OVI Law Update

Written materials prepared by

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for the

Ohio State Bar Association

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Overview – Marijuana in Ohio

Federal Law

Pursuant to the Controlled Substances Act, 21 U.S.C. § 801 et. seq., marijuana is categorized as a Schedule I drug.

Ohio Law

- Classified as a dangerous drug/drug of abuse. R.C. 2925.01(B), R.C. 3719.011(A).
- May not be transported over state lines.
- Possession or use beyond permitted use is a criminal offense. R.C. 2925.03, R.C. 2925.04, R.C. 2925.11, and R.C. 3780.99.

Medical marijuana in Ohio

- Governed by R.C. Chap. 3796
- Passed by General Assembly
- Effective September 8, 2016.
- Not a prescription
- Must be purchased at Ohio licensed dispensary with authorized medical marijuana card.
- Possession or use is limited to persons 18 years or older unless consent by parent or guardian. Ohio Admin. Code. 3796:7-2-01(C); 3796:7-2-04(B).
- May possess up to 90 day supply. R.C. 3796.22(B)
- Purchased in two day increments
- Whole day marijuana unit by type. Ohio Admin. Code. 3796:8-2-04.
- Medical marijuana must be stored at all times in dispensed container. Ohio Admin. Code. 3796:7-2-05(G).
- Can be vaped, but not smoked (R.C. 3796.06(B).
- May not be home grown.

Adult use (recreational) marijuana in Ohio

- Governed by R.C. Chap. 3780 in Ohio
- Adopted by Citizens ballot initiative on November 5, 2023.
- Became effective December 6, 2023

Permitted use

- Possession or use is limited to persons 21 years old or older
- May purchase and possess up to 2.5 oz.
- May only be purchased from state licensed dispensary.
- Not permitted to use, cultivate, dispense, or process cannabis on federally, state, or locally owned land located in Ohio.

Home grown marijuana

May cultivate, grow, or possess up to

- 6 plants at person's primary residence, or
- 12 plants for two or more people over age 21 at same residence

May only cultivate or grow marijuana within a secured

- Closet,
- Room,
- Greenhouse, or
- Other enclosed area in or on residence

No access to persons under 21 years old, and
Not visible by normal unaided vision from a public space.
May transfer up to 6 plants if without remunerations.

Statutory Limitations.

R.C. 3780.33(D). Notwithstanding any conflicting provision of the Revised Code, the use, possession, administration, cultivation, processing, testing, dispensing, transporting, sale, delivery, or transferring of adult use cannabis *in accordance with this chapter* shall not be used as the sole or primary reason for taking action under any criminal or civil statute

R.C. 3780.33(E) Notwithstanding any conflicting provision of the Revised Code, when an adult use consumer engages in activities related to adult use cannabis in compliance with this chapter, such activities alone do not constitute sufficient basis for conducting a field sobriety test on the individual or for suspending the individual's driver's license. To conduct any field sobriety test, a law enforcement officer must have an independent, factual basis giving reasonable suspicion that the individual is operating a vehicle under the influence of adult use cannabis or with a prohibited concentration of marijuana in the person's whole blood, blood serum, plasma, breath, or urine.

***State v. Fulcher,* 2d. Dist. Greene, No. 2023-CA-31, 2024-Ohio-1609.** Conviction for felony marijuana possession was affirmed. The defendant was charged with illegal possession and cultivation of marijuana. The marijuana crop was seen by aerial view from a police helicopter over the defendant's property. During the jury trial, the defendant entered a no contest plea to the felony possession charge in exchange for dismissal of the cultivation charge.

The defendant moved to vacate the conviction asserting the R.C. Chap. 3780, the Adult Cannabis Use/Recreational Marijuana Act passed in the November, 2023 election was retroactive and therefore, his conduct on September 2, 2020 was not illegal. Applying R.C. 1.48 and Art. II, Sec 28 of the Ohio Constitution which generally prohibit retroactive laws, the court found that R.C. Chap. 3780 was not retroactive. Putting aside the retroactivity claim, the court noted that R.C. 3780.29(A)(1)(b) requires marijuana grown outside to be "not visible by normal unaided vision from a public space." Due to the ability to spot the defendant's marijuana plant, the plants were not being grown in compliance with R.C. 3780.29. In addition, the defendant that he was growing marijuana for medical purposes. Unlike recreational marijuana, R.C. 3780.29, R.C. Chap. 3796 does not permit home grown medical marijuana.

House Bill 37, effective April 9, 2025.

Increases minimum fines with addition fines to be used for immobilizing or disabling devices, including certified ignition interlock devices, and remote alcohol monitoring devices for indigent offenders who are required to use those devices. (See chart in appendix for specific fine.).

Lowers the license reinstatement fee for an OVI conviction from $475.00 to $315.00.

Modifies driving privileges - First offense

- submitted to test – 15 day had time if no prior OVI or physical control convictions may be waived by court.
- Prior physical control conviction within ten years – 45 day hard time and ignition interlock is required.
- Refused chemical tests – 30 day hard time license suspension with ignition interlock required if alcohol related offense.
- Refusal with prior physical control conviction within ten years – 90 day hard time and ignition interlock is mandatory.

R.C. 4511.19. Adds oral fluids as admissible evidence for proof of alcohol or drug presence or concentration although an expert witness is required for testimony on the concentration of drugs.

R.C. 4511.19(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, oral fluid, 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. (Italics added).

R.C. 4511.19(D)(1)(b). The court may admit evidence on the presence and 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, oral fluid, 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, oral fluid, or urine specimens.

- R.C. 4511.19(D)(1)(b). Refusal to submit to oral fluid testing results in driver's license suspension under implied consent law.

Oral Fluid Screening for Impaired Drivers[1]

Increases in drug and multi-substance impaired driving call for expanded drug testing on the roadside. For officers who are not specially trained in drug impairment detection, oral fluid screening can aid in identifying drivers that may have recently consumed drugs who would otherwise escape detection.

[1] This explanation of oral fluid testing is taken from papers prepared by Responsibility.org.

How oral fluid field screening works. Oral fluid screening detects recent drug use but does not detect impairment. It is collected and analyzed in under 10 minutes which is important as drug levels dissipate quickly while impairment remains. Oral fluid screening devices typically include an oral fluid collection system consisting of a collection device and test cartridge and an analyzer. Law enforcement officers obtain samples using the collection device and insert them into the analyzer which determines drug presence by an objective reading of the test strip.

Oral fluid test devices screen for specific drugs or drug classes that commonly appear among impaired drivers [cannabis (Tetrahydrocannabinol (THC)), cocaine, methamphetamine, amphetamine, opioids, and benzodiazepines]. A positive result indicates recent drug use which alongside the officer's evaluation of impairment, can aid in detecting recent consumption of drugs (i.e., not several days or weeks prior to arrest).

Oral fluid screening devices are preliminary screening tests that can be used to establish probable cause in combination with other evidence. At the time of testing, the officer has concluded that a driver is impaired using the SFST and is subsequently unable to safely operate a motor vehicle. The on-site oral fluid screen is used to identify what drug class(es) is/are likely causing the observed impairment. The devices indicate drug presence above established cut-off levels. They do not detect quantifiable drug levels and are not admissible in court as evidence. Only a confirmation sample analyzed in a forensic laboratory, such as a blood test or a secondary oral fluid sample, can used for evidentiary purposes.

R.C 3708.36(D)(1). An individual is prohibited from operating a vehicle, motor vehicle, streetcar, trackless trolley, bike, watercraft, or aircraft while using adult use cannabis or while under the influence of adult use cannabis and is subject to R.C. 4511.19 for any violation of this division

R.C. 4511.181 defines an "equivalent offense" for OVI enhancement but does not refer to R.C. 3780.36. This OVI penalty applies to smoking marijuana while operating a vehicle, but it is not an OVI offense for enhancement purposes. R.C 3780.36 does not contain any levels of marijuana, so it appears smoking while driving is an offense that subject the driver to OVI penalties.

Operation of vehicle

***State v. Wright*, 2025-Ohio-672 (1st. Dist.).** OVI conviction was affirmed. The police found the defendant at a gas station, unconscious in the driver's seat of a vehicle with his foot on the brake, and that the vehicle was running and in gear. The defendant did not dispute he was impaired. The only issue was whether the defendant operated the vehicle while impaired.

When the officer arrived, he reached over from the passenger side of the defendant's car and shifted the gear from drive to park. When the defendant awoke, he denied using any drugs. Based on his physical condition, he was charged with OVI. A post arrest toxicology report showed multiple drugs in the defendant's system, including marijuana, cocaine, amphetamines, clonazepam, alprazolam, and fentanyl-related compounds.

The defendant admitted he drove the car to the gas station but denied using any alcohol or drugs prior to his arrival at the gas station. (Par. 5). The defendant testified he took an unspecified drug at the gas station and passed out. It was a twenty minute drive from his parent's home to the gas station. The court found this timeline supported the inference the defendant had ingested intoxicating substances prior to his arrival. Although the officer did not actually see the defendant's car in motion, from his unconscious condition, the running vehicle, and a crack pipe on his lap, the toxicology report of the multiple drugs the defendant had consumed, the trier of fact could reasonably infer from the evidence presented the defendant had operated his vehicle while impaired. (Par. 14).

***City of Cleveland v. Rivers,* 2025-Ohio-2868 (8th. Dist.).** OVI and failure to control convictions were affirmed. This case arose out of a single car collision with a fence. Police and fire arrived at the scene. The officer noted the defendant smelled of alcohol, was sweating profusely, and had slurred speech. A red striped beer bottle was seen on the floor in front of the passenger seat. Field sobriety tests were not performed because the defendant was already on a gurney for transport to the hospital by ambulance.

Operation of vehicle.

The statutory definition of operation, R.C. 4511.01(HHH) of "to cause or have caused movement" includes both present and past tense. (Par. 16, citation omitted.). The operation of the vehicle does not have to be witnessed but may be inferred from the circumstances surrounding the vehicle at the time of observation by the witnesses. (Par. 16, citations omitted.) Circumstantial evidence has the same weight as direct evidence to prove an element of a criminal offense. (Par. 16). The court found the testimony that the defendant was the only person in the car, her position in the driver's seat, and statements by fire department personnel that the engine was running when they arrived as she tried to back out her car, and had driven into the fence was sufficient evidence to establish operation of the vehicle and actually seeing the defendant move the car was not required.

***State v. Howell,* 2025-Ohio-3255 (1st. Dist**.). An order granting a motion to suppress was reversed. An officer was called to the scene of a collision at a Cincinnati yacht club where one car struck another car, which in turn was pushed into two other parked cars. All four cars were damaged from the collision. The officer began gathering witness information. The defendant was sitting in a chair a few yards from the collision. When asked for her identification, the defendant went to the car that initiated the crash to retrieve her driver's license and registration.

During this encounter the officer detected a strong alcohol odor from her and her speech was slurred. She also stumbled when she went to the car to obtain her driver's license. Because it was dark outside the officer was not able to see the defendant's eyes. The defendant told the officer she had driven from Columbus and had one drink in Columbus before her trip. Based on the field sobriety test results and surrounding circumstances the defendant was arrested. The defendant was charged with OVI in violation of R.C. 4511.19(A)(1)(a) and failure to maintain reasonable control of a vehicle in violation of R.C. 4511.202(A).

Although the officer asked the defendant if she had been driving the car, the defendant's response was not asked of the officer at the suppressions hearing. The trial court directed the attorneys to file supplemental briefs on the issue of probable cause whether the defendant was driving. At the post briefing hearing the trial court found the evidence presented at the suppression hearing was not sufficient to infer the defendant was operating the vehicle that crashed into the other car and granted to motion to suppress for lack of probable cause.[2]

On appeal, the court recognized the amount of evidence necessary to support probable cause is less than evidence to support a conviction. (Par. 14, citation omitted.). In addition, in an OVI case, the prosecution may prove operation by circumstantial evidence as well as direct evidence. (Par. 14, citations omitted.).

Under the reduced evidentiary standard applicable at the probable cause stage, the appellate court found the prosecution presented sufficient evidence at the suppression hearing to support the officer's belief that the defendant was the driver of the crashed vehicle. (Par. 16). The court based its decision on the defendant's close proximately to the vehicle after the crash, the defendant going to the specific crashed vehicle when asked to provide identification, and from the officer's investigation, the lack of any other person who might have driven the car. (Par. 16). From this evidence the court concluded a reasonably prudent person presented with these facts would form a reasonable belief that the defendant operated the vehicle that crashed into the stationary cars

Operation and proximate cause

***State v. Kinney*, 2025-Ohio-1620 (6th. Dist.) and *State v. Quinn*, 2025-Ohio-158 (6th. Dist.).** Convictions for two counts of aggravated vehicular homicide, falsification, OVI, and driving under suspended license were affirmed. The defendant was driving shortly after 10:00 p.m. on I-75 about 83 miles per hour in the center lane. The passenger grabbed the steering wheel, causing the car to swerve left into the concrete center barrier that separates the lanes from oncoming traffic. The car was immobile as a result of the damage. The defendant and passenger left the car on the highway without hazard or headlights on. Less than a minute later the decedent drove head-on into the stopped car. There was significant impact damage to both cars. The issue on appeal is whether the conduct by the passenger/defendant grabbing the steering wheel was within the definition of "operation."

"Operation" and R.C. 4511.19.

The defendant did not dispute she was under the influence of alcohol, that her BAC was over .08, or that her driver's license was suspended. Instead, she challenged that she was operating the vehicle. R.C. 4511.01(HHH) defines "operate" to "to cause or have caused movement of a vehicle." The court found the prosecution presented evidence that the defendant

[2] The defendant also asserted in the trial court lack of compliance with the field sobriety tests, but based on the court's decision the trial court only decided the operation issue. The court of appeals similarly limited its decision to the issue of the defendant's operation of the vehicle.

grabbed the steering wheel, causing movement of the vehicle which was sufficient to show the defendant/passenger's operation of the vehicle. (Par. 62).

"While operating" and R.C. 2903.06.

The defendant was charged with aggravated vehicular homicide under R.C. 2903.06(A)(1)(a) (as the proximate cause of an OVI offense) and R.C. 2903.06(A)(2) (recklessly), which requires proof of causing the death of another *while operating or participating in the operation of a motor vehicle*. (emphasis added). The defendant raised, among other issues, that she was not operating when the collision occurred and the critical issue was the discernibility of the disabled vehicle, not its operation.

Unlike "operation" there is no statutory definition of "while operating" and the trial court did not define the term to the jury. Regarding the defendant's assertion she was not operating the vehicle because it was inoperable at the time of the collision, the court held the sequence of events that resulted in the death began while the defendant was operating the vehicle. (Par. 74).

The court relied on and adopted the holding in *State v. Miranda,* 2014-Ohio-5312 (11th. Dist.), which similarly involved an intoxicated driver in which the car hit the guardrail and was left immobilized on the highway. The defendant in *Miranda* left the vehicle and the vehicle was struck moments later by an oncoming car, injuring the other driver. Affirming the vehicular assault conviction, the court in *Miranda* found the statutory definition of "operation" "encompassed past or completed movement of a vehicle" and included "a situation where the harm is caused by a vehicle rendered inoperable as a result of driving while intoxicated." *Miranda* at P.21- 22. The court in *Miranda* upheld the conviction when the actual operation of the motor vehicle has ceased but the harm has not yet occurred, provided that no intervening event breaks the chain of causation".

***State v. McMurray*, 2025-Ohio-196 (2d. Dist.).** The defendant disputed the jury instructions and argued at the trial that the prosecutor was required to prove the defendant's blood-alcohol level *at the time he was actually driving* the car. (Par. 23, emphasis by the court of appeals). The court found there was no practical difference between the defendant proposed term "*at the time of* operation, " and the instruction given to the jury of "*operated a vehicle"* (Par. 28). Moreover, to measure a person's blood-alcohol content at the exact time he or she was driving would take an in-car device that constantly checked the driver's blood-alcohol level while actively operating the vehicle. The defendant's argument also ignored the three hour period to collect the blood under R.C. 4511.19(D)(1)(b).

