

ORDINANCE NO. 10-03

AN ORDINANCE AMENDING §§ 73.01, 73.011 AND 96.12
OF THE 2003 EDITION OF THE OHIO BASIC CODE,
EFFECTIVE JUNE 30, 2003, TO REFLECT THE STATE
OF OHIO'S REDUCTION IN THE LEGAL ALCOHOL
LIMIT FOR OPERATING A MOTOR VEHICLE,
AND DECLARING AN EMERGENCY

WHEREAS, the Village of Spencer, Ohio, has adopted American Legal Publishing's Ohio Basic Code, 2003 Edition.

WHEREAS, effective June 30, 2003, the Ohio Legislature amended Ohio Revised Code §§ 1547.11, 4511.19, and 4511.191 by reducing the legal alcohol limit for operating a motor vehicle (See House Bill 87 of the 125th Session of the General Assembly).

WHEREAS, §§ 73.01, 73.011, and 96.12 of the 2003 Edition of the Ohio Basic Code do not reflect these amendments.

WHEREAS, it is necessary to provide for the immediate preservation of the public peace, health, safety, and general welfare of the Village of Spencer that this Ordinance take effect at an early date.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Spencer, Ohio:

Section 1. Effective June 30, 2003, §§ 73.01 (*Driving While Intoxicated or Drugged*), 73.011 (*Implied Consent*), and 96.12 (*Operating Under Influence of Alcohol or Drugs Prohibited*) of the 2003 Edition of the Ohio Basic Code are amended to read as set forth in "Exhibit A," attached hereto.

Section 2. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety, and general welfare of the people of this Village, and shall take effect at the earliest provided by law.

Passed: July 8, 2003

ATTEST:


TOMMY RAMEY, Mayor



RHONDA R. RIFFLE, Village Fiscal Officer

EXHIBIT A

(New matter is **bold and underscored**; deleted matter is ~~struck through~~)

§ 73.01 DRIVING WHILE INTOXICATED OR DRUGGED.

(A) No person shall operate any vehicle within this municipality if any of the following apply:

- (1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.
- (2) The person has a concentration of **0.08%** ~~0.10%~~ or more but less than 0.17% by weight of alcohol in the person's blood.
- (3) The person has a concentration of **0.08** ~~0.10~~ grams or more but less than 0.17 grams by weight of alcohol per 210 liters of the person's breath.
- (4) The person has a concentration of **0.11** ~~0.14~~ grams or more but less than 0.238 grams by weight of alcohol per 100 milliliters of the person's urine.
- (5) The person has a concentration of 0.17% or more by weight of alcohol in the person's blood.
- (6) The person has a concentration of 0.17 grams or more by weight of alcohol per 210 liters of the person's breath.
- (7) The person has a concentration of 0.238 grams or more by weight of alcohol per 100 milliliters of the person's urine.

(B) No person under 21 years of age shall operate any vehicle within this municipality if any of the following apply:

- (1) The person has a concentration of at least 0.02% but less than **0.08%** ~~0.10%~~ by weight of alcohol in the person's blood.
- (2) The person has a concentration of at least 0.02 grams but less than **0.08** ~~0.10~~ grams by weight of alcohol per 210 liters of the person's breath.
- (3) The person has a concentration of at least 0.028 grams but less than **0.11** ~~0.14~~ grams by weight of alcohol per 100 milliliters of the person's urine.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1) and a violation of division (B)(1), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(D) (1) In any criminal prosecution for a violation of this section, the court may admit evidence on the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in the defendant's blood, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance withdrawn within two hours of the time of the alleged violation. When a person submits to a blood test at the request of a police officer under R.C. § 4511.191 or a substantially similar municipal ordinance, only a physician, a registered nurse, or a qualified technician or chemist shall withdraw blood for the purpose of determining its alcohol, drug, or alcohol and drug content. This limitation does not apply to the taking of breath or urine specimens. A physician, a registered nurse, or a qualified technician or chemist may refuse to withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the blood, if in the opinion of the physician, nurse, technician, or chemist the physical welfare of the

person would be endangered by the withdrawing of blood. Such bodily substance shall be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director of Health pursuant to R.C. § 3701.143.

