

STATE:	<b>OHIO</b>
General Reference:	Ohio Revised Code Annotated
<u>Basis for a DWI Charge:</u>	
Standard DWI Offense:	Under the influence of alcohol §4511.19(A)(1)
Illegal Per Se Law (BAC/BrAC):	I. $\geq .08$ but $< .17$ <sup>947</sup> and <sup>948</sup> §4511.19(A)(2), (3) and (4) II. $\geq .17$ <sup>949</sup> §4511.19(A)(5), (6) and (7) <u>Persons Under 21 Years Old</u> $\geq .02$ but $< .08$ <sup>950</sup> §4511.19(B)
Presumption (BAC):	<b>None</b>
Types of Drugs/Drugs and Alcohol:	Under the influence of (1) a Drug Abuse or (2) a Combination of Alcohol and a Drug of Abuse §4511.19(A)(1)
<u>Chemical Breath Tests for Alcohol Concentration:</u>	
Preliminary Breath Test Law:	<b>No</b>
Implied Consent Law:	
Arrest Required (Yes/No):	<b>Yes §4511.191 (A)</b>
Implied Consent Law Applies to	
Drugs (Yes/No):	<b>Yes §4511.191(A)</b>
Refusal to Submit to Chemical Test	
Admitted into Evidence:	<b>Yes</b> (Criminal Cases) City of Westerville v. Cunningham, 239 N.E.2d 40 (Ohio 1968), and Maumee v. Anistic, 632 N.E.2d 497 (Ohio 1994) A conscious person cannot be compelled to submit to a blood alcohol test. State v. Lampman, 612 N.E.2d 779 (Ohio App. 1992)
Other Information:	
<u>Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:</u>	
Blood:	<b>Yes §4511.191(A)</b>
Urine:	<b>Yes §4511.191(A)</b>
Other:	<b>Probably No</b> “Other bodily” substance is applicable to §4511.19 but is not mentioned in the implied consent statute (§4511.191).

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL):** A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC/UrAC  $\geq .04$ , (2) is under the influence of a controlled substance, (3) refuses to submit to a chemical test for the presence of either alcohol or controlled substances or (4) violates an “out-of-service” order. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the “disqualification” is for life (or for any other period as specified by Federal regulations). A violation of any of these items appears to be a first degree misdemeanor; the sanctions for such a misdemeanor are an imprisonment for not more than 6 months and/or a fine of not

<sup>947</sup> Alcohol concentration standards are (1) “percent by weight” of alcohol in the blood, (2) grams of alcohol per 210 liters of breath or (3) grams of alcohol per 100 milliliters of urine. §§4511.19(A) and (B) and 4511.191(F)

<sup>948</sup> Also, (1) for a breath alcohol concentration which is  $\geq .08$  but  $< .17$  or (2) for a urine alcohol concentration which is  $\geq .11$  but  $< .238$ .

<sup>949</sup> Also, (1) for a breath alcohol concentration which is  $\geq .17$  or (2) for a urine alcohol concentration which is  $\geq .238$ .

<sup>950</sup> Under §4511.19(B), a person under 21 years old shall not operate a vehicle with an alcohol concentration of  $\geq .02$  up to  $.08$  for blood or breath and  $\geq .028$  up to  $.14$  for urine.

more than \$1,000. In addition, a CMV operator who has any “measurable” or “detectable” amount of alcohol or a controlled substance in the system must be placed “out-of-service” for 24 hours.

Under separate provisions of law, no person shall operate a CMV while alertness is impaired; such impairment includes the use of any drug that would adversely affect such alertness or ability to operate a CMV. The sanctions for violating this prohibition are for a first offense (minor misdemeanor) a fine of not more than \$100 and for a second offense (fourth degree misdemeanor) jail for not more than 30 days and/or a fine of not more than \$250. §§2929.21, 4506.01(A), (E), (G), (H) and (V), 4506.15, 4506.16(A) and (B), 4506.17(A), 4511.79 and 4511.99(C)

#### Adjudication of DWI Charges

Mandatory Adjudication Law (Yes/No):	<b>No</b>
Anti-Plea-Bargaining Statute (Yes/No):	<b>No</b>
Pre-Sentencing Investigation Law (PSI) (Yes/No):	<b>No</b>

#### Sanctions for Refusal to Submit to a Chemical Test:

##### Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail): **N/A**

##### Administrative Licensing Action (Susp/Rev):

**N/A**

##### Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail):

First Refusal (minor misdemeanor) – Not more than \$100; second refusal (within 1 yr) (fourth degree misdemeanor) – 30 days and not more than \$250; third and subsequent refusals (within 1 year of first) (third degree misdemeanor) – not more than 60 days and not more than \$500 §§4511.99(D) and 2929.21(B)