Traffic stops and community caretaker function

***State v. Logan Acres*, 2025-Ohio-1592 (9th. Dist.).** An order overruling a motion to suppress and OVI conviction were affirmed. The officer drove behind a parked truck on the side of the road with hazard lights flashing at 12:50 a.m. The defendant was the only occupant in the car. He told the officer he pulled to the side of the road to talk with his father because he had learned his grandfather had passed away. As she got near the defendant the officer immediately smelled alcohol and noticed the defendant's eyes were "exceptionally glassy." She also saw an

open container of an alcoholic beverage on the back floor of the truck. The defendant initially denied drinking any alcohol, but after confronted with the open container, he told her he had been drinking earlier at a graduation party. The defendant was asked to get out of the car to perform field sobriety tests. From the results of the test, the defendant was arrested for OVI. The defendant submitted to a breath test with a 0.138 BAC result.

After a hearing on a motion to suppress, the trial court granted the motion as related to the one leg stand and horizontal gaze nystagmus tests, but denied the remainder of the evidence sought to be suppressed. The defendant entered no contest pleas to two OVI counts, R.C. 4511.19(A)(1)(a) [operating a vehicle under the influence] and R.C. 4511.19(A)(1)(d) [operating a vehicle with a prohibited BAC], which were merged for sentencing, underage possession, and open container.

Stop and initial encounter.

The court found on appeal when the officer approached the truck she was engaged in a community caretaking function which is an exception to the Fourth Amendment. The community caretaking function permits police officers to stop a person to render aid if they reasonably believe that there is an immediate need for their assistance to protect life, prevent serious injury, or enhance public safety. (Par. 17). From the evidence in the record the court concluded the officer was engaged in a community caretaking function as it was reasonable to believe the truck was disabled or the occupant needed assistance. (Par. 20).

Reasonable suspicion to detain.

An officer may not prolong a stop for purposes unrelated to the original purpose of the stop unless there is reasonable suspicion that would justify further detention. *Rodriguez v. United States*, 575 U.S. 348, 355 (2015). To conduct field sobriety tests, an officer only needs a reasonable suspicion based on specific and articulable facts, not probable cause, indicating that the driver may be committing a criminal act. (Par. 21, citations omitted). Relying on *State v. Corn,* 2022-Ohio-3095 (9th. Dist.), the court held a community caretaking stop can be converted to a criminal investigation when, based on the totality of the circumstances, the officer determines a reasonable suspicion to investigate possible driver impairment. (Par. 25-26).

Multiple chemical tests.

***City of Kent v. Hughes*, 2025-Ohio-1499 (11th. Dist.).** An order overruling a motion to suppress and OVI conviction were affirmed. The defendant was stopped at 3:00 a.m. for driving without headlights in rainy conditions. The three occupants in the car gave conflicting stories of where they were coming from. During this time the officer noticed the smell of an alcoholic beverage from the car and the driver having bloodshot, glossy eyes. The defendant was asked to get out of the car so the officer could determine the source of the alcohol odor. After determining the alcohol odor on the driver's breath, the defendant was asked to perform field sobriety tests. Based on those tests results, the defendant was arrested for OVI.

Submitting to a breathalyzer, the BAC was 0.077 with a "low blow." The officer requested a second chemical test due to the defendant's apparent impaired conduct and a

"marijuana shake" found in the car during the vehicle inventory. The urine test showed a BAC of .11 along with positive results for marijuana and cocaine.

Probable cause for arrest.

The defendant asserted the officer lacked probable cause to arrest him for intoxication because his speech was coherent, he only had one traffic violation, and he was cooperative during the traffic stop. The court noted, however, that there were other indicia of impairment, citing State v. *Evans*, 127 Ohio App.3d 56 (11th Dist. 1998) for a non-exhaustive list of factors of impairment. The court concluded from the factors observed by the officer, including the alcohol odor, the defendant's appearance, driving at night without headlights, and the field sobriety test results, the officer had probable cause to arrest the defendant for OVI.

Multiple chemical tests.

As part of exercising the right to drive, under R.C. 4511.191(A)(2), a driver gives consent to chemical testing. The court noted the specific language of R.C. 4511.191(A)(2) permitting "chemical test or tests." The court further noted R.C. 4511.191(A)(2) authorizes police to conduct multiple tests and does not either prevent an officer from administering multiple chemical tests or establish a maximum number of tests. (Par. 24, citations omitted.). Due to way the defendant took the breath test, it was not unreasonable or improper for the officer to request a different chemical test.

Impaired driving with drugs.

***State v. Petersen*, 2025-Ohio-877 (9th. Dist.).** OVI conviction was affirmed. (2-1 decision). The defendant drove fast across three lanes of an interstate highway, striking another car from behind and causing the other car to spin around two times, with the defendant going off the road into a ditch. The other driver called out to check the defendant's condition, but he remained in the car, slumped over without moving. The officer testified that when he arrived at the scene he found the defendant still in the car, reclined back but still holding the steering wheel. The defendant's eyes were open, but he did not respond to the officer. The officer testified the defendant's pupils were constricted, consistent with drug use, and his skin was "blueish, purplish, and pale."

When the ambulance arrived the defendant was not responsive. NARCAN was administered by a paramedic and the defendant immediately responded. The defendant told the officer he had a seizure and was not using drugs. Both the officer and the paramedic testified based on their training and observations that the defendant was under the influence of opioids. (Par. 10, 13, 25).

The defendant was cited with OVI and after a jury trial, found guilty. The defendant asserted on appeal the verdict was not supported by the evidence. On appeal, the court noted a lay witness without special qualifications can give an opinion on whether a person is intoxicated based on the witness's perception and previous experience observing intoxicated people. (Par.

19, citation omitted.). With respect to a specific drug, both the officer and the paramedic testified to their qualifications and experience with opioid overdoses. [3]

The paramedic testified that the signs of an opioid or narcotic overdose are pinpoint pupils, decreased respiratory drive, unresponsiveness, and unconsciousness. He explained how the defendant reacted to NARCAN by immediately being able to breath on his own and that if NARCAN is administered to someone who is not overdosing on an opioid, it has no effect on the person. (Par. 12-13). He further distinguished an opioid overdose from a seizure, which the defendant alleged he was experiencing, in that a seizure would not cause pinpoint pupils or unresponsiveness. (Par. 25). His opinion also included track marks on the defendant's arms indicating intravenous drug use.

After asking if drugs would show up after a couple of days, the defendant refused all medical care and chemical tests. The court noted the refusal was probative of his consciousness of guilt. (Par. 40). Reviewing all of the evidence, the court found the conviction for driving under the influence of opioids was supported by the evidence.

The dissent asserted the evidence failed to establish a nexus between the defendant's allegedly impaired condition and a drug of abuse. (Par. 34). The dissent cited *State v. Collins,* 2012-Ohio-2236 (9th. Dist), in which an OVI conviction was reversed for lack of proof of impairment by a drug of abuse.[4] With neither drugs nor drug paraphernalia located on the defendant or in his car, the dissent stated the testimony of the officer and the paramedic were not sufficient to support the conviction.

State v. Love, 2022-Ohio-1454 (7th. Dist.). The prosecution must present evidence of a specific drug of abuse to sustain a conviction for drug impaired driving. See, also, *State v. Tucker,* 2024-Ohio-*** (1st. Dist.), *Cleveland v. Kulhman,* 2020-Ohio-3452 (8th. Dist.).

Validity of *pre se* marijuana impaired driving.

***State v. Duncan*, 2025-Ohio-1153 (1st. Dist.).** An order overruling motion to suppress and OVI conviction were affirmed. The defendant was stopped at a sobriety checkpoint. The officer smelled alcohol on the defendant's breath and the defendant admitted having a small amount of wine. The officer also observed the defendant appeared disoriented and had an abnormal speech pattern with delayed responses and interjection of irrelevant information. The defendant was asked to get out of the car to perform field sobriety tests. During the HGN test the defendant complained about nearby stadium lights and the officer told the defendant to face a different direction. Based on the results of the horizontal gaze nystagmus, walk and turn, and

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[3] The officer testified that after eight years of service he went back to the Ohio Highway Patrol Academy for special, additional training called Advance Roadside Impaired Driving Enforcement (ARIDE) which included different drugs of abuse, including opioids, and training to look for the effects of each one.

[4] The majority opinion distinguished *Collins*, because the prosecution did not present any evidence to identify a particular drug of abuse. (Par. 23-24).

one leg stand test, the defendant was arrested for OVI. The defendant agreed to a urine test which showed a level of marijuana metabolites over the legal limit, R.C. 4511.19(A)(1)(j)(viii)(II).

The defendant was initially charged with R.C. 4511.19(A)(1)(a), operating a vehicle under the influence. After a hearing in which the motion to suppress was overruled, a new citation was issued with a violation for operating a vehicle with a prohibited marijuana level. The defendant filed a motion to dismiss the new charge asserting no evidence of impairment. At the hearing the defendant's expert testified there was no correlation between THCA levels and impairment. The trial court denied the motion on both equal protection and due process grounds.

Regarding the motion to dismiss, the court applied a rational basis test, stating a statute will be upheld if it bears a rational relationship to a legitimate governmental interest. (Par. 32, citations omitted.). Applying this test, the court must 1) identify a valid state interest, and 2) determine whether the method or means by which the state has chosen to advance that interest is rational. (Par. 32, citations omitted.).

The state has a legitimate interest in highway safety and keeping impaired drivers off the road. *State v. Schulz*, 2015-Ohio-2252 (12th Dist.), relied on in this case and which also dealt with this issue, noted "the evidence does not demonstrate that there is no rational connection between the statutory marijuana metabolites standard and impairment." (Par. 35). The court also cited *State v. Whelan*, 2013-Ohio-1861 (1st. Dist.), which stated "Unlike some other states, Ohio does not prohibit driving with any amount of a marihuana metabolite in one's body but rather sets certain maximum limits that may not be exceeded." The court went on to explain the background testimony considered when the General Assembly determined the prohibited marijuana levels to operate a motor vehicle which were consistent with both federal standards and findings by forensic toxicologists. (Par. 36). The court also cited other appellate decisions that have found the marijuana metabolite per se statute, R.C. 4511.19(A)(1)(j)(vii)(II), was not unconstitutional on equal protection or due process grounds. *State v. Naylor*, 2024-Ohio-1648 (11th. Dist), *State v. Doane*, 2020-Ohio-900 (5th Dist.) *State v. Topolosky*, 2015-Ohio-4963 (10th Dist.).

***State v. Balmert,* 2024-Ohio-1207, (9th. Dist.).** Affirming conviction for drug related OVI and aggravated vehicular assault. The defendant struck a highway patrol officer while the officer was directing traffic during daylight hours and dry weather conditions. The defendant was found guilty after a bench trial. The defendant argued on appeal that although he had a prohibited marijuana metabolite levels in his urine, the OVI was not the proximate cause of the collision because there was no evidence of impairment. In rejecting this argument, the court compared two cases, *State v. Moore*, 6th. Dist. Wood, No. WD-18-030, 2019-Ohio-3705 and *State v. Massucci,* 6th. Dist. Lucas, No. G-4801-CL-201901302-000, 2021-Ohio-88. The conviction in *Moore* was reversed on the grounds that the evidence did not show the defendant's act of driving with a prohibited concentration of cocaine in her blood was the direct cause of the death, and without which, his death would not have occurred. In *Massacci,* however, there was evidence of traffic violations and erratic driving, and the defendant's behavior at the scene as evidence of the defendant's driving with a prohibited concentration of marijuana metabolite in his blood was the direct cause of the victim's death.

In the present case the court found evidence supporting both impairment and causation. The evidence included the results of field sobriety tests, advance roadside impaired driver evaluation (ARIDE), evidence of recent marijuana use, and reconstruction evidence showing the defendant began braking less that a second before impact. There was also evidence that recently consumed marijuana will impair the ability of a person's time and depth perception or time and space perception, and lack of concentration. (Par. 13.) The court found sufficient evidence to show the defendant was impaired which in turn was the proximate cause of the collision.

This case was reversed on the grounds that aggravated vehicular assault under R.C. 2903.08(A)(1)(a) was not an offense of violence for purposes of imposing mandatory post-release control. The reversal was limited only to this sentencing issue.

Note: *State v. Balmert* was argued before the Ohio Supreme Court on April 23, 2025, raising issues of :
1)Whether proximate cause of injury is a separate and distinct element for aggravated vehicular homicide or assault offense with predicate OVI offense under R.C. 2903.06(A)(1)(a) and R.C. 2903.08(A)(1)(a) and
2) when there are different OVI charges as the predicate offense, whether evidence of one charge when the defendant is acquitted of that charge may be considered for impairment for vehicular homicide or assault charge.).

Prior conviction and enhancement issues.

A) OVI and record of prior convictions.

***State v. Mason,* 2025-Ohio-1040 (5th. Dist.).** The trial court order limiting introduction of prior OVI convictions as enhancement of OVI offense was reversed. This is an appeal by the state. The defendant was charged with two separate OVI offenses; 1) R.C. 4511.19(A)(1)(a), (third OVI offense in ten years) and R.C. 4511.19(A)(2) (prior OVI conviction in twenty years and refusal to submit to chemical test). The defendant offered to stipulate to one prior OVI conviction within ten years which the prosecution rejected. The trial court held one prior conviction was an element of a R.C. 4511.19(A)(2) offense, prior convictions under R.C. 4511.19(A)(1) (a) enhanced the penalty, not the level of offense as it remained a misdemeanor. As such, the prosecution could only present evidence of one prior conviction.

State v. Allen, 29 Ohio St. 3d 53 (1997), previously held prior OVI convictions related to penalty enhancement, not the level of offense and therefore, need not be alleged in an indictment nor proven by the prosecutor. The court in *Mason* noted that *State v. Allen* was decided before the 2004 amendment to R.C. 4511.19(A(2). The *Allen* decision is also inconsistent with the subsequent Ohio Supreme Court decision in *State v. Hoover*, 2009-Ohio-4993, which held the prior conviction in an R.C. 4511.19(A)(2) refusal offense was an element of the offense.

Although under R.C. 4511.19(A)(1)(a), one prior OVI conviction increases the penalty but not the level of offense, as both remain a first degree misdemeanor, two prior OVI convictions elevate the level of offense from a first degree misdemeanor to an unclassified misdemeanor. Due to the elevated level of offense, the prosecution is required to prove the

existence of both prior convictions beyond a reasonable doubt. Arriving at this conclusion, the court reversed the trial court order limiting the prosecution to proof of only one prior OVI conviction.

Author's note. A first offense OVI and an offense with one prior OVI conviction within ten years are first degree misdemeanors. The prior conviction is a sentencing enhancement but does not raise the level of offense. Two prior OVI convictions within ten years, however, changes the level of offense from a first degree misdemeanor to an unclassified misdemeanor. As an unclassified misdemeanor, the penalty increases the maximum incarceration from six months to one year, elevating the OVI to a serious offense. Crim. R. 2(C). Two prior OVI convictions within ten years ais an element of an unclassified OVI misdemeanor. See, *State v. Mason,* 2025-Ohio-1040 (5th. Dist.). See also, *State v. Leasure,* 2015-Ohio-5327 (4th. Dist.), which held a prior OVI conviction was an essential element of a prosecution under R.C. 4511.19(A)(2) (refusal within 20 years) which must be proved beyond a reasonable doubt. (Par. 36, citations omitted.).

***State v. Medford,* 2025-Ohio-140 (3d. Dist.).** An order overruling a motion to suppress the defendant's prior conviction and felony OVI conviction were affirmed. The issue in this case was the validity of a 2020 OVI conviction that was used to enhance the degree of the OVI offense in this case.

