Supreme Court of Ohio Clerk of Court - Filed May 05, 2015 - Case No. 2014-1295

IN THE SUPREME COURT OF OHIO

COLUMBUS, OHIO

STATE OF OHIO	)	OHIO SUPREME COURT
	)	CASE NO. 2014-1295
Plaintiff-Appellant	)	
	)	On Appeal from the Ashtabula
vs.	)	County Court of Appeals,
	)	Eleventh Appellate District
MICHAEL D. BAKER	)	
	)	Eleventh District Court of
Defendant-Appellee	)	Appeals, Case No. 2013-A-0020

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STATEMENT OF THE CASE

On June 22, 2011, a traffic complaint was filed in the Ashtabula County Court, Eastern Division, in the form of an Indictment charging Michael D. Baker, Appellee herein, with one count of Operating a Motor Vehicle with a Concentration of Blood Alcohol of eight-hundredths (.08) of one percent or more, in violation of Ohio Revised Code §4511.19(A)(1)(b), a misdemeanor of the first degree (T.d. 2). The charge states the offense to have taken place on March 6, 2011, in Andover Township, Ashtabula County, Ohio. Upon arraignment, Appellee entered a plea of not guilty to the charge (T.d. 8).

On August 17, 2011, Appellee filed a motion to suppress evidence (T.d. 15). The Motion to Suppress specifically included the failure by the State to comply with statutory and administrative requirements for the analysis of bodily fluid of Appellee. On October 17, 2012, a suppression hearing was held.

The trial court sustained Appellee's Motion to Suppress in a Judgment Entry filed March 28, 2013 (T.D. 45). The State of Ohio appealed this decision (S.Ct. d. 1). The Eleventh District Court of Appeals affirmed the decision of the trial court. State v. Baker, 11th Dist. No. 2013-A-0020, 2014-Ohio-2873 at ¶26. The State of Ohio filed a Notice of Appeal with this Honorable Court (S.Ct. d. 17). In its Notice of Appeal, the State of Ohio stated that "this case raises a substantial constitutional question" and "involves a felony". The State neither raises nor argues any substantial constitutional question. The case does not involve a felony.

This Court accepted jurisdiction to hear Appellant's discretionary appeal by Entry filed December 29, 2014 (S.Ct. d. 18).

STATEMENT OF FACTS

On March 6, 2011, Trooper Charles Emery of the Ohio State Highway Patrol was working the midnight shift when he received a call about a pedestrian walking eastbound in the roadway on U.S. Route 6 in the westbound lane in Andover Township, Ashtabula County, Ohio (T.p. 8-9). At approximately 12:30 a.m. (T.p. 85), Trooper Emery was notified by the dispatcher that the pedestrian had been struck and that it was a fatality crash (T.p. 9 and 49). The trooper arrived at the scene at 12:34 a.m. (T.p. 48) and described the circumstances at the scene as "extreme weather nature of the dark, rainy night" (T.d. 18).

Appellee approached the trooper at the scene and stated he was the driver of the vehicle involved in the crash (T.p. 9, 10). The trooper stated with regard to Appellee, "Due to the circumstances, you could tell he was very distraught and under a high load of stress." (T.p. 11) Trooper Emery had Appellee sit in the front seat of his patrol car and provided him with an OH-3 Crash Statement Form and "had him get started on what had happened in the night" (T.p. 10). While at the scene of the incident, and with the OH-3 Crash Statement Form in his possession, the trooper during cross-examination quoted Appellee as follows:

> He just stated – yes, he stated that he didn't want to finish filling out the form or to do anything else as far as statements. He said he would rather speak to a – to a lawyer at that point before filling out any paperwork. (T.p. 62)

After the trooper was outside the patrol car for a few minutes, he returned and stated he "detected a strong odor of alcohol" (T.p. 12). He quoted Appellee as saying "he'd had 6 or 7 beers" with no reference as to when said consumption had taken place

(T.p. 13). On cross-examination, the trooper acknowledged some issues of recollection due to the 18-month period between the incident and the hearing on the Motion to Suppress (T.p. 50). He had completed an Impaired Driver's Report and a Statement of Facts in which he referenced having detected an odor of an alcoholic beverage on the person of Appellee, but had not characterized it as "strong" (T.p. 57). No testimony relative to any odor of alcohol on the person or breath of Appellee was given or suggested by Eric Fabian, the paramedic who drew blood from Appellee at approximately 1:50 a.m. (T.p. 99).

Testimony at the Motion to Suppress hearing was notable for what was not part of the record. This included the following:

1) Neither the trooper nor paramedic, Eric Fabian, ever suggested the conclusion or opinion that Appellee was impaired. There was no suggestion that Appellee's speech was slurred or otherwise out of the ordinary. There was no suggestion that Appellee's demeanor was anything other than appropriate under the circumstances. There was no indication of a lack of coordination such as dropping keys, falling over, or fumbling for a wallet or papers. There was no observation of any bloodshot, glassy or glazed condition of Appellee's eyes.

