

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellant,	:	Case No. 2013-0095
	:	
v.	:	On Appeal from the
	:	Cuyahoga County Court of Appeals,
GIOVANNI MANOCCHIO,	:	Eighth Appellate District
	:	
Appellee.	:	

MERIT BRIEF OF APPELLANT, STATE OF OHIO

TIMOTHY J. McGINTY (#0024626)
CUYAHOGA COUNTY PROSECUTOR
MARY H. McGRATH (#0041381) (COUNSEL OF RECORD)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7872
(216) 443-7806 *fax*
mmcgrath@prosecutor.cuyahogacounty.us *email*
COUNSEL FOR APPELLANT STATE OF OHIO

JOHN D. MIZANIN, JR. (#0080645) (COUNSEL OF RECORD)
Harvey B. Bruner Co., LPA
The Hoyt Block Building
700 W. St. Clair Ave., #110
Cleveland, Ohio 44113
(216) 566-9477
john@harveybruner.com
COUNSEL FOR APPELLEE GIOVANNI MANOCCHIO

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INTRODUCTION AND SUMMARY

The State respectfully seeks a decision from this Honorable Court that a trial court's action of granting driving privileges to a defendant whose driver's license has been suspended for life constitutes a "modification" of that suspension, requiring that the defendant satisfy the statutory criteria under R.C. 4510.54 to be eligible for modification of the suspension.

A majority of the Eighth District Court of Appeals held that granting limited driving privileges to Appellee Giovanni Manocchio, whose driver's license was suspended for life, did not constitute a modification of his suspension. As such, the Court held Manocchio was not required to wait 15 years to seek modification of his suspension as required by R. C. 4510.54(A)(1). The Eighth District's decision is contrary to the clear language of R.C. 4510.54(A)(1), which requires an individual demonstrate that 15 years have elapsed since his lifetime license suspension began in order to seek modification of the suspension.

The Eighth District's holding is also contrary to precedent, including its own in *State v. Bahr*, 8th Dist. No. 91667, 2009-Ohio-141, in which the appellate court found R.C. 4510.54 prohibited the trial court from granting limited driving privileges for a license suspended for life unless the statutory requirements, including the passage of 15 years, were met. *Id.*, at ¶ 17.

The State respectfully seeks reversal of the Eighth District's decision in *Manocchio* and a finding by this Court that granting driving privileges to a defendant whose driver's license has been suspended for life constitutes a modification of that suspension, requiring the defendant satisfy the statutory criteria for modification under R.C. 4510.54.

STATEMENT OF THE CASE AND FACTS

Manocchio was indicted by the Cuyahoga County Grand Jury in March 2003 for Driving Under the Influence (Prior Conviction) in violation of R.C. 4511.19, a third degree felony, by virtue of his three prior DUI convictions. Manocchio pleaded guilty in April 2003. On May 7, 2003, the court sentenced Manocchio to a one-year prison term and imposed a lifetime driver's license suspension. (Case Number CR 435289, Journal Entry of 5/16/03).

On November 2, 2007, Manocchio filed a Motion for Termination of Suspension of Driving and/or Restoration of Driving Privileges with Appropriate Monitoring. A hearing was held on the Motion in February 2009 and the trial court denied Manocchio's Motion. (Case Number CR 435289, Journal Entry of 2/2/09).

On February 24, 2012, Manocchio filed another motion for driving privileges, less than ten years after his suspension began. The State filed its written opposition. The trial court held a hearing on the Motion on April 23, 2012. (Tr. 3-15). During the hearing, defense counsel informed the court that Manocchio had been receiving

treatment, attending Alcoholics Anonymous meetings, and opened his own business. (Tr. 3-5). Over the State's objection, the trial court granted Manocchio limited driving privileges. (Tr. 6-8, 12-14; Case Number CR 435289, Journal Entry of 4/23/12).

The Eighth District Court of Appeals granted the State leave to appeal the trial court's decision. (Case No. 98473, Journal Entry of 6/25/12). On appeal, the State argued that the trial court's grant of limited driving privileges to Manocchio was a modification of the lifetime license suspension and, under R.C. 4510.54, the trial court could not modify the suspension until at least 15 years had elapsed since the suspension began. After hearing arguments, a majority of the Eighth District determined that the trial court's decision to grant Manocchio limited driving privileges did not constitute a modification of his lifetime driver's license suspension and upheld the trial court's order. *State v. Manocchio*, 8th Dist. No. 98473, 2012-Ohio-5720, at ¶ 9. Since granting limited driving privileges was not a modification of the suspension, the court found that Manocchio was not required to demonstrate compliance with R.C. 4510.54, specifically, that he waited at least 15 years to request modification. *Id.*, ¶ 12.

Thereafter, this Honorable Court accepted the State's discretionary appeal.

LAW AND ARGUMENT

PROPOSITION OF LAW I: A TRIAL COURT IS WITHOUT AUTHORITY TO MODIFY A LIFETIME DRIVER'S LICENSE SUSPENSION WHERE DEFENDANT FAILS TO MEET THE STATUTORY CRITERIA PROVIDING FOR MODIFICATION AS SET FORTH UNDER R.C. 4510.54.

A trial court may grant limited driving privileges relative to a class two license suspension under R.C. 4510.021 and 4510.13. R.C. 4511.19(G)(1)(e)(iv). R.C. 4510.021(A) states that a trial court's ability to grant limited driving privileges is allowed "unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code." (Emphasis added.) R.C. 4510.13(B) permits an individual whose license has been suspended under R.C. 4511.19 to seek limited driving privileges during the suspension.

At issue is whether granting limited driving privileges to an individual whose driver's license was suspended for life is a "modification" of the suspension, requiring satisfaction of the criteria of R.C. 4510.54. If so, former R.C. 4510.54, which was amended effective September 28, 2012, expressly prohibited the trial court from modifying Manocchio's lifetime license suspension by granting him driving privileges unless he demonstrated at least 15 years elapsed since his suspension began. Here, less than ten years had elapsed when Manocchio sought driving privileges.

R.C. 4510.54 provides, in part:

(A) Except as provided in division (F) of this section, a person whose driver's or commercial driver's license has been suspended for life under a class one suspension or as otherwise provided by law or has been suspended for a period in excess of fifteen years under a class two suspension may file a motion with the sentencing court for modification or termination of the suspension. **The person filing the motion shall demonstrate all of the following:**

(1) At least fifteen years have elapsed since the suspension began.

R.C. 4510.54(A)(1). (Emphasis added).

The Eighth District raised the issue of whether granting limited driving privileges to an individual with a lifetime driver's license suspension constituted a "modification" of the license suspension. The majority opinion disagreed with the State's interpretation that the trial court's decision to grant limited driving privileges constituted a modification of the suspension. *State v. Manocchio*, 2012-Ohio-5720, at ¶¶ 6-7. The majority further found that its decision in *State v. Bahr*, 8th Dist. No. 91667, 2009-Ohio-141 and the decision in *State v. Neace*, 3rd Dist. No. 10-06-04, 2006-Ohio-3072 did not control. The majority reasoned that granting driving privileges did not modify Manocchio's suspension, finding:

R.C. 4510.021(A) allows the court to grant limited driving privileges "during any suspension imposed by the court." From this language it follows that a grant of limited driving privileges does not change or alter the suspension itself. A lifetime license suspension is still a lifetime license suspension even if a driver is granted limited driving privileges because the original terms of the suspension remain in force—those terms have been neither modified nor terminated.

Manocchio, at ¶ 9.

The Eighth District interpreted the General Assembly's language in R.C. 4510.021(A) "or any other section of the Revised Code" as a "catchall proviso" "as a way of limiting the discretion to grant driving privileges." The Court continued, "But given the specificity with which the General Assembly defined the contours of limited driving privileges, we do not believe that the General Assembly intended to have the

word "modification" as used in R.C. 4510.54(A) serve as an express prohibition to granting limited driving privileges." *Manocchio*, at ¶ 11.

Respectfully, the Eighth District's holding is in contravention of those of other appellate courts, as well as a common sense application of the word "modification." In *State v. Bahr*, 8th Dist. No. 91667, 2009-Ohio-141, the Eighth District held:

Thus, the trial court does have the authority to grant limited driving privileges as long as R.C. 2919.22, 4510.13 or any other section of the Revised Code does not prohibit it. R.C. 4510.54 prohibits the trial court from granting limited driving privileges for licenses suspended for life or for more than 15 years unless the requirements set forth in the statute are met. The first requirement is that "at least fifteen years have elapsed since the suspension began." In the instant case, less than three years had elapsed. Thus, pursuant to R.C. 4510.54 the trial court was without authority to modify the license suspension prior to the elapse of fifteen years.

Id., at ¶ 8. (Citing *State v. Neace*, 3rd Dist. No. 10-06-04, 2006-Ohio-3072, *State v. Redman*, 163 Ohio App.3d 686, 2005-Ohio-5474.)

In *State v. Neace*, 3rd Dist. No. 10-06-04, 2006-Ohio-3072, the Third District Court of Appeals determined that a trial court properly followed R.C. 4510.54(A) by denying driving privileges to an offender who had a lifetime driver's license suspension, finding:

However, the State argues, and the trial court found, that R.C. 4510.54 prohibits the trial court from granting limited driving privileges to Neace. R.C. 4510.54(A) states in pertinent part:

A person whose driver's * * * license has been suspended for life under a class one suspension or as otherwise provided by law * * * may file a motion with the sentencing court for modification or termination of the

suspension. The person filing the motion shall demonstrate all of the following:

(1) At least fifteen years have elapsed since the suspension began.

