after the stop that might indicate a lack of coordination (dropping keys, falling over, fumbling for a wallet, etc.); and
- The suspect’s admission of alcohol consumption, the number of drinks had, and the amount of time in which they were consumed, if given.

All of these factors, together with the officer’s previous experience in dealing with drunken drivers, may be taken into account by a reviewing court in determining whether the officer acted reasonably.

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No single factor is determinative. *State v. Evans* (1998), 127 Ohio App. 3d 56, 63. See also, *State v. Bung*s (2005), 2005 Ohio 5776; *State v. Knight* (2005), 2005 Ohio 6951.

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## POST-ARREST

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### Right to Counsel

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“The right to counsel associated with the protection against self-incrimination contained in the Fifth Amendment to the United States Constitution, or as guaranteed by the Sixth Amendment, does not apply to the stage at which the officer requested the chemical test for alcohol content. A breath-or blood-alcohol test is merely a preparatory stage of the prosecution and is not considered a critical stage at which the Sixth Amendment right to counsel would attach.” *Dobbins v. Ohio Bureau of Motor Vehicles* (1996), 75 Ohio St. 3d 533.

Right to counsel does not apply to tests used to determine alcohol level or sobriety. *McNulty v. Curry* (1975), 42 Ohio St. 2d 341.

- Although there is no right to counsel before the administration of a breath test, some courts have interpreted R.C. §2935.20 to require police to allow consultation with counsel prior to administering the breathalyzer test.
- R.C. §2935.20 states: “After the arrest, detention, or any other taking into custody of a person, with or without a warrant, such person shall be permitted forthwith, facilities to communicate with an attorney at law of his choice, who is entitled to practice in the courts of this state, or to communicate with any other person of his choice for the purpose of obtaining counsel. Such communication may be made by a reasonable number of telephone calls or in any other reasonable manner. Such person shall have a right to be visited immediately by any attorney at law so obtained who is entitled to practice in the courts of this state, and to consult with him privately. No officer or any other agent of this state shall prevent, attempt to prevent, or advise such person against the communication, visit, or consultation provided for by this section.”

### MIRANDA

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Miranda only applies when a person is subjected to "custodial interrogation." *Miranda v. Arizona* (1966), 384 U.S. 436.

Custody depends on the restriction or restraint on freedom of movement of the degree associated with a formal arrest or an actual formal arrest. *California v. Beheler* (1983), 463 U.S. 1121.

This is a reasonable person standard. *Berkemer v. McCarty* (1984), 468 U.S. 420.

“Roadside questioning of motorist detained pursuant to routine traffic stop does not constitute custodial interrogation for purposes of Miranda rule.” *State v. Hall* (2005), 2005 Ohio 4526; quoting, *Berkemer* at 442.

There are two primary reasons that a traffic stop does not invoke Miranda:

“First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief...questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.” *Berkemer* at 437-438.

“Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police,” since traffic stops are generally conducted in public view and generally with only one or two policemen. *Berkemer* at 438-439.

“Although a motorist who is temporarily detained as the subject of an ordinary traffic stop is not ‘in custody’ for the purposes of Miranda, if that person thereafter is subjected to treatment that renders him ‘in custody’ for practical purposes, he will be entitled to the full panoply of protections prescribed by Miranda.” *State v. Farris* (2006), 109 Ohio St. 3d 519. See also, *Berkemer* at 440.

**BREATH TESTING**

“Ohio’s driving while intoxicated statute defines the point the legislature has determined an individual cannot drive without posing a substantial danger, not only to himself, but to others. The defendant may still challenge the accuracy of his specific test results, although he may not challenge the general accuracy of the legislatively determined test procedure as a valid scientific means of determining blood alcohol levels. The jury may consider those specific test results, and all other relevant evidence, in ascertaining whether the state has shown beyond a reasonable doubt that the defendant has violated the statute.” *State v. Tanner* (1984), 15 Ohio St. 3d 1.

R.C. §4511.19(D)(1) “The Court may admit evidence of chemical tests taken within three hours of the alleged violation.” “A blood sample taken outside the time frame set out in R.C. §4511.19(D) is admissible to prove that a person is under the influence of alcohol as prescribed by R.C. §4511.19(A)(1)(a) in the prosecution for a violation of R.C. §2903.06, provided that the administrative requirements of R.C. §4511.19(D) are substantially complied with and expert testimony is offered.” *State v. Hassler* (2007), 115 Ohio St. 3d 322.

Pursuant to R.C. §4511.19(D)(2), if the test results are less than the per se levels, the results may be considered with other competent evidence in determining the guilt or innocence of the defendant.

**BLOOD/URINE TESTING**

In *Melendez-Diaz v. Massachusetts* (2009), 129 S.Ct. 2527, the Supreme Court of the United States addressed the issue of certificates of state laboratory analysts used to provide prima facie evidence of the substance’s composition, quality, and net weight. On pages 20-22 of the Majority’s decision, the Court specifically upheld Ohio’s notice and demand statute under R.C. §2925.51(C) as constitutional. R.C. §2925.51(C) has the same language as in R.C. §4511.19(E), thus by implication, making that statute constitutional as well.

There are three ways to get records or results from a hospital:

1. Law Enforcement Request;
2. Hospital Records Request; and
3. Search Warrant.

**See Appendices B, C, and D.**

- Senate Bill 58 adds emergency medical technicians into the definition of those able to draw blood in an OVI case or a boating intoxicated case. See R.C. §§4511.19 and 1547.11. It also adds the same emergency medical technicians to the immunity clauses in the two above mentioned sections. This bill becomes effective 9-17-10.

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## **POST-ARREST**

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### **BLOOD/URINE TESTING**

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#### **1. Law Enforcement Request**

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- Law Enforcement makes a request under the implied consent law.
- The suspect consents.
- The blood is withdrawn by a Physician, Registered Nurse, Qualified Technician, Chemist or Phlebotomist as required under R.C. §4511.19(D)(1)(b).
- Blood shall be withdrawn in the manner proscribed by the Department of Health. See O.A.C. §3701.53 et seq.
- Results are admissible:
  - › If the hospital or lab is a Department of Health Permitted Facility
  - OR
  - › With the use of expert testimony.

#### **2. Hospital Records Request**

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Under R.C. §2317.02(2)(a), Law Enforcement may request the record of the suspect's blood results that was withdrawn for medical purposes.

- The results are admissible if:
  - › The hospital is a Department of Health Permitted Facility and withdrew the blood in accordance with Department of Health standards and protocol,
  - OR
  - › With the use of expert testimony.

#### **3. Search Warrant**

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Law Enforcement may serve a search warrant on the health care provider for the actual blood sample taken by the health care provider and have that actual blood sample analyzed by methods approved by the Director of Health.

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#### ***How does HIPPA (American Health Insurance Portability and Accountability Act of 1996) affect the request by law enforcement?***

Health Care providers may resist giving the results of an individual's blood tests claiming that it is a violation of HIPPA.

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## POST-ARREST

### BLOOD/URINE TESTING

There are several exceptions to HIPPA that might apply:

- As required by State, Federal, or Local Law. This includes investigations, audits, inspections, and licensure. See R.C. §2317.02.
- To law enforcement if you are a victim of a crime, involved in a crime, or you have threatened to commit a crime;
- When ordered to do so by a court, such as a search warrant or other court order.

TABLE 2: Laboratory Drug “Per Se” Levels (R.C. §4511.19(A)(1)(J))

| <b>LABORATORY DRUG “PER SE” LEVELS</b>    |   |   |                        |
|---|---|---|------------------------|
| <b>DRUG</b>                               | <b>URINE</b>  | <b>WHOLE BLOOD, BLOOD SERUM OR PLASMA</b> | <b>O.R.C. §4511.19</b> |
| Amphetamine                               | ≥ 500 ng/mL   | ≥ 100 ng/mL                               | (A)(1)(j)(i)           |
| Cocaine                                   | ≥ 150 ng/mL   | ≥ 50 ng/mL                                | (A)(1)(j)(ii)          |
| Cocaine Metabolite                        | ≥ 150 ng/mL   | ≥ 50 ng/mL                                | (A)(1)(j)(iii)         |
| Heroin                                    | ≥ 2000 ng/mL  | ≥ 50 ng/mL                                | (A)(1)(j)(iv)          |
| Heroin Metabolite (6-monoacetyl morphine) | ≥ 10 ng/mL  | ≥ 10 ng/mL                                | (A)(1)(j)(v)           |
| L.S.D.                                    | ≥ 25 ng/mL  | ≥ 10 ng/mL                                | (A)(1)(j)(vi)          |
| Marijuana                                 | ≥ 10 ng/mL  | ≥ 2 ng/mL                                 | (A)(1)(j)(vii)         |
| Marijuana Metabolite <sup>1</sup>         | ≥ 15 ng/mL  | ≥ 5 ng/mL                                 | (A)(1)(j)(viii)(I)     |
| Marijuana Metabolite <sup>2</sup>         | ≥ 35 ng/mL  | ≥ 50 ng/mL                                | (A)(1)(j)(viii)(II)    |
| Methamphetamine                           | ≥ 500 ng/mL   | ≥ 100 ng/mL                               | (A)(1)(j)(ix)          |
| Phencyclidine                             | ≥ 25 ng/mL  | ≥ 10 ng/mL                                | (A)(1)(j)(x)           |
| Salvia Divinorum                          | Levels yet to be determined by State Pharmacy Board |   | (A)(1)(j)(xi)          |

Note 1: Marijuana Metabolite results at these levels require an addition showing of impairment and a charge under R.C. §4511.19(A)(1)(a).

Note 2: Marijuana Metabolite results at these levels can be charged as a separate stand-alone offense.

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## POST-ARREST

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### **BMV 2255 Form: LE Report on ALS/CDL Disqualification/Immobilization/Forfeiture**

R.C. §4511.191 – Ohio’s implied consent law

R.C. §4511.192 – Required warnings to be given by the arresting officer

R.C. §4511.197 – Appeals of ALS suspensions

#### **Required Warnings**

The warnings that an arresting officer is required to read to a person arrested for OVI or physical control can be found on the back of the BMV 2255 form.

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See Appendix E and Ohio Revised Code sections 4511.191(B), 4511.192, and 4506.17.

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#### **Timing of required warnings and chemical tests**

- Before the arresting officer can request a person who is under arrest for an OVI or physical control violation to consent to a chemical test, the arresting officer shall first give the required advice and warnings.
- In all cases where a chemical test is requested, the arresting officer should inform the offender that he or she has the right to have an independent chemical test conducted at the offender’s own expense.
- Subsequent to the request of the arresting officer and receipt of the officer's required advice and warnings, the person must consent to the chemical test or tests, within two hours of the time of the alleged violation, and if the person does not consent to the test or tests within that two-hour time limit, the failure to consent automatically constitutes a refusal to submit to the test or tests.
- If the subject agrees to the chemical test, law enforcement has three hours, starting from the time of the alleged violation to obtain the blood, breath or urine sample.  
R.C. §4511.19 (D)(1)(b).
- Tests results obtained outside the time limits can be used to support an OVI charge  
R.C. §4511.19 (A)(1)(a) with expert testimony.

#### **Warnings and Chemical Tests for Offenders with zero or one previous OVI convictions**

- Before requesting a chemical test, the arresting officer shall read the advice on the back of the BMV 2255 form entitled “Consequences of Test and Refusal.”
- This advises the offender that:
  - › He or she is under arrest and the offense;
  - › Driving privileges will be suspended immediately if a chemical test is refused;
  - › A fee will be charged to have driving privileges reinstated;
  - › If he or she has multiple previous offenses, the officer may use reasonable force to ensure the offender submits to a chemical test;
  - › If he or she submits to a chemical test and is found to be at or over the prohibited amount, the offender’s driving privileges will be immediately suspended and a reinstatement fee will be required.
- After reading the warning, the offender must be shown the form where the warning is written, and then the arresting officer and one witness must sign the BMV 2255 certifying that the arresting officer did, in fact, read the advice and show it to the offender (sworn report).

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## POST-ARREST

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### BMV 2255 FORM

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#### Warnings and Chemical Tests for Offenders with at least two previous OVI convictions or at least one previous felony OVI conviction

- Under R.C. §4511.191, the officer *is not required to read, but is not prohibited, from reading* (see note) the advice in paragraphs one and two on the BMV 2255 form.
- The officer **must read** paragraph three under “Consequences of Test and Refusal.” This is the paragraph that advises offenders with multiple convictions that reasonable force may be used to ensure the offender submits to a chemical test.
- The arresting officer *is not required, but is not prohibited, from showing* the offender the warnings on the BMV 2255.
- An arresting officer may use reasonable means to obtain a chemical test if the offender refuses.

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**Note:** Check with local prosecutor's office for clarification and guidance regarding the giving of advice and warnings under this section.

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#### Chemical Tests

If the arresting officer **does not ask the offender to submit to a chemical test:**

- The arresting officer must seize the offender's driver's license and forward it to the court where the offender will appear on the charge.
- No driver's license suspension can be imposed until the offender's initial appearance in court.
- If the offender does not have his or her license, the officer shall order that it be surrendered to the officer's agency within 24 hours who will forward the license to the court.

Examples of situations where an officer *may choose* not to ask the offender to submit to a chemical test:

- Malfunctioning equipment;
- The offender is unconscious;
- Any person who, dead or unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in R.C. §4511.191(A)(4) and chemical tests may be administered.

If the officer asks the offender to submit to a chemical test:

- The offender has two hours from the time of the alleged violation to consent to a chemical test, if the offender does not consent within two hours it is an automatic refusal.
- **Refusal:** If the offender has been convicted or has pleaded guilty to two (2) or more OVIs in the previous six (6) years, the officer must inform the offender that the officer is authorized to use whatever reasonable means are necessary to ensure the offender submits to a chemical test.
- **Positive Test:** *An offender who is arrested for physical control (R.C. §4511.194) and who submits to a chemical test, is not subject to a BMV ALS suspension regardless of whether the chemical test(s) indicate a level above the per se concentrations listed in R.C. §4511.19. However, that offender may be subject to a judicial pre-trial suspension under R.C. §4511.196 at the offender's initial appearance for the physical control charge.*

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## POST-ARREST

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### BMV 2255 FORM

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#### Chemical Tests *continued*

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- Chemical test results below the per se level indicated in R.C. §4511.19, or chemical test results at per se level for persons arrested for physical control, do not require a sworn report of the BMV 2255 to be sent to the BMV. No suspension may be imposed until the offender's initial court appearance on the charges.

#### Completing and Submitting the BMV 2255

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1. If the offender refuses the chemical test or is arrested for OVI and tests above the per se level, the arresting officer must inform the offender:
  - That the offender's license is suspended effective immediately;
  - That the suspension will be in affect at least until the offender's initial appearance on the charges, which shall be within 5 days.

The arresting officer must:

- Verify the offender's current address;
  - Seize the offender's license if the offender has one;
  - Send the license (and updated address if applicable) along with notice of suspension to the BMV.
2. The BMV 2255 must be completed, "sworn," and sent to the registrar within 48 hours after the arrest.
    - The "sworn report" requirement can be met having the BMV 2255 signed and sealed by a notary public, signed with the court seal/stamp by a deputy clerk, or signed by a peace officer who has received the required training under R.C. §2935.081.
    - A copy of the sworn BMV 2255 should be given to the offender at the time of arrest; if this is not done, the registrar shall send the sworn report to the person within 14 days of receiving it.
    - An "un-sworn report" may be given to the offender at the time of arrest provided that within 48 hours it is sworn by the arrested officer.
  3. If the offender is not subject to an ALS suspension, DO NOT send a copy of the BMV 2255 to the BMV.
    - The BMV 2255 contains the notice of suspension. If the BMV receives a BMV 2255 that indicates the offender was not served with the notice, then the offender will NOT be placed under an ALS suspension.
    - The BMV will not send the offender notice of suspension, but will send a reinstatement notice to let the offender know the length of the suspension and reinstatement fee.
    - A copy of the sworn report shall also be sent to the court in which the arrested person will appear on the charge.

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## POST-ARREST

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### OPERATING A VEHICLE AFTER UNDERAGE CONSUMPTION (OVUAC)

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- Offenders under the age of 21 are subject to lower prescribed chemical breath levels, ranging from .02% to less than .08%.
- An underage offender who tests at one of these lower levels should be arrested for operating a vehicle after underage consumption.
- The offender is NOT subject to an ALS suspension if the offender submits to a chemical test and the tests indicate a level less than .08% BAC or below any of the other per se levels listed in R.C. §4511.19(A).
- If the offender is under the age of 21 and refuses the chemical test, the offender is subject to an ALS suspension for refusal, and the same procedures for refusal and completion of the BMV 2255 should be followed.
- If the offender is under the age of 21 and tests .08% BAC or above any of the per se concentrations listed in R.C. §4511.19(A), then the offender is subject to an ALS suspension for a positive chemical test, and the same procedures for positive test and completion of the BMV 2255 should be followed.

### COMMERCIAL DRIVER'S LICENSING (CDL) SUSPENSION

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- Offenders operating a commercial motor vehicle (CMV) that requires a CDL are subject to lower per se levels than those set forth in R.C. §4511.19(A).

See R.C. §4506.15(A)(1)-(5).