##### Administrative Licensing Action (Susp/Rev):

First Refusal – Suspension – 1 year (30 days mand); second Refusal (within 5 years) – Suspension – 2 years (90 days mand); third Refusal (within 5 years) – Suspension – 3 years (1 year mand); Subsequent Refusal (within 5 years) – Suspension – 5 years (3 years mand) Except as noted, occupational driving privileges may be granted after the mandatory period of license suspension has passed. Caution: Occupational driving privileges cannot be granted if the driver has had 3 prior refusals within 7 years or 3 or more drunk driving or vehicle homicide offense convictions within 7 years. §4511.191 (E), (I) and (K)  
I. A suspension for a refusal will not terminate if the driver is found “not guilty” of the related DWI offense. II. However, such suspension will terminate if the person is either found guilty of or pleads guilty to a related DWI offense. §4511.191(H)(2) and (K)

#### Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Unless specifically noted, the criminal and administrative sanctions given apply to **ALL** of the various types of drunk driving offenses.

## Imprisonment:

Term (Day, Month, Years, Etc.):

First offense and second offense within 6 years<sup>951</sup> – (first degree misdemeanor) – **Not more than 6 months; third offense** within 6 years – (misdemeanor)<sup>952</sup> – **Not more than 1 year; fourth offense within 6 years**(fourth degree felony)<sup>5</sup>–**6 to 30 months**; subsequent offenses within any time period – (third degree felony) – **1 to 5 years** §§2929.14, 2929.16, 2929.18(B)(3), 2929.19(C), 2929.21, 4511.19(G) and 4511.99(A)  
 Offense for Persons Under 21 Years Old (≥.02 but <.08). First offense (fourth degree misdemeanor) – Not more than 30 days; second offense within 1 year) – (third degree misdemeanor) – Not more than 60 days §§2929.21, 4511.19(H) and 4511.99(N)(1) I. First offense – **3 consecutive days**<sup>953and954</sup> (3 con days is defined as 72 con hrs.) §4511.991); second offense (within 6 years) – **10 consecutive days** (Alternative: 5 con days in jail and not less than 18 con days “house arrest” with electronic monitoring<sup>955</sup>); third offense (within 6 years) – **30 consecutive days** (Alternative: 15 con days in jail and not less than 55 con days “house arrest” with electronic monitoring); subsequent offenses (within 6 years) – **60 consecutive days**<sup>956</sup>

## Mandatory Minimum Term:

<sup>951</sup> For sanction enhancement purposes, a previous offense also includes either a conviction for a vehicle homicide offense where alcohol or drugs were a factor or a violation of §4511.19(B) (persons under 21 years old who operate a motor vehicle with a BAC ≥.02).

<sup>952</sup> A crime is classified as a misdemeanor if the imprisonment sanction is not more than 1 year. §2901.02(F)

<sup>953</sup> In lieu of this 3-day jail sanction, the court may place a defendant on probation and order attendance at a driver’s intervention program for 3 consecutive days. §§4511.99(A)(1) and 3793.10

<sup>954</sup> For a first, second or third offense, a defendant may be given work release following the mandatory jail sentence. §4511.99(A)(5)(a) and (b)

<sup>955</sup> This alternative is imposed only when there are overcrowded jail conditions that prohibit the offender from commencing his/her term of imprisonment within 60 days of sentencing. §4511.99(A)(12)

<sup>956</sup> **Special Conditions for DWI Felony Offenses.** I. For a first DWI felony offense, the 60 consecutive days must be served in a local incarceration facility (e.g., jail, a community based correctional facility, a halfway house or other alternative residential facility). In addition, after the mandatory incarceration period is served, the offender may be placed in either community control probation or the electronic monitoring program. II. For a subsequent DWI felony offense, the 60 consecutive days must be served in State prison and such person is not eligible to participate in the electronic monitoring program. §§2929.13(G), 2929.15(A), 2929.17 and 2929.23(3)(d)

**Aggravated Vehicle Assault.** A person commits “Aggravated Vehicle Assault” by causing serious injury to another person while DWI. First offense (third degree felony): Jail – 1 year to 5 years; fine – not more than \$5,500; subsequent offense (or a first off where the defendant has previously been convicted of a vehicle homicide offense) (second degree felony): Jail-2 to 18 years; fine – not more than \$15,000. §§2903.08 and 2929.11 “Shock-probation” is not available for persons who are repeat offenders or who have a prior DWI or vehicle homicide offense conviction. §2903.08(C) In addition, the court shall suspend a defendant’s license for 2 – 10 years . 2903.07(B)(1)