R.C. 4510.54(A) is clearly included as "any other section of the Revised Code", and its language is clear and unambiguous. The common meaning of "modification" is "a change to something; an alteration[.]" Blacks' Law Dictionary, (7th Ed. Rev.1999) 1020. Were the trial court to grant limited driving privileges, Neace's suspension would be altered. Neace has cited no authority to support his argument that a grant of limited driving privileges does not modify a driver's license suspension.

Id., at ¶ 7.

In dissent in *Manocchio*, Cooney, J. determined, "I would follow the precedent set forth in *Bahr* and reverse. The court has no discretion to modify Manocchio's driver's license suspension because it has not been at least 15 years since the suspension began. After 15 years, the court would have discretion to consider this modification. Because he was told he could not drive during his lifetime, I would view driving privileges as a modification of his lifetime suspension." *Manocchio*, at ¶ 18.

Judge Cooney's dissent applied a common sense interpretation of "modification." Manocchio's driver's license was suspended for life. The trial court granted Manocchio driving privileges. As such, the prohibition from driving was modified to permit driving. This is a modification of the original suspension - improperly granted years before Manocchio was eligible to obtain a modification.

While the Eighth District found that a "lifetime license suspension is still a lifetime license suspension even if a driver is granted limited driving privileges because

the original terms of the suspension remain in force—those terms have been neither modified nor terminated,” the original term of the suspension *has* been modified. *Manocchio*, at ¶ 9. The original term of Manocchio’s suspension prohibited him from obtaining a driver’s license and driving a motor vehicle during his lifetime. A term of the suspension – a complete prohibition against driving– has been modified - Manocchio may now *drive*. Manocchio’s suspension *has* been modified and altered.

The Eighth District interpreted the General Assembly’s language in R.C. 4510.021(A) - “or any other section of the Revised Code” - as a catchall provision in order to limit the discretion to grant driving privileges. *Manocchio*, at ¶ 11. But there is no authority to exclude R.C. 4510.54 from the meaning of R.C. 4510.021(A) that a trial court’s ability to grant limited driving privileges is allowed “unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code.” R.C. 4510.54 provides trial courts the authority to grant limited driving privileges where an individual demonstrates its statutory criteria are met. As such, the Eighth District erred in holding Manocchio was not required to satisfy the statutory criteria of R.C. 4510.54(A) in order to be eligible to have his suspension modified.

“It is a general rule that courts, in the interpretation of a statute, may not take, strike or read anything out of a statute, or delete, subtract or omit anything therefrom. To the contrary, it is a cardinal rule of statutory construction that significance and effect should if possible be accorded every word, phrase, sentence and part of an act.

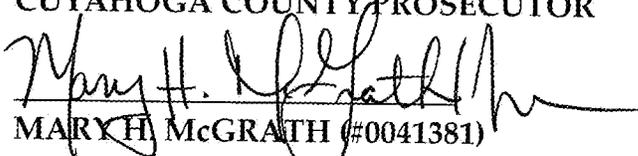
Wachendorf v. Shaver, 149 Ohio St. 231, 237, 78 N.E.2d 370 (1948).” *Dunbar v. State* --- N.E.2d ----, 2013-Ohio-2163, ¶ 18, 2013 WL 2350437. Here, the trial court failed to accord the word “modification” its significance. The court was without authority to modify Manocchio’s suspension by granting driving privileges as such grant is a modification of the suspension. The modification to Manocchio’s lifetime driver’s license suspension was contrary to the plain language of R.C. 4510.54 and was therefore contrary to law, requiring reversal.

CONCLUSION

For the foregoing reasons, Appellant State of Ohio respectfully requests that this Honorable Court reverse the decision of the Eighth District Court of Appeals and hold that granting driving privileges to a defendant who has a lifetime driver’s license suspension constitutes a “modification” of that suspension, requiring that the defendant satisfy the statutory criteria under R.C. 4510.54 in order to be granted a modification.

Respectfully submitted,

TIMOTHY J. MCGINTY
CUYAHOGA COUNTY PROSECUTOR


MARY H. MCGRATH (#0041381)

Assistant Prosecuting Attorney

The Justice Center, 8th Floor

1200 Ontario Street

Cleveland, Ohio 44113

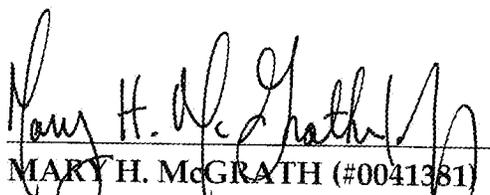
(216) 443-7872

(216) 443-7806 *fax*

mmcgrath@prosecutor.cuyahogacounty.us *email*

CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Appellant State of Ohio has been sent by regular U.S. Mail this 13th day of June, 2013, to John D. Mizanin, Jr., Harvey Bruner Co., LPA, The Hoyt Block Building, 700 W. St. Clair Ave., #110, Cleveland, Ohio, 44113.


MARY H. McGRATH (#0041381)
Assistant Prosecuting Attorney

ORIGINAL

NO.

IN THE SUPREME COURT OF OHIO

13-0095

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 98473

STATE OF OHIO
Plaintiff-Appellant

-vs-

GIOVANNI MANOCCHIO
Defendant-Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Counsel for Plaintiff-Appellant

WILLIAM D. MASON (0037540)
CUYAHOGA COUNTY PROSECUTOR

T. ALLAN REGAS (0067336)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

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JAN 17 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Counsel for Defendant-Appellant

JOHN D. MIZANIN
700 West St. Clair Avenue #100
Cleveland, Ohio 44113

OFFICE OF THE OHIO PUBLIC DEFENDER
250 East Broad Street, 14th Floor
Columbus, Ohio 43215

RECEIVED
JAN 17 2013
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Now comes the State of Ohio and hereby gives Notice of Appeal to the Supreme Court of Ohio from a judgment and final order of the Court of Appeals for Cuyahoga County, Ohio, Eighth Judicial District, entered December 6, 2012.

Said cause did not originate in the Court of Appeals and involves a felony.

Respectfully submitted,

WILLIAM D. MASON
CUYAHOGA COUNTY PROSECUTOR

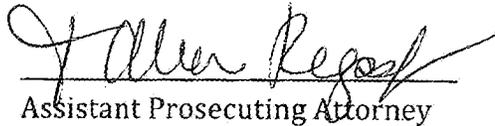
By:



T. ALLAN REGAS (0067336)
Assistant Prosecuting Attorneys
1200 Ontario Street, 8th Floor
Cleveland, OH 44113
216.443.7800

SERVICE

A true and accurate copy of the foregoing Notice of Appeal has been sent by regular United States Mail this 16 day of January, 2013, to John D. Mizanin, 700 W. St. Clair Avenue #110, Cleveland, Ohio 44113 and The Office of the Ohio Public Defender, 250 East Broad Street, 14th Floor, Columbus, Ohio 43215 and by e-mail at jim.foley@opd.ohio.gov.



Assistant Prosecuting Attorney

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 98473

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

GIOVANNI MANOCCHIO

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-435289

BEFORE: Stewart, P.J., Cooney, J., and Keough, J.

RELEASED AND JOURNALIZED: December 6, 2012

ATTORNEYS FOR APPELLANT

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Diane Smilanick
Assistant County Prosecutor
The Justice Center
1200 Ontario Street, 8th Floor
Cleveland, OH 44113

ATTORNEY FOR APPELLEE

John D. Mizanin
Harvey B. Bruner Co., LPA
The Hoyt Block Building
700 W. St. Clair Avenue, No. 110
Cleveland, OH 44113

MELODY J. STEWART, P.J.:

{¶1} In May 2003, defendant-appellee Giovanni Manocchio pleaded guilty to driving while under the influence. It appears that this was his fourth DUI offense, so he pleaded guilty to a third degree felony violation of R.C. 4511.19. The court sentenced him to one year in prison, ordered him to pay a fine of \$1,000, and further ordered a “lifetime driver’s license suspension.” In February 2012, Manocchio filed a motion for driving privileges. The court granted the motion over the state’s objection, granting Manocchio “driving privileges solely during daylight hours.” As conditions of granting limited driving privileges, the court required that Manocchio’s vehicle bear specialized license plates for DUI offenders and that he install an interlock device on the vehicle to prevent its operation if the driver is impaired. We granted the state leave to appeal on its claim that the grant of limited driving privileges constituted a modification of Manocchio’s lifetime license suspension and could not be granted until 15 years had elapsed from the start of that suspension.

{¶2} Although it is unclear from the record, it appears that the court imposed Manocchio’s license suspension under R.C. 4511.19(G)(1)(e)(iv), which is the only section that defines a DUI offense as a third degree felony. That section states that the court shall sentence an offender who had previously been convicted of a felony DUI

offense to a “class two license suspension” from the range specified in R.C. 4510.02(A)(2). R.C. 4510.02(A)(2) provides for a license suspension range of “a definite period of three years to life[.]”