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- These offenders may be charged with a criminal offense for operating a CMV while having only measurable or detectable amounts of alcohol or controlled substance in the person's blood, breath, or urine.
- CDL holders who are convicted of violating R.C. §4511.19 while operating either a CMV *or their personal vehicle* will be subject to CDL disqualification.

See R.C. §4506.16.

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- Persons arrested while operating a CMV that requires a CDL are subject to immediate disqualifying action under R.C. §4506.17.
- This section applies when the officer has reasonable grounds to stop or detain a person operating a commercial motor vehicle or has reason to believe that an offender is operating a commercial motor vehicle while having a *measurable or detectable amount* of alcohol or controlled substance in his or her blood, breath, or urine.
- In addition to the "Consequences of Test and Refusal" on the back of the BMV 2255, an officer must also read an additional warning on the BMV 2255.
- This warning notifies the offender that if the offender refuses the chemical test, he or she will be placed out of service immediately for 24 hours, be disqualified for a minimum of one year, and that the offender must surrender his or her CDL to the officer. Offenders are not subject to a CDL disqualification for a refusal or positive chemical test if operating their *personal* vehicles at the time of arrest.
- The offender must be read the advice, be shown the advice, and sign the BMV 2255 indicating that the offender received the advice before the test is administered.
- If the offender refuses or tests positive, the offender's license should be forwarded to the registrar and the BMV 2255 should be completed.

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## POST-ARREST

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### COMMERCIAL DRIVER'S LICENSING (CDL) SUSPENSION

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#### Appealing a CDL Disqualification

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- A CDL disqualification is imposed by the BMV and *is not subject to appeal in court.*
- The BMV is required to notify a driver who is subject to disqualification, of the length of time of the disqualification, and inform the offender that he or she may request an administrative hearing.
- An offender must request a BMV administrative hearing if the offender wants to show cause why he or she should not be disqualified.
- The offender has 30 days to request the hearing. The administrative procedures set forth in Ohio Revised Code, Chapter 119, should be followed.
- If the offender does not request an administrative hearing within the 30-day window, the order of disqualification becomes final.

### SEIZURE, TOWING AND IMPOUNDMENT OF VEHICLE

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#### Seizure

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The arresting officer, or another officer from his/her department, shall seize the vehicle that the OVI offender was operating at the time of arrest, and its license plates if the vehicle is registered to the OVI offender, if either of the following applies:

- The OVI offender is arrested for OVI, and within six years of the alleged violation, the OVI offender has previously been convicted of one or more OVI offenses; or
- The OVI offender is arrested for OVI, and the OVI offender previously has been convicted of a felony OVI offense, regardless of when the felony conviction occurred. R.C. §4511.195.

#### Arresting Officer's Notice to OVI Offender

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At the time the arrested OVI offender's vehicle is seized, the arresting officer shall provide the following written notice to the OVI offender:

- The vehicle and its license plates have been seized;
- The vehicle will either be kept by the arresting officer's department, or will be immobilized, at least until the OVI offender's initial appearance;
- At the initial appearance, the court, in certain circumstances, may order the vehicle and license plates be released to the OVI offender until final disposition of the charge;
- If the OVI offender is convicted of the pending charge, the court generally must order that the vehicle be immobilized, and the license plates impounded, or that the vehicle be forfeited; and
- The vehicle shall not be sold by the OVI offender during the immobilization period without prior court approval. R.C. §4511.195.

The seized vehicle shall either:

- Be towed to a place specified by the arresting officer's department to be safely kept at that place until the OVI offender's initial appearance, or until the final disposition of the charge;
- or

*continued on page 20*

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## POST-ARREST

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### SEIZURE, TOWING AND IMPOUNDMENT OF VEHICLE

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#### Arresting Officer's Notice to OVI Offender *continued*

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- Be immobilized, until the OVI offender's initial appearance, or until the final disposition of the charge, as follows:
  - › At a commercially operated private storage facility;
  - › At a place owned by a law enforcement agency or other government agency; or
  - › A place to which one of the following applies:
    - › The place is leased by or otherwise under the control of a law enforcement agency or other government agency;
    - › The place is owned by the OVI offender, his/her spouse, or a parent or child of the OVI offender;
    - › The place is owned by a private person or entity, and prior to the immobilization, the private entity or person that owns the place, or the authorized agent of that private entity or person, has given express written consent for the immobilization to be carried out at that place; or
    - › The place is a street or highway on which the vehicle is legally parked.
- The OVI offender may be charged the costs and expenses incurred in the removal and storage of the immobilized vehicle. R.C. §4511.195.
- If the OVI offender assigns or transfers title to the seized vehicle that is subject to an order of criminal forfeiture, the court may fine the OVI offender the value of the vehicle.

#### Rented or Leased Vehicles

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- If the seized vehicle is a rented or leased vehicle that is being rented or leased for 30 days or less, the department employing the arresting officer shall notify the lessor or owner of the vehicle regarding the circumstances of the arrest and the location where the vehicle may be retrieved.
- This notice shall be made within 24 hours after the arrest. R.C. §4511.195.

#### Arresting Officer's Notice to Court

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- The arresting officer, or another officer from his/her department, shall provide the court conducting the initial appearance with written notice of the vehicle seizure.
- Upon receipt of the arresting officer's written notice of seizure, the court shall promptly determine whether the OVI offender is the vehicle owner. R.C. §4511.195.
- The arresting officer's written notice shall:
  - › Contain the same information that is set forth in the BMV 2255 section captioned "ARRESTING OFFICER'S NOTICE TO OVI OFFENDER;"
  - › Specify the date, time, and place of the OVI offender's initial appearance;
  - › Inform the vehicle owner that if title to the motor vehicle, that is subject to an order of criminal forfeiture, is assigned or transferred, the court may fine the OVI offender the value of the vehicle;
  - › State that if the seized vehicle is immobilized pursuant to the court's order at the time of disposition, the department holding the vehicle will send a written notice to the registered owner of the vehicle, seven days after the immobilization period expires, informing the vehicle owner that if the vehicle is not retrieved, and the immobilization fees paid within twenty days after the date of the notice, the vehicle shall be forfeited to the entity entitled to the immobilization fee; and

## POST-ARREST

### SEIZURE, TOWING AND IMPOUNDMENT OF VEHICLE

*Arresting Officer's Notice to Court continued*

- State that the registered owner of the vehicle may be charged the costs and expenses incurred by the arresting officer's department for the removal and storage of the vehicle. R.C. §§4511.195, 4511.196, 4503.233, and 4503.234.
- If the court determines the OVI offender is not the registered owner of the seized vehicle, the court shall promptly send a written notice, by regular mail, to the vehicle's registered owner.

## PRE-TRIAL

### PRE-TRIAL SALE OR TRANSFER OF TITLE OF SEIZED VEHICLE

- At the initial appearance, or not less than seven days prior to the date of final disposition, the court shall notify the OVI offender that, if title to a motor vehicle that is subject to an order of criminal forfeiture is assigned or transferred, and if R.C. §4503.234(B)(2)(3) applies, the court may fine the OVI offender the value of the vehicle.
- If the OVI offender assigns or transfers title to the subject vehicle between the time of seizure and the time of actual court ordered immobilization, without prior court approval, the court shall order that, for a period of two years from the date of the order, neither the registrar nor any deputy registrar shall accept an application for the registration of any vehicle in the OVI offender's name. R.C. §4511.195 and §4503.233.

### ADMINISTRATIVE LICENSE SUSPENSION (ALS)

- Upon the BMV's and court's receipt of the arresting officer's sworn report regarding an OVI offender refusing to take a chemical test, the BMV registrar shall enter into its records the fact that the OVI offender's driving privilege was suspended by the arresting officer, and the period of the suspension. R.C. §4511.191(B).
- The suspension becomes effective immediately when the arresting officer serves the notice of suspension upon the OVI offender.
- The BMV registrar shall terminate the administrative suspension upon receipt of notice that the OVI offender was convicted of the OVI charge.

**TABLE 3: ALS Refusal Consequences**

| <b>ALS REFUSAL CONSEQUENCES</b>   |                              |
|---|------------------------------|
| <b>Refusal/Offense Events within 6-year period</b>  | <b>ALS Suspension Length</b> |
| <b>1st Offense Refusal</b>  | <b>1 year</b>                |
| <b>2nd Offense Refusal<br/>with either prior refusal or conviction.</b>                             | <b>2 years</b>               |
| <b>3rd Offense Refusal<br/>with either/or 2 prior refusals<br/>or convictions or a combination.</b> | <b>3 years</b>               |
| <b>4th Offense Refusal</b>  | <b>5 years</b>               |

- Upon the BMV's and court's receipt of the arresting officer's sworn report regarding a person whose whole blood, blood serum or plasma, breath or urine test results were at least the concentration set forth in R.C. §4511.19, the registrar shall enter into its records the fact that the arrested person's driving privilege was suspended by the arresting officer, and the period of the suspension. R.C. §4511.191(C).
- The suspension becomes effective immediately when the arresting officer serves the notice of suspension upon the arrested person.

**TABLE 4: ALS Positive Test Consequences**

| <b>ALS POSITIVE TEST CONSEQUENCES</b>          |                                  |
|--|----------------------------------|
| <b>OFFENSE EVENTS<br/>within 6-year period</b> | <b>ALS SUSPENSION<br/>LENGTH</b> |
| 1st Offense                                    | 90 days                          |
| 2nd Offense                                    | 1 years                          |
| 3rd Offense                                    | 2 years                          |
| 4th Offense                                    | 3 years                          |

- The BMV registrar shall terminate the administrative suspension upon receipt of notice that the arrested person was convicted of the OVI charge.

**Administrative License Suspension (ALS) Appeal**

- An ALS suspension imposed by the BMV under R.C. §4511.191 may be appealed in the court that has jurisdiction over the underlying charge, and the prosecuting attorney in the county where the arrest occurred shall represent the registrar.

**Time of Appeal**

- The ALS suspension may be appealed at the offender's initial appearance on the charge resulting from the arrest and suspension, or an appeal may be filed within the 30 day period following the initial appearance.
- An ALS appeal or the continuance of an ALS appeal does NOT stay the ALS suspension. The court must specifically grant the stay.

**ADMINISTRATIVE LICENSE SUSPENSION (ALS)**

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**Scope of Appeal**

- The appeal is limited to determining whether one or more of the following conditions were not met:
  - › The officer had reasonable suspicion to pull the vehicle over initially, and the officer had probable cause to make the arrest;
  - › The law enforcement officer asked the offender to submit to the chemical tests under R.C. §4511.191;
  - › The offender was advised of the consequences of refusal or testing positive;
  - › The person refused to submit to the test; or
  - › The person's test results indicated a prohibited level of alcohol listed in R.C. §4511.19(A) and (B) or a municipal OVI ordinance.
- The offender appealing the suspension has the burden of proving by a preponderance of the evidence that one or more of the above conditions were not met.
- The ALS suspension shall be terminated on appeal if the court finds one or more of the conditions specified above have not been met.
- The suspension must be upheld if all of the above conditions are met.

**If the suspension *is not upheld* on appeal**

- Upon terminating the ALS, the court may, at any time prior to judgment on the merits of the case, impose a new suspension under R.C. §4511.196 on the offender's license if the court determines that the offender's continued driving will be a threat to public safety.
- If the court does not impose a new suspension upon termination of the ALS, the court must send notice to the BMV registrar with an order to return the license to the person or take necessary measures to permit the offender to obtain a replacement if the license was destroyed.
- Along with notice to the BMV registrar, the court shall also issue a court order granting the offender operating privileges for not more than ten days from the date of issuance.

**If the suspension *is upheld* or *not appealed***

The suspension continues until it is either terminated by law or the underlying charges are adjudicated on the merits.

**1. Refusal**

If the offender was placed under the ALS suspension for refusing a chemical test, a finding of not guilty on the underlying charge does not terminate the ALS suspension that is already in effect.

**2. Positive test**

If the ALS suspension was imposed for a positive test, a finding of not guilty on an underlying misdemeanor charge of R.C. §4511.19 (A) or (B) shall terminate the ALS suspension.

## PRE-TRIAL

### DRIVING PRIVILEGES

#### Pre- and Post-Trial Privileges

- The courts may grant limited privileges in accordance with the provisions of R.C. §4510.021 and §4510.13.
- Before granting driving privileges, the court shall require the offender to provide proof of financial responsibility pursuant to R.C. §4509.45 and R.C. §4510.021(E).
- Driving privileges may be granted for 3 purposes only:
  1. Occupational, educational, vocational, or medical;
  2. Taking the driver's or commercial driver's license examination; or
  3. Attending court-ordered treatment.

#### Pre-Trial ALS suspensions

- A person whose driving privileges are suspended pursuant to R.C. §4511.191 may request limited driving privileges in the court with jurisdiction over the offense at any time during the suspension.
- The person may file a petition for limited privileges beginning on the day after he or she received notice of suspension from the law enforcement officer, but not later than 30 days after the initial appearance in court.
- The petitioner must notify the registrar of the filing and send the registrar a copy of the petition.

**R.C. §4510.13** is the specific statute that applies to the issuance of limited driving privileges when an offender is under a BMV suspension for a refusal or a positive test.

**R.C. §4510.13 division (A)(3)** prohibits the court from granting limited driving privileges where the offender is currently under an ALS refusal suspension and the offender has refused three previous requests for a chemical test within the preceding six years.

**R.C. §4510.13 division (A)(5)** specifies the period of "hard suspension" for a positive chemical test. A "hard suspension" is the suspension period where a court is prohibited from granting limited driving privileges.

**R.C. §4510.13 (A)(6)** specifies the period of "hard suspension" for an ALS refusal.

**TABLE 5: Privileges and Restrictions following "Hard" Suspension for Adults**

| ADULT                          |                               |                       |                      |                        |
|--------------------------------|-------------------------------|-----------------------|----------------------|------------------------|
| REFUSAL/<br>OFFENSE            | PRIVILEGES AND RESTRICTIONS   |                       |                      |                        |
| EVENTS within<br>6-year period | SUSPENSION<br>Type and Length | DRIVING<br>PRIVILEGES | RESTRICTED<br>PLATES | IGNITION<br>INTERLOCKS |
| 1                              | Class C (1 year)              | After 30 days         | Optional             | Optional               |
| 2                              | Class B (2 years)             | After 90 days         | Optional             | Optional               |
| 3                              | Class A (3 years)             | After 1 year          | Optional             | Optional               |
| 4th or more                    | 5 years                       | After 3 years         | Optional             | Optional               |

**DRIVING PRIVILEGES**

**TABLE 6: Privileges and Restrictions following "Hard" Suspension for Juveniles**

| <b>JUVENILES</b>                       |                                       |                               |                              |  |
|--|---------------------------------------|-------------------------------|------------------------------|--|
| <b>REFUSAL/<br/>OFFENSE</b>            | <b>PRIVILEGES AND RESTRICTIONS</b>    |                               |                              |  |
| <b>EVENTS within<br/>6-year period</b> | <b>SUSPENSION<br/>Type and Length</b> | <b>DRIVING<br/>PRIVILEGES</b> | <b>RESTRICTED<br/>PLATES</b> | <b>IGNITION<br/>INTERLOCKS</b>                         |
| Underage                               |                                       | After 60 days                 |                              | Optional   |
| 1                                      | Class E (90 days)                     | After 15 days                 | Optional                     | Optional   |
| 2                                      | Class C (1 year)                      | After 45 days                 | Optional                     | Optional   |
| 3                                      | Class B (2 years)                     | After 180 days                | Optional                     | Required if alcohol related, optional if drug related. |
| 4th or more                            | Class A (3 years)                     | After 3 years                 | Optional                     | Required if alcohol related, optional if drug related. |

**Note 1: For more specific information on privileges and restrictions, see Appendix F: Ohio Impaired Driving Laws and Driving Under Suspension Charts.**

**Conditions**

- Upon granting a petition for limited driving privileges, the court shall notify the BMV.
- The court, as a condition of granting limited driving privileges, may require that the person's vehicle be equipped with an immobilizing or disabling device, except when the person is operating a vehicle during the course and scope of his/her employment. R.C. §4510.43(C).
- The court may also require, as a condition of limited driving privileges, that the person's vehicle be equipped with restricted license plates. R.C. §4510.021.
- If the court orders that the person's vehicle be equipped with an immobilizing or disabling device, the offender may operate an employer's vehicle without the installation of an immobilizing or disabling device, provided that the employer has been notified that the offender has limited driving privileges and of the nature of the restriction, and further, provided that the offender has proof of the employer's notification in the offender's possession while operating the employer's vehicle for normal business duties.
  - › A motor vehicle owned by a business that is partly or entirely owned or controlled by the offender with limited driving privileges is not a motor vehicle owned by an employer. R.C. §4510.13(A)(1-5) and (B).
- Before granting limited driving privileges, the court shall require the offender to provide proof of financial responsibility. R.C. §4510.021.

