

# Sixth Edition

Judge Deborah J. Nicastro

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# **OHIO DRIVER'S LICENSE REINSTATEMENT HANDBOOK**

A Practical Guide for Attorneys

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## About the Authors

**Judge Deborah J. Nicastro** has served as a Garfield Heights Municipal Court Judge since 1994 and currently serves as the Presiding and Administrative Judge of the Court.

A graduate of the Case Western Reserve School of Law, Judge Nicastro actively practiced law from 1979 through 1993 in the areas of criminal defense and prosecution, real estate law, commercial contracts, taxation, civil rights, and municipal law.

She has taught continuing legal education for many organizations including the Ohio Judicial College, Cleveland Metropolitan Bar Association, and Cleveland-Marshall College of Law CLE Program. Judge Nicastro is the founder and organizer of the Kiwanis Annual Continuing Legal Education Program for municipal court practitioners.

Judge Nicastro currently serves on the Executive Board of the Ohio Judicial Conference (OJC), is Chair of the OJC Publications Committee, and as Chair of the OJC's Collaborative on the Local Budget Process, is editor of the ***Budget Process Handbook for Judges and Local Funding Authorities***. She also serves as a Trustee and the Chair of the Judicial Administration and Practice Committee of the Association of Municipal/County Judges of Ohio and is currently writing for and coordinating revisions of the AMCJO ***Benchmark***.

Judge Nicastro co-founded the License Reinstatement Clinic with Robert Walton, Esq. and in partnership with the Cleveland Marshall College of Law Pro Bono Clinic and the Legal Aid Society of Cleveland, conducts volunteer License Reinstatement Clinics in Cuyahoga County, Ohio.

Judge Nicastro has been awarded the Association of Municipal and County Judges of Ohio President's Award for Judicial Excellence, the Kiwanis Walter Heller Fellowship Award, the Freedom Award from the American Nationalities Movement, the Public Service Award from the Cleveland Italian American Heritage Committee, Kiwanis Hixson Award, Kiwanian of the Year and Columbian of Year from the Federation of Italian American Societies.

**Robert G. Walton** graduated from Cleveland-Marshall College of Law and has been in private practice since 1983. Mr. Walton has conducted cross-examination of witnesses during more than 200 suppression hearings and successfully defended clients in many jury trials. For the past 20 years the focus of Mr. Walton's practice has been defending persons charged with alcohol and drug related vehicular crimes. During that time, he has frequently taught OVI law, Driving under Suspension law, Reinstatement Of License law, and Misdemeanor Practice at CLE seminars sponsored by Cleveland-Marshall College of Law, the Ohio Judicial College, the Cleveland Legal Aid Society and several bar associations. Mr. Walton serves as the volunteer Magistrate for the University Heights Juvenile Diversion Program. He was named University Heights Volunteer of the year in 2008, and University Heights Citizen of the Year in 2013. Since 1996 Mr. Walton has served as an acting judge in the Shaker Heights Municipal Court.

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## CHAPTER ONE: INTRODUCTION

### Introduction

In today's economic environment, the lack of driving privileges for Ohio workers often results in loss of employment or the inability to gain employment, slowing economic recovery even more. The periodic creation of new types of suspensions by an aggressive Ohio legislature and the suspended drivers' apparent willingness to ignore the suspensions by continuing to drive without valid licenses has placed a burden on law enforcement and municipal and county courts' statewide.

In 2019, the Ohio Bureau of Motor Vehicles ("OBMV") processed 415,318 new suspensions and collected \$19,269,780.00 in reinstatement fees. Unreported is the total number of licenses which are under suspension.

### Scope of This Handbook

The purpose of this Handbook is to assist practitioners in understanding Ohio's license suspension law and reinstating driver's licenses which have been suspended, cancelled, or forfeited by an Ohio court or the Ohio Bureau of Motor Vehicles. Only the major suspensions are reviewed in this Sixth Edition. Many other court suspensions are possible but are not as frequent as those discussed herein. The purpose does not include strategies for trial or sentencing of drivers charged with traffic offenses.

This Handbook is not a substitute for skilled legal research. The reader will find that the statutory provisions which govern reinstatement of licenses can be confusing, conflicting, and illogical. Study of those provisions and relevant case law is necessary for a full understanding of the available alternatives. Thus, this Handbook may, in many instances, provide quick answers to simple questions but, in other instances, it will be the beginning of your research on more complicated issues.

On September 6, 2016, this Handbook was cited as authority by Judge Stuart A. Friedman on a licensing issue in *State v. Traci M. Philpott*, Cuyahoga County Common Pleas Case No. CR 602053. Thus, the practitioner may be able to rely on that decision to use this Handbook as authority in license related matters.

### Other Resources

As the agency entrusted with driver's licensing, the Ohio Bureau of Motor Vehicles (OBMV) has developed helpful materials which provide the practitioner with insight into its policies and procedures. To the extent that you believe these policies and procedures are accurate, they will also guide you in the task of reinstating a license. If you believe them to be inaccurate at times, you at least will understand the OBMV perspective.

The OBMV also has on-line resources that explain the information contained in the above referenced manual at <http://www.bmv.ohio.gov/suspensions-reinstatements.aspx>

## Obtaining the Suspension Record

The first step in reinstating a license is to discover the reasons for the suspension. The driver may go to an OBMV reinstatement office and obtain a printout that lists all pending impediments to reinstatement and some reinstatement requirements.

The OBMV also provides the same information on-line but the driver must know his or her social security number and driver's license number, ID card number or the number from a suspension notice. The search begins at

<https://services.dps.ohio.gov/BMVOnlineServices/Home/Login?returnUrl=%2FBMVOnlineServices%2FDL%2FReinstatement>

If the driver has a pending court case, the court may access this information on-line at your request with only the driver's social security number.

## CHAPTER TWO: GENERAL PRINCIPLES

### Commonly Used Words and Terms

**"License"** typically refers to a driver's license, probationary license (persons between 16 and 18 years of age), restricted license (persons subject to conditions imposed by the OBMV), and commercial license (issued to persons to operate commercial motor vehicles).

**"Suspension"** means the withdrawal, by action of a court or the OBMV, of a license or nonresident operating privilege for a specific period or until conditions are met. See ORC § 4510.01(H). A suspension may be "over" but the person cannot restore full driving privileges until reinstatement conditions are met.

**"Court Suspension"** generally means a suspension that a court elects (optional) or is required (mandatory) to impose pursuant to a conviction for an offense. Most court suspensions are based on a numerical class system (1 through 7). The sentencing provisions for an offense designate whether suspension is an available sanction and, whether it is optional (may), or mandatory (shall), and the applicable class. Each class has a minimum and maximum range from which the court imposes a definite period of suspension. See ORC §4510.02(A).

**"OBMV Suspension"** generally means a suspension that the OBMV is required to impose pursuant to an applicable statute. Most OBMV suspensions arise from circumstances unrelated to a conviction. The statute that requires a suspension specifies its length, based upon an alphabetical class system (A through F). OBMV suspensions are for a precise period or "until conditions are met". See ORC §4510.02(B).

**"Unclassified Suspension"** means that the statute which provides for the suspension does not refer to a class. Rather, the statute states the length of the suspension. Except as otherwise provided in such statutes, a suspension imposed thereunder is subject to ORC Chapter 4510, which deals primarily with suspensions and driving privileges. See ORC § 4510.02(D). OVI conviction suspensions are unclassified but physical control conviction and OVUAC convictions are unclassified.

**"Reinstatement Requirement"** generally means a requirement that must be met by a driver after the suspension is over but before driving privileges may be fully restored. Some suspensions involve numerous reinstatement requirements. Some, but not all, potential requirements may include paying a reinstatement fee; completing a remedial driving course; passing a complete driver's examination; showing proof of financial responsibility; filing and maintaining proof of financial responsibility for a designated period; obtaining a release of a warrant block or license forfeiture; and paying past due child support.

**"Proof of Financial Responsibility"** [See ORC §4509.01(K)] means proof of ability to respond in damages for liability, on account of accidents occurring after the effective date of such proof and arising out of the ownership or use of a motor vehicle in the amount of...

1. \$25,000.00 because of bodily injury to or death of one person in an accident.
2. \$50,000.00 because of bodily injury to or death of two or more persons in an accident.
3. \$25,000.00 because of injury to property of others in an accident.



**"Accident"** means any accident involving a motor vehicle which results in bodily injury to or death of any person, or damage to the property of any person in excess of \$400.00. See ORC §4509.01(J).

## Statutory Classes of Suspensions

License suspensions are either imposed by a Court or the OBMV under statutory authority. Courts do not have the inherent authority to suspend a driver's license in the absence of statutory authority. In most cases, the Ohio Revised Code defines the length of suspensions by classes.

### CLASSES OF COURT IMPOSED SUSPENSIONS – ORC §4510.02(A)

Class One:	Life
Class Two:	3 years to Life
Class Three:	2 years to 10 years
Class Four:	1 year to 5 years
Class Five:	6 months to 3 years
Class Six:	3 months to 2 years
Class Seven:	Not to exceed 1 year
Unclassified:	Set by statute

Some court-imposed suspensions are optional, depending on the discretion of the court, and others are mandatory. A court must impose a mandatory suspension for a definite period from the range above. The statute for each offense specifies the class of suspension and whether the suspension is mandatory or optional.

A few court suspensions are unclassified, e.g., OVI suspensions court suspensions after April 6, 2017. The statute itself, rather than referring to §4510.02(A) and identifying a class thereunder, specifies the period of suspension.

### Classes of OBMV Imposed Suspensions – ORC §4510.02(B)

Class A:	3 years
Class B:	2 years
Class C:	1 year
Class D:	6 months
Class E:	3 months
Class F:	Until conditions are met

OBMV imposed suspensions are mandatory and the period of suspension is not left to the discretion of the agency. The OBMV will impose the required period of suspension from the classes described above. The Class F suspension is the only suspension which is for an indefinite period because it is solely

dependent upon the driver taking the necessary steps to meet all the conditions required for reinstatement.

## Conflicting Statutory Provisions

Vigilance is required to understand the laws applicable to suspensions and reinstatement and to properly advise drivers seeking reinstatement. Some of the laws are conflicting and require integration and analysis to determine what the reinstatement requirements actually are and whether a driver is being subjected to an erroneous reinstatement requirement.

Keep in mind ORC §2901.04(A), which provides in relevant part that “sections of the Revised Code defining...penalties shall be strictly construed against the state, and liberally construed in favor of the accused.”

For example, it is sometimes difficult to determine for what period a driver must file and maintain proof of financial responsibility with the OBMV after suspension of a license. If a driver is convicted of Operating a Vehicle after Underage Consumption, the court must impose a Class 6 suspension under ORC §4511.19(H) and pursuant to ORC §4510.038, the driver must file and maintain proof of financial responsibility in accordance with ORC §4509.45. However, ORC §4509.45(B) designates the length of time that a driver must file and maintain proof while under a OBMV imposed Class A through F suspension, only. It makes no provision for classified and unclassified court imposed, Class 1 through 7 suspensions. As ORC §4509.45 (B) gives no guidance as to how long the OVUAC offender should have to file and maintain proof under a Class 6 suspension, the practitioner is left to speculate, and the driver is left to the interpretation of the OBMV as to how it will implement the conflicting statutes. In this case the OBMV informs drivers that they must "provide evidence of liability insurance currently in effect."

## CASE LAW-AUTHORITY TO SUSPEND DRIVER'S LICENSE

### ***State v. Knowlton, Fourth Dist., Washington County, 2012-Ohio-2350***

There are three statutes that prohibit failing to stop after an accident (hit skip). Knowlton was charged under ORC §4549.03, the least serious of the hit-skip statutes. It requires the driver of a car involved in an accident resulting in damage to real property, or personal property attached to real property, legally upon or adjacent to a road or highway to immediately stop and take certain actions to locate or notify the owner or person in charge of the property of the accident.

