

NOTICE

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CHAPTER 434
DWI; Reckless Operation; Speed

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CROSS REFERENCES

See section histories for similar State Law
 Drug of abuse defined - see Ohio R.C. 3719.011(A)
 Alcohol defined - see Ohio R.C. 4301.01(B)(1)
 Alteration of prima facie speed limits - see Ohio R.C. 4511.21, 4511.22(B), 4511.23
 Intoxicated pedestrians - see TRAF. 416.10
 Driving upon sidewalks, street lawns or curbs - see TRAF. 432.22
 "Peeling" - see TRAF. 432.35
 Failure to control; weaving course - see TRAF. 432.38
 Liquor consumption in motor vehicle - see GEN. OFF 612.04

434.01 DRIVING WHILE UNDER THE INFLUENCE; EVIDENCE.

(a) Operation Under Influence. No person shall operate any vehicle within the Municipality if any of the following applies:

- (1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent or more by weight of alcohol in his or her blood;
- (3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath; or
- (4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

(b) Evidence; Tests. In any criminal prosecution for a violation of this section, the court may admit evidence on the concentration of alcohol in the defendant's blood or urine at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance withdrawn within two hours of the time of such alleged violation.

When a person submits to a blood test at the request of a police officer under Ohio R.C. 4511.191, only a physician, a registered nurse or a qualified technician or chemist shall withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the

taking of breath or urine specimens. A physician, a registered nurse or a qualified technician or chemist may refuse to withdraw blood for the purpose of determining the alcohol content of the blood if, in his or her opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

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

If there was, at the time bodily substance was withdrawn, a concentration of less than ten hundredths of one percent by weight of alcohol in the defendant's blood, less than ten-hundredths of one gram by weight of alcohol per 210 liters of his or her breath, or less than fourteen-hundredths of one gram by weight of alcohol per 100 milliliters of his or her urine, such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

Upon the request of the person who has tested, the results of such test shall be made available to him or her, his or her attorney or his or her agent, immediately upon the completion of the test analysis.

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

Any physician, registered nurse or qualified technician or chemist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim that is not in the nature of a claim of malpractice, for any act performed in withdrawing blood from the person. (ORC 4511.19)

(c) License Suspension Pendente Lite. If a person is charged with a violation of this section relating to operating a motor vehicle while under the influence of alcohol, and if the results of a chemical test administered pursuant to Ohio R.C. 4511.191 indicate that the blood of the person contained a concentration of ten-hundredths of one percent or more by weight of alcohol, a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters or his or her breath, or a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine, at the time of the alleged offense, or refuses to consent to a chemical test of his or her blood, breath or urine to determine alcohol content under Ohio R.C. 4511.191, the court shall immediately suspend the person's operator's or chauffeur's license or permit or nonresident operating privilege, if the court or referee at the initial appearance, which shall be held within five days from the date of the citation or arrest, determines that one of the following is true:

- (1) The person has previously been convicted of a violation of this section, of another municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, or of Ohio R.C. 4511.19;
- (2) At the time of the arrest, the person's driver's or chauffeur's license or permit or nonresident operating privilege was suspended or revoked;
- (3) The person caused death or serious physical harm to another person;
- (4) The person failed to appear at the initial appearance; or
- (5) The court or referee determines that the person's continued driving will be a threat to public safety.

The suspension shall continue until the complaint alleging a violation of this section is adjudicated on the merits by the trial court, or until the trial court, upon motion, determines by a preponderance of the evidence that there was no probable cause for the arrest. (ORC 4511.191(K))

(d) Penalty for Operation Under Influence; Mandatory Imprisonment. Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree, in addition to the license suspension or revocation provided in subsection (d) hereof and in Ohio R.C. 4507.16. Punishment shall be as provided in Section 408.01.