**DRIVING PRIVILEGES**

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- When the court grants limited driving privileges, and requires the use of an immobilizing or disabling device, including an ignition interlock device, the court shall notify the offender at the time privileges are granted that if the court receives notice that the device prevented the offender from starting the motor vehicle, the court may increase the period of suspension of the offender's operating privileges by a factor of 2, and may increase the period of time, by a factor of 2, which the offender will be prohibited from exercising limited driving privileges unless the vehicle is equipped with a certified ignition interlock device. R.C. §4510.13.
- The court shall credit any time that the offender served subject to an administrative suspension imposed under §4511.191, against the time to be served under a related suspension imposed by R.C. §4510.13(D).
- The court shall provide the offender with a copy of the order granting limited driving privileges which the offender shall use in lieu of a driver's license, commercial driver's license, or permit.
  - The offender may present the immobilizing or disabling device order to the BMV registrar who shall issue the offender a restricted license. The date of commencement and the date of termination of the suspension period shall be conspicuously upon the face of the restricted license. R.C. §4510.13(F).

**Secure Continuous Remote Alcohol Monitoring (SCRAM)**

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R.C. §4510.13 allows for the usage of a continuous remote alcohol monitor in some instances, and mandates it in others, after the sentencing of the individual for violations of the usage of an interlock device.

R.C. §4511.198(B), mandates that a court order a continuous remote alcohol monitoring if limited driving privileges to a person are granted and the alleged violator has a prior felony conviction under R.C. §4511.19.

R.C. §4511.198 provides for the usage of continuous remote alcohol monitoring when the court grants limited driving privileges to a person who is alleged to have violated division (A) of R.C. §4511.19 or a substantially equivalent municipal ordinance.

- If the court imposes the requirement, the person shall wear the monitor until the person is convicted of, pleads guilty to, or is found not guilty of the violation, or the case is dismissed.
- The person shall pay the costs associated with the monitoring device.

**DRIVING PRIVILEGES**

**TABLE 7: SCRAM Requirements**

| <b>SCRAM REQUIREMENTS</b>                                 |                             |              |                 |                               |
|---|-----------------------------|--------------|-----------------|-------------------------------|
| <b>OFFENSE EVENTS</b>                                     | <b>NUMBER OF VIOLATIONS</b> | <b>SCRAM</b> | <b>TIME</b>     | <b>ADDITIONAL COSTS</b>       |
| 2nd in 6 years  | 1                           | Optional     |                 | \$2.50 if SCRAM unit ordered. |
|   | 2                           | Mandatory    | 40 days minimum | \$2.50                        |
|   | 3 or more                   | Mandatory    | 60 days minimum | \$2.50                        |
| 3rd or more in 6 years or 5th in 20 years or prior felony | 1                           | Mandatory    | 40 days minimum | \$2.50                        |
| 3rd or more in 6 years or 5th in 20 years or prior felony | 2 or more                   | Mandatory    | 60 days minimum | \$2.50                        |

**Commercial Driver’s License (CDL) Suspensions**

- Division (A)(4) of R.C. §4510.13 prohibits the courts from issuing driving privileges to operate a commercial motor vehicle (CMV) when the offender is under suspension for an OVI, refusal, or positive test. ***This includes a prohibition against granting privileges to drive a commercial motor vehicle in the course of employment.***
- R.C. §4506.161 states, “No court shall issue an order granting limited driving privileges for operation of a commercial motor vehicle to any person whose driver’s license or commercial driver’s license has been suspended or who has been disqualified from operating a commercial motor vehicle.”
- Under division (C)(2) of R.C. §4510.13, a suspension of a person’s commercial driver’s license must run concurrent with the period of suspension or disqualification imposed by R.C. §4506.16.
- Disqualifications are imposed by the BMV in accordance with federal laws and regulations, and as such, the length of disqualification cannot be reduced, suspended, or modified.
- When granting driving privileges to a CDL holder, there is often some confusion on the part of the offender because the court may grant privileges for employment purposes, but it is prohibited from granting privileges to ***operate a commercial motor vehicle.***
- The BMV suggests using the following language in journal entries that grant privileges to a CDL holder or offender who was operating a CMV that requires a CDL at the time of the offense: “The applicant may operate a ***non-commercial*** vehicle for purposes of driving to, from, and during work . . . ***the applicant may not operate a vehicle requiring a commercial driver’s license.***”

**MOTIONS**

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**Initial Appearance/Motion by OVI offender to Release Vehicle and License Plates**

The OVI offender's initial appearance shall be held within five days of the arrest or issuance of the citation. R.C. §4511.195 and §4511.196.

At, or before, the OVI offender's initial appearance, the OVI offender may file a motion with the court requesting that the vehicle and its license plates be released to the OVI offender.

Subject to the payment of expenses or charges incurred in the removal and storage of the vehicle, the court, in its discretion, may order the release of the vehicle and license plates to the OVI offender.

The court may impose terms and conditions upon its order, including but not limited to, the OVI offender posting bond in an amount determined by the court.

At or before the OVI offender's initial appearance, the registered owner may file a motion requesting the court to release the vehicle and its license plates to the owner. The vehicle owner, lien holder, or any person with an interest in the vehicle, may file a motion with the court, and request a hearing, to establish by a preponderance of the evidence that:

- The interested party neither knew, or should have known after a reasonable inquiry, that the vehicle would be used or involved in an OVI offense;
  - The interested party neither expressed or implied consent to the use, or the involvement of the vehicle, in an OVI offense; and
  - The interested party's interest in the seized vehicle, or lien against in the seized vehicle, was perfected prior to the final disposition of the OVI charge. R.C. §4511.195.
  - At the conclusion of the hearing, the court shall either:
    - › Return the vehicle to the owner, a lien holder, or other interested person; or
    - › Order that the vehicle be sold, and the sale proceeds be distributed as follows:
      - The costs of towing, storage, and maintenance of the vehicle shall be paid first;
      - The remaining proceeds shall be paid to an innocent interested party.
        - If the court orders the vehicle to be returned to that interested party, that person or entity shall submit an affidavit to the court stating:
          - The interested party will not return the vehicle to the OVI offender, or a family member of the offender; and
          - The interested party will not knowingly permit the OVI offender, or a family member of the offender, to obtain possession of the vehicle.
- R.C. §4511.195, §4511.196.

If the court orders the release of the vehicle and its license plates, a copy of the order shall be made available to the vehicle owner.

- The owner may then present the copy to the department that employs the arresting officer and the department shall promptly release the vehicle and its license plates to the vehicle owner upon payment by the vehicle owner of any expenses or charges incurred in the removal and storage of the vehicle.

## PRE-TRIAL

### MOTIONS

If the OVI offender is *not the vehicle owner*, and if the vehicle owner is not present at the offender's initial appearance, and if the court believes that the vehicle owner was not provided with adequate notice of the initial appearance, the court may allow the vehicle owner to file a motion within seven days of the initial appearance.

- If the court allows the vehicle owner to file a motion after the initial appearance, the extension of time granted by the court does not extend the time within which the initial appearance shall be conducted.

**TABLE 8: Table of Motions**

| <b>TABLE OF MOTIONS</b>                        |  |  |
|--|--|--|
| <b>MOTION</b>                                  | <b>TIME-LINE</b>   | <b>RULE</b>  |
| Defects in the Institution of the prosecution  | Prior to plea  | Traffic Rule 11(B)(1)                              |
| Defects in the Complaint                       | Prior to plea  | Traffic Rule 11 (B)(1)                             |
| Motions to Suppress Evidence                   | Within 35 days after arraignment or 7 days before trial, whichever is earlier.                 | Criminal Rule 12(C);<br>Traffic Rule 11(B)(2), (C) |
| Motions for Discovery                          | Within 21 days after arraignment but not later than 7 days before trial, whichever is earlier. | Criminal Rule 16(F);<br>Traffic Rule 11(B)(2)      |
| Motions for Severance of charges or defendants | Within 35 days after arraignment or 7 days before trial whichever is earlier.                  | Traffic Rule 11(B)(2), (C)                         |
| Motions in limine                              | Within 35 days after arraignment or 7 days before trial whichever is earlier.                  | Criminal Rule 12(C)                                |
| Motions for Limited Driving Privileges         | Within 35 days after arraignment or 7 days before trial whichever is earlier.                  | Criminal Rule 12(C)                                |
| Bill of Particulars                            | Within 21 days after arraignment but not later than 7 days before trial.                       | Criminal Rule 7(E)                                 |
| Motion to Change Venue                         | Within 35 days after arraignment or 7 days before trial whichever is earlier.                  | Criminal Rule 12(C)                                |
| Failure to Show Jurisdiction                   | Anytime  |  |
| Failure to Charge an Offense                   | Anytime  |  |

**Note:** The Court in the interest of justice may extend the time for making pretrial motions. Criminal Rule 12(C); Traffic Rule 11(C).

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## PRE-TRIAL

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### MOTIONS

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#### Mandatory Motions Before a Plea

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|   |                                   |
|---|-----------------------------------|
| Defects in the institution of the prosecution | Traffic Rule 11, Criminal Rule 12 |
| Defects in the complaint                      | Traffic Rule 11, Criminal Rule 12 |

#### Mandatory Motions Before Trial

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|  |                                   |
|--|-----------------------------------|
| Motions to suppress evidence                   | Traffic Rule 11, Criminal Rule 12 |
| Motions for discovery                          | Traffic Rule 11, Criminal Rule 12 |
| Motions for severance of charges or defendants | Traffic Rule 11, Criminal Rule 12 |
| Motions in limine                              | Criminal Rule 12                  |
| Motions for limited driving privileges         | Traffic Rule 11, Criminal Rule 12 |
| Bill of particulars                            | Criminal Rule 12                  |
| Change of venue                                | Criminal Rule 12                  |

#### Motions Filed Anytime

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|                              |                                   |
|------------------------------|-----------------------------------|
| Failure to show jurisdiction | Traffic Rule 11, Criminal Rule 12 |
| Failure to charge an offense | Criminal Rule 12                  |

#### Motion to Suppress

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The general burden of proof is “preponderance of the evidence.” *Mayfield Heights v. Parker* 2003 WL 1561936.

“When ruling on a motion to suppress evidence, the trial court serves as the trier of fact and is the primary judge of the credibility of witnesses and the weight of the evidence.” *State v. Johnson* (2000), 137 Ohio App. 3d 847.

A motion to suppress is the only procedural motion in which one can challenge the admissibility of alcohol and/or drug test results. See *City of Defiance v. Kretz* (1991), 60 Ohio St. 3d 1; *State v. French* (1995), 72 Ohio St. 3d 446.

#### Inventory Search

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“An inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedure(s) or established routines.” *State v. Hathman* (1992), 65 Ohio St. 3d 403, 407.

An inventory search cannot be used as a pretext to an investigatory or evidentiary search. *South Dakota v. Opperman* (1976), 428 U.S. 364.

#### Motion in limine

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A *motion in limine* is used when evidence is irrelevant, prejudicial, or otherwise inadmissible on non-constitutional grounds.

This motion is a case-law created motion meaning that there is no statutory or procedural authority for the motion. *State v. Maurer* (1984), 15 Ohio St. 3d 239.

These are not final appealable orders. *Defiance v. Kretz* (1991), 60 Ohio St. 3d 1.

If the motion is denied, the moving party must object at trial to save the issue for appeal. *State v. Brown* (1988), 38 Ohio St. 3d 305.

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**CHARGING INSTRUMENT/COMPLAINT**

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**General**

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- Traffic Rule 3(C) provides that in all moving traffic cases, including OVI, the charging instrument shall be a Uniform Traffic Ticket or citation.
- Criminal Rule 7(A) mandates that felony OVI offenses be charged by way of an indictment.
- Criminal Rule 7(D) allows for the amendment of the indictment, information, complaint, etc.

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“The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged.” The Ohio Supreme Court has held that amending the subsection of an OVI offense under R.C. §4511.19 is an acceptable amendment because it does not impermissibly change the name or identity of the offense charged. *State v. Campbell* (2004), 100 Ohio St. 3d 361.

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**Note:** This is under the old OVI statute. The Supreme Court has not addressed this issue with the current OVI statute although there are varying opinions by different appellate courts as to the permissibility of amending subsections. Check your local appellate district for current law in your jurisdiction.

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**Prior Convictions**

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- As a general rule, one must indicate the prior offense(s) on the complaint, indictment, etc., if the prior offense(s) increase the level of penalty. “The affidavit, complaint, indictment, or information either shall state the degree of the offense which the accused is alleged to have committed, or shall allege such additional element or elements. Otherwise, such affidavit, complaint, indictment, or information is effective to charge only the least degree of the offense.” R.C. §2945.75(A)(1).
- Runs from the date of the prior conviction to the date of the current offense. R.C. §4511.181(A)(6–8).

**Prior Refusals**

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- Pursuant to R.C. §4511.192, an individual arrested for OVI must consent to the chemical tests or tests within two hours of the time of the alleged violation and, if the individual does not consent to the test or tests within that two hour limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.
- If an individual refuses, they open their record to a twenty-year look back for prior convictions. See R.C. §4511.19(A)(2).

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*State v. Hoover* (2009), 2009 Ohio 4993, recently upheld the constitutionality of R.C. §4511.19(A)(2). The Court held that the implied-consent statute is constitutional.

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See also, *State v. Starnes* (1970), 21 Ohio St. 2d 38.

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**CHARGING INSTRUMENT/COMPLAINT**

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**Prior Refusals** *continued*

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Following the reasoning in *Schmerber v. California* (1966), 384 U.S. 757, the Court again held that, “[o]ne accused of intoxication has no constitutional right to refuse to take a reasonably reliable chemical test for intoxication.” See also, *Westerville v. Cunningham* (1968), 15 Ohio St. 2d 121. “Asking a driver to comply with conduct he has no right to refuse, and thereafter enhancing a later sentence upon conviction, does not violate the constitution.”

- Furthermore, in the following circumstances, if a person refuses a test or tests, the police may “employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person’s whole blood or blood serum or plasma.” R.C. §4511.191(A)(5)(b).

**Specifications**

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Under R.C. §2941.1413, in order to obtain a mandatory additional prison term of one to five years under R.C. §2929.13(G)(2) for a felony OVI offense, in which the offender has five or more prior OVI convictions or equivalent offense convictions, the indictment, court or information shall state:

**“SPECIFICATION (or) SPECIFICATION TO THE FIRST COUNT.**

The Grand Jurors or (insert the person’s or the prosecuting attorney’s name when appropriate) further find and specify that (set forth that the offender, within twenty years of committing the offense, previously had been convicted of or pleaded guilty to five or more equivalent offenses).”

The individual must be found guilty of the specification in addition to the underlying offense to receive the additional mandatory prison term.

Under R.C. §2941.1416, in order to obtain an additional mandatory definite jail term of up to six months in jail for a person who is convicted under R.C. §4511.19(B) and has five or more prior OVI convictions or equivalent offense convictions, the information or complaint must state:

**“SPECIFICATION.**

The Grand Jurors or (insert the person’s or the prosecuting attorney’s name when appropriate) further find and specify that (set forth that the offender, within twenty years of committing the offense, previously had been convicted of or pleaded guilty to five or more equivalent offenses).”

The individual must be found guilty of the specification in addition to the underlying offense to receive the additional mandatory jail term.

**PRIOR CONVICTIONS**

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If a prior conviction changes the degree of offense rather than merely enhancing its penalty, the prior conviction is an essential element of the crime and must be proven beyond a reasonable doubt by the State. *State v. Allen* (1987), 29 Ohio St. 3d 53, and *State v. Miller* (5th Dist. 2012), 2012-Ohio-6147.

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In misdemeanor OVI cases, the existence of a prior conviction is not a factor to be proven at trial as it is prejudicial to the defendant. *Allen* at 55.

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There are two ways for the State to prove a prior conviction:

1. "A certified copy of the entry of judgment in such prior conviction together with evidence sufficient to identify the defendant named in the entry as the offender in the case at bar;"

OR

2. A certified copy of the registrar of motor vehicles record that "shows the name, date of birth, and social security number of the accused."

- This is "prima-facie evidence of the identity of the accused and prima-facie evidence of all prior convictions shown on the record." R.C. §2945.75 (B).
  - In general, a past conviction can not be attacked in a subsequent case. However, there is a limited right to collaterally attack a conviction when the state proposes to use the past conviction to enhance the penalty of a later criminal offense.
- 

A conviction obtained against a defendant who is without counsel, or its corollary, an un-counseled conviction obtained without a valid waiver of the right to counsel, which resulted in confinement, has been recognized as constitutionally infirm. *State v. Brooke* (2007), 113 Ohio St. 3d 199.

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"Where questions arise concerning a prior conviction, a reviewing court must presume all underlying proceedings were conducted in accordance with the rules of law and a defendant must introduce evidence to the contrary in order to establish a prima-facie showing of constitutional infirmity." *State v. Brandon* (1989) 45 Ohio St. 3d 85, syllabus.

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"[A] defendant cannot establish a prima facie showing as to "un-counseled" merely by establishing that he or she had been convicted without representation." *State v. Thompson* (2009), 121 Ohio St. 3d 250, 252.

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Nor does a "bald allegation of constitutional infirmity" establish prima facie evidence. *Thompson* at 253.

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**PRIOR CONVICTIONS**

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**Procedure**

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- The State submits proper proof of a prior conviction under R.C. §2945.75.
  - › The court then proceeds as if the conviction was constitutional.
- The Defendant then has the burden to show prima-facie evidence to the contrary, showing a constitutional infirmity.
  - › Defendant was not represented by counsel, OR
  - › Defendant did not validly waive the right to counsel, AND the conviction resulted in confinement.
- Once proven by the Defense, the burden shifts to the State to show that the right to counsel was properly waived. See *Thompson*, at syllabus.