Knowlton was convicted and the judge suspended his license. He appealed. The appellate court interpreted the relevant statutes, ORC §4549.03 and ORC §2929.27(A)(13). The legislature has designated which offenses it deems worthy of a license suspension by providing in various offense statutes that a court must impose a license suspension (mandatory) or may impose a license suspension (discretionary). Nothing in ORC §4549.03 authorizes a court to suspend the license of a person who violates that section. As to ORC §2929.27(A)(13), a court imposing sentence for a misdemeanor may impose a nonresidential sanction including, if authorized by law, suspension of the offender's privilege to operate a motor vehicle. In Knowlton's case, a suspension of his license was not authorized by the law and the appellate court vacated the license suspension that was imposed for failure to stop.

### **State v. Smith, First Dist., Hamilton County, 2014-Ohio-4548**

Smith was convicted of tampering with evidence and the court imposed a driver's license suspension as part of his sentence. Smith appealed the sentence on the basis that the suspension was not an authorized penalty for the offense.

The court of appeals agreed with Smith. Initially, it stated that "Crimes are statutory, as are the penalties therefor, and the only sentence which a trial court may impose is that provided for by the statute." In this case, no statute authorized the court to impose the suspension. The court vacated the suspension portion of Smith's sentence as being void.

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## CASE LAW- GENERAL VERSUS SPECIFIC RESTITUTION STATUTES

### **State v. Board, Ninth Dist., Lorain County, 2021-Ohio-92**

Board was convicted of failure to stop after an accident and driving under suspension. One of the grounds for his appeal of his sentence was that the court erred in ordering him to pay restitution of almost \$28,000.00. He contended that each of the statutes he was convicted of limited restitution to \$5,000.00.

The court of appeals reviewed the relevant statutes. The statutes under which he was convicted state in relevant part that if the offender does not provide the court with proof of financial responsibility the court may order restitution in an amount not exceeding \$5,000.00 for any economic loss rising from the accident that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense.

On the other hand, the felony (ORC §2929.18(A)(1)) and misdemeanor (ORC §2929.28(A)(1)) restitution statutes allow courts to order restitution in an amount not to exceed the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

Based on its determination that the two sets of statutes govern distinct types of economic loss the court said it is unclear from the plain language of the statutes whether the legislature intended awards of restitution under the offense statutes to supplant awards of restitution under the general sentencing statutes. According to the court the differences between the two sets of statutes beg the question of whether they operate independently of each other or, if not, whether an offender may choose which statute applies by either providing or withholding proof of financial responsibility.

The trial court never considered the issues set forth by the appellate court. The court of appeals reversed the trial court and remanded the case with instructions that the trial court must consider the applicability and intersection of the two sets of statutes.

## “Failure to Reinstate” Status

The status of a license between the expiration of all suspension periods and compliance with all reinstatement requirements is commonly referred to as “failure to reinstate.” The license is not suspended because the periods of all suspensions have expired. However, the license is not reinstated until all reinstatement requirements are met, such as payment of reinstatement fees and showing proof of financial responsibility.

The penalties for driving under the “failure to reinstate” status may be less onerous than for driving under suspension. For instance, if a driver is convicted of driving under an OVI suspension, the sentence includes mandatory jail time, another license suspension, and the assessment of 6 points. The sentence for the driver convicted of driving with a “Failure to Reinstate” status after expiration of a suspension period does not include jail absent multiple prior convictions, allows an optional license suspension, and is a two-point offense.

If a license status is “failure to reinstate” but the driver complies with all OBMV reinstatement requirements except payment of all reinstatement fees owed in the minimum amount of \$150.00, the driver may apply to the OBMV for a driver’s license with a reinstatement fee payment plan.

## Reinstatement Fees and Payment Plans - ORC §4510.10

Whether a license suspension is imposed by a court or the OBMV, a reinstatement fee is usually assessed by the OBMV pursuant to a statutory directive. These fees are to be paid to the OBMV.

Currently, the OBMV may not reinstate a license until the driver has paid all reinstatement fees; the fees are discharged in bankruptcy; a court orders a reinstatement fee payment plan or extension of time to pay the fee; or the driver enters a reinstatement fee payment plan directly with the OBMV. Reinstatement fees may be discharged in bankruptcy if they are listed in the schedule of debts.

### COURT ORDERED REINSTATEMENT FEE PAYMENT PLAN

A driver may petition for, and a municipal or county court may grant, a payment plan or extension for the payment of the reinstatement fees if it determines that the driver cannot reasonably pay the fees. The court may order the driver to pay no less than \$50 per month to the OBMV until all fees are paid in full or grant an extension to pay all reinstatement fees for a period not to exceed 180 days. A court has jurisdiction and authority to modify payment plans. A driver may not be prosecuted for failing to pay reinstatement fees if an order grants a reinstatement fee plan or extension.

For practical purposes, the court should only grant a reinstatement fee payment plan if it is granting limited driving privileges as the OBMV is required to grant the reinstatement fee payment plan if there are no impediments to reinstating the license other than the fees that are due.

### OBMV REINSTATEMENT FEE PAYMENT PLAN

Pursuant to ORC §4510.10 (G) and rules adopted by the Registrar, a driver may apply directly to the OBMV for an OBMV Reinstatement Fee Installment Plan (OBMV Plan).

To be eligible for the OBMV Plan, a driver must meet all the eligibility requirements, as follows:

- owes at least \$150.00 in reinstatement fees.
- has met all reinstatement requirements except for paying the fees.
- does not have a pending suspension.
- has current proof of financial responsibility.
- is not currently on a court ordered reinstatement fee payment plan.

Application may be made on-line at [ohiobm.gov](http://ohiobm.gov) or in person at a Regional Reinstatement or Deputy Registrar office. BMV Form 1152 must be completed, and that Form is available online at the above address. If approved, the driver will receive notice and the license status will be listed as "valid," "expired," or "cleared to retest," as applicable. If denied, the OBMV will provide a notice indicating the reasons.

The minimum monthly payment under the OBMV Plan is \$50.00. If a driver misses a payment, the Plan will become inactive and the license status will revert to "failure to reinstate." If a driver makes a \$ 50.00 payment after the Plan becomes inactive it will be reactivated when the payment has been applied to the OBMV record.

If a driver is currently on a court ordered reinstatement fee payment plan, a termination order must be obtained from the court and submitted to the OBMV before applying for the OBMV Plan. §

The significant difference between a court ordered plan and the OBMV Plan is that under the OBMV Plan the Registrar will record a driver's license status as "valid," "expired," or "eligible to test" if the payments are current, and the driver does not get another suspension. With a court ordered plan, the Registrar records the driver's status as "failure to reinstate" with limited driving privileges. Thus, the major benefit of the OBMV Plan is that the driver will have a valid license (or "expired" or "eligible to test," as applicable) during compliance with the Plan.

## PERMANENT DRIVER'S LICENSE REINSTATEMENT FEE DEBT REDUCTION AND AMNESTY PROGRAM-ORC §§4510.101-4510.108

The Permanent Driver's License Reinstatement Fee Debt Reduction and Amnesty Program ("Program") is in addition to any other statutory, reinstatement fee payment plan. The Program is divided into two phases depending on the date of the offenses for which reinstatement fees are owed.

### EXCLUSIONS

Totally exclude from the Program is any offense if an essential element of the offense, the basis of the charge, or any underlying offense involves alcohol, a drug of abuse, a combination thereof, or a deadly weapon. "Deadly weapon" has the same meaning as in ORC §2923.11. "Drug of abuse" has the same meaning as in ORC §4511.181.

### ELIGIBLE OFFENSES

Reinstatement fees resulting from the below list of eligible offenses qualify for the Program.

- 2151.354-Juvenile unruly delinquent adjudication
- 2152.19- Juvenile delinquent adjudication
- 2152.21-Juvenile traffic offender
- 2913.02-Theft of gas from a gas station
- 4507.20-Incompetent to be licensed
- 4509.101-Non-compliance suspension
- 4509.17-Security suspension
- 4509.24-Default in payment agreement after accident
- 4509.40-judgment suspension
- 4510.037- 12-point suspension
- 4510.05-Suspension for violation of municipal ordinance similar to state code
- 4510.06-Federal court suspension/cancellation
- 4510.15-Reckless operation suspension
- 4510.22-Failure to appear or pay fine forfeiture
- 4510.23-Adjudication of incompetence to be licensed
- 4510.31- Juvenile probationary, restricted license, or temporary permit
- 4510.32-School drop-out suspension
- 4511.203-Wrongful entrustment suspension
- 4511.205-Juvenile use of electronic device while driving suspension
- 4511.251-Street racing suspension
- 4511.75-Failure to stop for a school bus suspension
- 4549.02-Failure to stop after accident on public roads suspension
- 4549.021- Failure to stop after accident on other than public roads suspension
- 5743.99-Trafficking cigarettes and/or distribution of tobacco to avoid tax suspensions

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## DEBT REDUCTION V. AMNESTY

The Program directs complete amnesty from payment of reinstatement fees for indigent drivers but only debt reduction for non-indigent drivers. The debt reduction and amnesty relief are the same for both Phase 1 and Phase 2.

If the driver is not indigent, the debt reduction is as follows:

- If the driver has multiple, eligible offenses, the driver must pay the lowest reinstatement fee or 10% of the total fees owed, whichever is greater.
- If the driver has just one eligible offense, the driver must pay one-half of the reinstatement fee.

If the driver is indigent, the driver is granted complete amnesty.

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## INDIGENCY DEFINITION - ORC§4510.101(F)

"Indigent" means a person who is a participant in any of the following programs:

- (1) The supplemental nutrition assistance program administered by the department of job and family services pursuant to ORC §5101.54;
- (2) The Medicaid program pursuant to ORC Chapter 5163;
- (3) The Ohio works first program administered by the department of job and family services pursuant to ORC §5107.10;
- (4) The supplemental security income program pursuant to 20 C.F.R. 416.1100;

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## REINSTATEMENT FEE PAYMENT PLAN FOR UNPAID BALANCE

If the driver owes reinstatement fees for excluded or ineligible offenses such as OVI or is unable to pay the reinstatement fee in one lump sum despite application of debt reduction or amnesty, the OBMV must grant a reinstatement fee payment plan with a minimum payment of \$25.00 per month.

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## QUALIFYING FOR PHASE ONE OF DEBT REDUCTION OR AMNESTY

Non-indigent drivers qualify for Phase 1 of the Program if

- Any eligible offenses occurred before 09/15/2020. Reinstatement fees for offenses occurring after 09/15/2020 may not be included in the debt reduction calculation.
- At least 18 months have expired since end of any period of suspension ordered by a court for at least one suspension.
- The driver is not indigent.

Indigent drivers qualify for Phase 1 of the Program if

- Any eligible offenses occurred before 09/15/2020. Reinstatement fees for offenses occurring after 09/15/2020 may not be included in the amnesty.
- The driver is indigent.



The Program does not affect any court ordered suspension. The driver does not have to have completed the term of court ordered suspension before being admitted to Phase 1 Program but must complete any suspension ordered by the court.

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## QUALIFYING FOR PHASE TWO OF DEBT REDUCTION OR AMNESTY

Non-indigent drivers qualify for Phase 2 of the Program if

- The driver is not eligible for Phase 1 and has not participate in Phase 1 or Phase 2.
- Eligible offenses occurred after 09/15/2020.
- At least 18 months have expired since the end of any period of suspension ordered by a court for at least one suspension.
- The driver is not indigent.

Indigent drivers qualify for Phase 2 of the Program if

- The driver is not eligible for Phase 1 and has not participate in Phase 1 or Phase 2.
- Any eligible offenses occurred before 09/15/2020.
- The driver is indigent.

Any driver who has received either a reduction or complete amnesty of reinstatement fees under the Phase 2 is not eligible for a subsequent reduction or complete amnesty of reinstatement fees through the Program.

Limitations on Phase 2

- ONE TIME OPPORTUNITY: A driver who has received either a reduction or complete amnesty of reinstatement fees under Phase 2 is not eligible for a subsequent reduction or complete amnesty of reinstatement fees through the program.
- An eligible offense that occurred prior to 09/15/2020 may not be included in Phase 2.
- No eligible offense that is committed on or after the date a driver becomes enrolled in the Program is eligible for the relief granted by the Program.