(2) In a criminal prosecution for a violation of division (A) of this section, if there was at the time the bodily substance was withdrawn a concentration of less than ~~0.08% 0.10%~~ by weight of alcohol in the defendant's blood, less than ~~0.08 0.10~~ grams by weight of alcohol per 210 liters of the defendant's breath, or less than ~~0.11 0.14~~ grams by weight of alcohol per 100 milliliters of the defendant's urine, that ~~such~~ fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution for a violation of division (B) of this section.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney or agent immediately upon the completion of the chemical test analysis. The person tested may have a physician, a registered nurse, or a qualified technician or chemist of the person's own choosing administer a chemical test or tests in addition to any administered at the request of a police officer, and shall be so advised. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a police officer.

(4) (a) As used in division (D)(4) of this section, *NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION* means the National Highway Traffic Safety Administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C. § 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the ~~existing~~ standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:

1. The officer may testify concerning the results of the field sobriety test so administered.
2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.
3. If testimony is presented or evidence is introduced under division (D)(4)(b)1. or 2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

(5) Any physician, registered nurse, or qualified technician or chemist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim that is not in the nature of a claim of malpractice, for any act performed in withdrawing blood from the person.

(R.C. § 4511.19) (Rev. 2003)

(E) Whoever violates division (A) of this section, in addition to the license suspension or revocation provided in R.C. § 4507.16 and any disqualification imposed under R.C. § 4506.16, shall be punished as provided in division (E)(1) and (2) below.

(1) Except as otherwise provided in division (E)(2) of this section, the offender is guilty of a misdemeanor of the first degree and shall be subject to any fines, terms of imprisonment, sanctions and regulations as provided in R.C. § 4511.99(A).

(2) If, within six years of the offense, the offender has been convicted of or pleaded guilty to three or more violations of divisions (A) or (B) of this section, R.C. § 4511.19(A) or (B), a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse; a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine; R.C. § 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section, or R.C. § 2903.06, 2903.07 or 2903.08 or a municipal ordinance that is substantially similar to R.C. § 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or a statute of the United States or of any other state or a municipal ordinance of a municipality located in any other state that is substantially similar to R.C. § 4511.19(A) or (B), the offender is guilty of a felony to be prosecuted under appropriate state law.
(R.C. § 4511.99(A)) (Rev. 2000)

(F) (1) Whoever violates division (B) of this section is guilty of operating a motor vehicle after underage alcohol consumption and shall be punished as follows:

(a) Except as otherwise provided in division (F)(1)(b) of this section, the offender is guilty of a misdemeanor of the fourth degree;

(b) The offender is guilty of a misdemeanor of the third degree if, within one year of the offense, the offender has been convicted of or pleaded guilty to any violation of the following:

1. Divisions (A) or (B) of this section or R.C. § 4511.19(A) or (B);
2. A municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
3. A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;
4. R.C. § 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section;
5. R.C. §§ 2903.06(A)(1) or 2903.08(A)(1) or a municipal ordinance that is substantially similar to either of those divisions;
6. R.C. §§ 2903.06(A)(2), (3) or (4) or 2903.08(A)(2) or a municipal ordinance that is substantially similar to any of those divisions, or former R.C. § 2903.07 or a substantially similar municipal ordinance, in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
7. A statute of the United States or of any other state or a municipal ordinance of a municipality located in any other state that is substantially similar to R.C. § 4511.19(A) or (B).

(2) In addition to or independent of all other penalties provided by law, the offender's driver's or commercial driver's license or permit or nonresident operating privilege shall be suspended in accordance with and for the period of time specified in R.C. § 4507.16(E).
(R.C. § 4511.99(N)) (Rev. 2000) Penalty, see § 70.99

Cross-reference:

Endangering children, see § 135.14

Power to suspend or revoke driver's license, see § 33.05

Statutory reference:

Sentencing, fines, terms of imprisonment, disposition of fines, electronically monitored house arrest, use of alcohol and drug addiction program, see R.C. § 4511.99(A)

Trial judge to suspend or revoke driver's license, see R.C. § 4507.16

§ 73.011 IMPLIED CONSENT.

