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124th General Assembly

Regular Session

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Am. Sub. S. B. No. 163

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Strahorn, Sullivan, Salerno

A B I L L

To amend sections 1547.11, 1547.111, and 4511.19 and 1
to enact sections 2909.09, 2909.10, and 2909.101 of 2
the Revised Code to prohibit knowingly dropping or 3
throwing any object at, onto, or in the path of any 4
vehicle on a highway or any vessel on a waterway, 5
to prohibit knowingly dropping or throwing any 6
object in the path of a railroad, to enact other 7
new offenses relating to railroad property and 8
operations and railroad grade crossing warning 9
signals and other protective devices, to create the 10
Highway, Bridge, and Overpass Vandal Fence Task 11
Force and to make amendments relative to the use,
in a vehicle or watercraft OMVI or OMVUAC

prosecution and in a "having physical control of a vehicle while under the influence" prosecution, of the results of field sobriety tests and to clarifications in the watercraft OMVI and OMVUAC law and implied consent law and to amend the versions of sections 1547.11, 1547.111, 4511.19, and 4511.194 of the Revised Code that are scheduled to take effect January 1, 2004, to continue the provisions of this act on and after that effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1547.11, 1547.111, and 4511.19 be 12
amended and sections 2909.09, 2909.10, and 2909.101 of the Revised 13
Code be enacted to read as follows:

Sec. 1547.11. (A) No person shall operate or be in physical 4
control of any vessel underway or shall manipulate any water skis, 5
aquaplane, or similar device on the waters in this state if any of 6
the following applies: 7

(1) The person is under the influence of alcohol or a drug of 8
abuse, or the combined influence of alcohol and a drug of abuse; 9

(2) The person has a concentration of ten-hundredths of one 10
per cent or more by weight of alcohol in the person's blood; 11
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(3) The person has a concentration of fourteen-hundredths of 13
one gram or more by weight of alcohol per one hundred milliliters 14
of the person's urine; 15

(4) The person has a concentration of ten-hundredths of one 16
gram or more by weight of alcohol per two hundred ten liters of 17

the person's breath.

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

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(1) The person has a concentration of at least two-hundredths
of one per cent, but less than ten-hundredths of one per cent by
weight of alcohol in the person's blood;

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(2) The person has a concentration of at least twenty-eight
one-thousandths of one gram, but less than fourteen-hundredths of
one gram by weight of alcohol per one hundred milliliters of the
person's urine;

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(3) The person has a concentration of at least two-hundredths
of one gram, but less than ten-hundredths of one gram by weight of
alcohol per two hundred ten liters of the person's breath.

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

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(D)(1) In any criminal prosecution or juvenile court
proceeding for a violation of division (A) or (B) of this section
or, of an ordinance of any a municipal corporation ordinance
relating to operating or being in physical control of a vessel
underway or ~~using~~ manipulating any water skis, aquaplane, or
similar device while under the influence of alcohol ~~or,~~ a drug of
abuse, or the combined influence of alcohol and a drug of abuse,
or of a municipal ordinance relating to operating or being in
physical control of a vessel underway or manipulating any water
skis, aquaplane, or similar device with a prohibited concentration

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of alcohol in the blood, breath, or urine, the court may admit 49
evidence on the concentration of alcohol ~~or a drug, drugs~~ of 50
abuse, or alcohol and drugs of abuse in the defendant's blood, 51
urine, or breath at the time of the alleged violation as shown by 52
chemical analysis of the defendant's blood, urine, or breath taken 53
within two hours of the time of the alleged violation. 54

When a person submits to a blood test, only a physician, 55
registered nurse, or qualified technician or chemist shall 56
withdraw blood for the purpose of determining its alcohol or drug 57
of abuse content. This limitation does not apply to the taking of 58
breath or urine specimens. A physician, registered nurse, or 59
qualified technician or chemist may refuse to withdraw blood for 60
the purpose of determining its alcohol or drug of abuse content if 61
in the opinion of the physician, nurse, or technician or chemist, 62
the physical welfare of the person would be endangered by the 63
withdrawing of blood. 64

The blood, urine, or breath shall be analyzed in accordance 65
with methods approved by the director of health by an individual 66
possessing a valid permit issued by the director pursuant to 67
section 3701.143 of the Revised Code. 68

If (2) In a criminal prosecution or juvenile court proceeding 69
for a violation of division (A) of this section, of a municipal 70
ordinance relating to operating or being in physical control of a 71
vessel underway or manipulating any water skis, aquaplane, or 72
similar device on the waters of this state while under the 73
influence of alcohol, a drug of abuse, or the combined influence 74
of alcohol and a drug of abuse, or of a municipal ordinance 75
substantially equivalent to division (A) of this section relating 76
to operating or being in physical control of a vessel underway or 77
manipulating any water skis, aquaplane, or similar device on the 78
waters of this state with a prohibited concentration of alcohol in 79
the blood, breath, or urine, if there was at the time the blood, 80

urine, or ~~breath~~ bodily substance was taken a concentration of 81
less than ten-hundredths of one per cent by weight of alcohol in 82
the defendant's blood, less than fourteen-hundredths of one gram 83
by weight of alcohol per one hundred milliliters of the defendant's 84
urine, or less than ten-hundredths of one gram by weight of 85
alcohol per two hundred ten liters of the defendant's breath, that 86
fact may be considered with other competent evidence in 87
determining the guilt or innocence of the defendant. This division 88
does not limit or affect a criminal prosecution or juvenile court 89
proceeding for a violation of division (B) of this section or of a 90
municipal ordinance substantially equivalent to division (B) of 91
this section relating to operating or being in physical control of 92
a vessel underway or manipulating any water skis, aquaplane, or 93
similar device on the waters of this state with a prohibited 94
concentration of alcohol in the blood, breath, or urine. 95

(3) Upon the request of the person who was tested, the 96
results of the test shall be made available to the person or the 97
person's attorney or agent immediately upon the completion of the 98
test analysis. 99

The person tested may have a physician, registered nurse, or 100
qualified technician or chemist of the person's own choosing 101
administer a chemical test or tests in addition to any 102
administered at the direction of a law enforcement officer, and 103
shall be so advised. The failure or inability to obtain an 104
additional test by a person shall not preclude the admission of 105
evidence relating to the test or tests taken at the direction of a 106
law enforcement officer. 107

A physician, registered nurse, or qualified technician or 108
chemist who withdraws blood from a person pursuant to this 109
section, and a hospital, first-aid station, or clinic at which 110
blood is withdrawn from a person pursuant to this section, is 111
immune from criminal liability, and from civil liability that is 112

based upon a claim of assault and battery or based upon any other
claim that is not in the nature of a claim of malpractice, for any
act performed in withdrawing blood from the person.

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

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

(b) The prosecution may introduce the results of the field

sobriety test so administered as evidence in any proceedings in 145
the criminal prosecution or juvenile court proceeding. 146

(c) If testimony is presented or evidence is introduced under 147
division (E)(1)(a) or (b) of this section and if the testimony or 148
evidence is admissible under the Rules of Evidence, the court 149
shall admit the testimony or evidence, and the trier of fact shall 150
give it whatever weight the trier of fact considers to be 151
appropriate. 152

(2) Division (E)(1) of this section does not limit or 153
preclude a court, in its determination of whether the arrest of a 154
person was supported by probable cause or its determination of any 155
other matter in a criminal prosecution or juvenile court 156
proceeding of a type described in that division, from considering 157
evidence or testimony that is not otherwise disallowed by division 158
(E)(1) of this section. 159

(F)(1) As used in division (E) of this section, "national 160
highway traffic safety administration" has the same meaning as in 161
section 4511.19 of the Revised Code. 162

(2) For the purposes of this section, "operate" means that a 163
vessel is being used on the waters in this state when the vessel 164
is not securely affixed to a dock or to shore or to any permanent 165
structure to which the vessel has the right to affix or that a 166
vessel is not anchored in a designated anchorage area or boat 167
camping area that is established by the United States coast guard, 168
this state, or a political subdivision and in which the vessel has 169
the right to anchor. 170

Sec. 1547.111. (A) Any person who operates or is in physical 171
control of a vessel or ~~uses~~ manipulates any water skis, aquaplane, 172
or similar device upon any waters in this state shall be deemed to 173
have given consent to a chemical test or tests of the person's 174
blood, breath, or urine for the purpose of determining its alcohol 175

or drug of abuse content if arrested for ~~the offense of~~ operating 176
~~or being in physical control of~~ a vessel or ~~using~~ manipulating any 177
water skis, aquaplane, or similar device ~~in violation of section~~ 178
~~1547.11 of the Revised Code~~ while under the influence of alcohol, 179
a drug of abuse, or the combined influence of alcohol and a drug 180
of abuse or for operating or being in physical control of a vessel 181
or manipulating any water skis, aquaplane, or similar device with 182
a prohibited concentration of alcohol in the blood, breath, or 183
urine. The test or tests shall be administered at the direction of 184
a law enforcement officer having reasonable grounds to believe the 185
person to have been so operating or being in physical control of a 186
vessel or using so manipulating any water skis, aquaplane, or 187
similar device ~~in violation of section 1547.11 of the Revised~~ 188
~~Code.~~ The law enforcement agency by which the officer is employed 189
shall designate which of the tests shall be administered. 190

(B) Any person who is dead, unconscious, or otherwise in a 192
condition rendering the person incapable of refusal shall be 193
deemed not to have withdrawn consent provided by division (A) of 194
this section and the test or tests may be administered, subject to 195
sections 313.12 to 313.16 of the Revised Code. 196

(C) Any person under arrest for ~~the offense of~~ operating or 197
being in physical control of a vessel or ~~using~~ manipulating any 198
water skis, aquaplane, or similar device ~~in violation of section~~ 199
~~1547.11 of the Revised Code~~ while under the influence of alcohol, 200
a drug of abuse, or the combined influence of alcohol and a drug 201
of abuse or for operating or being in physical control of a vessel 202
or manipulating any water skis, aquaplane, or similar device with 203
a prohibited concentration of alcohol in the blood, breath, or 204
urine shall be advised of the consequences of refusing to submit 205
to a chemical test designated by the law enforcement agency as 206
provided in division (A) of this section. The advice shall be in a 207

written form prescribed by the chief of the division of watercraft 208
and shall be read to the person. The form shall contain a 209
statement that the form was shown to the person under arrest and 210
read to the person in the presence of the arresting officer and 211
either another law enforcement officer, a civilian law enforcement 212
employee, or an employee of a hospital, first-aid station, or 213
clinic, if any, to which the person has been taken for first-aid 214
or medical treatment. The witnesses shall certify to this fact by 215
signing the form. 216

