Ohio Drunk Driving Defense Guide

If you have been charged with drunk driving in the state of Ohio this indispensable guide will help you to understand the criminal justice process you face.

Provided by

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Introduction

In Ohio, "drunk driving," is known as Operating a Vehicle Impaired (OVI). This is the same as what other states sometimes call DUI, DWI, or OMVI. However, OVI is a little bit more precise than "drunk driving" because in Ohio, operating any vehicle (even bicycles) while impaired by alcohol, or any other drug, is against the law. In Ohio, a first offense (barring certain aggravating circumstances) is a misdemeanor of the first degree punishable by a maximum term of incarceration of six months and a $1,075.00 fine. If other factors are present, particularly prior OVI offenses, "impaired driving" will be a more serious misdemeanor or even a felony. The more serious misdemeanor is punishable by up to a year in jail and a fine of up to $2,750.00. A felony, depending on the level, can be punishable by many years in jail and several thousand dollars in fines.

While it is true that OVI is a traffic offense and may not carry the same moral stigma as crimes like theft, rape, or murder, it can still be a very serious matter, particularly if it is not a first offense, and can have extremely severe consequences. Talking with an attorney can help to determine what level of crime (misdemeanor, felony, higher degree felony) a person confronted with an OVI offense is facing. However, a conviction for OVI, even a first offense, always bears at least the following consequences:

1. A period of incarceration and/or an alternative driver intervention program, electronic monitoring and house arrest, alcohol monitoring, or some combination of these punishments applied simultaneously or sequentially;

2. A fine;

3. An automatic driver's license suspension including at least some period of time in which no driving privileges may be granted;

4. Six points on the person's driving record;

5. Mandatory fees to the Ohio Bureau of Motor Vehicles;

6. Certain court costs.

The severity and extent to which some of these sanctions will be imposed depends upon the severity of the offense and the circumstances of the offense. For more information regarding the consequences for various levels of OVI, please refer to the chart at http://www.ghmc.org/charts.asp. Please note, however, ultimate penalties and consequences also depend upon other charges. Seriously injuring or killing someone else, for instance, even accidentally in a first OVI, can have extremely dire consequences.

Because OVI is such a serious charge, it is critical that you have an experienced OVI defense attorney represent you, and for you to understand the legal process you face following a drunk driving arrest. This Ohio Drunk Driving Defense Guide is designed to assist you in understanding the criminal justice process you face when charged with Drunk Driving in Ohio.

The System

THE OVI CHARGE

As mentioned, OVI can take the form of a misdemeanor or a felony. If the OVI charged is a misdemeanor offense, then charges are filed either in a Mayor's Court or in a Municipal Court of the County in which the offense allegedly occurred. The traffic citation should have information just above the officer's signature at the bottom showing the date, time, and place of the first court appearance. Future court appearances will be discussed and agreed upon at the initial appearance.

Felony charges can be initiated in Municipal Court, but under Ohio law a grand jury is required to review the case to determine if probable cause exists to charge the offense. If the grand jury finds probable cause, they will return an indictment and the defendant will either be served summons or an arrest warrant will issue. If a warrant issues the person must turn themselves in or they will be arrested and brought to a judge of the Common Pleas Court for their first appearance.

There are four kinds of OVI offenses and there are different ways of proving each:

1. Impaired driving ability – Here the most important question is whether the ability to drive was impaired, not whether the driving was actually bad. In this sort of case, field sobriety tests, physiological factors and visible evidence of impairment are all relevant to prove that alcohol, drug abuse, or a

combination of the two impaired the defendant's mental or physical abilities rendering them unfit to operate a vehicle.

2. Driving with a blood alcohol level (BAC) in excess of the legal limit – In Ohio the limit is 0.08%. The offense escalates in seriousness at a BAC of 0.17%.

3. Driving while under the influence of certain drugs – These drugs may be detected by various types of tests which will be used if an officer develops probable cause to believe that a driver is under the influence of drugs.

4. Driving a vehicle under the influence of alcohol or drugs with a prior OVI conviction in the last 20 years – Here, any of the above proofs will be offered along with evidence of the defendant's prior record.

