



OH & KY DUI

Joe Suhre, Suhre & Associates, LLC - 513.333.0014

DUI vs. OVI

- Same Meaning
- OH - ORC 4511.19
- KY - KRS 189A.010

Ohio OVI

- ORC 4511.19 - No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:
 - The person is under the influence of alcohol, a drug of abuse, or a combination of them.
 - The person has a prohibited concentration of alcohol in their blood (.08-whole blood/.096-serum or plasma), breath (.08), or urine (.11).
 - The person has a prohibited concentration of specific drugs in their blood or urine.

Kentucky DUI

- KRS 189A.010 -A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

Kentucky DUI

- (d) While the presence of a controlled substance listed in subsection (12) of this section is **detected** in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
- (e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
- (f) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

(12) The substances applicable to a prosecution under subsection (1)(d) of this section are:

(a) Any Schedule I controlled substance **except marijuana**;

(b) Alprazolam;

(c) Amphetamine;

(d) Buprenorphine;

(e) Butalbital;

(f) Carisoprodol;

(g) Cocaine;

(h) Diazepam;

(i) Hydrocodone;

(j) Meprobamate;

(k) Methadone;

(l) Methamphetamine;

(m) Oxycodone;

(n) Promethazine;

(o) Propoxyphene; and

(p) Zolpidem.

(4) (a) Except as provided in paragraph (b) of this subsection, the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section. (b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.

Penalties

- Ohio: 3 days to 6mos, if .17 or above - 6 days; 6mos - 3 yr suspension; up to 5 yrs of probation, \$375-\$1075 fine. Limited privileges after 15-days.
- Kentucky: 0-30 days, if .15 or aggravating circumstance - 4 days minimum, \$200-\$500 fine, court costs are about \$520, 30-120 license suspension. Hardship license after 30-days.

Breath Test Differences

Ohio

- .08 is the per se legal limit
- Test must be taken within 3-hours of operation
- Breath test results need to be challenged in a MTS

Kentucky

- .08 is the per se legal limit
- Test must be taken within 2-hours of operation
- Breath test results can be challenge in MTS, but state must also lay foundation at trial

Breath Test Differences

Ohio

- Single test on I-5000 and BAC-Datamaster, dual test on I-8000
- Machines are owned by individual police depts. Except I-8000

Kentucky

- Single Test on I-5000, but cal checked every test. I-8000 in service, but very limited distribution
- Machines are owned by Commonwealth

Breath Test Differences

Ohio

20-minute observation period

From the time of arrest?

-yeah, that's fine

From the time of the stop

-yeah, that's fine

While they're behind the officer?

-yeah, that's fine

By a non-certified officer?

-yeah, that's fine

Breath Test Differences

Kentucky

20-minute observation period

From the time of arrest?

-nope, has to be at the machine

While they're behind the officer?

-nope, needs to be 'personal observation'

By a non-certified officer?

-nope, has to be by a certified operator

Breath Test Differences

- Ohio
 - Every 192 hrs.
 - By senior operator - police officer on department
- Kentucky
 - Machine connected to a simulator, cal check every test
 - No specific time for full check, but done approx. 1x month
 - By state tech

Independent Testing

Kentucky

- Right to independent test
- Officer's failure to provide will subject test to suppression.
- Officer's inability to provide will not. Reasonableness standard.

Ohio

- No right to an independent test

Kentucky Breath Test Ticket

- Called a BA
- Results are referred to as a "13" or a "22"
- Can see the KSP logo - this was from a Campbell County case
- Breath test machines are generally at the jail, not the PD

CAMPBELL CO. DETENTION CENTER
INTOXILYZER - ALCOHOL ANALYZER
KI MODEL 5000EN - SN 68-010415
06/17/2015 03:26 EDT


SUB NAME=██████████
OPER NAME=RHODES, NICK K
A. O. NAME=RHODES, NICK K
A. O. AGENCY=KSPD
O. R. I. NO=KY0190000
CITATION NO=KX90501
REPORT NO=13-8896
DRIV LIC NO=██████████
SUB DOB=09/21/82 SUBJECT SEX=M
SUB RACE=W ETHNIC ORIGIN=H

TEST	GRAMS/210L	TIME
AIR BLANK	.000	03:25EDT
CAL. CHECK	.076	03:25EDT
AIR BLANK	.000	03:25EDT
SUBJECT TEST	.130	03:26EDT
AIR BLANK	.000	03:26EDT

Ronald N. ██████████
SUBJECT'S NAME

Nick Rhoden 907
OPERATOR

ADDITIONAL INFORMATION AND/OR REMARKS
Observation Start 0304

 Intoxilyzer® Instrument Printer Card
Forensic Laboratories Section

Ohio Breath Test Ticket

- Not called a BA
- Results are referred to as a .136 or .224
- Machines owned by PD
- Breath test machines are generally at the PD, not the jail