(D) If a person under arrest ~~for the offense of operating a~~ 217
~~vessel or using any water skis, aquaplane, or similar device in~~ 218
~~violation of section 1547.11 of the Revised Code as described in~~ 219
division (C)(1) of this section refuses upon the request of a law 220
enforcement officer to submit to a chemical test designated by the 221
law enforcement agency as provided in division (A) of this 222
section, after first having been advised of the consequences of 223
the refusal as provided in division (C) of this section, no 224
chemical test shall be given, but the chief, upon receipt of a 225
sworn statement of the law enforcement officer that the law 226
enforcement officer had reasonable grounds to believe the arrested 227
person had been operating or in physical control of a vessel or 228
~~using~~ manipulating any water skis, aquaplane, or similar device 229
while under the influence of alcohol ~~or~~, a drug of abuse, ~~under or~~ 230
the combined influence of alcohol and a drug of abuse, or with a 231
prohibited concentration of alcohol in the person's blood, urine, 232
or breath, and that the person refused to submit to the chemical 233
test upon the request of the law enforcement officer, and upon 234
receipt of the form as provided in division (C) of this section 235
certifying that the arrested person was advised of the 236
consequences of the refusal, shall inform the person by written 237
notice that the person is prohibited from operating a vessel or 238
~~using~~ manipulating any water skis, aquaplane, or similar device, 239
and is prohibited from registering any watercraft in accordance 240

with section 1547.54 of the Revised Code, for one year following 241
the date of the alleged violation of section 1547.11 of the 242
Revised Code. The suspension of these operation, ~~use~~ manipulation, 243
and registration privileges shall continue for the entire one-year 244
period, subject to review as provided in this section. 245

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If the person under arrest is the owner of the vessel 247
involved in the alleged violation, the law enforcement officer who 248
arrested the person shall seize the watercraft registration 249
certificate and tags from the vessel involved in the violation and 250
forward them to the chief. The chief, in addition to informing the 251
person by written notice that the person is prohibited from 252
operating a vessel or ~~using~~ manipulating any water skis, 253
aquaplane, or similar device, and from registering any watercraft 254
in accordance with section 1547.54 of the Revised Code, for one 255
year following the date of the alleged violation, shall retain the 256
impounded registration certificate and tags, and shall impound all 257
other registration certificates and tags issued to the person in 258
accordance with sections 1547.54 and 1547.57 of the Revised Code, 259
for a period of one year following the date of the alleged 260
violation, subject to review as provided in this section. 261

If the arrested person fails to surrender the registration 262
certificate because it is not on the person of the arrested person 263
or in the watercraft, the law enforcement officer who made the 264
arrest shall order the person to surrender it within twenty-four 265
hours to the law enforcement officer or the law enforcement agency 266
that employs the law enforcement officer. If the person fails to 267
do so, the law enforcement officer shall notify the chief of that 268
fact in the statement the officer submits to the chief under this 269
division. 270

(E) Upon suspending a person's operation, ~~use~~ manipulation, 271
and registration privileges in accordance with division (D) of 272

this section, the chief shall notify the person in writing, at the
person's last known address, and inform the person that the person
may petition for a hearing in accordance with division (F) of this
section. If a person whose operation, ~~use~~ manipulation, and
registration privileges have been suspended petitions for a
hearing or appeals any decision that is adverse to the person, the
suspension of privileges shall begin at the termination of any
hearing or appeal unless the hearing or appeal resulted in a
decision favorable to the person.

(F) Any person who has been notified by the chief that the
person is prohibited from operating a vessel or ~~using~~ manipulating
any water skis, aquaplane, or similar device and from registering
any watercraft in accordance with section 1547.54 of the Revised
Code, or who has had the registration certificate and tags of the
person's watercraft impounded pursuant to division (D) of this
section, within twenty days of the notification or impoundment,
may file a petition in the municipal court or the county court, or
if the person is a minor in juvenile court, in whose jurisdiction
the arrest occurred, agreeing to pay the cost of the proceedings
and alleging error in the action taken by the chief under division
(D) of this section or alleging one or more of the matters within
the scope of the hearing as provided in this section, or both. The
petitioner shall notify the chief of the filing of the petition
and send the chief a copy of the petition.

The scope of the hearing is limited to the issues of whether
the law enforcement officer had reasonable grounds to believe the
petitioner was operating or in physical control of a vessel or
~~using~~ manipulating any water skis, aquaplane, or similar device
while under the influence of alcohol ~~or~~, a drug of abuse, ~~under or~~
the combined influence of alcohol and a drug of abuse, or with a
prohibited concentration of alcohol ~~or a drug of abuse~~ in the
person's blood, urine, or breath, whether the petitioner was

placed under arrest, whether the petitioner refused to submit to 305
the chemical test upon request of the officer, and whether the 306
petitioner was advised of the consequences of the refusal. 307

(G)(1) The chief shall furnish the court a copy of the 308
affidavit as provided in division (C) of this section and any 309
other relevant information requested by the court. 310

(2) In hearing the matter and in determining whether the 311
person has shown error in the decision taken by the chief as 312
provided in division (D) of this section, the court shall decide 313
the issue upon the relevant, competent, and material evidence 314
submitted by the chief or the person whose operation, use, and 315
registration privileges have been suspended. 316

In the proceedings, the chief shall be represented by the 317
prosecuting attorney of the county in which the petition is filed 318
if the petition is filed in a county court or juvenile court, 319
except that if the arrest occurred within a city or village within 320
the jurisdiction of the county court in which the petition is 321
filed, the city director of law or village solicitor of that city 322
or village shall represent the chief. If the petition is filed in 323
the municipal court, the chief shall be represented as provided in 324
section 1901.34 of the Revised Code. 325

(3) If the court finds from the evidence submitted that the 326
person has failed to show error in the action taken by the chief 327
under division (D) of this section or in one or more of the 328
matters within the scope of the hearing as provided in division 329
(F) of this section, or both, the court shall assess the cost of 330
the proceeding against the person and shall uphold the suspension 331
of the operation, ~~use~~ manipulation, and registration privileges 332
provided in division (D) of this section. If the court finds that 333
the person has shown error in the action taken by the chief under 334
division (D) of this section or in one or more of the matters 335
within the scope of the hearing as provided in division (F) of 336

this section, or both, the cost of the proceedings shall be paid 337
out of the county treasury of the county in which the proceedings 338
were held, the operation, ~~use~~ manipulation, and registration 339
privileges of the person shall be reinstated without charge, and 340
the registration certificate and tags, if impounded, shall be 341
returned without charge. 342

(4) The court shall give information in writing of any action 343
taken under this section to the chief. 344

(H) At the end of any period of suspension or impoundment 345
imposed under this section, and upon request of the person whose 346
operation, use, and registration privileges were suspended or 347
whose registration certificate and tags were impounded, the chief 348
shall reinstate the person's operation, ~~use~~ manipulation, and 349
registration privileges by written notice and return the 350
certificate and tags. 351

(I) No person who has received written notice from the chief 352
that the person is prohibited from operating a vessel or ~~using~~ 353
manipulating any water skis, aquaplane, or similar device, and 354
from registering a watercraft, or who has had the registration 355
certificate and tags of the person's watercraft impounded, in 356
accordance with division (D) of this section, shall operate a 357
vessel or ~~use~~ manipulate any water skis, aquaplane, or similar 358
device for a period of one year following the date of the person's 359
alleged violation of section 1547.11 of the Revised Code. 360

Sec. 2909.09. (A) As used in this section: 14

(1) "Highway" means any highway as defined in section 4511.01 15
of the Revised Code or any lane, road, street, alley, bridge, or 16
overpass. 17

(2) "Alley," "street," "streetcar," "trackless trolley," and 18
"vehicle" have the same meanings as in section 4511.01 of the 19
Revised Code. 20

(3) "Vessel" and "waters in this state" have the same meanings as in section 1547.01 of the Revised Code. 21
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(B) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following: 23
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(1) Any vehicle, streetcar, or trackless trolley on a highway; 25
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(2) Any boat or vessel on any of the waters in this state. 27

(C) Whoever violates this section is guilty of vehicular vandalism. Except as otherwise provided in this division, vehicular vandalism is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of this section creates a substantial risk of physical harm to any person or the violation of this section causes serious physical harm to property, vehicular vandalism is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of this section causes physical harm to any person, vehicular vandalism is a felony of the third degree. If the violation of this section causes serious physical harm to any person, vehicular vandalism is a felony of the second degree. 28
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Sec. 2909.10. (A) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of, any railroad rail, railroad track, locomotive, engine, railroad car, or other vehicle of a railroad company while such vehicle is on a railroad track. 40
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(B) No person, without privilege to do so, shall climb upon or into any locomotive, engine, railroad car, or other vehicle of a railroad company when it is on a railroad track. 45
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(C) No person, without privilege to do so, shall disrupt, delay, or prevent the operation of any train or other vehicle of a railroad company while such vehicle is on a railroad track. 48
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(D) No person, without privilege to do so, shall knowingly enter or remain on the land or premises of a railroad company. 51
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(E) Whoever violates division (A) of this section is guilty of railroad vandalism. Whoever violates division (B) of this section is guilty of criminal trespass on a locomotive, engine, railroad car, or other railroad vehicle. Whoever violates division (C) of this section is guilty of interference with the operation of a train. 53
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Except as otherwise provided in this division, railroad vandalism; criminal trespass on a locomotive, engine, railroad car, or other railroad vehicle; and interference with the operation of a train each is a misdemeanor of the first degree. Except as otherwise provided in this division, if the violation of division (A), (B), or (C) of this section causes serious physical harm to property or creates a substantial risk of physical harm to any person, the violation is a felony of the fourth degree. Except as otherwise provided in this division, if the violation of division (A), (B), or (C) of this section causes physical harm to any person, the violation is a felony of the third degree. If the violation of division (A), (B), or (C) of this section causes serious physical harm to any person, the violation is a felony of the second degree. 59
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(F) Whoever violates division (D) of this section is guilty of criminal trespass on the land or premises of a railroad company, a misdemeanor of the fourth degree. 73
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Sec. 2909.101. (A) No person shall knowingly deface, damage, obstruct, remove, or otherwise impair the operation of any railroad grade crossing warning signal or other protective device, including any gate, bell, light, crossbuck, stop sign, yield sign, advance warning sign, or advance pavement marking. 76
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(B) Whoever violates this section is guilty of railroad grade 81

crossing device vandalism. Except as otherwise provided in this 82
division, railroad grade crossing device vandalism is a 83
misdemeanor of the first degree. Except as otherwise provided in 84
this division, if the violation of this section causes serious 85
physical harm to property or creates a substantial risk of 86
physical harm to any person, railroad grade crossing device 87
vandalism is a felony of the fourth degree. Except as otherwise 88
provided in this division, if the violation of this section causes 89
physical harm to any person, railroad grade crossing device 90
vandalism is a felony of the third degree. If the violation of 91
this section causes serious physical harm to any person, railroad 92
grade crossing device vandalism is a felony of the second degree. 93