(A) Any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within this municipality shall be deemed to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the alcohol, drug, or alcohol and drug content of his or her blood, breath, or urine if arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine. The chemical tests shall be administered at the request of a police officer having reasonable grounds to believe the person was operating a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking in this municipality while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(B) Any person who is dead or unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn consent as provided by division (A) above and the tests may be administered, subject to R.C. §§ 313.12 through 313.16.

(C) (1) Any person under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine shall be advised at a police station, or at a hospital, first-aid station, or clinic to which the person has been taken for first-aid or medical treatment, of both of the following:

(a) The consequences, as specified in R.C. § 4511.191(E), of the person's refusal to submit upon request to a chemical test designated by the law enforcement agency as provided in division (A);

(b) The consequences, as specified in R.C. § 4511.191(F), of the person's submission to the designated chemical test if the person is found to have a prohibited concentration of alcohol in the blood, breath, or urine.

(2) (a) The advice given pursuant to division (C)(1) of this section shall be in a written form containing the information described in division (C)(2)(b) of this section and shall be read to the person. The form shall contain a statement that the form was shown to the person under arrest and read to him or her in the presence of the arresting officer and either another police officer, civilian police employee, or an employee of a hospital, first-aid station, or clinic, if any, to which the person has been taken for first-aid or medical treatment. The witnesses shall certify to this fact by signing the form.

(b) The form required by division (C)(2)(a) of this section shall read as follows:

You now are under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or both alcohol and a drug of abuse and will be requested by a police officer to submit to a chemical test to determine the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in your blood, breath, or urine.

If you refuse to submit to the requested test or if you submit to the requested test and are found to have a prohibited concentration of alcohol in your blood, breath, or urine, your driver's or commercial driver's license or permit or nonresident operating privilege immediately will be suspended for the period of time specified by law by the officer, on behalf of the Registrar of Motor Vehicles. You may appeal this suspension at your initial appearance before the court that hears the charges against you resulting from the arrest and your initial appearance will be conducted no later than five days after the arrest. This suspension is independent of the penalties for the offense, and you may be subject to other penalties upon conviction.

(D) (1) If a person under arrest as described in division (C)(1) of this section is not asked by a police officer to submit to a chemical test designated as provided in division (A) of this section, the arresting officer shall seize the state or out-of-state driver's or commercial driver's license or permit of the person and immediately forward the seized license or permit to the court in which the arrested person is to appear on the charge for which he or she was arrested. If the arrested person does not have the person's driver's or commercial driver's license or permit on the person's self or in the person's vehicle, the arresting officer shall order him or her to surrender it to the law enforcement agency that employs the officer within 24 hours after the arrest, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the court in which the arrested person is to appear on the charge for which he or she was arrested. Upon receipt of the license or permit, the court shall retain it pending the initial appearance of the arrested person and any action taken under R.C. § 4511.196. If a person under arrest as described in division (C)(1) of this section is asked by a police officer to submit to a chemical test designated as provided in division (A) above and is advised of the consequences of his or her refusal or submission as provided in division (C) above, and if the person either refuses to submit to the designated chemical test or the person submits to the designated chemical test and the test results indicate that his or her blood contained a concentration of 0.08% ~~0.10%~~ or more by weight of alcohol, his or her breath contained a concentration of 0.08 ~~0.10~~ grams or more by weight of alcohol per 210 liters of his or her breath, or his or her urine contained a concentration of 0.11 ~~0.14~~ grams or more by weight of alcohol per 100 milliliters of his or her urine at the time of the alleged offense, the arresting officer shall do all of the following:

(a) On behalf of the Registrar, serve a notice of suspension upon the person that advises the person that, independent of any penalties or sanctions imposed upon him or her pursuant to any other section of the Revised Code or any other municipal ordinance his or her driver's or commercial driver's license or permit or nonresident operating privilege is suspended, that the suspension takes effect immediately, that the suspension will last at least until his or her initial appearance on the charge that will be held within five days after the date of his or her arrest or the issuance of a citation to him or her, and that he or she may appeal the suspension at the initial appearance; seize the state or out-of-state driver's or commercial driver's license or permit of the person; and immediately forward the seized license or permit to the Registrar. If the arrested person does not have the person's driver's or commercial driver's license or permit on the person's self or in the person's vehicle, the arresting officer shall order him or her to surrender it to the law enforcement agency that employs the officer within 24 hours after the service of the notice of suspension, and upon the surrender, the officer's employing agency immediately shall forward the license or permit to the Registrar.

