

VILLAGE OF YELLOW SPRINGS
Ordinance #2006-19

AN ORDINANCE REPEALING CHAPTERS 434.01 DRIVING OR PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS- OF CHAPTERS 434 D.U.I; RECKLESS OPERATION; SPEED -OF PART FOUR-TRAFFIC CODE OF THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW SPRINGS, OHIO AND ADDING A NEW CHAPTER 434.01, AS AN EMERGENCY.

WHEREAS, the Village Council wishes continue to insure the health, safety and welfare of its residents, and

WHEREAS, in keeping with the updated traffic laws provided by the State of Ohio, and

WHEREAS, in order to provide for enforcement of these traffic laws by the Yellow Springs Police Department and the Mayor's Court.

NOW, THEREFORE, THE COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:

Section 1. The attached amended sections of the Codified Ordinances are accepted as written. See Attachment A.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the Village of Yellow Springs, Ohio and for the further reason that it is necessary to assist the Village Police Department in preserving the safety and efficiency of the public roadways in the Village; wherefore, this Ordinance shall become effective immediately upon its adoption by the Council.

Jocelyn Hardman, President

Passed: October 2, 2006

Attest: _____
Deborah Benning, Clerk

ROLL CALL:

Jocelyn Hardman __Y__ Karen Wintrow __Y__ Bruce Rickenbach __Y__

Judith Hempfling Absent Kathryn Chase __Y__

ATTACHMENT A

434.01

DRIVING OR PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

(a) Driving Under the Influence.

(1) No person shall operate any vehicle within this Municipality, if, at the time of the operation, any of the following apply:

A. The person is under the influence of alcohol, a drug of abuse, or a combination of them.

B. The person has a concentration of 0.08% or more but less than 0.17% by weight per unit volume of alcohol in the person's whole blood.

C. The person has a concentration of 0.096% or more but less than 0.204% by weight per unit volume of alcohol in the person's blood serum or plasma.

D. The person has a concentration of 0.08 grams or more but less than 0.17 grams by weight of alcohol per 210 liters of the person's breath.

E. The person has a concentration of 0.11 grams or more but less than 0.238 grams by weight of alcohol per 100 milliliters of the person's urine.

F. The person has a concentration of 0.17% or more by weight per unit volume of alcohol in the person's whole blood.

G. The person has a concentration of 0.204% or more by weight per unit volume of alcohol in the person's blood serum or plasma.

H. The person has a concentration of 0.17 grams or more by weight of alcohol per 210 liters of the person's breath.

I. The person has a concentration of 0.238 grams or more by weight of alcohol per 100 milliliters of the person's urine.

J. Except as provided in division (k) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

1. The person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

2. The person has a

concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

3. The person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

4. The person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

5. The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

6. The person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

7. The person has a concentration of marihuana in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least 2 nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

8. Either of the

following applies:

a. The

person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 5 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

b. As

measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

9. The person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

10. The person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

(2) No person who, within 20 years of the conduct described in division (a)(2)A. of this section, previously has been convicted of or pleaded guilty to a violation of this division or a substantially equivalent State law or municipal ordinance, division (a)(1) or (b) of this section or a substantially equivalent State law

or municipal ordinance, or a municipal O.V.I. offense shall do both of the following:

A. Operate any vehicle within this Municipality while under the influence of alcohol, a drug of abuse, or a combination of them;

B. Subsequent to being arrested for operating the vehicle as described in division (a)(2)A. of this section, being asked by a law enforcement officer to submit to a chemical test or tests under Ohio R.C. 4511.191 or any substantially equivalent municipal ordinance, and being advised by the officer in accordance with Ohio R.C. 4511.192 or any substantially equivalent municipal ordinance of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(b) Underage Alcohol Consumption. No person under 21 years of age shall operate any vehicle within this Municipality if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least 0.02% but less than 0.08% by weight per unit volume of alcohol in the person's whole blood;

(2) The person has a concentration of at least 0.03% but less than 0.096% by weight per unit volume of alcohol in the person's blood serum or plasma;

(3) The person has a concentration of at least 0.02 grams but less than 0.08 grams by weight of alcohol per 210 liters of the person's breath;

(4) The person has a concentration of at least 0.028 grams but less than 0.11 grams by weight of alcohol per 100 milliliters of the person's urine.

(c) Prosecution; Limitation on Convictions. In any proceeding arising out of one incident, a person may be charged with a violation of division (a)(1)A. or (a)(2) and a violation of division (b)(1), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(d) Evidence; Tests.

(1) In any criminal prosecution for a violation of division (a) or (b) of this section or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in Ohio R.C. 4511.192(A) as the

maximum period of time during which a person may consent to a chemical test or tests as described in that section. When a person submits to a blood test at the request of a law enforcement officer under Ohio R.C. 4511.191 or a substantially equivalent municipal ordinance, only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood. The bodily substance withdrawn shall be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to Ohio R.C. 3701.143.