The Program does not affect any court ordered suspension. Participants in Phase 2 must complete any suspension ordered by the court.

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## ACCESSING THE PROGRAM

The OBMV is charged with notifying all eligible drivers of that they qualify for the Program and the action required to be taken. The OBMV is authorized to search for current drivers' addresses for purposes of the notification. Additionally, the OBMV is authorized to remove deceased persons from its database.

If a driver does not receive notification of eligibility from the OBMV but believes he/she qualifies for either Phase of the Program, the driver may apply to the OBMV to be admitted to the Program.

## Proof of Financial Responsibility - ORC §4509.01(K) and ORC §4509.16

Proof of financial responsibility is required to operate a motor vehicle in Ohio. But providing proof of financial responsibility to the OBMV is a significant reinstatement requirement for most suspensions.

Proof of financial responsibility may be shown by providing a copy of the declaration page of a policy of liability insurance, certificate of insurance, a financial responsibility identification card issued by an insurance company, or a binder of liability insurance bearing the original signature of an authorized insurance agent, a bond, a certificate of self-insurance. [ORC §4509.45(B)]

Proof must indicate current coverage, and if submitted prior to the end of the suspension, must cover the end date of the suspension. Additionally, the name of the person suspended must be listed as an insured on the policy, or on some other insurance documentation presented, or on the liability bond.

Proof of financial responsibility may be given through use of an electronic wireless communication device.

If a driver is required to file and maintain proof of financial responsibility with the OBMV, the most recognized form of proof is the SR 22 certificate which is an OBMV form completed by an insurance agent, filed with the OBMV, and carried by the driver. The SR 22 certificate is frequently, but incorrectly, referred to as an "SR 22 bond." In fact, it is not a bond but merely a document which proves that the driver has the mandatory minimum coverage in Ohio.

In addition to providing proof of financial responsibility to the OBMV, a driver may be under a statutory duty to file and maintain that proof for a definite period after the suspension of the license in order to avoid another OBMV imposed suspension. Hence, a difference exists between the requirements of showing proof of financial responsibility to the OBMV and filing and maintaining proof of financial responsibility with the OBMV.

Proof must be filed and maintained for 5 years from the OBMV imposition of some class A, B, or C suspension and shall be filed and maintained for 3 years from the date of the OBMV imposition of some class D, E, or F suspensions. Where proof is required to be filed AND maintained, an electronic wireless communication device cannot be used to prove financial responsibility.

For example, when an OVI conviction suspension expires, a driver must show proof of financial responsibility to the OBMV. In contrast, when a non-compliance suspension is imposed, a driver must file and maintain proof of financial responsibility with the OBMV for a statutorily prescribed period. If the driver successfully files and maintains proof, the license status is described as "in compliance."

If the coverage is cancelled during the period when proof must be filed and maintained, the license status reverts to "suspended" status until new proof is filed. Insurance companies are required to inform the OBMV of the cancellation of coverage during the period when proof must be filed and maintained. If the driver operates a motor vehicle during the "suspended" status, he or she will be charged with driving under a financial responsibility suspension.

## Impact of Vehicle Immobilization and Vehicle Forfeiture on License Reinstatement - ORC §§4503.233, 4503.234

As a sanction for a conviction of driving under some suspensions and wrongful entrustment, the court has the option to order the immobilization (ORC §4503.233), or in some cases, forfeiture (§4503.234) of the offender-owned vehicle. Immobilization or forfeiture is mandatory for some OVI offenses and driving under an OVI suspension. If a vehicle is forfeited, the offender's ability to register a vehicle is blocked for 5 years (ORC §4503.234).

The imposition of these sanctions, including the 5-year registration block, commonly referred to as a "Q" block, has no impact upon the reinstatement of a suspended license except that the offender is required to pay the \$100 immobilization/ forfeiture fee to the OBMV before the offender can qualify for reinstatement.

## Impact of the Ohio Points System on Reinstatement of Licenses – ORC §4510.036

Points as designated in ORC §4510.036 must be imposed upon conviction for certain offenses. In recognition of the license suspension problem in Ohio, the legislature reduced the points for most driving under suspension offenses effective September 23, 2011.

## **Limited** Driving Privileges During Suspensions - ORC §4510.021

A court may grant limited driving privileges during a court-imposed suspension unless expressly prohibited by statute. [ORC §4510.021(A)]

In contrast, a court may not grant limited driving privileges during any OBMV imposed suspension unless expressly authorized by statute. If driving privileges are authorized for an OBMV suspension, the driver may file a petition “in a court of record in the county in which the person resides” under [ORC §4510.021(B) or in a petition under ORC §4510.73.

The Court is required to specify the purposes, times, and places of the privileges and, in its discretion, may impose any other reasonable conditions.

Limited driving privileges may be granted, where authorized, for the following purposes:

- occupational, educational, vocational, or medical purposes
- taking the driver’s license exam
- attending court-ordered treatment
- any other purpose the court determines to be appropriate.
- attending any court proceeding related to the offense for which the offender’s suspension was imposed.
- transporting a minor to a childcare provider, day-care, preschool, school, or any other location for purposes of receiving childcare
- where the driver is under the age of 18, practicing driving with the driver’s parent, guardian, or other custodian who holds a valid license and occupies the seat next to the driver.

Some suspensions carry a “hard time” period during which the court may not grant driving privileges. [ORC §4510.13] A court cannot give limited driving privileges to an eligible driver absent proof of current financial responsibility.

If driving privileges are granted, the court may be required to order that the vehicle be operated with restricted plates or a disabling device such as an ignition interlock. If the restricted plates and disabling device are not mandatory, the court, generally, has the discretion to impose those requirements. [ORC §4510.21(C)]

The offender must obtain a restricted license from the OBMV if granted limited driving privileges with an ignition interlock device as follows [ORC §4510.13]:

1. The court must send a certified copy of the driving privileges order to the OBMV.
2. The offender shall present to the OBMV.
  - a. the court order granting unlimited driving privileges.
  - b. a certificate signed by the installer affirming a certified ignition interlock device is installed in his/her vehicle.
3. The OBMV will issue a license which states that the offender is prohibited from operating a vehicle without being equipped with an ignition interlock device. The OBMV may not issue the restricted license if the offender has other suspensions for which limited driving privileges have not been granted.

4. If the offender operates a vehicle without obtaining the restricted license, the offender is subject to the same penalties as driving under an OVI suspension under ORC §4510.14. This is a strict liability offense and ORC §2901.20 does not apply.

Some basic prerequisites for limited driving privileges are required by statute. The minimum statutory requirements are as follows:

1. Serve any “hard time” portion of suspension if any.
2. Pay court filing fee.
3. Obtain court order granting privileges.
4. Must have unexpired license.
5. Must be in compliance with all other suspensions and reinstatement requirements.
6. Provide proof of financial responsibility to the court and file and maintain proof with the OBMV for a specific period if required by statute.

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## CASE LAW-VALIDITY OF DRIVING PRIVILEGES

### ***City of Lakewood v. Armstrong, Eighth Dist., Cuyahoga County, 2014-Ohio-4219***

A municipal court found Armstrong guilty of DUS after a bench trial despite evidence that another court had granted him driving privileges with an IID which provided “May drive 7 days per week/24 hours per day” concerning the suspension. The court found that order to be contrary to law and void apparently because it did not contain any restrictions as to purposes, times, and places.

Armstrong appealed. The court of appeals stated in part that Armstrong cannot be convicted of driving under suspension after he produced his privileges from one municipal court based solely on another municipal court’s opinion that the privileges are invalid. The appellate court reversed and vacated the conviction.

## **Unlimited** Driving Privileges for First Time OVI Offender – ORC §4510.022

Effective April 6, 2017, a driver whose license is suspended because of a conviction of operating a vehicle while under the influence of alcohol, a drug of abuse or combination of both for the first time within ten years qualifies for unlimited driving privileges.

“Unlimited driving privileges” means there are no restrictions as to purpose, time, or place but the suspending court...

- Has discretion to impose other reasonable conditions.
- MUST require operation with a certified ignition interlock device and “restricted license.”

Unlimited driving privileges with a certified ignition interlock device may only be granted if driving privileges are permitted by statute in the first instance. The “hard time” period during which the court may not grant driving privileges still applies to unlimited driving privileges.

Unlimited driving privileges are not available pretrial and may only be granted upon conviction by the court imposing the suspension.

The court may reduce the period of the court’s suspension by half if unlimited driving privileges are granted.

The court must suspend the jail term it imposed if unlimited privileges are granted but if the offender violates any condition of the order during the period of suspension, the court shall require the offender to serve the jail term. The court may still impose the 72-hour driver intervention program as part of community control sanctions.

The court must assess a \$2.50 fee to be deposited into the state highway safety fund which will be used to maintain the habitual OVI/OMWI registry. The court may assess an additional \$2.50 to be deposited into the court’s special project fund.

There are serious penalties for an “ignition interlock device violation,” which means that a certified ignition interlock device indicates that it has prevented an offender from starting a motor vehicle, because of either of the following [ORC §4510.46]:

- The device was tampered with or circumvented.
- The analysis of the deep-lung breath sample or other method employed by the ignition interlock device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the ignition interlock device from permitting the motor vehicle to be started.

If the court grants unlimited driving privileges, the court must provide the offender with the following:

1. A certified order granting unlimited driving privileges.
2. A notice that he/she is subject to the following sanctions for an ignition interlock device violation.

- a. For a first violation, court may order the offender to wear a remote monitor that provides continuous alcohol monitoring.
- b. For a second violation, the court shall order the offender to wear a remote monitor that provides continuous alcohol monitoring for 40 days.
- c. For a third and subsequent violation, the court shall order the offender to wear a remote monitor that provides continuous alcohol monitoring for 60 days.
- d. For any ignition interlock device violation or operation of a vehicle without the required ignition interlock device, the court may increase the period of license suspension and the period for use of the certified ignition interlock device by a factor of two. However, the increase may not exceed the maximum suspension or period for use of the interlock device permitted for the offense, i.e., 3 years.
- e. If the violation occurs within 60 days of the end of the suspension and the court does not increase the suspension, the court shall.
- f. Extend the period of suspension and the period for use of the ignition interlock for 60 days from the date of the violation.
- g. If a violation occurs after the 60-day extension is ordered, enter another order extending the suspension and the period for use of the ignition interlock by 60 days from the date of the violation.
- h. The OBMV is prohibited from reinstating the offender's license unless the period of suspension is served, and no ignition interlock device violations have been committed with 60 days prior to the reinstatement application.

The offender may appeal any extension of the period of suspension or use of the ignition interlock as follows [ORC §4510.46]:

1. The ignition interlock monitor is required to notify the court and the OBMV of any alleged violation.
2. Upon receipt of the monitor's notice, the court must send a notice to the offender as follows.
  - a. The court has received evidence of an ignition interlock violation.
  - b. If applicable, that the offender must now wear a remote monitor that provides for continuous alcohol monitoring.
  - c. The court may increase the period of suspension by a factor of two and may increase the period for using the ignition interlock device by a factor of two and whether, in fact the court is increasing the suspension and the time for use of the device.
  - d. Whether the court is increasing the period of suspension by 60 days if the alleged violation is within 60 days of the termination of suspension
3. The offender has 14 days of receiving the violation notice and if filed later than 14 days, the appeal is untimely.
4. The court may hold a hearing on the appeal, but the hearing is limited to "determining whether the offender in fact was prevented from starting a motor vehicle...because the offender committed an ignition interlock device violation."
5. If the court finds by a preponderance of evidence that a violation occurred, the appeal will be denied. If the court finds no violation, the order increasing the suspension will be terminated.
6. Nothing in this statute prevents the court from revoking driving privileges once granted.

The offender must obtain a restricted license from the OBMV if granted unlimited driving privileges with an ignition interlock device as follows:

1. The court must send a certified copy of the driving privileges order to the OBMV.
2. The offender shall present to the OBMV.
  - a. the court order granting unlimited driving privileges.
  - b. a certificate signed by the installer affirming a certified ignition interlock device is installed in his/her vehicle.
3. The OBMV will issue a license which states that the offender is prohibited from operating a vehicle without being equipped with an ignition interlock device. The OBMV may not issue the restricted license if the offender has other suspensions for which limited driving privileges have not been granted.
4. If the offender operates a vehicle without obtaining the restricted license, the offender is subject to the same penalties as driving under an OVI suspension under ORC §4510.14. This is a strict liability offense and ORC §2901.20 does not apply.