2) No evidence or suggestion was produced or argued that Appellee had in any way driven erratically. To the contrary, Appellee sought to introduce testimony as to the absence of any problematic or reckless operation of his motor vehicle and the existence of the aberrational conduct of the pedestrian in the roadway at the time of the incident herein (T.p. 51-53). The Court would not permit said testimony, although a proffer thereof was made on behalf of Appellee (T.p. 122).

3) No charge, citation or complaint of any offense of any kind was written, delivered or served upon Appellee by the trooper during the night of March 6, 2011, or thereafter (T.p. 44). The misdemeanor charge resulted from a Grand Jury Indictment filed June 21, 2011 (T.d. 2). After completion of the blood draw by paramedic Fabian, the trooper transported Appellee back to Appellee's residence (T.p. 43). The trooper stated he had not placed Appellee under arrest for anything (T.p. 43).

The trooper made the decision to administer to Appellee a horizontal gaze nystagmus (HGN) test and stated he observed four of six clues (T.P. 13-17). No audio or video was made of the administration of the HGN, although the facilities were available within the trooper's cruiser upon his decision to engage the system (T.p. 59-60). No testimony was given by the officer that he had training for the administration of the HGN test. The National Highway Traffic Safety Administration (NHTSA) manual was not introduced into evidence. There was no testimony that the HGN test was given in conformity with the NHTSA standards.

Following administration of the HGN test, Trooper Emery testified:

> I had advised Mr. Baker at that time of his Miranda Rights and read a form to him, and he refused to sign it....I Mirandized him and read the Mirandize (sic) form that we have to him, and asked him if he would voluntarily sign it. And he stated—very respectfully, he stated with all respect, he wanted—at that point in time, he'd rather seek legal counsel before he signed any paperwork or answered any more questions (T.p. 23-24).

In spite of the clear expression of Appellee's assertion of his constitutional rights under the Fifth and Sixth Amendments to the United States Constitution, Trooper Emery proceeded as follows:

> And I told him I understood, and advised him that we would be going down to Saint Joseph's Hospital, we'll get out of the weather

> and be able to do the field-side sobriety test; and also, with us, it's standard procedure that we draw blood from anybody involved in a fatality crash. Mr. Baker stated he understood. And I asked if he would volunteer a sample, and he stated yes. (T.P. 24)

At this point in Trooper Emery's testimony, counsel for Appellee objected and moved in limine from any further questions or responses based upon the Fifth Amendment. The Objection was overruled by the Court (T.P. 25-26). The officer then proceeded to state the following:

> To Mr. Baker, what I had stated was is that I understood his – that I asked him, you know, gave him his Miranda Rights, and <u>he stated he didn't want to finish filling out the OH-3, didn't really want to talk anymore about what had happened or anything like that about the crash until he had spoke to a lawyer</u>. And I said, okay, you have that right. I said, but per our procedure, anybody involved in a fatality crash, we ask for a voluntary consent of alcohol – or I'm sorry, blood, or we can go around pursuant to getting a warrant to be able to obtain that. And Mr. Baker volunteered, stated that he would be willing to just volunteer a sample of his blood. (T.P. 26) [emphasis added]

Defense counsel again objected and moved in limine with respect to further testimony. The objection and motion were again overruled by the Court (T.P. 29).

The trooper characterized Appellee as "not under arrest" (T.p. 61), although having Mirandized Appellee and having heard Appellee's specific request to stop discussions and to consult with an attorney (T.p. 62). Although Appellee was "not under arrest", the trooper made the decision to transport Appellee approximately 5 miles to the St. Joseph's Hospital (T.p. 60) to conduct field sobriety tests and to draw blood. The trooper characterized his actions as "standard procedure…from anybody involved in a fatality crash" (T.p. 24). No evidence of any "standard procedure" was introduced. The trooper testified that Appellee stated he understood the alleged "standard procedure",

whereupon the trooper asked if Appellee "would volunteer a sample" to which Appellee is alleged to have stated "yes" (T.p. 24).

At the St. Joseph's Hospital in Andover, Ohio, the trooper conducted field sobriety testing consisting of the one leg stand and the walk and turn tests. The trooper testified that he observed one positive clue out of 8 available clues on the walk and turn test (T.p. 31) and one clue on the one leg stand (T.p. 31-32). No testimony was given by the officer that he had training for the administration of either the walk and turn or the one leg stand tests. The National Highway Traffic Safety Administration (NHTSA) manual was not introduced into evidence and there was no testimony that the two tests were given in conformity with the NHTSA standards. A video (Plaintiff Exhibit B - T.p. 34-39) of the one leg stand and walk and turn tests, taken at approximately 1:22 a.m. on the morning of the accident, was shown to the Court.