(2) In a criminal prosecution for a violation of division (a) of this section or for an equivalent offense, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (a)(1)B., (a)(1)C., (a)(1)D. and (a)(1)E. of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (a)(1)J. of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution for a violation of division (b) of this section.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis. The person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. The form to be read to the person to be tested, as required under division (g) of this section, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4) A. As used in division (d)(4)B. and C. of this section, "National Highway Traffic Safety Administration" means the National Highway Traffic Safety Administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C. 105.

B. In any criminal prosecution or

juvenile court proceeding for a violation of division (a) or (b) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:

1. The officer may testify concerning the results of the field sobriety test so administered.

2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

3. If testimony is presented or evidence is introduced under division (d)(4)B.1. or 2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

C. Division (d)(4)B. of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (d)(4)B. of this section.

(e) (1) Subject to division (e)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (a)(1)B., (a)(1)C., (a)(1)D., (a)(1)E., (a)(1)F., (a)(1)G., (a)(1)H., (a)(1)I. or (a)(1)J. or (b)(1), (b)(2), (b)(3), or (b)(4) of this section or for an equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the Department of Health authorizing an analysis as described in this division that contains an analysis of

the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division shall be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

A. The signature, under oath, of any person who performed the analysis;

B. Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

C. A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

D. An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (e)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (e)(1) of this section shall not be prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.

(f) Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(g) Implied Consent.

(1) Definition. "Physical control" has the same meaning as in Ohio R.C. 4511.194.

(2) Implied consent to chemical tests. Any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within this Municipality or who is in physical control of a vehicle shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of division (a), (b) or (o) of this section, Ohio R.C. 4511.19(A) or (B), Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, or any other municipal O.V.I. ordinance.

(3) The chemical test or tests under division (g)(2) of this section shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle in violation of a division, section, or ordinance identified in division (g)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(4) Effect of death or unconsciousness. Any person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in division (g)(2) of this section and the test or tests may be administered, subject to Ohio R.C. 313.12 to 313.16.

(ORC 4511.191(A))

(5) Advice required. The arresting law enforcement officer shall give advice in accordance with this division to any person under arrest for a violation of division (a), (b) or (o) of this section, Ohio R.C. 4511.19(A) or (B), Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, or any other municipal O.V.I. ordinance. The officer shall give that advice in a written form that contains the information described in division (g)(6) of this section and shall read the advice to the person. The form shall contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. One or more persons shall witness the arresting officer's reading of the form, and the witnesses shall certify to this fact by signing the form. 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.

(6) Certification of arrest. If a person is under arrest as described in division (g)(5) of this section, before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine, the arresting officer shall read the following form to the person:

"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 prior conviction of O.V.I., O.V.U.A.C., 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 20 years, you are now under arrest for State O.V.I., and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the State O.V.I.

(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."

(7) Actions required by arresting officer. If the arresting law enforcement officer does not ask a person under arrest as described in division (g)(5) of this section to submit to a chemical test or tests under Ohio R.C. 4511.191 or this section, the arresting officer shall seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the arrest, and, upon the surrender, the agency immediately shall forward the license or permit to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court shall retain it pending the arrested person's initial appearance and any action taken under Ohio R.C. 4511.196.

(8) A. If a law enforcement officer asks a person under arrest as described in division (g)(5) of this section to submit to a chemical test or tests under Ohio R.C. 4511.191 or this section, if the officer advises the person in accordance with this section of the consequences of the person's refusal or submission, and if either the person refuses to submit to the test or tests or, unless the arrest was for a violation of division (o) of this section, Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, the person submits to the test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer shall do all of the following:

1. On behalf of the Registrar of Motor Vehicles, notify the person that, independent of any penalties or sanctions imposed upon the person, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date of the person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance;

2. Seize the driver's or commercial driver's license or permit of the person and immediately forward it to the Registrar. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the person is given notice of the suspension, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the Registrar;

3. Verify the person's current residence and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the Registrar of the change;

4. Send to the Registrar, within 48 hours after the arrest of the person, a sworn report that includes all of the following statements:

a. That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle in violation of Ohio R.C. 4511.19(A) or (B) or a municipal O.V.I. ordinance or for being in physical control of a stationary vehicle in violation of Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance;

b. That the person was arrested and charged with a violation of Ohio R.C. 4511.19(A) or (B), Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, or a municipal O.V.I. ordinance;

c. That the officer asked the person to take the designated chemical test or tests, advised the person in accordance with this section of the consequences of submitting to, or refusing to take, the test or tests, and gave the person the form described in division (g)(6) of this section;

d. That either the person refused to submit to the chemical test or tests or, unless the arrest was for a violation of Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, the person submitted to the

chemical test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

B. Division (g)(8)A. of this section does not apply to a person who is arrested for a violation of division (o) of this section, Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, or any other substantially equivalent municipal ordinance, who is asked by a law enforcement officer to submit to a chemical test or tests under this section, and who submits to the test or tests, regardless of the amount of alcohol, a controlled substance, or a metabolite of a controlled substance that the test results indicate is present in the person's whole blood, blood serum or plasma, breath, or urine.