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A prior Physical Control under R.C. §4511.194 conviction can not be used to enhance. For an analysis of why physical control does not work as an enhanceable prior, see *State v. Shultz* (8th Dist. 2008), 2008-Ohio-4448.

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**Jury Instructions**

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*Criminal Rule 30* requires a trial court to fully and completely give the jury all instructions that are relevant and necessary for the jury to weigh the evidence and discharge its duty as a fact-finder. *State v. Comen* (1990), 50 Ohio St. 3d 206.

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Pursuant to *Criminal Rule 30*, a party may request specific instructions. The requested specific instructions must be a correct statement of the law and applicable to the facts of the case. *Murphy v. Carrollton Mfg. Co.* (1991), 61 Ohio St. 3d 585.

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The decision of which jury instructions are to be used is left to the sound discretion of the trial court. *State v. Guster* (1981), 66 Ohio St. 2d 266. Discretion is determined upon whether reasonable minds can properly reach the conclusion sought by the instruction. See *Murphy*.

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A jury can consider a refusal as evidence that the defendant believed he or she was under the influence of alcohol and allows evidence of a refusal to be considered with all other facts and circumstances in deciding whether the defendant was under the influence. 4 OJI (2005) 711. See *City of Maumee v. Anistik* (1994), 69 Ohio St. 3d 339.

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## **POST-TRIAL**

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### **SENTENCING**

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#### **Misdemeanors in General**

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##### **Purposes of Misdemeanor Sentencing (R.C. §2929.21):**

- Protect the public from future crime by the offender, and
- Punish the offender.

##### **Factors to consider in Misdemeanor Sentencing:**

- Impact on the victim.
- Need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim and/or public.
- Nature and circumstances of the offense.
- History of persistent criminal activity.
- Substantial risk to commit another offense based on offender's character and condition.
- Substantial risk that offender will be a danger to others based on history, character and condition.
- Offender's conduct characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences.
- Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious.
- Likelihood to commit future crimes in general.
- Any other factors that are relevant to achieving the purposes and principles of misdemeanor sentencing.
- Any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. See R.C. §2929.21, §2929.22.

#### **Felonies in General**

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##### **Purposes of Felony Sentencing (R.C. §2929.11):**

- Protect the public from future crime by the offender, and
- Punish the offender.

##### **Factors to consider in Felony Sentencing:**

- Need for incapacitating the offender.
- Deterring the offender and others from future crime.
- Rehabilitating the offender.
- Making restitution to the victim and/or public.
- The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.
- The victim of the offense suffered serious physical, psychological, or economic harm as a result of the offense.
- The offender held a public office or position of trust in the community, and the offense related to that office or position.
- The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

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## **POST-TRIAL**

### **SENTENCING**

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#### **Felonies in General** *continued*

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- The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.
- The offender's relationship with the victim facilitated the offense.
- The offender committed the offense for hire or as a part of an organized criminal activity.
- In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.
- Any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense.
- Any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:
  - The victim induced or facilitated the offense.
  - In committing the offense, the offender acted under strong provocation.
  - In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.
  - There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.
  - Any other relevant factors indicating that the offender is likely to commit future crimes:
- The offender was under release from confinement or under post-release control or unfavorably terminated from post-release control.
- Previously adjudicated a delinquent child.
- Offender has not been rehabilitated to a satisfactory degree or the offender has not responded favorably to sanctions previously imposed for criminal convictions.
- The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.
- The offender shows no genuine remorse for the offense.
- Any other relevant factors indicating that the offender is not likely to commit future crimes:
  - Prior to committing the offense, the offender had not been adjudicated a delinquent child.
  - Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.
  - Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.
- The offense was committed under circumstances not likely to recur.
- The offender shows genuine remorse for the offense.

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**Note:** For further information regarding sentencing, see R.C. §2929.11 and §2929.12 and Appendix F: *Ohio's Impaired Driving Laws and Driving Under Suspension Charts*.

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**DISPOSITION OF OVI CHARGE**

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If the offender pleads “*guilty*” or “*no contest*” to the OVI charge at the initial appearance or at anytime after the initial appearance, and is convicted of the violation, the court shall impose sentence as provided by law.

- The court shall order the immobilization of the vehicle, if the offender is the owner, and the impoundment of the license plates pursuant to R.C. §§4503.233 and 4511.19 or 4511.193.
- Or, the court may order criminal forfeiture of the vehicle pursuant to R.C. §§ 4503.234 and 4511.19 or 4511.193.
- In either case, the vehicle and its license plates shall not be returned to the vehicle owner. R.C. §4511.195(C)(2)(a).

If the offender is found *not guilty*, or the charge is dismissed for any reason, the court shall order that the vehicle and license plates be immediately released to the offender.

- › The offender may be charged costs and expenses incurred in the removal and storage of the immobilized vehicle. R.C. §4511.195.

If impoundment is not authorized under this section, the vehicle and plates shall be immediately released to the offender, or the vehicle owner if other than the offender, and the state or political subdivision of the arresting law enforcement agency shall pay all expenses and charges incurred for the removal and storage of the vehicle. R.C. §4511.195(D)(4).

## POST-TRIAL

### IMMOBILIZATION AND CRIMINAL FORFEITURE OF VEHICLE

- If the offender is convicted of OVI, the court shall impose sentence as provided by law, and shall order the immobilization of the vehicle the offender was operating at the time of the offense, if registered to the offender, and impoundment of the license plates under R.C. §§4503.233 and 4511.19 or 4511.193, or shall order the criminal forfeiture of the vehicle if registered to the offender under R.C. §§4503.234 and 4511.19 or R.C. §§4511.193 and 4511.195(C) and (D).
- Immobilization or forfeiture of an OVI offender's vehicle, and the impoundment of the license plates, comes into play only after the offender's first OVI conviction. R.C. §4511.19(G)(1)(b), (c), (d), and (e), and R.C. §4503.233.

**TABLE 9: Forfeiture, Immobilization, or Impoundment**

| <b>FORFEITURE, IMMOBILIZATION, or IMPOUNDMENT</b>    |                                       |                                   |  |                                   |
|--|---------------------------------------|-----------------------------------|--|-----------------------------------|
| <b>OVI OFFENSE EVENTS<sup>1</sup></b>                | <b>SUSPENSION</b>                     | <b>LIMITED DRIVING PRIVILEGES</b> | <b>VEHICLE<sup>2</sup></b>             | <b>LICENSE PLATES IMPOUNDMENT</b> |
| 2 within 6 years                                     | Class 4 suspension<br>1 - 5 years     | PERMITTED                         | MANDATORY<br>90 days<br>Immobilization | MANDATORY<br>90 days              |
| 3 within 6 years                                     | Class 3 suspension<br>2 - 10 years    | PERMITTED                         | MANDATORY<br>Criminal Forfeiture       |                                   |
| 4 or more,<br>within 6 years OR<br>6 within 20 years | Class 2 suspension<br>3 years to Life | PERMITTED                         | MANDATORY<br>Criminal Forfeiture       |                                   |
| Prior Felony<br>Conviction                           | Class 2 suspension<br>3 years to Life | PERMITTED                         | MANDATORY<br>Criminal Forfeiture       |                                   |

**Note 1:** In all cases the offender must pay a \$100 immobilization fee.  
See R.C. §4503.233(B).

**Note 2:** Applies only if the vehicle is registered to the offender and the vehicle is involved in the offense.

**IMMOBILIZATION AND CRIMINAL FORFEITURE OF VEHICLE**

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- In any of the situations set forth in the above chart, if title to the motor vehicle that is subject to an order of criminal forfeiture under R.C. §4511.19(G)(1)(c), (d), or (e), and R.C. §4503.234(B)(2) or (3), is assigned or transferred, the court, in addition to any other penalty, may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. R.C. §4511.195(G)(6).
- The immobilization order from the court shall indicate the following:
  - › The date on which it is issued;
  - › The make, model, and year of the vehicle that is the subject of the order;
  - › The period of immobilization;
  - › The place where the immobilization shall be carried out, which shall be either:
    - A commercially operated private storage lot;
    - A place owned by a law enforcement or other government agency; or
    - A place to which one of the following applies:
      - The place is leased by or otherwise under the control of a law enforcement or other government agency;
      - The place is owned by the offender, the offender's spouse, or a parent or child of the offender;
      - The place is owned by a private person or entity, and prior to the issuance of the order, the private person or entity that owns the place, or the authorized agent of the person or entity, has given express written consent for the immobilization to be carried out; or
      - The place is a public street or highway on which the vehicle is parked in accordance with law.
  - › The person or agency designated to execute the order, which shall be either the law enforcement agency that employs the officer who seized the vehicle, a bailiff of the court, another person the court deems appropriate, or the law enforcement agency with jurisdiction over the place of residence of the vehicle owner; and
  - › That neither the registrar nor a deputy registrar will be permitted to accept an application for the license plate registration of any motor vehicle in the name of the vehicle owner until the immobilization fee is paid.
- The immobilization period begins on the day on which the vehicle is immobilized. If the vehicle was seized pursuant to R.C. §4510.41 or §4511.195, the time between the seizure and the beginning of the period shall be credited against the immobilization period. R.C. §4503.233(D)(1).
- The person or agency designated to immobilize the vehicle shall seize or retain that vehicle's license plates and forward them to the bureau of motor vehicles. The registrar shall destroy the license plates.
- At the end of the period, and upon payment of the fee, the registrar shall authorize the release of the vehicle and authorize the issuance of new license plates and a new certificate of registration, if necessary. The offender shall be required to pay the same fee required for the replacement of lost, mutilated, or destroyed plates and certificates of registration. R.C. §4503.233(C).

**IMMOBILIZATION AND CRIMINAL FORFEITURE OF VEHICLE**

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- If the vehicle subject to the immobilization order is found being operated on any street or highway during the immobilization period, the vehicle shall be seized, removed from the street, and criminally forfeited and disposed of pursuant to R.C. §4503.234. However, no vehicle forfeited shall be considered contraband under R.C. Chapter 2981.
- If the vehicle is not claimed within seven days after the end of the immobilization period, or if the offender has not paid the fee, the person or agency that immobilized the vehicle shall send a written notice to the offender at his/her last known address advising that the immobilization period has ended, that the offender has twenty days to pay the fee and obtain the vehicle, and that if the offender does not pay the fee and obtain the vehicle, it will be forfeited under R.C. §4503.234 to the entity entitled to the fee. R.C. §4503.234(D)(3).
- An offender may not sell the immobilized vehicle without prior court approval. If the court is satisfied that the sale will be in good faith, and is not an attempt to circumvent the immobilization order, it may certify its consent to the offender and the registrar. R.C. §4503.233(D)(4).
- If the title to the immobilized vehicle is assigned or transferred without court approval between the time of arrest and the time of actual immobilization of the vehicle, the court shall order that for a period of two years neither the registrar nor any deputy registrar accept an application for the registration of any motor vehicle in the offender's name. R.C. §4503.233(D)(5).
- If the court finds, after a hearing with notice to all interested parties, in conjunction with R.C. §4503.233(E)(3), that the offender does not intend to seek release of the vehicle, or is unable or unwilling to pay the expenses and charges incurred in the removal and storage of the subject vehicle, the court may order that the title to the vehicle be transferred in the following order of priority:
  - Into the name of the entity entitled to the immobilization fee:
    - If title is transferred to the entity entitled to the immobilization fee, that entity shall pay all liens on the vehicle;
  - Into the name of a lien holder:
    - If title is transferred to a lien holder, the lien holder shall pay all expenses and charges incurred in the vehicle's removal and storage; or
  - Into the name of the owner of the storage facility. R.C. §4503.233(E)(1).
- Whoever receives title may keep or dispose of the vehicle in any legal manner. In no case, however, shall the person or entity transfer the vehicle to the person who is the immediate previous owner. R.C. §4503.233(E)(1).
- If the owner assigns the vehicle to a salvage dealer or scrap metal processing facility, the person or entity shall send the assigned certificate of title to the clerk of court of common pleas of the county in which the salvage dealer or scrap facility is located. The person or entity shall mark the face of the title with the words **"FOR DESTRUCTION"** and shall deliver a copy to the salvage dealer or scrap facility for its records. R.C. §4503.233(E)(1).
- The court shall order removal of the license plates from the vehicle and cause them to be sent to the registrar. No further proceedings shall take place pursuant to R.C. §4503.233(E), except the offender remains liable for the immobilization fee. R.C. §4503.233(E)(2).

**WAIVER OF VEHICLE IMMOBILIZATION ORDER**

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- Pursuant to R.C. §4503.235(A), the court may determine not to order immobilization of a vehicle as required by R.C. §§4511.19(G) or 4511.193(B), if both of the following apply:
  - › Prior to the issuance of the order, a family or household member of the offender files a motion identifying the vehicle and requesting that the order not be issued on the ground that the family or household member is completely dependent on the vehicle for necessities of life and that immobilization would be an undue hardship to the family or household member; and
  - › The court determines that the family or household member is completely dependent on the vehicle for the necessities of life and that the immobilization of the vehicle would be an undue hardship on the family or household member.
- “Family or household member” as used in this section has the same meaning as in R.C. §2919.25, except the person must currently be residing with the offender. R.C. §4503.235(F).
- The immobilization waiver order shall specify the time period for which it is effective, which is for the same period of time for which the immobilization of the vehicle otherwise would have been required under R.C. §§4511.19(G) or 4511.193(B). A copy of the order shall be provided to the offender, the family or household member, and entered into the court’s record. The court shall impose a waiver fee of \$50, and shall determine whether the offender or family or household member pays the fee. R.C. §4503.235(B).
- The order shall identify the family or household member who requested the order and the vehicle to which it applies, the family or household members who are permitted to operate the vehicle, and shall identify the offender and specify that he/she is not permitted to operate the vehicle.
- The family or household member is required to display restricted plates on the vehicle under R.C. §4503.231 for the entire period for which the vehicle would have been immobilized. R.C. §4503.235(C).
- A family or household member so permitted shall not allow the offender to operate the vehicle subject to the waiver order. If the family or household member allows the offender to operate the vehicle, both of the following apply:
  - › The court shall terminate the order, and shall issue an immobilization order in accordance with R.C. §4503.233, and the order shall be in effect for the remaining period of time for which the order otherwise would have been in effect; and
  - › The conduct of the family or household member is in violation of R.C. §4511.203.
- Further, the conduct of the offender in operating the vehicle constitutes a 1st degree misdemeanor in violation of R.C. §4503.235(E).

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## POST-TRIAL

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### JUDICIAL LICENSE SUSPENSIONS AND POST TRIAL DRIVING PRIVILEGES

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- Upon conviction of an OVI or OVUAC and the imposition of a court ordered suspension, the ALS suspension or pre-adjudication suspension is terminated and the court suspension begins. R.C. §4510.13(A)(2) lists the portions of the judicial suspension that the court is prohibited from suspending.
  - However, the total time of the court imposed suspension shall be credited by the amount of time the offender was under an ALS suspension or pre-adjudication suspension.
- If an offender's driving privileges are suspended pursuant to R.C. §4511.19(G), and if R.C. §4510.13 permits limited driving privileges, the court may grant privileges only after a definite period of suspension has occurred as provided in R.C. §4510.13(A)(2).
  - As a condition of limited driving privileges, the offender must display restricted license plates on all vehicles operated by the offender as required by R.C. §4503.231(B). R.C. §§4511.19(G)(4), 4510.13(A)(2), and 4503.231(A).
- The only exception is when the OVI offender is operating a motor vehicle in the course and scope of the person's employment. In such case, the offender may operate that vehicle without displaying the restricted license plates.
  - However, the offender must notify his/her employer that the offender has limited driving privileges and must use restricted plates, and the offender must have proof of the employer's notification in his/her possession while operating the employer's vehicle for normal business duties. R.C. §4503.231(B).
- A motor vehicle owned by a business that is partly or entirely owned or controlled by the OVI offender who has been granted limited driving privileges, is not a motor vehicle owned by an employer for purposes of this section. R.C. §4503.231(B).
- Physical control convictions are not addressed in R.C. §4510.13 and driving privileges associated with a suspension that may be imposed are governed by R.C. §4510.021.

### REINSTATEMENT

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#### **R.C. §4511.191(F) sets forth the reinstatement requirements for the following offenses:**

- Suspensions for refusing a chemical test or a positive chemical test imposed under R.C. §4511.191;
- Suspensions imposed for a conviction of an OVI or equivalent offense under R.C. §4511.19(A) or an equivalent municipal ordinance;
- Suspensions imposed for a conviction of physical control under R.C. §4511.194 or substantially equivalent municipal ordinance;
- Pre-trial suspensions imposed under R.C. §4511.196;
- Suspensions imposed for conviction of a municipal ordinance that is substantially equivalent to a violation of R.C. §§2903.06, 2907.24 or a municipal OVI ordinance under R.C. §4510.07.

#### **R.C. §4511.191 Reinstatement Requirements**

- Proof of financial responsibility, and
- Payment of a \$475 reinstatement fee.