Sec. 4511.19. (A) No person shall operate any vehicle, 362
streetcar, or trackless trolley within this state, if any of the 363
following apply: 364

(1) The person is under the influence of alcohol, a drug of 365
abuse, or alcohol and a drug of abuse; 366

(2) The person has a concentration of ten-hundredths of one 367
per cent or more but less than seventeen-hundredths of one per 368
cent by weight of alcohol in the person's blood; 369

(3) The person has a concentration of ten-hundredths of one 370
gram or more but less than seventeen-hundredths of one gram by 371
weight of alcohol per two hundred ten liters of the person's 372
breath; 373

(4) The person has a concentration of fourteen-hundredths of 374
one gram or more but less than two hundred 375
thirty-eight-thousandths of one gram by weight of alcohol per one 376
hundred milliliters of the person's urine; 377

(5) The person has a concentration of seventeen-hundredths of 378
one per cent or more by weight of alcohol in the person's blood; 379

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(6) The person has a concentration of seventeen-hundredths of 381
one gram or more by weight of alcohol per two hundred ten liters 382
of the person's breath; 383

(7) The person has a concentration of two hundred 384
thirty-eight-thousandths of one gram or more by weight of alcohol 385
per one hundred milliliters of the person's urine. 386

(B) No person under twenty-one years of age shall operate any 387
vehicle, streetcar, or trackless trolley within this state, if any 388
of the following apply: 389

(1) The person has a concentration of at least two-hundredths 390
of one per cent but less than ten-hundredths of one per cent by 391
weight of alcohol in the person's blood; 392

(2) The person has a concentration of at least two-hundredths 393
of one gram but less than ten-hundredths of one gram by weight of 394
alcohol per two hundred ten liters of the person's breath; 395
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(3) The person has a concentration of at least twenty-eight 397
one-thousandths of one gram but less than fourteen-hundredths of 398
one gram by weight of alcohol per one hundred milliliters of the 399
person's urine. 400

(C) In any proceeding arising out of one incident, a person 401
may be charged with a violation of division (A)(1) and a violation 402
of division (B)(1), (2), or (3) of this section, but the person 403
may not be convicted of more than one violation of these 404
divisions. 405

(D)(1) In any criminal prosecution or juvenile court 406
proceeding for a violation of division (A) or (B) of this section, 407
of a municipal ordinance relating to operating a vehicle while 408
under the influence of alcohol, a drug of abuse, or alcohol and a 409
drug of abuse, or of a municipal ordinance relating to operating a 410

vehicle with a prohibited concentration of alcohol in the blood, 411
breath, or urine, the court may admit evidence on the 412
concentration of alcohol, drugs of abuse, or alcohol and drugs of 413
abuse in the defendant's blood, breath, urine, or other bodily 414
substance at the time of the alleged violation as shown by 415
chemical analysis of the defendant's blood, urine, breath, or 416
other bodily substance withdrawn within two hours of the time of 417
the alleged violation. 418

When a person submits to a blood test at the request of a 419
police officer under section 4511.191 of the Revised Code, only a 420
physician, a registered nurse, or a qualified technician or 421
chemist shall withdraw blood for the purpose of determining its 422
alcohol, drug, or alcohol and drug content. This limitation does 423
not apply to the taking of breath or urine specimens. A physician, 424
a registered nurse, or a qualified technician or chemist may 425
refuse to withdraw blood for the purpose of determining the 426
alcohol, drug, or alcohol and drug content of the blood, if in the 427
opinion of the physician, nurse, technician, or chemist the 428
physical welfare of the person would be endangered by the 429
withdrawing of blood. 430

Such bodily substance shall be analyzed in accordance with 431
methods approved by the director of health by an individual 432
possessing a valid permit issued by the director of health 433
pursuant to section 3701.143 of the Revised Code. 434

(2) In a criminal prosecution or juvenile court proceeding 435
for a violation of division (A) of this section, of a municipal 436
ordinance relating to operating a vehicle while under the 437
influence of alcohol, a drug of abuse, or alcohol and a drug of 438
abuse, or of a municipal ordinance substantially equivalent to 439
division (A) of this section relating to operating a vehicle with 440
a prohibited concentration of alcohol in the blood, breath, or 441
urine, if there was at the time the bodily substance was withdrawn 442

a concentration of less than ten-hundredths of one per cent by weight of alcohol in the defendant's blood, less than ten-hundredths of one gram by weight of alcohol per two hundred ten liters of the defendant's breath, or less than fourteen-hundredths of one gram by weight of alcohol per one hundred milliliters of the defendant's urine, such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or of a municipal ordinance substantially equivalent to division (B) of this section relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine.

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(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney or agent immediately upon the completion of the chemical test analysis.

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The person tested may have a physician, a registered nurse, or a qualified technician or chemist of the person's own choosing administer a chemical test or tests in addition to any administered at the request of a police officer, and shall be so advised. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a police officer.

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(4)(a) As used in divisions (D)(4)(b) and (c) of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States department of transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

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(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a

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municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

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

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

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

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

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(5) Any physician, registered nurse, or qualified technician 506
or chemist who withdraws blood from a person pursuant to this 507
section, and any hospital, first-aid station, or clinic at which 508
blood is withdrawn from a person pursuant to this section, is 509
immune from criminal liability, and from civil liability that is 510
based upon a claim of assault and battery or based upon any other 511
claim that is not in the nature of a claim of malpractice, for any 512
act performed in withdrawing blood from the person. 513

Section 2. That existing sections 1547.11, 1547.111, and
4511.19 are hereby repealed.

Section 3. That the versions of sections 1547.11, 1547.111,
4511.19, and 4511.194 of the Revised Code that are scheduled to
take effect January 1, 2004, be amended to read as follows:

Sec. 1547.11. (A) No person shall operate or be in physical 519
control of any vessel underway or shall manipulate any water skis, 520
aquaplane, or similar device on the waters in this state if, at 521
the time of the operation, control, or manipulation, any of the 522
following applies: 523

(1) The person is under the influence of alcohol, a drug of 524
abuse, or a combination of them. 525

(2) The person has a concentration of ten-hundredths of one 526
per cent or more by weight of alcohol per unit volume in the 527
person's whole blood. 528

(3) The person has a concentration of twelve-hundredths of 529
one per cent or more by weight per unit volume of alcohol in the 530
person's blood serum or plasma. 531

(4) The person has a concentration of fourteen-hundredths of 532
one gram or more by weight of alcohol per one hundred milliliters 533
of the person's urine. 534

(5) The person has a concentration of ten-hundredths of one 535
gram or more by weight of alcohol per two hundred ten liters of 536
the person's breath. 537

(B) No person under twenty-one years of age shall operate or 538
be in physical control of any vessel underway or shall manipulate 539
any water skis, aquaplane, or similar device on the waters in this 540
state if, at the time of the operation, control, or manipulation, 541
any of the following applies: 542

(1) The person has a concentration of at least two-hundredths 543
of one per cent, but less than ten-hundredths of one per cent by 544
weight per unit volume of alcohol in the person's whole blood. 545
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(2) The person has a concentration of at least 547
three-hundredths of one per cent but less than twelve-hundredths 548
of one per cent by weight per unit volume of alcohol in the 549
person's blood serum or plasma. 550

(3) The person has a concentration of at least twenty-eight 551
one-thousandths of one gram, but less than fourteen-hundredths of 552
one gram by weight of alcohol per one hundred milliliters of the 553
person's urine. 554

(4) The person has a concentration of at least two-hundredths 555
of one gram, but less than ten-hundredths of one gram by weight of 556
alcohol per two hundred ten liters of the person's breath. 557
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(C) In any proceeding arising out of one incident, a person 559
may be charged with a violation of division (A)(1) and a violation 560
of division (B)(1), (2), (3), or (4) of this section, but the 561
person shall not be convicted of more than one violation of those 562
divisions. 563

(D)(1) In any criminal prosecution or juvenile court 564
proceeding for a violation of division (A) or (B) of this section 565

or for an equivalent violation, the court may admit evidence on 566
the concentration of alcohol, drugs of abuse, or a combination of 567
them in the defendant's or child's whole blood, blood serum or 568
plasma, urine, or breath at the time of the alleged violation as 569
shown by chemical analysis of the substance withdrawn, or specimen 570
taken within two hours of the time of the alleged violation. 571

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When a person submits to a blood test, only a physician, a 573
registered nurse, or a qualified technician, chemist, or 574
phlebotomist shall withdraw blood for the purpose of determining 575
the alcohol, drug, or alcohol and drug content of the whole blood, 576
blood serum, or blood plasma. This limitation does not apply to 577
the taking of breath or urine specimens. A person authorized to 578
withdraw blood under this division may refuse to withdraw blood 579
under this division if, in that person's opinion, the physical 580
welfare of the defendant or child would be endangered by 581
withdrawing blood. 582

The whole blood, blood serum or plasma, urine, or breath 583
shall be analyzed in accordance with methods approved by the 584
director of health by an individual possessing a valid permit 585
issued by the director pursuant to section 3701.143 of the Revised 586
Code. 587

(2) In a criminal prosecution or juvenile court proceeding 588
for a violation of division (A) of this section or for a violation 589
of a prohibition that is substantially equivalent to division (A) 590
of this section, if there was at the time the ~~whole blood, blood~~ 591
~~serum or plasma, urine, or breath~~ bodily substance was taken a 592
concentration of less than the applicable concentration of alcohol 593
specified for a violation of division (A)(2), (3), (4), or (5) of 594
this section, that fact may be considered with other competent 595
evidence in determining the guilt or innocence of the defendant or 596
in making an adjudication for the child. This division does not 597

limit or affect a criminal prosecution or juvenile court 598
proceeding for a violation of division (B) of this section or for 599
a violation of a prohibition that is substantially equivalent to 600
that division. 601