(9) Sworn report of arresting officer.

A. The arresting officer shall give the officer's sworn report that is completed under this section to the arrested person at the time of the arrest, or the Registrar of Motor Vehicles shall send the report to the person by regular first class mail as soon as possible after receipt of the report, but not later than 14 days after receipt of it. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than 48 hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

B. The sworn report of an arresting officer completed under this section is prima facie proof of the information and statements that it contains. It shall be admitted and considered as prima facie proof of the information and statements that it contains in any appeal under Ohio R.C. 4511.197 relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report.

(ORC 4511.192)

(10) Suspension effective immediately. A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under this section for the time described in Ohio R.C. 4511.191(B) or (C) is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent

finding that the person is not guilty of the charge that resulted in the person's being requested to take the chemical test or tests under division (g) of this section does not affect the suspension.

(11) Initial appearance. If a person arrested for operating a vehicle in violation of division (a) or (b) of this section, Ohio R.C. 4511.19(A) or (B), or any other municipal O.V.I. ordinance, or for being in physical control of a vehicle in violation of division (o) of this section or Ohio R.C. 4511.194 or a substantially equivalent municipal ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under Ohio R.C. 4511.191(B) or (C) or Ohio R.C. Chapter 4510, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the persons' arrest or the issuance of the citation to him or her, subject to any continuance granted by the court pursuant to Ohio R.C. 4511.197 regarding the issues specified in that section.
(ORC 4511.191(D))

(h) Penalty for Driving Under the Influence.

(1) Whoever violates any provisions of divisions (a)(1)A. through (a)(1)I. or (a)(2) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates division (a)(1)J. of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under Ohio R.C. Chapter 2929, except as otherwise authorized or required by divisions (h)(1)A. through (h)(1)E. of this section:

A. Except as otherwise provided in division (h)(1)B., C., D., or E. of this section, the offender is guilty of a misdemeanor of the first degree and the court shall sentence the offender to all of the penalties and sanctions provided in Ohio R.C. 4511.19(G)(1)(a)(i) to (iv).

B. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six years of the offense previously has been convicted of or pleaded guilty to one violation of division (a) or (b) of this section, or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the penalties and sanctions provided in Ohio R.C. 4511.19(G)(1)(b)(i) to (v).

C. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to two violations of division (a) or (b) of this section or other equivalent offenses is guilty of a misdemeanor. The court shall sentence the offender to all of the penalties and sanctions provided in Ohio R.C. 4511.19(G)(1)(c)(i) to (vi).

D. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to three or more violations of division (a) or (b) of this section or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature is guilty of a felony to be prosecuted under appropriate State law.

E. An offender who previously has been convicted of or pleaded guilty to a violation of Ohio R.C. 4511.19(A) that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony to be prosecuted under appropriate State law.

(2) An offender who is convicted of or pleads guilty to a violation of division (a) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section or Ohio R.C. 4511.19 as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in Ohio R.C. 4511.191(F)(2).

(3) A. If an offender is sentenced to a jail term under Ohio R.C. 4511.19(G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) and if, within 60 days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing, the court may impose an alternative sentence as specified in Ohio R.C. 4511.19(G)(3) that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

B. As an alternative to the mandatory jail terms as required by Ohio R.C. 4511.19(G)(1), the court may sentence the offender as provided in Ohio R.C. 4511.19(G)(3).

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (h) of this section or Ohio R.C. 4511.19(G) and if Ohio R.C. 4510.13 permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under Ohio R.C. 4503.231, except as provided in division (B) of that section, the

court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in Ohio R.C. 4503.231(B).

(5) Fines imposed under this section for a violation of division (a) of this section shall be distributed as provided in Ohio R.C. 4511.19(G)(5).

(6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (h)(1)C., D., or E. of this section is assigned or transferred and Ohio R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(7) As used in division (g) of this section, "electronic monitoring" has the same meaning as in Ohio R.C. 2929.01.

(i) Penalty for Operating a Vehicle After Underage Alcohol Consumption. Whoever violates division (b) of this section is guilty of operating a motor vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in division (i)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in Ohio R.C. 4510.02(A)(6);

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of division (a) or (b) of this section or other equivalent offense or offenses, the offender is guilty of a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in Ohio R.C. 4510.02(A)(4).