In spite of the absence of any opinion by the trooper or the paramedic, in spite of the results of the field sobriety tests, in spite of the trooper's statement that the Defendant was never placed under arrest, in spite of the fact that no citation for any traffic offense was issued, and in spite of the provisions in Form 2255 providing for the explicit articulation by the officer of the probable cause for the driver's arrest, the trooper read to Appellee Ohio Bureau of Motor Vehicles Form 2255 and the rights and admonitions contained therein (T.p. 40, 71, 72). The trooper did not save or complete the Form 2255 "because we never did charge him with ALS paperwork" (T.p. 71). The trooper stated that Appellee "again consented to a sample of his blood" (T.p. 40-41). Paramedic Fabian drew the blood sample in the Emergency Room of St. Joseph's Hospital at approximately 1:50 a.m. and handed it to the trooper (T.p. 41-42, 98). The

trooper acknowledged receipt of the sample, which he placed in his patrol car cupholder (T.p. 73). He drove Appellee to Appellee's residence and then drove from Andover to the Highway Patrol Post in Saybrook Township, where he "finished up some paperwork". In spite of these various activities and his continuing travel in his patrol car, the trooper did not mail the sample until after the 6:00 a.m. conclusion of his work shift (T.p. 73). He stated that he did not refrigerate the sample at the Patrol Post because "that's not a procedure of ours" (T.p. 73, 74).

The testing of the blood sample was conducted at the Ohio State Highway Patrol Crime Lab Toxicology Unit by Emily Adelman on March 16, 2011 (T.p. 120). Ms. Adelman is responsible for testing biological substances for the presence of alcohol or drugs, for which she holds a permit through the Ohio Department of Health (T.p. 103). She testified that the blood sample is required to be refrigerated other than while in transit or testing (T.p. 110). No testimony was provided by the witness relative to the certification of her laboratory to perform testing conforming to the requirements of the Department of Health nor to whether her testing procedure was in conformity with said requirements. No testimony was provided by the witness to even suggest that there would have been no adverse effect upon the blood sample due to the failure to provide refrigeration after collection and prior to the mailing. Timely objection was made to Ms. Adelman's conclusions (T.p. 125, 126).

ARGUMENT

APPELLANT'S PROPOSITION OF LAW

THE STATE SUBSTANTIALLY COMPLIED WITH OHIO ADM. CODE 3701-53-05 WHERE APPELLEE'S BLOOD SAMPLE REMAINED UNREFRIGERATED PRIOR TO MAILING FOR A FOUR HOUR AND TEN MINUTE PERIOD, THUS, ABSENT A SHOWING

OF PREJUDICE BY APPELLEE THE BLOOD SAMPLE WAS ADMISSIBLE.

Argument Against Appellant's Proposition of Law

Ohio Administrative Code §3701-53-05 regulates collection and handling of blood and urine specimens. At subsection (F), it is specifically stated that "while not in transit or under examination, all blood and urine specimens shall be refrigerated". In her testimony, the State's witness, Emily Adelman, stated with regard to blood specimens as follows: "when they're not in transit or not being tested, they'll have to be refrigerated" (T.p. 110).

In cross-examination of Trooper Emery, he was asked whether he had placed the vial containing the blood specimen into refrigeration at the Patrol Post. His response was "No. That's not a procedure of ours." (T.p. 74). In State v. Burnside, 100 Ohio St. 3d 152, 797 N.E. 2d 71, 2003-Ohio-5372, the Ohio Supreme Court held as follows:

> A court infringes upon the authority of the Director of Health when the court holds that the State need not do that which the Direct has required by its regulations on blood alcohol testing of drivers; such an infringement places the court in the position of the Director of Health for the precise purpose of second-guessing whether the regulation with which the State has not complied is necessary to ensure the reliability of the alcohol test results OAC 3701-53-05.

The Burnside decision further held with regard to OAC 3701.53-05 that "only de minimis errors easily recognizable as such are excusable under the standard of substantial compliance with regulations on blood alcohol testing of drivers". The decision directed an appellate court to accept the trial court's findings of fact if they are supported by competent credible evidence.

In State v. Falconer (2012) 5th District, 2012 Ohio 2293; 2012 Ohio App. LEXIS 2013, the Court of Appeals held at paragraph 25 as follows:

> After a defendant challenges the validity of test results in a pretrial motion, the state has the burden to show that the test was administered in substantial compliance with the regulations prescribed by the Director of Health. Once the state has satisfied this burden and created a presumption of admissibility, the burden then shifts to the defendant to rebut that presumption by demonstrating that he was prejudiced by anything less than strict compliance.

The Falconer decision specifically references the refrigeration requirement of the blood sample. The requirement herein was not followed. The subsequent testing thereof must be suppressed.