(3) Upon the request of the person who was tested, the 602
results of the chemical test shall be made available to the person 603
or the person's attorney immediately upon completion of the test 604
analysis. 605

The person tested may have a physician, a registered nurse, 606
or a qualified technician, chemist, or phlebotomist of the 607
person's own choosing administer a chemical test or tests in 608
addition to any administered at the direction of a law enforcement 609
officer, and shall be so advised. The failure or inability to 610
obtain an additional test by a person shall not preclude the 611
admission of evidence relating to the test or tests taken at the 612
direction of a law enforcement officer. 613

(E)(1) In any criminal prosecution or juvenile court 614
proceeding for a violation of division (A) or (B) of this section 615
or for an equivalent violation, if a law enforcement officer has 616
administered a field sobriety test to the operator or person found 617
to be in physical control of the vessel underway involved in the 618
violation or the person manipulating the water skis, aquaplane, or 619
similar device involved in the violation and if it is shown by 620
clear and convincing evidence that the officer administered the 621
test in substantial compliance with the testing standards for 622
reliable, credible, and generally accepted field sobriety tests 623
for vehicles that were in effect at the time the tests were 624
administered, including, but not limited to, any testing standards 625
then in effect that have been set by the national highway traffic 626
safety administration, that by their nature are not clearly 627
inapplicable regarding the operation or physical control of 628
vessels underway or the manipulation of water skis, aquaplanes, or 629

similar devices, all of the following apply: 630

(a) The officer may testify concerning the results of the field sobriety test so administered. 631
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(b) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding. 633
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(c) If testimony is presented or evidence is introduced under division (E)(1)(a) or (b) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate. 636
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(2) Division (E)(1) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (E)(1) of this section. 642
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(F)(1) Subject to division ~~(E)~~(F)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of this section or for an equivalent violation, the court shall admit as prima-facie evidence a laboratory report from any forensic laboratory certified by the department of health that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division. The laboratory report shall contain all of the following: 649
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(a) The signature, under oath, of any person who performed the analysis; 658
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(b) Any findings as to the identity and quantity of alcohol, 660

a drug of abuse, or a combination of them that was found; 661

(c) A copy of a notarized statement by the laboratory 662
director or a designee of the director that contains the name of 663
each certified analyst or test performer involved with the report, 664
the analyst's or test performer's employment relationship with the 665
laboratory that issued the report, and a notation that performing 666
an analysis of the type involved is part of the analyst's or test 667
performer's regular duties; 668

(d) An outline of the analyst's or test performer's 669
education, training, and experience in performing the type of 670
analysis involved and a certification that the laboratory 671
satisfies appropriate quality control standards in general and, in 672
this particular analysis, under rules of the department of health. 673

(2) Notwithstanding any other provision of law regarding the 674
admission of evidence, a report of the type described in division 675
~~(E)~~(F)(1) of this section is not admissible against the defendant 676
or child to whom it pertains in any proceeding, other than a 677
preliminary hearing or a grand jury proceeding, unless the 678
prosecutor has served a copy of the report on the defendant's or 679
child's attorney or, if the defendant or child has no attorney, on 680
the defendant or child. 681

(3) A report of the type described in division ~~(E)~~(F)(1) of 682
this section shall not be prima-facie evidence of the contents, 683
identity, or amount of any substance if, within seven days after 684
the defendant or child to whom the report pertains or the 685
defendant's or child's attorney receives a copy of the report, the 686
defendant or child or the defendant's or child's attorney demands 687
the testimony of the person who signed the report. The judge in 688
the case may extend the seven-day time limit in the interest of 689
justice. 690

~~(F)~~(G) Except as otherwise provided in this division, any 691

physician, registered nurse, or qualified technician, chemist, or 692
phlebotomist who withdraws blood from a person pursuant to this 693
section, and a hospital, first-aid station, or clinic at which 694
blood is withdrawn from a person pursuant to this section, is 695
immune from criminal and civil liability based upon a claim of 696
assault and battery or any other claim that is not a claim of 697
malpractice, for any act performed in withdrawing blood from the 698
person. The immunity provided in this division is not available to 699
a person who withdraws blood if the person engages in willful or 700
wanton misconduct. 701

~~(G)~~(H) As used in this section and section 1547.111 of the 702
Revised Code: 703

(1) "Equivalent violation" means a violation of a municipal 704
ordinance, law of another state, or law of the United States that 705
is substantially equivalent to division (A) or (B) of this 706
section. 707

(2) "National highway traffic safety administration" has the 708
same meaning as in section 4511.19 of the Revised Code. 709

(3) "Operate" means that a vessel is being used on the waters 710
in this state when the vessel is not securely affixed to a dock or 711
to shore or to any permanent structure to which the vessel has the 712
right to affix or that a vessel is not anchored in a designated 713
anchorage area or boat camping area that is established by the 714
United States coast guard, this state, or a political subdivision 715
and in which the vessel has the right to anchor. 716

Sec. 1547.111. (A)(1) Any person who operates or is in 717
physical control of a vessel or ~~uses~~ manipulates any water skis, 718
aquaplane, or similar device upon any waters in this state shall 719
be deemed to have given consent to a chemical test or tests to 720
determine the alcohol, drug of abuse, or alcohol and drug of abuse 721
content of the person's whole blood, blood serum or plasma, 722

breath, or urine if arrested for ~~the offense of~~ operating or being 723
in physical control of a vessel or manipulating any water skis, 724
aquaplane, or similar device in violation of section 1547.11 of 725
the Revised Code or a substantially equivalent municipal 726
ordinance. 727

(2) The test or tests under division (A) of this section 728
shall be administered at the direction of a law enforcement 729
officer having reasonable grounds to believe the person was 730
operating or in physical control of a vessel or manipulating any 731
water skis, aquaplane, or similar device in violation of section 732
1547.11 of the Revised Code or a substantially equivalent 733
municipal ordinance. The law enforcement agency by which the 734
officer is employed shall designate which test or tests shall be 735
administered. 736

(B) Any person who is dead or unconscious or who otherwise is 737
in a condition rendering the person incapable of refusal shall be 738
deemed to have consented as provided in division (A)(1) of this 739
section, and the test or tests may be administered, subject to 740
sections 313.12 to 313.16 of the Revised Code. 741

(C) Any person under arrest for violating section 1547.11 of 742
the Revised Code or a substantially equivalent municipal ordinance 743
shall be advised of the consequences of refusing to submit to a 744
chemical test or tests designated as provided in division (A) of 745
this section. The advice shall be in a written form prescribed by 746
the chief of the division of watercraft and shall be read to the 747
person. The form shall contain a statement that the form was shown 748
to the person under arrest and read to the person by the arresting 749
officer. The reading of the form shall be witnessed by one or more 750
persons, and the witnesses shall certify to this fact by signing 751
the form. 752

(D) If a law enforcement officer asks a person under arrest 753

for violating section 1547.11 of the Revised Code or a
substantially equivalent municipal ordinance to submit to a
chemical test or tests as provided in division (A) of this
section, if the arresting officer advises the person of the
consequences of the person's refusal as provided in division (C)
of this section, and if the person refuses to submit, no chemical
test shall be given. Upon receipt of a sworn statement of the
officer that the arresting law enforcement officer had reasonable
grounds to believe the arrested person violated section 1547.11 of
the Revised Code or a substantially equivalent municipal ordinance
and that the person refused to submit to the chemical test upon
the request of the officer, and upon receipt of the form as
provided in division (C) of this section certifying that the
arrested person was advised of the consequences of the refusal,
the chief of the division of watercraft shall inform the person by
written notice that the person is prohibited from operating or
being in physical control of a vessel, from ~~using~~ manipulating any
water skis, aquaplane, or similar device, and from registering any
watercraft in accordance with section 1547.54 of the Revised Code,
for one year following the date of the alleged violation. The
suspension of these operation, physical control, ~~use~~ manipulation,
and registration privileges shall continue for the entire one-year
period, subject to review as provided in this section.

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If the person under arrest is the owner of the vessel
involved in the alleged violation, the law enforcement officer who
arrested the person shall seize the watercraft registration
certificate and tags from the vessel involved in the violation and
forward them to the chief. The chief shall retain the impounded
registration certificate and tags and shall impound all other
registration certificates and tags issued to the person in
accordance with sections 1547.54 and 1547.57 of the Revised Code,
for a period of one year following the date of the alleged

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violation, subject to review as provided in this section. 787

If the arrested person fails to surrender the registration 788
certificate because it is not on the person of the arrested person 789
or in the watercraft, the law enforcement officer who made the 790
arrest shall order the person to surrender it within twenty-four 791
hours to the law enforcement officer or the law enforcement agency 792
that employs the law enforcement officer. If the person fails to 793
do so, the law enforcement officer shall notify the chief of that 794
fact in the statement the officer submits to the chief under this 795
division. 796

(E) Upon suspending a person's operation, physical control, 797
~~use~~ manipulation, and registration privileges in accordance with 798
division (D) of this section, the chief shall notify the person in 799
writing, at the person's last known address, and inform the person 800
that the person may petition for a hearing in accordance with 801
division (F) of this section. If a person whose operation, 802
physical control, ~~use~~ manipulation, and registration privileges 803
have been suspended petitions for a hearing or appeals any adverse 804
decision, the suspension shall begin at the termination of any 805
hearing or appeal unless the hearing or appeal results in a 806
decision favorable to the person. 807

(F) Any person who has been notified by the chief that the 808
person is prohibited from operating or being in physical control 809
of a vessel or ~~using~~ manipulating any water skis, aquaplane, or 810
similar device and from registering any watercraft in accordance 811
with section 1547.54 of the Revised Code, or who has had the 812
registration certificate and tags of the person's watercraft 813
impounded pursuant to division (D) of this section, within twenty 814
days of the notification or impoundment, may file a petition in 815
the municipal court or the county court, or if the person is a 816
minor in juvenile court, with jurisdiction over the place at which 817
the arrest occurred, agreeing to pay the cost of the proceedings 818

and alleging error in the action taken by the chief under division 819
(D) of this section or alleging one or more of the matters within 820
the scope of the hearing as provided in this section, or both. The 821
petitioner shall notify the chief of the filing of the petition 822
and send the chief a copy of the petition. 823