## Administrative Review and Appeals

ORC §119.06 provides the right to a hearing before the suspension of a driver's license by the Registrar. ORC Chapter 119 provides for the review mechanism, including notice of suspension and right to a hearing, unless another provision of the Ohio Revised Code provides for a different procedure. An example of a different procedure is the 12-point suspension where ORC §4510.037 provides for a direct appeal to the municipal or county court rather than an adjudicatory hearing before the Registrar or any litigation in a court pursuant to ORC §4510.73.

ORC §119.062 expressly provides also that the Registrar is not required to hold any prior hearing in connection with an order canceling or suspending a motor vehicle driver's or commercial driver's license pursuant to sections 2903.06, 2903.08, 2907.24, 2921.331, 4549.02, 4549.021, or 5743.99 or any provision of Chapter 2925, 4509, 4510, or 4511 of the Revised Code or in connection with an out-of-service order issued under Chapter 4506 of the Revised Code.

ORC §119.12 provides that any party adversely affected by the final action of the Registrar in connection with a driver's license may appeal the decision to the court of common pleas.

## Multiple Forums – ORC §4510.73

As the practitioner begins to study the morass of available administrative appeals and hearings for OBMV imposed suspensions, forfeitures and blocks as well as the multitude of court suspensions, he or she will find that a single driver may be involved in multiple forums and multiple time-consuming proceedings to avoid or clear suspensions.

To partially address the multiplicity of forums, ORC §4510.73 provides that any court shall have concurrent jurisdiction to "adjudicate all issues and appeals" including validity and suspension issues as well as driving privileges under a OBMV imposed suspension, notwithstanding any provision of the ORC to the contrary. Thus, courts may now hear any appeal or conduct any hearing which was formerly within the sole jurisdiction of the OBMV or restricted to certain courts. Once the jurisdiction of a court is invoked, that jurisdiction cannot be divested unless the court consents to a transfer of jurisdiction by issuance of a court order.

To facilitate the court proceedings, a court may stay any suspension and may order the OBMV to renew an expired license, if expired for less than 6 months, pending its resolution of any issue.

ORC §4510.73 does not authorize a court do any of the following:

1. Waive or alter a reinstatement requirement including reinstatement fees.
2. Modify an order from another court, resulting in a suspension, forfeiture, or block.
3. Exceed the scope of an appeal or administrative hearing prescribed by statute or the administrative code.

Two express restrictions on the courts' authority under ORC §4510.73 are as follows:

1. A court may not hear any matter that involves a Commercial Driver's License disqualification. The court may address other issues pertaining to the holder of such a License but may not alter the status of the Commercial Driver's License.
2. A court may not unilaterally assume jurisdiction of all matters pertaining to a suspended license. The court's jurisdiction must be invoked by a "holder of a driver's license" by means of a motion, appeal or petition which expressly states the issue to be determined by the court.

Note that jurisdiction may only be invoked by a "holder of a driver's license," pursuant to ORC §4510.73. Presumably, persons who have never been issued a license may not invoke the jurisdiction of a court to adjudicate issues regarding suspensions which prevent them from applying for a license.

In *State v, McPhillamy*, 2012 Ohio 3612 (6<sup>th</sup> District August 10, 2012), the Court of Appeals held that the municipal court retained jurisdiction to hear an appeal of an administrative license suspension (ALS) after the felony OVI was bound over to common pleas court pursuant to ORC §4510.73.

## CASE LAW-LITIGATING DRIVER'S LICENSE ISSUES UNDER ORC §4510.73

### ***State v. Caskey*, Sixth Dist., Lucas County, 2018-Ohio-116**

Caskey filed a petition in a municipal court seeking to vacate a non-compliance suspension and a security suspension arising out of an accident he caused while uninsured.

The state filed a motion to dismiss, arguing that the court lacked subject matter jurisdiction over the issue of the suspensions. The state cited ORC §119.12(A)(1), which provides that “any party adversely affected by an order of an agency. . .suspending a license. . .may appeal the order. . .to the court of common pleas of the county in which . . .the licensee is a resident.”

The trial court granted the state’s motion to dismiss and Caskey appealed. The court of appeals correctly stated that ORC §4510.73 was enacted after ORC §119.12, and the grant of concurrent jurisdiction thereunder (to adjudicate all issues and appeals regarding non-commercial driver’s license matters) applies “notwithstanding any provision of the Revised Code to the contrary.”

The appeals court determined that the trial court erred in concluding it lacked subject matter jurisdiction over appellant’s ORC §4510.73 petition and reversed the judgment of dismissal.

## CHAPTER THREE: OVI AND DRUG RELATED SUSPENSIONS

### Operating A Vehicle Under the Influence Suspension - ORC §4511.19

A court must impose an OVI suspension when a person is convicted of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them, in violation of ORC §4511.19(A)(1) or ORC §4511.19(A)(2).

<u>10 years</u>	Applicable ORC Section	Class	Unclassified	Limited Driving Privileges	Ignition Interlock	Restricted Plates	Fee
<b>No Prior Convictions Within 10 Years</b>	§4511.19(G) (1)(a)(iv)	Class 5- 6 months to 3 years	1 to 3 years  May be reduced by half with unlimited driving privileges*	Yes  15 day waiting period	Optional	Optional	\$475
<b>1 Prior Conviction Within 10Years</b>	§4511.19(G) (1)(b)(iv)	Class 4- 1 to 5 years	1 to 7 years	Yes  45 day waiting period	Mandatory if alcohol related offense	Mandatory if high test	
<b>2 Prior Convictions Within 10 Years</b>	§4511.19(G) (1)(c)(iv)	Class 3- 2 to 10 years	2 to 12 years	Yes  180 day waiting period	Mandatory if alcohol related offense	Mandatory	

\* See Section on Unlimited Driving Privileges for First Time Offenders

### REINSTATEMENT REQUIREMENTS

1. Show proof of financial responsibility to OBMV
2. Pay the reinstatement fee.
3. Serve the period of suspension.

## CASE LAW-TERMINATION OF SUSPENSION IN EXCESS OF 15 YEARS

### ***State v. Kimpel, Sixth Dist., Williams County, 2020-Ohio-1158***

Under the law as it existed prior to the classification of court-imposed license suspensions upon conviction, Kimpel's driver's license was suspended for life due to his aggravated vehicular homicide conviction. In that matter, he was also convicted of OVI.

Years later and under the authority of *State v. Manocchio*, 138 Ohio St.3d 292, 2014-Ohio-292, Kimpel sought limited driving privileges and they were granted.

In 2019 Kimpel filed a motion to terminate the suspension under ORC §4510.54. The trial court denied the motion and Kimpel appealed.

The court of appeals began its analysis by noting the distinction between statutory authority to grant limited privileges during a suspension (ORC §4510.021 and related statutes) and statutory authority to terminate a suspension in excess of 15 years (ORC §4510.54).

The court then reviewed everything that a person must demonstrate for a court to consider granting the termination of a license suspension pursuant to ORC §4510.54. Important to an understanding of the statute is that the person seeking termination must meet all the requirements contained in ORC §4510.54 to establish eligibility. Further, the requirements differ depending on whether the suspension was imposed for a felony or a misdemeanor, but in both instances if the suspension was imposed because the person was "under the influence or at or over the limit" there are additional requirements. One of the additional requirements applicable to that circumstance is that the person has not been found guilty of any alcohol or drug offense for the past 15 years.

The court of appeals found that Kimpel failed to demonstrate that he met all the conditions for eligibility and affirmed the judgment of the lower court.

## Administrative License Suspension (Positive Test or Refusal) - ORC §4511.191 (B) & (C)

The arresting officer, on behalf of the OBMV, imposes an Administrative License Suspension at the time of arrest for OVI, or OVUAC when the driver refuses to take the chemical test or takes it and has an alcohol concentration in his whole blood of .08%, blood serum or plasma of .096%, breath of .08%, or in his urine of .11 grams.

The arresting officer, on behalf of the OBMV imposes an Administrative License Suspension at the time of arrest for physical control when the driver refuses to take the test. If the driver takes the chemical test, **no** Administrative License Suspension is imposed. ORC §4511.191(C)(1).

The effective time and date of the suspension is when the arresting police officer seizes the driver's license and issues an OBMV Form 2255, *Report of Law Enforcement Officer Administrative License Suspension*, but the suspension appears on the driver's record when the OBMV receives Form 2255 and enters it in the computer system.

### SUSPENSION FOR REFUSAL TO TAKE THE TEST

Prior Refusals and/or Convictions Within 10 Years	Applicable ORC Section	Class	Limited Driving Privileges	Review Process
None	§4511.191(B)	Class C 1 Year	Yes After 30 days	Appeal to Court and/or Petition for Limited Driving Privileges under ORC §4511.197
One		Class B 2 Years	Yes After 90 days	
Two		Class A 3 Years	Yes After 1 year	
Three or more		5 Years	Yes After 3 years	

### SUSPENSION FOR A FAILED CHEMICAL TEST

Prior Convictions within 10 Years	Applicable ORC Section	Class	Limited Driving Privileges	Review Process
None	§4511.191(C)	Class E 90 days	Yes After 15 days	Appeal to Court and/or Petition for Limited Driving Privileges under ORC §4511.197
One		Class C 1 year	Yes After 45 days	
Two		Class B 2 years	Yes After 180 days	
Three or More		Class A 3 years	None §4510.13(A)(5)(g)	

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## ADMINISTRATIVE LICENSE SUSPENSION TERMINATION

**Refusal Suspension:** The refusal suspension terminates upon a guilty or no contest plea resulting in a conviction for OVI or OVUAC. A finding of not guilty does not result in a termination of the refusal suspension. ORC §4511.191(D)(1). Thus, a refusal suspension will continue beyond the termination of the underlying OVI case if the driver is found not guilty of the OVI offense.

**Failed Test Suspension:** The failed test suspension terminates upon a guilty or no contest plea resulting in a conviction for OVI or OVUAC and a finding of not guilty. ORC §4511.197(D) Thus, even if the driver fails the test, the suspension terminates with the conviction for or dismissal of the OVI charge.

The court may terminate the administrative license suspension as part of a plea agreement with the prosecutor and the driver will not be required to pay the reinstatement fee. OBMV Form 2261 may be submitted by the court to the OBMV for this purpose.

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## REINSTATEMENT REQUIREMENTS

1. Show proof of financial responsibility to OBMV.
2. Serve the period of suspension.
3. Pay the \$475.00 Reinstatement fee. If the driver is convicted of the OVI offense, the driver pays only one reinstatement fee for both the Administrative License Suspension and the OVI suspension. ORC §4511.191(F)(3)

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## APPEAL PROCESS

1. The driver may appeal the suspension at the initial court appearance which is held within 5 days of the arrest or issuance of the citation, but the appeal must be made within 30 days after the initial appearance. ORC §4511.197
2. The suspension is not automatically stayed during the appeal without a court ordering staying the suspension. The court has the authority to stay the suspension. *State v. Hochhausler*, 77 Ohio St. 3<sup>rd</sup> 455 (1996).
3. The court may grant limited driving privileges during the suspension after the expiration of the waiting period, commonly known as the "hard time."

*Cautionary Note- if an OVI arrestee is not placed under an Administrative License Suspension or successfully appeals the Administrative License Suspension, the court has the discretion to impose a pretrial suspension under ORC §4511.196. The pretrial suspension remains in effect until the OVI case is determined on the merits but there is no waiting period for limited driving privileges.*

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## ALS CASE LAW

### **ALS Appeal – Right to Evidentiary Hearing**

#### ***State v. Mancini, Eleventh Dist., Trumbull County, 2020-Ohio-990***

Mancini appealed his ALS in the trial court, which arose out of his OVI arrest and refusal to submit to a chemical test. At a pretrial the court stayed the ALS. Later, the court dismissed all the charges as a sanction for a discovery violation. Since an ALS for a refusal is not terminated upon a dismissal or acquittal of an underlying OVI charge the court denied defense counsel's request that it be terminated. Counsel then asked the court for an evidentiary hearing on the appeal. The court would not permit a hearing and Mancini appealed.