If an offender is convicted of, or suspended for more than one of the above listed offenses, and the suspension arises from a single incident or set of facts that offender only has to pay one reinstatement fee of \$475. R.C. §4511.191(F)(3).

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## POST-TRIAL

### REINSTATEMENT

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#### Payment Plans

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- The purpose of a reinstatement fee is to compensate the BMV for suspensions, cancellations, or disqualifications of a person's driving privileges, and the administration of educational and public safety programs. R.C. §4510.10(B).
- The courts have the authority to establish a payment plan, but the reinstatement fee itself cannot be reduced or waived. R.C. §4510.10(D)(1) and (2).
  - A reasonable repayment plan can be established by the court upon a petition from the offender, but the fee established cannot be less than \$50 a month. This allows the offender to operate a motor vehicle while following the payment plan, up until the established date where all reinstatement fees must be paid in full. The offender may request a payment extension of not more than 180 days.
  - Throughout the course of the repayment plan, the court may grant privileges solely for the purposes of permitting the offender occupational or family necessity privileges in order to enable the offender to reasonably acquire the delinquent reinstatement fees due and owing.

#### Distribution of the Reinstatement Fee

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|   |          |
|---|----------|
| Statewide Treatment and Prevention fund   | \$112.50 |
| Reparations fund  | \$75.00  |
| Indigent Drivers Alcohol Treatment fund   | \$37.50  |
| Ohio Rehabilitation Services Commission   | \$75.00  |
| State Treasury  | \$75.00  |
| State BMV fund  | \$30.00  |
| Trauma and EMS Grants fund  | \$20.00  |
| Indigent Drivers Interlock and Alcohol Monitoring fund (IDAM),<br>distributed to the county funds in accordance with R.C. §4511.191(H). | \$50.00  |

#### Operating a Vehicle After Underage Consumption (OVUAC)

##### Additional Reinstatement Requirement: Driver Instruction

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- In addition to the above reinstatement requirements, an offender convicted of OVUAC is required to complete a course of remedial driving instruction before having driving privileges reinstated.
- The course must be one approved by the director of the Department of Public Safety.

### SEALING

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An OVI conviction cannot be expunged. See R.C. §2953.36(B).

An OVI conviction also acts as a bar to expungement of other offenses. *State v. Sandlin* (1999), 86 Ohio St. 3d 165, 168.

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## MISCELLANEOUS ISSUES

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### OHIO'S HABITUAL OVI/OMWI OFFENDERS REGISTRY

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- Established in R.C. §5502.10, the Registry is a public record and can be found online through the Ohio Department of Public Safety's (DPS) website at <https://ext.dps.state.oh.us/omvi/>.
- The Registry applies to offenders who, on or after 9/30/08, are convicted of their 5th or subsequent OVI/OMWI, or equivalent offense, violation within 20 years.
- Although offenses occurring prior to 9/30/08 are counted toward the 5th or subsequent OVI/OMWI violation, the Registry is not retroactive; those convicted of 5 or more before 9/30/08, are not included.
- Only a 5th or subsequent conviction after 9/30/08 triggers placement on the Registry.
- Courts are required to look back 20 years from the date of conviction to determine how many prior OVI/OMWI offenses the offender has on his or her record.
- The courts are responsible for determining whether a person must be placed on the Registry and providing the necessary information to DPS within 30 days of conviction.

See Appendix I.

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DPS is responsible for maintaining the Registry and making it available via an internet database searchable by the offender's name, by county, and by zip code. The following information about a habitual offender can be found by accessing the database:

- › The offender's name and date of birth;
- › The offender's residence address, including, but not limited to, the street address, municipal corporation or township, county, and zip code;
- › The number of OVI/OMWI and equivalent offense convictions within the preceding twenty years (20 year look back requirement) and the date of each conviction.
- The term, "equivalent offense," has the same meaning as "equivalent offense" in R.C. §4511.181.
- The term, "OVI/OMWI offense," includes convictions of physical control (R.C. §4511.194) and watercraft OVIs (R.C. §1547.11).

See Appendices G and H.

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### TEMPORARY AND PERMANENT ID CARDS

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- A *Temporary ID* may be issued to any person, who is a resident or temporary resident of this state, and whose Ohio driver's or commercial driver's license has been suspended or canceled.
- A *Permanent ID* may be issued to any person who is a resident or a temporary resident of this state and, except as otherwise provided in this section, is not licensed as an operator of a motor vehicle in this state or another jurisdiction.
- The BMV will not issue a *Temporary ID* to any person whose driving record does not reflect a current suspension or cancellation.
- It is imperative that an individual applying for a *Temporary ID* confirm that he or she is currently suspended before applying.
- If a suspension is not reflected in the BMV systems, the BMV will cancel a person's license and issue a *Permanent ID*.
- The result is that a person will be required to re-take both the knowledge and physical driver exam before a license can be reinstated after the suspension has been posted by the BMV and served.

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## MISCELLANEOUS ISSUES

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### LINKS

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#### OHIO DEPARTMENT OF PUBLIC SAFETY

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*Ohio's Habitual OVI/OMWI Offenders Registry*  
<https://ext.dps.state.oh.us/omvi/>

#### NATIONAL DISTRICT ATTORNEYS ASSOCIATION

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Traffic Law Publications  
<http://www.ndaa.org/publications.html>

#### NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

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*The Visual Detection of DWI Motorists*  
<http://www.nhtsa.dot.gov/people/injury/alcohol/dwi/dwihtml/>

*The Detection of DWI Motorcyclists*  
<http://www.nhtsa.gov/people/injury/pedbimot/motorcycle/610DWIMotorcyWeb/pages/DetectionGuide.htm>

*Development of a Standardized Field Sobriety Test*  
<http://www.nhtsa.gov/people/injury/alcohol/SFST/>

#### OHIO ADMINISTRATIVE AND REVISED CODES

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<http://codes.ohio.gov/>

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## APPENDICES

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## APPENDICES

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### APPENDIX A. SFST - Instructions and Safety Tips

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#### STANDARD FIELD SOBRIETY TESTS

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##### ONE LEG TEST

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- \_\_\_ SWAYS WHILE BALANCING.
  - \_\_\_ USES ARMS TO BALANCE (RAISES ARMS MORE THAN SIX INCHES).
  - \_\_\_ HOPPING.
  - \_\_\_ PUTS FOOT DOWN.
  - \_\_\_ CANNOT DO TEST (PUTS FOOT DOWN 3 OR MORE TIMES).
  - \_\_\_ TOTAL (DECISION POINT 2).
- TOTAL CLUES (4) — 2 OF 4 = 65% THAT BAC IS .10% OR ABOVE

---

##### HORIZONTAL GAZE NYSTAGMUS TEST

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- RIGHT LEFT  
\_\_\_ NO SMOOTH PURSUIT \_\_\_
- DISTINCT NYSTAGMUS  
\_\_\_ AT MAXIMUM DEVIATION \_\_\_
- ONSET BEFORE 450 WITH  
\_\_\_ SOME WHITE SHOWING \_\_\_
- TOTAL \_\_\_\_\_ (DECISION POINT 4).
- TOTAL CLUES (6) — 4 OF 6 = 77% THAT BAC IS .10% OR ABOVE

---

##### WALK AND TURN TEST

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- \_\_\_ CAN'T KEEP BALANCE WHILE LISTENING TO INSTRUCTIONS (MUST SHUFFLE FEET).
  - \_\_\_ STARTS BEFORE INSTRUCTIONS ARE FINISHED.
  - \_\_\_ STOPS WALKING TO STEADY SELF.
  - \_\_\_ DOES NOT TOUCH HEEL-TO-TOE.
  - \_\_\_ LOSES BALANCE WHILE WALKING (STEPS OFF LINE).
  - \_\_\_ USES ARMS TO BALANCE (RAISES ARMS MORE THAN SIX INCHES).
  - \_\_\_ LOSES BALANCE WHILE TURNING, TURNS INCORRECTLY.
  - \_\_\_ INCORRECT NUMBER OF STEPS.
  - \_\_\_ CANNOT DO TEST (STEPS OFF LINE 3 OR MORE TIMES).
  - \_\_\_ TOTAL SCORE (DECISION POINT 2).
- TOTAL CLUES (8) — 2 OF 8 = 68% THAT BAC IS 10% OR ABOVE

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##### COMBINATION HGN AND W/T

4 OF 6 HGN + 2 OR MORE OF 8 W/T = 80% THAT BAC IS .10% OR ABOVE

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## **APPENDICES**

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### **APPENDIX A. SFST - Instructions and Safety Tips**

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#### **DUI OFFICER SAFETY TIPS**

- 1. ALWAYS MAINTAIN THE APPROPRIATE OFFICER-VIOLATOR CONTACT REACTIONARY GAP.**
- 2. WHEN ADMINISTERING HGN, ALWAYS PLACE STIMULUS IN WEAK HAND, WITH ARMS STRAIGHT AND BODY BLADED.**
- 3. WHEN DEMONSTRATING WALK AND TURN, HAVE VIOLATOR STAND TO YOUR WEAK SIDE AND DEMONSTRATE TEST PERPENDICULAR TO THE VIOLATOR. (NEVER TURN YOUR BACK ON THE VIOLATOR).**
- 4. WHEN DEMONSTRATING THE ONE LEG STAND, BE AWARE OF THE VIOLATOR'S HANDS AND FEET.**
- 5. AFTER PLACING VIOLATOR UNDER ARREST, SECURE BY DOUBLE LOCKING THE HANDCUFFS BEHIND THE BACK, CONDUCT A THOROUGH PAT DOWN, AND PLACE IN BACK SEAT OF CRUISER WITH SAFETY BELT ON.**
- 6. ALWAYS BE PREPARED FOR THE UNEXPECTED!!!**

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**APPENDICES**

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**APPENDIX B. Generic Search Warrant for Blood**

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STATE OF OHIO )  
COUNTY OF \_\_\_\_\_ )  
 ) AFFIDAVIT FOR SEARCH WARRANT

OFFICER'S RANK, NAME, AGENCY AND AGENCY ADDRESS

being first duly cautioned and sworn, deposes and states that within the jurisdiction of NAME OF THE COURT at HOSPITAL NAME, at HOSPITAL ADDRESS, situated in the NAME OF CITY and/or TOWNSHIP, COUNTY, Ohio; believes and has good cause to believe that at said place, there is concealed; blood samples, laboratory analysis of blood samples, and medical records of one

NAME OF SUSPECT, DOB: DATE OF BIRTH, SSN: SOCIAL SECURITY NUMBER , treated at said hospital on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_; and that said items are concealed in violation of law, to wit:

DESCRIPTION OF OFFENSE , SECTION of the Ohio Revised Code.

Such belief is supported by the following facts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sworn to, and subscribed before me, and filed in this court this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_ a.m. / p.m.

By:

\_\_\_\_\_  
Signature of Judge

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Court Jurisdiction

\_\_\_\_\_  
Name of Officer

\_\_\_\_\_  
Agency of Officer

\_\_\_\_\_  
Agency Address

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**APPENDICES**

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**APPENDIX C. Request for Release of Records**

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**REQUEST FOR RELEASE OF RECORDS**

To: \_\_\_\_\_, \_\_\_\_\_  
Name of Health Care Provider Date

I hereby state that an official criminal investigation has begun regarding, or a criminal action or proceeding has been commenced, against SUSPECT'S NAME, and that I believe that one or more tests have been administered to him/her by this health care provider to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in his/her blood, breath, or urine at a time relevant to the criminal offense in question. Therefore, I hereby request, pursuant to §2317.02 (B)(2) of the Ohio Revised Code, this health care provider supply me with copies of any records that the provider may possess which pertain to any test, or the results of any test, administered to the person specified above to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in his/her blood, breath, or urine at any time relevant to the criminal offense in question.

\_\_\_\_\_  
Officer's Name and Badge #

\_\_\_\_\_  
Subject's Name

\_\_\_\_\_  
Officer's Agency

\_\_\_\_\_  
Date of Treatment

\_\_\_\_\_  
Agency Address

\_\_\_\_\_  
Subject's Social Security Number

\_\_\_\_\_  
Officer's Phone Number

\_\_\_\_\_  
Subject's Date of Birth

**APPENDICES**

**APPENDIX D. Generic Affidavit for Search Warrant**

STATE OF OHIO )  
COUNTY OF \_\_\_\_\_ ) **SEARCH WARRANT**

To the **CHIEF OF POLICE or SHERIFF**, etc., of **NAME OF THE CITY or COUNTY**:

Greetings:

Whereas, there has been filed with me an affidavit, a copy of which is attached hereto and incorporated herein, these are therefore, to command you in the name of the State of Ohio, with the necessary and proper assistance, to enter the premises of:

NAME OF THE HOSPITAL, located at ADDRESS OF THE HOSPITAL, situated in the City of NAME OF CITY, in the County, NAME OF COUNTY, and there diligently search for the goods, chattels, or articles to wit:

Blood samples, laboratory analysis of blood samples, and medical records of one NAME OF SUSPECT, DOB: DATE OF BIRTH, SSN: SOCIAL SECURITY NUMBER

treated at said hospital on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_;

And that you bring the same, or any part thereof, found on such search, forthwith before me, or some other judge or magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ a.m. / p.m.

\_\_\_\_\_  
Signature of Judge

\_\_\_\_\_  
Court Jurisdiction

**RETURN OF SEARCH WARRANT**

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m. / p.m., I executed the search warrant attached hereto, and removed from said premises in the presence of

NAME OF HOSPITAL REPRESENTATIVE SERVED, property, of which the following is an inventory:

LIST AND DESCRIBE ALL ITEMS REMOVED

I hereby certify that copies of the search warrant and inventory were delivered to and left at ADDRESS OF HOSPITAL, by NAME OF EXECUTING OFFICER.

By: \_\_\_\_\_  
Signature of Judge

\_\_\_\_\_  
Court Jurisdiction

# APPENDICES

## APPENDIX E. BMV 2255



OHIO DEPARTMENT OF PUBLIC SAFETY  
BUREAU OF MOTOR VEHICLES

### INSTRUCTIONS For Preparing the BMV 2255 for OVI / Physical Control / Refusal Arrest

All items must be completed on the form in order for the BMV to process the suspension onto the driving record of the individual.

#### A. IDENTIFYING INFORMATION

1. Driver's Information:
  - a. Enter driver's name, driver license #, class of driver license & state.
  - b. Verify and enter current address of driver (enter only one address).
  - c. Enter driver's Date of Birth and Social Security number.
2. Violation Information:
  - a. Enter date and time of violation.
  - b. Enter date and time of refusal / test.
  - c. Enter the four-digit court code of court that will hear OVI / Physical Control.
  - d. Enter the county in which the violation occurred.
  - e. Enter date, time and place of test if the offender refuses and if reasonable means are used to ensure a chemical test.
3. Vehicle Information:
  - a. Verify and enter VIN # (1981 model years and beyond have 17 characters).
  - b. Enter year and make of vehicle.
  - c. Enter plate number, type of plate and state of issuance.
  - d. Enter vehicle owner information.
  - e. Enter address where vehicle will be stored.

#### B. QUESTIONS FOR ALS

1. Document the reasonable grounds for OVI or Physical Control arrest before test.
2. Circle whether the arrest was an OVI arrest or a Physical Control arrest.
3. Check appropriate box if offender refused to submit to test(s).
4. If the offender submitted to the test, indicate test level and circle type of test. NOTE: If level is below the required level, the offender will not be placed under an Administrative License Suspension, (ALS). Forward all information to the court. **If the offender submitted to the test, the test score must be entered.**
5. Check box for "Was placed under an Administrative License Suspension (ALS)." **If the box is not checked, then the ALS cannot be imposed.**
6. Check box if driver license was seized.
7. Check box if offender was provided a copy of this form at time of arrest.
8. If offender submits to test(s) and test results are not immediately available, do not impose the ALS until results are available and offender is notified.
9. The person must submit to the chemical test or tests, subsequent to the request of the arresting officer, within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.
10. Document the reasonable grounds for the OVI / Physical Control arrest before test.
11. If the subject tested for a controlled substance or metabolite, circle the test type.
12. Specify the controlled substance and / or metabolite results: Please note the results should be provided in ng / ml.
13. Check if the subject tested positive for a prohibited level of marihuana metabolite and was under the influence of alcohol and / or a drug of abuse.
14. Please note: Under Ohio Revised Code (R.C.) 4511.19 (J)(viii)(I), the prohibited level of marihuana metabolite, in conjunction with a person being under the influence of alcohol, a drug of abuse, or a combination of the two, is 15 nanograms per milliliter of urine or 5 nanograms per milliliter of whole blood, blood serum, or plasma. Check the appropriate box and list the marihuana metabolite test results if the subject tested positive for prohibited level of marihuana metabolite and was under the influence of alcohol and / or a drug of abuse.
15. If the subject tested over a prohibited level for a controlled substance or metabolite, indicate the date the results were received and indicate the date the subject was served with the notice of ALS.
16. I requested the driver, (by reading advice on the back), to submit to a chemical test(s) for alcohol and / or for the presence of any controlled substance or metabolite. The reasonable means I used to ensure the offender submitted to a chemical test were.