The scope of the hearing is limited to the issues of whether 824
the law enforcement officer had reasonable grounds to believe the 825
petitioner was operating or in physical control of a vessel or 826
manipulating any water skis, aquaplane, or similar device in 827
violation of section 1547.11 of the Revised Code or a 828
substantially equivalent municipal ordinance, whether the 829
petitioner was placed under arrest, whether the petitioner refused 830
to submit to the chemical test upon request of the officer, and 831
whether the petitioner was advised of the consequences of the 832
petitioner's refusal. 833

(G)(1) The chief shall furnish the court a copy of the 834
affidavit as provided in division (C) of this section and any 835
other relevant information requested by the court. 836

(2) In hearing the matter and in determining whether the 837
person has shown error in the decision taken by the chief as 838
provided in division (D) of this section, the court shall decide 839
the issue upon the relevant, competent, and material evidence 840
submitted by the chief or the person whose operation, physical 841
control, ~~use~~ manipulation, and registration privileges have been 842
suspended. 843

In the proceedings, the chief shall be represented by the 844
prosecuting attorney of the county in which the petition is filed 845
if the petition is filed in a county court or juvenile court, 846
except that if the arrest occurred within a city or village within 847
the jurisdiction of the county court in which the petition is 848
filed, the city director of law or village solicitor of that city 849
or village shall represent the chief. If the petition is filed in 850

the municipal court, the chief shall be represented as provided in
section 1901.34 of the Revised Code.

(3) If the court finds from the evidence submitted that the
person has failed to show error in the action taken by the chief
under division (D) of this section or in one or more of the
matters within the scope of the hearing as provided in division
(F) of this section, or both, the court shall assess the cost of
the proceeding against the person and shall uphold the suspension
of the operation, physical control, use, and registration
privileges provided in division (D) of this section. If the court
finds that the person has shown error in the action taken by the
chief under division (D) of this section or in one or more of the
matters within the scope of the hearing as provided in division
(F) of this section, or both, the cost of the proceedings shall be
paid out of the county treasury of the county in which the
proceedings were held, the chief shall reinstate the operation,
physical control, ~~use~~ manipulation, and registration privileges of
the person without charge, and the chief shall return the
registration certificate and tags, if impounded, without charge.

(4) The court shall give information in writing of any action
taken under this section to the chief.

(H) At the end of any period of suspension or impoundment
imposed under this section, and upon request of the person whose
operation, physical control, use, and registration privileges were
suspended or whose registration certificate and tags were
impounded, the chief shall reinstate the person's operation,
physical control, ~~use~~ manipulation, and registration privileges by
written notice and return the certificate and tags.

(I) No person who has received written notice from the chief
that the person is prohibited from operating or being in physical
control of a vessel, from ~~using~~ manipulating any water skis,
aquaplane, or similar device, and from registering a watercraft,

or who has had the registration certificate and tags of the 883
person's watercraft impounded, in accordance with division (D) of 884
this section, shall operate or be in physical control of a vessel 885
or ~~use~~ manipulate any water skis, aquaplane, or similar device for 886
a period of one year following the date of the person's alleged 887
violation of section 1547.11 of the Revised Code or the 888
substantially equivalent municipal ordinance. 889

Sec. 4511.19. (A) No person shall operate any vehicle, 890
streetcar, or trackless trolley within this state, if, at the time 891
of the operation, any of the following apply: 892

(1) The person is under the influence of alcohol, a drug of 893
abuse, or a combination of them; 894

(2) The person has a concentration of ten-hundredths of one 895
per cent or more but less than seventeen-hundredths of one per 896
cent by weight per unit volume of alcohol in the person's whole 897
blood; 898

(3) The person has a concentration of twelve-hundredths of 899
one per cent or more but less than two hundred four-thousandths of 900
one per cent by weight per unit volume of alcohol in the person's 901
blood serum or plasma; 902

(4) The person has a concentration of ten-hundredths of one 903
gram or more but less than seventeen-hundredths of one gram by 904
weight of alcohol per two hundred ten liters of the person's 905
breath; 906

(5) The person has a concentration of fourteen-hundredths of 907
one gram or more but less than two hundred 908
thirty-eight-thousandths of one gram by weight of alcohol per one 909
hundred milliliters of the person's urine; 910

(6) The person has a concentration of seventeen-hundredths of 911
one per cent or more by weight per unit volume of alcohol in the 912

person's whole blood;	913
(7) The person has a concentration of two hundred	914
four-thousandths of one per cent or more by weight per unit volume	915
of alcohol in the person's blood serum or plasma;	916
(8) The person has a concentration of seventeen-hundredths of	917
one gram or more by weight of alcohol per two hundred ten liters	918
of the person's breath;	919
(9) The person has a concentration of two hundred	920
thirty-eight-thousandths of one gram or more by weight of alcohol	921
per one hundred milliliters of the person's urine.	922
(B) No person under twenty-one years of age shall operate any	923
vehicle, streetcar, or trackless trolley within this state, if, at	924
the time of the operation, any of the following apply:	925
(1) The person has a concentration of at least two-hundredths	926
of one per cent but less than ten-hundredths of one per cent by	927
weight per unit volume of alcohol in the person's whole blood;	928
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(2) The person has a concentration of at least	930
three-hundredths of one per cent but less than twelve-hundredths	931
of one per cent by weight per unit volume of alcohol in the	932
person's blood serum or plasma;	933
(3) The person has a concentration of at least two-hundredths	934
of one gram but less than ten-hundredths of one gram by weight of	935
alcohol per two hundred ten liters of the person's breath;	936
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(4) The person has a concentration of at least twenty-eight	938
one-thousandths of one gram but less than fourteen-hundredths of	939
one gram by weight of alcohol per one hundred milliliters of the	940
person's urine.	941
(C) In any proceeding arising out of one incident, a person	942

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

(D)(1) In any criminal prosecution or juvenile court
proceeding for a violation of division (A) or (B) of this section
or for an equivalent offense, the court may admit evidence on the
concentration of alcohol, drugs of abuse, or a combination of them
in the defendant's whole blood, blood serum or plasma, breath,
urine, or other bodily substance at the time of the alleged
violation as shown by chemical analysis of the substance withdrawn
within two hours of the time of the alleged violation.

When a person submits to a blood test at the request of a law
enforcement officer under section 4511.191 of the Revised Code,
only a physician, a registered nurse, or a qualified technician,
chemist, or phlebotomist shall withdraw blood for the purpose of
determining the alcohol, drug, or alcohol and drug content of the
whole blood, blood serum, or blood plasma. This limitation does
not apply to the taking of breath or urine specimens. A person
authorized to withdraw blood under this division may refuse to
withdraw blood under this division, if in that person's opinion,
the physical welfare of the person would be endangered by the
withdrawing of blood.

The bodily substance withdrawn shall be analyzed in
accordance with methods approved by the director of health by an
individual possessing a valid permit issued by the director
pursuant to section 3701.143 of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding
for a violation of division (A) of this section or for an
equivalent offense, if there was at the time the bodily substance
was withdrawn a concentration of less than the applicable
concentration of alcohol specified in divisions (A)(2), (3), (4),

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and (5) of this section, that fact may be considered with other
competent evidence in determining the guilt or innocence of the
defendant. This division does not limit or affect a criminal
prosecution or juvenile court proceeding for a violation of
division (B) of this section or for an equivalent offense that is
substantially equivalent to that division.

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(3) Upon the request of the person who was tested, the
results of the chemical test shall be made available to the person
or the person's attorney, immediately upon the completion of the
chemical test analysis.

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The person tested may have a physician, a registered nurse,
or a qualified technician, chemist, or phlebotomist of the
person's own choosing administer a chemical test or tests, at the
person's expense, in addition to any administered at the request
of a law enforcement officer. The form to be read to the person to
be tested, as required under section 4511.192 of the Revised Code,
shall state that the person may have an independent test performed
at the person's expense. The failure or inability to obtain an
additional chemical test by a person shall not preclude the
admission of evidence relating to the chemical test or tests taken
at the request of a law enforcement officer.

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(4)(a) As used in divisions (D)(4)(b) and (c) of this
section, "national highway traffic safety administration" means
the national highway traffic safety administration established as
an administration of the United States department of
transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

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(b) In any criminal prosecution or juvenile court proceeding
for a violation of division (A) or (B) of this section, of a
municipal ordinance relating to operating a vehicle while under
the influence of alcohol, a drug of abuse, or alcohol and a drug
of abuse, or of a municipal ordinance relating to operating a
vehicle with a prohibited concentration of alcohol in the blood,

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breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

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

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

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(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

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

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(E)(1) Subject to division (E)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (A)(2), (3), (4), (5), (6), (7), (8), or (9) or (B)(1), (2), (3), or (4) of this section or for an equivalent

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offense that is substantially equivalent to any of those 1038
divisions, a laboratory report from any forensic laboratory 1039
certified by the department of health that contains an analysis of 1040
the whole blood, blood serum or plasma, breath, urine, or other 1041
bodily substance tested and that contains all of the information 1042
specified in this division shall be admitted as prima-facie 1043
evidence of the information and statements that the report 1044
contains. The laboratory report shall contain all of the 1045
following: 1046

(a) The signature, under oath, of any person who performed 1047
the analysis; 1048

(b) Any findings as to the identity and quantity of alcohol, 1049
a drug of abuse, or a combination of them that was found; 1050

(c) A copy of a notarized statement by the laboratory 1051
director or a designee of the director that contains the name of 1052
each certified analyst or test performer involved with the report, 1053
the analyst's or test performer's employment relationship with the 1054
laboratory that issued the report, and a notation that performing 1055
an analysis of the type involved is part of the analyst's or test 1056
performer's regular duties; 1057

(d) An outline of the analyst's or test performer's 1058
education, training, and experience in performing the type of 1059
analysis involved and a certification that the laboratory 1060
satisfies appropriate quality control standards in general and, in 1061
this particular analysis, under rules of the department of health. 1062