In the hearing upon Appellee's Motion to Suppress, the State neither presented the pertinent regulations of the Ohio Department of Health relevant to blood testing nor testimony by the State's witnesses that the testing complied with those regulations. The Falconer, supra, decision references Ohio Administrative Code (OAC) 3701-53-05 as establishing the requirements for collecting and handling blood samples. The decision establishes these requirements as follows:

> First, the person collecting the sample must use a non-volatile antiseptic on the area where blood is to be drawn OAC 3701-53-05(B). The blood must be drawn with a sterile dry needle into a vacuum container that contains a solid anticoagulant. OAC 3701-53-05(C); State v. Maudllin, 1989 Ohio App. LEXIS 2974 (Ohio Ct. App., Clark County July 24, 1989). In State v. Burnside, 100 Ohio St. 3d 152, 2003 Ohio 5372, 797 N.E. 2d 71 (Ohio 2003), the Supreme Court of Ohio held that the State must prove that a solid anticoagulant was used. If the State is unable to prove this required element, it is not in substantial compliance with OAC 3701-53-05(C). The State must also provide evidence that the container of blood was sealed in a manner such that tampering can be detected and have a label which contains at least the following information: (1) name of suspect; (2) date and time of collection; (3) name or initials of person collecting the sample; and (4) name

> or initials of person sealing the sample. OAC 3701-53-5(E). Also, the blood sample must be refrigerated when it is either not in transit or under examination. OAC 3701-53-5(F). The State must also lay the foundation for chain of custody of the sample, to ensure it has not been substituted or tampered with. Further OAC 3701-53-06 through 3701-53-09 established the requirements for the laboratory and personnel testing the blood sample. Again, the burden is on the State to provide evidence of substantial compliance with these regulations concerning the testing of the blood sample.

Both the decisions in State v. Burnside, *Id.*, and State v. Falconer, *Id.*, were cited as authority in State v. Troyer, 2013 WL 4678646, Ohio App. 5 Dist. 2013. The Troyer decision held that a motion to suppress should have been granted by the trial court where the State failed to carry its burden to show that the blood test in the case was administered in substantial compliance with the regulations prescribed by the Department of Health. The holding stated as follows:

> Upon review, we find that the State failed to present testimony or evidence at the suppression hearing in regard to the chain of custody, or of preservation of Appellant's blood sample during transport as required by O.A.C. 3701-53-05. We further find that the State failed to present evidence of substantial compliance that the Stark County Crime Lab was in compliance with O.A.C. 3701-53-09 on the issue of completion and passage of a proficiency test of O.A.C. 3701-53-06 requiring that the director review, sign and date the procedure manual, certifying its compliance with such rule.

Citing State v. Price, 11th Dist. No. 2007-G-2785, 2008-Ohio-1134, and State v. Brush, 5th Dist. No. 04CA92, 2005-Ohio-3767, the State has propounded in its Proposition of Law that the period of non-refrigeration of the blood sample herein was a deviation which would not affect the reliability of the test results. It is noted that this holding was premised upon specific testimony in the record of that case that the 6 hour period of refrigeration would not affect the reliability of the test results in that case. No such testimony was submitted in the instant case.

At page 2 of the trial court's Judgment Entry granting Appellee's Motion to Suppress (T.d. 45), the trial court held as follows:

> As to the failure to refrigerate the same, however, the court finds that this is not a *de minimus* shortcoming. It is clear that the sample was not refrigerated prior to sending same to the lab. What is more, this is a matter of policy, not an isolated instance. The regulations require refrigeration. Further, as defendant has pointed out, there are simply too many other areas and items which the State, in its duty to go forward with the evidence, failed to adduce.
>
> As to the blood test sampling and process and result, the defendant's Motion to Suppress is granted.

It is respectfully submitted that the trial court made a finding herein that the Motion to Suppress should be granted because of the failure to refrigerate the blood sample. This finding was based on support in the record from Emily Adelman who confirmed the requirement of refrigeration. No evidence in the record was provided to justify why such finding would not be applicable to the facts of this case.

The Eleventh District Court of Appeals affirmed the aforesaid decision of the trial court. State v. Baker, 11th Dist. No. 2013-A-0020, 2014-Ohio-2873, at ¶26. Citing State v. Burnside, 100 Ohio St. 3d 152, 2003-Ohio-5372 ¶8, the Eleventh District Court of Appeals specifically noted that its review of a decision on a Motion to Suppress involves issues of both law and fact and that the trial court, acting as trier of fact, sits in the best position to weigh the evidence and evaluate the credibility of the witnesses (¶11). Relying upon State v. Burnside *Id.*, State v. Mills, 62 Ohio St. 3d 357, 366 (1992), and State v. Fanning, 1 Ohio St. 3d 19 (1982), the Court found that it is required to uphold the trial court's findings of fact provided they are supported by competent credible evidence.

Citing State v. Price, *Id.*, the Eleventh District Court decision herein framed the issue and burden of proof as follows at ¶11:

> In any prosecution premised upon a violation of R.C. 4511.19, the result of a blood alcohol test is presumed valid unless the defendant first challenges the validity 'by way of a pretrial motion to suppress'. *Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, ¶24. Failure to file such a motion 'waives the requirement on the state to lay a foundation for the admissibility of the test results.' *Id.*, quoting *State v. French*, 72 Ohio St. 3d 446, 451. However, if the defendant challenges the validity of the test results by means of a pretrial suppression motion, the burden shifts to the state 'to show that the test was administered in substantial compliance with the regulations prescribed by the Director of Health'. *Id.* If the state satisfies this burden and creates a presumption of admissibility, 'the burden then shifts to the defendant to rebut that presumption by demonstrating that he was prejudiced by anything less than strict compliance.' *Id.*, citing *State v. Brown* (1996), 109 Ohio App. 3d 629, 632, 672 N.E. 2d 1050.