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## APPENDICES

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### APPENDIX E. BMV 2255

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#### INSTRUCTIONS

#### For Preparing the BMV 2255 for OVI / Physical Control / Refusal Arrest

##### C. Vehicle Sanctions

1. Check box if the plates were seized.
2. Check box if vehicle was seized as a result of an arrest for OVI.
3. Check box if vehicle was seized as a result of an arrest for DUS or wrongful entrustment of a motor vehicle.
4. Check boxes if vehicle is subject to immobilization / forfeiture.

**NOTE: Do not send this form to the BMV if this arrest is only for DUS or Wrongful Entrustment of a Motor Vehicle.**

##### D. CDL Information

Complete this block if the offender is the holder of a commercial driver license, or was operating a commercial vehicle. Officer is to read the advice on back of form BMV 2255 (R.C. 4506.17) and indicate that the advice was read and shown by checking the box.

1. Indicate if a refusal.
2. Indicate test results if test was taken.
3. Check appropriate remaining boxes.

##### E. Offender's Signature

1. Have offender (driver) sign.
2. If the offender refuses to sign, check refused to sign box.

##### F. Signatures

All signatures on bottom portion of form, "Complete below only for OVI / Physical Control Arrest," must be included in order for BMV to process.

1. Arresting officer must sign, followed by signature of witness. This indicates that the officer in fact has read the advice to the offender.
  - a. Complete County in affidavit portion.
2. Enforcement agency of arresting officer must be indicated.
3. In general, the four digits that are required are positions four through seven of your nine-character NCIC number. Check with your agency head if you have any questions.

**NOTE: OSHP, Columbus PD, and Cincinnati PD:**

**Please check with your agency for the four digits of the NCIC number to use.**

4. Enter arresting officer's business street address.
5. Officer must sign form again in presence of a Notary Public or Deputy Clerk of Court, or peace officer.
6. Notary, Deputy Clerk or peace officer must sign form.
  - a. If Notary signs, must include seal and commission stamp. Must also indicate date sworn to.
  - b. If Deputy Clerk signs, must include court seal / stamp and city.
  - c. If peace officer signs, he or she must have completed an approved course of training as required by R.C. 2935.081.

##### G. When all of the above have been completed, distribute the copies as follows:

**NOTE: Only mail BMV 2255 once a positive test result has been received and an Administrative License Suspension imposed, or if there was an arrest involving a commercial vehicle.**

|           |   |
|-----------|---|
| White     | BMV (use 2257 envelope), include driver license |
| Canary    | Law Enforcement                                 |
| Pink      | Court   |
| Goldenrod | Offender  |

# APPENDICES

## APPENDIX E. BMV 2255



OHIO DEPARTMENT OF PUBLIC SAFETY  
BUREAU OF MOTOR VEHICLES

### REPORT OF LAW ENFORCEMENT OFFICER ADMINISTRATIVE LICENSE SUSPENSION / NOTICE OF POSSIBLE CDL DISQUALIFICATION / IMMOBILIZATION / FORFEITURE

|   |                   |  |  |                     |          |
|---|-------------------|--|--|---------------------|----------|
| A. NAME   |                   | DRIVER LICENSE #   |  | CLASS               | STATE    |
| CURRENT STREET ADDRESS (AS VERIFIED BY OFFICER) |                   |  |  |                     |          |
| CITY  |                   | OHIO COUNTY OF RESIDENCE   |  | STATE               | ZIP CODE |
| DATE OF BIRTH                                   | SOCIAL SECURITY # | 4 DIGIT COURT CODE   |  | COUNTY OF VIOLATION |          |
| DATE OF VIOLATION                               |                   | TIME OF VIOLATION<br><input type="checkbox"/> AM <input type="checkbox"/> PM       |  | PLACE OF TEST       |          |
| DATE OF REFUSAL OR TEST                         |                   | TIME OF REFUSAL OR TEST<br><input type="checkbox"/> AM <input type="checkbox"/> PM |  | YEAR                | MAKE     |
| VEHICLE OWNER'S NAME                            |                   | DATE OF BIRTH  |  | STREET ADDRESS      |          |
| CITY  |                   | STATE  |  | ZIP CODE            |          |
| VEHICLE STORED AT (STREET ADDRESS)              |                   |  |  |                     | CITY     |

**B. Officer to Complete for All OVI / Physical Control Arrests:**  
**Circle arrest type:** OVI Physical Control  
**The driver:**  
 Refused to submit to test (s).  
 Submitted to test (s). 0. \_\_\_\_\_ % alcohol test result  
 Circle test type for which results were reported:  
 Whole Blood, Breath, Urine, Blood Serum, or Blood Plasma  
 Was placed under an Administrative License Suspension (R.C. 4511.191)  
 License was seized  
 Offender was provided a copy of this form at the time of arrest.

I requested the driver, by reading advice on the back, to submit to a chemical test (s) for alcohol and / or for the presence of any controlled substance or metabolite. My reasonable grounds for OVI / Physical Control arrest before test were: \_\_\_\_\_

Subject tested for controlled substance or metabolite. Circle test type for which controlled substance or metabolite results were reported: Urine, Whole Blood, Blood Serum, or Blood Plasma.  
 Specify controlled substance and / or metabolite results: \_\_\_\_\_  
 Subject tested positive for prohibited level of marijuana metabolite \_\_\_\_\_ (specify amount) and was under the influence of alcohol and / or a drug of abuse.  
 Alcohol, controlled substance or metabolite test result received on \_\_\_\_\_ Subject served with notice of Administrative License Suspension on \_\_\_\_\_  
 Reasonable means officer used to ensure offender submitted to a chemical test were: \_\_\_\_\_

**C. Officer to Complete Applicable Vehicle Sanctions:**  
 License plate(s) seized  
 Vehicle seized under R.C. 4511.195 (OVI)  
 Vehicle seized under R.C. 4510.41 only (DUS or wrongful entrustment of a motor vehicle) If so, **Do not mail this form to the BMV**  
 Vehicle subject to immobilization  
 Vehicle subject to forfeiture

**D. Officer to Complete if Offender is the holder of a commercial driver license or was Operating a Commercial Vehicle:**  
 Read and showed advice to offender (R.C. 4506.17)  
 Refused to submit to test(s)  
 Submitted to test(s) 0. \_\_\_\_\_ % alcohol test result  
 (Circle One) Whole Blood, Breath, Urine, Blood Serum, or Blood Plasma  
 Prohibited Alcohol Content without OVI charge  
 Prohibited Alcohol Content with OVI charge  
 Commercial vehicle per definition (R.C. 4506.01(E))  
 24-hour out-of-service order  
 CDL to be disqualified  
 CDL seized  
 Hazardous material  
 Operated a commercial vehicle under the influence of a controlled substance

**E. The advice on the back of this form was read to me and I have received a copy of this form.**  
 \_\_\_\_\_  
 DRIVER'S SIGNATURE  REFUSED TO SIGN

**F. Complete Below Only for an OVI / Physical Control ARREST:**  
 We, the undersigned, certify that the advice prescribed by the General Assembly (under R.C. 4511.191 and R.C. 4511.192), was shown to the person under arrest and read to him or her in the presence of the arresting officer and one other person.

**X** \_\_\_\_\_ **OHO** \_\_\_\_\_  
 ARRESTING OFFICER'S SIGNATURE ENFORCEMENT AGENCY N.C.I.C. #

**X** \_\_\_\_\_  
 WITNESS'S SIGNATURE CITY STATE ZIP CODE

**COMPLETE BELOW ONLY ON OVI ARREST, PHYSICAL CONTROL ARREST, OR ARREST INVOLVING COMMERCIAL VEHICLE. AFFIDAVIT OF ARRESTING OFFICER:**  
 STATE OF OHIO, COUNTY OF \_\_\_\_\_  
 I certify I arrested the person, having had reasonable grounds to believe the person was operating a vehicle upon a highway, or upon public or private property used by the public for vehicular travel or parking in the State of Ohio, under the influence of alcohol and / or drugs of abuse, in physical control of a vehicle while under the influence of alcohol and / or drugs of abuse, or with a prohibited concentration of alcohol in the whole blood, blood serum, blood plasma, breath, or urine. I advised the person in the prescribed manner of the consequences of a refusal or a test. The person either refused the test, or was under arrest for OVI and took the test and had a prohibited concentration of alcohol in the whole blood, blood serum, blood plasma, breath, or urine (all as described above). In the case of a commercial vehicle (if applicable) I had reasonable grounds to believe the person was driving a commercial motor vehicle in the State of Ohio in violation of section 4506.15 of the Ohio Revised Code. The information contained on this form is true to the best of my knowledge and belief.

**X** \_\_\_\_\_ **X** \_\_\_\_\_  
 ARRESTING OFFICER SIGNATURE PEACE OFFICER SIGNATURE

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
**X** \_\_\_\_\_  
 DEPUTY CLERK OF COURT'S SIGNATURE City of \_\_\_\_\_ NOTARY PUBLIC'S SIGNATURE

APPENDICES



# APPENDICES

## APPENDIX E. BMV 2255

### CONSEQUENCES OF TEST AND REFUSAL (R.C. 4511.192) (MUST BE READ TO OVI / PHYSICAL CONTROL OFFENDER)

"You now are under arrest for (specifically state the offense under state law or a substantially equivalent municipal ordinance for which the person was arrested) operating a vehicle under the influence of alcohol, a drug, or a combination of them; operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance; operating a vehicle after underage alcohol consumption; or having physical control of a vehicle while under the influence. "If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a commercial driver license and refuse to submit to the test or tests you will immediately be placed out-of-service for twenty-four hours; you will be disqualified from operating a commercial motor vehicle for a period of not less than one year; and you will be required to surrender your commercial driver license to me."

"If you have a prior conviction of OVI, OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding twenty years, you now are under arrest for state OVI, and if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI."

"If you have previously pled guilty or been convicted of two or more OVI'S, OVUAC's, or equivalent offenses in the previous six years, or pled guilty or been convicted of five or more OVI'S, OVUAC's, or equivalent offenses in the previous twenty years, or pled guilty or been convicted of a felony of any of the above violations, and you refuse to submit to a chemical test required by law, I am authorized to use whatever reasonable means are necessary to ensure that you submit to a chemical test."

(Read this part unless the person is under arrest for solely having physical control of a vehicle while under the influence.) "If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma, breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated."

"If you take a chemical test, you may have an independent chemical test taken at your own expense."

### CONSEQUENCES OF TEST AND REFUSAL – OUT-OF-SERVICE (R.C. 4506.17) (MUST BE READ IN ADDITION TO THE ABOVE TO AN OFFENDER WHO IS THE HOLDER OF A COMMERCIAL DRIVER LICENSE OR IS DRIVING A COMMERCIAL VEHICLE)

"I am a law enforcement officer; I have probable cause to stop or detain you. After investigating the circumstances, I have probable cause to believe you were operating a motor vehicle in violation of section 4506.15 of the Ohio Revised Code. I request that you submit to a test or tests of your blood, breath, or urine for the purpose of determining your alcohol concentration or the presence of any controlled substance. If you refuse to submit to the test or tests you will immediately be placed out-of-service for twenty-four hours; you will be disqualified from operating a commercial motor vehicle for a period of not less than one year; and you will be required to surrender your commercial driver license to me."

### ADDITIONAL INFORMATION FOR OFFENDER

#### IMMOBILIZATION OR FORFEITURE UPON OVI ARREST (R.C. 4511.195)

If you have previously been convicted of operating a motor vehicle under the influence, OVI, (R.C. 4511.19), or similar municipal ordinance, the vehicle and its identification license plates may be seized. The vehicle may be towed and kept by the law enforcement agency or may be immobilized. The period of time for which the vehicle and license plates will be kept or immobilized may be at least until the initial appearance in court. At the initial appearance the court may order that the vehicle and license plates be returned or released to the vehicle owner until the disposition of the charge. If you are convicted of or plead guilty to OVI, the court may issue an order of immobilization of the vehicle and the impoundment of its license plates, or an order for the criminal forfeiture of the vehicle to the state. If you are not the vehicle owner you must immediately inform the owner that the vehicle and its license plates have been seized and that the owner may be able to obtain the return or release of the vehicle and plates at your initial appearance in court.

#### OFFENDERS ARRESTED FOR DRIVING UNDER SUSPENSION OR WRONGFUL ENTRUSTMENT OF A MOTOR VEHICLE (R.C. 4511.203)

If you are charged for driving under an FRA suspension, (R.C. 4510.16), driving under an OVI suspension, (R.C. 4510.14), or wrongful entrustment of a motor vehicle, (R.C. 4511.203), the vehicle and identification plates may be seized, and the vehicle may be towed and kept by the law enforcement agency. Any period of seizure will be at least until your initial appearance in court. At the initial appearance the court may order the vehicle returned to you or released to the vehicle owner. If you are convicted of driving under suspension, or of wrongful entrustment of a vehicle, the court may issue an order of immobilization of the vehicle and impoundment of its license plates. Upon a third conviction of wrongful entrustment of a vehicle (R.C. 4511.203), of driving under FRA suspension (R.C. 4510.16), of driving under suspension (R.C. 4510.11), or a municipal ordinance similar to one of the above, the court, upon your conviction may order the forfeiture of the vehicle. If you are not the owner, you should immediately inform the owner that the vehicle and the license plates have been seized and that the owner may be able to obtain the return or release of the vehicle and plates at your initial appearance in court.

#### IF YOU HAVE A COMMERCIAL DRIVER LICENSE OR YOU WERE OPERATING A COMMERCIAL VEHICLE:

- A. To appeal your disqualification, you must prepare a WRITTEN request for an Administrative Hearing and submit the request by REGISTERED or CERTIFIED MAIL within 30 days of your refusal or test date (see reverse side). Mail your request to:  
Ohio Bureau of Motor Vehicles  
Attn.: CDL / OSP  
P.O. Box 16784  
Columbus, Ohio 43216-6784
- B. You may appeal this SUSPENSION in court at the time of your initial appearance. Even though you may appeal this suspension, your driving privileges will still be suspended.

#### NOTICE OF SUSPENSION (R.C. 4511.192)

Independent of any penalties or sanctions imposed upon you pursuant to any other section of the Revised Code or municipal ordinance, your driver license or commercial driver license, permit, or nonresident operating privilege is now suspended. The suspension takes effect immediately. The suspension will last at least until your initial appearance on the charge, which will be held within five days after the date of this arrest or the issuance of a citation to you. You may appeal the suspension at the initial appearance before the court that hears the charges against you that resulted from the arrest, or during the period of time ending 30 days after that initial appearance.

#### LENGTH OF SUSPENSION

##### FOR REFUSAL

(Based on prior refusals, convictions, and guilty pleas within 6 years)

No priors ..... 1 year  
One prior ..... 2 years  
Two priors ..... 3 years  
Three or more priors ..... 5 years

##### FOR PROHIBITED CONCENTRATION OF ALCOHOL

(Based on prior convictions and guilty pleas within 6 years)

No priors ..... 90 days  
One prior ..... 1 year  
Two priors ..... 2 years  
Three priors ..... 3 years

APPENDIX F. Ohio's Impaired Driving Laws and Driving Under Suspension Charts

OHIO IMPAIRED DRIVING LAW

TYPES OF OFFENSES

- Operation under the influence of alcohol, drug of abuse or both. RC 4511.19(A)(1)(a).
- Operation with concentration of alcohol specified below. RC 4511.19(A)(1)(b)-(i).

| Alcohol Level | Whole Blood |            | Blood Serum or Plasma |            | Breath |            | Urine   |            |
|---------------|-------------|------------|-----------------------|------------|--------|------------|---------|------------|
| Low Test      | ≥ .08%      | §(A)(1)(b) | ≥ .096%               | §(A)(1)(c) | ≥ .08g | §(A)(1)(d) | ≥ .11g  | §(A)(1)(e) |
|               | < .17%      |            | < .204%               |            | < .17g |            | < .238g |            |
| High Test     | ≥ .17%      | §(A)(1)(f) | ≥ .204%               | §(A)(1)(g) | ≥ .17g | §(A)(1)(h) | ≥ .238g | §(A)(1)(i) |

- Operation with concentration of controlled substance specified below. RC 4511.19(A)(1)(j)-(x).

| Controlled Substance                         | Urine                                | Whole Blood, Blood Serum or Plasma   | Section No.         |
|--|--------------------------------------|--------------------------------------|---------------------|
| Amphetamine                                  | ≥ 500 ng                             | ≥ 100 ng                             | (A)(1)(j)(i)        |
| Cocaine                                      | ≥ 150 ng                             | ≥ 50 ng                              | (A)(1)(j)(ii)       |
| Cocaine Metabolite                           | ≥ 150 ng                             | ≥ 50 ng                              | (A)(1)(j)(iii)      |
| Heroin                                       | ≥ 2000 ng                            | ≥ 50 ng                              | (A)(1)(j)(iv)       |
| Heroin Metabolite (6-monoacetyl morphine)    | ≥ 10 ng                              | ≥ 10 ng                              | (A)(1)(j)(v)        |
| L.S.D.                                       | ≥ 25 ng                              | ≥ 10 ng                              | (A)(1)(j)(vi)       |
| Marihuana                                    | ≥ 10 ng                              | ≥ 2 ng                               | (A)(1)(j)(vii)      |
| Marihuana Metabolite and under the influence | ≥ 15 ng                              | ≥ 5 ng                               | (A)(1)(j)(viii)(I)  |
| Marihuana Metabolite                         | ≥ 35 ng                              | ≥ 50 ng                              | (A)(1)(j)(viii)(II) |
| Methamphetamine                              | ≥ 500 ng                             | ≥ 100 ng                             | (A)(1)(j)(ix)       |
| Phencyclidine                                | ≥ 25 ng                              | ≥ 10 ng                              | (A)(1)(j)(x)        |
| Salvia divinorum and salvinorin A            | Pending State Board of Pharmacy rule | Pending State Board of Pharmacy rule | (A)(1)(j)(xi)       |

- Operation under the influence of alcohol, drug of abuse or both, with prior OVI conviction in 20 years, and with current refusal of chemical test or tests. RC 4511.19(A)(2).
- Operation by person under age 21 with concentration of alcohol specified below. RC 4511.19(B)(1)-(4).

| Whole Blood |         | Blood Serum or Plasma |         | Breath |         | Urine   |         |
|-------------|---------|-----------------------|---------|--------|---------|---------|---------|
| ≥ .02%      | §(B)(1) | ≥ .03%                | §(B)(2) | ≥ .02g | §(B)(3) | ≥ .028g | §(B)(4) |
| < .08%      |         | < .096%               |         | < .08g |         | < .11g  |         |

- Having physical control while under the influence of alcohol, drug of abuse or both, or with concentration of alcohol or controlled substance equal to or greater than §(A)(1)(b)-(e) or (j) amounts. RC 4511.194(B)(1)-(3).