Prior judgment of conviction.

The defendant asserted the 2020 conviction was characterized as a journal entry, not a judgment and therefore, not valid. While the appellate court agreed that the better practice is to clearly state the judgment entry of conviction, the sentencing order in the prior conviction set out 1) the fact of the conviction, 2) the sentence, 3) the judge's signature, and 4) the time stamp indicating the entry upon the journal by the clerk. Therefore, the journal entry satisfied the requirements of a final judgment by Criminal Rule 32(C). As such, the judgment of the prior conviction was not defective.

Uncounseled plea.

Although a prior conviction is not subject to attack in a later case, as an exception, a defendant may collaterally attack a conviction when the state proposes to use the past conviction to enhance the penalty of a later criminal offense. *State v. Gerken*, 2023-Ohio-2244, ¶ 22 (6th Dist.). (Par. 15). When the issue of an uncounseled plea is raised to avoid enhancement, there is a presumption of constitutionality and regularity with the prior conviction with the obligation on the defendant to introduce contrary evidence. (Par. 16, citations omitted.). Once the defendant makes a prima facie showing that the prior conviction was uncounseled, the burden shifts to the prosecutor to show the right to counsel was properly waived. *State v. Thompson*, 2009-Ohio-314 (Par. 16).

Regarding an effective waiver of counsel under Criminal Rule 22 and 44(C), the court distinguished between:

1) Serious offence (confinement more than six months), which must be 1) in writing, 2) made in open court, and 3) recorded, and

2) Petty offense (confinement of six months or less), which is made 1) in open court and 2) recorded.

In the present case the court of appeals agreed with the trial court that the defendant waived his right to counsel in the 2020 OVI conviction. The trial court reviewed the audio recording of the plea colloquy between the defendant and the court in the 2020 conviction in which the defendant not only waived counsel but asserted his right to represent himself after being appointed counsel by the court. Moreover, although classified as a petty offense, the defendant also executed a waiver of counsel. Reviewing the totality of the circumstances, the court found the defendant knowingly, intelligently, and voluntarily waived his right to the assistance of counsel before pleading guilty in the 2020 OVI case. (Par. 30, citations omitted).

Application of res judicata

The defendant was also arrested in 2023 for OVI which he plead no contest with an agreement to consider the charge as a "first offense." The defendant argued the amendment to a first offense was based on the invalidity of the 2020 OVI conviction and could not be challenged in the present case. The appellate court held, however, there was no evidence in the record that the defendant's 2023 OVI conviction was amended to a "first offense" *because* of any alleged infirmity with his 2020 OVI conviction. (Par. 34, emphasis in the original). Moreover, based on the rejection of the defendant's other attacks on the validity of the 2020 conviction, the 2020 OVI conviction was not infirm.

***State v. Miller,* 2024-Ohio-2009 (2d. Dist.).** OVI conviction was affirmed, but remanded for resentencing as a first degree misdemeanor instead of a fourth degree felony. The defendant was discovered around 2:00 a.m. slumped over the steering wheel of a vehicle stopped in a ditch on the side of a rural road. The car was not running and the keys were not located. The defendant was charged with OVI in violation of R.C. 4511.19 and physical control of the vehicle under the influence in violation of R.C. 4511.194. The defendant was disoriented with glassy, bloodshot eyes and slurred speech. The defendant refused a breath test at the scene and again at the station. After a search warrant was obtained, the defendant's blood sample was positive for methamphetamine at a concentration exceeding the legal limit. The LEADS report showed five prior OVI convictions, enhancing the offense to a fourth degree felony. After a bench trial the defendant was found guilty of both OVI and physical control charges, which the trial court merged and sentenced the defendant on the OVI and driving under suspension offenses.

Sufficiency of the evidence.

Regarding the issue of operation, the court held the term "cause or have caused movement" in R.C 4511.01(HHH), included both present and past tense. The court noted "operation" could be proven by circumstantial evidence from the facts in the case. In this case the evidence showed the defendant was alone in the vehicle at the side of the road in the early morning hours, slumped over behind the steering wheel, and with no one else at the scene. The court found the evidence was sufficient to support the OVI conviction.

Level of offense.

The only evidence offered in support of the defendant's prior OVI convictions was an uncertified LEADS printout. In the absence of stipulation of parties or admission by the defendant, R.C. 2945.75(B)(1) requires a certified copy of a record showing the name, date of birth, and social security number of the defendant for an offense which the BMV registrar maintains a record. In the present case the uncertified record, timely objected to by the defendant at trial, was insufficient to prove the defendant's prior OVI convictions. Consequently, the offense defaulted to a first degree misdemeanor.

Verdict forms for level of offense.

***State v. Sims,* 2024-Ohio-5829 (1st. Dist.).** Felony OVI conviction, on remand from the Supreme Court of Ohio, was reversed and remanded due to verdict form issues with instructions to the trial court to enter a finding of guilt to a fist degree misdemeanor OVI offense. The parties stipulated at trial that the defendant had been convicted of a felony OVI offense in 2018. The verdict form, however, stated the defendant being found guilty of R.C. 4511.19(A)(1)(a) and R.C. 4511.19(A)(2).

R.C. 2945.75(A)(2) provides a "guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged." In this case, to sustain a felony OVI conviction, the jury must find a prior felony OVI conviction, as charged in the indictment, as an element of the offense. The use of a general verdict form, without additional findings, will limit the conviction to a first degree misdemeanor.

In *State v. Pelfrey*, 2007-Ohio-256, the court found materials outside of the verdict form, including the complaint, indictment, or stipulations, cannot be considered on the issue of the level of offense. This includes an express finding of a prior conviction or the level of offense. In *State v. Mayes*, 2024-Ohio-4616, the Supreme Court reaffirmed the finding in *Pelfrey,* but also provided the additional element, such as a prior conviction, could be satisfied by referring to the specific statute for that offense. As the court in *Sims* noted, neither of these statutory provisions define the OVI offense level. (Par. 22).[5] In the absence of a jury finding of the additional enhancing element, the conviction reverts to the lowest level. R.C. 2945.75(B)(2).

Author's Note: Although verdict form issues generally occur with felony offenses, with a third OVI offense in ten years the level of offense is increased from a first degree misdemeanor to a higher, serious offense unclassified misdemeanor. No appellate cases have been discovered as guidance on this issue. Even though a first or second OVI offense in ten years are both first degree misdemeanors, because of the penalty differences, verdict forms may also be considered.

[5] Similar issues occur in theft cases, when the level of offense is based on the amount involved in the theft.

Reasonable suspicion - Required for field sobriety tests.

***State v. Hoey*, 2024-Ohio-5399 (5th. Dist.).** An order granting a motion to suppress in an OVI arrest was affirmed. An appeal was taken by the state in accordance with Criminal Rule 12(K). The officer approached the defendant for a welfare check after seeing the defendant who was pulled over to the side of the road. When the officer approached the defendant the defendant's breath had a slight alcohol odor and the defendant had admitted he had been recently drinking. The officer did not see any erratic driving as the car was parked the entire time.

Field sobriety tests results are not required to determine probable cause in an OVI arrest when there are other indicia of impairment. (Par. 28, relying on *State v. Judy*, 2008-Ohio-4520, ¶ 27 (5th Dist.), citing *Oregon v. Szakovits*, 32 Ohio St.2d 271 (1972)). In this case the defendant wanted to take the field sobriety tests, but the officer did not feel comfortable administering the tests. For probable cause, the test is whether, at the moment of the arrest, the officer had knowledge from a reasonably trustworthy source of facts and circumstances sufficient to cause a prudent person to believe that the suspect was driving under the influence of alcohol." *State v. Medcalf*, 111 Ohio App.3d 142, (4th Dist.1996). In the present case the only evidence was the alcoholic beverage odor. From the evidence the court found lack of probable cause for an OVI arrest.

Field sobriety test

***State v. Garcilaso*, 2025-Ohio-352 (4th. Dist.).** An order overruling a motion to suppress and aggravated vehicular homicide conviction were affirmed. The defendant struck multiple vehicles before crashing into the front of a house and killing the homeowner. At the scene the officer smelled both marijuana and alcohol from the defendant. The defendant admitted to having two or three drinks. The defendant was administered the three standard field sobriety tests, and based on their results the defendant was arrested. A motion to suppress the field sobriety tests was overruled.

The court noted the officer asked the questions required before the HGN test, but did not ask about the defendant's medical history. (Par. 9). The instructions for the walk and turn test were "almost verbatim" to the NHTSA Manual Regarding the one leg stand test, the court noted the manual did not provide an exception to an obese person. As such, there was substantial compliance with the NHTSA standards for the field sobriety tests. (Par. 10).

The court also noted properly administered field sobriety tests can provide law enforcement with information to form a reasonable belief that a suspect operated a vehicle while under the influence of alcohol or drugs. (Par. 10, citing *State v. Richards*, 2015-Ohio-669 (4th Dist.). Field sobriety tests, however, are not the sole basis for an OVI arrest and based on other factors, probable case can be shown when there is a refusal to comply with requests to perform field sobriety tests and no chemical test results were available to determine alcohol concentration. (Par. 11). In the present case the factors included 1) colliding with multiple parked vehicles, 2) colliding with a house that collapsed the roof and killed the resident, 3) an odor about his person of an alcoholic beverage and marijuana, 4) physical unsteadiness aside from the field sobriety tests, and 5) admitting recent alcohol consumption.

***State v. Sugden,* 2024-Ohio-4442 (9th. Dist.).** An order overruling motion to suppress and OVI conviction were affirmed. The defendant was stopped around 1:30 a.m. after the officer saw the defendant travel out of her lane two times and then make an improper left hand turn. As the officer approached the driver there was a slight odor of alcohol from the car. The driver had bloodshot, glassy eyes and spoke with slurred speech. The officer performed two pre-exit tests and asked the driver to get out of the truck. The driver had difficulty, explaining she was scheduled for knee surgery that week. The HGN showed four of six clues. The officer also administered a modified Romberg test, finger to nose test, and checked the driver's eyes for lack of convergence. Based on the officer's observations, the driver was arrested for OVI. After a motion to suppress was overruled, the defendant entered no contest pleas to both OVI charges, driving under the influence and driving with a prohibited BAC, which were merged for sentencing.

Reasonable, articulable suspicion to detain the defendant to conduct field sobriety tests.

The appellate court noted only a reasonable suspicion of criminal activity, not probable cause, is required to conduct field sobriety tests. (Par. 28, citations omitted.). Reasonable suspicion is based on specific and articulable facts that a person is committing a criminal act. In the present case the evidence showed the defendant had red eyes, slurred speech, and a slight odor of alcohol from the car, combined with the initial denial of consuming alcohol and the pre-exit roadside tests. Reviewing the totality of the circumstances, the appellate court found sufficient evidence that the officer possessed reasonable suspicion to detain the defendant to investigate her possible impairment.

Une of non-standardized sobriety tests.

In response to the defendant's assertion that non-standardized tests should not be included in the probable cause determination, the appellate court held the officer's observations of the defendant during the tests could be considered when making the determination to arrest the defendant for impaired driving. The court relied on *State v. Schmitt*, 101 Ohio St.3d 79, 2004-Ohio-37, which permitted the officer's observations of the defendant during the field sobriety tests, even though the tests were not performed in substantial compliance with the NHTSA requirements. (Par. 38). Applying the decision in *Schmitt,* the court in *State v. Washington,* 2012-Ohio-1391 (9th. Dist.), concluded that an officer's observations of the defendant with non-standardized field sobriety tests, such as the Modified Romberg test and the finger to nose test in this case, could also be considered in the probable cause determination. (Par. 39).

***State v. Nesbitt,* 2025-Ohio-223 (9th. Dist.).** An order partially overruling a motion to suppress based on administration of the HGN test was reversed. A traffic stop occurred after the officer saw the defendant fail to make a complete stop at a red light. At the scene the officer detected signs of impairment and performed two divided attention tests. The defendant was asked the defendant to submit to field sobriety tests, The HGN test was administered with the officer determining four out of six clues. The defendant refused to take the remaining tests and was arrested for OVI. The defendant later took the remaining tests at the police station, but as the court noted, could not be considered as the basis for her arrest that had already occurred. After the defendant's motion to suppress was overruled in part, the defendant was found guilty by a jury of two OVI counts, operating a vehicle under the influence and refusal with a prior OVI conviction in ten years.

The trial court held a hearing on the defendant's motion to suppress and found the officer did not properly administer the test for smooth pursuit in substantial compliance with the NHTSA manual as part of the HGN test. (Par. 10). Consequently, the trial court ruled that only 3 clues, not 4 as the officer found, were admissible. (Par. 11). The officer was permitted to testify to the jury about the three clues from the HGN test.

On appeal, the court found that when the trial court determined the HGN test was not administered in substantial compliance with the NHTSA standards, the proper remedy is to exclude, not modify the test results when determining 1) if there was probable cause to arrest the defendant for an OVI offense or 2) admissibility as evidence at trial. (Par. 17). The court noted that under R.C. 4511.19(D)(4)(c), a finding of lack of substantial compliance with reliable standards does not limit or preclude the court from determining probable cause for arrest based on other evidence or testimony. In this case, there was evidence of two non-standardized tests, a traffic violation, a slight odor of alcoholic beverage, the defendant's difficulty in selecting appropriate words, and slurred speech. The case was remanded for a determination for probable cause for the arrest.

***State v. Duncan*, 2025-Ohio-1153 (1st. Dist.).** An order overruling motion to suppress and OVI conviction were affirmed. The defendant was stopped at a sobriety checkpoint. The officer smelled alcohol on the defendant's breath and the defendant admitted having a small amount of wine. The officer also observed the defendant appeared disoriented and had an abnormal speech pattern with delayed responses and interjection of irrelevant information. The defendant was asked to get out of the car to perform field sobriety tests. During the HGN test the defendant complained about nearby stadium lights and the officer told the defendant to face a different direction. Based on the results of the horizontal gaze nystagmus, walk and turn, and one leg stand test, the defendant was arrested for OVI. The defendant agreed to a urine test which showed a level of marijuana metabolites over the legal limit, R.C. 4511.19(A)(1)(j)(viii)(II).

On the motion to suppress, the appellate court found the field sobriety tests were performed in substantial compliance with the NHTSA Manual. The stadium lights did not impact the HGN results as the lights were not flashing or strobe lights and the test was restarted after the defendant was told to look away from the lights. Reviewing the totality of the circumstances, the court found the smell on the defendant's breath, the officer's observations of the defendant, and the field sobriety test results were probable cause to support the defendant's arrest.

Author's Note: The validity of sobriety checkpoints was upheld in *State v. Blackburn,* 2d. Dist. Clark, No. 3083 (3/23/1994), citing and relying on *Michigan State Police v. Sitz*, 496 U.S. 44, (1990), which held a sobriety checkpoint, to which all traffic was subjected, was found not to violate the Fourth Amendment to the United States Constitution.

Field Sobriety observations.

***State v. Duncan,* 2024-Ohio-5290 (1st. Dist.).** OVI conviction and order overruling motion to suppress were affirmed. The defendant was involved in a two car collision. The defendant got out of her car and acted erratically at the scene to the extent an uninvolved person stopped to let the other driver get into her car for personal safety. Two officers arrived at the

scene. Although the defendant denied consuming alcohol, the officers testified the defendant's her eyes were glassy and bloodshot, and her speech was slurred. From their observations, field sobriety tests were administered to the defendant.

One of the officers was in training and the tests were not administered in compliance with the NHTSA manual. As a result, the field sobriety tests were suppressed by the trial court, but the court found from the remaining evidence supported probable cause to arrest the defendant for OVI. (Par. 6).

