

# 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	≥ amount specified by board of pharmacy rule under RC 4729.041	≥ amount specified by board of pharmacy rule under RC 4729.041	(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<sup>1</sup>

### Refusal of Chemical Test - RC 4511.191(B)

No. of Refusal/ Offense in 10 Years	Type and Length <sup>2</sup> of Suspension	Driving Privileges	Restricted Plates	Restricted license/ Interlock <sup>3</sup>
1 <sup>st</sup>	Class C (1 year)	Ordinarily, after 30 days <sup>6</sup>	Optional	Optional
2 <sup>nd</sup>	Class B (2 years)	After 90 days	Optional	Required if alcohol-related; optional if drug
3 <sup>rd</sup>	Class A (3 years)	After 1 year	Optional	Required if alcohol-related; optional if drug
4 <sup>th</sup> or more	5 years	After 3 years	Optional	Required if alcohol-related; optional if drug

### Failed Chemical Test- RC 4511.191(C)<sup>4</sup>

No. of Offense in 10 Years	Type and Length <sup>5</sup> of Suspension	Driving Privileges	Restricted Plates	Restricted license/ Interlock <sup>3</sup>
1 <sup>st</sup>	Class E (90 days)	Ordinarily, after 15 days <sup>7</sup>	Optional	Optional
2 <sup>nd</sup>	Class C (1 year)	After 45 days	Optional	Required if alcohol-related; optional if drug.
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> Operator is deemed to have given consent to submit to chemical test(s) of his or her blood, blood serum or plasma, breath, oral fluid, or urine. RC 4511.191(A)(2).

<sup>2</sup> A 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).

<sup>3</sup> A subsequent finding of not guilty does not affect the suspension. RC 4511.191(D)(1).

<sup>4</sup> A 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.

<sup>5</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>6</sup> Suspension for failing test terminates upon guilty or no contest plea resulting in conviction with time served to be credited against judicial suspension.

<sup>7</sup> RC 4511.191(C)(2). Any subsequent finding of not guilty does not affect the suspension. RC 4511.191(D)(1). However, where the suspension is continued on appeal, a subsequent finding of not guilty terminates it. RC 4511.197(D).

<sup>8</sup> Driving privilege exception: If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 90 days and IID required. RC 4510.13(A)(6)(a).

<sup>9</sup> Driving privilege exceptions: (1) the 15-day suspension may be waived if the Δ (a) was never convicted of RC 4511.194 and (b) submitted to chemical test in pending case. (2) If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 45 days and IID required. RC 4510.13(A)(5)(a).

### 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:<sup>\*</sup>

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 which have been recognized by some courts. See, e.g. *State v. Ferguson*, 2017-Ohio-1394 (6<sup>th</sup> Dist.), app. den., 151 Ohio St.3d 1503 (2018).