Under the circumstances wherein Trooper Emery clearly had the opportunity to refrigerate the blood sample during his hours at the Highway Patrol Post but failed to do so because such minimal effort was "not a procedure of ours" (T.p. 73, 74), the trial court held that the period of non-refrigeration was "not a *de minimus* shortcoming". Certainly, the Highway Patrol was not in the position to overrule or modify the requirements of the Ohio Administrative Code. No expert testimony was presented by the State to even suggest that the trooper's failure to refrigerate was in substantial compliance with those requirements. At ¶16, the Court of Appeals placed upon the State the requirement to put forth evidence at the suppression hearing that the lack of compliance with OAC 3701-53-05(F) did not affect the reliability of the blood test results. Unlike Price, there was no testimony in the instant case that the lack of refrigeration failed to affect the reliability of [Appellee's] blood test result. The State did not introduce any testimony to demonstrate how the failure to refrigerate the sample as required would or would not affect the reliability of the test results. The Appellate Court further held at ¶17:

> A careful reading of *Burnside* establishes it is in harmony with the holding in both this case and *Price*. The *Burnside* Court made clear that, in the

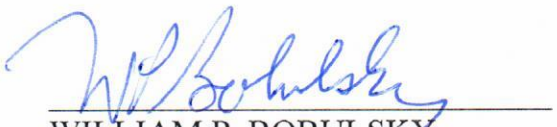
> absence of any evidence to the contrary, the court should not substitute its opinion for that of the Director of Health.

The decision of the Eleventh District Court of Appeals is consistent with the facts in the case and the law of the State of Ohio and should be affirmed.

CONCLUSION

The case of the State of Ohio against the Appellee is characterized by a unique set of facts. The officer proposes to the Court that the Appellee is not under arrest, yet Mirandizes him. The Appellee avails himself of his Fifth and Sixth Amendment rights, yet the officer continues with questions and testing. The officer testifies to the Court that the Appellee is not under arrest yet the officer tells the Appellee that he is under arrest through the direct administration of the BMV Form 2255 warnings. The officer never reaches the conclusion the Appellee is impaired but continues, nevertheless, to perform field sobriety testing. The field sobriety tests which the officer conducts are not done in any way that can be concluded to have been in conformity with the NHTSA standards, yet the officer continues to seek and obtain a sample of Appellee's blood. The blood specimen is not properly refrigerated and preserved and is neither collected nor tested in any way that can be concluded to conform with Ohio Department of Health standards. Any of these major events in an investigation such as took place herein is fatal to the associated evidence. It is submitted that all of these events took place. For the foregoing reasons, Appellee respectfully requests this Honorable Court to affirm the decision of the Eleventh District Court of Appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Merit Brief of Appellee, Michael D. Baker, has been sent by regular U.S. Mail, postage prepaid, this 5th day of May, 2015, to wit:

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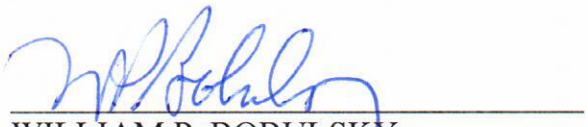

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3701-53-05 Collection and handling of blood and urine specimens.

(A) All samples shall be collected in accordance with section 4511.19, or section 1547.11 of the Revised Code, as applicable.

(B) When collecting a blood sample, an aqueous solution of a non-volatile antiseptic shall be used on the skin. No alcohols shall be used as a skin antiseptic.

(C) Blood shall be drawn with a sterile dry needle into a vacuum container with a solid anticoagulant, or according to the laboratory protocol as written in the laboratory procedure manual based on the type of specimen being tested.

(D) The collection of a urine specimen must be witnessed to assure that the sample can be authenticated. Urine shall be deposited into a clean glass or plastic screw top container which shall be capped, or collected according to the laboratory protocol as written in the laboratory procedure manual

(E) Blood and urine containers shall be sealed in a manner such that tampering can be detected and have a label which contains at least the following information:

(1) Name of suspect;

(2) Date and time of collection;

(3) Name or initials of person collecting the sample; and

(4) Name or initials of person sealing the sample.

(F) While not in transit or under examination, all blood and urine specimens shall be refrigerated.

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3701-53-06 Laboratory requirements.

(A) Chain of custody and the test results for evidential alcohol and drugs of abuse shall be identified and retained for not less than three years, after which time the documents may be discarded unless otherwise directed in writing from a court. All positive blood, urine and other bodily substances shall be retained in accordance with rule 3701-53-05 of the Administrative Code for a period of not less than one year, after which time the specimens may be discarded unless otherwise directed in writing from a court.