Exclusion of field sobriety test results does not automatically mean lack of probable cause for the arrest. The court noted an officer has probable cause for an OVI arrest when based on the totality of the facts and circumstances at the time of the arrest the officer "had sufficient information, derived from a reasonably trustworthy source that was sufficient to cause a prudent person to believe that the suspect was driving under the influence. The standard is not actual criminal activity, but a probability or substantial chance of such activity. (Par. 9, relying on *State v. Homan*, 2000-Ohio-212.).

In this case the court found, notwithstanding the omitted field sobriety test results, the defendant's erratic and sometimes uncooperative behavior, odor of alcohol, and inconsistent statements were sufficient evidence of probable cause for her arrest. The appellate court upheld the testimony of the officer's observations of the defendant, including her inability to follow the field sobriety instructions. (Par. 14). The court distinguished between the *results* of the HGN test and mere *observations* made throughout the administration of it. (Par.18, emphasis in the original.). A lay witness as well as a police officer may testify about observations when an individual appears intoxicated, which is both relevant and admissible pursuant to Evid. R. 401 and Evid. R. 402. (Par. 15, citations omitted.). The court found the officer's observations about her inability to focus and comply with instructions could be understood by a lay witness observation. (Par. 17.).

Compliance with HGN requirements.

***State v. Ruffin*, 2024-Ohio-5626 (6th. Dist.).** Order overruling motion to suppress and felony OVI conviction were affirmed. The defendant was involved in a collision with a truck when the two vehicles merged into the same lane. When the officer arrived, he determined the defendant had been drinking due to the smell on the defendant's breath. When the officer asked the defendant to move to the side of the road to perform the HGN test, the defendant refused, staying behind his car facing the blinking lights of the truck. The officer found four clues from the HGN test with any other clues not available due to the defendant's refusal to follow the stimulus. The defendant refused any more field sobriety tests as well as the breathalyzer back at the station.

Reasonable Suspicion to Conduct Field Sobriety Tests.

The court found the evidence of glassy eyes, an odor of alcohol, and a 1:00 a.m. collision were sufficient grounds of reasonable suspicion to permit the officer to conduct field sobriety tests. In arriving at this conclusion, the court noted the level of suspicion required to meet the reasonable-suspicion standard is obviously less demanding than that for probable cause. (Par. 32).

Probable Cause to Arrest. And HGN.

"The legal standard for determining whether the police had probable cause to arrest an individual for OVI is whether, at the moment of arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence." (Par. 35, citations omitted.). In the present case the court found the defendant's involvement in the traffic crash at 1:00 a.m., the odor of alcohol, his glassy eyes, his statement that how much he had to drink "ain't got nothing to do with it," the presence of four out of six clues on the HGN test, and his conduct in being "pleasantly uncooperative" when asked to perform the walk and turn test established probable cause for the OVI arrest. (Par. 36).

The defendant challenged the admissibility of the results of the HGN test as a factor for probable cause. An officer may testify about the field sobriety test results if it is shown by clear and convincing evidence that the tests were administered in substantial compliance with reliable, credible, and generally accepted tests such as those in the NHTSA manual. R.C. 4511.19(D)(4)(b). (Par. 37). Among other things, the defendant argued Optokinetic Nystagmus occurred because the test was conducted too close to the semi-truck's blinking hazard lights and he was facing rapidly moving traffic in close proximity. (Par. 39). Quoting the NHTSA Manual, the court noted,

> Optokinetic Nystagmus occurs when the eyes fixate on an object that suddenly moves out of sight, or when the eyes watch sharply contrasting moving images. Examples of Optokinetic Nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity. (Par. 39).

In this case the court found from the video evidence the Optokinetic Nystagmus was avoided because the defendant was able to fixate on the stimulus as it is moving. (Par. 40). The court also found the truck and the roadside traffic were sufficient distance away from the defendant that neither interfered with the HGN test.[6]

***State v. Miller*, 2025-Ohio-4328 (11th. Dist.).** Affirming the trial court's order granting a motion to suppress. The defendant was seen by the officer going 59 MPH in a 45 MPH zone. The officer also testified the defendant crossed over the double yellow line. The defendant was pulled over and when the officer approached him, the officer smelled alcohol coming from the defendant. The officer also noted the defendant had bloodshot, red, glassy eyes and slurred speech. The defendant was wearing a wristband and handstamp from a local bar. The officer administered the HGN and walk and turn tests and based on the results, arrested the defendant. The defendant was charged with improperly handling firearms in a motor vehicle in violation of R.C. 2923.16 and two counts of OVI in violation of R.C. 4511.19(A)(1)(a) and (d).

[6] Although the defendant asserted he also had glaucoma, no medical evidence was presented in support of this claim. The officer also testified that based upon his training, glaucoma does not impact the HGN test. (Par. 43). The NHTSA manual provides if the defendant raises any medical issues the officer should note the issue in the report and continue the tests.

The trial court pointed to multiple deficiencies in the field sobriety tests. For the HGN test, the police car's overhead blue flashing lights remained on with the defendant's back to the passenger side of the car. As a result, there was a blue strobe lights on the defendant's face during the tests. The court noted the NHTSA manual requires the defendant to be turned away from the rotating or strobe lights to avoid optokinetic nystagmus, which may affect the test results. (Par. 15, citations omitted). The appellate court deferred to the trial court's finding that the HGN was not performed in compliance with the NHTSA requirements and the test results were not valid.

The appellate court noted that probable cause to arrest for an OVI can exist even in the absence of field sobriety tests or where the tests' results have been excluded. (Par. 17, citation omitted). In the present case, accepting the trial court's findings of fact including inconsistencies between the video and the officer's testimony, the court affirmed the trial court's conclusion of lack reasonable suspicion to conduct field sobriety tests and probable cause for the defendant's arrest.

Blood draw issues.

***State v. Benefield,* 2025-Ohio-1116 (5th. Dist.)**. Convictions for aggravated vehicular homicide, OVI, and driving under suspension affirmed. (2-1 decision). The defendant ran a red light causing a fatal two car collision. The defendant was stopped by the police walking away from the collision. After being transferred to the hospital the defendant refused medical treatment, became combative with the medical staff, and had to be physically restrained to force medication into his IV to be intubated so he could be treated for his injuries. During the process the officer smelled alcohol from the defendant's breath and timely obtained a search warrant for a blood sample.

The nurse testified she used an already established IV to draw the blood to avoid causing any additional, unnecessary trauma by poking the defendant with another needle. She did not recall if an alcohol antiseptic was used when the original IV was inserted. (Par. 7). The blood contained 0.173 grams by weight of alcohol per 100 ml of whole blood. It also showed 111.32 nanograms per milliliter of THC, 81.12 nanograms per milliliter of fentanyl, 49.79 nanograms per milliliter of midazolam, and 675.34 nanograms per milliliter of Lorazepam.

The defendant filed a motion to motion to suppress generally asserting the blood sample was not collected, handled, transported, or analyzed in compliance with R.C. 4511.19 and with the Ohio Department of Health rules regarding chemical tests. The motion did not set out any specific allegations of non-compliance. Three weeks after the suppression hearing the defendant filed a supplemental motion to suppress setting out more specific arguments to suppress the blood results. After the trial court overruled the motion to suppress, the defendant entered pleas of no contest to the three aggravated vehicular homicide charged merged for sentencing, OVI, and driving under a suspended license.

Compliance with blood draw procedures.

R.C. 4511.19(D)(1)(b) requires compliance with techniques or methods approved by the director of health for admissibility of blood samples in OVI cases. *State v. Baker*, 2016-Ohio-451. Ohio Adin. Code Sec. 3701-53-06(B) states ,"When collecting a blood sample, an aqueous solution of a non-volatile antiseptic will be used on the skin. No alcohols will be used as a skin antiseptic."

The defendant asserted that because the nurse who drew the blood was not able to testify to the type of antiseptic that was used when the IV was inserted into the defendant, the blood sample did not meet the requirements of admissibility. Rigid compliance with the Ohio Department of Health regulations is not required as such compliance is not always humanly or realistically possible. (Par. 35). Substantial compliance with the regulations, absent prejudice to the defendant, is sufficient for the admissibility of alcohol and drug tests results. *State v. Plummer*, 22 Ohio St. 3d 294 (1986).

In the present case the court found under the circumstances including the defendant being uncooperative and need to be physically restrained in order to be docile enough to receive treatment for his injuries, the blood was drawn in substantial compliance with the Department of Health regulations. (Par. 25). The court noted there was no claim of prejudice for any noncompliance. Moreover, there was no evidence that an alcohol antiseptic was used in violation of the regulation, but only it was not known under the rush of the extreme circumstances and the defendant's behavior.

The dissent found with no testimony that an alcohol antiseptic was not used when the IV was inserted, there was neither strict nor substantial compliance with the Ohio Department of Health's regulations for drawing the blood.

***Schubert v. Watson*, No. 2:23-cv-4231, 2024 U. S. Dist. LEXIS 215526 (S.D. 2024).** Habeas corpus denied. Compliance with blood taking procedure in OVI case is governed by state law and does not rise to the level of a constitutional issues. A failure to comply with state procedural law is not a violation of the Due Process Clause. The court noted that the issue was raised in state court, with a motion to suppress overruled by the trial court, and affirmed on appeal. *State v. Schubert*, 2021-Ohio-1478 (5th Dist.), reversed on other grounds, 2021-Ohio-2923.

***State v. Quinn*, 2025-Ohio-158 (6th. Dist.).** A search warrant was obtained and a blood sample from the hospital was drawn almost four hours after the collision. The blood test results showed a blood/alcohol level of 0.094. The coroner's chief toxicologist testified, due to average hourly alcohol rate of elimination, blood-alcohol concentration at the time of the crash would likely have been between 0.1248 and 0.1556. (Par. 30).

The court found there was evidence of the OVI offense from defendant's BAC of .094 four hours after the crash which by expert testimony of reversed extrapolation suggested a BAC level 0.1248 and 0.1556 at the time of the crash. From the testimony the court further noted a BAC of this level depresses the central nervous system and impairs a person's ability to divide attention and to pay attention to the road and surrounding activities. In addition, two of the most

common traffic violations that impaired people commit are speed and marked lanes violations which the defendant committed when she hit the concrete wall. (Par. 53).

Ohio Administrative Code Compliance

***State v. Ghimire,* 2024-Ohio-1747 (5th. Dist.)** Convictions for OVI and marked lanes were affirmed. The officer initially saw the car driving with "poor lane position," made a U-turn to follow the car, and stopped the defendant after observing the defendant drifting across the marked dash lane lines from the right lane. The driver has a strong smell of alcohol and bloodshot eyes. The defendant agreed to the field sobriety test and a portable breathalyzer. The officer saw something in the defendant's mouth which was chewing tobacco. While administering the portable breath test, the officer directed the defendant to spit it out and the officer checked the defendant's mouth for any residue. The defendant was taken to the police station and submitted to a breathalyzer 45 minutes later. The BAC was .119. The defendant was charged with OVI and marked lanes violations. The defendant entered a no contest plea, found guilty, and raised the suppression order on appeal.

Breathalyzer challenge.

The defendant challenged the breathalyzer results from the Intoxilyzer 8000, which is approved for use under Ohio Administrative Code Section 3701-53-03. The court noted the Ohio Administrative Code does not specifically provide for a 20 minute observation period, but instead comply with the "operational checklist" which for some breathalyzers include a 20 minute observation period before testing. (Par. 22. Citations omitted.) The Intoxilyzer 8000, however, requires the breath test in accordance with the machine's "instrument display," not an "operational checklist." (Par. 22). Although the record did not indicate whether the instrument display included a 20 minute observation period, the state substantially complied with the requirement with the 45 minute interval.

The court also rejected the defendant's challenge that the breathalyzer results might be tainted by any residual tobacco juices when the test was administered. The court noted than neither the Ohio Administrative Code nor case law imposed this requirement. Moreover, the purpose of the mandatory observation period is to prevent oral intake of any material by the defendant during the observation period and anything in the defendant's mouth prior to the observation period could not be verified. *Relying on Bolivar v. Dick,* 76 Ohio St.3d 216, 218, 1996-Ohio-409. (Par. 22). Nor was there any proof of either residual tobacco or other lingering digestive juices having any impact on the breath test results.

Urine sample storage procedure.

***State v. Weaver,* 2024-Ohio-5028 (2d. Dist.).** An order granting motion to suppress was reversed. The defendant was charged with operation of a vehicle under the influence and with a prohibited marijuana level, driving under a suspended license, and crossing over marked lanes. The defendant was stopped after leaving the airport going the wrong way on a one way street. The defendant made a U-turn in front of the officer and proceeded to accelerate over the posted speed limit. The defendant entered a not guilty plea and filed a motion to suppress. After the

hearing, the trial court granted the motion to suppress on the grounds that 1the urine specimen container had not been properly sealed in accordance with Ohio Adm.Code 3701-53-06(F).

The urine specimen container had not been properly sealed.

The trial court found the urine specimen container had not been properly sealed in accordance with Ohio Adm.Code 3701-53-06(F).[7] This rule requires the urine sample "to be sealed in a manner such that tampering can be detected and have a label" setting out identification information.

In the present case the record shows the urine sample seal was not on the bottle when it was delivered to the lab for testing. The appellate court, based on the evidence in the record, set out the chain of custody, indicating each person who handled the bag that contained the bottled urine sample. (Par. 50). The appellate court found there was "no indication that the sealed manila envelope had been opened, damaged, or tampered with, which would have allowed the test tube-like container inside the sealed envelope to be opened, damaged, or tampered with. (Par. 51). Nor was there any indication of tampering was apparent during the transportation of the urine specimen to the laboratory.

"The purpose of the sealing requirements described in Ohio Adm.Code 3701-53-06(F) is to ensure that the blood [or urine] specimen is the same specimen that was placed in its container by the person who collected it from the defendant, and [that] it is in the same condition as when it was put there." *State v. Roberts*, 2009-Ohio-1799 (1st Dist.). This allows for an outer package containing the sample to be sufficiently sealed in a manner such that tampering can be detected. (Par. 52). A change was made to Ohio Adm.Code 3701-53-06(F) from requiring the urine sample to be "sealed with a gummed tape or sticker." To the current language of "to be sealed in a manner such that tampering can be detected." The appellate court noted the amendment to the rule permitted more flexibility in how a urine specimen may be sealed. (Par. 52). The appellate court held there was at least substantial compliance with Ohio Adm.Code 3701-53-06(F) and no evidence of tampering, Therefore, the urine sample should not be excluded for lack of compliance.[8]

State v. Vaughn, 2025-Ohio-2274 (12th. Dist.). Convictions for aggravated vehicular assault and OVI and an order overruling motion to suppress were affirmed. The defendant collided with a utility pole, severely injuring her front seat passenger. The defendant was also injured. At the hospital the defendant told the officer she tried to avoid a squirrel and lost control of the car. The defendant consented to giving the officer a urine sample. A nurse assisted using an unused, one-time use disposable cardboard bedpan to collect the urine. The urine sample was poured from the bedpan into a plastic vial (with preservative) from an OVI test kit provided by

[7] The trial court also suppressed the urine test results on the grounds there was no probable cause for the arrest, and therefore the urine sample should not have been collected. This ground was held no longer valid in light of the court of appeals finding of sufficient probable cause to arrest the defendant.

[8] Because the trial court excluded the field sobriety test results and the urine sample based on lack of probable cause, the case was remanded for the trial court to address the merits of the field sobriety tests and the admissibility of the urine sample.

Ohio State Patrol. The bedpan was thrown away and the sample was transported to the Regional Crime Laboratory for testing. The urine showed the presence of amphetamines, methamphetamines, and benzodiazepines.

The defendant filed a motion to suppress, raising numerous issues on the validity of the urine test results. The motion was overruled after a hearing and the defendant entered no contest pleas to second-degree felony aggravated vehicular assault and OVI. On appeal the defendant raised issues concerning the motion to suppress.

A) Compliance with Ohio Department of Health regulations.