The appellate court stated that the cornerstone of statutory interpretation is legislative intention and to determine that intent a court must first look to the language of the statute. If the meaning is unambiguous and definite, it must be applied as written and no further interpretation is necessary. The court then cited cases which have considered errors in the imposition or review of an ALS as potential due process violations. In one such case a court of appeals noted that the ALS appeal statute, ORC §4511.197, does not expressly set forth a procedure a trial court is to follow in reviewing an appeal for an ALS, the statute clearly provides for an appeal to seek relief from an ALS and an opportunity to be heard is inherent in such an appeal. In Mancini, the appeals court agreed that implicit in ORC §4511.197 is the right to an evidentiary hearing.

### **ALS Appeal – Burden of Proof**

#### ***State v. Harding, Seventh Dist., Mahoning County, 2014-Ohio-884***

Harding appealed his ALS on the ground that the only evidence before the trial court at the hearing was the BMV Form 2255 and that it did not contain reasonable grounds to believe he was OVI. The relevant portion of the Form stated the officer smelled an odor of alcohol, saw bloodshot eyes, and heard an admission of drinking. The court denied the appeal.

One of the grounds that a person can raise in support of an ALS Appeal is that the arresting officer lacked reasonable grounds to believe he/she was OVI. ORC §4511.197(C) (1). The sworn BMV Form 2255 is a prima facie proof of its contents. The Appellant has the burden of proving by a preponderance of the evidence one or more of the grounds for the appeal.

In Harding's case the Form did not contain any indication that the officer saw impaired driving, poor coordination, or any other suggestion of impairment. Indicia of alcohol consumption does not in and of itself establish a prima facie case that a driver is OVI. It is not illegal to drive after drinking. A BMV Form 2255 which does not set forth reasonable grounds to believe a person is OVI is not sufficient to shift the burden of proof to the Appellant. The state could have called the officer to testify to establish a prima facie case. It did not call him.

The court of appeals noted that reasonable grounds as it relates to an ALS is more akin to probable cause for an arrest than a mere suspicion to investigate because the police must have probable cause to arrest to invoke implied consent. In Harding, the court determined the Form failed to establish reasonable grounds for the OVI arrest. It reversed the trial court's denial of the Appeal.



## **ALS Appeal – Due Process Grounds**

### ***State v. Ferguson, Sixth Dist., Lucas County, 2017-Ohio-1394***

Ferguson appealed his ALS on the basis that the police filed the BMV Form 2255 with the court six days after the citation for OVI was issued. He contended that the failure to file the sworn Form with the court within 48 hours of his arrest violated ORC §4511.192(D)(1)(d) and (E) and required the vacation of the ALS. The state countered by arguing that the only grounds for vacating an ALS are those set forth in ORC §4511.197.

The court of appeals said that the timely filing of the Sworn form is a notice requirement which protects the licensee's interest (and right) in appealing the ALS at the initial appearance. The initial appearance on an OVI must be held within five days of arrest and the timely filing of the Sworn form protects a person's right to a prompt post suspension review of the ALS. In essence, adherence to the above requirements allow the licensee to begin the process of judicial review of an officer's actions in imposing the ALS within five days of arrest. The court of appeals noted that the failure to follow the notice requirements contained in the Implied Consent statutes is a violation of due process.

In *Ferguson*, the court noted that the late filing of the Form deprived appellant an appropriate opportunity to review and prepare a written appeal for the initial appearance. The court granted the appeal based on a lack of compliance with the statutory notice mandates.

As to the state's contention that an ALS appeal is limited to an appellant proving that one of the four conditions listed in ORC §4511.197(C) has not been met, the court stated: "the state cannot set forth a statutory scheme to suspend a person's operating privileges, not follow the scheme, and then claim that since such actions are not one of the four issues allowed in an ALS Appeal "... court has no authority to terminate the ALS." In conclusion, the court said that the licensee is relieved of the burden of proving that a condition in ORC §.197(C) has not been met where the BMV fails to present prima facie proof that the officer complied with all mandates of the statutory scheme.

## Physical Control - ORC §4511.194

The Court may, but is not required to, impose a physical control suspension when a driver is convicted of being seated in the driver's seat of a vehicle and having possession of the vehicle's ignition key or other ignition device while under the influence of alcohol and/or drug of abuse.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
§4511.194(D)	Optional Class 7- Not to exceed 1 year	Yes No waiting period	\$475 if court imposes discretionary suspension

### REINSTATEMENT REQUIREMENTS, IF COURT EXERCISES ITS DISCRETION TO IMPOSE A SUSPENSION

1. Provide proof of financial responsibility to OBMV.
2. Pay the reinstatement fee of \$475.
3. Serve the period of suspension.

## Operating Vehicle After Underage Consumption (Under 21) - ORC §4511.19(B)

A court must impose a suspension if a person under the age of 21 is convicted of operating a vehicle with a blood alcohol content of .02% or more but less than .08% (“OVUAC”)

If a driver is convicted of OVUAC, the statute requires the court to impose a Class 6 suspension and the driver must file and maintain proof of financial responsibility in accordance with §4509.45. However, §4509.45(B) designates the length of time that a driver must file and maintain proof while under a OBMV imposed, Class A through F suspension, only. It makes no provision for a court imposed, Class 6 suspension.

As §4509.45 (B) gives no guidance as to how long the OVUAC offender will have to file and maintain proof of financial responsibility under a Class 6 suspension, the OBMV instructs the driver to show current proof of financial responsibility only.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Unlimited Driving Privileges</b>	<b>Fee</b>
§4511.19(B)	Class 6- 90 days to 2 years	Yes After 60 days		\$40

### REINSTATEMENT REQUIREMENTS

1. Complete a remedial driving course.
2. Retake a complete driver license examination.
3. Pay the reinstatement fee.
4. Serve the period of suspension.
5. Show proof of financial responsibility to OBMV.

**Aggravated Vehicular Homicide, Vehicular Homicide, And Vehicular Manslaughter – ORC §2903.06**

A court must impose a suspension when a person is convicted of aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter.

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Ignition Interlock</b>	<b>Restricted Plates</b>	<b>Reinstatement Fee</b>
<b>Aggravated Vehicular Homicide – Alcohol or Drugs</b>	§2903.06(B)(2)(d)	Class 1 – Life	Yes No waiting period	Optional	Optional	\$40
<b>Aggravated Vehicular Homicide – Recklessly</b>	§2903.06(B)(3)	Class 2 – 3 Years to Life	Yes No waiting period	Optional	Optional	\$40
<b>Vehicular Homicide - Negligently</b>	§2903.06(C)	Class 4 – 2 Years to 10 Years	Yes No waiting period	Optional	Optional	\$40
<b>Vehicular Manslaughter</b>	§2903.06(D)	Class 6 – 3 Month to 2 Years	Yes No waiting period	Optional	Optional	\$40

**REINSTATEMENT REQUIREMENTS**

1. Pay the reinstatement fee.
2. Serve the period of suspension.

**MODIFICATION OR TERMINATION OF CLASS 1 LIFE SUSPENSION OR CLASS 2 SUSPENSION – ORC §4510.54**

ORC §4510.54 provides for the modification or termination of certain Class 1 and 2 suspensions but it expressly excludes:

1. Class 1 life suspension for aggravated vehicular homicide committed recklessly in violation of ORC §2903.06(A)(2) if the offender was previously convicted of a traffic related murder, felonious assault, or attempted murder. ORC §2903.06(B)(3)

2. Class 1 life suspension or Class 2 suspension in excess of 15 years for aggravated vehicular assault committed as the proximate result of violating ORC §4511.19(A) if the offender was previously convicted of vehicular assault, any traffic related homicide, manslaughter or assault offense, or any traffic related murder, felonious assault, or attempted murder. ORC §2903.08(B)(2).
3. Class 2 suspension in excess of 15 years for vehicular homicide committed negligently if the offender was previously convicted of a traffic related murder, felonious assault, or attempted murder. ORC §2903.06(C)
4. Class 2 suspension in excess of 15 years for felonious assault committed in violation of ORC §2903.11(A)(2) if the deadly weapon used in the commission of the offense is a motor vehicle. ORC §2903.11(D)(2)
5. Class 2 suspension in excess of 15 years for attempted aggravated murder or murder if the offender used a motor vehicle as the means to attempt to commit the offense. ORC §2923.02 (E)(3)
6. Class 2 suspension in excess of 15 years for aggravated murder or murder if the offender used a motor vehicle as the means to commit the offense. ORC §2929.02(D)(1)

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## PREREQUISITES FOR MODIFICATION OR TERMINATION

The offender must demonstrate the following:

1. At least 15 years have elapsed since the suspension began or in the case of aggravated vehicular homicide, 15 years have elapsed since the offender was released from prison and, for the past 15 years, the driver has not been convicted of any felony, any moving violation, or any violation of a suspension under ORC Chapter 4510 or an equivalent ordinance; or
2. At least 5 years have elapsed since the suspension began, and during that time, the driver has not been convicted of a moving violation, any violation of ORC §2903.06 or §2903.08, or any violation of a suspension under ORC Chapter 4510 or an equivalent ordinance; and
3. The driver has current proof of financial responsibility; and
4. If the suspension was imposed because the offender was under the influence of alcohol and/or a drug of abuse at the time of the offense or at or over the *per se* limit for alcohol or drugs at the time of the offense, the offender has successfully completed an alcohol or drug treatment program, has not abused alcohol or drugs for a period satisfactory to the court, and for the past 15 years, the driver has not been found guilty of any alcohol related or drug related offense.

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## PROCEDURE FOR MODIFICATION OR TERMINATION

1. The offender files a Motion for modification or termination.
2. The court may deny the motion without a hearing but cannot grant the motion without a hearing.
  - a. If the court denies the motion after a hearing, the court cannot consider a subsequent motion from the offender. The court shall hear only one motion filed by the offender.
  - b. If a hearing is scheduled, the court must conduct it within 90 days from the date of the filing of the motion.
  - c. The court must notify the offender and the prosecutor of the time date and location of the hearing and the prosecutor must then notify any victim or victim representative.

3. At the hearing, the court must afford the offender an opportunity to present oral and written, relevant information under oath. The prosecutor and the victim or victim representative shall be given the same opportunity to present information.
4. The court shall consider the offender's driving record, nature of the offense that resulted in the suspension, the impact on the victim, whether the offender committed any other offense while under suspension and whether the offense is relevant to the determination.
5. The court may modify or terminate the suspension if it finds that to do so is not likely to present a danger to the public.

***Note** that if a court modifies a license suspension and the driver is subsequently found guilty of any moving violation or of any substantially equivalent municipal ordinance that carries as a possible penalty the suspension of a license, the court may re-impose the Class 1 or other lifetime suspension and the Class 2 suspension.*

## LIMITED DRIVING PRIVILEGES DO NOT CONSTITUTE A MODIFICATION OF A LIFE SUSPENSION

In *State of Ohio v. Manocchio*, 2012 Ohio 5720 (8<sup>th</sup> District, December 6, 2012), the Court held that an order granting limited driving privileges under ORC §4510.13(A) does not constitute a modification of a suspension under ORC §4510.54 so that the lower court had the authority to grant limited driving privileges during a life suspension even where 15 years had not elapsed.

**Aggravated Vehicular Assault and Vehicular Assault – ORC §2903.08**

A court must impose a suspension when a person is convicted of operating a vehicle and causing serious physical harm to another as a proximate result of committing a violation of ORC §4511.19(A) (Aggravated Vehicular Assault) or recklessly (Vehicular Assault).

