



## Operating a Vehicle Under the Influence of Drugs or Alcohol

A Summary of Ohio OVI Law



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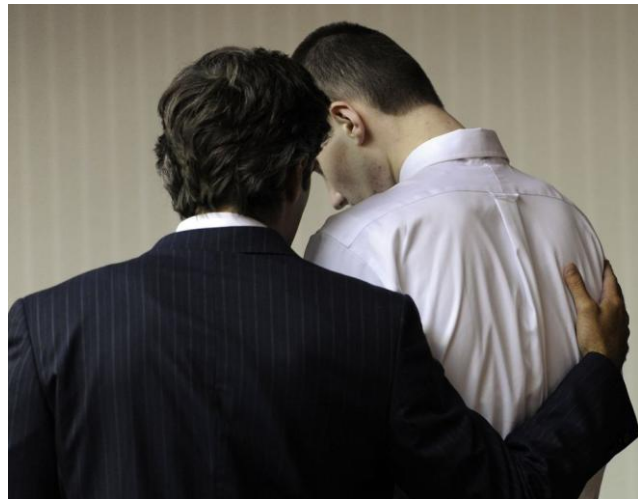


# Introduction

This paper is designed to help educate non-lawyers as to what happens when an individual is charged with an OVI in Ohio and what can be expected throughout the legal process.

Ohio law prohibits drivers from operating a vehicle while impaired by either drugs or alcohol. A driver who is pulled over for being suspected of driving while impaired may be charged with OVI under ORC § 4511.19. Many people think DUI and OVI are different, this is not the case. The terms DUI and OVI in Ohio have the same meaning and therefore are used interchangeably.

Ohio OVI law can be complicated. It is even difficult sometimes for criminal defense attorneys to fully understand. The fact Ohio OVI law has changed numerous times throughout the past couple of decades and continues to change does not make it any easier. This is why it is important to hire an experienced OVI attorney who is up to speed on the current status of OVI law in Ohio.



## Operating a Vehicle While Impaired

What must the state prove to convict an individual of OVI? Essentially, the state must prove beyond a reasonable doubt that the individual: (1) operated; (2) a vehicle, streetcar, or trackless trolley; (3) anywhere in the state; (4) while under the influence drugs or alcohol. If the state fails to prove beyond a reasonable doubt each and every element of the offense, the individual cannot be convicted of an OVI.



To show that the individual operated the vehicle, the state must prove that he or she “caused movement” to the vehicle. Thus, to operate a vehicle does not necessarily mean to drive a vehicle — all the state needs to show is that the individual caused the vehicle to move.

Regarding the second element, the state must prove that the individual caused movement to a vehicle, streetcar or trackless trolley. ORC § 4511.01(A) defines the term “vehicle.” Essentially, it includes any device in, upon or by which any person or property may be transported via a highway. Interestingly, it exempts devices moved by human power except bicycles. Therefore, an individual riding a bike while allegedly impaired by drugs or alcohol can be charged with OVI. The definition of “vehicle” however, does not include electric personal assistive devices such as motorized wheelchairs.

Third, the state must show that the individual operated the vehicle within the state. Thus, the fact that an individual drove a vehicle impaired on private property does not make it legal.

The last element the state must prove beyond a reasonable doubt is showing that the individual was impaired. Many people believe drinking and driving is against the law. However, drinking and driving in and of itself is not illegal. What is illegal is operating a vehicle while impaired or under the influence of drugs or alcohol. This essentially means that the individual consumed some amount of drugs or alcohol (or both) that adversely affected and noticeably impaired his or her actions, reactions or mental processes under the circumstances, which deprived the defendant of clearness of intellect and control of him or herself, which he or she would have otherwise possessed. This definition is a mouthful, but basically, the issue is whether such consumption affected the defendant so as to impair, to a noticeable degree, his or her ability to operate the vehicle. If so, the person is considered “under the influence.”

Further, concerning the “under the influence” element the state must prove, many people believe that if an individual blows under the legal limit, he or she cannot be charged with and convicted of OVI. While rare, it does happen. Blowing below .08 does not necessarily mean the individual is not “under the influence.” The individual might test below the legal limit, yet the amount of alcohol in his or her system could have been enough to adversely affect his or her ability to operate the vehicle to a noticeable degree. Based on all of the circumstances, if the officer has probable cause to believe the individual consumed drugs or alcohol that impaired his or her ability to operate the vehicle, the person may be charged with and ultimately convicted of OVI.

