

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)(i)-(xi).**

| 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 | To be specified by State Board of Pharmacy rule | To be specified by 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 SUSPENSIONS¹

Refusal of Chemical Test - RC 4511.191(B)

| No. of Refusal/ Offense in 10 Years | Type and Length ² of Suspension | Driving Privileges | Restricted Plates | Restricted license/ Interlock ³ |
|--|---|----------------------------|-------------------|---|
| 1 st | Class C (1 year) | After 30 days | Optional | Optional |
| 2 nd | Class B (2 years) | After 90 days | Optional | Optional |
| 3 rd | Class A (3 years) | After 1 year ⁴ | Optional | Optional |
| 4 th or more | 5 years | After 3 years ⁴ | Optional | Optional |

Failed Chemical Test⁵ - RC 4511.191(C)

| No. of Offense in 10 Years | Type and Length ⁶ of Suspension | Driving Privileges | Restricted Plates | Restricted license/ Interlock ³ |
|-------------------------------|---|-----------------------------|-------------------|--|
| 1 st | Class E (90 days) | After 15 days | Optional | Optional |
| 2 nd | Class C (1 year) | After 45 days | Optional | Optional |
| 3 rd | Class B (2 years) | After 180 days ⁷ | Optional | Required if alcohol-related; optional if drug. |
| 4 th or more | Class A (3 years) | After 3 years ⁷ | Optional | Required if alcohol-related; optional if drug. |

¹Under RC 4506.15(A)(8), it is a criminal offense for a CDL holder to refuse to submit to a test under RC 4506.17 or RC 4511.191. A conviction for a CDL OVI under RC 4506.15(A)(2) to (12), or imposition of an ALS under RC 4511.191, results in a **one-year disqualification**. RC 4506.16(D)(1). A second anytime results in a **lifetime disqualification**. RC 4506.16(D)(2). No CDL privileges may be granted on either an ALS or OVI suspension. RC 4510.13(A)(4).

²A refusal suspension terminates upon guilty or no contest plea resulting in conviction with time served 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).

³A RC 4510.46 certified ignition interlock device (IID) violation, or operation of vehicle without IID, is subject to RC 4510.13(A)(8) penalties. Operation without a restricted license is subject to RC 4511.14 penalties.

⁴No privileges may be granted to offender with refusal who has had three or more test refusals within the preceding ten years. RC 4510.13(A)(3).

⁵Failed 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).

⁶Suspension for failing test terminates upon guilty or no contest plea resulting in conviction with time served to be credited against 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 under RC 4511.197(D), where the suspension is continued upon appeal, a subsequent finding of not guilty terminates it.

⁷No privileges may be granted to offender with failed test who has had three or more convictions or guilty pleas within the preceding ten years. RC 4510.13(A)(3).

Appeal RC 4511.197

An administrative license suspension may be appealed at the initial appearance or within 30 days after the same.

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

1. 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).
2. Whether the officer requested the person to submit to a chemical test or tests. RC 4511.197(C)(2).
3. 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).
4. Whichever of the following applies:
 - a. if a test refusal suspension was imposed, whether the person refused to submit to test or tests requested by the officer, or
 - b. 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).

^{*}The BMV Form 2261 ALS court disposition notification lists additional procedural errors and deficiencies for granting the appeal. See, e.g. State v. Ferguson, 2017-Ohio-1394 (6th Dist.), app. den., 151 Ohio St.3d 1503 (2018).

PENALTIES

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

| <i>No. and Type of Offense</i> | <i>Degree of Offense</i> | <i>Incarceration</i> | <i>Fines</i> | <i>Treatment</i> | <i>Type and Length of Suspension</i> | <i>Driving Privileges</i> | <i>Restricted Plates and/or License/ Interlock</i> | <i>Immobilization/ Forfeiture</i> |
|--|--------------------------|--|-----------------|--|---|-----------------------------|---|--|
| 1 st in 10 years [simple OVI, low test or drug] | M-1 | 3 days jail or DIP. Up to 6 months. <i>Must suspend jail if Δ granted UDP.</i> ¹ | \$375 - \$1,075 | Optional | Unclassified (1 to 3 years). ² <i>May be reduced by half w/UDP.</i> ³ | After 15 days | Plates optional. License/interlock ⁴ required for unlimited privileges. | No |
| 1 st in 10 yrs. and either: [a] high test, or [b] refusal with prior in 20 years | M-1 | 6 days jail or 3 days jail and DIP. Up to 6 months. <i>Must suspend jail if Δ granted UDP.</i> ¹ | \$375 - \$1,075 | Optional | Unclassified (1 to 3 years). ² <i>May be reduced by half w/UDP.</i> ³ | After 15 days | Plates required. License/interlock ⁴ required for unlimited privileges. | No |
| 2 nd in 10 years [simple OVI, low test or drug] | M-1 | 10 days jail or 5 days jail and 18 days HAEM and/or CAM. ⁵ Up to 6 months. | \$525 - \$1,625 | Alcohol/drug assessment, recommended treatment mandatory | Unclassified (1 to 7 years) | After 45 days | Plates optional. License/interlock ⁴ required if alcohol-related, optional if drug. | Immobilize 90 days if registered to Δ ^{6,7} |
| 2 nd in 10 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. ⁵ Up to 6 months. | \$525 - \$1,625 | Alcohol/drug assessment, recommended treatment mandatory | Unclassified (1 to 7 years) | After 45 days | Plates required for high-test/optional for refusal. License/interlock ⁴ required if alcohol-related, optional if drug. | Immobilize 90 days if registered to Δ ^{6,7} |
| 3 rd in 10 years [simple OVI, low test or drug] | Unclassified misdemeanor | 30 days jail or 15 days jail and 55 days HAEM and/or CAM. ⁵ Up to 1 year. | \$850 - \$2,750 | Alcohol/drug Addiction program mandatory | Unclassified (2 to 12 years) [minimum may be reduced to 1 year] | After 180 days ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |
| 3 rd in 10 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. ⁵ Up to 1 year. | \$850 - \$2,750 | Alcohol/drug addiction program mandatory | Unclassified (2 to 12 years) [minimum may be reduced to 1 year] | After 180 days ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |

| | | | | | | | | |
|--|--|--|--------------------|--|---------------------------|----------------------------|--|---|
| Either: [a] 4 th or 5 th in 10 years, or [b] 6 th 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. ¹⁰ | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |
| Either: [a] 4 th or 5 th in 10 years, or [b] 6 th in 20 years and high test or refusal | F-4 | 120 days local incarceration , up to 1 year; or 120 days prison , with option of additional 6 to 30 months. ¹⁰ | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |
| Either: 2 nd felony lifetime [simple OVI, low test or drug] | F-3 | 60 days prison . Up to 36 months. ^{10, 11} | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |
| Either: 2 nd felony life-time, and : [a] high test, or [b] refusal | F-3 | 120 days prison . Up to 36 months. ^{10, 11} | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |
| 1 st or 2 nd felony lifetime with RC 2941.1413 specification | F-4 (1 st felony) F-3 (2 nd felony) | 1, 2, 3, 4, or 5 years prison to be served prior and consecutive to any F-4 or F-3 penalties as set forth in boxes above and which may be imposed. | \$1,350 - \$10,500 | Alcohol/drug addiction program mandatory | Class 2 (3 years to life) | After 3 years ⁸ | Plates required. License/interlock ⁴ required if alcohol-related, optional if drug. | Forfeit if registered to Δ ⁹ |

¹ If defendant requests *and* court grants order of “unlimited driving privileges” with certified ignition interlock device (IID), it *must* suspend any jail term imposed. But such term must be served if court order is violated during suspension period. RC 4510.022(C)(2)(c); RC 4519.11(G)(1)(a).

² OVI penalty section providing minimum suspension of *one-year* conflicts with RC 4510.13(A)(2) which says the first *six months* of suspension may not be suspended.

³ Court may reduce up to one-half of license suspension period. RC 4510.022(C)(2)(b).

⁴ RC 4510.14 penalties apply if Δ fails to obtain restricted license. RC 4510.022(D)(2). Penalties for violation of ignition interlock device order contained in RC 4510.022(E).

⁵ “HAEM” 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).

⁶ Court may terminate immobilization if privileges granted. Upon good cause showing that Δ violated any condition, immobilization may be reinstated. RC 4510.13(A)(5)(e)(ii).

⁷ Waiver may be granted for “family or household member” if completely dependent on vehicle and immobilization would be undue hardship. RC 4503.235.

⁸ No privileges may be granted on suspension imposed on offender who has had three or more convictions or guilty pleas within the preceding ten years. RC 4510.13(A)(3).

⁹ 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).

¹⁰ 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).

¹¹ *State v. South* 144 Ohio St. 3d 295 (2015) held, under RC 2929.14(B)(4), maximum sentence for F-3 OVI with RC 2941.1413 specification is *36 months* rather than *5 years* as provided by RC 4511.19(G)(1)(e). *State v. Semencuk* (8th Dist.), 2015-Ohio-5408, app. denied, 145 Ohio St.3d 1459 (2016), applied *South* to a felony with no specification.

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

| <i>No. of Offense</i> | <i>Degree of Offense</i> | <i>Incarceration</i> | <i>Fines</i> | <i>Treatment</i> | <i>License Suspension</i> | <i>Driving Privileges</i> | <i>Restricted License/ Interlock</i> | <i>Immobilization/ Forfeiture</i> |
|-----------------------------------|--------------------------|---|--------------|------------------|---|---------------------------|--|-----------------------------------|
| 1 st in 1 year | M-4 | 0-30 days jail. <i>Must suspend jail if Δ granted UDP.</i> ¹ | \$0-\$250 | Optional | Class 6 (90 days to 2 years). <i>May be reduced by half w/UDP.</i> ³ | After 60 days | License/interlock ⁴ required for unlimited privileges | No |
| 2 nd 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

| <i>No. of Offense</i> | <i>Degree of Offense</i> | <i>Incarceration</i> | <i>Fines</i> | <i>Treatment</i> | <i>License Suspension</i> | <i>Driving Privileges</i> | <i>Restricted License/ Interlock</i> | <i>Immobilization/ Forfeiture</i> |
|-----------------------|--------------------------|----------------------|---------------|------------------|---------------------------------|---------------------------|--------------------------------------|-----------------------------------|
| Any | M-1 | 0-180 days jail | \$0 - \$1,000 | Optional | Class 7 optional (Up to 1 year) | No “hard-time” | Optional | No |