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Ignition Interlock</b>	<b>Restricted Plates</b>	<b>Reinstatement Fee</b>
<b>Aggravated Vehicular Assault</b>	§2903.08(B)(2)	Class 3 – 2 Years to 10 Years	Yes No waiting period	Optional	Optional	\$40
<b>Vehicular Assault</b>	§2903.08(C)(2)	Class 4 – 1 Year to 5 Years	Yes No waiting period	Optional	Optional	\$40

**REINSTATEMENT REQUIREMENTS**

1. Pay the reinstatement fee.
2. Serve the period of suspension.



## In-State Drug Offense Suspension - ORC §2925.01 *Et Seq.*

A court is no longer required but may impose a drug conviction suspension when a person is convicted of certain drug offenses under ORC Chapter 2925 in an Ohio court. If the drug conviction is under a municipal ordinance which is substantially similar to a provision of the ORC, the court has the option to impose a suspension which does not exceed the length of the state suspension. ORC §4510.05

Applicable ORC Section	Class	Limited Driving Privileges	Fee
§2925.01 <i>et seq.</i>	Unclassified Up to 5 years	Yes No waiting period	\$40 If 90 days or longer

### DRUG OFFENSES FOR WHICH A COURT SUSPENSION IS PERMISSIBLE UNDER CHAPTER 2925

- §2925.02 Corrupting Another with Drugs
- §2925.03 Trafficking Offenses
- §2925.04 Illegal Manufacture of Drugs or Cultivation of Marijuana
- §2925.041 Assembly or possession of chemicals used to manufacture controlled substance with intent to manufacture controlled substance
- §2925.05 Funding of drug or marijuana trafficking
- §2925.06 Illegal administration or distribution of anabolic steroids
- §2925.11 Drug possession offenses
- §2925.12 Possessing drug abuse instruments
- §2925.13 Permitting drug abuse
- §2925.14 Use, possession, or sale of drug paraphernalia
- §2925.141 Illegal use or possession of marijuana drug paraphernalia
- §2925.22 Deception to obtain a dangerous drug
- §2925.23 Illegal processing of drug documents
- §2925.31 Abusing harmful intoxicants
- §2925.32 Trafficking harmful intoxicants, improperly dispensing/distributing nitrous oxide
- §2925.33 Possessing nitrous oxide in a motor vehicle
- §2925.36 Illegal dispensing of drug samples
- §2925.37 Possessing or trafficking in counterfeit controlled substances

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.

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## TERMINATION OF PRIOR MANDATORY COURT SUSPENSIONS

Prior to September 13, 2016, the license suspensions under Chapter 2925 offenses were mandatory. Any offender who received a mandatory suspension may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of an OVI violation of ORC §4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license was suspended may not file such a motion. Upon the filing of a motion to terminate a mandatory suspension, the sentencing court, in its discretion, may terminate the suspension.

## Out-Of-State OVI or Drug Conviction Suspension – ORC §4510.17

The OBMV imposes a suspension when an Ohio resident driver pleads guilty to or is convicted of a violation of a statute of any other state or out-of-state local ordinance similar to the OVI and drug offenses listed below.

Applicable ORC Section	Class	Prior OVI Convictions	Limited Driving Privileges	Fee	Review Process
§4510.17	Class D-6 months or end of suspension of non-resident operating privileges by other state or federal court, whichever is earlier	0 in 6 years	After 15 days	\$40	By OBMV or Court
		1 in 6 years	After 30 days		
		2 in 6 years	After 180		
		3 or more in 5	None		

### DRUG AND OVI OFFENSES FOR WHICH OBMV SUSPENSION IS MANDATORY

- §2925.02 Corrupting Another with Drugs
- §2925.03 Trafficking Offenses
- §2925.04 Illegal Manufacture of Drugs or Cultivation of Marijuana
- §2925.041 Assembly or possession of chemicals used to manufacture controlled substance with intent to manufacture controlled substance
- §2925.05 Funding of drug or marijuana trafficking
- §2925.06 Illegal administration or distribution of anabolic steroids
- §2925.11 Drug possession offenses
- §2925.12 Possessing drug abuse instruments
- §2925.13 Permitting drug abuse
- §2925.14 Use, possession, or sale of drug paraphernalia
- §2925.141 Illegal use or possession of marijuana drug paraphernalia
- §2925.22 Deception to obtain a dangerous drug
- §2925.23 Illegal processing of drug documents
- §2925.31 Abusing harmful intoxicants
- §2925.32 Trafficking harmful intoxicants, improperly dispensing/distributing nitrous oxide
- §2925.36 Illegal dispensing of drug samples
- §2925.37 Possessing or trafficking in counterfeit controlled substances
- §4511.19 Operating vehicle under the influence of alcohol or drugs

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the suspension period.

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## ADMINISTRATIVE OR CIVIL HEARING

1. A driver may request a hearing in writing within 21 days from the date of the OBMV suspension notice.
2. The driver may request a hearing before the Registrar (§4510.17) or court (§4510.73). The hearing must be held within 40 days from the date of the filing of the petition.
3. The request does not stay the suspension, but it may be stayed by the court.
4. Although ORC §4510.17 expressly states that the scope of the hearing is whether the driver pled or was found guilty of the offense, practitioners may consider other important issues that should be raised.

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## DRIVING PRIVILEGES

1. First offenders may apply for unlimited driving privileges with ignition interlock device.
2. The driver may apply for driving privileges in the county of residence by paying the costs of the proceeding and alleging that the suspension would seriously affect the driver's ability to continue the driver's employment. Privileges cannot be granted for employment as a driver of a commercial vehicle.
3. After April 6, 2017, the "look back" period for the "hard time" during which privileges cannot be granted is 10 years.

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## TERMINATION OF SUSPENSION

The driver may file a motion with the court requesting termination of the out of state drug suspension if it does not arise from an OVI conviction. If the court, in its discretion, determines that a termination of the suspension is appropriate, the court shall issue an order to the Registrar to terminate the suspension. ORC §4510.17(F)

## Habitual Use of Alcohol/Drugs Suspension - ORC §4507.08

The OBMV imposes a suspension when a driver is convicted of 3 or more OVI offenses within the immediately preceding 3-year period.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>Appeal Process</b>
§4507.08 OAC 4501:1-1-16	Class F - until conditions are met	None	None	To OBMV or Court

### REINSTATEMENT REQUIREMENTS:

1. Complete a treatment/rehabilitation program approved by the Alcohol and Drug Addiction Services Board after the last conviction.
2. Maintain 6 months continuous sobriety or freedom from addiction from the date of completion of the treatment program.
3. File OBMV Form 2326, *Alcohol/Drug Reinstatement Form*, completed and signed by a physician, psychologist, certified chemical dependency counselor or national certified chemical dependency counselor attesting to the above with the OBMV.

### ADMINISTRATIVE OR CIVIL HEARING

1. The driver may request a hearing in writing within 30 days from the date of the OBMV suspension notice (§119.07).
2. Driver may request hearing before the Registrar (§119.06) or Court (§4510.73).
3. The request for hearing does not stay the suspension.
4. The scope of the hearing is to determine whether the suspension was properly imposed.

## CHAPTER FOUR: FINANCIAL RESPONSIBILITY SUSPENSIONS (ORC CHAPTER 4509)

### Security Suspension – ORC §4509.17

The OBMV imposes a security suspension if an uninsured driver is in accident and the driver or vehicle owner fails to deposit security in the amount determined by the OBMV to be sufficient to satisfy a judgment for damages resulting from an accident.

Applicable ORC Section	Class	Limited Driving Privileges	Fee	Review Process
§4509.17	Class F- until conditions are met	None	None	By the OBMV or Court

### REINSTATEMENT REQUIREMENTS

Submit any one of the following to the OBMV:

1. Release (§4509.21) or agreement signed by both parties (§4509.24) or
2. Security deposit in the amount determined by the OBMV up to the statutorily required minimum limits (§4509.12) or
3. Final adjudication of non-liability (§4509.22) or
4. Proof that judgment is paid in full up to statutorily required minimum limits (§4509.22)
5. Satisfactory evidence showing no action for damages has been instituted within two years after the date of the accident (§4509.26)
6. Discharge in bankruptcy with the schedule of creditors showing accident claim is listed (§4509.22)

### ADMINISTRATIVE OR CIVIL HEARING

1. The request for hearing must be made within 30 days of the mailing of the OBMV notice as to the amount of the security to be deposited.
2. Driver may request hearing before the Registrar (§4509.13) or Municipal Court (§4510.73)
3. The request for hearing stays the suspension.

4. The scope of the hearing is to determine any exemptions under ORC §4509.19 or to challenge the amount of the deposit required by the Registrar.

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#### EXEMPTIONS FROM A SECURITY SUSPENSION– ORC §4509.19

The security deposit requirement does not apply to ...

1. the driver or vehicle owner where no injury or damage was caused to anyone other than the driver or the owner's vehicle.
2. the driver or vehicle owner if the vehicle was parked legally.
3. the vehicle owner if the driver was operating or parked the vehicle without the owner's permission.
4. to any police officer who was responding to an emergency and assumed custody of the motor vehicle at the time of the accident.
5. to the driver or owner if liability policy or bond was in effect at the time of the accident, except the driver is not exempt if he or she was operating the vehicle without the owner's permission.
6. to the driver if he or she was driving another's vehicle but had a liability policy in effect which covered the driver while operating a vehicle not owned by him or her.
7. to the driver that is covered by any other form of liability policy or bond.
8. to the driver or vehicle owner if the vehicle owner was self-insured but the driver will not be exempt if he or she did not have permission to operate the vehicle.
9. to a vehicle owner which is a government agency.

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#### OTHER SECURITY SUSPENSION REMEDY – ORC §4509.19 (B)

If the Registrar receives information within six months after an accident that a decision regarding the security deposit was incorrect by reason of erroneous information, the Registrar is to take corrective action. However, the Registrar is not required to evaluate the amount of the deposit.

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#### NOTE

The accident report which triggers the security suspension must be forwarded to the OBMV within 6 months of the accident. ORC §4509.069(A)

## Non-Compliance Suspension – ORC §4509.101

A driver may not operate, and a vehicle owner may not permit the operation of, a motor vehicle without maintaining proof of financial responsibility continuously throughout the registration period of that vehicle. The OBMV imposes a suspension for failure to provide proof of financial responsibility which is in effect at the time...

1. Of a vehicle crash
2. When a driver receives a traffic citation.

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>File &amp; Maintain FR</b>	<b>Review Process</b>
<b>1<sup>st</sup> Suspension within 5 years</b>	§4509.101 (A)(2)(a)	Class F- Until Compliance	No Need- File SR 22 and Pay Reinstatement Fee	\$100	3 years	To OBMV or Court
<b>2<sup>nd</sup> Suspension within 5 years</b>	§4509.101 (A)(2)(b)	Class C- 1 year	Yes After 15 days	\$300	5 years	
<b>3<sup>rd</sup> Suspension within 5 years</b>	§4509.101 (A)(2)(c)	Class B- 2 years	Yes After 30 days	\$600	5 years	

### REINSTATEMENT REQUIREMENTS

1. File and maintain proof of financial responsibility for required period with OBMV
  - a. Certificate of insurance or
  - b. Financial responsibility bond or
  - c. Certificate of deposit of money or securities in the amount of \$30,000 issued by the OBMV upon application and approval.
2. Pay the reinstatement fee plus a non-voluntary compliance fee in the amount of \$50 if the driver has not voluntarily surrendered the license, certificate of registration, or license plates.
3. Serve the period of suspension.



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## ADMINISTRATIVE OR CIVIL HEARING

1. The request for hearing with a \$30.00 hearing fee must be received by the OBMV within 10 days of the mailing of the OBMV notice of suspension.
2. The driver may request a hearing before the Registrar (§4509.101) or Court (§4510.73).
3. The request for hearing does not stay the suspension, but it may be stayed by the court.
4. The scope of hearing is limited to whether proof of financial responsibility in accordance with ORC §4509.101 was demonstrated by the suspended driver or owner of the vehicle. The vehicle owner may also argue and prove that he or she did not give the driver permission to drive the vehicle.

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## RELIEF FROM NON-COMPLIANCE SUSPENSION FOR EXCUSABLE NEGLIGENCE ORC §4509.101(L)

The OBMV may terminate a non-compliance suspension imposed under ORC §4509.101 and waive the reinstatement fee and proof of financial responsibility filing requirement if, with or without a hearing, it determines the owner of the vehicle has established by clear and convincing evidence that the owner customarily maintains proof of financial responsibility and proof was not in effect on the date in question due to excusable neglect under circumstances that are not likely to recur.