{¶3} A license suspension is not necessarily a complete bar to all driving during the term of suspension. R.C. 4511.19(G)(1)(e)(iv) permits the court to “grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.” As applicable here, R.C. 4510.021(A)(1) states that driving privileges shall be limited to “[o]ccupational, educational, vocational, or medical purposes[.]” And R.C. 4510.13(B) specifically allows a person whose license has been suspended pursuant to R.C. 4511.19 to file a petition for limited driving privileges during the suspension.

{¶4} The state does not argue on appeal that the court abused its discretion by granting Manocchio limited driving privileges, nor does it contest the purpose for granting the limited privileges. The state’s sole argument is that the court was barred from granting driving privileges because the statutory minimum of 15 years had not elapsed since the suspension began.

{¶5} R.C. 4510.021(A) expressly states that the court’s ability to grant limited driving privileges is allowed “[u]nless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code * * *.” (Emphasis added.) The state cites former R.C. 4510.54(A)(1)(a),¹ which at the time of the court’s hearing stated that

¹R.C. 4510.54 was subsequently amended effective September 28, 2012.

the court may modify or terminate a lifetime, class two license suspension, but only if the person filing the motion demonstrates, among other things, that “[a]t least fifteen years have elapsed since the suspension began[.]” The state argues that Manocchio’s driver’s license suspension began in 2003, so 15 years had not elapsed as required by the statute and the court had no authority to modify the suspension to permit Manocchio to have limited driving privileges.

{¶6} The state’s argument assumes that the court’s decision to grant limited driving privileges constituted a “modification” of the license suspension. This assumption is based on language in *State v. Neace*, 3d Dist. No. 10-06-04, 2006-Ohio-3072, stating that limited driving privileges constitute an “alteration” of the original suspension and is thus a “modification” of the original suspension. *Id.* at ¶ 7.

{¶7} Respectfully, we do not believe that *Neace* and a similar decision from this court, *State v. Bahr*, 8th Dist. No. 91667, 2009-Ohio-141, control the outcome in this case because they did not differentiate and give effect to various terms used by the General Assembly in defining the scope of license suspensions.

{¶8} The court is allowed to “suspend” or “terminate” a license suspension. *See* R.C. 4510.03(A). The court may also grant limited driving privileges during the term of a suspension. *See* R.C. 4510.021(A). *Neace* and *Bahr*, however, make the word

{¶11} The General Assembly went to great lengths in R.C. 4510.13(A) to describe the conditions under which the court may order limited driving privileges. It also stated very specifically that the discretion to grant limited driving privileges was expressly limited by certain terms in R.C. 2919.22 and 4510.13. To be sure, the General Assembly threw in the catchall proviso of “or any other section of the Revised Code” as a way of limiting the discretion to grant driving privileges. But given the specificity with which the General Assembly defined the contours of limited driving privileges, we do not believe that the General Assembly intended to have the word “modification” as used in R.C. 4510.54(A) serve as an express prohibition to granting limited driving privileges.

{¶12} We therefore hold that the 15-year time period set forth in R.C. 4510.54(A) is inapplicable to limited driving privileges and that the court had the authority to grant those privileges to Manocchio.

{¶13} Judgment affirmed.

It is ordered that appellee recover of appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., CONCURS;

COLLEEN CONWAY COONEY, J., DISSENTS
WITH SEPARATE OPINION

COLLEEN CONWAY COONEY, J., DISSENTING:

{¶14} I respectfully dissent. I would reverse the trial court's judgment on two grounds: it fails to specify an acceptable purpose for granting privileges under R.C. 4510.021, and 15 years has not elapsed to allow the modification Manocchio seeks.

{¶15} R.C. 4510.54(A) provides:

Except as provided in division (F) of this section, a person whose driver's or commercial driver's license has been suspended for life under a class one suspension or as otherwise provided by law or has been suspended for a period in excess of fifteen years under a class two suspension may file a motion with the sentencing court for modification or termination of the suspension. The person filing the motion shall demonstrate all of the following:

(1) At least fifteen years have elapsed since the suspension began.

{¶16} Thus, under R.C. 4510.54, the court may not modify or terminate the suspension for at least fifteen years after the suspension began. In contrast, Manocchio claims he is entitled to driving privileges under R.C. 4510.021, which provides, in pertinent part:

(A) Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code, a court may grant limited driving

privileges for any purpose described in division (A)(1), (2), or (3) of this section during any suspension imposed by the court. In granting the privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

- (1) Occupational, educational, vocational, or medical purposes;
- (2) Taking the driver's or commercial driver's license examination;
- (3) Attending court-ordered treatment.

{¶17} In a closely analogous case, this court held:

[T]he trial court does have the authority to grant limited driving privileges as long as R.C. 2919.22, 4510.13 or any other section of the Revised Code does not prohibit it. R.C. 4510.54 prohibits the trial court from granting limited driving privileges for licenses suspended for life or for more than 15 years unless the requirements set forth in the statute are met. The first requirement is that "at least fifteen years have elapsed since the suspension began." In the instant case, less than three years had elapsed. Thus, pursuant to R.C. 4510.54 the trial court was without authority to modify the license suspension prior to the elapse of fifteen years.

State v. Bahr, 8th Dist. No. 91667, 2009-Ohio-141, ¶ 8, citing *State v. Neace*, 3d Dist. No. 10-06-04, 2006-Ohio-3072; *State v. Redman*, 163 Ohio App.3d 686, 2005-Ohio-5474, 839 N.E.2d 1001 (12th Dist.).

{¶18} I would follow the precedent set forth in *Bahr* and reverse. The court had no discretion to modify Manocchio's driver's license suspension because it had not been at least 15 years since the suspension began. After 15 years, the court would have discretion to consider this modification. Because he was told he could not drive during his lifetime, I would view driving privileges as a modification of his lifetime suspension. And the statute clearly requires that the court specify the purposes, times, and places of any

privileges. The trial court's entry that merely specifies "daytime hours only" does not satisfy this requirement.

{¶19} Therefore, I would reverse the judgment and vacate the granting of limited driving privileges.

c

Effective:[See Text Amendments]

Baldwin's Ohio Revised Code Annotated Currentness
 Title XLV. Motor Vehicles--Aeronautics--Watercraft
 ↗ Chapter 4510. Driver's License Suspension and Cancellation (Refs & Annos)
 →→ **4510.021 Limited driving privileges**

(A) Unless expressly prohibited by section 2919.22, section 4510.13, or any other section of the Revised Code, a court may grant limited driving privileges for any purpose described in division (A)(1), (2), or (3) of this section during any suspension imposed by the court. In granting the privileges, the court shall specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges shall be for any of the following limited purposes:

- (1) Occupational, educational, vocational, or medical purposes;
- (2) Taking the driver's or commercial driver's license examination;
- (3) Attending court-ordered treatment.

(B) Unless expressly authorized by a section of the Revised Code, a court may not grant limited driving privileges during any suspension imposed by the bureau of motor vehicles. To obtain limited driving privileges during a suspension imposed by the bureau, the person under suspension may file a petition in a court of record in the county in which the person resides. A person who is not a resident of this state shall file any petition for privileges either in the Franklin county municipal court or in the municipal or county court located in the county where the offense occurred. If the person who is not a resident of this state is a minor, the person may file the petition either in the Franklin county juvenile court or in the juvenile court with jurisdiction over the offense. If a court grants limited driving privileges as described in this division, the privileges shall be for any of the limited purposes identified in division (A) of this section.

(C) When the use of an immobilizing or disabling device is not otherwise required by law, the court, as a condition of granting limited driving privileges, may require that the person's vehicle be equipped with an immobilizing or disabling device, except as provided in division (C) of section 4510.43 of the Revised Code. When the use of restricted license plates issued under section 4503.231 of the Revised Code is not otherwise required by law, the court, as a condition of granting limited driving privileges, may require that the person's vehicle be equipped with restricted license plates of that nature, except as provided in division (B) of that section.

(D) When the court grants limited driving privileges under section 4510.31 of the Revised Code or any other provision of law during the suspension of the temporary instruction permit or probationary driver's license of a person who is under eighteen years of age, the court may include as a purpose of the privilege the person's practicing of driving with the person's parent, guardian, or other custodian during the period of the suspension. If the court grants limited driving privileges for this purpose, the court, in addition to all other conditions it imposes, shall impose as a condition that the person exercise the privilege only when a parent, guardian, or custodian of the person who holds a current valid driver's or commercial driver's license issued by this state actually occupies the seat beside the person in the vehicle the person is operating.

(E) Before granting limited driving privileges under this section, the court shall require the offender to provide proof of financial responsibility pursuant to section 4509.45 of the Revised Code.

CREDIT(S)

(2004 H 52, eff. 6-1-04; 2002 S 123, eff. 1-1-04)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2004 H 52 rewrote division (B), which prior thereto read:

“(B) Unless expressly authorized by a section of the Revised Code, a court may not grant limited driving privileges during any suspension imposed by the bureau of motor vehicles. To obtain limited driving privileges during a suspension imposed by the bureau, a petition may be filed in a court of record in the county in which the person under suspension resides. A person who is not a resident of this state shall file any petition for privileges in the Franklin county municipal court, or, if the person is a minor, in the Franklin county juvenile court. If a court grants limited driving privileges as described in this division, the privileges shall be for any of the limited purposes identified in division (A) of this section.”

