



Administrative License Suspension, Issues Warranting a Termination : A Quick Guide To Regaining Your Driver's License After a DUI Arrest

with relevant statutes and case law



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Your driver's license is suspended prior to appearing in Court...

By now you've probably read Rittgers & Rittgers' [OVI White Paper](#), and understand the seriousness of an Administrative License Suspension (ALS).

The purpose of this quick guide is to familiarize you with several situations that may warrant the termination of an ALS, as well as the relevant statutes and case law.

Sometimes an ALS is imposed on a defendant when in reality, it never should have been. In these situations, the individual must depend upon and inconvenience a friend or family member for transportation as a result of the state illegally depriving the individual of the privilege to drive. The officer's improper imposition of an ALS could result in a stay or perhaps even a termination of the ALS. A stay means the judge temporarily puts the ALS on hold and the individual's full driving privileges are restored while the case is pending. Some situations warrant the termination of an ALS.

This is why it is crucial to hire an attorney who can quickly recognize whether an imposition of the ALS was proper and immediately restore the individual's full driving privileges if it was not proper.



If the Offense Occurred On Private Property

Issue	R.C. Section	Relevant Case Law
Offense Occurred on PRIVATE PROPERTY not used by the public.	R.C. 4511.191(A)(2)	<i>State v. Decroce</i> , 1994 WL 102252 (Ohio Ct. App. 11th Dist. Geauga County 1994)
	The statute is written poorly. It states implied consent applies only to an individual charged with an <u>OVI</u> on public property or private property the public uses for travel or parking. However, it does not explicitly list this limitation to one charged with a <u>physical control</u> .	“ <i>[T]he implied consent statute is narrow in scope and applies to one operating a motor vehicle on private property only if it is used by the public for vehicular travel or parking.</i> ” <i>Decroce</i> , at *2.
		Note: Not only does an ALS not apply when the offense occurred on private property not used by the public for travel or parking...if the Defendant submits to a breath test on private property after the officer tells him about the consequences of the refusal (i.e., the ALS), <u>those results must be suppressed.</u>
		“ <i>When on private property, the advice contained in R.C. 4511.191 cannot be given. The failure to observe this distinction and abide by the technical legal requirements will result in exclusion or any chemical test result.</i> ” <i>Decroce</i> , at *2 (citing <i>State v. Szalai</i> (1983), 13 Ohio Misc.2d 6, 7).



If the Defendant was Not Cited Into Court Within the Necessary Five Day Window

Issue	R.C. Section	Relevant Case Law
Defendant not cited into court within the necessary FIVE DAY WINDOW	R.C. 4511.191(D)(2)	<i>State v. Gibson</i>, 144 Ohio Misc. 2d 18, 2007-Ohio-6069, 877 N.E.2d 1053 (Mun. Ct. 2007)
		Note: This is a Clermont Co. Municipal Court decision issued by Judge Brock.
		The court found the failure to cite the defendant into court within five days warranted a termination of the ALS because the failure to hold the hearing within the statutory time frame deprived the defendant of due process to appeal its imposition. See <i>Gibson</i> , at ¶ 17.
		Note: Five days means five working days, excluding the date of the occurrence . Crim. R. 45(A); <i>City of Bedford v. Tolber</i> , 1998 WL 166147 (Ohio Ct. App. 8 th Dist. Cuyahoga Co. 2009).