Ohio Department of Health Alcohol and Drug Testing Subject Test Report

Subject Information

Revised 10-2011

TEST DATE 02/10/2014	NAME [REDACTED]	DRIVERS LICENSE NUMBER [REDACTED]	STATE OH		
CURRENT STREET ADDRESS (As Verified by Officer) [REDACTED]		SOCIAL SECURITY # [REDACTED]			
CITY LOVELAND	STATE OH	ZIP CODE 45140	DATE OF BIRTH 08/17/1989	AGE 24	SEX F

Arrest Information

ARRESTING OFFICER STALLARD, GREG	AGENCY LEBANON POLICE DEPARTMENT		
TESTING OFFICER WEITHOFER, MATT	AGENCY LEBANON POLICE DEPARTMENT	COH CERTIFICATION# 12451	
TIME OF VIOLATION 01:59	TIME FIRST OBSERVED 01:59	IMPLIED CONSENT WARNING Y	TIME OF TEST 02:31

Test Information

INSTRUMENT SERIAL # 80-004527	TEST SITE # LEBANON PD	DATE OF LAST CERTIFICATION 04/24/2013	CERTIFICATION SOLUTION # ODH-0019
CERTIFICATION BOTTLE # 0720	TARGET VALUE 0.099 g/210L	CERTIFICATION AVERAGE 0.0992	CERTIFICATION STANDARD DEVIATION 0.0004
Test			DRY GAS STANDARD
Air Blank	0.000	02:36	LOT # 00413100A1
Diagnostic	VAC/OK	02:36	TANK # 003
Air Blank	0.000	02:36	TARGET: 0.100 g/210L
Dry Gas Control	0.099	02:37	EXPIRATION DATE: 08/01/2015
Air Blank	0.000	02:37	
Subject Sample 1	0.087	02:38	
Air Blank	0.000	02:39	
Air Blank	0.000	02:41	
Subject Sample 2	0.085	02:42	
Air Blank	0.000	02:42	
Dry Gas Control	0.099	02:43	
Air Blank	0.000	02:43	

BrAC = 0.085 g/210L

<u>G. Stallard</u> ARRESTING OFFICER'S SIGNATURE	02/10/2014 DATE
<u>M. Weithofer</u> TESTING OFFICER'S SIGNATURE	02/10/2014 DATE

Ohio Breath Test Ticket

- Not called a BA
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- Breath test machines are generally at the PD, not the jail

THIS SIDE UP/THIS EDGE IN
GUTH LABORATORIES, INC. 800-233-2328

CIN 6
11/25/2014 SERIAL # 45-01-0001
MODEL# 59000H

SUBJECT'S NAME: [REDACTED]

RESULTS EXPRESSED AS GRAMS OF
ALCOHOL PER 210 LITERS OF BREATH

AIR BLANK	.000	02:44
SUBJECT TEST	.261	02:45
AIR BLANK	.000	02:45

OPERATOR'S NAME: A. DETTMER/BA/VA
PERMIT# 01991 G-3

[REDACTED]

SUBJECT'S NAME: [REDACTED]

0128 CIN 6
TIME TEST OBSERVED REGISTERED LOCATION

OPERATOR
A. DETTMER

ADDITIONAL INFORMATION AND/OR REMARKS
OVC # 6115

Kentucky Detention KRS 189A.110

-Any person who is arrested for a violation of KRS 189A.010 and who, upon blood alcohol testing, shows a blood alcohol reading above .15 percent shall be detained in custody at least four (4) hours following his arrest.

CAMPBELL CO. DETENTION CENTER
INTOXILYZER - ALCOHOL ANALYZER
KI MODEL 5000EN - SN 68-010415
06/17/2015 03:26 EDT

SUB NAME-
OPER NAME=RHODEN, NICK K
A. O. NAME=RHODEN, NICK K
A. O. AGENCY=KSPD
O. R. I. NO=KY0190000
CITATION NO=KX90501
REPORT NO=15-8896
DRIV LIC NO=KYB98184606
SUB DOB=09/21/82 SUBJECT SEX=M
SUB RACE=W ETHNIC ORIGIN=H

TEST	GRAMS/210L	TIME
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SUBJECT TEST	.130	03:26EDT
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SUBJECT'S NAME
Nick Rhoden 907
OPERATOR
ADDITIONAL INFORMATION AND/OR REMARKS
Observation Start 0304

KENTUCKY
STATE
POLICE

Intoxilyzer® Instrument Printer Card
Forensic Laboratories Section

Blood & Urine Test Differences

- After an arrestee takes a breath test the officer will offer them a blood test
- Kentucky has no per se urine limit for alcohol or drugs
- Kentucky has no per se limit for drugs...it's any amount for listed drugs or impairing if marijuana