This case involved operating a vehicle with a prohibited concentration of a controlled substance or its metabolite. R.C. 4511.19(D)(1)(b) requires a urine sample must be analyzed in accordance with methods approved by the Director of Health for admission of evidence of the concentration of metabolites in a defendant's urine at the time of the alleged violation.

Regarding urine samples, Adm. Code 3701-53-06(D), promulgated by the Ohio Department of Health, provides, “The collection of a urine specimen will be witnessed to assure that the sample can be authenticated. Urine is to be deposited into a clean glass or plastic screw top container and capped or collected according to the laboratory protocol as written in the laboratory procedure manual."

Witness requirements.

The defendant objected that the nurse who took the sample was not identified nor testified at the suppression hearing. On appeal the court noted the officer who did testify at the hearing was present when the sample was taken. The officer witnessed the defendant provide the sample to the nurse who in turn gave it to the officer to immediately put into the plastic evidence bottle. The court found the continuous witness of the procedure by the officer substantially complained the Department of Health regulations. (*Relying on State v. Ossege,* 2014-Ohio-3186 (12th. Dist.). (Par. 15).

Cardboard collection box

As a preliminary matter, the prosecutor argued Adm. Code 3701.53-06(D) only required the sample to be deposited, not collected, in a clean glass or plastic container. The court held, however, the term 'deposit' in the regulation does not imply a transfer of fluid between containers later in time. (Par. 16). Instead, the court construed the term “collection” to include the entire process of taking blood, urine, and oral fluid for testing. “The purpose of the regulation is to preserve the quality of the specimen to ensure accurate test results, therefore the regulation dictates urine is to be deposited into a *clean* plastic or glass screw top container.” (Par. 17).

The critical issue was whether use of the disposable cardboard bedpan contaminated the urine sample. The court recognized there may be circumstances when the urine is initially collected in another container. In this case the evidence showed the bedpan was unused, not wet or otherwise degraded. Having shown substantial compliance with the regulation, the burden

shifted to the defendant to show she was prejudiced by the use of the cardboard bedpan as "less than strict compliance." (Par. 20, citing *Ossege*.) The court held there was no evidence of any contaminants in the bedpan and affirmed the order overruling the motion to suppress.

***State v. McMurray*, 2025-Ohio-196 (2d. Dist.).** An order overruling motion to suppress and OVI conviction under R.C. 4511.19(A)(1)(b) (prohibited whole blood concentration) were affirmed. An officer saw a car "brake check" a truck that was traveling behind it, slowing down to approximately 15 mph before speeding back up again. A short time later, the same car changed lanes without using its turn signal within the required distance. At the traffic stop the officers smelled the odor of alcohol, glassy eyes, and a can of beer and a red solo cup in the front seat cupholders.

Due to the defendant's verbal aggression towards the officers, field sobriety tests were not offered, but the defendant agreed to submit to a blood test. The defendant was taken to a hospital and a phlebotomist drew two vials of blood. The vials were put into an OVI test box, transported to the police station, and placed it in the refrigerator. The sample was eventually tested at the Hamilton County Crime Lab, and the results showed .13755 grams of alcohol per 100 milliliters of blood. (Par. 5).

Ohio Administrative Code Compliance.

By Adm. Code 3701-53-02(B)(1), blood test measurements are to be expressed as equivalent to grams by weight of alcohol per one hundred milliliters of whole blood, blood serum or plasma (grams per cent by weight). The defendant asserted the toxicologist testified of the blood results without delineating whole blood, blood serum or plasma. Reviewing the record, the court found the testimony concerned only whole blood and there was nothing in the record about steps taken to convert the whole blood into serum or plasma. (Par. 10). Relying on *State v. Burnside*, 2003-Ohio-5372, the court further noted that only substantial compliance with the Ohio Administrate Code was required for *de minimis* errors which would include omitting the word "whole" in the report.

The defendant also asserted that Ohio Admin Code 3701-53-06 and 3701-53-07, regarding the reliability of the storage tubes, should be read together for reliable evidence. 3701-53-06 concerns drawing the blood and storage in tamper free, labeled vacuum tubes. 3701-53-07 concerns chain of custody and length of time to keep the blood samples. Contrary to the defendant's assertion, the court found the two regulations are separate and do not require a record of where the collection tubes came from or document their reliability. (Par. 15).

Blood/alcohol testing

***State v. Quinones*, 2024-Ohio-2552 (2d Dist).** An order overruling motion to suppress and OVI conviction was affirmed. The officer first saw the defendant driving on the right lane line and stopping for a red light over the stop bar and crosswalk. Based on the officer's observations at the stop, including slurred speech, smell of alcohol, bloodshot, glassy eyes, argumentative conduct, and short term forgetfulness, the defendant was asked to perform field sobriety tests. From the test results the defendant was arrested for OVI and minor traffic offenses.

After his arrest the defendant agreed to a breath test, he could not provide a valid sample. He then agreed to a blood test and was transported to a hospital for the test. The blood was drawn within two hours of the observed traffic violations, with the sample recorded, labeled, and sealed. The officer took possession of the sealed blood kit to take to the restricted police building for storage and refrigeration. The delivery of the blood kit was delayed due to the officer being called off for an unrelated emergency, with the blood kit delivered approximately one and a half hours after the blood was drawn. The test results were 0.0106.

Regarding the refrigeration delay, the appellate court noted Ohio Adm. Code 3701-53-06(G) (formerly Ohio Adm. Code 3701-53-05(F)), requires that all blood specimens "will be refrigerated" while not in transit or under examination. (Par. 50). The court in *Quinones* summarized the burden-shifting procedure for admissibility of alcohol test results as:

> The defendant must first challenge the validity of the alcohol test by way of a pretrial motion to suppress * * *. 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. * * * Hence, evidence of prejudice is relevant only after the state demonstrates substantial compliance with the applicable regulation. (Citations omitted.) (Par. 51).

The delay itself is not grounds to deny admission of the test. A previous four hour, ten minute delay before putting the blood in transit did not render the test result inadmissible for failure to substantially comply with administrative regulations. *State v. Baker*, 146 Ohio St.3d 456, 2016-Ohio-451, (Par. 21). An issue of fermentation of the alcohol from refrigeration delay, as opposed to consumption by the defendant, goes to the weight, not the admissibility of the blood test results. (Par. 52, citation omitted.). The court held that the defendant did not show any prejudice by the delay in the blood test refrigeration. The court also noted that the blood kit was in the officer's car when he responded to the emergency and thus, still in transit.[9]

Medical records

***State v. Burson*, 2025-Ohio-499 (12th. Dist.).** An order overruling motion to suppress and convictions for OVI, repeat OVI offender specification, failure to comply with an order or signal of a police officer, and resisting arrest were affirmed. The defendant fled into a lake and after being taken out of the water, the defendant went directly to the hospital for hypothermia treatment. The police obtained the defendant's medical records through R.C. 2317.02(B)(2), instead of a search warrant. The medical record showed the defendant's blood/alcohol level was above .08. The trial court denied the motion to suppress the medical records obtained by the statute instead of a search warrant based on the good-faith exception to the exclusionary rule.

[9] The defendant also raised other issues in the motion to suppress. The court found the defendant's driving over the stop bar and crosswalk was sufficient to justify the stop of the defendant. The court also found the field sobriety tests were correctly administered to the defendant.

On appeal, the court held the blood/alcohol results were immaterial, and therefore, not grounds for reversal. The defendant was charged with R.C. 4511.19(A)(1)(a) [operating a vehicle under the influence] and R.C. 4511.19(A)(2)[operating a vehicle under the influence with a prior refusal]. Neither offense required the state to prove the defendant's blood/alcohol content was above any prohibited blood alcohol/level. (Par. 25). The court noted the evidence presented at trial included the defendant stumbling and unable to stay upright as he fled from the police on foot through the woods, a "very overwhelming" odor of alcoholic beverage, an empty beer can, several unopened cans of beer, an empty shot glass with fresh liquor residue during the subsequent inventory search of the vehicle, and jumping into the water on a freezing winter night, was sufficient evidence to prove the defendant was under the influence without any reference to his blood/alcohol level. As such, regardless of the trial court's decision on the motion to suppress, there was sufficient evidence of impairment. (Par. 25).

Author's note: R.C. 2317.022 contains a form for the police officer to obtain the medical records. While there is no dispute that R.C. 2317.02 waives the physician/patient privilege in criminal actions, the issue is whether this statutory procedure preempts a search warrant requirement by waiving a defendant's reasonable expectation of privacy.

One of the critical issues is the amount of information in a defendant's medical records that exceed the presence and amount of alcohol, medication, and/or drugs of abuse in the defendant's system. While a subpoena is often issued without judicial review, a search warrant determines whether there is probable cause for release of the medical records, and if so, may limit the scope of the records obtained.

To date the following Ohio appellate districts have held that a search warrant, rather than a subpoena or the statutory procedure in R.C. 2317.02 is required to obtain a defendant's medical records and blood results in an OVI case.

Search warrant required

1st. Dist. S*tate v. Eads*, 2020-Ohio-2805 (1st. Dist.)

3rd. Dist. *State v. Little,* 2014-Ohio-4871 (3rd. Dist.) and *State v. Clark*, 2014-Ohio-4873 (3rd. Dist.).

5th. Dist. *State v. Saunders*, 2017-Ohio-7348 (5th. Dist.)

6th. Dist. *State v. Helper*, 2016-Ohio-2662 (6th. Dist.)

9th. Dist. *State v. Gubanich,* 2022-Ohio-2815 (9th. Dist.).

10th. Dist. *State v. Rogers.* 2023-Ohio-2749, (10th Dist.).

Search Warrant not required

8th. Dist. *Cleveland v. Khamies,* 2023-Ohio-812 (8th. Dist.) Cuyahoga.[10]

[10] In *State v. Harper,* 8th. Dist. Cuyahoga, No. 105961, 2018-Ohio-690, raised the need for a search warrant, but did not decide the issue.

Unclear if search warrant required.

2nd. Dist. *State v. Smith,* 2019-Ohio-4706 (2d. Dist.). (Medical records were obtained by R.C. 2317.022, but prosecutor went back and obtained the same records with a search warrant.)

12th. Dist. *State v. Perry*, 2017-Ohio-7214 (12th. Dist.). (Search warrant issue raised to obtain medical records, but not decided, finding the issue was moot due to defendant's no contest plea to R.C. 4511.19(A)(1)(a) charge and specific blood/alcohol level not applicable.)

Notwithstanding the split of appellate court authority, to date there has been no decision directly on the constitutionality of R.C. 2317.02 by the Fourth Amendment, although it has been raised in some cases.

Roadside translator.

***State v. Abaev,* 2025-Ohio-1108 (5th. Dist.).** OVI conviction affirmed. At 1:30 a.m. the officer saw the defendant driving under the speed limit, drive straight through in a turn lane going onto the shoulder of the road and then make a wide right turn going left of center in the process. At the stop the officer discovered the defendant did not speak English. The defendant spoke Uzbek and the officer used the Google Translator app on his phone to communicate with the defendant.

The officer testified to a strong odor of alcohol from the car and the defendant had bloodshot and glassy eyes. The defendant admitted having something to drink in response to the officer's questions which based on the translation was "one beer four hours ago." At the officer's request, the defendant got out of the car for the horizontal gaze nystagmus test. The officer testified he observed six clues, three in each eye, from the HGN test.[11] Based on the test results, erratic driving, and the officer's observations, the defendant was arrested for OVI. The defendant submitted to the breathalyzer, resulting in 0.129 blood/alcohol level. After a hearing on the motion to suppress, the court denied the motion and the defendant entered a no contest plea to the charge.

Reliability of Google translator.

The defendant asserted that the prosecution was required to offer some testimony showing the reliability of Google Translator. In the absence of proof of reliability, the prosecution could not show the HGN instructions were valid and the HGN test results should have been suppressed. On appeal the court noted it may have been preferable for the State to have an interpreter testify regarding the accuracy of the translated instructions. (Par. 15). The court further found, however, from the video and the officer's testimony of the "near perfect compliance" with the instructions, the accuracy of the translation was supported by circumstantial evidence.

[11] It does not appear from the decision that the walk and turn or one legged stand tests were offered to the defendant.

Sentencing considerations

***State v. Rice*, 2024-Ohio-3156 (3d. Dist.).** An OVI conviction with a jail sentence in excess of minimum jail term was affirmed. The defendant was charged with OVI violations of R.C. 4511.19(A)(1)(a) and R.C. 4511.19(A)(1)(h) (Prohibited BAC) as well as a stop sign violation. The defendant entered a guilty plea to the OVI operation charge with the OVI/Bac and stop sign charges dismissed. The trial court ordered a term in jail of 365 days with 305 days suspended. The defendant appeals the sixty day jail sentence.

Due to the defendant's two prior OVI convictions, the minimum sentence for a violation of R.C. 4511.19(A)(1)(a) is thirty days, while the minimum sentence under R.C. 4511.19(A)(1)(h) (the dismissed charge) was sixty days due to the 0.317 BAC. Upholding the sentence, the appellate court found the trial court properly considered and applied the sentencing factors in R.C. 2929.22 and 2929.22(B). In view of the defendant's prior criminal record and the high BAC, the trial court did not abuse its discretion in imposing a sentence higher than the statutory minimum.

***State v. Kidd*, 2025-Ohio-3167 (2d. Dist**.). Felony OVI conviction with a specification for an additional prison term for repeat OVI offenders were affirmed. The defendant struck a tree and fled on foot, later being found by the police hiding in nearby bushes. The defendant entered a guilty plea to the OVI charge and repeat offender specification with other charges dismissed. The court imposed a sixty month sentence on the OVI conviction consecutive to a five year sentence on the specification. The issues raised on appeal were limited to the defendant's sentence.

Proportionality and consistency.

R.C. 2929.11(B) requires a felony sentence to be commensurate with and not demeaning to the seriousness of the defendant's conduct, its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar defendants.[12] Consistency relates to the sentences in the context of sentences given to other offenders and proportionality relates solely to the punishment in the context of the defendant's conduct (does the punishment fit the crime). *State v. Moore*, 2014-Ohio-5135 (8th Dist.). (Par. 16).

Sentencing consistency is not based on a trial court's comparison to prior sentences for similar defendants and similar offenses. Instead, it is the court's proper application of the statutory sentencing guidelines that ensures consistency. (Par. 16, citations omitted.). To show a sentence is inconsistent, a defendant must show the trial court failed to properly consider the statutory guidelines and factors. (Par. 16, citation omitted.).

Principles and purposes of sentencing.

The overriding purposes of felony sentencing include protecting the public from future crime, punishing the defendant, and promoting effective rehabilitation of the defendant. R.C.

[12] The same factors apply with misdemeanor sentencing. R.C. 2929.21(B).

2929.11(A). Other factors set out in R.C. 2929.12 includes the seriousness of the defendant's conduct and the likelihood of the defendant's recidivism.

The repeat offender specification, R.C. 2941.1413, includes a penalty range of one to five years and applies when the defendant has been convicted of five or more equivalent OVI offenses within the past 20 years, The additional sentence must be served prior to and consecutively to the sentence for the underlying felony. *State v. S.*, 2015-Ohio-3930. The statutory purpose is to deter people from driving drunk and unnecessarily placing Ohioans at risk and to punish those who continue to do so. *State v. O'Malley*, 2022-Ohio-3207.

Statements considered in sentencing.

The trial court considered the presentence report, including the defendant's prior record of eight OVI convictions and numerous other criminal offenses. The trial court, however, is not confined to the statutory factors and could rely on a broad range of information at sentencing. R.C. 2929.12(A). (Par. 15, citations omitted.). A court may consider hearsay evidence, prior arrests, facts supporting a charge that resulted in an acquittal, and facts related to a charge that was dismissed under a plea agreement. *State v. Bowser,* 2010-Ohio-951 (2d. Dist.).