(B) The laboratory shall successfully complete a national proficiency testing program using the applicable technique or method for which the laboratory personnel seek a permit under rule 3701-53-09 of the Administrative Code.

(C) The laboratory shall have a written procedure manual of all analytical techniques or methods used for testing of alcohol or drugs of abuse in bodily substances. Textbooks and package inserts or

operator manuals from the manufacturer may be used to supplement, but may not be used in lieu of the laboratory's own procedure manual for testing specimens.

(D) The designated laboratory director shall review, sign, and date the procedure manual as certifying that the manual is in compliance with this rule. The designated laboratory director shall ensure that:

(1) Any changes in a procedure be approved, signed, and dated by the designated laboratory director;

(2) The date the procedure was first used and the date the procedure was revised or discontinued is recorded;

(3) A procedure shall be retained for not less than three years after the procedure was revised or discontinued, or in accordance with a written order issued by any court to the laboratory to save a specimen that was analyzed under that procedure;

(4) Laboratory personnel are adequately trained and experienced to perform testing of blood, urine and other bodily substances for alcohol and drugs of abuse and shall ensure, maintain and document the competency of laboratory personnel. The designated laboratory director shall also monitor the work performance and verify the skills of laboratory personnel;

(5) The procedure manual includes the criteria the laboratory shall use in developing standards, controls, and calibrations for the technique or method involved; and

(6) A complete and timely procedure manual is available and followed by laboratory personnel.

(E) Any time the designated laboratory director is replaced, another permitted laboratory director or applicant shall be designated and approved by the director.

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3701-53-07 Qualifications of personnel.

(A) Blood, urine, and other bodily substance tests for alcohol shall be performed in a laboratory by an individual who has a laboratory director's permit or, under his or her general direction, by an individual who has a laboratory technician's permit. General direction does not mean that the laboratory director must be physically present during the performance of the test. Laboratory personnel shall not perform a technique or method of analysis that is not listed on the laboratory director's permit.

(1) An individual who is employed by a laboratory, which has successfully completed a proficiency examination administered by a national program for proficiency testing for the approved technique or method of analysis for which the permit is sought and who possesses at least two academic years of college chemistry and at least two years of experience in a clinical or chemical laboratory and possesses a minimum of a bachelor's degree shall meet the qualifications for a laboratory director's permit.

(2) An individual who is employed by a laboratory, which has successfully completed a proficiency examination administered by a national program for proficiency testing for the approved technique or method of analysis for which the permit is sought, has been certified by the designated laboratory

director that he or she is competent to perform all procedures contained in the laboratory's procedure manual for testing specimens and meets one of the following requirements shall meet the qualifications for a laboratory technician's permit:

(a) Has a bachelor's degree in laboratory sciences from an accredited institution and has six months experience in laboratory testing;

(b) Has an associate's degree in laboratory sciences from an accredited institution or has completed sixty semester hours of academic credit including six semester hours of chemistry and one year experience in laboratory testing;

(c) Is a high school graduate or equivalent and has successfully completed an official military laboratory procedures course of at least fifty weeks duration and has held the military enlisted occupational specialty of medical laboratory specialist (laboratory technician); or

(d) Is a high school graduate or equivalent and was permitted on or before July 7, 1997.

(B) Blood, urine and other bodily substances tests for drugs of abuse shall be performed in a laboratory by an individual who has a laboratory director's permit or, under his or her general direction, by an individual who has a laboratory technician's permit. General direction does not mean that the laboratory director must be physically present during the performance of the test. Laboratory personnel shall not perform a technique or method of analysis that is not listed on the laboratory director's permit.

(1) An individual who is employed by a laboratory, which has successfully completed a proficiency examination administered by a national program for proficiency testing for the approved technique or method of analysis for which the permit is sought, who possesses at least two academic years of college chemistry and meets one of the following requirements shall meet the qualifications for a laboratory director's permit:

(a) Has at least five years of experience in a clinical or chemical laboratory and possesses a minimum of a bachelor's degree in laboratory sciences;

(b) Has at least three years of experience in a clinical or chemical laboratory and possesses a minimum of a master's degree; or

(c) Has at least two years of experience in a clinical or chemical laboratory and possesses a minimum of an earned doctoral degree.

(2) An individual who is employed by a laboratory, which has successfully completed a proficiency examination administered by a national program for proficiency testing for the approved technique or method of analysis for which the permit is sought, has been certified by the designated laboratory director that he or she is competent to perform all procedures contained in the laboratory's procedure manual for testing specimens and meets one of the following requirements shall meet the qualifications for a laboratory technician's permit:

(a) Has a bachelor's degree in laboratory sciences from an accredited institution and has one year experience in laboratory testing;

(b) Has an associate's degree in laboratory sciences from an accredited institution or has completed sixty semester hours of academic credit including six semester hours of chemistry and two years experience in laboratory testing;

(c) Is a high school graduate or equivalent and has successfully completed an official military laboratory procedures course of at least fifty weeks duration and has held the military enlisted occupational specialty of medical laboratory specialist (laboratory technician) and two years experience in laboratory testing; or

(d) Is a high school graduate or equivalent and was permitted on or before July 7, 1997.