ADMINISTRATIVE LICENSE SUSPENSIONS

Refusal of Chemical Test RC 4511.191(B)

| No. of Refusal/ Offense in 6 Years | Type and Length <sup>1</sup> of Suspension | Driving Privileges <sup>2(a)</sup> | Restricted Plates as Condition for Privileges | Interlock as Condition for Privileges |
|------------------------------------|--|------------------------------------|---|---------------------------------------|
| 1 <sup>st</sup>                    | Class C (1 year)                           | After 30 days                      | Optional                                      | Optional                              |
| 2 <sup>nd</sup>                    | Class B (2 years)                          | After 90 days                      | Optional                                      | Optional                              |
| 3 <sup>rd</sup>                    | Class A (3 years)                          | After 1 year                       | Optional                                      | Optional                              |
| 4 <sup>th</sup> or more            | 5 years                                    | After 3 years                      | Optional                                      | Optional                              |

Failed<sup>1</sup> Chemical Test RC 4511.191(C)

| No. of Offense in 6 Years | Type and Length <sup>2</sup> of Suspension | Driving Privileges <sup>3</sup> | Restricted Plates as Condition for Privileges | Interlock as Condition for Privileges          |
|---------------------------|--|---------------------------------|---|--|
| 1 <sup>st</sup>           | Class E (90 days)                          | After 15 days                   | Optional                                      | Optional                                       |
| 2 <sup>nd</sup>           | Class C (1 year)                           | After 45 days                   | Optional                                      | Optional                                       |
| 3 <sup>rd</sup>           | Class B (2 years)                          | After 180 days                  | Optional                                      | Required if alcohol-related, optional if drug. |
| 4 <sup>th</sup> or more   | Class A (3 years)                          | After 3 years                   | Optional                                      | Required if alcohol-related, optional if drug. |

<sup>1</sup> Refusal suspension terminates upon guilty or no contest plea resulting in conviction, and time served is to be credited against judicial suspension. RC 4511.191(B)(2). However, a subsequent finding of not guilty does not affect the suspension. RC 4511.191(D)(1).

<sup>2</sup> No privileges may be granted to offender with refusal who, within the preceding six years, has had three or more test refusals. RC 4510.13(A)(3).

<sup>3</sup> Imposition of an ALS in offense in commercial vehicle results in a one-year commercial driver's (CDL) license disqualification while a second anytime results in lifetime CDL disqualification. RC 4506.16(D). No privileges may be granted. RC 4510.13(A)(4). Also, CDL operators are subject to separate offenses with lower alcohol and controlled substance levels while operating a commercial vehicle. RC 4506.15.

<sup>4</sup> Failed chemical test result is a concentration of alcohol or controlled substance equal to or greater than RC 4511.19(A)(1)(b)-(e) or (j) amounts. RC 4511.191(C)(1).

<sup>5</sup> Suspension for failing test terminates upon guilty or no contest plea resulting in conviction, and time served is to be credited against any judicial suspension.

RC 4511.191(C)(2). Under RC 4511.191(D)(1), any subsequent finding of not guilty does not affect the suspension. But note RC 4511.197(D), stating that if the suspension is continued upon appeal, a subsequent finding of not guilty terminates the suspension.

<sup>6</sup> No privileges may be granted to offender with failed test who, within the preceding six years, has had three or more convictions or guilty pleas. RC 4510.13(A)(3).

Appeal RC 4511.197

An administrative license suspension may be appealed at the initial appearance (5 day hearing), or within 30 days of the same.

The scope of appeal is limited to determining whether one or more of the following conditions have **not** been met:

- Whether the officer had reasonable ground to believe the person was OVI, OVUAC, or in physical control in violation of statute or municipal ordinance, and whether the person was in fact placed under arrest. RC 4511.197(C)(1).
- Whether the officer requested the person to submit to a chemical test or tests. RC 4511.197(C)(2).
- Whether the officer informed the person of consequences of taking or refusing test or tests; or for repeat OVI offender that would be required to be sentenced under RC 4511.19(G)(1)(c),(d), or (e), that in event of test refusal officer could use whatever reasonable means were necessary to ensure the person submitted to a blood test. RC 4511.197(C)(3).
- Whichever of the following applies:
  - if a test refusal suspension was imposed, whether the person refused to submit to test or tests requested by the officer, or
  - if a failed test suspension was imposed, whether at the time of the offense, the bodily substance tested contained a prohibited concentration of alcohol or a listed controlled substance or metabolite. RC 4511.197(C)(4).

APPENDIX F. Ohio's Impaired Driving Laws and Driving Under Suspension Charts

PENALTIES

OPERATING VEHICLE UNDER THE INFLUENCE RC 4511.19(A),(G) - 6 POINTS

| No. and Type of Offense   | Degree of Offense        | Incarceration   | Fines           | Treatment   | License Suspension                   | Driving Privileges <sup>1,2</sup> | Restricted Plates/ Interlock  | Immobilization/ Forfeiture                             |
|---|--------------------------|---|-----------------|---|--------------------------------------|-----------------------------------|---|--|
| 1 <sup>st</sup> in 6 years [simple OVI, low test or drug]                                   | M-1                      | 3 days jail or DIP. <sup>3</sup> Up to 6 months. <sup>4</sup>                                       | \$375 - \$1,075 | Optional  | Class 5 (6 months to 3 years)        | After 15 days                     | Both optional   | No   |
| 1 <sup>st</sup> in 6 years and either: [a] high test, or [b] refusal with prior in 20 years | M-1                      | 6 days jail or 3 days jail and 3 days DIP. <sup>3</sup> Up to 6 months. <sup>4</sup>                | \$375 - \$1,075 | Optional  | Class 5 (6 months to 3 years)        | After 15 days                     | Plates required for high-end. Interlock optional.                         | No   |
| 2 <sup>nd</sup> in 6 years [simple OVI, low test or drug]                                   | M-1                      | 10 days jail or 5 days jail and 18 days HAEM and/or CAM. <sup>5</sup> Up to 6 months. <sup>4</sup>  | \$525 - \$1,625 | Alcohol/drug assessment and recommended treatment mandatory | Class 4 (1 to 5 years)               | After 45 days                     | Plates required. Interlock required if alcohol-related, optional if drug. | 90 days immobilization if registered to Δ <sup>6</sup> |
| 2 <sup>nd</sup> in 6 years and either: [a] high test, or [b] refusal with prior in 20 years | M-1                      | 20 days jail or 10 days jail and 36 days HAEM and/or CAM. <sup>5</sup> Up to 6 months. <sup>4</sup> | \$525 - \$1,625 | Alcohol/drug assessment and recommended treatment mandatory | Class 4 (1 to 5 years)               | After 45 days                     | Plates required. Interlock required if alcohol-related, optional if drug. | 90 days immobilization if registered to Δ <sup>6</sup> |
| 3 <sup>rd</sup> in 6 years [simple OVI, low test or drug]                                   | Unclassified misdemeanor | 30 days jail or 15 days jail and 55 days HAEM and/or CAM. <sup>5</sup> Up to 1 year. <sup>4</sup>   | \$850 - \$2,750 | Alcohol/drug addiction program mandatory                    | Class 3 (2 to 10 years) <sup>7</sup> | After 180 days                    | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup>             |
| 3 <sup>rd</sup> in 6 years and either: [a] high test, or [b] refusal with prior in 20 years | Unclassified misdemeanor | 60 days jail or 30 days jail and 110 days HAEM and/or CAM. <sup>5</sup> Up to 1 year. <sup>4</sup>  | \$850 - \$2,750 | Alcohol/drug addiction program mandatory                    | Class 3 (2 to 10 years) <sup>7</sup> | After 180 days                    | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup>             |

|  |   |   |                    |  |                           |               |   |  |
|--|---|---|--------------------|--|---------------------------|---------------|---|--|
| Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 6 years, or [b] 6 <sup>th</sup> in 20 years [simple OVI, low test or drug] | F-4   | 60 days local incarceration, up to 1 year, or 60 days prison, with option of additional 6 to 30 months. <sup>9</sup>  | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup> |
| Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 6 years, or [b] 6 <sup>th</sup> in 20 years [and high test or refusal]     | F-4   | 120 days local incarceration, up to 1 year, or 60 days prison, with option of additional 6 to 30 months. <sup>9</sup> | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup> |
| 2 <sup>nd</sup> felony lifetime [simple OVI, low test or drug]   | F-3   | 60 days prison, up to 5 years [36 months under RC 2929.14(A)(3)(b)]. <sup>9, 10</sup>                                 | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup> |
| 2 <sup>nd</sup> felony lifetime, and either: [a] high test, or [b] refusal   | F-3   | 120 days prison, up to 5 years [36 months under RC 2929.14(A)(3)(b)]. <sup>9, 10</sup>                                | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup> |
| 1 <sup>st</sup> or 2 <sup>nd</sup> felony lifetime with RC 2941.1413 specification   | F-4 (1 <sup>st</sup> felony) F-3 (2 <sup>nd</sup> felony) | F-4 or F-3 penalties as set forth in boxes above, and 1, 2, 3, 4, or 5 years prison consecutive to same.              | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years | Plates required. Interlock required if alcohol-related, optional if drug. | Forfeiture if registered to Δ <sup>8</sup> |

<sup>1</sup> No privileges may be granted on suspension imposed on offender who, within the preceding six years, has had three or more convictions or guilty pleas. RC 4511.13(A)(3)  
<sup>2</sup> CDL operators are subject to separate offenses with lower alcohol and controlled substance levels while operating a commercial vehicle. RC 4506.15.  
<sup>3</sup> DIP<sup>3</sup> is a driver intervention program certified under RC 3793.10 provisions. See RC 4511.191(G)(1)(a).  
<sup>4</sup> A court located within a county served by board establishing an alternative sentencing center may sentence an "eligible offender" to center for an OVI and/or a driving under an OVI suspension. RC 307.932.  
<sup>5</sup> HAEM<sup>5</sup> is house arrest with electronic monitoring. "CAM" is continuous alcohol monitoring. Within 60 days, court must issue finding of lack of jail space. RC 4511.19(G)(3).  
<sup>6</sup> Waiver may be granted, under RC 4503.235 conditions, for "family or household member" if completely dependent on vehicle and immobilization would be undue hardship.  
<sup>7</sup> Court has authority to reduce the minimum period of a Class 3 suspension from two years to one year. RC 4511.13(A)(2)(b).  
<sup>8</sup> If vehicle forfeiture is required and title is assigned/transferred, offender may be fined value of vehicle per national auto dealers' association publications. RC 4503.234(E).  
<sup>9</sup> Under RC 2967.19, court has limited power to order early release for felony offender serving prison term imposed under RC 2929.13(G)(2).  
<sup>10</sup> For F-3 OVI, RC 2929.14 conflicts with RC 4511.19. The sentence in brackets is maximum under RC 2929.14. See *State v. Owen*, 2013-Ohio-2824 (11<sup>th</sup> Dist.).

OPERATING VEHICLE AFTER UNDERAGE ALCOHOL CONSUMPTION RC 4511.19(B),(H) - 4 POINTS

| No. of Offense                    | Degree of Offense | Incarceration  | Fines       | Treatment | License Suspension           | Driving Privileges | Restricted Plates/ Interlock | Immobilization/ Forfeiture |
|-----------------------------------|-------------------|----------------|-------------|-----------|------------------------------|--------------------|------------------------------|----------------------------|
| 1 <sup>st</sup> in 1 year         | M-4               | 0-30 days jail | \$0 - \$250 | Optional  | Class 6 (90 days to 2 years) | After 60 days      | Optional                     | No                         |
| 2 <sup>nd</sup> or more in 1 year | M-3               | 0-60 days jail | \$0 - \$500 | Optional  | Class 4 (1 to 5 years)       | After 60 days      | Optional                     | No                         |

PHYSICAL CONTROL WHILE UNDER THE INFLUENCE RC 4511.194 - 0 POINTS

| No. of Offense | Degree of Offense | Incarceration   | Fines         | Treatment | License Suspension              | Driving Privileges | Restricted Plates/ Interlock | Immobilization/ Forfeiture |
|----------------|-------------------|-----------------|---------------|-----------|---------------------------------|--------------------|------------------------------|----------------------------|
| Any            | M-1               | 0-180 days jail | \$0 - \$1,000 | Optional  | Class 7 optional (up to 1 year) | No restrictions    | Optional                     | No                         |

Judge Jennifer P. Weiler, Garfield Heights Municipal Court  
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# APPENDICES

## APPENDIX F. Ohio's Impaired Driving Laws and Driving Under Suspension Charts

### OHIO DRIVER'S LICENSE LAW

| POINTS FORMULA RC 4510.036(C)  |   |
|--|---|
| <b>SIX POINT VIOLATIONS</b>  | <b>FOUR POINT VIOLATIONS</b>  |
| Aggravated vehicular homicide, vehicular homicide, vehicular manslaughter aggravated vehicular assault, or vehicular assault | Operation of vehicle after underage consumption                           |
| Willful fleeing and eluding law enforcement officer  | Operation in willful or wanton disregard of safety of persons or property |
| Failure to stop and disclose identity at scene of accident   | Exceeding speed limit by > 30 mph   |
| <b>TWO POINT VIOLATIONS</b>  |   |
| Street racing  | Exceeding speed limit of 55 or higher by > 10 mph but < 30 mph            |
| Driving under a 12-point, OVI, or AFS suspension   | Exceeding speed limit of less than 55 mph by > 5 mph but < 30 mph         |
| Driving under the influence of alcohol, drug of abuse, or both   | Operating in violation of registrar's license restriction                 |
| Unauthorized use of vehicle (that does not involve an aircraft or motorboat)   | RC 4510.11, RC 4510.111, RC 4510.16, RC 4510.21, or any DUS ordinance     |
| Any felony motor vehicle violation, any felony committed with a motor vehicle  | All other moving violations, except for RC 4510.12, which is 0 points     |

#### RC 4507.35 - FAILURE TO DISPLAY LICENSE OR PROOF OF LICENSE - 0 POINTS

| Level/No. of Offense       | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (<= 1 year) | Immobilization | Forfeiture | Impound Plates Required |
|----------------------------|--------------------------|--|---------------|--------------------------------|----------------|------------|-------------------------|
| First or second in 3 years | Unclassified misdemeanor | 0 - 500 hours community service <sup>1</sup> | \$0 - \$1,000 | No                             | No             | No         | No                      |
| Third or more in 3 years   | M-1                      | 0 - 180 days                                 | \$0 - \$1,000 | No                             | No             | No         | No                      |

#### RC 4510.037(J) - DRIVING UNDER 12-POINT SUSPENSION - 6 POINTS

| Level/No. of Offense | Degree of Offense | Incarceration | Fines       | Class 7 Suspension (<= 1 year) | Immobilization | Forfeiture | Impound Plates Required |
|----------------------|-------------------|---------------|-------------|--------------------------------|----------------|------------|-------------------------|
| Any                  | M-1               | 3 - 180 days  | 0 - \$1,000 | No                             | No             | No         | No                      |