In the present case the presentence report included statements from a pending protection order proceeding which contained statements of the defendant's continued intoxication while on bond in this case. The trial court also acknowledged the defendant's traumatic experiences as an adolescent in mitigation of sentence, but noted there had been many intervening opportunities for treatment.

The court found the sentence imposed was within the statutory range for the felony OVI offense under R.C. 2929.14(A)(3)(a) and R.C. 2941.1413. Although at the higher end of the statutory range, the court noted the sentence was supported by the numerous prior OVI convictions and the defendant's repeated failure to comply with treatment in the past.

House arrest

***State v. Kirkendall*, 2025-Ohio-2497 (1st. Dist.).** A sentence imposing house arrest for five years as a probation condition with only release for treatment was reversed. The defendant was convicted of aggravated menacing. The conviction arose out of Facebook threats the defendant made to Walmart employees after being fired. The defendant was intoxicated at the time and turned himself in after the Facebook post went viral and appeared on the evening television news.

At sentencing, the defendant was given a 180 day suspended sentence with five years' probation with 24/7 house arrest and electronic monitoring. As part of his sentence, the defendant was required to enroll in mental health and substance abuse treatment and only allowed to leave the house to attend treatment sessions.[13] After the defendant filed his notice of

[13] Other probation conditions included no alcohol consumption, random urine screens, no contact with Walmart or employees, and no possession or any real or toy guns.

appeal the trial court modified the sentence to permit the defendant's release from house arrest for school, to look for a job, and employment purposes if the defendant obtains a job. (Par. 11).

On appeal the court recognized a trial court has broad imposing community control conditions but limited to any statutory restrictions. R.C. 2929.27(A)(2) authorizes house arrest with electronic monitoring as a probation condition. R.C. 2929.01(P)(1), however, provides an exclusion "for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court …" The court noted the phrase, " as authorized by the sentencing court" was limited to "other premises." (Par. 20-22). In other words, a house arrest sanction has a built in statutory exception for work release. The court reversed the sentence and remanded the case to the trial court to resentence with work release for any period of house arrest.

Author's Note: Other than a first offense within ten years, a court may impose half of the mandatory jail sentence and impose house arrest or continuous alcohol monitoring when the court issues written findings that the defendant would not be able to begin serving that term within the sixty-day period following the date of sentencing. R.C. 4511.19(G)(3). The work release exception set out in R.C. 2929.01(P) also applies when the court imposes house arrest for an OVI offense.

Trial court discretion and recommended sentence.

***State v. Davis,* 2024-Ohio-5688 (1st. Dist.).** The four year prison sentence imposed by the court on vehicular assault conviction was affirmed.[14] The defendant entered a guilty plea to aggravated vehicular assault with the remaining two OVI counts and the vehicular assault count being dismissed. As part of the plea the parties agreed to a one year prison term. Due to the defendant's conduct between the time of the plea and sentencing, including a social media video which portrayed her drinking and smoking marijuana in violation of her pretrial release conditions and lack of remorse for the incident that left the victim a quadriplegic after she hit him, the court imposed a four year sentence.

Upholding the greater sentence, the appellate court noted the trial court is not bound by a recommended sentence in a plea agreement and may depart from the agreed sentence when the defendant is forewarned by the court that a greater sentence could be imposed, relying on *State v. Shaw,* 2023-Ohio-3230 (1st. Dist) and *State v. Elliott,* 2021-Ohio-424. (Par. 17). In the present case the court advised the defendant before accepting her guilty plea that he was not bound by the proposed sentence. The court specifically advised the defendant that either more or less time could be imposed, which she acknowledged. The appellate court held the sentence was within the range for a third degree felony and the trial court properly considered the video and lack of remorse and insight as sentencing factors under R.C. 2929.12(D).

***State v. Lyles*, 2024-Ohio-5834 (1st. Dist.).** Conviction for aggravated vehicular assault was affirmed. The defendant and prosecutor entered into a plea agreement with a recommended two year prison term. At the time of the plea the trial court went over the terms of the agreement

[14] Although the sentence was affirmed, the case was remanded to the trial court for limited resentencing on the issue of post-release control notification.

including dismissal of related charges and recommended prison sentence. The defendant was informed the trial court was not bound by the parties' recommended sentence, which the defendant acknowledged. The trial court imposed a four year prison sentence as opposed to the two year term agreed to by the parties.[15]

On appeal the court noted a trial court is not bound by a recommended sentence agreed to by the prosecution and the defendant, but when the recommended sentence is the basis for the inducement to plea, the trial court must inform the defendant of the possibility of imposing a greater sentence. (Par. 9, citations omitted.). The court on appeal also noted the difference between a recommended sentence and a stipulated sentence accepted by the court.

The trial court's colloquy with the defendant and in the absence of a stipulation or agreement of sentence by the court, the defendant did not have a reasonable expectation that the trial court would automatically follow the sentence recommendation. Although the trial court should provide the defendant an opportunity to withdraw a plea if the sentence exceeds the recommended sentence, in this case the defendant did not raise any objection to the increased sentence at the sentencing hearing. Moreover, the trial court gave the defendant sufficient time to consider the potential sentence before entering the guilty plea.

Evidence admissibility issues.

A) NHTSA manual.

***State v. Berhe,* 2024-Ohio-3135 (5th. Dist.).** Convictions for OVI and possession of marijuana (bench trial) and driving under suspended license and speeding (guilty pleas) were affirmed. The defendant was stopped for speeding. At the stop the officer smell raw marijuana. The defendant had glassy eyes and was sweating, despite a cold night. A baggie of marijuana fell out of the car when the defendant got out. The defendant listed six out of six clues on the HGN and also lack of eye convergence. The modified Romberg test was also conducted. Upon his arrest, a pill was found in the defendant's shirt pocket that was field identified as Vicodin.

The defendant objected at trial to the NHTSA manual and pill identification chart on the grounds of hearsay. The exhibits were admitted limited purpose of showing the officer's training and not as hearsay evidence. The appellate court found there was nothing in the record to show the trial court improperly relied on these exhibits for the truth of the matters asserted. In reaching this conclusion, the appellate court that it must presume, in reviewing a bench trial, that the trial court considered nothing but relevant and competent evidence in reaching its verdict. (Par. 11). In this case the trial court made a record specifically limiting the consideration of the exhibits.

***State v. Ruffin,* 2024-Ohio-5626 (6th. Dist.).** At the suppression hearing the judge declined the defendant's request to take judicial notice of the NHTSA Manual. The appellate court found prior case law permits a trial court may take judicial notice of the NHTSA standards governing the administration of field sobriety tests, including the HGN test. (Par. 20, citations

[15] The presentence report showed the defendant had three prior OVI convictions within the past ten years and a BAC of 0.265 in the present case.

omitted.). The court found harmless error in light of the defendant given a full opportunity to use and cross examine the officer on the procedures set out in the manual. (Par. 22).

B) LEADS information.

***Willard v. Smith,* 2024-Ohio-3344 (6th. Dist.).** Convictions for multiple traffic offenses were affirmed. On December 20, 2022, the defendant was charged with driving with a suspended license, unsafe vehicle, fictitious registration, and refusal to identify. The defendant was found guilty of all four charges following a bench trial. On January 15, 2023, the defendant was charged with driving with a suspended license, fictitious registration, and failure to comply with police order. The defendant was found guilty of all three charges following a bench trial.

In both incidents the officers used information from the Law Enforcement Automated Data System (LEADS), to confirm the ownership of the vehicle and the validity of both the license plate and the defendant's driver's license. On appeal the defendant asserted the information from LEADS was inadmissible hearsay. In both trials the defendant made a general objection to the admission of the LEADS evidence, but not specifically on hearsay grounds.[16] Although the appellate court agreed that the information in the LEADS documents was hearsay, it was admissible under the public records exception to the hearsay rule, Evid. R. 803(8)(a). (Par. 28, citations omitted).

The appellate court noted "in this case, each police officer testified at each trial that they knew of LEADS and BMV reports, used them on each incident date in the performance of their official duties, and identified each report 'is what it is claimed to be,'" and therefore, authenticated under Evid. R. 901(B)(1). (Par. 30). Under Evid. R. 901(A), the authentication inquiry is whether the document is what the proponent at trial claimed it to be, which occurred at each trial. (Par. 30). In affirming the convictions, the court distinguished its prior holding in *State v. Pelmear,* 2022-Ohio-1534 (6th. Dist.), in which the conviction based in the information in the LEADS was reversed. (Par. 31). In *Pelmear* the LEADS report was not introduced into evidence, only the officer's testimony of the information in the LEADS report. (Par. 31.).

Sufficiency of motion to suppress

***State v. Benefield,* 2025-Ohio-1116 (5th. Dist.)**. Crim.R. 47 requires all written motions to state with particularity the grounds upon which they are made. The prosecution is only required to present general evidence of substantial compliance with the regulations in response

[16] The defendant claimed to be a Moorish National for the Moroccan Ohio State Republic and did consent to being in any jurisdiction other than the jurisdiction of the Moroccan Empire. Although he did not have a lawyer, he was assisted at the trials by another claimed Moorish person, acting as his "Next Friend/Consul" who repeatedly objected to the court's jurisdiction and disrupted the trial proceedings by reading from their Moorish-National documents over the judge's statements and yelling at the judge. (Par. 7.). The appellate court characterized the self-proclaimed status as a Moorish National as baseless "gibberish" sovereign-citizen challenges to a trial court's jurisdiction in criminal cases. (Par. 10, citations omitted.).

to a motion to suppress that generally raises noncompliance. Specific evidence is not required unless the defendant raises a specific issue in the motion to suppress. *State v. Bordeau,* 2023-Ohio-2040 (5th. Dist.). (Par. 23). The defendant is required to raise specific issues of noncompliance in the initial motion. The defendant "is not entitled to a 'second bite at the apple' after the prosecution has concluded its arguments and rested its case at the motion to suppress hearing." (Par. 23).

In the present case the court noted the defendant's motion to suppress only raised a generalized claim of inadmissibility. The motion identified sections of the Ohio Administrative Code but was devoid of any specificity of any claimed violations. (Par. 22). The court held, based on the defendant's motion, the prosecution's evidence demonstrated substantial compliance with R.C. 4511.19(D)(1)(b) and Ohio Administrative Code 3701-53-06 for admissibility.

Dissenting opinion.

The dissenting opinion pointed out that unlike discovery in civil cases, a defendant in a criminal case does not have access to knowledge of facts necessary to particularize how the prosecution might have failed to comply with the administrative rules governing a blood test. Under the circumstances, the dissent found the defendant's general statement contesting the blood sample and the limited access to information substantially complied with Criminal Rule 47.

***State v. Parks,* 2025-Ohio-191 (1st. Dist.).** An order overruling motion to suppress was reversed. The defendant was pulled over after being recognized by the officer for an outstanding arrest warrant. The officer noticed the defendant's eyes were glassy and watery, she seemed lethargic, with slurred and slowed speech, and a strong odor of alcohol emanated from her vehicle. The defendant agreed to take the field sobriety tests and based on the results, was charged with two OVI counts, operating a vehicle under the influence and refusal with a prior OVI conviction in ten years. The defendant was also charged with child endangering due to two children in the car and other unrelated offenses. The defendant's motion to suppress was overruled and after a jury trial, the defendant was found guilty of both OVI counts and both child endangering counts.

Field sobriety tests.

Regarding the motion to suppress, the defendant filed a "generic" motion to suppress regarding lack of substantial compliance with the NHTSA standards. The officer testified at the hearing that prior to each test, he read aloud instructions to the defendant from a "cheat sheet," a document distributed by his police department detailing how each field sobriety test would occur. (Par. 11). The document was not offered as an exhibit at the hearing and there was no video recording. The officer testified the defendant failed all three tests.

The officer was cross examined on specific compliance with each test. He admitted that he could not remember the instructions or steps for administering each test, but needed to refer to his "cheat sheet" for guidance, which he did not have with him at the hearing. He further testified

he did not screen the defendant, as required, about any factors that could compromise the tests, such as wearing glasses or contacts, or preexisting medical issues. (Par. 19).

The appellate court noted when a defendant files a "shotgun" motion, which generally raises suppression issues, the burden on the state is "general and slight" to show the officer complied with the relevant standards. *State v. Richards*, 2016-Ohio-3518, (1st Dist.). When, however, the defendant identifies specific issues of non-compliance on cross examination or other evidence, the burden shifts to require the prosecutor to establish by clear and convincing evidence that there was substantial compliance with the NITSA standards on the specific test or issue being disputed. (Par. 33.). The court noted that the elevated burden on the state is limited to the specific areas raised by the defense. Par. 35-36).

In the present case defense counsel asked pointed questions to the officer on the administration of each test. The officer was not able to provide any detailed information other than he relied on his information card. (Par. 42). The court found the specific questions and the responses they elicited from the officer were sufficient to shift the prosecution's burden from general and slight to substantial compliance as to all three field sobriety tests. (Par. 44). Based on the record, the court found the state did not show the field sobriety tests were performed in substantial compliance with the NHTSA standards, vacated the convictions, and remanded the case for a new trial. In doing so, the appellate court noted that although the field sobriety test results would be inadmissible in a new trial, it did not preclude the officer from testifying about his observations of the defendant's behavior and demeanor during field sobriety testing. (Par. 47).

Restitution and statutory cap.

***State v. Jing Yang*, 2025-Ohio-691 (5th. Dist.).** A restitution order in excess of statutory monetary cap in an OVI case was affirmed. While impaired, the defendant struck an Ohio Highway Patrol car on the side of the road. The defendant plead no contest to the OVI charge, found guilty with the case passed for a hearing on restitution. The damage to the highway patrol car was $26,847.60. $10,000, the limits of the defendant's insurance policy were applied to the damage, leaving an unpaid balance of $16,847.60. The court imposed restitution of $16,847.60 and part of the sentence in this case.

Statutory damage cap.

For an OVI offense, R.C. 4511.19(G)(7) bars restitution if the defendant was insured at the time of the incident and caps the amount of restitution to $5,000 if the defendant was not insured.[17] The defendant argued on appeal that he was insured at the time of the collision and therefore, the court could not award restitution even though the entire amount of the damage was not covered by the insurance. In rejecting this argument, the appellate court noted a victim is constitutionally guaranteed "full and timely" restitution. Ohio. Const. Art. I, Sec. 10a(A)(7). (Par. 9).

[17] The same statutory restitution limit is contained in R.C. 4549.02, 4549.021 & 4549.03, failure to stop after an accident (hit/skip), as well as numerous driving under suspended license offenses under R.C. 4510.11(G), R.C. 4510.111(C)(2), R.C. 4510.14(F), & R.C. 4510.16(D)(3).

Article I, Section 10a(E) provides "All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws." The court found the Ohio Constitution, Article I, Section 10a(A)(7) right of full and timely restitution prevailed over the restitution limits contained in R.C. 4511.19(G)(7). See also, *Cleveland v. Fuller*, 2023-Ohio-1669 (8th Dist.) which held a comparable municipal ordinance limiting the amount of restitution in an OVI offense was in conflict with Art. I, Sec. 10a(A)(7). (Par. 14). The court upheld the restitution order of $16,847.60.

Highway Patrol/State of Ohio as victim.

The defendant argued the State of Ohio was not a victim under Marsy's law. In *City of Centerville v. Knab,* 2020-Ohio-5219, the court held a municipality was not a victim entitled to restitution under Marsy's Law. The Court's holding was limited to restitution in the performance of a city's governmental services and expressly reserved issue in which the governmental entity incurred damage from the criminal act, such as embezzlement or vandalism.

In this case the court found the Highway Patrol car was not dispatched to investigate the defendant's impaired driving, but was parked on the side of the road when hit by the defendant. (Par. 13). The expenses incurred in this case were not due to the performance of a governmental function, but for damages caused by the defendant's criminal conduct and fit within the exception set out in *Knabb.* (Par. 13, citing *State v. Turner,* 2018-Ohio-2860 (2d. Dist.).