**Double Jeopardy.** Based upon the same factual situation, a person, who has been subjected to licensing action under the administrative per se law, may also be subsequently prosecuted for a drunk driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *State v. Gustafson*, 668 N.E.2d 435 (Ohio 1996), and *Herbert v. Billy*, 160 F.3d 1131 (6th Cir. 1998)

II. For illegal per se offenses with a BAC  $\geq$ .17: first offense – 3 consecutive days in jail with 3 consecutive days of a driver’s intervention program or 6 consecutive days in jail; second

(continued)

offense (within 6 years) – 20 consecutive days (Alternative: 10 con days in jail and not less than 36 con days “house arrest” with electronic monitoring”); third offense (within 6 years) – 60 consecutive days (Alternative: 30 con days in jail and not less than 110 con days “house arrest” with electronic monitoring); subsequent offenses (within any time period) – 120 consecutive days  
Offense for Persons Under 21 Years Old ( $\geq$ .02 but  $<$ .08). **None**

Fine:

Amount (\$ Range):

First offense – **\$250 to \$1,000**; second offense (within 6 years) – **\$350 to \$1,500**; third offense (within 6 years) – **\$550 to \$2,500**; subsequent offenses – **\$800 to \$10,000**

Offense for Persons Under 21 Years Old ( $\geq$ .02 but  $<$ .08). First offense – **Not more than \$250**; second offense (within 1 yr) – **Not more than \$500**

Mandatory Min. Fine (\$):

First offense – **\$250**; second offense (within 6 years) – **\$350**; third offense (within 6 years) – **\$550**; subsequent offenses – **\$800**<sup>957</sup>

Offense for Persons Under 21 Years Old ( $\geq$ .02 but  $<$ .08). **None**

Other Penalties:

Community Service:

The law is not specific, but it appears that community service could be made a condition of probation. §2947.06

Restitution

(e.g., Victim’s Fund):

**Yes** (1) A victim may receive payment only for property damage directly from a defendant. §2929.21(E) and *State v. Theuring*, 546 N.E.2d 436 (Ohio App. 1988). (2) A victim is also eligible for reparations from the State. §2743.51 et seq.

Other:

**Driver’s Intervention Program.** §3720.66

**Ignition Interlock.** As a condition of probation by the court<sup>958</sup> §§2951.02(G), 4507.16(C), 4511.83 and 4511.99(L)

<sup>957</sup> Ref: *State v. Cichy*, 480 N.E.2d 90 (Ohio App. 1984).

<sup>958</sup> If such a condition is imposed, offenders must obtain a specially marked driver’s license indicating they may only operate a vehicle equipped with such a device. §2951.02(G)(2) and (3)

**DWI Arrests:** I. Usually, following a DWI arrest where there has been either a refusal to submit to a chemical test or where the test indicated an illegal alcohol concentration level (administrative per se), an offender’s license is immediately suspended until the initial court appearance which must take place within 5 days after the arrest. §§4511.191(D) and 4511.196 The Ohio Supreme Court has held that the immediate suspension of a license by a law enforcement officer does not violate Federal or State constitutional provisions concerning due process of law. *State v.*

**Fine In Lieu of Vehicle Forfeiture.**

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

**≥.08 BAC/BrAC or ≥.11 UrAC** (1) Suspension – 90 days (15 days mand) if the offender has no prior DWI, vehicle homicide or vehicle assault convictions. (2) **Suspension – 1 year** (30 days mand) if the offender has one prior DWI, vehicle homicide or vehicle assault conviction within 6 years. (3) **Suspension – 2 years** (180 days mand) if the offender has two prior DWI, vehicle homicide or vehicle assault convictions within 6 years. (4) **Suspension – 3 years** (mand) if the offender has three or more prior DWI, vehicle homicide or vehicle assault convictions within 6 years. Occupational licenses may be issued after the above mandatory suspension periods. Administrative license suspensions are to be “offset” by any license suspension imposed as a result of a DWI offense conviction. See *State v. Gustafsen* 668 N.E.2d 435 (Ohio 1994) Occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions within 7 years.

Ignition Interlock. For (1) and (2), a person may be required to use “ignition interlock” devices when operating a vehicle on an occupational license. For (3) and (4), a person must use these devices when driving on an occupational license.

A suspension for an administrative per se violation will terminate if the person is either (1) found “not guilty” or (2) pleads “guilty” to a related DWI offense.

