



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



EFFECTIVE DATE: MARCH 1, 2002	REVISED DATE:	NO. PAGES: 1 of 5	NUMBER: 3.4.14
SUBJECT: DRIVING UNDER SUSPENSION ARRESTS AND CITATIONS			
ASSOCIATED MANUAL: COMMUNICATION CONTROL SECTION, DISTRICT, INSPECTION UNIT, DATA PROCESSING		RELATED ORDERS: 8.2.06	
CHIEF OF POLICE: <p style="text-align: center;"><i>Edward F. Lohn, Chief</i></p>			

PURPOSE: To provide guidelines to cite or arrest drivers who operate a motor vehicle under a driver license or wrongful entrustment suspension.

POLICY: The Cleveland Division of Police shall arrest/or cite violators for Driving Under Suspension and/or Wrongful Entrustment, and as legally mandated, seize the motor vehicle.

PROCEDURES:

- I. Cleveland Codified Ordinances (CCO) for Driving Under Suspension (435.07):
 - A. Prohibits operation of a motor vehicle by a person whose driver license is suspended or revoked due to a Financial Responsibility Act (FRA) violation.
 - B. Prohibits an owner, under suspension, from knowingly allowing another person to operate their vehicle, during the period in which the suspended person is required to file proof of financial responsibility which must be maintained with respect to that vehicle.
 - C. When a LEADS inquiry shows “No Driving Privileges Indefinitely,” and the reason is “ Proof Filing Canceled,” the person is delinquent in their payment and the insurance company has notified the Bureau of Motor Vehicles (BMV). The officer shall cite under 435.07 (a) for this license suspension.
 - D. 435.07(b) is a duplicate of 435.01(c) and shall not be used.
 - E. 435.07(c) prohibits operation of a motor vehicle by any person whose driver’s license has been suspended due to failure to pay reinstatement fee for an Administrative License Suspension (ALS) or any other court-imposed suspension.

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- F. When a LEADS inquiry shows “No Driving Privileges Indefinitely,” due to a “Reinstatement Fee Required” and no other active suspension shows, cite the violator under 435.07(c).
- G. 435.07(d) is a “catch all” for driving under any type of suspension other than a FRA or DUI, or any of the specific suspensions listed under 435.07. (This section also prohibits driving outside of granted occupational driving privileges, except in connection with a DUI suspension).
- H. 435.07(e) prohibits operation of a motor vehicle by any person whose driver’s license has been suspended in connection with a DUI conviction, or who, is found to be driving outside of court granted occupational driving privileges.
- I. 435.07(f) prohibits operation of a motor vehicle by any person under an Administrative License Suspension (ALS) or judicial pretrial suspension. This applies if a person refuses to take a chemical test in connection with a DUI or fails the test, and is then placed on an ALS. When a LEADS inquiry is made, this suspension shows as “ALS Suspension”, and may range from five days after arrest, to final disposition of the case.
- J. 435.05(a/b) prohibits the owner or operator to allow another, with no legal right, to drive their motor vehicle. This is the CCO version of wrongful entrustment.

II. Procedures for Driving Under Suspension Arrests and/or Citations:

- A. When a violator is cited under CCO 435.07 for Driving Under Suspension, the specific applicable subsection letter (a,c,d,e or f) shall be included with the CCO # 435.07 in the offense code section on the Uniform Traffic Ticket. **It is critical that a specific subsection letter be included**, because the court cannot seize or initiate forfeiture proceedings on a motor vehicle unless the proper and complete offense code is on the UTT.
- B. When a violator is cited under CCO 435.07 for Driving Under Suspension, a copy of the violator’s driving record and registration by VIN (LEADS printout) of the motor vehicle driven shall be attached to the white copy of the UTT. If LEADS is unavailable at the time the officers attempt to retrieve the printouts, they shall notify the booking institutional guard, who shall

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insure that the above mentioned printouts are obtained and attached to the white copy of the UTT prior to same being forwarded.