(2) Notwithstanding any other provision of law regarding the 1063
admission of evidence, a report of the type described in division 1064
(E)(1) of this section is not admissible against the defendant to 1065
whom it pertains in any proceeding, other than a preliminary 1066
hearing or a grand jury proceeding, unless the prosecutor has 1067
served a copy of the report on the defendant's attorney or, if the 1068

defendant has no attorney, on the defendant. 1069

(3) A report of the type described in division (E)(1) of this 1070
section shall not be prima-facie evidence of the contents, 1071
identity, or amount of any substance if, within seven days after 1072
the defendant to whom the report pertains or the defendant's 1073
attorney receives a copy of the report, the defendant or the 1074
defendant's attorney demands the testimony of the person who 1075
signed the report. The judge in the case may extend the seven-day 1076
time limit in the interest of justice. 1077

(F) Except as otherwise provided in this division, any 1078
physician, registered nurse, or qualified technician, chemist, or 1079
phlebotomist who withdraws blood from a person pursuant to this 1080
section, and any hospital, first-aid station, or clinic at which 1081
blood is withdrawn from a person pursuant to this section, is 1082
immune from criminal liability and civil liability based upon a 1083
claim of assault and battery or any other claim that is not a 1084
claim of malpractice, for any act performed in withdrawing blood 1085
from the person. The immunity provided in this division is not 1086
available to a person who withdraws blood if the person engages in 1087
willful or wanton misconduct. 1088

(G)(1) Whoever violates any provision of divisions (A)(1) to 1089
(9) of this section is guilty of operating a vehicle under the 1090
influence of alcohol, a drug of abuse, or a combination of them. 1091
The court shall sentence the offender under Chapter 2929. of the 1092
Revised Code, except as otherwise authorized or required by 1093
divisions (G)(1)(a) to (e) of this section: 1094

(a) Except as otherwise provided in division (G)(1)(b), (c), 1095
(d), or (e) of this section, the offender is guilty of a 1096
misdemeanor of the first degree, and the court shall sentence the 1097
offender to all of the following: 1098

(i) If the sentence is being imposed for a violation of 1099

division (A)(1), (2), (3), (4), or (5) of this section, a
mandatory jail term of three consecutive days. As used in this
division, three consecutive days means seventy-two consecutive
hours. The court may sentence an offender to both an intervention
program and a jail term. The court may impose a jail term in
addition to the three-day mandatory jail term or intervention
program. However, in no case shall the cumulative jail term
imposed for the offense exceed six months.

The court may suspend the execution of the three-day jail
term under this division if the court, in lieu of that suspended
term, places the offender on probation and requires the offender
to attend, for three consecutive days, a drivers' intervention
program certified under section 3793.10 of the Revised Code. The
court also may suspend the execution of any part of the three-day
jail term under this division if it places the offender on
probation for part of the three days, requires the offender to
attend for the suspended part of the term a drivers' intervention
program so certified, and sentences the offender to a jail term
equal to the remainder of the three consecutive days that the
offender does not spend attending the program. The court may
require the offender, as a condition of probation and in addition
to the required attendance at a drivers' intervention program, to
attend and satisfactorily complete any treatment or education
programs that comply with the minimum standards adopted pursuant
to Chapter 3793. of the Revised Code by the director of alcohol
and drug addiction services that the operators of the drivers'
intervention program determine that the offender should attend and
to report periodically to the court on the offender's progress in
the programs. The court also may impose on the offender any other
conditions of probation that it considers necessary.

(ii) If the sentence is being imposed for a violation of
division (A)(6), (7), (8), or (9) of this section, except as

otherwise provided in this division, a mandatory jail term of at
least three consecutive days and a requirement that the offender
attend, for three consecutive days, a drivers' intervention
program that is certified pursuant to section 3793.10 of the
Revised Code. As used in this division, three consecutive days
means seventy-two consecutive hours. If the court determines that
the offender is not conducive to treatment in a drivers'
intervention program, if the offender refuses to attend a drivers'
intervention program, or if the jail at which the offender is to
serve the jail term imposed can provide a driver's intervention
program, the court shall sentence the offender to a mandatory jail
term of at least six consecutive days.

The court may require the offender, as a condition of
probation, to attend and satisfactorily complete any treatment or
education programs that comply with the minimum standards adopted
pursuant to Chapter 3793. of the Revised Code by the director of
alcohol and drug addiction services, in addition to the required
attendance at drivers' intervention program, that the operators of
the drivers' intervention program determine that the offender
should attend and to report periodically to the court on the
offender's progress in the programs. The court also may impose any
other conditions of probation on the offender that it considers
necessary.

(iii) In all cases, a fine of not less than two hundred fifty
and not more than one thousand dollars;

(iv) In all cases, a class five license suspension of the
offender's driver's or commercial driver's license or permit or
nonresident operating privilege from the range specified in
division (A)(5) of section 4510.02 of the Revised Code. The court
may grant limited driving privileges relative to the suspension
under sections 4510.021 and 4510.13 of the Revised Code.

(b) Except as otherwise provided in division (G)(1)(e) of

this section, an offender who, within six years of the offense, 1164
previously has been convicted of or pleaded guilty to one 1165
violation of division (A) or (B) of this section or one other 1166
equivalent offense is guilty of a misdemeanor of the first degree. 1167
The court shall sentence the offender to all of the following: 1168

(i) If the sentence is being imposed for a violation of 1169
division (A)(1), (2), (3), (4), or (5) of this section, a 1170
mandatory jail term of ten consecutive days. The court shall 1171
impose the ten-day mandatory jail term under this division unless, 1172
subject to division (G)(3) of this section, it instead imposes a 1173
sentence under that division consisting of both a jail term and a 1174
term of electronically monitored house arrest. The court may 1175
impose a jail term in addition to the ten-day mandatory jail term. 1176
The cumulative jail term imposed for the offense shall not exceed 1177
six months. 1178

In addition to the jail term or the term of electronically 1179
monitored house arrest and jail term, the court may require the 1180
offender to attend a drivers' intervention program that is 1181
certified pursuant to section 3793.10 of the Revised Code. If the 1182
operator of the program determines that the offender is alcohol 1183
dependent, the program shall notify the court, and, subject to 1184
division (I) of this section, the court shall order the offender 1185
to obtain treatment through an alcohol and drug addiction program 1186
authorized by section 3793.02 of the Revised Code. 1187

(ii) If the sentence is being imposed for a violation of 1188
division (A)(6), (7), (8), or (9) of this section, except as 1189
otherwise provided in this division, a mandatory jail term of 1190
twenty consecutive days. The court shall impose the twenty-day 1191
mandatory jail term under this division unless, subject to 1192
division (G)(3) of this section, it instead imposes a sentence 1193
under that division consisting of both a jail term and a term of 1194
electronically monitored house arrest. The court may impose a jail 1195

term in addition to the twenty-day mandatory jail term. The 1196
cumulative jail term imposed for the offense shall not exceed six 1197
months. 1198

In addition to the jail term or the term of electronically 1199
monitored house arrest and jail term, the court may require the 1200
offender to attend a driver's intervention program that is 1201
certified pursuant to section 3793.10 of the Revised Code. If the 1202
operator of the program determines that the offender is alcohol 1203
dependent, the program shall notify the court, and, subject to 1204
division (I) of this section, the court shall order the offender 1205
to obtain treatment through an alcohol and drug addiction program 1206
authorized by section 3793.02 of the Revised Code. 1207

(iii) In all cases, notwithstanding the fines set forth in 1208
Chapter 2929. of the Revised Code, a fine of not less than three 1209
hundred fifty and not more than one thousand five hundred dollars; 1210

(iv) In all cases, a class four license suspension of the 1211
offender's driver's license, commercial driver's license, 1212
temporary instruction permit, probationary license, or nonresident 1213
operating privilege from the range specified in division (A)(4) of 1214
section 4510.02 of the Revised Code. The court may grant limited 1215
driving privileges relative to the suspension under sections 1216
4510.021 and 4510.13 of the Revised Code. 1217

(v) In all cases, if the vehicle is registered in the 1218
offender's name, immobilization of the vehicle involved in the 1219
offense for ninety days in accordance with section 4503.233 of the 1220
Revised Code and impoundment of the license plates of that vehicle 1221
for ninety days. 1222

(c) Except as otherwise provided in division (G)(1)(e) of 1223
this section, an offender who, within six years of the offense, 1224
previously has been convicted of or pleaded guilty to two 1225
violations of division (A) or (B) of this section or other 1226

equivalent offenses is guilty of a misdemeanor. The court shall 1227
sentence the offender to all of the following: 1228

(i) If the sentence is being imposed for a violation of 1229
division (A)(1), (2), (3), (4), or (5) of this section, a 1230
mandatory jail term of thirty consecutive days. The court shall 1231
impose the thirty-day mandatory jail term under this division 1232
unless, subject to division (G)(3) of this section, it instead 1233
imposes a sentence under that division consisting of both a jail 1234
term and a term of electronically monitored house arrest. The 1235
court may impose a jail term in addition to the thirty-day 1236
mandatory jail term. Notwithstanding the terms of imprisonment set 1237
forth in Chapter 2929. of the Revised Code, the additional jail 1238
term shall not exceed one year, and the cumulative jail term 1239
imposed for the offense shall not exceed one year. 1240

(ii) If the sentence is being imposed for a violation of 1241
division (A)(6), (7), (8), or (9) of this section, a mandatory 1242
jail term of sixty consecutive days. The court shall impose the 1243
sixty-day mandatory jail term under this division unless, subject 1244
to division (G)(3) of this section, it instead imposes a sentence 1245
under that division consisting of both a jail term and a term of 1246
electronically monitored house arrest. The court may impose a jail 1247
term in addition to the sixty-day mandatory jail term. 1248
Notwithstanding the terms of imprisonment set forth in Chapter 1249
2929. of the Revised Code, the additional jail term shall not 1250
exceed one year, and the cumulative jail term imposed for the 1251
offense shall not exceed one year. 1252

(iii) In all cases, notwithstanding the fines set forth in 1253
Chapter 2929. of the Revised Code, a fine of not less than five 1254
hundred fifty and not more than two thousand five hundred dollars; 1255

(iv) In all cases, a class three license suspension of the 1256
offender's driver's license, commercial driver's license, 1257
temporary instruction permit, probationary license, or nonresident 1258

operating privilege from the range specified in division (A)(3) of 1259
section 4510.02 of the Revised Code. The court may grant limited 1260
driving privileges relative to the suspension under sections 1261
4510.021 and 4510.13 of the Revised Code. 1262