On the flip side, in the eyes of the law, blowing .08 or above means an individual is “under the influence” regardless of whether his or her ability to operate a vehicle is actually impaired to a noticeable degree. Thus, as a matter of law, the individual is impaired if he or she tests at .08 or above.



# The Administrative License Suspension

## What is an ALS?

The administrative license suspension form is usually white or yellow and looks like the sample form below:

OHIO BUREAU OF MOTOR VEHICLES									
REPORT OF LAW ENFORCEMENT OFFICER									
ADMINISTRATIVE LICENSE SUSPENSION /									
NOTICE OF POSSIBLE CDL DISQUALIFICATION / IMMOBILIZATION / FORFEITURE									
A. NAME			DRIVER LICENSE NUMBER			CLASS		STATE	
CURRENT STREET ADDRESS (AS VERIFIED BY OFFICER)									
CITY				OHIO COUNTY OF RESIDENCE			STATE	ZIP CODE	
DATE OF BIRTH		SOCIAL SECURITY NUMBER		4 DIGIT COURT CODE		COUNTY OF VIOLATION			
DATE OF VIOLATION		TIME OF VIOLATION		VIN					
DATE OF REFUSAL OR TEST		TIME OF REFUSAL OR TEST		YEAR	MAKE	LICENSE PLATE NO.	TYPE PLATE	STATE	
VEHICLE OWNER'S NAME			DATE OF BIRTH		STREET ADDRESS				
CITY			STATE		ZIP CODE				
VEHICLE STORED AT (STREET ADDRESS)							CITY		
<p><b>B. Officer to Complete for All OVI / Physical Control Arrests:</b></p> <p>Circle arrest type: OVI Physical Control</p> <p>The driver:</p> <p><input type="checkbox"/> Refused to submit to test (s).</p> <p><input type="checkbox"/> Submitted to test (s). 0. _____ % alcohol test result</p> <p><input type="checkbox"/> Circle test type for which results were reported: Whole Blood, Breath, Urine, Blood Serum, or Blood Plasma</p> <p><input type="checkbox"/> Was placed under an Administrative License Suspension (4511.191)</p> <p><input type="checkbox"/> License was seized</p> <p><input type="checkbox"/> Offender was provided a copy of this form at the time of arrest.</p> <p>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: _____</p> <p><input type="checkbox"/> 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.</p> <p><input type="checkbox"/> Specify controlled substance and/or metabolite results: _____</p> <p><input type="checkbox"/> Subject tested positive for prohibited level of marijuana metabolite _____ (specify amount) and was under the influence of alcohol and/or a drug of abuse.</p> <p><input type="checkbox"/> Controlled substance or metabolite test result received on _____, Subject served with notice of Administrative License Suspension on _____</p>									
<p><b>C. Officer to Complete Applicable Vehicle Sanctions:</b></p> <p><input type="checkbox"/> License plate(s) seized</p> <p><input type="checkbox"/> Vehicle seized under 4511.195 (OVI)</p> <p><input type="checkbox"/> Vehicle seized under 4511.203 only (DUS or wrongful entrustment of a motor vehicle) if so, <b>Do Not Mail this form to the BMV</b></p> <p><input type="checkbox"/> Vehicle subject to immobilization</p> <p><input type="checkbox"/> Vehicle subject to forfeiture</p>									
<p><b>D. Officer to Complete if Offender was Operating a Commercial Vehicle:</b></p> <p><input type="checkbox"/> Read and showed advice to offender (4506.17)</p> <p><input type="checkbox"/> Refused to submit to test(s)</p> <p><input type="checkbox"/> Submitted to test(s) 0. _____ % alcohol test result (Circle One) Whole Blood, Breath, Urine, Blood Serum, or Blood Plasma</p> <p><input type="checkbox"/> Prohibited Alcohol Content <b>without</b> OVI charge</p> <p><input type="checkbox"/> Prohibited Alcohol Content <b>with</b> OVI charge</p> <p><input type="checkbox"/> Commercial vehicle per definition (4506.01(E))</p> <p><input type="checkbox"/> 24-hour out-of-service order</p> <p><input type="checkbox"/> CDL to be disqualified</p> <p><input type="checkbox"/> CDL seized</p> <p><input type="checkbox"/> Hazardous material</p> <p><input type="checkbox"/> Operated a commercial vehicle under the influence of a controlled substance</p>									
<p><b>E. The advice on the back of this form was read to me and I have received a copy of this form:</b></p> <p style="text-align: center;"><input checked="" type="checkbox"/> SIGNATURE OF DRIVER <span style="float: right;"><input type="checkbox"/> REFUSED TO SIGN</span></p>									
<p><b>F. Complete Below Only for an OVI / Physical Control ARREST:</b></p> <p>We, the undersigned, certify that the advice prescribed by the General Assembly (under 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.</p> <p><b>X</b> SIGNATURE OF ARRESTING OFFICER <span style="float: right;">OHIO _____</span></p> <p style="text-align: right;">ENFORCEMENT AGENCY <span style="float: right;">N.C.I.C. NUMBER</span></p> <p>OFFICER'S BUSINESS STREET ADDRESS _____</p> <p><b>X</b> SIGNATURE OF WITNESS <span style="float: right;">CITY _____ STATE _____ ZIP CODE _____</span></p>									
<p><b>COMPLETE BELOW ONLY ON OVI ARREST, PHYSICAL CONTROL ARREST, OR ARREST INVOLVING COMMERCIAL VEHICLE. AFFIDAVIT OF ARRESTING OFFICER:</b></p> <p>STATE OF OHIO, COUNTY OF _____</p> <p>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.</p> <p><b>X</b> ARRESTING OFFICER SIGNATURE _____</p> <p>Sworn to before me this _____ day of _____ 20____ <b>X</b> NOTARY PUBLIC'S SIGNATURE _____</p> <p><b>X</b> DEPUTY CLERK OF COURT'S SIGNATURE _____ City of _____</p> <p>BMV 2255 7/06 <span style="float: right;">White/Original – BMV Canary – Law Enforcement Pink – Court Goldenrod - Offender</span></p>									