Blood & Urine Test Differences

- A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
- While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;

Blood & Urine Test Differences

- The substances applicable to a prosecution under subsection (1)(d) of this section are:
 - (a) Any Schedule I controlled substance except marijuana;
 - (b) Alprazolam;
 - (c) Amphetamine;
 - (d) Buprenorphine;
 - (e) Butalbital;
 - (f) Carisoprodol;
 - (g) Cocaine;
 - (h) Diazepam;
 - (i) Hydrocodone;
 - (j) Meprobamate;
 - (k) Methadone;
 - (l) Methamphetamine;
 - (m) Oxycodone;
 - (n) Promethazine;
 - (o) Propoxyphene; and
 - (p) Zolpidem.

Blood & Urine Test Differences

- HOWEVER:
 - (a) Except as provided in paragraph (b) of this subsection, the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
 - (b) A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.

Blood & Urine Test Differences

Operation with concentration of controlled substance specified below. RC 4511.19(A)(1)(j)(i)-(x).

<i>Controlled Substance</i>	<i>Urine</i>	<i>Whole Blood, Blood Serum or Plasma</i>	<i>Section No.</i>
Amphetamine	≥ 500 ng	≥ 100 ng	(A)(1)(j)(i)
Cocaine	≥ 150 ng	≥ 50 ng	(A)(1)(j)(ii)
Cocaine Metabolite	≥ 150 ng	≥ 50 ng	(A)(1)(j)(iii)
Heroin	≥ 2000 ng	≥ 50 ng	(A)(1)(j)(iv)
Heroin Metabolite (6-monoacetyl morphine)	≥ 10 ng	≥ 10 ng	(A)(1)(j)(v)
L.S.D.	≥ 25 ng	≥ 10 ng	(A)(1)(j)(vi)
Marihuana	≥ 10 ng	≥ 2 ng	(A)(1)(j)(vii)
Marihuana Metabolite and under the influence	≥ 15 ng	≥ 5 ng	(A)(1)(j)(viii)(I)
Marihuana Metabolite	≥ 35 ng	≥ 50 ng	(A)(1)(j)(viii)(II)
Methamphetamine	≥ 500 ng	≥ 100 ng	(A)(1)(j)(ix)
Phencyclidine	≥ 25 ng	≥ 10 ng	(A)(1)(j)(x)
Salvia divinorum and salvinorin A	Pending State Board of Pharmacy rule	Pending State Board of Pharmacy rule	(A)(1)(j)(xi)



Initial Appearance

ALS 5-day hearing and Kentucky Arraignment

Ohio's Arrest, Arraignment, and ALS

- On a first offense, person is usually cited to court
- No requirement that they be held if they have a high BAC
- If they refuse the test or test over, an ALS is imposed at the time of test/refusal

Ohio's Arrest, Arraignment, and ALS

- Arraignment required to occur within 5 business days of arrest
- At arraignment, the defendant may challenge the imposition of the ALS
- At arraignment, limited pre-trial privileges can be requested

Kentucky's Arrest, Arraignment, and ALS

- On a first offense, person is usually taken to jail
- Requirement that they are held for 4 hrs if BA > .15
- At arraignment, the defendant is placed under a pre-trial suspension for a refusal or 2nd offense
- At arraignment, defendant can request a pre-trial suspension hearing

Kentucky's Arrest, Arraignment, and ALS

- If the person took the test and was over, there is no pretrial suspension on a 1st offense
- The defendant may file a petition for judicial review of the pre-trial suspension
- That review consists of a mini-pc hearing, implied consent, and actual refusal determination
- Hearing must occur within 30-days of demand

Kentucky's Arrest, Arraignment, and ALS

- If there was a refusal, the person may petition the court for an interlock device. This is new - eff. 7/15, KRS 189A.200(2)
- They may do this only if they waive their right to a judicial review of the suspension.

Prior Offenses

- Prior convictions enhance penalties for future convictions
- Look back period: 10 years in OH and 10 years in KY
- OH: Calculates the date from prior conviction to present offense
- KY: Calculates the date from prior offense to present offense

Prior Offenses in KY

- Any challenges to a prior conviction in KY must occur at the 'first opportunity' or they're waived
- **THIS IS BIG:** any OVI conviction that came from a NO CONTEST plea cannot be used to enhance the current KY DUI. KRE 410(2)

Prior Offenses in KY

- KY sees DUI and Physical Control as one and the same
- What does DUI require? Operation.
- What does physical control require in OH? Being in the driver's position of a vehicle and having possession of the ignition key.
- **THIS IS ALSO BIG:** a conviction for an OH physical control can cause an enhancement in a subsequent KY DUI.