Author's Note: The significance of this case, while not addressed by the court on appeal, is the affirmance of a monetary amount of restitution by a municipal court above the municipal court's $15,000 monetary jurisdiction. R.C. 1901.17. Following the same logic as the statutory restitution cap, a municipal or county court's monetary jurisdiction is set by statute, and therefore subject to a victim's constitutional right to full restitution, regardless of the amount. "No lengthy citation of authority is necessary to support the general proposition that when a statute conflicts with a constitutional provision, the latter must prevail." *In re Black*, 36 Ohio St. 2d 124 (1973). Thus, while a municipal or county court's civil monetary jurisdiction is limited by statute to $15,000, this limit would not apply to a restitution order in a criminal case. *See also, State v. Kettering,* 2025-Ohio-54 (5th. Dist.) upholding restitution order of $18,000 from a municipal court. The issue in *Kettering* was the accrual of interest from the certificate of judgment issued by the trial court.

Sealing issues

criminal conviction with related traffic conviction.

***State v. M.F.*, 2025-Ohio-747 (8th. Dist.).** Reversing order sealing record of conviction of drug offenses that also involved a traffic conviction. The defendant was initially charged with two felony and one misdemeanor drug charges. The cases were dismissed on the prosecutor's motion and re-indicted with same drug charges but also included an OVI charge. The defendant plead guilty to the three drug charges and to an amended charge of physical control of a vehicle under the influence. R.C. 4511.194.

After the legally required time after final discharge, the defendant filed a motion to seal both cases. A hearing was conducted and the trial court ordered sealing the records in the first case with the dismissed charges, and the drug convictions in the second case. The trial court overruled the motion to seal the physical control conviction as a traffic offense.

R.C. 2953.32(A)(1)(a) excludes traffic offenses, including violations of R.C. Chap. 4511 from sealing or expungment eligibility. The defendant's conviction under R.C. 4511.194 for physical control of a vehicle under the influence could not be sealed. Citing *State v. Futrall*, 2009-Ohio-5590, an applicant with multiple convictions under one case number and one of the convictions is not eligible for sealing, the trial court may not seal the remaining convictions. (Par 9). The court also held the dismissed charges, which arose out of the same incident, were not eligible for sealing because the physical control charge involved the same incident. R.C. 2953.61prohibited sealing the record when the charges have different final discharge dates and one of the offenses is not eligible for sealing. As the appellate court summarized, "until all charged offenses that arise from the same act are eligible for expungement or sealing, none are eligible for sealing or expungement." (Par. 11).

***State v. Pigg*, 2024-Ohio-5466 (5th. Dist.).** Dismissed charge of improper handling of a firearm in a motor vehicle, arising out of OVI offense, was not eligible for sealing. The two charges were bifurcated to allow the defendant to participate in intervention in lieu conviction on the weapons charge. This charge was later dismissed upon successful completion of the program. The defendant was found guilty of the OVI charge by guilty plea.

With multiple offenses and different dispositions, R.C. 2953.61prohibits the sealing or expungment of a record of an offense if it is the result of or in connection with the same act as an OVI or physical control of a vehicle under the influence. (Par. 16). In the present case, the weapons charge stemmed from the same conduct as the defendant's OVI, and therefore the weapons charge, although dismissed, could not be sealed.

OVI Fines.

***State v. Moore*, 2024-Ohio-2382 (2d. Dist.).** OVI and aggravated drug possession convictions affirmed. The defendant did not dispute the OVI conviction, only the $1,000 fine based on her ability to pay. With a prior OVI conviction in the past ten years, there was a mandatory fine of $525.00 to $1,625.00. R.C. 4511.19(G)(1)(b). Because of the mandatory sentencing language in R.C. 4511.19, the trial court was not required to consider the defendant's ability to pay the fine. In addition, the trial court imposed the fine strictly applied to the OVI conviction concurrent with the felony drug conviction, so R.C. 2929.28, regarding ability to pay did not apply.

The court in *Moore* noted R.C. 4511.19 was enacted to criminalize intoxicated driving and established penalties designed to deter people from driving while intoxicated in order to protect Ohioans and their property from the damage that may follow. The General Assembly "did not treat all impaired drivers equally in R.C. 4511.19, "but enacted a graduated sentencing scheme that escalates an offender's punishment based on how many times the offender has been previously convicted of an OVI offense," (Par. 19.Citations omitted.)

Community control supervision issues

A) Alcohol or marijuana prohibition.

***State v. Jones*, 49 Ohio St.3d 51 (1990).** A probation condition must:
1) reasonably relate to rehabilitating the offender,
2) have some relationship to the crime of which the offender was convicted, and
3) relate to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.

(Par. 8.). *Accord, State v. Talty,* 103 Ohio St. 3d 177, 2004-Ohio-4888.

Alcohol

***State v. Bright*, 2025-Ohio-725 (5th. Dist.).** Assault conviction with community control supervision conditions to abstain from the use of illegal drugs and alcohol and to avoid any establishment where the sale of alcohol is the primary source of business was affirmed.

***City of Conneaut v. Pushic,* 2025-Ohio-1783 (11th. Dist.).** Probation conditions for two convictions of leaving the scene of a collision to complete drug and alcohol assessment and barring entry to any bars or other liquor establishments was affirmed on appeal. CCS conditions are valid when they are "reasonably related to the probationary goals of doing justice, rehabilitating the offender, and insuring good behavior" and are not overly broad so as to unnecessarily impinge upon the probationer's liberty. *State v. Bourne*, 2023-Ohio-2832 (11th. Dist), citing *State v. Talty*, 2004-Ohio-4888.

In the present case the court noted the severity of the collision, leaving one car disabled, the time the defendant left the club, and his identification by the bartender. Citing *State v. Bright*, 2025-Ohio-725 (5th. Dist.), in which the court upheld no-alcohol and no-entry-into bars restrictions as a condition of probation in an assault case that did not directly involve alcohol, the court in this case found the CCS conditions imposed did not rise to the level of plain error.

Medical marijuana

***State v. Lynn,* 2023-Ohio-4429, (5th. Dist.).** A defendant's absolute ban on using medical marijuana while he was on community control sanctions was overbroad because the probationary condition of not using medical marijuana did not have an obvious relationship to the crimes for which defendant was convicted. Defendant's conviction was for attempted felonious assault and the State pointed to nothing in the record to indicate that drugs or alcohol were involved in the offense.

In arriving at this conclusion, the court noted:
- Both patients and caregivers are also subject to several other restrictions, legal duties, and obligations imposed by three different state agencies.
- The ban on medical marijuana was not reasonably related to rehabilitation.
- There was no relationship to the crime of which the offender was convicted.

- There was no indication in the record that the defendant had a history of alcohol or drug abuse that could possibly support the trial court's desire to rehabilitate the defendant.

The court also distinguished between medical marijuana, which may have a therapeutic purpose and recreational marijuana use. In doing so, the court noted that a trial court could prohibit the use of medical marijuana, similar to a prohibition of prescription medication when reasonable under the facts of the case.

***State v. Ballish*, 2024-Ohio-1885, (11th. Dist.).** Conviction for theft was reversed based on prohibition of no drugs or alcohol as a condition of probation was not related to underlying offense. R.C. 2929.27(A)(8) authorizes a court to include drug and alcohol use monitoring, including random drug testing as a condition of probation with a misdemeanor offense. The court's authority to impose this condition is limited to the standard set out in *State v. Jones*, 49 Ohio St.3d 51 (1990). (Par. 8.). *Accord, State v. Talty,* 103 Ohio St. 3d 177, 2004-Ohio-4888. The court in *Ballish* reaffirmed the holding in *Jones* and *Talty* in light of legislative amendments since those cases were decided.

Upon review, the court in *Ballish* found the trial court record was devoid of any facts indicating that alcohol or drugs contributed to the theft offense of which the defendant was convicted in the instant case. Although the trial court noted at the time of sentencing the defendant had a record of past alcohol and drug related offenses in the court, all three of the conditions under *Jones,* are required and the second factor was not met due to the nature and facts of the underlying offense. (Par. 13.).

Note: The holding is *Ballish* is consistent with *State v. Lynn*, 2023-Ohio-4429 (5th Dist.) vacating a probation condition prohibiting medical marijuana use when the underlying offense was for attempted felonious assault and there was nothing in the record to indicate that drugs or alcohol were involved in the offense.

Since the Supreme Court's decision in *Jones and Talty,* there have been a number of legislative amendments to community control supervision conditions. For example, R.C. 2929.17(H) (felony) and R.C. 2929.17(A)(8) (misdemeanor) include as nonresidential sanctions a term of drug and alcohol use monitoring, including random drug testing. *State v. Ballish* has been accepted for review by the Ohio Supreme Court on the proposition of law, "The test from *State v. Jones* is not applicable to community control conditions that have been specifically authorized by statute." The *Ballish* case is scheduled for oral argument on June 25, 2025.

***United States v. Lewis,* No. 2:22-CR-05, 2024 U.S. LEXIS 1693326 (S.D. Ohio. 2024).** Motion to modify supervised release terms to permit the defendant to use medical marijuana was overruled. The court recognized that despite state legislation, marijuana remains a Schedule I controlled substance under federal law, *see* 21 U.S.C. § 812. 18 U.S.C. 2583(d) provides a defendant may "not unlawfully possess a controlled substance" while on supervised release.[18] In denying the motion, the court relied on *United States v. Schostag*, 895 F.3d 1025, 1028 (8th Cir.

[18] A statutory probation condition includes the defendant shall "abide by the law." R.C. 2929.17(felony offenses) and R.C. 2929.25(C)(2) (misdemeanor offenses).

2018), that under the Supremacy Clause of the United States Constitution, state medical-marijuana laws do not supersede federal laws that criminalize the possession of marijuana. See also, *United States v. Cannon*, 36 F.4th 496, 500 (3d Cir. 2022), finding the Controlled Substance Act that lists marijuana as a schedule I controlled substance does not contain any exceptions for medical marijuana.

Not a prescription

***State v. Ryan*, 11th. Dist., 2021-Ohio-4059 (11th. Dist.).**
Marijuana continues to be illegal under federal law. See, 21 U.S.C. 841(a)(1) and 844. Thus, it remains illegal for physicians to prescribe the controlled substance. A medical marijuana card, referred to as a "registry identification card" pursuant to Ohio Admin Code 37976:7-1-01(E) is not a prescription, but rather, is issued based on a physician's "recommendation" for its use. See, R.C. 4731.30; Adm.Code 4731-32-02.

A dispensary is not a pharmacy. A "'dispensary', as used in Chapter 3796. of the Revised Code, means an entity licensed pursuant to sections 3796.04 and 3796.10 of the Revised Code and any rules promulgated thereunder to sell medical marijuana to qualifying patients and caregivers." Ohio Adm. Code 3796:1-1-01(A)(13). See also, *State v. Bourne,* 2023-Ohio-2832 (11th. Dist.).

B) Diversion

***State v. Reichert*, 2025-Ohio-2965 (7th. Dist.).** Reviewing the trial court's prohibition of medical marijuana as a diversion program condition, the appellate court applied the standard for reasonable probation conditions under *State v. Jones*, 49 Ohio St.3d 51 (1990). The court applied the analysis in *State v. Lynn*, 2023-Ohio-4429 (5th. Dist.), which recognized the rehabilitative purpose is not served when the probation condition proscribes the lawful use of marijuana for medical purposes any more than it is served by the lawful use of a prescription drug. (Par. 34, citing *People v. Tilehkooh*, 113 Cal.App.4th 1433, 1444 (2003).

The court in *Lynn* found the condition of refraining from medical marijuana use bore no relationship to the underlying crimes. An absolute ban on using drugs without making exceptions for medical marijuana did not reasonably serve the ends of community control. In arriving at this conclusion, the court in *Lynn* distinguished between recreational and medical marijuana as well as the reason the defendant sought to use medical marijuana. Although a defendant's possession of a medical marijuana card does not bar the trial court from imposing a community control condition that the defendant refrain from using marijuana, a defendant is not precluded from raising the use of medical marijuana in compliance with a valid medical marijuana card as an affirmative defense. *State v. Ryan*, 2021-Ohio-4059 (11th. Dist). (Par. 39, 43). In the present case the reason for medical marijuana use was not addressed by the trial court.

C) Medical marijuana and community control supervision violations.

***State v. Holling*, 2025-Ohio-385 (5th. Dist.).** Revocation of community control supervision was affirmed. The defendant was on probation for aggravated possession of drugs conviction. After numerous nonappearances and failure to comply with drug treatment, the

defendant's probation term was extended. Although the terms of probation included no consumption of drugs or alcohol, the defendant sought permission to use medical marijuana. The request was denied, but the court directed the defendant to forward any medical marijuana information to the court for a final determination. (Par.14). No appeal was taken from this order. After further violations, including failure to maintain sobriety, and complete treatment, community control supervision was revoked and the prison sentence was imposed.

Upon prior notice of violation, the trial court extended the probation term for one year by journal entry without a hearing. The court of appeals found that the prior court order extending probation was not appealed and therefore, could not be raised in a subsequent appeal. (Par. 28, relying on *State v. Carpenter*, 2009-Ohio-4759 (5th. Dist.).

***State v. Williams*, 2025-Ohio-461 (8th. Dist.).** Community control supervision revocation for medical marijuana use was affirmed. The defendant had tested positive for marijuana after being denied the use of medical marijuana by the trial court as a condition of probation. The defendant's medical records indicated the defendant had received permission or recommendation for medical marijuana use.

R.C 3796.22 (C)(1)provides a registered patient shall not be subject to arrest or criminal prosecution for obtaining, using, or possessing medical marijuana. The defendant argued probation revocation for medical marijuana use was prohibited by this statute. Affirming the probation revocation, the appellate court noted the defendant had not directly appealed his sentence, including the conditions of probation and therefore, the validity of the condition was barred by res judicata.

Addressing the merits of the defendant's argument, the court distinguished between a trial and a probation revocation hearing. The court held the defendant was not being prosecuted for possession of medical marijuana, but instead, violating community control supervision conditions. Although the court did not directly address the issue, the decision implied a probation violation for medical marijuana was not a prosecution within the meaning of R.C. 3796.22(C)(1).

Note: The language of R.C. 3796.22(C) differs from more restrictive medical marijuana statutes in other states. For example, in *People v. Thua,* 336 Mich. App. 35 (2021), the court held a trial court could not prohibit the use of medical marijuana as a condition of probation when the marijuana is used in compliance with the Michigan Medical Marijuana Act. (MMMA, MCL 333.26421 *et seq.)* The decision in *Thue* was based on the statutory language of two specific passages in the MMMA. First, the MMMA stated "all other acts or parts of acts inconsistent with this act do not apply with the medical use of marijuana as provided for by this act." The court found that the language in the MMMA preempted any conflicting statute unless a registered qualifying patient lost immunity because of a failure to act in accordance with the MMMA.

Second, the Michigan statute provided for protection from arrest, prosecution, *or penalty* of any kind. (emphasis added). The court reasoned that as probation was a privilege, revocation of probation was a penalty under the language of the MMMA. "In other words, a condition of probation prohibiting the use of medical marijuana that is otherwise used in accordance with the MMMA is directly in conflict with the MMMA and impermissible." 336 Mich. App. at 47.

Other states with similarly worded statutes have also found that properly used medical marijuana could not banned or regulated as a condition of probation.

***State v. Smith*, 2024-Ohio-2854 (12th. Dist.).** Probation violation for defendant's use of medical marijuana was affirmed. The defendant was convicted of burglary. The defendant had kicked in his neighbor's door, took her dog, and placed several items from her home in her front yard looking for weapons of mass destruction. The defendant was placed on community control supervision and required to complete a treatment program with a mental health facility, comply with all recommended treatment, prohibited from possessing or consuming any alcoholic beverages or illicit drugs, and to random drug screens.