If you have been charged with but not yet convicted of OVI in Ohio, you are probably wondering why your license is suspended. This is known as an administrative license suspension (“ALS”). The arresting officer imposes an ALS on behalf of the Ohio Bureau of Motor Vehicles (“BMV”) on an individual at the time he or she is arrested on suspicion of OVI. An ALS is active while the OVI charge is pending. Thus, even if you have not been convicted of OVI, you are still subject to an ALS.

Ohio’s implied consent law, ORC § 4511.191(A)(2), is what justifies an ALS. Essentially, in Ohio, driving is considered a regulated “privilege” and not an absolute “right.” Thus, a person does not have an absolute right to the licensed operation of a vehicle in the state. Instead, a condition of exercising that privilege is that a driver who is arrested on suspicion of OVI, through Ohio statute, has impliedly given his or her consent to submit to at least one chemical test (meaning either a breath, blood, or urine test) to detect the drug or alcohol level in his or her system.

### What is an ALS?

An ALS is imposed on an individual who is charged with a OVI and who either: (1) submitted to and failed a chemical or breath test to detect the drug or alcohol level in one’s system; or (2) refused to submit to a chemical or breath test to detect the drug or alcohol level in one’s system.

An individual fails a chemical test if he or she tests above the per se limit. This means that an individual fails a chemical test if his or her whole blood alcohol level measures at .08 percent or above; his or her blood serum or plasma alcohol level measures at .096 percent or above; his or her breath alcohol level measures at .08 percent or above, or his or her urine alcohol level measures at .11g or above.

A person refuses a chemical test if he or she manifests an unwillingness to submit to the chemical test through his or her actions or words. Further, if he or she does not agree to submit to the test or tests within two hours of the time of the alleged violation, that failure automatically constitutes a refusal.

Sometimes an ALS is imposed on a defendant when in reality, it never should have been. In these situations, the individual must depend upon and inconvenience a friend or family member for transportation as a result of the state illegally depriving the individual of the privilege to drive. The officer’s improper imposition of an ALS could result in a stay or perhaps even a termination of the ALS. A stay means the judge temporarily puts the ALS on hold and the individual’s full driving privileges are restored while the case is pending. This is why it is crucial to hire an attorney who can quickly recognize whether an imposition of the ALS was proper and immediately restore the individual’s full driving privileges if not.