(b) Verify the current residence of the person and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the Registrar of the change;

(c) In addition to forwarding the arrested person's driver's or commercial driver's license or permit to the Registrar, send to the Registrar, within 48 hours after the arrest of the person, a sworn report that includes all of the following statements:

1. That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle upon a highway or public or private property used by the public for vehicular travel or parking within this municipality while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine;

2. That the person was arrested and charged with operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

3. That the officer asked the person to take the designated chemical test, advised the person of the consequences of submitting to the chemical test or refusing to take the chemical test, and gave the person the form described in division (C)(2) of this section;

4. That the person refused to submit to the chemical test or that the person submitted to the chemical test and the test results indicate that his or her blood contained a concentration of 0.08% ~~0.10%~~ or more by weight of alcohol, his or her breath contained a concentration of 0.08 ~~0.10~~ grams or more by weight of alcohol per 210 liters of his or her breath, or his or her urine contained a concentration of 0.11 ~~0.14~~ grams or more by weight of alcohol per 100 milliliters of his or her urine at the time of the alleged offense;

5. That the officer served a notice of suspension upon the person as described in division (D)(1)(a) of this section.

(2) The sworn report of an arresting officer completed under division (D)(1)(c) of this section shall be given by the officer to the arrested person at the time of the arrest or sent to the person by regular first class mail by the Registrar as soon thereafter as possible, but no later than 14 days after receipt of the report. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and is subsequently sworn to by the arresting officer. As soon as possible, but no later than 48 hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which he or she was arrested.

(3) The sworn report of an arresting officer completed and sent to the Registrar and the court under divisions (D)(1)(c) and (D)(2) of this section is prima facie proof of the information and statements that it contains and shall be admitted and considered as prima facie proof of the information and statements that it contains in any appeal under R.C. § 4511.191(H) relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report.

(E) (1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under division (D)(1)(a) of this section for the period of time described in R.C. § 4511.191(E) or (F) is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge that resulted in his or her being requested to take, or in his or her taking, the chemical test or tests under division (A) of this section affects the suspension only as described in R.C. § 4511.191(H)(2).

(2) If a person arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine and regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under R.C. § 4511.191(E) or (F), the person's initial appearance on the charge resulting from the arrest shall be held within five days of the persons' arrest or the issuance of the citation to him or her, subject to any continuance granted by the court pursuant to R.C. § 4511.191(H)(1) regarding the issues specified in that division.
(R.C. § 4511.191(A) - (D), (G)) (Rev. 2000)

(F) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under this section, R.C. § 4511.191 or 4511.196 shall operate a vehicle upon the highways or streets within this municipality. However, it is an affirmative defense to any prosecution brought pursuant to this section that the alleged offender drove under suspension because of a substantial emergency, provided that no other person was reasonably available to drive in response to the emergency.
(R.C. § 4511.192)

(G) Whoever violates division (F) of this section is guilty of a misdemeanor of the first degree. The court, in addition to or independent of all other penalties provided by law, may suspend for a period not to exceed one year the driver's or commercial driver's license or permit or nonresident operating privilege of any person who pleads guilty to or is convicted of a violation of division (F) of this section.

(R.C. § 4511.99(B)) Penalty, see § 70.99

Statutory reference:

Disposition of fines, immobilization of vehicle and impoundment of license plates, criminal forfeiture for municipal ordinance conviction, see R.C. § 4511.193

Effect of refusal to submit to test, seizure of license, suspension periods, appeal procedures, occupational driving privileges, and indigent drivers alcohol treatment funds, see R.C. § 4511.191(C) - (N)

Judicial pretrial suspension, initial appearance, see R.C. § 4511.196

Seizure of vehicles upon arrest, see R.C. § 4511.195

§ 96.12 OPERATING UNDER INFLUENCE OF ALCOHOL OR DRUGS PROHIBITED.