During community control supervision the defendant continued his erratic behavior, including auditory and visual hallucinations. The defendant continued to use medical marijuana which the treatment facility clinician suggested exacerbated the defendant's mental health condition. After numerous positive drug screens, prior probation violations, and the defendant's statement that he would continue using marijuana due to chronic back pain, the court imposed the suspended sentence.

The defendant asserted he has a valid medical marijuana card, marijuana is not an "illicit drug" in violation of the terms of his community control. The trial court found, however, the continued marijuana use lead to "moments of psychosis" and overall, noncompliance with his community control. (Par. 8).

The defendant argued on appeal that because the Ohio legislature has authorized licensed health professionals to recommend medical marijuana for treatment to alleviate pain, the trial court erred in revoking his community control based upon his medical marijuana use. The appellate court recognized that a medical marijuana card *may* or *could possibly* be an affirmative defense to a community control violation (Par. 18-19). When, however, there is some nexus or relationship between the offender's marijuana use and his underlying criminal behavior, the trial court may restrict the otherwise lawful use of medical marijuana. (Par. 21, citations omitted). In the present case the court found the defendant demonstrated concerning behavior throughout the case due to his marijuana use and mental health issues with both the underlying offense and later behavior while on probation. The court also noted the defendant rejected alternate remedies to manage his back pain. (Par.26). The court found the defendant's possession of a valid medical marijuana card did not prohibit the trial court from restricting his marijuana use under the circumstances in this case. (Par. 24).

Note: Regarding the term "illicit drugs," the court in *Smith* noted that although R.C. Chap. 3796 allows people with certain medical conditions, upon the recommendation of an Ohio-licensed physician, to purchase and use medical marijuana., it still continues to be illegal under federal law. 21 U.S.C. 841(a)(1) and 844. (Fn. 1). Similarly, the term "drug of abuse" is statutorily defined in R.C. 2925.01 (which incorporates R.C. 3719.011), but also R.C 4506.01 & R.C. 4511.181 for OVI offenses, which also adds "over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes." With the prevalence of both medical and recreational marijuana, the community control supervision conditions should be clearly defined to avoid confusion.

OHIO IMPAIRED DRIVING LAW

TYPES OF OFFENSES

- **Operation under the influence of alcohol, drug of abuse or both. RC 4511.19(A)(1)(a).**
- **Operation with concentration of alcohol specified below. RC 4511.19(A)(1)(b)-(i).**

Alcohol Level	*Whole Blood*		*Blood Serum or Plasma*		*Breath*		*Urine*	
Low Test	≥ .08% < .17%	§(A)(1)(b)	≥ .096% < .204%	§(A)(1)(c)	≥ .08g < .17g	§(A)(1)(d)	≥ .11g < .238g	§(A)(1)(e)
High Test	≥ .17%	§(A)(1)(f)	≥ .204%	§(A)(1)(g)	≥ .17g	§(A)(1)(h)	≥ .238g	§(A)(1)(i)

- **Operation with concentration of controlled substance specified below. RC 4511.19(A)(1)(j)(i)-(xi).**

Controlled Substance	*Urine*	*Whole Blood, Blood Serum or Plasma*	*Section No.*
Amphetamine	≥ 500 ng	≥ 100 ng	(A)(1)(j)(i)
Cocaine	≥ 150 ng	≥ 50 ng	(A)(1)(j)(ii)
Cocaine Metabolite	≥ 150 ng	≥ 50 ng	(A)(1)(j)(iii)
Heroin	≥ 2000 ng	≥ 50 ng	(A)(1)(j)(iv)
Heroin Metabolite (6-monoacetyl morphine)	≥ 10 ng	≥ 10 ng	(A)(1)(j)(v)
L.S.D.	≥ 25 ng	≥ 10 ng	(A)(1)(j)(vi)
Marihuana	≥ 10 ng	≥ 2 ng	(A)(1)(j)(vii)
Marihuana Metabolite **and** under the influence	≥ 15 ng	≥ 5 ng	(A)(1)(j)(viii)(I)
Marihuana Metabolite	≥ 35 ng	≥ 50 ng	(A)(1)(j)(viii)(II)
Methamphetamine	≥ 500 ng	≥ 100 ng	(A)(1)(j)(ix)
Phencyclidine	≥ 25 ng	≥ 10 ng	(A)(1)(j)(x)
Salvia divinorum and salvinorin A	≥ amount specified by board of pharmacy rule under RC 4729.041	≥ amount specified by board of pharmacy rule under RC 4729.041	(A)(1)(j)(xi)

- **Operation under the influence of alcohol, drug of abuse or both, with prior OVI conviction in 20 years, and with current refusal of chemical test or tests. RC 4511.19(A)(2).**
- **Operation by person under age 21 with concentration of alcohol specified below. RC 4511.19(B)(1)-(4).**

Whole Blood		*Blood Serum or Plasma*		*Breath*		*Urine*	
≥ .02% < .08%	§(B)(1)	≥ .03% < .096%	§(B)(2)	≥ .02g < .08g	§(B)(3)	≥ .028g < .11g	§(B)(4)

- **Having physical control while under the influence of alcohol, drug of abuse or both, or with concentration of alcohol or controlled substance equal to or greater than §(A)(1)(b)-(e) or (j) amounts. RC 4511.194(B)(1)-(3).**

ADMINISTRATIVE LICENSE SUSPENSIONS[1]

Refusal of Chemical Test - RC 4511.191(B)

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

Failed Chemical Test- RC 4511.191(C)[4]

No. of Offense in 10 Years	*Type and Length[5] of Suspension*	*Driving Privileges*	*Restricted Plates*	*Restricted license/ Interlock[3]*
1st	Class E (90 days)	Ordinarily, after 15 days[7]	Optional	Optional
2nd	Class C (1 year)	After 45 days	Optional	Required if alcohol-related; optional if drug.
3rd	Class B (2 years)	After 180 days	Optional	Required if alcohol-related; optional if drug.
4th or more	Class A (3 years)	After 3 years	Optional	Required if alcohol-related; optional if drug.

[1] Operator is deemed to have given consent to submit to chemical test(s) of his or her blood, blood serum or plasma, breath, oral fluid, or urine. RC 4511.191(A)(2).
[2] A refusal suspension terminates upon guilty or no contest plea resulting in conviction with time served to be credited against judicial suspension. RC 4511.191(B)(2). A subsequent finding of not guilty does not affect the suspension. RC 4511.191(D)(1).
[3] A RC 4510.46 certified ignition interlock device (IID) violation, or operation of vehicle without IID, is subject to RC 4510.13(A)(8) penalties. Operation without a restricted license is subject to RC 4511.14 penalties.
[4] Failed chemical test result is a concentration of alcohol or controlled substance equal to or greater than RC 4511.19(A)(1)(b)-(e) or (j) amounts. RC 4511.191(C)(1).
[5] Suspension for failing test terminates upon guilty or no contest plea resulting in conviction with time served is to be credited against judicial suspension. RC 4511.191(C)(2). Any subsequent finding of not guilty does not affect the suspension. RC 4511.191(D)(1). However, where the suspension is continued on on appeal, a subsequent finding of not guilty terminates it. RC 4511.197(D).
[6] Driving privilege exception: If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 90 days and IID required. RC 4510.13(A)(6)(a).
[7] Driving privilege exceptions: (1) the 15-day hard time may be waived if the Δ (a) was never convicted of RC 4511.194 and (b) submitted to chemical test in pending case. (2) If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 45 days and IID required. RC 4510.13(A)(5)(a).

Appeal RC 4511.197

An administrative license suspension may be appealed at the initial appearance or within 30 days after the same.
The scope of appeal is limited to determining whether one or more of the following conditions have **not** been met:*

1. Whether the officer had reasonable ground to believe the person was OVI, OVUAC, or in physical control in violation of statute or municipal ordinance, and whether the person was in fact placed under arrest. RC 4511.197(C)(1).
2. Whether the officer requested the person to submit to a chemical test or tests. RC 4511.197(C)(2).
3. Whether the officer informed the person of consequences of taking or refusing test or tests; or for repeat OVI offender that would be required to be sentenced under RC 4511.19(G)(1)(c),(d), or (e), that in event of test refusal officer could use whatever reasonable means were necessary to ensure the person submitted to a blood test. RC 4511.197(C)(3).
4. Whichever of the following applies:
   a. if a test refusal suspension was imposed, whether the person refused to submit to test or tests requested by the officer, or
   b. if a failed test suspension was imposed, whether at the time of the offense, the bodily substance tested contained a prohibited concentration of alcohol or a listed controlled substance or metabolite. RC 4511.197(C)(4).

The BMV Form 2261 ALS court disposition notification lists additional procedural errors and deficiencies for granting the appeal which have been recognized by some courts. See, e.g. *State v. Ferguson*, 2017-Ohio-1394 (6th Dist.), app. den., 151 Ohio St.3d 1503 (2018).

PENALTIES

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

No. and Type of Offense	*Degree of Offense*	*Incarceration*	*Fines*	*Treatment*	*Type and Length of Suspension*	*Driving Privileges*	*Restricted Plates and/or License/ Interlock*[4]	*Immobili-zation/ Forfeiture*
1st in 10 years [simple OVI, low test or drug]	M-1	3 days jail **or** DIP. Up to 6 months. *Must suspend jail if Δ granted UDP.*[1]	$565 - $1,075	Optional	Unclassified (1 to 3 years). *May be reduced by half w/UDP.*[2]	Ordinarily, after 15 days[3]	Plates optional. License/interlock generally optional.	No
1st in 10 yrs. and either: [a] high test, or [b] refusal with prior in 20 years	M-1	6 days jail **or** 3 days jail and DIP. Up to 6 months. *Must suspend jail if Δ granted UDP.*[1]	$565 - $1,075	Optional	Unclassified (1 to 3 years). *May be reduced by half w/UDP.*[2]	Ordinarily, after 15 days[3]	Plates optional. License/interlock generally optional.	No
2nd in 10 years [simple OVI, low test or drug]	M-1	10 days jail **or** 5 days jail and 18 days HAEM and/or CAM.[5] Up to 6 months.	$715 - $1,625	Alcohol/drug assessment, recommended treatment mandatory	Unclassified (1 to 7 years)	After 45 days	Plates required for high-test/optional for refusal. License/ interlock required if alcohol-related, optional if drug.	Immobilize 90 days if registered to Δ[6,7]
2nd in 10 years and either: [a] high test, or [b] refusal with prior in 20 years	M-1	20 days jail **or** 10 days jail and 36 days HAEM and/or CAM.[5] Up to 6 months.	$715 - $1,625	Alcohol/drug assessment, recommended treatment mandatory	Unclassified (1 to 7 years)	After 45 days	Plates required for high-test/optional for refusal. License/ interlock required if alcohol-related, optional if drug.	Immobilize 90 days if registered to Δ[6,7]
3rd in 10 years [simple OVI, low test or drug]	Unclassified misdemeanor	30 days jail **or** 15 days jail and 55 days HAEM and/or CAM.[5] Up to 1 year.	$1,040 - $2,750	Alcohol/drug Addiction program mandatory	Unclassified (2 to 12 years) *[minimum may be reduced to 1 year]*	After 180 days	Plates required. License/interlock required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
3rd in 10 years and either: [a] high test, or [b] refusal with prior in 20 years	Unclassified misdemeanor	60 days jail **or** 30 days jail and 110 days HAEM and/or CAM.[5] Up to 1 year.	$1,040 - $2,750	Alcohol/drug addiction program mandatory	Unclassified (2 to 12 years) *[minimum may be reduced to 1 year]*	After 180 days	Plates required. License/interlock required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
Either: [a] 4th or 5th in 10 years, or [b] 6th in 20 years [simple OVI, low test or drug]	F-4	60 days **local incarceration**, up to 1 year; **or** 60 days **prison**, with option of additional 6 to 30 months.	$1,540 - $10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock[4] required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
Either: [a] 4th or 5th in 10 years, or [b] 6th in 20 years and high test or refusal	F-4	120 days **local incarceration**, up to 1 year; **or** 120 days **prison**, with option of additional 6 to 30 months.	$1,540 - $10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock[4] required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
Either: 2nd felony lifetime [simple OVI, low test or drug]	F-3	60 days **prison**. Up to 60 months.	$1,540 - $10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock[4] required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
Either: 2nd felony life-time, and: [a] high test, or [b] refusal	F-3	120 days **prison**. Up to 60 months.	$1,540 - $10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock[4] required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]
1st or 2nd felony lifetime with RC 2941.1413 specification	F-4 (1st felony) F-3 (2nd felony)	1, 2, 3, 4, or 5 years **prison** to be served **prior and consecutive to** any F-4 or F-3 penalties as set forth in boxes above and which may be imposed.	$1,540 - $10,500	Alcohol/drug addiction program mandatory	Class 2 (3 years to life)	After 3 years	Plates required. License/interlock[4] required if alcohol-related, optional if drug.	Forfeit if registered to Δ[8]

[1] If defendant requests *and* court grants order of "unlimited driving privileges" with certified ignition interlock device (IID), court *must* suspend any jail term imposed. But such term must be served if court order is violated during suspension period. RC 4510.022(C)(2)(c); RC 4519.11(G)(1)(a).
[2] See RC 4510.022(C)(2)(b).
[3] Driving privilege exceptions: (1) the 15-day hard time may be waived if the Δ (a) was never convicted of RC 4511.194 and (b) submitted to chemical test in pending case. (2) If Δ had a RC 4511.194 conviction within the prior ten years, no privileges available for 45 days and IID required. RC 4510.13(A)(5)(a).
[4] RC 4510.14 penalties apply if Δ fails to obtain restricted license. RC 4510.022(D)(2). Penalties for violation of ignition interlock device order contained in RC 4510.022(E).
[5] "HAEM" is house arrest with electronic monitoring. "CAM" is continuous alcohol monitoring. Within 60 days, court must issue finding of lack of jail space. RC 4511.19(G)(3).
[6] Court may terminate immobilization if privileges granted. Upon good cause showing that Δ violated any condition, immobilization may be reinstated. RC 4510.13(A)(5)(e)(ii).
[7] Waiver may be granted for "family or household member" if completely dependent on vehicle and immobilization would be undue hardship. RC 4503.235.
[8] If vehicle forfeiture is required and title is assigned/transferred, offender may be fined value of vehicle per national auto dealers' association publications. RC 4503.234(E).

OPERATING VEHICLE AFTER UNDERAGE ALCOHOL CONSUMPTION - RC 4511.19(B),(H) - *4 POINTS*

No. of Offense	*Degree of Offense*	*Incarceration*	*Fines*	*Treatment*	*License Suspension*	*Driving Privileges*	*Restricted License/ Interlock*	*Immobili-zation/ Forfeiture*
1st in 1 year	M-4	0-30 days jail. *Must suspend jail if Δ granted UDP.*[1]	$0-$250	Optional	Class 6 (90 days to 2 years). *May be reduced by half w/UDP.*[2]	After 60 days	License/interlock[4] required for unlimited privileges	No
2nd or more in 1 year	M-3	0-60 days jail	$0-$500	Optional	Class 4 (1 to 5 years)	After 60 days	Optional	No

PHYSICAL CONTROL WHILE UNDER THE INFLUENCE - RC 4511.194 - *0 POINTS*

No. of Offense	*Degree of Offense*	*Incarceration*	*Fines*	*Treatment*	*License Suspension*	*Driving Privileges*	*Restricted License/ Interlock*	*Immobili-zation/ Forfeiture*
Any	M-1	0-180 days jail	$0 - $1,000	Optional	Class 7 optional (Up to 1 year)	No "hard time"	Optional	No

Judge Jennifer P. Weiler, Retired. Effective 4-9-2025.