## Judgment Suspension - ORC §4509.37

The OBMV imposes a judgment suspension when it receives a certified copy of judgment in a civil action taken as a result of damages and/or injuries arising from ownership, maintenance or use of a motor vehicle.

Applicable ORC Section	Class	Limited Driving Privileges	Fee	File & Maintain FR	Review Process
§4509.37	Class F- until conditions are met Or 7 years if judgment prior to 1/1/2004	None	None	3 years Or 5 years If judgment prior to 1/1/2004	Appeal to court which rendered the judgment

### REINSTATEMENT PROCEDURE

1. File and maintain proof of financial responsibility with OBMV for the required period.
2. Submit proof to OBMV of any of the following:
  - a. Judgment satisfied up to statutorily required minimum limits (§4509.40 and §4509.41)
  - b. Creditor consent in writing that debtor be allowed license (§4509.38)
  - c. Court in which judgment rendered approves installment payment plan (§4509.42)
  - d. Petition or notice of discharge in bankruptcy with the schedule of creditors showing accident claim is listed (§4509.40)

### APPEAL – ORC §119.12

1. The appeal must be filed within 15 days of the mailing of the OBMV notice of suspension.
2. The appeal is to the Common Pleas Court in the County of the driver's residence. The appeal is to the Franklin County Common Pleas Court if the driver resides outside of Ohio.
3. The request for hearing does not stay the suspension but the Court may issue a stay order.
4. Case law should be researched to determine the scope of the appeal.

## CHAPTER FIVE: MISCELLANEOUS SUSPENSIONS

### Wrongful Entrustment Suspension - ORC §4511.203

The Court may impose a suspension when a vehicle owner permits a vehicle owned by him or under his control to be driven by another person without a valid license or while under the influence.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
§4511.203	Optional Class 7- not to exceed one year	Yes No waiting period	\$40 if suspension is 90 days or longer

#### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee, if any.
2. Serve the period of suspension.

## Twelve Point Suspension - ORC §4510.037

The OBMV imposes a suspension when a driver accumulates 12 points within a 2-year period.

At any point before accumulating 12 points, a driver who has 2 or more points may take a remedial driving class and earn a 2-point credit. A person is permitted to receive one 2-point credit in any 3-year period, and up to 5 in a lifetime. However, there is no credit where the class is imposed by a court as a condition for the return of driving privileges. A 2-point credit does not reduce points but instead allows a person to accumulate 14 points before imposition of the 12-point suspension.

Applicable ORC Section	Class	Limited Driving Privileges	Fee	Review Process
§4510.037	Class D 6 months or until compliance	Yes No waiting period	\$40	Appeal to Court

### REINSTATEMENT REQUIREMENTS

1. Pass remedial driving course
2. Re-take driver's license exam
3. File and maintain proof of financial responsibility.
4. Pay reinstatement fee.

### APPEAL PROCESS

1. The driver must file an appeal within 20 days after the mailing of the notice, i.e., prior to the effective date of the suspension and pay court costs. If the driver is under the age of 18, the appeal must be filed in the juvenile court for the county in which the juvenile driver resides.
2. The filing of the appeal stays the imposition of the suspension by the OBMV.
3. The scope of the appeal is whether cause can be shown why driving privileges should not be suspended.
4. If the suspension is upheld, the court may grant limited driving privileges.
5. If the court upholds the suspension, it shall impose the applicable suspension under §4510.037 or suspend all or a portion of the suspension and impose any conditions upon the driver that the court considers proper or impose upon the driver a community control sanction pursuant to ORC §2929.15 or §2929.25.

## License Forfeiture Suspension– ORC §4510.22

A court may declare a license forfeiture when person is charged with a violation of any of the various statutes listed in ORC §4510.22, or any substantially equivalent municipal ordinances, and fails to appear in court prior to conviction at the required time and place or fails within the time allowed to pay the fines imposed by the court after conviction.

A license forfeiture cannot be imposed for unpaid costs. *State v. Short*, 2d Dist. No. 2011 CA 16, 2012-Ohio-2546.

The court notifies the OBMV of the forfeiture 30 days after the declaration by the court, which gives the driver 30 days to appear or pay any fines.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
§4510.22	Class F- until conditions are met	None	\$25

### REINSTATEMENT REQUIREMENTS

1. Satisfy the court requirements to appear or pay fines.
2. Obtain a release of forfeiture from the court.
3. Pay the reinstatement fee.

## Warrant Block - ORC §4507.091

The OBMV imposes a block on a driver's record when it receives a report from a clerk of court that an arrest warrant has issued for the driver. The block prevents the driver from obtaining, renewing, or reinstating a driver license and prevents the driver from registering a motor vehicle in his or her name. The warrant block is not a suspension so that a driver may still have a valid driver's license after the imposition of the block. A driver may not be charged with driving under suspension based on a warrant block alone.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>Review Process</b>
ORC §4507.091	None as no suspension is imposed	Not applicable	\$15	None

### REMOVAL REQUIREMENTS

1. Pay reinstatement fee.
2. File a release from the court issuing the warrant with the OBMV.

## Indefinite Medical Suspension - ORC §4507.20

The OBMV imposes a suspension, when in the opinion of the Registrar, a driver is afflicted with or suffering from a physical or mental disability or disease that prevents him/her from exercising reasonable and ordinary control over a vehicle. Prior to imposition of the suspension, the Registrar notifies the driver that he/she will be required to submit to a physical examination or a driver's license examination or both. An unfavorable examination or refusal to submit to the examination will also result in the suspension, although the Registrar may impose license restrictions in lieu of a suspension.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>Review Process</b>
§4507.20	Class F- until conditions are met	None	None	To OBMV or Court

### REINSTATEMENT REQUIREMENTS

OBMV can order one or both of the following:

1. File a satisfactory physician's report AND/OR
2. Pass the driver's license examination.

### ADMINISTRATIVE OR CIVIL HEARING

1. The driver may request a hearing in writing within 30 days of the date of the notice of suspension.
2. The driver may request the hearing before the Registrar (§119.06) or Municipal Court (§4510.73).
3. The request does not stay the suspension, but it may be stayed by the court.
4. The scope of the hearing is whether the suspension or restrictions are medically warranted.

### OTHER RELIEF

The suspended driver may apply for a restricted license for 6 months if a physician reports that the medical condition resulting in the suspension is under control. (§4507.08)

## Violation of Restriction Suspension - ORC §4507.14

The OBMV imposes a suspension when it receives notice that a driver has violated a license restriction such as corrective lenses, mechanical control devices, daylight driving only, etc., relating to the ability to operate a vehicle.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>Review Process</b>
§4507.14	Class D - 6 months	None	\$40	By OBMV or court

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.

### PRE- SUSPENSION ADMINISTRATIVE HEARING

1. The driver may request a hearing within 30 days of the date of the suspension notice.
2. The driver may request hearing before the Registrar (§119.06) or Court (§4510.73).
3. The suspension does not take effect until after the hearing or the expiration of the period for requesting the hearing.



## Child Support Suspension - ORC §3123.55

The OBMV imposes the suspension when it receives notice from a Child Support Enforcement Agency that a driver defaulted on a child support order.

Applicable ORC Section	Class	Limited Driving Privileges	Fee	Review Process
§3123.55	Class F- until conditions are met	Yes- No waiting period Court may grant driving privileges in contempt action	\$25	None

### REINSTATEMENT REQUIREMENTS

1. Obtain a release from Child Support Enforcement Agency
2. Pay the reinstatement fee.

### LIMITED DRIVING PRIVILEGES

Effective September 28, 2012, amended ORC §3123.58(B)(1) authorizes a court to grant limited driving privileges in accordance with ORC §4510.021 in an action for contempt initiated under ORC §2705.031.

The driver must provide a recent, non-certified copy of the driver's abstract from the Registrar.

The court must request the Child Support Enforcement Agency to advise the court as to its position on the request for driving privileges prior to granting privileges, although the court is not bound by the Agency's position.

If driving privileges are granted, the court shall issue a permit card to the driver. If the person granted limited driving privileges is convicted of any violation of Chapter 4510, the privileges are immediately suspended pending a reinstatement hearing.

**NOTE** that a contempt proceeding under ORC §2705.031 must be initiated by persons other than the driver. Recent amendments to the law do not appear to give the driver the right to petition the court for driving privileges other than in a contempt proceeding initiated against him or her.

## Reckless Operation Suspension - ORC §4510.15

The court may impose a suspension when a person is convicted of operating a vehicle in violation of a state or local code relating to reckless operation.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
§4510.15	Optional Class 5-6 months to 3 years	Yes No waiting period	\$40

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.

**Leaving the Scene After an Accident (Hit-Skip) Suspension – ORC §4549.02 & §4549.021**

A court must impose a suspension when a person is convicted of “Hit-Skip,” in violation of ORC §4549.02 or ORC §4549.021.

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Ignition Interlock</b>	<b>Restricted Plates</b>	<b>Reinstatement Fee</b>
<b>Accident on Public Road or Highway</b>	§4549.02(B)	Class 5 – 6 Months to 3 Years	Yes No Waiting Period	Optional	Optional	\$40
<b>Accident on Public or Private Property other than Public Road or Highway</b>	§4549.021(B)	Class 5 – 6 Months to 3 Years	Yes No Waiting Period	Optional	Optional	\$40

**REINSTATEMENT REQUIREMENTS**

1. Pay the reinstatement fee.
2. Serve the period of suspension.

**Failure to Comply with Order or Signal of Police Officer and Fleeing or Eluding Police Officer Suspension – ORC §2921.331**

A court must impose a suspension when a person is convicted of failing to comply with a lawful order or direction of an officer invested with authority to direct and regulate traffic or willfully fleeing or evading a police officer in violation of ORC §2921.331.

	<b>Applicable Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Ignition Interlock</b>	<b>Restricted Plates</b>	<b>Reinstatement Fee</b>
<b>Failure to Comply with Order</b>	§ 2921.331(E)	Class 5 – 6 Months to 3 Years	Yes No waiting period	Optional	Optional	\$40
<b>Fleeing or Eluding M1</b>	§ 2921.331(E)	Class 5 – 6 Months to 3 Years	Yes No waiting period	Optional	Optional	\$40
<b>Fleeing or Eluding Felony</b>	§ 2921.331(E)	Class 2 – 3 Years to Life	No	Optional	Optional	\$40

**REINSTATEMENT REQUIREMENTS**

1. Pay the reinstatement fee.
2. Serve the period of suspension.

## Juvenile Driver Suspension – ORC §4510.31

The Registrar must suspend the license of any person who has been convicted of, pleaded guilty to, or been adjudicated in juvenile court as having committed one of a series of offenses before the person's 18<sup>th</sup> birthday.

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Reinstatement Fee</b>
<b>Unruly Child with a Drug Abuse Offense</b>	§4510.31(B)	Class D – 6 Months	Yes – No waiting period. May be granted to practice driving with parent or guardian.	\$40
<b>Suspension for Two Moving Violations</b>	§4510.31(A)(1)(c)	Class E – 3 Months	Yes – No waiting period. May be granted to practice driving with parent or guardian. May also be granted upon petition for employment, education, vocational training, or treatment.	\$40
<b>Suspension for Three Moving Violations</b>	§4510.31(A)(1)(a)	Class C – 1 Year	Yes – No waiting period. May be granted to practice driving with parent or guardian. May also be granted upon petition for employment, education, vocational training, or treatment.	\$40
<b>Suspension for Juvenile OVI</b>	§4510.31(A)(1)(b)	Class D – 6 Months	Yes – No waiting period. May be granted to practice driving with parent or guardian.	\$40

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.
3. Obtain temporary license.
4. Take a juvenile driver improvement program.
5. Pass Driver's License Examination

## JUDICIAL RELIEF FROM JUVENILE SUSPENSION – ORC §4510.31(C)(2)(A)

When a juvenile has been adjudicated to have committed two or three traffic violations, the court in which the juvenile has been adjudicated to have committed the second or third violation may order the Registrar to waive the suspension. The court may do so only if all the following are satisfied:

1. the driver submits a petition requesting a waiver of the suspension to the court before the sentence or order of disposition. The petition must describe why the suspension would seriously affect the person's ability to continue employment, education, vocational training, or treatment.
2. the driver submits proof to the court before the sentence or disposition, showing that he or she has completed an advanced juvenile driver improvement program after the person committed the second or third violation; and
3. the court finds reasonable cause to believe the suspension would seriously affect the person's ability to continue employment, education, vocational training, or treatment.