If the Court's Copy of the BMV 2255 Form is Not Notarized

Issue	R.C. Section	Relevant Case Law
<p>Court's copy of the BMV 2255 form is NOT NOTORIZED</p>		<p><i>State v. Frame</i>, 1999 WL 333249 (Ohio Ct. App. 5th Dis. Morrow County 1999).</p> <p>Note: The 5th District overruled the state's appeal, upholding the trial court's decision to terminate the ALS because the officer did not send a copy of a sworn 2255 form to the BMV.</p> <p>"The sending of a copy of the sworn report to the court is a mandatory requirement. The statute uses the term "shall" and does not allow for an arresting officer's authentication of the BMV Form 2255 at an ALS appeal hearing as a substitute for the actual sending of the document." <i>Frame</i>, at *3.</p> <p><i>State v. O'Neill</i>, 2000-Ohio-2656, 140 Ohio App. 3d 48, 57, 746 N.E.2d 654.</p> <p>"A problem with the form may preclude an administrative **661 license suspension under R.C. 4511.191; however, there is no provision in the criminal DUI statute, R.C. 4511.19, requiring this form. See <i>Bryan v. Hudson</i> (1997), 77 Ohio St.3d 376, 378, 674 N.E.2d 678, 679 (stating that R.C. 4511.191 arises in the context of an administrative license suspension)." <i>O'Neill</i>, at 660-61. (Emphasis added).</p>



BMV 2255 Form Does Not State Reasonable Grounds for the OVI, or Physical Control Arrest

Issue	R.C. Section	Relevant Case Law
BMV 2255 form does NOT STATE REASONABLE GROUNDS FOR THE OVI, OR PHYSICAL CONTROL ARREST	R.C. 4511.192(D)(1)(d)(i)	<i>State v. Cook</i>, 2005-Ohio-1677, 2005 WL 791408 (Ohio Ct. App. 6th Dist. Wood)
		The appeals court overruled the trial court's decision denying Defendant's ALS appeal and terminated the ALS because the "BMV Form 2255 was not sufficient on its face, and it cannot be made sufficient by the officer's statement on the back of the citation." <i>Cook</i> , at ¶ 21.
		<i>State v. O'Neill</i>, 2000-Ohio-2656, 140 Ohio App. 3d 48, 57, 746 N.E.2d 654.



ALS was Imposed on a Defendant Who was Charged with a Physical Control & Failed the Chemical Test

Issue	R.C. Section	Relevant Case Law
<p>ALS Imposed on defendant who was charged with a PHYSICAL CONTROL & FAILED THE CHEMICAL TEST</p>	<p>R.C. 4511.191(C)(1)</p> <p>“The suspension described in this division does not apply to, and shall not be imposed upon, a person arrested for a violation of section 4511.194 of the Revised Code or a substantially equivalent municipal ordinance who submits to a designated chemical test.”</p>	



ALS was Imposed on a Defendant Who Submitted to a Chemical Test, the Results of Which are Pending

Issue	R.C. Section	Relevant Case Law
ALS imposed on defendant who submitted to a chemical test, THE RESULTS OF WHICH ARE PENDING.	R.C. 4511.191(C)(1)	<i>State v. Boone, No. 96 CA 1, 1996 WL 753140, at *2 (Ohio Ct. App. Dec. 26, 1996)</i>
		<p>"The first ALS issued to appellant on September 6, 1995, was improper. Pursuant to R.C. 4511.191(D)(1), an ALS is triggered by a person's refusal to take a requested test or taking the test and testing over the legal limit. In the case <i>sub judice</i>, the trooper initially issued the ALS before he had the test results. This is not permitted by statute. Further, to issue an ALS without knowing whether the person tested over the legal limit is a due process violation. See <i>State v. Henry</i> (1994), 66 Ohio Misc.2d 57." <i>Boone, at *2.</i></p>



Hiring an Attorney

If you have been charged with OVI, you need an experienced and competent attorney who can explain your rights and the entire legal process you face. If you know a judge or an attorney in private practice, ask who he or she would recommend handling your case. Further, before hiring an attorney, read reviews about him or her. Make sure the attorney has been successful taking cases to trial. Also, make sure you hire an attorney who is familiar with the court—you do not want a Dayton attorney handling a DUI in Lebanon or Mason. And before you hire an attorney, discuss your case with him or her. Ask questions and tell the attorney what your goal is in hiring him or her. Further, make sure he or she is a good fit. Assess the attorney's ability to effectively explain to you not only the process, but also the strategies involved in handling your case. Hiring a competent and trustworthy attorney will make a world of difference in your OVI case.

If you have any questions, please contact a DUI criminal defense attorney at Rittgers & Rittgers in Lebanon, Ohio, at 513-932-2115. You can also learn more at our website: www.rittgers.com.



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