(v) In all cases, if the vehicle is registered in the 1263
offender's name, criminal forfeiture of the vehicle involved in 1264
the offense in accordance with section 4503.234 of the Revised 1265
Code. Division (G)(6) of this section applies regarding any 1266
vehicle that is subject to an order of criminal forfeiture under 1267
this division. 1268

(vi) In all cases, participation in an alcohol and drug 1269
addiction program authorized by section 3793.02 of the Revised 1270
Code, subject to division (I) of this section. 1271

(d) Except as otherwise provided in division (G)(1)(e) of 1272
this section, an offender who, within six years of the offense, 1273
previously has been convicted of or pleaded guilty to three or 1274
more violations of division (A) or (B) of this section or other 1275
equivalent offenses is guilty of a felony of the fourth degree. 1276
The court shall sentence the offender to all of the following: 1277

(i) If the sentence is being imposed for a violation of 1278
division (A)(1), (2), (3), (4), or (5) of this section, in the 1279
discretion of the court, either a mandatory term of local 1280
incarceration of sixty consecutive days in accordance with 1281
division (G)(1) of section 2929.13 of the Revised Code or a 1282
mandatory prison term of sixty consecutive days of imprisonment in 1283
accordance with division (G)(2) of that section. If the court 1284
imposes a mandatory term of local incarceration, it may impose a 1285
jail term in addition to the sixty-day mandatory term, the 1286
cumulative total of the mandatory term and the jail term for the 1287
offense shall not exceed one year, and no prison term is 1288
authorized for the offense. If the court imposes a mandatory 1289
prison term, notwithstanding division (A)(4) of section 2929.14 of 1290

the Revised Code, it also may sentence the offender to a definite
prison term that shall be not less than six months and not more
than thirty months, the prison terms shall be imposed as described
in division (G)(2) of section 2929.13 of the Revised Code, and no
term of local incarceration, community residential sanction, or
nonresidential sanction is authorized for the offense.

(ii) If the sentence is being imposed for a violation of
division (A)(6), (7), (8), or (9) of this section, in the
discretion of the court, either a mandatory term of local
incarceration of one hundred twenty consecutive days in accordance
with division (G)(1) of section 2929.13 of the Revised Code or a
mandatory prison term of one hundred twenty consecutive days in
accordance with division (G)(2) of that section. If the court
imposes a mandatory term of local incarceration, it may impose a
jail term in addition to the one hundred twenty-day mandatory
term, the cumulative total of the mandatory term and the jail term
for the offense shall not exceed one year, and no prison term is
authorized for the offense. If the court imposes a mandatory
prison term, notwithstanding division (A)(4) of section 2929.14 of
the Revised Code, it also may sentence the offender to a definite
prison term that shall be not less than six months and not more
than thirty months, the prison terms shall be imposed as described
in division (G)(2) of section 2929.13 of the Revised Code, and no
term of local incarceration, community residential sanction, or
nonresidential sanction is authorized for the offense.

(iii) In all cases, notwithstanding section 2929.18 of the
Revised Code, a fine of not less than eight hundred nor more than
ten thousand dollars;

(iv) In all cases, a class two license suspension of the
offender's driver's license, commercial driver's license,
temporary instruction permit, probationary license, or nonresident
operating privilege from the range specified in division (A)(2) of

section 4510.02 of the Revised Code. The court may grant limited 1323
driving privileges relative to the suspension under sections 1324
4510.021 and 4510.13 of the Revised Code. 1325

(v) In all cases, if the vehicle is registered in the 1326
offender's name, criminal forfeiture of the vehicle involved in 1327
the offense in accordance with section 4503.234 of the Revised 1328
Code. Division (G)(6) of this section applies regarding any 1329
vehicle that is subject to an order of criminal forfeiture under 1330
this division. 1331

(vi) In all cases, participation in an alcohol and drug 1332
addiction program authorized by section 3793.02 of the Revised 1333
Code, subject to division (I) of this section. 1334

(vii) In all cases, if the court sentences the offender to a 1335
mandatory term of local incarceration, in addition to the 1336
mandatory term, the court, pursuant to section 2929.17 of the 1337
Revised Code, may impose a term of electronically monitored house 1338
arrest. The term shall not commence until after the offender has 1339
served the mandatory term of local incarceration. 1340

(e) An offender who previously has been convicted of or 1341
pleaded guilty to a violation of division (A) of this section that 1342
was a felony, regardless of when the violation and the conviction 1343
or guilty plea occurred, is guilty of a felony of the third 1344
degree. The court shall sentence the offender to all of the 1345
following: 1346

(i) If the offender is being sentenced for a violation of 1347
division (A)(1), (2), (3), (4), or (5) of this section, a 1348
mandatory prison term of sixty consecutive days in accordance with 1349
division (G)(2) of section 2929.13 of the Revised Code. The court 1350
may impose a prison term in addition to the sixty-day mandatory 1351
prison term. The cumulative total of the mandatory prison term and 1352
the additional prison term for the offense shall not exceed five 1353

years. No term of local incarceration, community residential
sanction, or nonresidential sanction is authorized for the
offense.

(ii) If the sentence is being imposed for a violation of
division (A)(6), (7), (8), or (9) of this section, a mandatory
prison term of one hundred twenty consecutive days in accordance
with division (G)(2) of section 2929.13 of the Revised Code. The
court may impose a prison term in addition to the one hundred
twenty-day mandatory prison term. The cumulative total of the
mandatory prison term and the additional prison term for the
offense shall not exceed five years. No term of local
incarceration, community residential sanction, or nonresidential
sanction is authorized for the offense.

(iii) In all cases, notwithstanding section 2929.18 of the
Revised Code, a fine of not less than eight hundred nor more than
ten thousand dollars;

(iv) In all cases, a class two license suspension of the
offender's driver's license, commercial driver's license,
temporary instruction permit, probationary license, or nonresident
operating privilege from the range specified in division (A)(2) of
section 4510.02 of the Revised Code. The court may grant limited
driving privileges relative to the suspension under sections
4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the
offender's name, criminal forfeiture of the vehicle involved in
the offense in accordance with section 4503.234 of the Revised
Code. Division (G)(6) of this section applies regarding any
vehicle that is subject to an order of criminal forfeiture under
this division.

(vi) In all cases, participation in an alcohol and drug
addiction program authorized by section 3793.02 of the Revised

Code, subject to division (I) of this section. 1385

(2) An offender who is convicted of or pleads guilty to a 1386
violation of division (A) of this section and who subsequently 1387
seeks reinstatement of the driver's or occupational driver's 1388
license or permit or nonresident operating privilege suspended 1389
under this section as a result of the conviction or guilty plea 1390
shall pay a reinstatement fee as provided in division (F)(2) of 1391
section 4511.191 of the Revised Code. 1392

(3) If an offender is sentenced to a jail term under division 1393
(G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) of this section and 1394
if, within sixty days of sentencing of the offender, the court 1395
issues a written finding on the record that, due to the 1396
unavailability of space at the jail where the offender is required 1397
to serve the term, the offender will not be able to begin serving 1398
that term within the sixty-day period following the date of 1399
sentencing, the court may impose an alternative sentence under 1400
this division that includes a term of electronically monitored 1401
house arrest, as defined in section 2929.23 of the Revised Code. 1402

As an alternative to a mandatory jail term of ten consecutive 1403
days required by division (G)(1)(b)(i) of this section, the court, 1404
under this division, may sentence the offender to five consecutive 1405
days in jail and not less than eighteen consecutive days of 1406
electronically monitored house arrest. The cumulative total of the 1407
five consecutive days in jail and the period of electronically 1408
monitored house arrest shall not exceed six months. The five 1409
consecutive days in jail do not have to be served prior to or 1410
consecutively to the period of house arrest. 1411

As an alternative to the mandatory jail term of twenty 1412
consecutive days required by division (G)(1)(b)(ii) of this 1413
section, the court, under this division, may sentence the offender 1414
to ten consecutive days in jail and not less than thirty-six 1415
consecutive days of electronically monitored house arrest. The 1416

cumulative total of the ten consecutive days in jail and the 1417
period of electronically monitored house arrest shall not exceed 1418
six months. The ten consecutive days in jail do not have to be 1419
served prior to or consecutively to the period of house arrest. 1420

As an alternative to a mandatory jail term of thirty 1421
consecutive days required by division (G)(1)(c)(i) of this 1422
section, the court, under this division, may sentence the offender 1423
to fifteen consecutive days in jail and not less than fifty-five 1424
consecutive days of electronically monitored house arrest. The 1425
cumulative total of the fifteen consecutive days in jail and the 1426
period of electronically monitored house arrest shall not exceed 1427
one year. The fifteen consecutive days in jail do not have to be 1428
served prior to or consecutively to the period of house arrest. 1429

As an alternative to the mandatory jail term of sixty 1430
consecutive days required by division (G)(1)(c)(ii) of this 1431
section, the court, under this division, may sentence the offender 1432
to thirty consecutive days in jail and not less than one hundred 1433
ten consecutive days of electronically monitored house arrest. The 1434
cumulative total of the thirty consecutive days in jail and the 1435
period of electronically monitored house arrest shall not exceed 1436
one year. The thirty consecutive days in jail do not have to be 1437
served prior to or consecutively to the period of house arrest. 1438

(4) If an offender's driver's or occupational driver's 1439
license or permit or nonresident operating privilege is suspended 1440
under division (G) of this section and if section 4510.13 of the 1441
Revised Code permits the court to grant limited driving 1442
privileges, the court may grant the limited driving privileges 1443
only if the court imposes as one of the conditions of the 1444
privileges that the offender must display on the vehicle that is 1445
driven subject to the privileges restricted license plates that 1446
are issued under section 4503.231 of the Revised Code, except as 1447
provided in division (B) of that section. 1448

(5) Fines imposed under this section for a violation of 1449
division (A) of this section shall be distributed as follows: 1450

(a) Twenty-five dollars of the fine imposed under division 1451
(G)(1)(a)(iii), thirty-five dollars of the fine imposed under 1452
division (G)(1)(b)(iii), one hundred twenty-three dollars of the 1453
fine imposed under division (G)(1)(c)(iii), and two hundred ten 1454
dollars of the fine imposed under division (G)(1)(d)(iii) or 1455
(e)(iii) of this section shall be paid to an enforcement and 1456
education fund established by the legislative authority of the law 1457
enforcement agency in this state that primarily was responsible 1458
for the arrest of the offender, as determined by the court that 1459
imposes the fine. The agency shall use this share to pay only 1460
those costs it incurs in enforcing this section or a municipal OVI 1461
ordinance and in informing the public of the laws governing the 1462
operation of a vehicle while under the influence of alcohol, the 1463
dangers of the operation of a vehicle under the influence of 1464
alcohol, and other information relating to the operation of a 1465
vehicle under the influence of alcohol and the consumption of 1466
alcoholic beverages. 1467

(b) Fifty dollars of the fine imposed under division 1468
(G)(1)(a)(iii) of this section shall be paid to the political 1469
subdivision that pays the cost of housing the offender during the 1470
offender's term of incarceration. If the offender is being 1471
sentenced for a violation of division (A)(1), (2), (3), (4), or 1472
(5) of this section and was confined as a result of the offense 1473
prior to being sentenced for the offense but is not sentenced to a 1474
term of incarceration, the fifty dollars shall be paid to the 1475
political subdivision that paid the cost of housing the offender 1476
during that period of confinement. The political subdivision shall 1477
use the share under this division to pay or reimburse 1478
incarceration or treatment costs it incurs in housing or providing 1479
drug and alcohol treatment to persons who violate this section or 1480

a municipal OVI ordinance, costs of any immobilizing or disabling
device used on the offender's vehicle, and costs of electronic
house arrest equipment needed for persons who violate this
section.