- C. If a LEADS inquiry into a violator's driving status reveals "No Driving Privileges Indefinitely/License Expired", the officers shall determine the reason for the license suspension and cite the violator for Driving Under Suspension under the appropriate code number and letter designation. Officers shall not additionally cite for CCO 435.01(a) Driver's License Required. The court ruling, (STATE v. GILBO) found that citing for both the suspension and lack of driver's license is improper.
- D. When a violator is cited under CCO 435.07, Driving Under Suspension, and the violator is in possession of a driver's license, the officer's shall seize the license, place it in a glassine envelope and attach it to the white copy of the UTT to forward to court. The driver's license shall not be sent to the B.M.V. If the operator states he has a license but does not have it on his person, the violator shall be ordered to surrender the license to the court at the initial appearance. If a DUI and DUS violation, use the DUI procedures for sending the driver's license to the B.M.V., if applicable.
- E. If a violator is in possession of a driver's license or other form of valid identification, it is the officer's discretion to cite and release, or make a physical arrest. If cited and released, the court date shall be set for 14 days from issuance, with the exception of the five day rule in Sec. III. B. of this order.
- F. When a violator is cited under CCO 435.07, driving under suspension, the motor vehicle that the violator is operating shall be towed in connection with the arrest/citation. The only exception to this is if the owner (or owner-authorized person) has a valid driver license, and proof of insurance for the motor vehicle.
- G. When arresting/citing for Driving Under an FRA or DUI Suspension (435.07a/e), or Wrongful Entrustment (435.05a/b), the ORC mandates seizure (tow) of the motor vehicle, if the violator is the owner of the motor vehicle. If the owner is not the violator, but subsequently attempts to claim the motor vehicle to avoid the tow, officers can arrest/cite for Wrongful Entrustment (435.05a/b), if probable cause exists for that offense.

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III. Procedures to be followed only when arresting/citing for Driving Under a Financial Responsibility Act (FRA), Driving Under the Influence (DUI) (435.07a/e), or Wrongful Entrustment Suspension (435.05a/b):

A. When a person is arrested/cited for one of the offenses listed in the above heading, the Driving Under FRA or DUI Suspension Form shall be completed.

1. The top portion of the form shall be filled out with the driver's information, motor vehicle information, and the motor vehicle owner's information. If the motor vehicle information is the same as that of the driver, fill in "SAME AS ABOVE LISTED DRIVER", in the motor vehicle owner's space.

2. The center portion contains four "YES" or "NO" questions which must be answered, and a space for the UTT number, which must be entered.

a) The first question asks if the driver license was seized, and if, the answer is "YES". Refer to Sec. II.D. of this order for the procedure for disposition or surrender of a driver's license.

b) The second question asks if the driver is provided a copy of the required form, the answer is "YES".

c) The third question asks if the motor vehicle and plates were seized under ORC 4507.38. This should be answered "YES", if the violator is the owner of the motor vehicle. If the violator is not the owner, answer "NO".

NOTE: Due to the court ruling (STATE v. HOCHHAUSLER), it cannot be seized or forfeited unless the violator is the owner of the motor vehicle.

d) The fourth question asks if the motor vehicle is subject to forfeiture.

If the violator is the owner of the motor vehicle, the violator's driving record shall be checked via LEADS, to determine if the violator has had any past convictions for Driving Under an FRA

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Suspension, Driving Under a DUI Suspension, Wrongful Entrustment, a third conviction of Driving Under FRA or DUI suspension. If the answer is “Yes” than the motor vehicle is subject to forfeiture. The “vehicle subject to forfeiture” box must be checked on the UTT. If the motor vehicle is not subject to forfeiture, the answer on the form is “NO”.

3. The “consequence statement” comprises the bottom portion of the Form. No information is required from the officer. The violator’s signature is not required.
 4. The original shall be attached to the original white court copy of the UTT. A copy of the form shall be provided to the violator. This form is not sent to the Bureau of Motor Vehicles.
- B. If the violator is cited and released, and the motor vehicle is seized under ORC 4507.38, the court date on the UTT shall be five days from the date of issuance, including weekends and court holidays. If no arrest is made, the original white court copy of the UTT shall be forwarded directly to the Background Special Investigation General Office. The green UTT shall be submitted according to procedures.
- IV.** When a motor vehicle is being seized or forfeited under ORC 4507.38, the officers shall advise CCS (Channel Seven) dispatcher that the motor vehicle is either being seized for DUS or Wrongful Entrustment, or subject to forfeiture for DUS or Wrongful Entrustment, and shall be held until released by the court. In “Reason for Tow”, section of the tow sheet, officers shall write “Hold for DUS Seizure”, “Hold for Wrongful Entrustment Seizure”, or “Hold for Forfeiture”.