CROSS REFERENCES

Appeal of suspension, see 4511.197

Contempt action for failure to pay support, failure to comply with visitation order, or interference with visitation order, summons, see 2705.031

Driving under the influence of alcohol or drugs, see 4511.19

Failure to comply with order or signal of police officer, see 2921.331

Individual subject to collateral sanction, petition for certificate of qualification for employment, see 2953.25

Powers and duties of registrar upon receipt of notice, see 3123.58

LIBRARY REFERENCES

Automobiles  144.2(14).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 290 to 296, 336 to 338, 341 to 346.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Automobiles & Other Vehicles § 19, Limited Driving Privileges.

OH Jur. 3d Automobiles & Other Vehicles § 142, Limited Driving Privileges.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1155, Limited Driving Privileges While Otherwise Suspended.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1198, Misdemeanor, Generally.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1199, Second Offense Within Six Years.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1200, Third Offense Within Six Years.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1201, Fourth or Fifth Offense Within Six Years; Sixth or Subsequent Offense Within 20 Years.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1202, Prior Felony Offenses.

Treatises and Practice Aids

Hennenberg & Reinhart, Ohio Criminal Defense Motions F 3:10, Petition for Limited Driving Privileges.

Painter, Ohio Driving Under the Influence § 14:7, Penalties--Misdemeanor--First Offense--Simple OVI, Low Test BAC or Drugged Driving.

Painter, Ohio Driving Under the Influence § 6:12, Court Hearing--Petition for Limited Driving Privileges.

Painter, Ohio Driving Under the Influence § 6:23, Forms.

Painter, Ohio Driving Under the Influence § 14:25, Limited Driving Privileges--Under Operator and Commercial Driver's License--Overview.

Painter, Ohio Driving Under the Influence § 14:26, Limited Driving Privileges--Immobilizing and Disabling

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Devices.

Painter, Ohio Driving Under the Influence § 14:28, Limited Driving Privileges--Restricted Plates.

Painter, Ohio Driving Under the Influence § 16:22, Financial Responsibility--Limited Driving Privileges.

NOTES OF DECISIONS

Educational or occupational purposes 1

1. Educational or occupational purposes

Felon whose driver's license was suspended for life as part of sentence for vehicular homicide was not eligible for a grant of limited driving privileges for occupational and educational purposes until fifteen years elapsed since the suspension began, as such a grant would constitute a "modification" of the suspension, triggering the fifteen-year requirement under statute governing requests for modification or termination of life-long license suspensions. State v. Neace (Ohio App. 3 Dist., Mercer, 06-19-2006) No. 10-06-04, 2006-Ohio-3072, 2006 WL 1669134, Unreported. Automobiles ↪ 144.5

R.C. § 4510.021, OH ST § 4510.021

Current through 2013 File 11 of the 130th GA (2013-2014).

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Effective: April 7, 2009

Baldwin's Ohio Revised Code Annotated Currentness

Title XLV. Motor Vehicles--Aeronautics--Watercraft

Chapter 4510. Driver's License Suspension and Cancellation (Refs & Annos)

→ → **4510.13 Mandatory suspension periods; immobilizing or disabling device; restricted license**

(A)(1) Divisions (A)(2) to (9) of this section apply to a judge or mayor regarding the suspension of, or the grant of limited driving privileges during a suspension of, an offender's driver's or commercial driver's license or permit or nonresident operating privilege imposed under division (G) or (H) of section 4511.19 of the Revised Code, under division (B) or (C) of section 4511.191 of the Revised Code, or under section 4510.07 of the Revised Code for a conviction of a violation of a municipal OVI ordinance.

(2) No judge or mayor shall suspend the following portions of the suspension of an offender's driver's or commercial driver's license or permit or nonresident operating privilege imposed under division (G) or (H) of section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a conviction of a violation of a municipal OVI ordinance, provided that division (A)(2) of this section does not limit a court or mayor in crediting any period of suspension imposed pursuant to division (B) or (C) of section 4511.191 of the Revised Code against any time of judicial suspension imposed pursuant to section 4511.19 or 4510.07 of the Revised Code, as described in divisions (B)(2) and (C)(2) of section 4511.191 of the Revised Code:

(a) The first six months of a suspension imposed under division (G)(1)(a) of section 4511.19 of the Revised Code or of a comparable length suspension imposed under section 4510.07 of the Revised Code;

(b) The first year of a suspension imposed under division (G)(1)(b) or (c) of section 4511.19 of the Revised Code or of a comparable length suspension imposed under section 4510.07 of the Revised Code;

(c) The first three years of a suspension imposed under division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or of a comparable length suspension imposed under section 4510.07 of the Revised Code;

(d) The first sixty days of a suspension imposed under division (H) of section 4511.19 of the Revised Code or of a comparable length suspension imposed under section 4510.07 of the Revised Code.

(3) No judge or mayor shall grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (G) or (H) of section 4511.19 of the Revised Code, under division (C) of section 4511.191 of the Revised Code, or under section

4510.07 of the Revised Code for a municipal OVI conviction if the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the Revised Code sections, municipal ordinances, statutes of the United States or another state, or municipal ordinances of a municipal corporation of another state that are identified in divisions (G)(2)(b) to (h) of section 2919.22 of the Revised Code.

Additionally, no judge or mayor shall grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (B) of section 4511.191 of the Revised Code if the offender, within the preceding six years, has refused three previous requests to consent to a chemical test of the person's whole blood, blood serum or plasma, breath, or urine to determine its alcohol content.

(4) No judge or mayor shall grant limited driving privileges for employment as a driver of commercial motor vehicles to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (G) or (H) of section 4511.19 of the Revised Code, under division (B) or (C) of section 4511.191 of the Revised Code, or under section 4510.07 of the Revised Code for a municipal OVI conviction if the offender is disqualified from operating a commercial motor vehicle, or whose license or permit has been suspended, under section 3123.58 or 4506.16 of the Revised Code.

(5) No judge or mayor shall grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (G) or (H) of section 4511.19 of the Revised Code, under division (C) of section 4511.191 of the Revised Code, or under section 4510.07 of the Revised Code for a conviction of a violation of a municipal OVI ordinance during any of the following periods of time:

(a) The first fifteen days of a suspension imposed under division (G)(1)(a) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code, or of a suspension imposed under division (C)(1)(a) of section 4511.191 of the Revised Code. On or after the sixteenth day of the suspension, the court may grant limited driving privileges, but the court may require that the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in division (C) of section 4510.43 of the Revised Code.

(b) The first forty-five days of a suspension imposed under division (C)(1)(b) of section 4511.191 of the Revised Code. On or after the forty-sixth day of suspension, the court may grant limited driving privileges, but the court may require that the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption or any other type of immobilizing or disabling devices, except as provided in division (C) of section 4510.43 of the Revised Code.

(c) The first sixty days of a suspension imposed under division (H) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code.

(d) The first one hundred eighty days of a suspension imposed under division (C)(1)(c) of section 4511.191 of the Revised Code. On or after the one hundred eighty-first day of suspension, the court may grant limited driving privileges, and either of the following applies:

(i) If the underlying arrest is alcohol-related, the court shall issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(ii) If the underlying arrest is drug-related, the court in its discretion may issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(e) The first forty-five days of a suspension imposed under division (G)(1)(b) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code. On or after the forty-sixth day of the suspension, the court may grant limited driving privileges, and either of the following applies:

(i) If the underlying conviction is alcohol-related, the court shall issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(ii) If the underlying conviction is drug-related, the court in its discretion may issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(f) The first one hundred eighty days of a suspension imposed under division (G)(1)(c) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code. On or after the one hundred eighty-first day of the suspension, the court may grant limited driving privileges, and either of the following applies:

(i) If the underlying conviction is alcohol-related, the court shall issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(ii) If the underlying conviction is drug-related, the court in its discretion may issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension

the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(g) The first three years of a suspension imposed under division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code, or of a suspension imposed under division (C)(1)(d) of section 4511.191 of the Revised Code. On or after the first three years of suspension, the court may grant limited driving privileges, and either of the following applies:

(i) If the underlying conviction is alcohol-related, the court shall issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(ii) If the underlying conviction is drug-related, the court in its discretion may issue an order that, except as provided in division (C) of section 4510.43 of the Revised Code, for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

(6) No judge or mayor shall grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (B) of section 4511.191 of the Revised Code during any of the following periods of time:

(a) The first thirty days of suspension imposed under division (B)(1)(a) of section 4511.191 of the Revised Code ;

(b) The first ninety days of suspension imposed under division (B)(1)(b) of section 4511.191 of the Revised Code;

(c) The first year of suspension imposed under division (B)(1)(c) of section 4511.191 of the Revised Code;

(d) The first three years of suspension imposed under division (B)(1)(d) of section 4511.191 of the Revised Code.

(7) In any case in which a judge or mayor grants limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (G)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code, under division (G)(1)(a) of section 4511.19 of the Revised Code for a violation of division (A)(1)(f), (g), (h), or (i) of that section, or under section 4510.07 of the Revised Code for a municipal OVI conviction for which sentence would have been imposed under division (G)(1)(a)(ii) or (G)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code had the offender been charged with and convicted of a violation of section 4511.19 of the Revised Code instead of a violation of the municipal

OVI ordinance, the judge or mayor shall 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 section 4503.231 of the Revised Code, except as provided in division (B) of that section.