- (1) If the offender has not been convicted, within five years of the offense, of a violation of subsection (a) hereof, of another municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, of Ohio R.C. 4511.19, or of Ohio R.C. 2903.06 or 2903.07 or Section 434.08 of this Traffic Code in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, he or she shall be sentenced to a term of imprisonment of three consecutive days and may be sentenced to a longer term of imprisonment. In addition, the offender shall be fined not less than one hundred fifty dollars (\$150.00) nor more than one thousand dollars (\$1,000).
 - (2) If the offender has been convicted, within five years of the offense, of a violation of subsection (a) hereof, or another municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, of Ohio R.C. 4511.19, or of Ohio R.C. 2903.06 or 2903.07 or Section 434.08 of this Traffic Code in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, he or she shall be sentenced to a term of imprisonment of ten consecutive days and may be sentenced to a longer term of imprisonment. In addition, the offender shall be fined not more than one hundred fifty dollars (\$150.00) nor more than one thousand dollars (\$1,000).
 - (3) If the offender has been convicted, within five years of the offense, of more than one violation of subsection (a) hereof, of another municipal ordinance relating to operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, or of Ohio R.C. 4511.19, or of Ohio R.C. 2903.06 or 2903.07 or Section 434.08 of this Traffic Code in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, he or she shall be sentenced to a term of imprisonment of not less than thirty consecutive days nor more than one year. In addition, the offender shall be fined not less than one hundred fifty dollars (\$150.00) nor more than one thousand dollars (\$1,000).
 - (4) Upon a showing that imprisonment would seriously affect the ability of an offender sentenced pursuant to paragraph (e)(2) or (3) hereof to continue his or her employment, the court may authorize that the offender be granted work release from imprisonment after the offender has served the three, ten or thirty consecutive days of imprisonment that the court is required by paragraphs (e)(1), (2) and (3) hereof to impose. No court shall authorize work release from imprisonment during the three, ten or thirty consecutive days of imprisonment that the court is required by paragraphs (e)(1), (2) and (3) hereof to impose. The duration of the work release shall not exceed the time necessary each day for the offender to commute to and from the place of employment and the place of imprisonment and the time actually spent under employment.
 - (5) Notwithstanding Ohio R.C. 2929.51 and 2951.02 and any other section of the Ohio Revised Code that authorizes the suspension of a sentence, no court shall suspend the three, ten or thirty consecutive days of imprisonment required to be imposed by paragraphs (e)(1), (2) and (3) hereof.
- (e) Three Consecutive Days Defined. As used in subsection (e) hereof, three consecutive days means seventy-two consecutive hours. (Ord. No. 3049-83. Effective 3-16-83.)

434.02 RECKLESS OPERATION ON STREETS, PUBLIC OR PRIVATE PROPERTY.

(a) No person shall operate a vehicle on any street or highway without due regard for the safety of persons or property. (ORC 4511.20)

(b) No person shall operate a vehicle on any public or private property other than streets or highways, without due regard for the safety of persons or property.

This subsection does not apply to the competitive operation of vehicles on public or private property when the owner of such property knowingly permits such operation thereon. (ORC 4511.201; Ord. 1766-68. Passed 3-26-68.)

(c) "Reckless operation" is defined to mean the operation of a vehicle without the degree of care as a reasonably prudent person would have under similar circumstances. It is prima facie evidence of "reckless operation" to drive a vehicle in excess of twice the posted speed limit. (Ord. 2593-74. Passed 10-8-74.)

(d) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in Section 408.01. (Ord. 2542-74. Passed 1-22-74.)

434.03 MAXIMUM SPEED LIMITS; ASSURED CLEAR DISTANCE AHEAD.

No person shall operate a motor vehicle in and upon the streets and highways at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

It is prima facie lawful for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

- (a) Fifteen miles per hour on all alleys within the Municipality;
- (b) Twenty miles per hour when passing a school building or the grounds thereof during school recess and while children are going to or leaving school during the opening or closing hours, and when appropriate signs giving notice of the existence of the school are erected; except, that on controlled-access highways and expressways, if the right-of-way fence has been erected without pedestrian opening, the speed shall be governed by subsection (e) of this section, and on freeways, if the right-of-way fence has been erected without pedestrian opening, the speed shall be governed by subsection (f) of this section;
- (c) Twenty-five miles per hour in all other portions of the Municipality, except on State routes, through streets and through highways outside business districts;
- (d) Thirty-five miles per hour on all State routes or through streets and through highways within the Municipality outside business districts, except as provided in subsection (e) of this section;
- (e) Fifty miles per hour on controlled-access highways and expressways within the Municipality, and on State routes outside urban districts unless a lower prima facie speed is established as provided in Ohio R.C. 4511.21;
- (f) Fifty-five miles per hour at all times on freeways with paved shoulders inside the Municipality, except fifty miles per hour at all times for operators of trucks and commercial tractors weighing in excess of 4,000 pounds empty weight and school buses.

It is prima facie unlawful for any person to exceed any of the speed limitations in any section of this Traffic Code. In every charge of violation of this section the affidavit and warrant shall specify the time, place and the speed at which the defendant is alleged to have driven, and also, the speed which this section declares is prima facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit him to bring the vehicle to a stop within the assured clear distance ahead, the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

Whenever, in accordance with Ohio R.C. 4511.21, the maximum prima facie speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima facie unlawful for any person to exceed the speed limits posted upon such signs.
(ORC 4511.21; 4511.211)

Penalty - see Sections 408.01 and 408.02

434.04 SLOW SPEED; POSTED MINIMUM SPEEDS.

(a) No person shall operate vehicle at such a low speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or to comply with law. (Ord. 42. Passed 10-1-53.)