§§4507.16 and 4511.191(F), (H)(2), (I)(4) and (K)

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

First offense – **Suspension**; second offense (within 6 years) – **Suspension**; third offense (within 6 years) – **Suspension**; subsequent offenses (within 6 years) – **Suspension/Revocation** DWI Related Aggravated Vehicle Assault – Revocation §§2903.08 and 4507.16(B)

Offense for Persons Under 21 Years Old (≥.02 but <.08).– suspension §§4507.16(E), (G) and (I)

Term of License Withdrawal

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*Hochhausler*, 668 N.E.2d 457 (Ohio 1996) However, in this same case, the court held that those provisions of the administrative per se law that prohibit the courts from granting a stay of license suspension violated constitutional principles of separation of powers. II. If an offender’s license has not been suspended either for a refusal or under the administrative per se provisions, the court may impose a license suspension where the offender would pose a “threat to the public safety.” §4511.196(B) III. Notwithstanding the fact a court on appeal may terminate a license suspension based either on a refusal or under the administrative per se provisions, it may still impose a license suspension where the offender would pose a “threat to the public safety.” §4511.196(B).

(Days, Months, Years, etc.):

First offense – **6 months to 3 years**; second offense (within 6 years) – **1 to 5 years**; third offense (within 6 years) – **1 to 10 years**; subsequent offenses (within 6 years) – **Suspension for not less than 3 years or Permanent Revocation**<sup>959</sup> DWI

Related Aggravated Vehicle Assault-**Permanent Revocation**

Offense for Persons Under 21 Years Old ( $\geq .02$  but  $< .10$ ) – **60 days to 2 years** §§4507. 16(E), (G) and (I)

Mandatory Minimum Term  
of Withdrawal:

First offense – **15 days**<sup>960</sup>; second offense (within 6 years) – **30 days**; third offense (within 6 years) – **180 days**; subsequent offenses (within 6 years) – **3 years** §4507.16(F) and (L) After these mandatory minimum suspension periods, occupational driving privileges may be granted. But occupational driving privileges cannot be granted if the driver has had 3 or more drunk driving or vehicle homicide offense convictions within 7 years. §4507.16(F) and (G) DWI-Related Aggravated Vehicle Assault-**Permanent Revocation**

Offense for Persons Under 21 Years Old ( $\geq .02$  but  $< .08$ ) – **60 days**

Other:

Rehabilitation:

Alcohol Education:

Alcohol Treatment:

**Yes I.** A person, (1) charged with a misdemeanor offense, (2) determined by the court to be either an alcoholic or a person suffering from acute alcohol intoxication and (3) who would benefit from an alcohol or drug treatment program, may in lieu of imprisonment, be placed in such a program under close supervision. However, a regular DWI offender, a §4511.19(A) offender, must be confined in a treatment facility for at least 3 days. §2935.33(8)

<sup>959</sup> **Persons Under 18 Years Old.** I. Persons < 18 years old who violated any provision of the DWI law (§4511.19) have the license suspended for 6 months (appears mand). §4507.162(A) i.e., this suspension also applies to persons < 18 years old who violate §4511.19(B) by driving with a BAC/BrAC  $\geq .02$  (UrAC  $\geq .028$ ) but  $< .08$  (UrAC  $< .11$ ). II. Persons < 18 years old who commit 3 or a combination of 3 violations as specified in §4507.162 within 2 years have their license suspended for 1 year (appears mand). These violations include refusal to submit to a chemical test; admin. per se and driving while suspended or revoked. §4507.162(A).

<sup>960</sup> For first and second offenses, the court may order a person to use “**ignition interlock**” devices when using an occupational license, for third and subsequent offenses, the court must require a person to use these devices when using an occupational license.

**Point System.** A license may be suspended via a point system under §4507.021(D), (G)(11) and (K). In brief, under this section a DWI conviction results in an assessment of 6 points. If a driver accumulates 12 or more points from traffic violations within a 2-year period, the license may be suspended for 6 months. Also, 4 points are assessed for a .02 offense for persons under 21 years old.

**Other Information:** I. Under §4507.1610, the court is authorized to suspend a license for a violation of a municipal DWI ordinance which is substantial similar to State law. However, the suspension period cannot exceed that imposed under State law. II. The licensing agency also may suspend an offender’s license for 6 months. An occupational license is available after the person has served the same mandatory license suspension periods noted above. §4507.169(B) and (E)

This alternate confinement of 3 days in lieu of jail per this program only applies to first but NOT to subsequent offenders. *State v. Johnson*, 491 N.E.2d 1138 (Ohio 1986)

II. For second offenses, the court may require a defendant to attend a treatment program. For third and subsequent offenses, the court shall require the defendant to attend a treatment program.  
§4511.99(A)

Vehicle Impoundment/Confiscation:  
Authorized by Specific  
Statutory Authority:

Second offense (within 6 years) – **Immobilization of and impoundment of the license plates of the vehicle used in the offense for 90 days**; third offense (within 6 years) – **Criminal Forfeiture of the vehicle used in the offense**; subsequent offense (within 6 years) – **Criminal Forfeiture of the vehicle used in the offense** §§4507.164, 4511.19, 4511.195 and 4511.99 See Footnote Nos. <sup>961</sup>, <sup>962</sup>, <sup>963</sup> and <sup>964</sup>