If the sentence is for a third moving violation, a waiver of the suspension may only be granted if the person did not petition for a waiver of suspension after the second offense, and the court did not order the waiver of the suspension for the second violation.

If the court elects to order a waiver of suspension, it will immediately send written notice to the Registrar, and the Registrar shall not suspend the person's license.

## CHAPTER SIX: INTERSTATE SUSPENSIONS

### Non-Resident Violator Compact Suspension - ORC §4510.71, Article IV

The OBMV imposes a suspension when an out of state court informs the OBMV that there is an outstanding traffic ticket against an Ohio licensed driver.

In *State v. Hutchings*, 2013 Ohio 5432, the Court of Appeals held that an Ohio Court may suspend a driver's nonresident driving privileges but may not confiscate the driver's Michigan license. Michigan is not a member of the violator compact.

Applicable ORC Section	Class	Limited Driving Privileges	Fee	Review Process
§4510.71	Class F- until conditions are met	None	\$40	To OBMV or Court

#### REINSTATEMENT REQUIREMENTS

1. Comply with the requirements of the out of state court.
2. Obtain a release from the out-of-state court and file with the OBMV.
3. Pay the reinstatement fee.

#### ADMINISTRATIVE OR CIVIL HEARING

1. The driver may request a hearing in writing within 30 days from the date of the suspension notice.
2. The driver may request the hearing before the Registrar (§119.06) or Municipal Court (§4510.73).
3. The request for hearing stays the suspension.

## Driver License Compact Suspension Due to Certain Out of State Convictions - ORC §4510.61, Article IV

The OBMV imposes a suspension when it receives notice from another state that an Ohio driver was convicted of a traffic violation in the non-resident state. For the purpose of suspension, revocation, or limitation of the driver's license, the OBMV will give the same effect to the conviction as it would if the conviction had occurred in Ohio.

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### REINSTATEMENT REQUIREMENTS

The reinstatement requirements will depend on the nature of the conviction.

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### ADMINISTRATIVE OR CIVIL HEARING

The availability of and procedure for review of the imposition of the suspension by the OBMV depends on the nature of the conviction.



## National Driver Registry or Driver's License Compact Block – ORC §4510.61, Article V

The OBMV imposes a block when a driver is applying for or renewing an Ohio license and is under suspension in another state or held a license in another state which is suspended. The block is triggered when the OBMV processes a driver through the Problem Drivers Pointer System, formerly through the National Driver Registry.

The OBMV searches the Pointer System when...

1. A person is requesting an Ohio driver's license for the first time and is over 18 years of age.
2. A person is renewing an Ohio driver's license.
2. An Ohio driver is being re-tested due to reinstatement requirements.
3. An out of state, licensed driver applies for an Ohio license.

<b>Applicable ORC Section</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>	<b>Review Process</b>
§4510.61 Article V	None	\$40	Appeal to Court under §4507.08 or §4510.73

### REINSTATEMENT REQUIREMENTS

1. Pay the OBMV fee
2. File a clearance letter from the other state with the OBMV
3. The Pointer System's license status is converted to "ELIGIBLE."

### APPEAL PROCESS UNDER ORC §4507.08(D)(5) AND §4510.73

1. When the application for a license is denied by the OBMV, the driver may file a petition in the municipal court where he/she resides.
2. The scope of the appeal is whether the conduct involved in the out-of-state offense would have resulted in a suspension had the offense occurred in Ohio.
3. If the appeal is successful, the OBMV will process the license application upon the filing of a certified judgment entry from the municipal court.
4. An appeal under ORC §4510.73 to avoid multiple forums.

## CHAPTER SEVEN: COURT SUSPENSIONS UPON CONVICTION FOR DRIVING UNDER VARIOUS TYPES OF SUSPENSION

### Operating Under Suspension or in Violation of a License Restriction (Catch All - Other than under ORC Chapter 4509, §4510.111 and §4510.16) - ORC §4510.11.

The court may impose a suspension if a driver is convicted of operating a vehicle in violation of any license restriction or while under any suspension other than a financial responsibility suspension imposed under ORC Chapter 4509, ORC §4510.111 and ORC §4510.16.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Reinstatement Fee</b>
§4510.11	Optional Class 7- Not to exceed one year	Yes No waiting period	\$40.00 if suspended 90 days or longer

#### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.

### Operating Under License Forfeiture Suspension- ORC §4510.111

Effective September 28, 2012, a Court may no longer suspend the license of a driver convicted of driving under a license forfeiture suspension.

### Operating Under Child Support Suspension - ORC §4510.111

Effective September 28, 2012, a Court may no longer suspend the license of a driver convicted of driving under a child support suspension.

### Operating Under A Financial Responsibility Suspension - ORC §4510.16

Effective September 28, 2012, a Court may no longer suspend the license of a driver convicted of driving under a financial responsibility suspension.

## Operating Under OVI Suspension - ORC §4510.14

The court must impose a suspension when a person is convicted of operating a vehicle under an OVI suspension (§4511.19 and §4510.07), an Administrative License Suspension (§4511.191), or a judicial pretrial suspension (§4511.196).

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
§4510.14	Mandatory Class 7- Not to exceed 1 year	Yes No Waiting Period	\$40.00 if the suspension is 90 days or longer

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee.
2. Serve the period of suspension.

## Operating with Expired License Suspension - ORC §4510.12

The court may impose a suspension when a person is convicted of operating a vehicle with an expired license if it is at least the second offense within three years and the license is expired for more than six months.

	<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Fee</b>
<b>1 or more priors in 3 years &amp; expired for &gt;6 months</b>	§4510.12	Optional Class 7- up to 1 year	Yes No waiting period	\$40 if suspension is for 90 days or longer

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee, if any
2. Serve the period of suspension.

## Driving While Failing to Reinstate a License - ORC §4510.21

A court may impose a suspension when a driver is convicted of operating a vehicle after period of suspension has expired but the person has failed to comply with all reinstatement requirements imposed by law i.e., "failure to reinstate" status.

<b>Applicable ORC Section</b>	<b>Class</b>	<b>Limited Driving Privileges</b>	<b>Reinstatement Fee</b>
§4510.21	Optional Class 7 – Not to exceed 1 year	Yes No waiting period	\$40.00 if suspension is 90 days or longer

### REINSTATEMENT REQUIREMENTS

1. Pay the reinstatement fee, if any
2. Serve the period of suspension.

## CHAPTER EIGHT: COMMERCIAL DRIVER'S LICENSE

### Commercial Driver's License Suspensions and Disqualifications ORC §4506.16

A commercial driver's license may be suspended for any reason that other forms of driver's licenses may be suspended. If a driver's commercial driver's license is suspended, he or she may not apply or receive another form of driver's license. ORC §4506.16(K). Further, no court may grant limited driving privileges for the operation of a commercial vehicle to a driver whose driver's license or commercial driver's license is suspended or who has been disqualified. ORC §4506.161.

In addition to suspensions, however, a commercial driver's license may be subject to disqualification under ORC §4506.16. The OBMV will "disqualify a holder of a commercial driver's license...from operating a commercial motor vehicle" upon a first conviction for a violation of any provision of divisions (A)(2) to (12) of ORC §4506.15. As of the most recent amendment of ORC §4506.16 on January 27, 2012, a conviction for OVI under ORC §4511.19 or an equivalent ordinance has been removed as a disqualifying event. Notwithstanding, the OBMV's interpretation of the statute is that it may disqualify for a conviction of any violation listed in ORC §4506.15(A)(2) to (A)(12), which would include state and municipal OVI's. Note that OAC §4501:1-1-24(A) provides that the OBMV shall disqualify a person from operating a commercial motor vehicle for a conviction of an offense described in ORC §4506.15. Additionally, the disqualification applies to persons who are placed under an ALS imposed pursuant to ORC §4511.191 (Implied Consent Law) for refusing a chemical test after a lawful arrest for OVI.

Although a court may not grant limited driving privileges for employment as a driver of a commercial motor vehicle to any driver who is disqualified under ORC §4506.16, it may grant driving privileges for other purposes. ORC §4510.13(B).

**Cautionary Note:** *As of January 27, 2012, an Administrative License Suspension (ALS) imposed under ORC§ 4511.191 for refusing a chemical test (Implied Consent law) will cause the OBMV to disqualify a person from operating a commercial motor vehicle. See ORC §4506.16(D)(1) and (2). Thus, it is particularly important that an ALS appeal be filed within 30 days of the arraignment. Unless the ALS (for a refusal) is vacated on appeal, the commercial driver will be disqualified even if he or she is found not guilty of the OVI by acquittal or dismissal upon amendment to a reduced charge. A first ALS requires a one-year disqualification. A second ALS will require a disqualification "for life or for any other period of time as determined by the United States secretary of transportation and designed by the director of public safety by rule."*

## APPENDIX A: POINTS CHART - SELECT OFFENSES

CONVICTION	ORC SECTION	POINTS
Catch-All Driving Under Suspension	§4510.11(A)	2
Driving Under FRA Suspension	§4510.16(A)	2
Violation of Restriction	§4510.11	2
Driving Under an OVI Suspension	§§4510.14, 4511.19, 4511.191	6
Failure to Reinstate	§4510.21(B)	2
Driving Under a 12 Point Suspension	§4510.037(J)	6
Driving Under a Lifetime Suspension	§4510.18	6
Driving Under Child Support/ Failure to Pay Suspension	§4510.111	2
Driving Under Non-Payment of Judgment Suspension	§4510.16	2
Hit Skip/Leaving the Scene of Accident	§4549.02	6
Hit Skip Private Property	§4549.03	2
Fleeing and Eluding a Police Officer	§2921.331	6
Reckless Operation	§4510.20	4
Reckless Operation	§4510.201	2



## APPENDIX B: OHIO BUREAU OF MOTOR VEHICLE REINSTATEMENT FEES

SUSPENSION TYPE	FEE
Administrative Indefinite or Medical Suspension	None
ALS Positive	\$475
ALS Refusal	\$475
License Forfeiture	\$25
Court Suspension of 90 days or more	\$40
Child Support Suspension	\$25
Drug-Related (In-state or Out-of-state)	\$40
Habitual Use of Drugs/Alcohol	None
High School Dropout	\$40
Judgment	None
NDR Indefinite Suspension	\$40
Noncompliance Suspension; Incident/Accident After 4/19/95 First Suspension	\$100 (+\$50 FINANCIAL RESPONSIBILITY involuntary compliance fee if person has not voluntarily surrendered license, certificate, or license plates)
Noncompliance Suspension; Second Suspension within 5 Years	\$300 (+\$50 FINANCIAL RESPONSIBILITY involuntary compliance fee if person has not voluntarily surrendered license, certificate, or license plates)
Noncompliance Suspension; Third Suspension within 5 Years	\$600 (+\$50 FINANCIAL RESPONSIBILITY involuntary compliance fee if person has not voluntarily surrendered license, certificate, or license plates)
Nonresident Violator Compact	\$40
OVI	\$475
OVUAC	\$40
Physical Control	\$475 (if license is suspended by a court)
Probationary Suspension for 2 Moving Violations	\$40
Probationary Suspension for 3 Moving Violations	\$40
Probationary Suspension for OVUAC	\$40
Probationary Suspension for OVI (Under 18)	\$40
Security Suspension	None
Twelve-Point Suspension	\$40
Vehicle Forfeiture	None
Vehicle Immobilization	\$100
Violation of Liquor Law	\$40
Violation of Restriction	\$40
Juvenile Intervention Suspension	\$40
Warrant Block	\$15