## How is an ALS Imposed?

Before an individual is arrested on suspicion of OVI, the arresting officer must advise the person of the consequences for both refusing to submit to the chemical test and failing the chemical test. This advice must be in written form, shown and read to the individual by the arresting officer. This is done by reading the top portion of the BMV's 2255 Form, which the arresting officer must provide the individual.

If an individual either refuses a chemical test or fails a chemical test by testing over the legal limit, pursuant to ORC § 4511.192(D), the officer must do all of the following:

- (1) On behalf of the BMV, notify the person that, in addition to any other potential penalties he or she could face:
  - a) his or her license is immediately suspended;
  - b) the license suspension will last at least until the initial appearance, which must be held within five days after the arrest; and
  - c) the suspension may be appealed at the initial appearance or within 30 days of the appearance.
- (2) Seize the person's license and forward it to the BMV. If the person does not have a license, the officer must order the person to give it to the arresting police agency within 24 hours, and the agency must forward it to the BMV.
- (3) Verify the person's current residence and notify the BMV of any change if the address is different from the one shown on the license.
- (4) Send the BMV a sworn report, which is the 2255 Form, and give copies to the court and the person being arrested. The report must state that:
  - a) the officer had reasonable grounds to believe the person was under the influence of drugs or alcohol or in physical control while under the influence of drugs or alcohol;
  - b) the person was arrested and charged with such an offense;
  - c) the officer asked the person to take a chemical test, advised the person of the consequences of refusing or failing the test, and gave the person the proper form; and
  - d) the person refused the test or submitted to the test and failed.

Sometimes, the officer rightly imposes an ALS, but fails to comply with the proper procedures in doing so. The officer's failure to carefully follow the proper statutory procedures in imposing an ALS could result in a stay or termination of the ALS. Most OVI attorneys file an ALS Appeal early in the court proceedings. The ALS Appeal challenges the validity of the ALS.



Hiring an attorney who asks the right questions and who is willing to carefully look through the individual's citation and ALS paperwork is imperative. If the attorney is experienced and knows what questions to ask and what technicalities to look for, the individual has an excellent chance of reacquiring full driving privileges immediately if the arresting officer failed to carry out his or her duties properly.

## How long am I under ALS?

The length of the ALS depends upon whether the individual refuses to submit to the chemical test or fails the chemical test, and upon how many prior convictions or refusals the individual has had within the past six years.

Whether a test refusal or test failure, however, the ALS terminates upon an OVI conviction. Further, time served under the suspension is to be credited against any judicial suspension. The judicial suspension is simply the penalty the judge must impose upon an OVI conviction, which is not imposed through the BMV.

To illustrate this, suppose an individual pleads guilty to a lesser OVI offense (say, a low-tier OVI [.08-.169 test] with less severe penalties as opposed to a high-tier OVI [.17 and above] with more severe penalties) 2 months after he or she is arrested and placed under an ALS. Upon the individual's conviction, the ALS terminates. Assume as a result this conviction, the judge sentences the individual to the mandatory minimum 6 month license suspension. The individual's time served under the ALS is credited against the 6 month judicially-imposed suspension. Therefore, under this scenario, the person is under a license suspension for only 4 more months after his or her conviction, rather than the full 6. In other words, when an individual under an ALS is convicted of an OVI, the ALS terminates and his or her judicially-imposed license suspension applies retroactively from the date of the offense.

## Can I terminate the ALS or get driving privileges while under the ALS?

As discussed above, the judge might either stay or terminate the ALS. A stay is when the judge puts the ALS on hold, meaning the suspension no longer applies while the case is pending. If the judge stays the ALS, the individual's full driving privileges are immediately restored. A termination while the case is pending occurs less frequently but it can happen. In this instance, the individual's full driving privileges are restored as well.

Whether an attorney is successful in getting an ALS stay or termination depends on many factors. Remember, all courts are different. Some judges may grant a stay of the ALS if the facts are not egregious and the individual has no prior OVI offenses, blew under .17 and needs his or her full driving privileges immediately restored. Other judges may not grant a stay if the ALS was properly imposed. Each case is different and whether an individual will be granted an ALS stay cannot be guaranteed.