Terms Upon Which Vehicle  
Will Be Released:  
Other:

fourth or subsequent offense, motor vehicle registration prohibited for 5 years. §4503.234(E) and 4507.021(C)(3)

Miscellaneous Sanctions  
Not Included Elsewhere:

A person under 18 years old who violates the regular DWI law §4511.19(A) may be assigned to temporary custody of not more than 5 days (1) to a detention home, (2) to another similar institution for children or (3) to a school camp. §2152.21(A)(5) **Child Endangerment.** It is a separate offense to operate a motor vehicle in violation of the drunk driving laws while carrying a passenger who is under 18 years old. First offense (first degree misdemeanor) – imprisonment for not more than 6

<sup>961</sup> Even though the occupation licenses can be granted as indicated, under §4507.16(I), the court cannot suspend (1) the first 90 days of the license suspension period for a first offense, (2) the first year of the license suspension period for a second offense, (3) the first year of the license suspension period for a third offense and (4) the first 3 years of the license suspension for a fourth or subsequent offense.

<sup>962</sup> A non-driver owner of the vehicle may avoid the forfeiture sanction by proving by a preponderance of the evidence that the non-driver neither knew nor should have known that an offense was or would be committed.

§4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle's registration has been either been assigned or transferred, the defendant may be required to pay a fine which is equal to the value of the vehicle. §§4503.234 and 4511.99(A)(4)(b), 4511.19(G)(6)

<sup>963</sup> The court has discretionary authority to prohibit the defendant from either registering a vehicle or renewing or transferring the registration of any vehicle owned by a person who has been convicted of an offense that requires driver's license suspension or revocation. §4507.16(A)(2)

<sup>964</sup> I. A vehicle subject to immobilization/license plate impoundment may be operated with special license plates. §4503.231, §§4507.02(F)(2) and 4507.164(F)

II The Ohio Supreme Court has held that the law providing for vehicle seizure and immobilization, without a prior hearing, violates U.S. Constitutional provisions concerning due process of law when it is applied against vehicle owners who were not operating the vehicle at the time of the drunk driving offense. *State v. Hochhausler*, 668 N.E.2d 457 (Ohio 1996)

months and/or a fine of not more than \$1,000; first offense: where there has been serious physical harm to the child or subsequent offense (fifth degree felony) – imprisonment from 6 to 12 months and/or a fine of not more than \$2,500; subsequent child endangerment offense where there has been serious physical harm to the child or where there has been serious physical harm to the child, and the driver has a prior drunk driving offense conviction (fourth degree felony) – imprisonment from 6 to 18 months and/or a fine of not more than \$5,000 In addition to the above, offenders are subject to not more than 200 hours of community service, which is not in lieu of community service that may be imposed via probation, and license suspension for 90 days, which is consecutive to any other licensing action. §§2919.22, 2929.14, 2929.18 and 2929.21  
**Confinement Costs.** In some counties, offenders may have to pay the costs of confinement (workhouses). §§2929.35 et seq. and 2947.19

#### Other Criminal Actions Related to DWI:

Homicide by Vehicle:  
 State Has Such a Law:

**Yes** (1) Aggravated (Reckless) Vehicle Homicide-felony §2903.06(A)(2); (2) Aggravated (DUI) Vehicle Homicide – felony §2903.06(A)(1); (3) Vehicle (Negligent) Homicide – Misdemeanor §2903.06(A)(3) (1)

Sanctions:  
 Criminal Sanction:  
 Imprisonment (Term):

Aggravated Vehicle Homicide (DUI): first offense (aggravated felony second degree) – 1 to 5 years; sub. offense (Aggravated felony first degree) – 2 to 8 years (2) Aggravated Vehicle Homicide (Reckless): first offense – (third degree felony), second or sub. offense (second degree felony) (3) Vehicle Homicide (Negligence): first offense (Misd first degree) – not more than 6 months; sub. offense<sup>965</sup> or driving while suspended/revoked (felony fourth degree) – 6 to 18 months §§2929.14 and 2929.21<sup>966</sup>

Mandatory Minimum Term:  
 Fine (\$ Range):

(1) Aggravated Vehicle Homicide: first offense (aggravated felony second degree) – not more than \$15,000; sub. offense (aggravated felony first

<sup>965</sup> A previous offense includes a §2903.06 offense, any other traffic-related homicide, manslaughter, or assault offense, 3 prior DUIs, or a second felony DUI, or if the death occurs while offender's license is suspended.