(A) No person shall operate or be in physical control of any vessel underway or shall manipulate any water skis, aquaplane, or similar device on the waters in this municipality if any of the following applies:

(1) The person is under the influence of alcohol or a drug of abuse, or the combined influence of alcohol and a drug of abuse.

(2) The person has a concentration of 0.08% ~~0.10%~~ or more by weight of alcohol in the person's blood.

(3) The person has a concentration of 0.11 ~~0.14~~ grams or more by weight of alcohol per 100 milliliters of the person's urine.

(4) The person has a concentration of 0.08 ~~0.10~~ grams or more by weight of alcohol per 210 liters of the person's breath.

(B) No person under 21 years of age shall operate or be in physical control of any vessel underway or shall manipulate any water skis, aquaplane, or similar device on the waters in this municipality if any of the following applies:

(1) The person has a concentration of at least 0.02 % but less than 0.08% ~~0.10%~~ by weight of alcohol in the person's blood.

(2) The person has a concentration of at least 0.028 grams but less than 0.11 ~~0.14~~ grams by weight of alcohol per 100 milliliters of the person's urine.

(3) The person has a concentration of at least 0.02 grams but less than 0.08 ~~0.10~~ grams by weight of alcohol per 210 liters of the person's breath.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1) and a violation of division (B)(1), (2), or (3) of this section, but the person shall not be convicted of more than one violation of those divisions.

(D) (1) (a) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, or of a municipal ordinance relating to operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the blood, breath, or urine, the court may admit evidence on the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in the defendant's blood, urine, or breath at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, or breath taken within two hours of the time of the alleged violation.

(b) When a person submits to a blood test, only a physician, registered nurse, or qualified technician or chemist shall withdraw blood for the purpose of determining its alcohol or drug of abuse content. This limitation does not apply to the taking of breath or urine specimens. A physician, registered nurse, or qualified technician or chemist may refuse to withdraw blood for the purpose of determining its alcohol or drug of abuse content if in the opinion of the physician, nurse, or technician or chemist, the physical welfare of the person would be endangered by the withdrawing of blood.

(c) The blood, urine, or breath shall be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to R.C. § 3701.143.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section, of a municipal ordinance relating to operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state while under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, or of a municipal ordinance substantially equivalent to division (A) of this section relating to operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol in the blood, breath, or urine, if there was at the time the blood, urine, or breath bodily substance was taken a concentration of less than 0.08% ~~0.10%~~ by weight of alcohol in the defendant's blood, less than 0.11 ~~0.14~~ grams by weight of alcohol per 100 milliliters of the defendant's urine, or less than 0.08 ~~0.10~~ grams by weight of alcohol per 210 liters of the defendant's breath, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or of a municipal ordinance substantially equivalent to division (B) of this section relating to operating or being in physical control of a vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol in the blood, breath, or urine.

(3) Upon the request of the person who was tested, the results of the test shall be made available to the person or the person's attorney or agent immediately upon the completion of the test analysis. The person tested may have a physician, registered nurse, or qualified technician or chemist of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer, and shall be so advised. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. A physician, registered nurse, or qualified technician or chemist who withdraws blood from a person pursuant to this section, and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim that is not in the nature of a claim of malpractice, for any act performed in withdrawing blood from the person.

(E) (1) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state while under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, or of a municipal ordinance relating to operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator or person found to be in physical control of the vessel underway involved in the violation or the person manipulating the water skis, aquaplane, or similar device involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for reliable, credible and generally accepted field sobriety tests for vehicles that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that have been set by the National Highway Traffic Safety Administration, that by their nature are not clearly inapplicable regarding the operation or physical control of vessels underway or the manipulation of water skis, aquaplanes, or similar devices, all of the following apply:

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

(b) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(c) If testimony is presented or evidence is introduced under division (E)(1)(a) or (E)(1)(b) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(2) Division (E)(1) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (E)(1) of this section.

(F) (1) As used in division (E) of this section, *NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION* has the same meaning as in R.C. § 4511.19.

(2) For the purposes of this section, *OPERATE* means that a vessel is being used on the waters in this state when the vessel is not securely affixed to a dock or to shore or to any permanent structure to which the vessel has the right to affix or that a vessel is not anchored in a designated anchorage area or boat camping area that is established by the United States Coast Guard, this state, or a political subdivision and in which the vessel has the right to anchor.