(C) Breath tests used to determine whether a person's breath contains a concentration of alcohol prohibited or defined by sections 4511.19 and/or 1547.11 of the Revised Code, or any other equivalent statute or local ordinance prescribing a defined or prohibited breath alcohol concentration shall be performed by a senior operator or an operator. A senior operator shall be responsible for the care, maintenance and instrument checks of the approved evidential breath testing instruments listed in paragraphs (A)(1), (A)(2), and (B) of rule 3701-53-02 of the Administrative Code. Representatives of the director shall be responsible for the instrument certifications on approved evidential breath testing instruments listed under paragraph (A)(3) of rule 3701-53-02 of the Administrative Code.

(D) An individual meets the qualifications for a senior operator's permit by:

(1) Being a high school graduate or having passed the "General Education Development Test";

(2) Being a certified law enforcement officer sworn to enforce sections 4511.19 and/or 1547.11 of the Revised Code, or any other equivalent statute or local ordinance prescribing a defined or prohibited breath alcohol concentration, or a certified corrections officer, and;

(3) Having demonstrated that he or she can properly care for, maintain, perform instrument checks upon and operate the evidential breath testing instrument by having successfully completed a basic senior operator, upgrade or conversion training course for the type of approved evidential breath testing instrument for which he or she seeks a permit.

(E) An individual meets the qualifications for an operator's permit by:

(1) Being a high school graduate or having passed the "General Education Development Test";

(2) Being a certified law enforcement officer sworn to enforce sections 4511.19 and/or 1547.11 of the Revised Code, or any other equivalent statute or local ordinance prescribing a defined or prohibited breath alcohol concentration, or a certified corrections officer, and;

(3) Having demonstrated that he or she can properly operate the evidential breath testing instrument by having successfully completed a basic operator or conversion training course for the type of approved evidential breath testing instrument for which he or she seeks a permit.

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3701-53-08 Surveys and proficiency examinations.

(A) Individuals desiring to function as laboratory directors and laboratory technicians who apply for or are issued permits under paragraph (A) of rule 3701-53-09 of the Administrative Code shall be subject to surveys and proficiency examinations by representatives of the director of health. A survey or proficiency examination may be conducted at the director's discretion.

(1) A survey shall consist of a review of the permit holder's, applicant's or laboratory's compliance with the requirements of this chapter.

(2) A proficiency examination shall consist of an evaluation of the permit holder's, applicant's or laboratory's ability to test samples provided by a representative of the director, or has successfully completed a proficiency examination administered by a national program for proficiency testing using the techniques or methods for which the permit is held or sought. Proficiency examination samples may be:

(a) Mailed to the facility at which the permit holder or applicant uses or plans to use the permit; or

(b) Presented in person by a representative of the director at the facility where the permit holder or applicant uses or plans to use the permit.

(B) During proficiency examinations, laboratory directors, laboratory technicians and applicants shall accept samples, perform tests, and report all test results to a representative of the director or the national program that administered the proficiency testing. During surveys and proficiency examinations, permit holders, applicants and laboratories shall grant the director's representatives access to all portions of the facility where the permit is used or is intended to be used and to all records relevant to compliance with the requirements of this chapter.

(C) Individuals desiring to function as senior operators and operators who apply for or are issued permits under paragraph (B) of rule 3701-53-09 of the Administrative Code, shall be subject to surveys and proficiency examinations conducted at the director's discretion.

(1) A survey shall consist of a review of the permit holder's or applicant's compliance with the requirements of this chapter.

(2) A proficiency examination shall consist of an evaluation of the permit holder's or applicant's ability to test samples using the evidential breath testing instrument for which the permit is held or sought.

(D) Individuals desiring to function as operators who apply for or are issued an operator access card under paragraph (C) of rule 3701-53-09 of the Administrative Code, shall be subject to a proficiency examination once per calendar year conducted at the director's discretion.

(E) During proficiency examinations, senior operators, operators and applicants shall accept samples, perform tests and report all results to a representative of the director or the proficiency examination administered by a national program for proficiency testing. During surveys and proficiency examinations, permit holders, applicants and laboratories shall grant the director's representatives access to all portions of the facility where the permit is used or is intended to be used, and to all records relevant to compliance with the requirements of this chapter.

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3701-53-09 Permits.

(A) Individuals desiring to function as laboratory directors or laboratory technicians shall apply to the director of health for permits on forms prescribed and provided by the director. A separate application shall be filed for a permit to perform tests to determine the amount of alcohol in a person's blood, urine or other bodily substance, and a separate permit application shall be filed to perform tests to determine the amount of drugs of abuse in a person's blood, urine or other bodily substance. A laboratory director's and laboratory technician's permit is only valid for the laboratory indicated on the permit.