Even when an ALS is neither stayed nor terminated, the individual is eligible for driving privileges after he or she has served the requisite "hard time." Hard time is the time period during which the judge, by statute, has no discretion to grant the individual limited driving privileges. This period varies depending on whether the individual refused to submit to a chemical test or failed one and how many OVI convictions the individual has on his or her record.

Even after the hard-time is served, a judge does not have to grant an individual driving privileges. In most (but not all) courts, however, a judge will grant an individual limited driving privileges for certain purposes as set out by statute after the hard-time is served. These include privileges for occupational, educational, and medical purposes, as well as privileges to and from court and probation. If a court grants driving privileges, it must specify the purposes for, times during and places to which the person will exercise those privileges.

Further, if a judge grants an individual limited driving privileges during the ALS, he or she will specify the scope of the privileges in a letter he issued as an entry and order of the court. For an individual to exercise these driving privileges, he or she must not exceed the scope of those specific privileges and must carry a certified copy of the letter at all times. Failing to do so could result in a driving under an OVI suspension charge, creating more burdens on the individual.

It is important to know that an individual with a commercial driver's license (CDL) cannot be granted any limited driving privileges on the CDL while under an ALS. Without privileges, one could lose his or her job for which a CDL is required. This is another reason it is extremely important to hire an attorney who is prepared to fight the ALS on the technical and procedural grounds discussed above.



# Penalties

What kind of penalties do I face if convicted of OVI?

Like the ALS discussed above, OVI conviction penalties vary based on the nature of the charge. For instance, if someone is a first-time offender and blows between .08 and .17, he or she will be charged with a “low-tier” OVI, the penalties for which are less severe than a “high-tier” OVI, meaning the individual blew .17 or above. The penalty chart on the next page was written by Ohio Judge Jennifer P. Weiler and summarizes the mandatory minimum penalties associated with each OVI conviction.



**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	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. <i>Must suspend jail if Δ granted UDP.</i> <sup>1</sup>	\$375 - \$1,075	Optional	Unclassified (1 to 3 years) <sup>2</sup> <i>May be reduced by half w/UDP.</i> <sup>3</sup>	After 15 days	Plates optional. License/interlock <sup>4</sup> required for unlimited privileges.	No
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. <i>Must suspend jail if Δ granted UDP.</i> <sup>1</sup>	\$375 - \$1,075	Optional	Unclassified (1 to 3 years) <sup>2</sup> <i>May be reduced by half w/UDP.</i> <sup>3</sup>	After 15 days	Plates required. License/interlock <sup>4</sup> required for unlimited privileges.	No
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.	\$525 - \$1,625	Alcohol/drug assessment, recommended treatment mandatory	Unclassified (1 to 7 years)	After 45 days	Plates optional. License/interlock <sup>4</sup> 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.	\$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 <sup>4</sup> 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.	\$850 - \$2,750	Alcohol/drug Addiction program mandatory	Unclassified (2 to 12 years) <i>[minimum may be reduced to 1 year]</i>	After 180 days <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</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.	\$850 - \$2,750	Alcohol/drug addiction program mandatory	Unclassified (2 to 12 years) <i>[minimum may be reduced to 1 year]</i>	After 180 days <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</sup>
Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 10 years, <u>or</u> [b] 6 <sup>th</sup> in 20 years [simple OVI, low test or drug]	F-4	60 days local incarceration, up to 1 year, <u>or</u> 60 days prison, with option of additional 6 to 30 months. <sup>10</sup>	\$1,350 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</sup>
Either: [a] 4 <sup>th</sup> or 5 <sup>th</sup> in 10 years, <u>or</u> [b] 6 <sup>th</sup> in 20 years and high test <u>or</u> refusal	F-4	120 days local incarceration, up to 1 year, <u>or</u> 120 days prison, with option of additional 6 to 30 months. <sup>10</sup>	\$1,350 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</sup>
Either: 2 <sup>nd</sup> felony lifetime [simple OVI, low test or drug]	F-3	60 days prison. Up to 36 months. <sup>10, 11</sup>	\$1,350 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</sup>
Either: 2 <sup>nd</sup> felony life-time, and: [a] high test, or [b] refusal	F-3	120 days prison. Up to 36 months. <sup>10, 11</sup>	\$1,350 - \$10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</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 prison to be served prior <u>and</u> 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 <sup>8</sup>	Plates required. License/interlock <sup>4</sup> required if alcohol-related, optional if drug.	Forfeit if registered to Δ <sup>9</sup>