<sup>966</sup> For either type of offense; either a second offender or a first offender who has had a previous DWI conviction is not eligible for probation. §§2903.06(C)

**“Involuntary manslaughter”** (death as a result of committing a felony or misdemeanor) may include DWI as an element of the offense. §2903.04 If the death is felony-related, the offense is an aggravated felony first degree (Jail-3 to 10 years; fine – not more than \$20,000). If the death is misdemeanor-related, the offense is an aggravated felony third degree (Jail-1 to 5 years; fine – not more than \$10,000). §§2929.14 and 2929.18

<p>Mandatory Minimum Fine: Administrative Licensing Action: Licensing Authorized and Type of Action:</p>	<p>degree) – not more than \$20,000; (2) Vehicle Homicide (Negligence): first offense (Misd first-degree) not more than \$1,000; sub. offense<sup>19</sup> or driving while suspended/revoked (felony fourth degree) – not more than \$5,000 §§2929.18 and 2929.21</p>
<p>Length of Term of Licensing Withdrawal:</p>	<p>For either Aggravated Vehicle Homicide (DUI or Reckless) or Vehicle Homicide (Negligence) – Suspension or revocation §§2903.06(B), 4507.16(A), 4507.16(D), 4507.34 and City of Columbus v. Tyson. 484 N.E.2d 155 (Ohio App. 1983).</p>
<p>Mandatory Action--Minimum Length of License Withdrawal:</p>	<p>For either Aggravated (DUI or Reckless) Vehicle Homicide or Vehicle Homicide (Negligence) – Suspension – 30 days to 3 years or revocation – not more than 1 year. For either offense, if alcohol or drugs were involved, the driver’s license is permanently revoked. §4507.16(D) There is also permanent license revocation if a person has been convicted of “Involuntary Manslaughter” where DWI is an element of the offense. §2903.04(D)(1)(a)</p>
<p>Other:</p>	<p>For either Aggravated Vehicle Homicide (DUI or Reckless) or Vehicle Homicide (Negligence) – Suspension – 30 days §4507.16(G) For either offense, if alcohol or drugs were involved, the driver’s license is permanently revoked. §4507.16(D) There is also permanent license revocation if a person has been convicted of “<b>Involuntary Manslaughter</b>” where DWI is an element of the offense. §2903.04(D)(1)(a) For any vehicle homicide offense, 6 points are assessed against a driver’s record. §4507.021(G)(3) A driver’s license may be suspended for 6 months if a person has accumulated 12 points within a 2-year period. <b>License Plate Impoundment.</b> A vehicle’s license plates may be impounded if the owner thereof has had their driver’s license either suspended or revoked for any death-related vehicle offenses. §4507.164(A).</p>
<p>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense:</p>	<p>§4511.192 See Footnote No. <sup>967</sup>.</p>

<sup>967</sup> Driving while suspended for an implied consent law violation (refusal) – first degree misdemeanor: Imprisonment – not more than 6 months; fine – not more than \$1,000; and license revocation – not more than 1 year §§2929.21(B)(1) and (C)(1), 4511.192 and 4511.99(B). Aggravated vehicular assault during a suspension is a second degree felony- Aggravated Vehicular Homicide during a suspension is a first degree felony.

## Sanction:

## Criminal:

## Imprisonment (Term):

First offense (first degree misdemeanor) – not more than 6 months; second offense within 5 years – (misdemeanor) – 10 consecutive days to 1 year; third and subsequent offense within 5 years – (misdemeanor) – 30 consecutive days to 1 year §§2929.21, 4507.02(D)(2) and 4507.99(B)

## Mandatory Minimum Term of Imprisonment:

First offense – 3 consecutive days (Alternative: 30 con days of “house arrest” with electronic monitoring.<sup>968</sup>); second offense (within 5 years) – 10 consecutive days (Alternative: 90 con days of “house arrest” with electronic monitoring.); third and subsequent offense (within 5 years) – 30 consecutive days

Fine (\$ Range): First offense – \$250 to \$1,000; second offense (within 5 years) – \$500 to \$2,500; third and subsequent offense (within 5 years) – \$500 to \$2,500

## Mandatory Minimum Fine:

First offense – \$250; second offense (within 5 years) – \$500; third and subsequent offense (within 5 years) – \$500.<sup>969</sup>

## Administrative Licensing Actions:

## Type of Licensing Action (Susp/Rev):

**Suspension**<sup>970</sup> §4507.99(B)(4)

## Length of Term of License

## Withdrawal Action:

For first, second, third and subsequent offenses – not more than 1 year §4507.99(B)(4).