(1) The director shall issue permits to perform tests to determine the amount of alcohol in a person's blood, urine or other bodily substance to individuals who qualify under the applicable provisions of rule 3701-53-07 of the Administrative Code or under paragraph (A) of this rule. Laboratory personnel holding permits issued under this rule shall use only those laboratory techniques or methods for which they have been issued permits.

(a) The laboratory where the permit holder is employed shall have successfully completed a proficiency examination from a national program for proficiency testing using the applicable techniques or methods, and provide to representatives of the director all proficiency test results.

(b) Permit holders shall successfully complete proficiency examinations by representatives of the director using the techniques or methods for which they have been issued permits.

(2) The director shall issue permits to perform tests to determine the amount of drugs of abuse in a person's blood, urine or other bodily substances to individuals who qualify under the applicable provisions of rule 3701-53-07 of the Administrative Code or under paragraph (A) of this rule. Laboratory personnel holding permits issued under this rule shall use only those laboratory techniques or methods for which they have been issued permits.

The laboratory where the permit holder is employed shall have successfully completed a proficiency examination from a national program for proficiency testing using the applicable techniques or methods, and provide to representatives of the director all proficiency results.

(B) Individuals desiring to function as senior operators or operators using instruments listed under paragraphs (A)(1), (A)(2), and (B) of rule 3701-53-02 of the Administrative Code shall apply to the director of health for permits on forms prescribed and provided by the director of health. A separate application shall be filed for each type of evidential breath testing instrument for which the permit is sought.

The director of health shall issue permits to perform tests to determine the amount of alcohol in a person's breath to individuals who qualify under the applicable provisions of rule 3701-53-07 of the Administrative Code.

(C) Permits issued after the effective date of this rule under paragraphs (A) and (B) of this rule shall expire one year from the effective date, unless revoked or voluntarily surrendered prior to the expiration date. An individual holding a permit may seek renewal of an issued permit by the director under paragraphs (A) and (B) of this rule by filing an application with the director no sooner than six

months before the expiration date of the current permit. The director shall not renew the permit if the permit holder is in proceedings for revocation of his or her current permit under rule 3701-53-10 of the Administrative code.

(D) Individuals desiring to function as operators using instruments listed under paragraph (A)(3) of rule 3701-53-02 of the Administrative Code shall apply to the director of health for a permit, which shall be in the form of an operator access card, on forms prescribed and provided by the director of health. The director of health shall issue a permit, which shall be in the form of an operator access card, to perform tests to determine the amount of alcohol in a person's breath to individuals who qualify under the applicable provisions, including but not limited to, paragraph (D) and/or (E) of rule 3701-53-07 of the Administrative Code.

(E) Permits issued under paragraph (D) of this rule shall not expire unless revoked by the director under rule 3701-53-10 of the Administrative Code or are voluntarily surrendered. To retain a permit under paragraph (D) of this rule the individual shall present evidence satisfactory to the director that he or she continues to meet the qualifications established by the applicable provisions of rules 3701-53-07 and 3701-53-08 of the Administrative Code for issuance of the permit sought.

(F) To qualify for renewal of a permit under paragraph (A) or (B) of this rule:

(1) A permit holder shall present evidence satisfactory to the director that he or she continues to meet the qualifications established by the applicable provisions of rule 3701-53-07 of the Administrative Code for issuance of the type of permit sought.

(2) If the individual seeking a renewal permit currently holds a laboratory technician or laboratory director permit, the permit holder shall meet the requirements of paragraph (A) of this rule.

(G) The director, director's designee or individuals appointed by the director of health are not required to obtain or retain permits while acting as representatives of the director.

(H) An individual may use any and all approved breath testing instruments for which the individual has been issued a permit.

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4511.19 Operating vehicle under the influence of alcohol or drugs - OVI.

(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.

(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 employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

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

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

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

(F) Except as otherwise provided in this division, any physician, registered nurse, 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 5119.38 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 5119. of the Revised Code by the director of mental health and 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 5119.38 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 5119. of the Revised Code by the director of mental health and 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 a community addiction services provider that is authorized by section 5119.21 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the services provider. 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 services provider 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 a community addiction service provider that is authorized by section 5119.21 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the services provider. 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 services provider 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 with a community addiction services provider authorized by section 5119.21 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The operator of the services provider 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 services provider 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 with a community addiction services provider authorized by section 5119.21 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The operator of the services provider 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 services provider 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 with a community addiction services provider authorized by section 5119.21 of the Revised Code, subject to division (I) of this section, and shall order the offender to follow the treatment recommendations of the services provider. The operator of the services provider 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 services provider 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 subsequently 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 5119. of the Revised Code by the director of mental health and 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.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General AssemblyFile No.25, HB 5, §1, eff. 9/23/2011.

Amended by 128th General AssemblyFile No.50, SB 58, §1, eff. 9/17/2010.

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