(c) Twenty-five dollars of the fine imposed under division
(G)(1)(a)(iii) and fifty dollars of the fine imposed under
division (G)(1)(b)(iii) of this section shall be deposited into
the county or municipal indigent drivers' alcohol treatment fund
under the control of that court, as created by the county or
municipal corporation under division (N) of section 4511.191 of
the Revised Code.

(d) One hundred fifteen dollars of the fine imposed under
division (G)(1)(b)(iii), two hundred seventy-seven dollars of the
fine imposed under division (G)(1)(c)(iii), and four hundred forty
dollars of the fine imposed under division (G)(1)(d)(iii) or
(e)(iii) of this section shall be paid to the political
subdivision that pays the cost of housing the offender during the
offender's term of incarceration. The political subdivision shall
use this share to pay or reimburse incarceration or treatment
costs it incurs in housing or providing drug and alcohol treatment
to persons who violate this section or a municipal OVI ordinance,
costs for any immobilizing or disabling device used on the
offender's vehicle, and costs of electronic house arrest equipment
needed for persons who violate this section.

(e) The balance of the fine imposed under division
(G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), or (e)(iii) of this
section shall be disbursed as otherwise provided by law.

(6) If title to a motor vehicle that is subject to an order
of criminal forfeiture under division (G)(1)(c), (d), or (e) of
this section is assigned or transferred and division (B)(2) or (3)
of section 4503.234 of the Revised Code applies, in addition to or
independent of any other penalty established by law, the court may

fine the offender the value of the vehicle as determined by 1513
publications of the national auto dealers association. The 1514
proceeds of any fine so imposed shall be distributed in accordance 1515
with division (C)(2) of that section. 1516

(H) Whoever violates division (B) of this section is guilty 1517
of operating a vehicle after underage alcohol consumption and 1518
shall be punished as follows: 1519

(1) Except as otherwise provided in division (H)(2) of this 1520
section, the offender is guilty of a misdemeanor of the fourth 1521
degree. In addition to any other sanction imposed for the offense, 1522
the court shall impose a class six suspension of the offender's 1523
driver's license, commercial driver's license, temporary 1524
instruction permit, probationary license, or nonresident operating 1525
privilege from the range specified in division (A)(6) of section 1526
4510.02 of the Revised Code. 1527

(2) If, within one year of the offense, the offender 1528
previously has been convicted of or pleaded guilty to one or more 1529
violations of division (A) or (B) of this section or other 1530
equivalent offense offenses, the offender is guilty of a 1531
misdemeanor of the third degree. In addition to any other sanction 1532
imposed for the offense, the court shall impose a class four 1533
suspension of the offender's driver's license, commercial driver's 1534
license, temporary instruction permit, probationary license, or 1535
nonresident operating privilege from the range specified in 1536
division (A)(4) of section 4510.02 of the Revised Code. 1537

(I)(1) No court shall sentence an offender to an alcohol 1538
treatment program under this section unless the treatment program 1539
complies with the minimum standards for alcohol treatment programs 1540
adopted under Chapter 3793. of the Revised Code by the director of 1541
alcohol and drug addiction services. 1542
1543

(2) An offender who stays in a drivers' intervention program 1544
or in an alcohol treatment program under an order issued under 1545
this section shall pay the cost of the stay in the program. 1546
However, if the court determines that an offender who stays in an 1547
alcohol treatment program under an order issued under this section 1548
is unable to pay the cost of the stay in the program, the court 1549
may order that the cost be paid from the court's indigent drivers' 1550
alcohol treatment fund. 1551

(J) If a person whose driver's or commercial driver's license 1552
or permit or nonresident operating privilege is suspended under 1553
this section files an appeal regarding any aspect of the person's 1554
trial or sentence, the appeal itself does not stay the operation 1555
of the suspension. 1556

(K) All terms defined in sections 4510.01 of the Revised Code 1557
apply to this section. If the meaning of a term defined in section 1558
4510.01 of the Revised Code conflicts with the meaning of the same 1559
term as defined in section 4501.01 or 4511.01 of the Revised Code, 1560
the term as defined in section 4510.01 of the Revised Code applies 1561
to this section. 1562

(L)(1) The Ohio Traffic Rules in effect on ~~the effective date~~ 1563
~~of this amendment~~ January 1, 2004, as adopted by the supreme court 1564
under authority of section 2937.46 of the Revised Code, do not 1565
apply to felony violations of this section. Subject to division 1566
(L)(2) of this section, the Rules of Criminal Procedure apply to 1567
felony violations of this section. 1568

(2) If, on or after ~~the effective date of this amendment~~ 1569
January 1, 2004, the supreme court modifies the Ohio Traffic Rules 1570
to provide procedures to govern felony violations of this section, 1571
the modified rules shall apply to felony violations of this 1572
section. 1573

Sec. 4511.194. (A) As used in this section, ~~"physical:~~ 1574

(1) "National highway traffic safety administration" has the 1575
same meaning as in section 4511.19 of the Revised Code. 1576

(2) "Physical control" means being in the driver's position 1577
of the front seat of a vehicle or in the driver's position of a 1578
streetcar or trackless trolley and having possession of the 1579
vehicle's, streetcar's, or trackless trolley's ignition key or 1580
other ignition device. 1581

(B) No person shall be in physical control of a vehicle, 1582
streetcar, or trackless trolley while under the influence of 1583
alcohol, a drug of abuse, or a combination of them or while the 1584
person's whole blood, blood serum or plasma, breath, or urine 1585
contains at least the concentration of alcohol specified in 1586
division (A)(2), (3), (4), or (5) of section 4511.19 of the 1587
Revised Code. 1588

(C)(1) In any criminal prosecution or juvenile court 1589
proceeding for a violation of this section or a substantially 1590
equivalent municipal ordinance, if a law enforcement officer has 1591
administered a field sobriety test to the person in physical 1592
control of the vehicle involved in the violation and if it is 1593
shown by clear and convincing evidence that the officer 1594
administered the test in substantial compliance with the testing 1595
standards for any reliable, credible, and generally accepted field 1596
sobriety tests that were in effect at the time the tests were 1597
administered, including, but not limited to, any testing standards 1598
then in effect that were set by the national highway traffic 1599
safety administration, all of the following apply: 1600

(a) The officer may testify concerning the results of the 1601
field sobriety test so administered. 1602

(b) The prosecution may introduce the results of the field 1603
sobriety test so administered as evidence in any proceedings in 1604
the criminal prosecution or juvenile court proceeding. 1605

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

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

(D) Whoever violates this section is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

Section 4. That the existing versions of sections 1547.11, 1547.111, 4511.19, and 4511.194 of the Revised Code that are scheduled to take effect January 1, 2004, are hereby repealed.

Section 5. Sections 3 and 4 of this act shall take effect January 1, 2004.

Section 6. There is hereby created the Highway, Bridge, and Overpass Vandal Fence Task Force, consisting of the Governor or the Governor's designee, one person appointed by the Director of Transportation, one person appointed by the Director of Public Safety, who shall be the Superintendent or a trooper of the State

Highway Patrol, one person appointed by the Buckeye State Sheriffs Association, one person appointed by the Ohio Association of Chiefs of Police, one person appointed by the County Engineers Association of Ohio, and three or more members of the public appointed by the Governor. The Governor or the Governor's designee shall be chairperson of the Task Force, and the Task Force members shall elect a vice-chairperson from among their members and appoint a secretary, who need not be a member of the Task Force. A vacancy shall be filled in the same manner as the original appointment. Members of the Task Force shall not receive a salary, but the three Task Force members the Governor appoints shall be reimbursed for the actual expenses they incur in performing their duties as Task Force members.

The Task Force shall do all of the following:

(A) Develop an awareness program with local law enforcement officials and the Ohio Department of Transportation relative to the problem of objects thrown from highways, bridges, and overpasses;

(B) Review and evaluate the overall situation regarding objects thrown from highways, bridges, and overpasses, including the types and number of objects thrown yearly, the perpetrators involved, the locations within this state where such throwing has occurred, and any other aspects of this criminal activity the Task Force determines to be relevant and significant;

(C) Facilitate communication between the Ohio Department of Transportation and law enforcement agencies by developing a central computer system to track these incidents;

(D) Examine the value of the improved safety resulting from the installation of vandal fences on all bridges and overpasses on interstate freeways relative to the cost of such installation.

The Task Force shall compile its findings and formulate

recommendations and report these to a joint House of
Representatives and Senate Transportation Committee not later than
September 30, 2003. The joint committee shall consist of eight
members, four from the Senate appointed by the President of the
Senate and four from the House of Representatives appointed by the
Speaker. After the Task Force presents its report, the Governor
may declare the end to the existence of the Task Force or may
declare that the Task Force will remain in existence for such
additional time as the Governor determines necessary. If the
Governor declares that the Task Force will remain in existence,
the Task Force shall examine any issues relating to the throwing
of objects from highways, bridges, and overpasses that the Task
Force chooses to examine, until the Governor declares the end to
the existence of the Task Force.

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