Jury Trial

- Ohio has 8 jurors in Municipal Court
- Kentucky has 6 jurors in District Court
- In Ohio we voir dire the venire, pass for cause, then exercise peremptory challenges in succession

Jury Trial

- In KY we directly voir dire a venire of 12, pass for cause
- Then the prosecutor and defense each strike 3 jurors - if we each strike a different 3, then we have our jury
- If we strike one or more of the same, then the clerk puts the remaining names in a hat and draws out the first 6, then we have our jury

Post Conviction Suspension

- Ohio driver
 - KY DUI, 1st offense suspended 30-120 days
 - KY will notify OH
 - OH will send notice of suspension to driver
 - 21 days from date of mailing of letter, a 6-month suspension begins

Post Conviction Suspension

- Ohio driver
 - The ORC provides that the Ohio driver will be suspended for 6-months or the period of suspension given by the foreign court, whichever is *less*
 - By default, they suspend for 6-months
 - ORC 4510.17(B)

How to Fix It

- Documents needed
 - Certified Copy of Driving History Record from KY Transportation Cabinet - 8120 Dream Street in Florence, KY
 - Clearance letter from Transportation Cabinet, if available
 - Copy of the OH BMV Suspension Notice

How to Fix It

- Appeal Letter Sent to OH BMV
- Include a copy of the KY Driving History Record and, if available, the Clearance Letter
- Never had to have a hearing
- Call Ted

How to Fix It

- If the suspension in OH will still be active you can petition for limited privileges
- File in County of Residence
- \$126 in Hamilton County

How to Fix It

- Heard in Rm. 236
- Establish need for privileges: work, school, medical
- Must surrender OH license at that time
- Similar to obtaining privileges at OH arraignment

How to Fix It

- Available to download for your use:
 - Sample letter to client
 - Sample of Driving History Record
 - Sample of Clearance Letter
 - Sample letter of appeal to OH BMV

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Post Conviction Suspension

Kentucky Driver

- Ask Judge to put the end date of the OH suspension on the Judgment Entry sheet
- After being informed of the OH conviction:
 - the KY Transportation Cabinet will send a Notice of Suspension to the Client
 - The suspension will begin on the DATE OF CONVICTION, not the date of arrest, even if the OH judge backdates the suspension to the date of arrest.
- Client will be facing KY suspension time equivalent to OH suspension.

Post Conviction Suspension

Kentucky Driver

- For example, if Client is arrested in January 2019 and pleads NO CONTEST in April 2019, his OH 1-year suspension, after being backdated, will terminate in January 2020. However, KY will suspend Client for 1-year, but will begin the suspension in April 2019, meaning the KY suspension will terminate in April 2019. The best way to avoid this scenario is to do the following:

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Post Conviction Suspension

1. Have the sentencing Judge write down the end date of the suspension. Normally, the Judge will write that the suspension will be for 1-year and be backdated to the date of arrest, without putting the end date of the suspension. If the end date of OH suspension is on the Entry, the KY Transportation Cabinet will honor the end date of the suspension and Client's KY suspension will terminate at the same time as the OH suspension.
2. OH BMV records will not help! The KY Transportation Cabinet will only honor documents coming from the OH courts regarding modifying KY suspensions.

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Post Conviction Suspension

- Client will be eligible for a hardship license in KY after a 30 day hard suspension. The 30 day suspension will be an actual 30 days, beginning from the date of conviction. (No exceptions, even if OH suspension ends prior to 30 days!)
- Client is eligible for hardship license after 30 days. Client does not have to complete 20 hours of Adult Driving Education program to get hardship license.
- Client must pay \$40 reinstatement fee in KY and complete a KY alcohol assessment and 20 hours of ADE program (OH assessment will not be accepted!). If KY assessment determines Client only needs to complete 20 hours of ADE program, the OH 3 day DIP program at a state-approved facility may be used to substitute for the 20 hour ADE program.
- In order to get his KY license reinstated, Client must complete ADE program or its equivalent.

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5 Take Aways

- In KY, priors calculate from offense to offense and look back 10 years. In OH they calculate from prior conviction date to current offense date and look back 10 years.
- A conviction that came from a no contest plea cannot be used to enhance a KY DUI.
- KY does not have a physical control that is separate from a DUI. An OH physical control conviction can enhance a KY DUI.

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5 Take Aways

- Ohio will issue a 6-month suspension upon receiving notice of a KY DUI conviction. You can administratively appeal it and have it converted to the length of suspension given by the KY court.
- KY will hand down the suspension given by the OH court but will start the time from the date of conviction unless the OH court journalizes the end date of the suspension.

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