(8) In any case in which the offender operates a motor vehicle that is not equipped with an ignition interlock device, circumvents the device, or tampers with the device or in any case in which the court receives notice pursuant to section 4510.46 of the Revised Code that a certified ignition interlock device required by an order issued under division (A)(5)(e), (f), or (g) of this section prevented an offender from starting a motor vehicle, the following applies:

(a) If the offender was sentenced under division (G)(1)(b) of section 4511.19 of the Revised Code, on a first instance the court may require the offender to wear a monitor that provides continuous alcohol monitoring that is remote. On a second instance, the court shall require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of forty days. On a third instance or more, the court shall require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of sixty days.

(b) If the offender was sentenced under division (G)(1)(c), (d), or (e) of section 4511.19 of the Revised Code, on a first instance the court shall require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of forty days. On a second instance or more, the court shall require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of sixty days.

(9) In any case in which the court issues an order under this section prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, or requires an offender to wear a monitor that provides continuous alcohol monitoring that is remote, the court shall impose an additional court cost of two dollars and fifty cents upon the offender. The court shall not waive the payment of the two dollars and fifty cents unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. The clerk of court shall transmit one hundred per cent of this mandatory court cost collected during a month on or before the twenty-third day of the following month to the state treasury to be credited to the state highway safety fund created under section 4501.06 of the Revised Code, to be used by the department of public safety to cover costs associated with maintaining the habitual OVI/OMWI offender registry created under section 5502.10 of the Revised Code. In its discretion the court may impose an additional court cost of two dollars and fifty cents upon the offender. The clerk of court shall retain this discretionary two dollar and fifty cent court cost, if imposed, and shall deposit it in the court's special projects fund that is established under division (E)(1) of section 2303.201, division (B)(1) of section 1901.26, or division (B)(1) of section 1907.24 of the Revised Code.

(10) In any case in which the court issues an order under this section prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, the court shall notify the offender at the time the offender is granted limited driving privileges that, in accordance with section 4510.46 of the Revised Code, if

the court receives notice that the device prevented the offender from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method employed by the device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the device from permitting the motor vehicle to be started, the court may increase the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from that originally imposed by the court by a factor of two and may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

(B) Any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to section 4511.19 or 4511.191 of the Revised Code or under section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance may file a petition for limited driving privileges during the suspension. The person shall file the petition in the court that has jurisdiction over the place of arrest. Subject to division (A) of this section, the court may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. However, the court shall not grant the privileges for employment as a driver of a commercial motor vehicle to any person who is disqualified from operating a commercial motor vehicle under section 4506.16 of the Revised Code or during any of the periods prescribed by division (A) of this section.

(C)(1) After a driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to section 2903.06, 2903.08, 2903.11, 2907.24, 2921.331, 2923.02, 2929.02, 4511.19, 4511.251, 4549.02, 4549.021, or 5743.99 of the Revised Code, any provision of Chapter 2925. of the Revised Code, or section 4510.07 of the Revised Code for a violation of a municipal OVI ordinance, the judge of the court or mayor of the mayor's court that suspended the license, permit, or privilege shall cause the offender to deliver to the court the license or permit. The judge, mayor, or clerk of the court or mayor's court shall forward to the registrar the license or permit together with notice of the action of the court.

(2) A suspension of a commercial driver's license under any section or chapter identified in division (C)(1) of this section shall be concurrent with any period of suspension or disqualification under section 3123.58 or 4506.16 of the Revised Code. No person who is disqualified for life from holding a commercial driver's license under section 4506.16 of the Revised Code shall be issued a driver's license under this chapter during the period for which the commercial driver's license was suspended under this section, and no person whose commercial driver's license is suspended under any section or chapter identified in division (C)(1) of this section shall be issued a driver's license under Chapter 4507. of the Revised Code during the period of the suspension.

(3) No judge or mayor shall suspend any class one suspension, or any portion of any class one suspension, imposed under section 2903.04, 2903.06, 2903.08, or 2921.331 of the Revised Code. No judge or mayor shall suspend the first thirty days of any class two, class three, class four, class five, or class six suspension imposed under section 2903.06, 2903.08, 2903.11, 2923.02, or 2929.02 of the Revised Code.

(D) The judge of the court or mayor of the mayor's court shall credit any time during which an offender was sub-

ject to an administrative suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to section 4511.191 or 4511.192 of the Revised Code or a suspension imposed by a judge, referee, or mayor pursuant to division (B)(1) or (2) of section 4511.196 of the Revised Code against the time to be served under a related suspension imposed pursuant to any section or chapter identified in division (C)(1) of this section.

(E) The judge or mayor shall notify the bureau of motor vehicles of any determinations made pursuant to this section and of any suspension imposed pursuant to any section or chapter identified in division (C)(1) of this section.

(F)(1) If a court issues an immobilizing or disabling device order under section 4510.43 of the Revised Code, the order shall authorize the offender during the specified period to operate a motor vehicle only if it is equipped with an immobilizing or disabling device, except as provided in division (C) of that section. The court shall provide the offender with a copy of an immobilizing or disabling device order issued under section 4510.43 of the Revised Code, and the offender shall use the copy of the order in lieu of an Ohio driver's or commercial driver's license or permit until the registrar or a deputy registrar issues the offender a restricted license.

An order issued under section 4510.43 of the Revised Code does not authorize or permit the offender to whom it has been issued to operate a vehicle during any time that the offender's driver's or commercial driver's license or permit is suspended under any other provision of law.

(2) An offender may present an immobilizing or disabling device order to the registrar or to a deputy registrar. Upon presentation of the order to the registrar or a deputy registrar, the registrar or deputy registrar shall issue the offender a restricted license. A restricted license issued under this division shall be identical to an Ohio driver's license, except that it shall have printed on its face a statement that the offender is prohibited during the period specified in the court order from operating any motor vehicle that is not equipped with an immobilizing or disabling device. The date of commencement and the date of termination of the period of suspension shall be indicated conspicuously upon the face of the license.

CREDIT(S)

(2008 H 215, eff. 4-7-09; 2008 S 17, eff. 9-30-08; 2006 H 461, eff. 4-4-07; 2004 H 163, eff. 9-23-04; 2002 S 123, eff. 1-1-04)

HISTORICAL AND STATUTORY NOTES

Ed. Note: RC 4510.13(C)(2) contains provisions analogous to former RC 4507.16(H)(2), repealed by 2002 S 123, eff. 1-1-04.

Ed. Note: RC 4510.13(E) contains provisions analogous to former RC 4507.16(K), repealed by 2002 S 123, eff. 1-1-04.

Ed. Note: RC 4510.13(C)(1) contains provisions analogous to former RC 4507.16(H)(1), repealed by 2002 S 123, eff. 1-1-04.

Ed. Note: RC 4510.13(D) contains provisions analogous to former RC 4507.16(J), repealed by 2002 S 123, eff. 1-1-04.

Ed. Note: RC 4510.13(F) contains provisions analogous to former RC 4507.16(L), repealed by 2002 S 123, eff. 1-1-04.

Amendment Note: 2008 H 215 substituted “forty-sixth” for “thirty-first” in division (A)(5)(b); substituted “one hundred eighty-first day” for “first one hundred eighty days” in division (A)(5)(d); and rewrote division (A)(9), which prior thereto read:

“(9) In any case in which the court issues an order under this section prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, or requires an offender to wear a monitor that provides continuous alcohol monitoring that is remote, the court shall impose an additional court cost of two dollars and fifty cents upon the offender. The court shall not waive the payment of the two dollars and fifty cents unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. The clerk of court shall retain one hundred per cent of this court cost. The clerk of court shall transmit one hundred per cent of this court cost collected during a month on the first business day of the following month to the state treasury to be credited to the state highway safety fund created under section 4501.06 of the Revised Code, to be used by the department of public safety to cover costs associated with maintaining the habitual OVI/OMWI offender registry created under section 5502.10 of the Revised Code. In its discretion the court may impose an additional court cost of two dollars and fifty cents upon the offender. The clerk of court shall retain this two dollar and fifty cent court cost, if imposed, and shall deposit it in the court's special projects fund that is established under division (E)(1) of section 2303.201 or division (B)(1) of section 1901.26 of the Revised Code.”

Amendment Note: 2008 S 17 substituted “(9)” for “(7)” after “Divisions (A)(2) to” in division (A)(1), substituted “forty-five” for “thirty” before “days of a suspension imposed” in division (A)(5)(b), deleted “division (G)(1)(b) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code, or of a suspension imposed under” before “division (C)(1)(b) of section 4511.191” in division (A)(5)(b), rewrote division (A)(5)(d), added new division (A)(5)(e) and (A)(5)(f), redesignated old division (A)(5)(e) as (A)(5)(g) and rewrote the section, and added division (A)(8)-(A)(10). Prior to amendment, divisions (A)(5)(d) and (e) read:

“(d) The first one hundred eighty days of a suspension imposed under division (G)(1)(c) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code, or of a suspension imposed under division (C)(1)(c) of section 4511.191 of the Revised Code. The judge may grant limited driving privileges on or after the one hundred eighty-first day of the suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender, while exercising the privileges dur-

ing the period commencing with the one hundred eighty-first day of suspension and ending with the first year of suspension, from operating any motor vehicle unless it is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption. After the first year of the suspension, the court may authorize the offender to continue exercising the privileges in vehicles that are not equipped with immobilizing or disabling devices that monitor the offender's alcohol consumption, except as provided in division (C) of section 4510.43 of the Revised Code. If the offender does not petition for limited driving privileges until after the first year of suspension, the judge may grant limited driving privileges without requiring the use of an immobilizing or disabling device that monitors the offender's alcohol consumption."