<sup>1</sup> 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 the 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> OVI penalty section providing minimum suspension of one-year conflicts with RC 4510.13(A)(2) stating that the first six months of suspension may not be suspended.  
<sup>3</sup> Court may reduce up to one-half of license suspension period. RC 4510.022(C)(2)(b).  
<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> 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).  
<sup>9</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>10</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>11</sup> *State v. South* (2015), 144 Ohio St. 3d 295, 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* (8<sup>th</sup> Dist.), 2015-Ohio-5408, app. denied, 145 Ohio St.3d 1459 (2016), applied *South* in case with no specification.

**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. <i>Must suspend jail if Δ granted UDP.</i> <sup>1</sup>	\$0-\$250	Optional	Class 6 (90 days to 2 years). <i>May be reduced by half w/UDP.</i> <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

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

A pretrial is typically scheduled after the first court appearance. At the pretrial, your attorney and the prosecutor will meet to discuss the details of the case and attempt to negotiate a deal, commonly referred to as a plea bargain. An overwhelming majority of cases are resolved through plea bargains.

Like judges, however, all prosecutors are different and many factors impact whether the prosecutor is willing to offer a plea to a reduced charge in lieu of having to prove the original, more serious charge at trial. The most common factors include: the reputation of the attorney, the specific facts of the case, the client's criminal history, and the desire of the client and the prosecutor (who may be influenced by a victim, the arresting officer, or both) to reach an agreement.

In any criminal case—not only OVI cases—the defendant, not the attorney, is the one who ultimately decides whether to accept the prosecutor's offer. The attorney can advise the client as to what he or she believes is in the client's best interest; however, whether to accept the deal and plead guilty to either a reduced charge or the original charge is always the client's choice. If the client declines the offer, he or she has the constitutional right to take the case to trial to attempt to demonstrate the prosecutor's failure to prove beyond a reasonable doubt that he or she committed the crime.

Here is an example of how a plea bargain might work in an OVI context. Suppose you are charged with OVI and have no prior offenses on your record. Further, when you were pulled over, you complied with the officer's instructions and were polite and cooperative. You submitted to all field sobriety tests the officer asked you to submit to and while you failed two out of three tests, you did not appear to be extremely impaired, only slightly. Further, assume you even submitted to the breath test. You failed the test by blowing .11, which is considered a "low" test, yet still over the legal limit. The prosecutor, instead of having to prove your guilt beyond a reasonable doubt at trial by subpoenaing witnesses, preparing direct and cross-examinations, collecting and reviewing all of the evidence, and preparing opening and closing arguments, may instead be willing to offer you a deal. Perhaps the prosecutor says he or she will dismiss the OVI charge if you plead guilty to physical control (that is, being in physical control of a vehicle while under the influence of drugs or alcohol). In this instance, you avoid an OVI conviction and perhaps some of the penalties associated with it. Or perhaps the prosecutor says he or she will dismiss the OVI charge if you plead guilty to reckless operation. These are some typical plea deals offered on a first offense OVI charge when the circumstances are favorable.



# Motion to Suppress

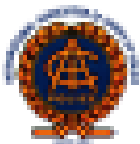
A motion to suppress is filed to exclude evidence the state will introduce at trial to attempt to prove the defendant is guilty of committing a crime. If a defendant's attorney believes there is a good basis for excluding the incriminating evidence, he or she files a written motion to suppress with the court. Next, the court holds a motion to suppress hearing during which the defendant's attorney presents evidence and questions witnesses on the stand. In OVI cases, motions to suppress are filed when the defendant or his or her attorney believes the arresting officer either: (1) arrested the defendant without probable cause to either stop or search the person, or both; or (2) administered a standard field sobriety test or chemical test improperly. In the latter situation, the defendant or his or her attorney challenges the reliability of the test results, arguing that they should not be admitted by the state at trial.

