



## Ohio Revised Code

### Section 1547.11 Operation, control, or manipulation under influence of alcohol or drug.

Effective: September 17, 2010

Legislation: Senate Bill 58 - 128th General Assembly

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

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

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

(3) The person has a concentration of ninety-six-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

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

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

(6) Except as provided in division (H) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

(a) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.



- (b) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
- (c) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (d) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
- (e) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.
- (f) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or has a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
- (g) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.
- (h) The state board of pharmacy has adopted a rule pursuant to section 4729.041 of the Revised Code that specifies the amount of salvia divinorum and the amount of salvinorin A that constitute



concentrations of salvia divinorum and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of 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, the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of at least that amount so specified by rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma.

(i) Either of the following applies:

(i) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(ii) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

(j) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

(k) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.



(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, at the time of the operation, control, or manipulation, any of the following applies:

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

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

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

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

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1) and a violation of division (B)(1), (2), (3), or (4) of this section, but the person shall not be convicted of more than one violation of those divisions.

(D)(1)(a) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is watercraft-related, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in section 2317.02 of the Revised Code, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is watercraft-related, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's or child's whole blood, blood serum or plasma, urine, or breath at the time of the alleged violation as shown by chemical analysis of the



substance withdrawn, or specimen taken within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (C) of section 1547.111 of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 1547.111 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination 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 defendant or child would be endangered by withdrawing blood.

The whole blood, blood serum or plasma, urine, or breath withdrawn under division (D)(1)(b) of this section 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 that is watercraft-related, if there was at the time the bodily substance was taken a concentration of less than the applicable concentration of alcohol specified for a violation of division (A)(2), (3), (4), or (5) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(6) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant or in making an adjudication for the child. 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 a violation of a prohibition that is substantially equivalent to that division.



(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 completion of the test analysis.

If the chemical test was administered pursuant to division (D)(1)(b) of this section, 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 in addition to any administered at the direction of a law enforcement officer, and shall be so advised. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(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 to 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 a combination of them, or of a municipal ordinance relating to operating or being in physical control of any vessel underway or to manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator or person found to be in physical control of the vessel underway involved in the violation or the person manipulating the water skis, aquaplane, or similar device involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for reliable, credible, and generally accepted field sobriety tests for vehicles that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that have been set by the national highway traffic safety administration, that by their nature are not clearly inapplicable regarding the operation or physical control of vessels underway or the manipulation of water skis, aquaplanes, or similar devices, all of the following apply:

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

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



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

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

(F)(1) Subject to division (F)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is substantially equivalent to either of those divisions, the court shall admit as prima-facie evidence a laboratory report from any laboratory personnel issued a permit by the department of health authorizing an analysis as described in this division 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:

- (a) The signature, under oath, of any person who performed the analysis;
- (b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;
- (c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;
- (d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the department of health.



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

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

(G) Except as otherwise provided in this division, any physician, registered nurse, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section or section 1547.111 of the Revised Code, and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or section 1547.111 of the Revised Code, is immune from criminal and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division also extends to an emergency medical service organization that employs an emergency medical technician-intermediate, an emergency medical technician-paramedic who withdraws blood under this section. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(H) Division (A)(6) of this section does not apply to a person who operates or is in physical control of a vessel underway or manipulates any water skis, aquaplane, or similar device while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:





(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(I) As used in this section and section 1547.111 of the Revised Code:

(1) "Equivalent offense" has the same meaning as in section 4511.181 of the Revised Code.

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

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

(4) "Controlled substance" and "marihuana" have the same meanings as in section 3719.01 of the Revised Code.

(5) "Cocaine" and "L.S.D." have the same meanings as in section 2925.01 of the Revised Code.

(6) "Equivalent offense that is watercraft-related" means an equivalent offense that is one of the following:

(a) A violation of division (A) or (B) of this section;

(b) A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from 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 a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or



from manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine;

(c) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) or (B) of this section;

(d) A violation of a former law of this state that was substantially equivalent to division (A) or (B) of this section.

(7) "Emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in section 4765.01 of the Revised Code.