"(e) The first three years of a suspension imposed under division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or a comparable length suspension imposed under section 4510.07 of the Revised Code, or of a suspension imposed under division (C)(1)(d) of section 4511.191 of the Revised Code. The judge may grant limited driving privileges after the first three years of suspension only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender from operating any motor vehicle, for the period of suspension following the first three years of suspension, unless the motor vehicle is equipped with an immobilizing or disabling device that monitors the offender's alcohol consumption, except as provided in division (C) of section 4510.43 of the Revised Code."

Amendment Note: 2006 H 461 inserted references to RC 2903.11, 2923.02, and 2929.02 in division (C)(1); substituted "imposed under" for "required by" and inserted references to RC 2903.08, 2921.331, 2903.11, 2923.02, and 2929.02 in division (C)(3); substituted "section" for "chapter" at the end of division (D); and made other nonsubstantive changes.

Amendment Note: 2004 H 163 rewrote division (A)(7) and made other nonsubstantive changes. Prior to amendment division (A)(7) read:

"(7) In any case in which a judge or mayor grants limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under division (G) of section 4511.19 of the Revised Code or under section 4510.07 of the Revised Code for a municipal OVI conviction, the judge or mayor shall 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 section 4503.231 of the Revised Code, except as provided in division (B) of that section."

CROSS REFERENCES

Appeal of suspension, see 4511.197

Driving under the influence of alcohol or drugs, see 4511.19

Financial sanctions, see 2929.18, 2929.28

Individual subject to collateral sanction, petition for certificate of qualification for employment, see 2953.25

LIBRARY REFERENCES

Automobiles ↪ 144.2(14).
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 C.J.S. Motor Vehicles §§ 290 to 296, 336 to 338, 341 to 346.

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OH Jur. 3d Automobiles & Other Vehicles § 141, Disposition of License Upon Judicial Suspension or Revocation.

OH Jur. 3d Automobiles & Other Vehicles § 142, Limited Driving Privileges.

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OH Jur. 3d Criminal Law: Procedure § 1937, Reimbursement.

OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1155, Limited Driving Privileges While Otherwise Suspended.

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OH Jur. 3d Criminal Law: Substantive Principles and Offenses § 1202, Prior Felony Offenses.

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Painter, Ohio Driving Under the Influence § 6:1, Introduction.

Painter, Ohio Driving Under the Influence § 6:4, Type and Length of the Suspension.

Painter, Ohio Driving Under the Influence § 14:5, Sentencing Fundamentals--Treatment of High Test BAC or Refusal With Prior in 20 Years.

Painter, Ohio Driving Under the Influence § 14:7, Penalties--Misdemeanor--First Offense--Simple OVI, Low Test BAC or Drugged Driving.

Painter, Ohio Driving Under the Influence § 14:8, Penalties--Misdemeanor--First Offense--High Test BAC or Refusal With Prior in 20 Years.

Painter, Ohio Driving Under the Influence § 14:9, Penalties--Misdemeanor--Second Offense--Simple OVI, Low Test BAC or Drugged Driving.

Painter, Ohio Driving Under the Influence § 6:12, Court Hearing--Petition for Limited Driving Privileges.

Painter, Ohio Driving Under the Influence § 14:11, Penalties--Misdemeanor--Third Offense--Simple OVI, Low Test BAC or Drugged Driving.

Painter, Ohio Driving Under the Influence § 14:14, Mandatory Penalty Provisions Common to All Felony OVI Offenses.

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Painter, Ohio Driving Under the Influence § 14:26, Limited Driving Privileges--Immobilizing and Disabling Devices.

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LAW REVIEW COMMENTARIES

"Have you been drinking tonight Ms. Prynne?" Ohio's scarlet letter for OVI/DUI offenders: A violation of first amendment protection against compelled speech. William Livingston, 59 Clev. St. L. Rev. 745 (2011).

R.C. § 4510.13, OH ST § 4510.13

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Baldwin's Ohio Revised Code Annotated Currentness

Title XLV. Motor Vehicles--Aeronautics--Watercraft

Chapter 4510. Driver's License Suspension and Cancellation (Refs & Annos)

→ → **4510.54 Modification or termination of suspension of fifteen years or longer**

(A) Except as provided in division (F) of this section, a person whose driver's or commercial driver's license has been suspended for life under a class one suspension or as otherwise provided by law or has been suspended for a period in excess of fifteen years under a class two suspension may file a motion with the sentencing court for modification or termination of the suspension. The person filing the motion shall demonstrate all of the following:

(1) One of the following applies:

(a) At least fifteen years have elapsed since the suspension began, and, for the past fifteen years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, the law of this state, or the law of any of its political subdivisions, or any violation of a suspension under this chapter or a substantially equivalent municipal ordinance.

(b) At least five years have elapsed since the suspension began, and, for the past five years, the person has not been found guilty of any offense involving a moving violation under the law of this state, the law of any of its political subdivisions, or federal law, any violation of section 2903.06 or 2903.08 of the Revised Code, or any violation of a suspension under this chapter or a substantially equivalent municipal ordinance.

(2) The person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standard set forth in section 4509.51 of the Revised Code, or proof, to the satisfaction of the registrar of motor vehicles, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in that section.

(3) If the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or combination of them at the time of the offense or because at the time of the offense the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code or at least the concentration of a listed controlled substance or a listed metabolite of a controlled substance specified in division (A)(1)(j) of section 4511.19 of the Revised Code, the person also shall demonstrate all of the following:

- (a) The person successfully completed an alcohol, drug, or alcohol and drug treatment program.
- (b) The person has not abused alcohol or other drugs for a period satisfactory to the court.
- (c) For the past fifteen years, the person has not been found guilty of any alcohol-related or drug-related offense.

(B) Upon receipt of a motion for modification or termination of the suspension under this section, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but shall not grant the motion without a hearing. If the court denies a motion without a hearing, the court may consider a subsequent motion filed under this section by that person. If a court denies the motion after a hearing, the court shall not consider a subsequent motion for that person. The court shall hear only one motion filed by a person under this section. If scheduled, the hearing shall be conducted in open court within ninety days after the date on which the motion is filed.

(C) The court shall notify the person whose license was suspended and the prosecuting attorney of the date, time, and location of the hearing. Upon receipt of the notice from the court, the prosecuting attorney shall notify the victim or the victim's representative of the date, time, and location of the hearing.

(D) At any hearing under this section, the person who seeks modification or termination of the suspension has the burden to demonstrate, under oath, that the person meets the requirements of division (A) of this section. At the hearing, the court shall afford the offender or the offender's counsel an opportunity to present oral or written information relevant to the motion. The court shall afford a similar opportunity to provide relevant information to the prosecuting attorney and the victim or victim's representative.

Before ruling on the motion, the court shall take into account the person's driving record, the nature of the offense that led to the suspension, and the impact of the offense on any victim. In addition, if the offender is eligible for modification or termination of the suspension under division (A)(1)(a) of this section, the court shall consider whether the person committed any other offense while under suspension and determine whether the offense is relevant to a determination under this section. The court may modify or terminate the suspension subject to any considerations it considers proper if it finds that allowing the person to drive is not likely to present a danger to the public. After the court makes a ruling on a motion filed under this section, the prosecuting attorney shall notify the victim or the victim's representative of the court's ruling.

(E) If a court modifies a person's license suspension under this section and the person subsequently is found guilty of any moving violation or of any substantially equivalent municipal ordinance that carries as a possible penalty the suspension of a person's driver's or commercial driver's license, the court may reimpose the class one or other lifetime suspension, or the class two suspension, whichever is applicable.

(F) This section does not apply to any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended for life under a class one suspension imposed under division (B)(3) of section 2903.06 or section 2903.08 of the Revised Code or a class two suspension imposed under division (C)

of section 2903.06 or section 2903.11, 2923.02, or 2929.02 of the Revised Code.

CREDIT(S)

(2012 S 337, eff. 9-28-12; 2006 H 461, eff. 4-4-07; 2006 S 8, eff. 8-17-06; 2004 H 163, eff. 9-23-04; 2004 H 52, eff. 6-1-04; 2002 S 123, eff. 1-1-04)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2012 S 337, rewrote and combined former divisions (A)(1) and (A)(2); redesignated former divisions (A)(3) and (A)(4) as divisions (A)(2) and (A)(3), respectively; and in the second paragraph of division (D), changed the reference from "(A)(2)" to "(A)(1)(a)". Prior to amendment, former divisions (A)(1) and (A)(2) read:

"(1) At least fifteen years have elapsed since the suspension began.