A motion to suppress hearing is not necessarily a trial, but it is like a trial in that it can be case-determinative. For instance, if the judge finds the arresting officer did not have probable cause to pull the defendant over, or that the officer did not administer the standard field sobriety tests in substantial compliance with the National Highway Traffic Safety Administration (NHTSA), the judge will grant the defendant's motion to suppress. This means the judge will order the evidence be excluded from trial—the potentially incriminating evidence the state has against the defendant. If this is the case, the prosecutor can no longer use at a trial the evidence it has to show that the defendant operated a motor vehicle while under the influence and the case will be dismissed.

## DWI Detection and Standardized Field Sobriety Testing

May 2013 Edition

Instructor Guide



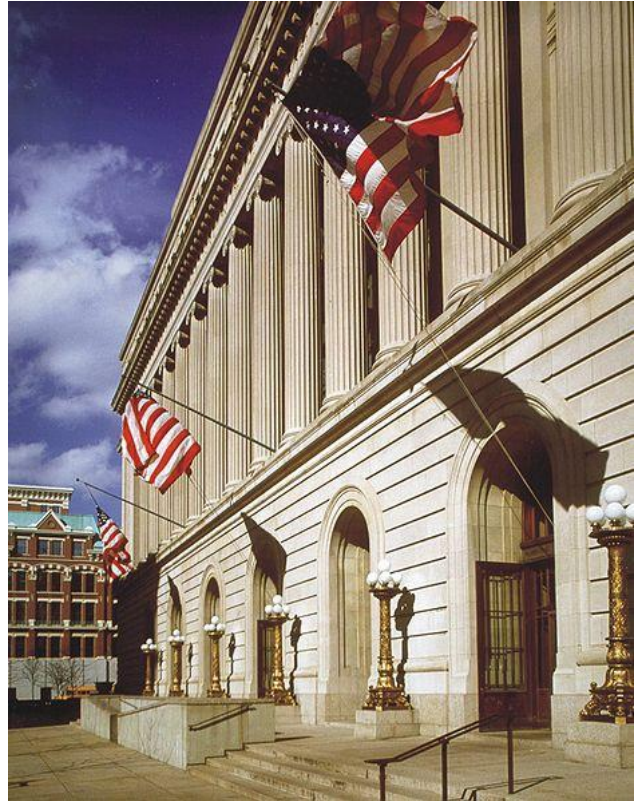
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# Trial

If the case is not resolved by way of a plea bargain or a dismissal based on a successful motion to suppress, then it will proceed to trial. At trial, the state has the burden of proving every element of the OVI offense beyond a reasonable doubt. Essentially, this means the state must prove that the defendant operated a vehicle in Ohio while under the influence of drugs or alcohol. The defendant is not required to prove anything at trial and stands innocent until the prosecutor convinces the fact-finder (in a bench trial, the judge; in a jury trial, a randomly selected group of eight members from the community) that the state proved beyond a reasonable doubt all elements of the offense.

At trial, the state will call to the stand witnesses to testify, including the arresting officer and any other individuals who may have observed the defendant or the defendant's driving on the day or night in question. The state may also introduce evidence such as reports or audio and video clips capturing the day or night in question. The defendant has an opportunity to cross-examine the witnesses the state calls and to introduce his or her own evidence to prove his or her innocence.

Ultimately, the defendant is found either guilty or not guilty. If found guilty, the case proceeds to sentencing either immediately after the trial or at the next hearing the judge schedules with the parties.



# Hiring an Attorney

If you have been charged with OVI, you need an experienced and competent attorney who can explain your rights and the entire legal process you face. If you know a judge or an attorney in private practice, ask who he or she would recommend handling your case. Further, before hiring an attorney, read reviews about him or her. Make sure the attorney has been successful taking cases to trial. Also, make sure you hire an attorney who is familiar with the court—you do not want a Dayton attorney handling a DUI in Lebanon or Mason. And before you hire an attorney, discuss your case with him or her. Ask questions and tell the attorney what your goal is in hiring him or her. Further, make sure he or she is a good fit. Assess the attorney's ability to effectively explain to you not only the process, but also the strategies involved in handling your case. Hiring a competent and trustworthy attorney will make a world of difference in your OVI case.

If you have any questions, please contact a DUI criminal defense attorney at Rittgers & Rittgers in Lebanon, Ohio, at 513-932-2115. You can also learn more at our website: [www.rittgers.com](http://www.rittgers.com).



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