(R.C. § 1547.11) (Rev. 2003)

(G) Whoever violates this section is guilty of a misdemeanor of the first degree and shall be punished as provided in division (G)(1), (2), or (3) of this section.

(1) Except as otherwise provided in division (G)(2) or (3) of this section, the court shall sentence the offender to a term of imprisonment of three consecutive days and may sentence the offender pursuant to R.C. § 2929.21 to a longer term of imprisonment. In addition, the court shall impose upon the offender a fine of not less than \$150 nor more than \$1,000. The court may suspend the execution of the mandatory three consecutive days of imprisonment that it is required to impose by this division (G)(1) if the court, in lieu of the suspended term of imprisonment, places the offender on probation and requires the offender to attend, for three consecutive days, a drivers' intervention program that is certified pursuant to R.C. § 3793.10. The court also may suspend the execution of any part of the mandatory three consecutive days of imprisonment that it is required to impose by this division (G)(1) if the court places the offender on probation for part of the three consecutive days; requires

the offender to attend, for that part of the three consecutive days, a drivers' intervention program that is certified pursuant to R.C. § 3793.10; and sentences the offender to a term of imprisonment equal to the remainder of the three consecutive days that the offender does not spend attending the drivers' intervention program. The court may require the offender, as a condition of probation, to attend and satisfactorily complete any treatment or education programs, in addition to the required attendance at a drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of probation on the offender that it considers necessary.

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of this section; of R.C. § 1547.11; of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse; of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the blood, breath, or urine; of R.C. § 2903.06(A)(1); or of R.C. § 2903.06(A)(2), (3) or (4) or former R.C. § 2903.06 or 2903.07 in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, the court shall sentence the offender to a term of imprisonment of 10 consecutive days and may sentence the offender pursuant to R.C. § 2929.21 to a longer term of imprisonment. In addition, the court shall impose upon the offender a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence that it imposes upon the offender, the court may require the offender to attend a drivers' intervention program that is certified pursuant to R.C. § 3793.10.

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to more than one violation identified in division (G)(2) of this section, the court shall sentence the offender to a term of imprisonment of 30 consecutive days and may sentence the offender to a longer term of imprisonment of not more than one year. In addition, the court shall impose upon the offender a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence that it imposes upon the offender, the court may require the offender to attend a drivers' intervention program that is certified pursuant to R.C. § 3793.10.

(4) Upon a showing that imprisonment would seriously affect the ability of an offender sentenced pursuant to division (G)(1), (2), or (3) of this section to continue the offender's employment, the court may authorize that the offender be granted work release from imprisonment after the offender has served the 3, 10, or 30 consecutive days of imprisonment that the court is required by division (G)(1), (2), or (3) of this section to impose. No court shall authorize work release from imprisonment during the 3, 10, or 30 consecutive days of imprisonment that the court is required by division (G)(1), (2), or (3) of this section to impose. The duration of the work release shall not exceed the time necessary each day for the offender to commute to and from the place of employment and the place of imprisonment and the time actually spent under employment.

(5) Notwithstanding any section of the Ohio Revised Code that authorizes the suspension of the imposition or execution of a sentence or the placement of an offender in any treatment program in lieu of imprisonment, no court shall suspend the 10 or 30 consecutive days of imprisonment required to be imposed by division (G)(2) or (3) of this section or place an offender who is sentenced pursuant to division (G)(2) or (3) of this section in any treatment program in lieu of imprisonment until after the offender has served the 10 or 30 consecutive days of imprisonment required to be imposed pursuant to division (G)(2) or (3) of this section. Notwithstanding any section of the Ohio Revised Code that authorizes the suspension of the imposition or execution of a sentence or the placement of an offender in any treatment program in lieu of imprisonment, no court, except as specifically authorized by division (G)(1) of this section, shall suspend the 3 consecutive days of imprisonment required to be imposed by division (G)(1) of this section or place an offender who is sentenced pursuant to division (G)(1) of this section in any treatment program in lieu of imprisonment until after the offender has served the 3 consecutive days of imprisonment required to be imposed pursuant to division (G)(1) of this section.

(R.C. § 1547.99(G)) (Rev. 2003)