"(2) For the past fifteen years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, the law of this state, or the law of any of its political subdivisions, or any violation of a suspension under this chapter or a substantially equivalent municipal ordinance."

Amendment Note: 2006 H 461 substituted "Except as provided in division (F) of this section, a" for "A" at the beginning of division (A) and added division (F).

Amendment Note: 2006 S 8 inserted "or at least the concentration of a listed controlled substance or a listed metabolite of a controlled substance specified in division (A)(1)(j) of section 4511.19 of the Revised Code" in the introductory paragraph of (A)(4).

Amendment Note: 2004 H 163 substituted "(1)(b), (c), (d), or (e)" for "(2), (3), (4), or (5)" in division (A)(4).

Amendment Note: 2004 H 52 deleted "A motion under this division may be heard only once." in division (A); and added the second through the fourth sentences in division (B).

LIBRARY REFERENCES

Automobiles ↪ 144.2(14), 144.3.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles §§ 290 to 296, 336 to 338, 341 to 346, 402 to 408.

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OH Jur. 3d Automobiles & Other Vehicles § 145, Conditions for Restoration of Full Driving Privileges.

NOTES OF DECISIONS

Constitutional issues 1
Reinstatement of license 2

1. Constitutional issues

Statute providing that a person whose driver's license was suspended for life could move to modify or terminate suspension after at least 15 years had elapsed since suspension began did not violate state constitutional prohibition against retroactive laws, as applied to defendant whose license had been permanently revoked following convictions for aggravated vehicular homicide and involuntary manslaughter; statute was remedial since it had no effect on substantial rights, and it provided a procedure for the enforcement of rights. *State v. Redman* (Ohio App. 12 Dist., 10-17-2005) 163 Ohio App.3d 686, 839 N.E.2d 1001, 2005-Ohio-5474. Automobiles  144.1(1.5); Statutes  278.25

2. Reinstatement of license

Felon whose driver's license was suspended for life as part of sentence for vehicular homicide was not eligible for a grant of limited driving privileges for occupational and educational purposes until fifteen years elapsed since the suspension began, as such a grant would constitute a "modification" of the suspension, triggering the fifteen-year requirement under statute governing requests for modification or termination of life-long license suspensions. *State v. Neace* (Ohio App. 3 Dist., Mercer, 06-19-2006) No. 10-06-04, 2006-Ohio-3072, 2006 WL 1669134, Unreported. Automobiles  144.5

Statute requiring a motorist seeking reinstatement of a driver's license that was permanently suspended or suspended for a period exceeding 15 years to demonstrate that at least 15 years have elapsed since the suspension began did not prevent defendant whose license was permanently revoked as part of his sentence for involuntary manslaughter arising out of a motor vehicle accident from seeking relief after fewer than 15 years; defendant did not seek direct reinstatement of his license, but rather sought to have conviction and sentence vacated. *State v. Harrison* (Ohio App. 11 Dist., Portage, 08-12-2005) No. 2004-P-0068, 2005-Ohio-4212, 2005 WL 1940353, Unreported. Automobiles  144.7

R.C. § 4510.54, OH ST § 4510.54

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Title XLV. Motor Vehicles--Aeronautics--Watercraft

⌘ Chapter 4511. Traffic Laws--Operation of Motor Vehicles (Refs & Annots)

⌘ Operation of Motor Vehicle While Intoxicated

→ → **4511.19 Driving while under the influence of alcohol or drugs; tests; presumptions; penalties; immunity for those withdrawing blood**

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, 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 eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.
- (c) The person has a concentration of ninety-six-thousandths of one per cent or more but less than two hundred four-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.
- (d) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.
- (e) The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.
- (f) The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.
- (g) The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.
- (h) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

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- (i) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred 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:
- (i) The person has a concentration of amphetamine in the person's urine of at least five hundred 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 one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.
- (ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty 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 fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
- (iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty 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 fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (iv) The person has a concentration of heroin in the person's urine of at least two thousand 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 fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
- (v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten 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 ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.
- (vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five 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 ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
- (vii) The person has a concentration of marihuana in the person's urine of at least ten 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 two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

(viii) Either of the following applies:

(I) 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 fifteen 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 five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(II) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five 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 fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(ix) The person has a concentration of methamphetamine in the person's urine of at least five hundred 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 one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(x) The person has a concentration of phencyclidine in the person's urine of at least twenty-five 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 ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

(xi) The state board of pharmacy has adopted a rule pursuant to section 4729.041 of the Revised Code that specifies the amount of salvia divinorum and the amount of salvinorin A that constitute concentrations of salvia divinorum and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating any vehicle, streetcar, or trackless trolley within this state, the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of at least that amount so specified by rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma.

(2) No person who, within twenty 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, a violation of division (A)(1) or (B) of this section, or any other equivalent offense shall do both of the following:

(a) Operate any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them;

(b) Subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley 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

section 4511.191 of the Revised Code, and being advised by the officer in accordance with section 4511.192 of the Revised Code of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(B) No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least two-hundredths of one per cent but less than eight-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(4) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(C) 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)(1)(a) In any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(a) of this section or for an equivalent offense that is vehicle-related, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in section 2317.02 of the Revised Code, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is vehicle-related, 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 division (A) of section 4511.192 of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-

intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample 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 under division (D)(1)(b) of this section 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 section 3701.143 of the Revised Code.

(c) As used in division (D)(1)(b) of this section, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section or for an equivalent offense that is vehicle-related, 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), (c), (d), and (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 or juvenile court proceeding for a violation of division (B) of this section or for an equivalent offense that is substantially equivalent to that division.

(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.

If the chemical test was obtained pursuant to division (D)(1)(b) of this section, 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. If the person was under arrest as described in division (A)(5) of section 4511.191 of the Revised Code, the arresting officer shall advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. If the person was under arrest other than described in division (A)(5) of section 4511.191 of the Revised Code, the form to be read to the person to be tested, as required under section 4511.192 of the Revised Code, 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 divisions (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.A. 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 whole blood, blood serum or plasma, 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:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) 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.

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) 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), (c), (d), (e), (f), (g), (h), (i), or (j) or (B)(1), (2), (3), or (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 em-

ployment 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, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section or section 4511.191 or 4511.192 of the Revised Code, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or section 4511.191 or 4511.192 of the Revised Code, 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 also extends to an emergency medical service organization that employs an emergency medical technician-intermediate or emergency medical technician-paramedic who withdraws blood under this section. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

As used in this division, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(G)(1) Whoever violates any provision of divisions (A)(1)(a) to (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 Chapter 2929. of the Revised Code, except as otherwise authorized or required by divisions (G)(1)(a) to (e) of this section:

(a) Except as otherwise provided in division (G)(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 following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of three consecutive days. As used in this division, three consecutive days means seventy-two consecutive hours. The court may sentence an offender to both an intervention program and a jail term. The court may impose a jail term in addition to the three-day mandatory jail term or intervention program. However, in no case shall the cumulative jail term imposed for the offense exceed six months.

The court may suspend the execution of the three-day jail term under this division if the court, in lieu of that suspended term, places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code and requires the offender to attend, for three consecutive days, a drivers' intervention program certified under section 3793.10 of the Revised Code. The court also may suspend the execution of any part of the three-day jail term under this division if it places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code for part of the three days, requires the offender to attend for the suspended part of the term a drivers' intervention program so certified, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of community control and in addition to the required attendance at a drivers' intervention program, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose on the offender any other conditions of community control that it considers necessary.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program that is certified pursuant to section 3793.10 of the Revised Code. As used in this division, three consecutive days means seventy-two consecutive hours. If the court determines that the offender is not conducive to treatment in a drivers' intervention program, if the offender refuses to attend a drivers' intervention program, or if the jail at which the offender is to serve the jail term imposed can provide a driver's intervention program, the court shall sentence the offender to a mandatory jail term of at least six consecutive days.

The court may require the offender, under a community control sanction imposed under section 2929.25 of the Revised Code, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services, in addition to the required attendance at drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of community control on the offender that it considers necessary.

(iii) In all cases, a fine of not less than three hundred seventy-five and not more than one thousand seventy-five dollars;

(iv) In all cases, a class five license suspension of the offender's driver's or commercial driver's license or permit

or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(b) Except as otherwise provided in division (G)(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 following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of ten consecutive days. The court shall impose the ten-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court shall require the offender to be assessed by an alcohol and drug treatment program that is authorized by section 3793.02 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The purpose of the assessment is to determine the degree of the offender's alcohol usage and to determine whether or not treatment is warranted. Upon the request of the court, the program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of twenty consecutive days. The court shall impose the twenty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the twenty-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court shall require the offender to be assessed by an alcohol and drug treatment program that is authorized by section 3793.02 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The purpose of the assessment is to determine the degree of the offender's alcohol usage and to determine whether or not treatment is warranted. Upon the request of the court, the program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929. of the Revised Code, a fine of not less than

five hundred twenty-five and not more than one thousand six hundred twenty-five dollars;

(iv) In all cases, a class four license 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 division (A)(4) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for ninety days in accordance with section 4503.233 of the Revised Code and impoundment of the license plates of that vehicle for ninety days.