#### RC 4510.11 - DRIVING UNDER SUSPENSION OR IN VIOLATION OF LICENSE RESTRICTION<sup>2</sup> - 2 POINTS

| Level/No. of Offense (includes prior RC 4510.111 and 4510.16) | Degree of Offense | Incarceration | Fines         | Restitution for loss due to accident | Class 7 Suspension (<= 1 year) | Immobilization                     | Forfeiture                              | Impound Plates Required <sup>3</sup> |
|---|-------------------|---------------|---------------|--------------------------------------|--------------------------------|------------------------------------|---|--------------------------------------|
| First in 3 years  | M-1               | 0 - 180 days  | \$0 - \$1,000 | Up to \$5000 if no proof of Δ's FRA  | Optional                       | No                                 | No                                      | No                                   |
| Second in 3 years   | M-1               | 0 - 180 days  | \$0 - \$1,000 | Up to \$5000 if no proof of Δ's FRA  | Optional                       | Optional 30 days if Δ owns vehicle | No                                      | Optional 30 days if Δ owns vehicle   |
| Third in 3 years  | M-1               | 0 - 180 days  | \$0 - \$1,000 | Up to \$5000 if no proof of Δ's FRA  | Optional                       | Optional 60 days if Δ owns vehicle | No                                      | Optional 60 days if Δ owns vehicle   |
| Fourth or more in 3 years                                     | M-1               | 0 - 180 days  | \$0 - \$1,000 | Up to \$5000 if no proof of Δ's FRA  | Optional                       | No                                 | Optional if Δ owns vehicle <sup>4</sup> | Optional                             |

#### RC 4510.111 - DRIVING UNDER SUSPENSION - 2 POINTS

(imposed under RC 2151.354, RC 2151.87, RC 2935.27, RC 3123.58, RC 4301.99, RC 4510.032, RC 4510.22, or RC 4510.33)

| Level/No. of Offense (includes prior RC 4510.11 and 4510.16) | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (<= 1 year) | Immobilization | Forfeiture | Impound Plates Required |
|--|--------------------------|--|---------------|--------------------------------|----------------|------------|-------------------------|
| First or second in 3 years                                   | Unclassified misdemeanor | 0 - 500 hours community service <sup>1</sup> | \$0 - \$1,000 | No                             | No             | No         | No                      |
| Third in 3 years   | M-4                      | 0 - 30 days                                  | \$0 - \$250   | No                             | No             | No         | No                      |

#### RC 4510.12 - OPERATING MOTOR VEHICLE OR MOTORCYCLE WITHOUT VALID LICENSE - 0 POINTS

| Level/No. of Offense  | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (<= 1 year)                         | Immobilization | Forfeiture | Impound Plates Required |
|---|--------------------------|--|---------------|--|----------------|------------|-------------------------|
| Never licensed RC 4510.12(C)(1) First anytime               | Unclassified misdemeanor | 0 - 500 hours community service <sup>1</sup> | \$0 - \$1,000 | No   | No             | No         | No                      |
| Second or more anytime                                      | M-1                      | 0 - 180 days                                 | \$0 - \$1,000 | No   | No             | No         | No                      |
| Expired license RC 4510.12(C)(2) First or second in 3 years | MM                       | No   | \$0 - \$150   | No for first offense or if prior was > 3 years.        | No             | No         | No                      |
| Third or more in 3 years                                    | M-1                      | 0 - 180 days                                 | \$0 - \$1000  | Optional if a prior in 3 years and expired > 6 months. | No             | No         | No                      |

<sup>1</sup>Defendant may not be sentenced to jail term or community residential sanction. Failure to perform community service may be punished as indirect criminal contempt under RC 2705.02 that may be filed in the underlying case.

<sup>2</sup>It is an affirmative defense that accused drove because of substantial emergency and no other person was reasonably able to drive in response to the same. RC 4510.04

<sup>3</sup>The court may impound the plates of any vehicle registered in the name of the defendant. See RC 4507.02(B)(1) and RC 4507.164.

<sup>4</sup>If title to subject vehicle is assigned or transferred, offender may be fined value of vehicle per national automobile dealer's association publications. RC 4503.234(E).

# APPENDICES

## APPENDIX F. Ohio's Impaired Driving Laws and Driving Under Suspension Charts

### RC 4510.14 - DRIVING UNDER OVI SUSPENSION<sup>1</sup> - 6 POINTS

| Level/No. of Offense     | Degree of Offense | Incarceration  | Fines           | Restitution for less due to accident | Class 7 Suspension (≤ 1 year) | Immobilization                      | Forfeiture                               | Impound Plates Required <sup>2</sup> |
|--------------------------|-------------------|--|-----------------|--------------------------------------|-------------------------------|-------------------------------------|--|--------------------------------------|
| First in 6 years         | M-1               | 3 - 180 days jail <sup>3</sup> or 30 - 180 days HAEM <sup>4</sup>          | \$250 - \$1,000 | Up to \$5000 if no proof of Δ's FRA  | Mandatory                     | Mandatory 30 days if Δ owns vehicle | No                                       | Mandatory 30 days if Δ owns vehicle  |
| Second in 6 years        | M-1               | 10 days to 1 year <sup>3</sup> jail or 90 days to 1 year HAEM <sup>4</sup> | \$500 - \$2,500 | Up to \$5000 if no proof of Δ's FRA  | Mandatory                     | Mandatory 60 days if Δ owns vehicle | No                                       | Mandatory 60 days if Δ owns vehicle  |
| Third or more in 6 years | Misdemeanor       | 30 days to 1 year jail <sup>3</sup> No HAEM <sup>4</sup>                   | \$500 - \$2,500 | Up to \$5000 if no proof of Δ's FRA  | Mandatory                     | No                                  | Mandatory if Δ owns vehicle <sup>5</sup> | Optional if Δ owns vehicle           |

### RC 4510.16 - DRIVING UNDER FRA SUSPENSION/CANCELLATION/NONPAYMENT JUDGMENT<sup>1(A)</sup> - 2 POINTS

| Level/No. of Offense (includes prior RC 4510.11 and 4510.111) | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (≤ 1 year) | Immobilization | Forfeiture | Impound Plates Required |
|---|--------------------------|--|---------------|-------------------------------|----------------|------------|-------------------------|
| First or second in 3 years                                    | Unclassified misdemeanor | 0 - 500 hours community service <sup>7</sup> | \$0 - \$1,000 | No                            | No             | No         | No                      |
| Third in 3 years  | M-4                      | 0 - 30 days                                  | \$0 - \$250   | No                            | No             | No         | No                      |

### RC 4510.21 - FAILURE TO REINSTATE LICENSE<sup>1</sup> - 2 POINTS

| Level/No. of Offense       | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (≤ 1 year) | Immobilization | Forfeiture | Impound Plates Required |
|----------------------------|--------------------------|--|---------------|-------------------------------|----------------|------------|-------------------------|
| First or second in 3 years | Unclassified misdemeanor | 0 - 500 hours community service <sup>7</sup> | \$0 - \$1,000 | Optional                      | No             | No         | No                      |
| Third or more in 3 years   | M-1                      | 0 - 180 days                                 | \$0 - \$1,000 | Optional                      | No             | No         | No                      |

### RC 4511.203 - WRONGFUL ENTRUSTMENT OF MOTOR VEHICLE - 0 POINTS

| Level/No. of Offense  | Degree of Offense        | Incarceration/Community Service              | Fines         | Class 7 Suspension (≤ 1 year) | Immobilization   | Forfeiture            | Impound Plates Required <sup>2</sup> |
|---|--------------------------|--|---------------|-------------------------------|------------------|-----------------------|--------------------------------------|
| <b>First in 3 years:</b><br>RC 4511.203(A)(1),(2) or (3)                                      | Unclassified misdemeanor | 0 - 500 hours community service <sup>7</sup> | \$0 - \$1,000 | Optional                      | Optional 30 days | No                    | Optional 30 days                     |
| RC 4511.203(A)(4) or (5)  | M-1                      | 0-180 days                                   |               |                               |                  |                       |                                      |
| <b>Second in 3 years:</b><br>RC 4511.203(A)(1),(2) or (3)                                     | Unclassified misdemeanor | 0 - 500 hours community service <sup>7</sup> | \$0 - \$1,000 | Optional                      | Optional 60 days | No                    | Optional 60 days                     |
| RC 4511.203(A)(4) or (5)  | M-1                      | 0-180 days                                   |               |                               |                  |                       |                                      |
| <b>Third or more in 3 years:</b><br>RC 4511.203(A)(1),(2), or (3) or RC 4511.203(A)(4) or (5) | M-1                      | 0 - 180 days                                 | \$0 - \$1,000 | Optional                      | No               | Optional <sup>5</sup> | Optional                             |

<sup>1</sup>It is an affirmative defense that accused drove because of substantial emergency and no other person was reasonably able to drive in response to the same. RC 4510.04.

<sup>2</sup>The court may impound the plates of any vehicle registered in the name of the defendant. See RC 4507.02(B)(1) and RC 4507.164.

<sup>3</sup>A court located within a county served by board establishing an alternative sentencing center may sentence an "eligible offender" to center for an OVI and/or a driving under an OVI suspension. RC 307.932.

<sup>4</sup>HAEM means house arrest with electronic monitoring. Within 60 days, court must issue finding of lack of jail space. RC 4510.14(C).

<sup>5</sup>If title to subject vehicle is assigned or transferred, offender may be fined value of vehicle per national automobile dealer's association publications.

<sup>6</sup>It is an affirmative defense that the suspension resulted from the person's failure to respond to a random financial responsibility request, and at the time of the request, the person was in compliance with requirements as shown by proof of financial responsibility then in effect. RC 4510.04.

<sup>7</sup>Defendant may not be sentenced to jail term or community residential sanction. Failure to perform community service may be punished as indirect criminal contempt under RC 2705.02 that may be filed in the underlying case.

### LIMITED DRIVING PRIVILEGES

- **Court-Imposed Suspensions** A court may grant limited driving privileges except for:
  1. Any part of a class 2 suspension for a felony conviction, or during the first 3 years of a class 1 suspension for a second misdemeanor offense, imposed for failure to comply with an order or signal of a police officer. RC 2921.331(E).
  2. The "hard-time" of OVI, OVUAC, or ALS. RC 4510.13(A).
  3. Child endangering involving operating under the influence, and three or more prior/equivalent offenses within six years. RC 2919.22(G).
  4. Certain moving violations committed by juveniles with three or more prior offenses. RC 4510.31(C)(3).
  5. The operation of a commercial vehicle by person with suspended driver's license or CDL or commercial motor vehicle disqualification. RC 4506.161.
- **Bureau of Motor Vehicles Suspensions** A court may not grant limited driving privileges except for:
  1. Extension of time, up to 180 days, for offender to reasonably acquire reinstatement fees if payment of fees is the only impediment to reinstatement. Privileges may be for occupational or "family necessity" only. RC 4510.10(D)(2).
  2. FRA suspensions as follows:
    - a. First violation: court-ordered privileges not required; reinstatement immediately restores privileges. RC 4509.101(A)(2)(a).
    - b. Second violation within 5 yrs: with FR and compliance with RC 4509.101(A)(5); no privileges allowable for first 15 days. RC 4509.101(A)(2)(b).
    - c. Third violation within 5 yrs: with FR and compliance with RC 4509.101(A)(5); no privileges allowable for first 30 days. RC 4509.101(A)(2)(c).
  3. Upon an appeal of a twelve point suspension. RC 4510.037(G).
  4. Upon certain juvenile probationary suspensions by the issuing court upon finding that the person's ability to continue employment, educational or vocational training, or treatment will be seriously affected. RC 4510.31(C)(1).
  5. For Class D suspensions on Ohio residents for drug convictions from other state or federal court, except during "hard-time" of same. RC 4510.17(E).
- **Conditions** In granting limited driving privileges, the court:
  1. Shall specify the purposes, times and places of the privileges. RC 4510.021(A).
  2. Shall require the offender to provide proof of financial responsibility. RC 4510.021(E).
  3. May impose any other reasonable conditions including requiring immobilizing and disabling device and/or restricted plates. RC 4510.021(A)(C).
- **Purposes** Privileges may be granted for:
  1. Occupational, educational, vocational, or medical purposes. RC 4510.021(A)(1).
  2. Taking driver's or commercial driver's license examination. RC 4510.021(A)(2).
  3. Attending court-ordered treatment. RC 4510.021(A)(3).
  4. For juveniles, practice driving with parent, guardian, or custodian in the seat beside the juvenile. RC 4510.021(D).

Judge Jennifer P. Weiler, Garfield Heights Municipal Court

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**APPENDIX G. OVI/OMWI and Equivalent Offenses****OVI/OMWI and EQUIVALENT OFFENSES**

The Definition of Equivalent Offense can be found in ORC 4511.181

1. **OVI: Operating a Vehicle under the Influence of Alcohol**
2. **OMWI: Operating a Motor Watercraft under the Influence of Alcohol**
3. **Equivalent Offenses:**
  - a. **Vehicular Homicide**
  - b. **Driving under the influence of Drugs/Opiates**
  - c. **DUI Municipal**
  - d. **Vehicular Assault**
  - e. **Vehicular Homicide**
  - f. **Aggravated Vehicular Homicide (not alcohol related)**
  - g. **Aggravated Vehicular Assault w/ Alcohol**
  - h. **Aggravated Vehicular Homicide w/ Alcohol**
  - i. **Vehicular Manslaughter**
  - j. **Involuntary Manslaughter w/ Alcohol**
  - k. **OVUAC: Operating a Vehicle with Alcohol Consumption**
    - l. **OVI Felony**
  - m. **Physical Control**
  - n. **OVI Refusal**
  - o. **CDL OVI (BAC .04 or higher)**

**APPENDIX H. Registry Equivalent Offenses****R.C. 5502.10 REGISTRY EQUIVALENT OFFENSES**

SEMO = Substantially Equivalent Municipal Ordinance

**A. 4511.181 Equivalent Offenses**

- a. 4511.19(A) – OVI
- b. 4511.19(B) – OVUAC
- c. Municipal OVI ordinance
- d. 2903.04 – Involuntary manslaughter where the bases for the violation is 4511.19(A), 4511.19(B), or a municipal OVI ordinance.
- e. 2903.06(A)(1) or a SEMO– Aggravated vehicular homicide as a result of 4511.19(A), 1547.11(A), 4561.15(A)(3)
- f. 2903.08 – Aggravated vehicular assault/vehicular assault or a SEMO
- g. 2903.06(A)(2) or SEMO – Recklessly where finding that offender as under the influence of alcohol, drug, or combo
- h. 2903.06(A)(3) or SEMO – Vehicular homicide where finding that offender is under the influence of alcohol, drug, or combo
- i. 2903.06(A)(4) or SEMO – Vehicular manslaughter where finding that the offender is under the influence of alcohol, drug, or combo
- j. 2903.08(A)(2) or former 2903.07 or SEMO – Vehicular assault where finding that the offender is under the influence of alcohol, drug, or combo.
- k. 1547.11(A) – OMWI
- l. 1547.11(B) – Underage OMWI
- m. Municipal OMWI or Physical Control on water
- n. Violation of existing or former municipal ordinance, another state’s law, or U.S. law that is substantially equivalent to 4511.19 (A) or (B) or 1547.11(A) or (B)
- o. Violation of a former law of this state that was substantially equivalent to 4511.19(A) or (B) or 1547.11 (A) or (B)

**B. 4511.194 Physical Control or a SEMO**

# APPENDICES

## APPENDIX I. Report for Habitual OVI/OMWI Offenders Registry



### REPORT FOR HABITUAL OVI / OMWI OFFENDERS REGISTRY

COURTS should use this form to report offenders who are convicted of their fifth (5th) or subsequent OVI / OMWI offense or equivalent offense (as defined in Ohio Revised Code [R.C.] 4511.181) within the past twenty (20) years. R.C. 5502.10 requires courts to report the fifth or subsequent conviction and all preceding convictions within the past twenty years to the Ohio Department of Public Safety (ODPS), and requires ODPS to list those offenders in a registry of "Ohio's habitual OVI / OMVI offenders."

Please send this report to: OHIO DEPARTMENT OF PUBLIC SAFETY, OHIO TRAFFIC SAFETY OFFICE, P.O. Box 182074, Columbus, OH 43218-2074.

|   |                |                       |              |                  |                 |              |                  |
|---|----------------|-----------------------|--------------|------------------|-----------------|--------------|------------------|
| DATE OF BIRTH (MONTH, DAY, YEAR)                      |                | DRIVER LICENSE NUMBER |              |                  |                 |              |                  |
| LAST NAME   |                | FIRST NAME            |              |                  | MIDDLE NAME     |              |                  |
| RESIDENCE (STREET AND NUMBER OR RDF NUMBER)           |                |                       |              |                  |                 |              |                  |
| CITY  |                | COUNTY                |              |                  | STATE           | ZIP CODE     |                  |
| COURT CODE  |                | CASE NUMBER           |              |                  | SSN (required)  |              |                  |
| NUMBER OF OVI / OMWI CONVICTIONS IN PREVIOUS 20 YEARS | #              | CONVICTION DATE       | OFFENSE CODE | COURT CODE/STATE | CONVICTION DATE | OFFENSE CODE | COURT CODE/STATE |
|   | <i>Example</i> | <i>5/23/08</i>        | <i>02</i>    | <i>OH2520</i>    |                 |              |                  |
| CURRENT CONVICTION                                    |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION (START WITH MOST RECENT)          |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |
| PREVIOUS CONVICTION                                   |                |                       |              |                  |                 |              |                  |

|   |      |
|---|------|
| AUTHORIZED SIGNATURE OF JUDGE / MAGISTRATE / CLERK OF COURT | DATE |
| <b>X</b>  |      |

Send completed copy to:  
**OHIO DEPARTMENT OF PUBLIC SAFETY**  
 Ohio Traffic Safety Office  
 P.O. BOX 182074  
 Columbus, Ohio 43218-2074



APPENDICES