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in Ohio R.C. 2941.1414 and if the court imposes a jail term for the violation of division (b) of this section, the court shall impose upon the offender an additional definite jail term pursuant to Ohio R.C. 2929.24(E).

(j) (1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under Ohio R.C. Chapter 3793 by the Director of Alcohol and Drug Addiction Services.

(2) An offender who stays in a drivers' intervention

program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund.

(k) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section or Ohio R.C. 4511.19 files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.

(l) Division (a)(1)J. of this section does not apply to a person who operates a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(m) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in division (a)(1)J. of this section also apply in a prosecution of a violation of Ohio R.C. 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(n) All terms defined in Ohio R.C. 4510.01 apply to this section. If the meaning of a term defined in Ohio R.C. 4510.01 conflicts with the meaning of the same term as defined in Ohio R.C. 4501.01 or 4511.01, the term as defined in Ohio R.C. 4510.01 applies to this section.

(ORC 4511.19(A) - (M))

(o) Physical Control of Vehicle While Under the Influence.

(1) Definition. As used in this division, "physical control" means being in the driver's position of the front seat of a vehicle and having possession of the vehicle's ignition key or other ignition device.

(2) Generally. No person shall be in physical control of a vehicle if, at the time of the physical control, any of the following apply:

A. The person is under the influence of alcohol, a drug of abuse, or a combination of them.

B. The person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in divisions (a)(1)B.,

(a)(1)C., (a)(1)D., or (a)(1)E. of this section.

C. Except as provided in division (o)(5) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in division (a)(1)J. of this section.

(3) A. In any criminal prosecution or juvenile court proceeding for a violation of this section, if a law enforcement officer has administered a field sobriety test to the person in physical control of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally acceptable field sobriety tests that were in effect at the time the tests were administered, including but not limited to any testing standards then in effect what were set by the National Highway Traffic Safety Administration, all of the following apply:

1. The officer may testify concerning the results of the field sobriety test so administered.

2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

3. If testimony is presented or evidence is introduced under division (o)(3)A.1. or 2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

B. Division (o)(3)A. of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (o)(3)A. of this section.

(4) Penalty. Whoever violates this division (o) is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in Ohio R.C. 4510.02(A)(7).

(5) Exception. Division (o)(2)C. of this section does not apply to a person who is in physical control of a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in division (a)(1)J. of this section if both of the following apply:

A. The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

B. The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(ORC 4511.194)

(p) As used in this section:

(1) "Community residential sanction", "jail", "mandatory prison term", "mandatory term of local incarceration", "prison term", and "sanction" have the same meanings as in Ohio R.C. 2929.01.

(2) "Drug of abuse" has the same meaning as in Ohio R.C. 4506.01.

(3) "Equivalent offense" means any of the following:

A. A violation of Ohio R.C. 4511.19(A) or (B);

B. A violation of a municipal O.V.I. ordinance;

C. A violation of Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section;

D. A violation of Ohio R.C. 2903.06(A)(1) or Ohio R.C. 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;

E. A violation of Ohio R.C. 2903.06(A)(2), (A)(3), or (A)(4), Ohio R.C. 2903.08(A)(2), or former Ohio R.C. 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

F. A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to Ohio R.C. 4511.19(A) or (B);

G. A violation of a former law of this state that was substantially equivalent to Ohio R.C. 4511.19(A) or (B).

(4) "Mandatory jail term" means the mandatory term in

jail of 3, 6, 10, 20, 30, or 60 days that must be imposed under Ohio R.C. 4511.19(G)(1)(a), (G)(1)(b), or (G)(1)(c) upon an offender convicted of a violation of division (A) of that section and in relation to which all of the following apply:

A. Except as specifically authorized under Ohio R.C. 4511.19, the term must be served in a jail.

B. Except as specifically authorized under Ohio R.C. 4511.19, the term cannot be suspended, reduced, or otherwise modified pursuant to Ohio R.C. 2929.21 through 2929.28 or any other provision of the Ohio Revised Code.

(5) “Municipal O.V.I. ordinance” and “municipal O.V.I. offense” mean any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(ORC 4511.181)

Statutory reference:

Disposition of fines, immobilization of vehicle and impoundment of license plates, criminal forfeiture

for municipal ordinance conviction, see Ohio R.C. 4511.193

Effect of refusal to submit to test, seizure of license, suspension periods, appeal procedures,

occupational driving privileges, and indigent drivers alcohol treatment funds, see Ohio

R.C. 4511.191(C) - (N)

Judicial pretrial suspension, initial appearance, see Ohio R.C. 4511.196

Mayor's Court to suspend driver's license, see Ohio R.C. 1905.201

Seizure of vehicles upon arrest, see Ohio R.C. 4511.195

Trial judge to suspend driver's license, see Ohio R.C. 4510.05