(c) Except as otherwise provided in division (G)(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 following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of thirty consecutive days. The court shall impose the thirty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the thirty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory jail term of sixty consecutive days. The court shall impose the sixty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the sixty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929. of the Revised Code, a fine of not less than eight hundred fifty and not more than two thousand seven hundred fifty dollars;

(iv) In all cases, a class three license 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 division (A)(3) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, the court shall order the offender to participate in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The operator of the program shall determine and assess the degree of the offender's alcohol dependency and shall make recommendations for treatment. Upon the request of the court, the program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(d) Except as otherwise provided in division (G)(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 four violations of division (A) or (B) of this section or other equivalent offenses or an offender who, within twenty 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 of the fourth degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of sixty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the sixty-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of one hundred twenty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose

a jail term in addition to the one hundred twenty-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than one thousand three hundred fifty nor more than ten thousand five hundred dollars;

(iv) In all cases, a class two license 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 division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, the court shall order the offender to participate in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The operator of the program shall determine and assess the degree of the offender's alcohol dependency and shall make recommendations for treatment. Upon the request of the court, the program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(vii) In all cases, if the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court, pursuant to section 2929.17 of the Revised Code, may impose a term of house arrest with electronic monitoring. The term shall not commence until after the offender has served the mandatory term of local incarceration.

(e) An offender who previously has been convicted of or pleaded guilty to a violation of division (A) of this section that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of the third degree. The court shall sentence the offender to all of the following:

(i) If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division

(G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a sixty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a one hundred twenty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than one thousand three hundred fifty nor more than ten thousand five hundred dollars;

(iv) In all cases, a class two license 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 division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, the court shall order the offender to participate in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the program. The operator of the program shall determine and assess the degree of the offender's alcohol dependency and shall make recommendations for treatment. Upon the request of the court, the program shall submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

(2) An offender who is convicted of or pleads guilty to a violation of division (A) of this section and who sub-

sequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in division (F)(2) of section 4511.191 of the Revised Code.

(3) If an offender is sentenced to a jail term under division (G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) of this section and if, within sixty 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 sixty-day period following the date of sentencing, the court may impose an alternative sentence under this division that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

As an alternative to a mandatory jail term of ten consecutive days required by division (G)(1)(b)(i) of this section, the court, under this division, may sentence the offender to five consecutive days in jail and not less than eighteen consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the five consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The five consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of twenty consecutive days required by division (G)(1)(b)(ii) of this section, the court, under this division, may sentence the offender to ten consecutive days in jail and not less than thirty-six consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the ten consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The ten consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to a mandatory jail term of thirty consecutive days required by division (G)(1)(c)(i) of this section, the court, under this division, may sentence the offender to fifteen consecutive days in jail and not less than fifty-five consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the fifteen consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The fifteen consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of sixty consecutive days required by division (G)(1)(c)(ii) of this section, the court, under this division, may sentence the offender to thirty consecutive days in jail and not less than one hundred ten consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the thirty consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The thirty consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (G) of this section and if section 4510.13 of the Revised Code 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 that 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 section 4503.231 of the Revised Code, 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 division (B) of section 4503.231 of the Revised Code.

(5) Fines imposed under this section for a violation of division (A) of this section shall be distributed as follows:

(a) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii), thirty-five dollars of the fine imposed under division (G)(1)(b)(iii), one hundred twenty-three dollars of the fine imposed under division (G)(1)(c)(iii), and two hundred ten dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender, as determined by the court that imposes the fine. The agency shall use this share to pay only those costs it incurs in enforcing this section or a municipal OVI ordinance and in informing the public of the laws governing the operation of a vehicle while under the influence of alcohol, the dangers of the operation of a vehicle under the influence of alcohol, and other information relating to the operation of a vehicle under the influence of alcohol and the consumption of alcoholic beverages.

(b) Fifty dollars of the fine imposed under division (G)(1)(a)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section and was confined as a result of the offense prior to being sentenced for the offense but is not sentenced to a term of incarceration, the fifty dollars shall be paid to the political subdivision that paid the cost of housing the offender during that period of confinement. The political subdivision shall use the share under this division to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who violate this section or a municipal OVI ordinance, costs of any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(c) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii) and fifty dollars of the fine imposed under division (G)(1)(b)(iii) of this section shall be deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of that court, as created by the county or municipal corporation under division (F) of section 4511.191 of the Revised Code.

(d) One hundred fifteen dollars of the fine imposed under division (G)(1)(b)(iii), two hundred seventy-seven dollars of the fine imposed under division (G)(1)(c)(iii), and four hundred forty dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. The political subdivision shall use this share to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to

persons who violate this section or a municipal OVI ordinance, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(e) Fifty dollars of the fine imposed under divisions (G)(1)(a)(iii), (G)(1)(b)(iii), (G)(1)(c)(iii), (G)(1)(d)(iii), and (G)(1)(e)(iii) of this section shall be deposited into the special projects fund of the court in which the offender was convicted and that is established under division (E)(1) of section 2303.201, division (B)(1) of section 1901.26, or division (B)(1) of section 1907.24 of the Revised Code, to be used exclusively to cover the cost of immobilizing or disabling devices, including certified ignition interlock devices, and remote alcohol monitoring devices for indigent offenders who are required by a judge to use either of these devices. If the court in which the offender was convicted does not have a special projects fund that is established under division (E)(1) of section 2303.201, division (B)(1) of section 1901.26, or division (B)(1) of section 1907.24 of the Revised Code, the fifty dollars shall be deposited into the indigent drivers interlock and alcohol monitoring fund under division (I) of section 4511.191 of the Revised Code.

(f) Seventy-five dollars of the fine imposed under division (G)(1)(a)(iii), one hundred twenty-five dollars of the fine imposed under division (G)(1)(b)(iii), two hundred fifty dollars of the fine imposed under division (G)(1)(c)(iii), and five hundred dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be transmitted to the treasurer of state for deposit into the indigent defense support fund established under section 120.08 of the Revised Code.

(g) The balance of the fine imposed under division (G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), or (e)(iii) of this section shall be disbursed as otherwise provided by law.

(6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (G)(1)(c), (d), or (e) of this section is assigned or transferred and division (B)(2) or (3) of section 4503.234 of the Revised Code 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 automobile dealers association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(7) In all cases in which an offender is sentenced under division (G) of this section, the offender shall provide the court with proof of financial responsibility as defined in section 4509.01 of the Revised Code. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution pursuant to section 2929.18 or 2929.28 of the Revised Code in an amount not exceeding five thousand dollars for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under division (G) of this section.

(8) As used in division (G) of this section, "electronic monitoring," "mandatory prison term," and "mandatory term of local incarceration" have the same meanings as in section 2929.01 of the Revised Code.

(H) Whoever violates division (B) of this section is guilty of operating a vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in division (H)(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 division (A)(6) of section 4510.02 of the Revised Code.

(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 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 division (A)(4) of section 4510.02 of the Revised Code.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1416 of the Revised Code 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 division (E) of section 2929.24 of the Revised Code.

(4) The offender shall provide the court with proof of financial responsibility as defined in section 4509.01 of the Revised Code. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to section 2929.28 of the Revised Code in an amount not exceeding five thousand dollars for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the violation of division (B) of this section.

(I)(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 Chapter 3793. of the Revised Code 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.

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

(K) Division (A)(1)(j) of this section does not apply to a person who operates a vehicle, streetcar, or trackless trolley 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.

(L) 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 division (D) of section 2923.16 of the Revised Code in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(M) All terms defined in section 4510.01 of the Revised Code apply to this section. If the meaning of a term defined in section 4510.01 of the Revised Code conflicts with the meaning of the same term as defined in section 4501.01 or 4511.01 of the Revised Code, the term as defined in section 4510.01 of the Revised Code applies to this section.

(N)(1) The Ohio Traffic Rules in effect on January 1, 2004, as adopted by the supreme court under authority of section 2937.46 of the Revised Code, do not apply to felony violations of this section. Subject to division (N)(2) of this section, the Rules of Criminal Procedure apply to felony violations of this section.

(2) If, on or after January 1, 2004, the supreme court modifies the Ohio Traffic Rules to provide procedures to govern felony violations of this section, the modified rules shall apply to felony violations of this section.

CREDIT(S)

(2011 H 5, eff. 9-23-11; 2010 S 58, eff. 9-17-10; 2008 H 215, eff. 4-7-09; 2008 S 17, eff. 9-30-08; 2008 S 209, eff. 3-26-08; 2006 H 461, eff. 4-4-07; 2006 S 8, eff. 8-17-06; 2004 H 163, eff. 9-23-04; 2003 H 87, § 4, eff. 1-1-04; 2003 H 87, § 1, eff. 6-30-03; 2002 S 163, § 3, eff. 1-1-04; 2002 S 163, § 1, eff. 4-9-03; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 1999 S 22, eff. 5-17-00; 1994 S 82, eff. 5-4-94; 1990 H 837, eff. 7-25-90; 1990 S 131; 1986 S 262; 1982 S 432; 1974 H 995; 1971 S 14; 1970 H 874; 132 v H 380; 130 v S 41; 125 v 461; 1953 H 1; GC 6307-19)

HISTORICAL AND STATUTORY NOTES

Ed. Note: RC 4511.19 contains provisions analogous to former RC 4507.16(B) and 4511.99(A), repealed by 2002 S 123, eff. 1-1-04.