## Mandatory Term of License

## Withdrawal Action:

For first, second, third and subsequent offenses – not more than 1 year. §4507.99(B)(4)

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**Special Note:** It is a first degree misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 6 months and/or a fine of not more than \$1,000. In addition, if the offense concerned CDL operation while under an out-of-service order, the offender is subject to a CDL disqualification; §§2929.21(B)(1) and (C)(1), 4506.04(A)(2) and 4506.99(A)

<sup>968</sup> This alternative is imposed only when overcrowded jail conditions prevent the offender from commencing the term of imprisonment within 60 days of sentencing. §4507.99(B)(6)

<sup>969</sup> Ref: *State v. Cichy*, 480 N.E.2d 90 (Ohio App. 1984).

<sup>970</sup> (1) The vehicle used in the offense shall be “immobilized” and the license plates “impounded” for the following mandatory periods: first offense – 30 days; second offense – 60 days and (2) for a third or sub. offense, the vehicle used in the offense will be subject to criminal forfeiture. §§4507.361(C), 4507.164(C) and 4507.99(B) A non-driver owner of the vehicle may avoid the forfeiture sanction if they can prove by a preponderance of the evidence the non-driver neither knew nor should have known that an offense was or would be committed. §4503.234(C)(3) If the vehicle is not subject to forfeiture due to this provision and the vehicle’s registration has either been assigned or transferred, the defendant may be required to pay a fine that is equal to the value of the vehicle. §4507.99(B)(3)

In addition to the “immobilization” and license plate “impoundment” of a vehicle that was used in the offense, the law also provides via judicial action for the mandatory “impoundment” of the license plate(s) of vehicle(s) registered to the offender even if such vehicles were not used in the offense. The license plates of such vehicles shall be impounded until the offender’s license is reinstated. §4507.02(F)(1) Nevertheless, under §§4507.02(F)(2) and 4503.231, such vehicle may be operated if special license plates are obtained. These special license plates must be different in appearance than the normal ones. (Under §4507.164(C), discretionary judicial authority also exists for such registration suspension.)

Habitual Traffic Offender Law:  
State Has Such a Law (Yes/No): **No**

Grounds for Being Declared an  
Habitual Offender:  
Term of License Rev While  
Under Habitual Offender Status:  
Type of Criminal Offense if  
Convicted on Charges of  
Driving While on Habitual  
Sanctions Following a Conviction of  
Driving While on Habitual Offender  
(continued)  
Status:  
Imprisonment (Term):  
Mandatory Minimum Term of  
Imprisonment:  
Fine (\$ Range):  
Mandatory Minimum Fine (\$):  
Licensing Actions (Specify):

Other State Laws Related To Alcohol Use:  
Laws Requiring BAC Chemical Tests on  
Persons Killed in Traffic Accidents:  
State Has Such a Law (Yes/No): **Yes §313.13(6)**

BAC Chemical Test Is Given to  
the Following Persons:  
Driver: **Yes §313.13(8)**  
Vehicle Passengers: **No**  
Pedestrian: **No**

Laws Establishing the Minimum Ages  
Concerning Alcoholic Beverages:  
Minimum Age (Years) Sale/Purchase: **21<sup>971</sup> §§4301.22(A)(1), 4301.63 and 4301.69**  
Minimum Age (Years) Possession: **21 §4301.69**  
Minimum Age (Years) Consumption: **21 §4301.69**

Dram Shop Laws and Related Legal Actions:  
State Has a Dram Shop Law (Yes/No): **Yes §§4399.01, 4399.02 and 4399.18**

“Dram Shop Law” Concept Has Been  
Adopted Via a Change to the Common  
Law Rule by Action of the Highest  
Court of Record in the State (Case Citation): **Yes Mason v. Roberts, 294 N.E. 2d 884 (Ohio  
1973)<sup>972</sup> (for a history of the dram shop law prior**

<sup>971</sup> It is illegal (1) for a licensee to sell to a person under 18 years old or (2) for a person under 18 years old to either purchase, possess or consume (unless accompanied by a parent, legal guardian or spouse who is over 18 years old) a low-alcohol beverage. §§4301.22(A)(2) and 4301.631 A low-alcoholic beverage, “means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one percent of alcohol by volume.” However, such beverages do not include soft drinks (e.g., root beer, birch beer or ginger beer). §4301.01(B)(20)

<sup>972</sup> See also *Terry v. Markoff*, 497 N.E.2d 1133 (Ohio App. 1986).