## PENALTIES

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

No. and Type of Offense	Degree of Offense	Incarceration	Fines	Treatment	Type and Length of Suspension	Driving Privileges	Restricted Plates and/or License/ Interlock <sup>4</sup>	Immobilization/ Forfeiture
1 <sup>st</sup> in 10 years [simple OVI, low test or drug]	M-1	3 days jail <u>or</u> DIP. Up to 6 months. <u>Must suspend jail if Δ granted UDP.</u> <sup>1</sup>	\$565 - \$1,075	Optional	Unclassified (1 to 3 years). <u>May be reduced by half w/UDP.</u> <sup>2</sup>	Ordinarily, after 15 days <sup>3</sup>	Plates optional. License/interlock generally optional. <sup>5</sup>	Immobilize 90 days if registered to Δ with prior RC 4511.194
1 <sup>st</sup> in 10 yrs. and either: [a] high test, or [b] refusal with prior in 20 years	M-1	6 days jail <u>or</u> 3 days jail and DIP. Up to 6 months. <u>Must suspend jail if Δ granted UDP.</u> <sup>1</sup>	\$565 - \$1,075	Optional	Unclassified (1 to 3 years). <u>May be reduced by half w/UDP.</u> <sup>2</sup>	Ordinarily, after 15 days <sup>3</sup>	Plates optional. License/interlock generally optional. <sup>5</sup>	Immobilize 90 days if registered to Δ with prior RC 4511.194
2 <sup>nd</sup> in 10 years [simple OVI, low test or drug]	M-1	10 days jail <u>or</u> 5 days jail and 18 days HAEM and/or CAM. <sup>5</sup> Up to 6 months.	\$715 - \$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 required if alcohol-related, optional if drug.	Immobilize 90 days if registered to Δ <sup>6,7</sup>
2 <sup>nd</sup> in 10 years and either: [a] high test, or [b] refusal with prior in 20 years	M-1	20 days jail <u>or</u> 10 days jail and 36 days HAEM and/or CAM. <sup>5</sup> Up to 6 months.	\$715 - \$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 required if alcohol-related, optional if drug.	Immobilize 90 days if registered to Δ <sup>6,7</sup>
3 <sup>rd</sup> in 10 years [simple OVI, low test or drug]	Unclassified misdemeanor	30 days jail <u>or</u> 15 days jail and 55 days HAEM and/or CAM. <sup>5</sup> Up to 1 year.	\$1,040 - \$2,750	Alcohol/drug Addiction program mandatory	Unclassified (2 to 12 years) [minimum may be reduced to 1 year]	After 180 days	Plates required. License/interlock required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>
3 <sup>rd</sup> in 10 years and either: [a] high test, or [b] refusal with prior in 20 years	Unclassified misdemeanor	60 days jail <u>or</u> 30 days jail and 110 days HAEM and/or CAM. <sup>5</sup> Up to 1 year.	\$1,040 - \$2,750	Alcohol/drug addiction program mandatory	Unclassified (2 to 12 years) [minimum may be reduced to 1 year]	After 180 days	Plates required. License/interlock required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>
Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 10 years, or [b] 6 <sup>th</sup> in 20 years [simple OVI, low test or drug]	F-4	60 days <b>local incarceration</b> , up to 1 year; <u>or</u> 60 days <b>prison</b> , with option of additional 6 to 30 months.	\$1,540 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>
Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 10 years, or [b] 6 <sup>th</sup> in 20 years and high test or refusal	F-4	120 days <b>local incarceration</b> , up to 1 year; <u>or</u> 120 days <b>prison</b> , with option of additional 6 to 30 months.	\$1,540 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>
Either: 2 <sup>nd</sup> felony lifetime [simple OVI, low test or drug]	F-3	60 days <b>prison</b> . Up to 36 months.	\$1,540 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>
Either: 2 <sup>nd</sup> felony lifetime, and: [a] high test, or [b] refusal	F-3	120 days <b>prison</b> . Up to 36 months.	\$1,540 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit 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)	1, 2, 3, 4, or 5 years <b>prison</b> to be served <b>prior and consecutive</b> to any F-4 or F-3 penalties as set forth in boxes above and which may be imposed.	\$1,540 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>8</sup>

<sup>1</sup> If defendant requests and court grants order of "unlimited driving privileges" with certified ignition interlock device (IID), court *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).

<sup>2</sup> See RC 4510.022(C)(2)(b).

<sup>3</sup> **Driving privilege exceptions:** (1) the 15-day suspension may be waived if the Δ (a) was never convicted of RC 4511.194 and (b) submitted to chemical test in pending case. (2) If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 45 days and IID required. RC 4510.13(A)(5)(a).

<sup>4</sup> 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).

<sup>5</sup> "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).

<sup>6</sup> 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).

<sup>7</sup> Waiver may be granted for "family or household member" if completely dependent on vehicle and immobilization would be undue hardship. RC 4503.235.

<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).

### 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 License/ Interlock	Immobilization/ Forfeiture
1 <sup>st</sup> in 1 year	M-4	0-30 days jail. <u>Must suspend jail if Δ granted UDP.</u> <sup>1</sup>	\$0-\$250	Optional	Class 6 (90 days to 2 years). <u>May be reduced by half w/UDP.</u> <sup>2</sup>	After 60 days	License/interlock <sup>4</sup> required for unlimited privileges	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 License/ Interlock	Immobilization/ Forfeiture
Any	M-1	0-180 days jail	\$0 - \$1,000	Optional	Class 7 optional (Up to 1 year)	No "hard time"	Optional	No