(b) Whenever, in accordance with Ohio R.C. 4511.22(B), the minimum prima facie speed limit of a controlled-access highway has been established and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima facie unlawful for any person to operate a motor vehicle below the speed limits posted upon such signs except when necessary for safe operation or in compliance with law.
(ORC 4511.22; Ord. 2437-72. Passed 12-12-72.)

Penalty - see Sections 408.01 and 408.02

434.05 SPEED LIMITATIONS OVER BRIDGES.

(a) No person shall operate a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater than the maximum speed that can be maintained with safety to such bridge or structure, when such structure is posted with authorized signs stating such maximum speed. Such signs shall be erected and maintained at a distance of at least 100 feet before each end of such structure.

(b) Upon the trial of any person charged with a violation of this section, proof of the determination of the maximum speed and the existence of such signs shall constitute prima facie evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(ORC 4511.23; Ord. 2437-72. Passed 12-12-72.)

Penalty - see Sections 408.01 and 408.02

434.06 SPEED EXCEPTIONS FOR EMERGENCY OR SAFETY VEHICLES.

The prima facie speed limitations set forth in Section 434.03 do not apply to emergency vehicles or public safety vehicles when they are responding to emergency calls and are equipped with and displaying at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and when the drivers thereof sound audible signals by bell, siren or exhaust whistle. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.

(ORC. 4511.24)

434.07 DRAG RACING PROHIBITED.

(a) "Drag racing" is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds.

Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as the participants. The operation of two or more vehicles side by side either at speeds in excess of prima facie lawful speeds established by Section 434.03 or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speeds shall be prima facie evidence of drag racing.

(b) No person shall participate in a drag race as defined in subsection (a) of this section upon any public road, street or highway in this Municipality.
(ORC 4511.251; Ord. 712-59. Passed 12-22-59.)

(c) Whoever violates this section is guilty of a misdemeanor of the first degree. Punishment shall be as provided in Section 408.01.
(ORC 4511.99(B); Ord. 2542-74. Passed 1-22-74.)

434.08 VEHICULAR HOMICIDE.

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft or aircraft, shall negligently cause the death of another.

(b) Whoever violates this section is guilty of vehicular homicide, a misdemeanor of the first degree, provided the offender has not previously been convicted of an offense under this section or Ohio R.C. 2903.06 or 2903.07. Punishment shall be as provided in Section 408.01.

If the jury or judge as trier of fact finds that the offender was under the influence of alcohol or any drug of abuse, or the combined influence of alcohol or any drug of abuse, at the time of the commission of the offense, then the offender's operator's or chauffeur's license or permit or nonresident operating privileges shall be permanently revoked pursuant to Ohio R.C. 4507.16.

When the trier of fact determines whether the offender was under the influence of alcohol or any drug of abuse, or the combined influence of alcohol or any drug of abuse, the concentration of alcohol in the offender's blood, breath or urine, as shown by a chemical test taken pursuant to Ohio R.C. 4511.191, may be considered as competent evidence and the offender shall be presumed to have been under the influence of alcohol if there was, at the time the bodily substance was withdrawn for the chemical test, a concentration of ten-hundredths of one percent or more by weight of alcohol in the offender's blood, ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath or fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

(c) If the offender has been previously convicted of a violation of Ohio R.C. 2903.06, 2903.07, 4507.38, 4507.39, 4511.19 or 4511.192, or Sections 434.01, 436.07 or this section of this Traffic Code, if the offender has accumulated twelve points pursuant to Ohio R.C. 4507.40 within one year of the offense, or if in the commission of the offense the offender was driving under suspension or operating a motor vehicle while under the influence of alcohol, a drug of abuse, or both, he or she shall not be eligible for shock probation, probation or shock parole pursuant to Ohio R.C. 2947.061, 2951.02 or 2967.31.
(ORC 2903.07) (Ord. No. 3049-83. Effective 3-16-83.)

434.09 PHYSICAL CONTROL WHILE UNDER THE INFLUENCE.

(a) No person shall be in actual physical control of any vehicle within the Municipality if any of the following applies:

- (1) The person is under the influence of alcohol or any drug of abuse, or the combined influence of alcohol and any drug of abuse;
- (2) The person has a concentration of ten-hundredths of one percent or more by weight of alcohol in his or her blood;
- (3) The person has a concentration of ten-hundredths of one gram or more by weight of alcohol per 210 liters of his or her breath; or
- (4) The person has a concentration of fourteen-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

(b) Whoever violates this section is guilty of a misdemeanor of the third degree. Punishment shall be as provided in Section 408.01. (Ord. No. 3049-83. Effective 3-16-83.)

(Revision 127)