Dram Shop Actions-Social Hosts:

to codification, see *Lesnau v. Andate Enterprises*, 756 N.E.2d 97 (Ohio 2001)

**Yes Limited** A social host is not liable for the actions of an intoxicated adult guest. *Settlemyer v. Wilmington Veterans Post No. 49. American Legion, Inc.*, 464 N.E.2d 521 (Ohio 1984). However, a social host may be held liable for either the death or injury of a third person caused by an intoxicated minor guest. *Mitseff v. Wheeler*, 526 N.E.2d 798 (Ohio 1988), *Huston v. Konieczny*, 556 N.E.2d 505 (Ohio 1990), and *Williams v. Veterans of Foreign Wars*. 650 N.E.2d 175 (Ohio App. 2 Dist. 1994)

Other:

An intoxicated patron (or the estate of a deceased intoxicated patron), including a person under the legal drinking age, but over the age of majority, does not have a cause of action against a licensee for injuries that patron sustained off the licensee's premises due to the consumption of alcoholic beverages at the licensed establishment. *Smith v. 10th Inning, Inc.*, 551 N.E.2d 1296 (Ohio 1990), *Klever v. Canton Sachsenheim, Inc.* 715 N.E.2d 536 (Ohio 1999), *Fifer v. Buffalo*, 601 N.E.2d 601 (Ohio App. 6 Dist. 1991), *Gillum v. Fairgreens County Club*, 673 N.E.2d 637 (Ohio App. 4 Dist 1996), *Cole v. Broomsticks. Inc.*, 669 N.E.2d 253 (Ohio App. 1 Dist. 1996). and *Walker v. Capri Ent. Inc.*, 707 N.E.2d 1201 (Ohio App. 10 Dist. 1997) (Discretionary appeal was not allowed by the State supreme court. 691 N.E.2d 1062 (Ohio 1998)) Generally, a social host is not liable for the injuries sustained by an intoxicated guest. *Holman v. George*, 713 N.E.2d 432 (Ohio App. 1998), and *Estate of Valesquez v. Cunningham*, 738 N.E.2d 876 (Ohio App. 5 Dist. 2000)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

**Third Degree Misdemeanor** §§4301.22(B) and 4301.99(E)

Term of Imprisonment:

**Not more than 60 days** §2929.21(B)(3)

Fine (\$ Range):

**Not more than \$500** §2929.21(C)(3)

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No):

**Yes Revocation/Suspension**<sup>973</sup> §§4301.25 and 4301.27

<sup>973</sup> For a first or second offense (within 2 years), a monetary forfeiture maybe imposed in lieu of a suspension: first violation – \$100 to \$200 for each day of the suspension; second violation – \$200 to \$400 for each day of the violation. §4301.252

Length of Term of License Withdrawal:	<b>Indeterminate</b>
Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age: Type of Criminal Action: Term of Imprisonment: First Degree Misdemeanor: Fine (\$ Range):	<b>Misdemeanor<sup>974</sup> First or third degree</b> §2929.21(B)(1); third degree Misdemeanor: <b>Not more than 60 days</b> §2929.21(B)(3) First Degree Misdemeanor: <b>Not more than \$1,000</b> §2929.21(C)(1); third degree Misdemeanor: <b>Not more than \$500</b> §2929.21(C)(3)
Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:	See the Special Note below.
License to Serve Alcoholic Beverages Withdrawn (Yes/No):	<b>Yes Revocation/Suspension<sup>975</sup></b> §§4301.25 and 4301.27
Length of Term License Withdrawal:	<b>Indeterminate</b>
Anti-Happy Hour Laws/Regulations:	<b>Yes</b> 4301:1-1-50 (regulation) <sup>976</sup>
Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle: Open Container Law (Yes/No): Anti-Consumption Law (Yes/No):	<b>Yes</b> §4301.62(B)(4) and (5) <b>Yes Drivers and passengers</b> §4301.64 The law states that “[n]o person shall consume any beer or intoxicating liquor in a motor vehicle.”

<sup>974</sup> A person may be charged with a misdemeanor of either the first or third degree. §§4301.22(A), 4301.69 and §4301.99

<sup>975</sup> For a first or second offense (within 2 years), a monetary forfeiture may be imposed in lieu of a suspension: first violation – \$100 to \$200 for each day of the suspension; second violation – \$200 to \$400 for each day of the violation. §4301.252

<sup>976</sup> This regulation prohibits the sale of alcoholic beverages (1) in unlimited number of servings “during a set period of time for a fixed price” or (2) after 9:00 p.m. “at a price less than those charged to other patrons.” This regulation was held to be constitutional. *DDD, Inc. v. Liquor Control Comm.*, 582 N.E.2d 1152 (Ohio App. 10 Dist. 1990)

**Special Note:** A licensee commits a fourth degree misdemeanor if they sell a low-alcohol beverage to a person under 18 years old. The sanctions for this offense are a jail term of not more than 30 days and/or a fine of not more than \$250. §§2929.21 (B)(4) and (C)(4) and 4301.99(B) However, they are not subject to having their license either suspended, revoked or canceled. §4301.22(A)(2)