Despite these different types of offenses, a prosecutor must always prove four elements beyond a reasonable doubt. He must prove that:

1. the defendant was "operating"

2. a vehicle

3. in the state of Ohio (including private property).

It is critical for the accused to have the charge reviewed by an experienced OVI defense attorney to ensure that all of the essential elements of the offense have been set forth in the traffic citation. There are certain "motions" that have to be made before you enter a "not guilty" plea at arraignment. These motions are: 1) defenses and objections based on defects or problems in the institution of the prosecution; and 2) defenses and objections based on defects or problems in the traffic citation itself. It requires an experienced OVI defense attorney to review the charge and to make the proper motions before you enter a not guilty plea, so that you do not lose certain defenses and objections to the charge against you.

ARRAIGNMENT

The first court appearance in a drunk driving case is called an arraignment. During

the arraignment, a defendant will have to enter a plea. The possible pleas are, "not guilty," "guilty," or "no contest" (also sometimes called "nolo" which stands for nolo contendere). A plea "guilty" admits guilt to the crime charged and has essentially the same effect as a conviction. A plea of "no contest" admits that the facts charged are true but does not admit that those facts constitute guilt to the crime charged. "Not guilty" admits nothing.

Unless a plea agreement satisfactory to the defendant and the prosecutor has been reached and firmly agreed upon, no plea other than "not guilty" should be entered at the arraignment. Even if a defendant believes he is guilty, he should plead "not guilty" because the plea of "not guilty" is not an assertion of innocence but a refusal to admit guilt. That is, even a guilty defendant has a right to plead "not guilty" and force the prosecution to prove his guilt. Moreover, at the arraignment stage of the case, it is often true that neither the defense nor the prosecution is fully aware of the strength and extent of the evidence against the defendant. Thus, it would be premature, at this stage, unless a beneficial deal has been reached, to consider giving up on the defense.

At the arraignment it is also important to demand a jury. Felony cases are automatically entitled to a jury. However misdemeanor cases only receive one if there is a demand. If a defendant does not demand a jury at the time of his plea, the defendant runs the risk of losing his right to a jury trial. If a defendant loses his right to trial by jury, then a judge will decide everything. This is often referred to as a "bench trial." This means the judge will decide, the facts (what happened), the law (what the law says is prohibited), and the application of the law to the facts (whether what happened means the defendant is guilty). Generally speaking, defendants who have a jury decide the facts and the application of the law to the facts, get much better results than those who let the judge decide everything.

Pleading "not guilty" and demanding a jury trial does not mean that a defendant will necessarily go to trial. But it is important to keep that option "on the table." By preparing your case for trial from the beginning, we will be in a much better position to understand the evidence against you, to exploit weaknesses in the prosecutor's case, to litigate pretrial issues regarding the admissibility of evidence, and to obtain a more favorable plea offer if that is in your best interests. Unlike most attorneys who assume every case is going to end in a plea bargain, we treat each case as if it will end in a jury

trial. Our approach sets us apart from most other lawyers, and can account for the favorable results that we obtain for many of our clients.

AUTOMATIC ADMINISTRATIVE LICENSE SUSPENSION

An alert, knowledgeable and diligent lawyer will also file an appeal or request a stay of the license suspension while the criminal case is ongoing. An "administrative license suspension" (ALS) is something that the BMV does automatically at the start of almost every OVI case. An ALS will occur if a defendant refused a chemical test (NOT a roadside test) or submitted to a test and tested over the legal limit (for alcohol 0.08%). While the ALS stands, the defendant is not permitted to drive. If he is caught driving while under ALS, he will be charged with additional crimes and it will make his OVI case much more difficult to defend. Thus, it is very important to challenge the ALS and, if possible, restore driving privileges to the defendant. Some possible methods to challenge an ALS include:

1. The officer did not have "reasonable grounds" to believe the defendant was committing OVI;

2. The officer failed to ask the defendant to take a chemical test;

3. The officer did not inform the defendant of the consequences of refusal to take the test;

4. The defendant did not refuse to submit to the chemical test officer confiscates the license anyway;

5. The chemical test does not show substance concentrations in excess of the legal limit.

As with many rights and defenses, if an ALS is not promptly challenged, the defendant's right to challenge it may expire.

VEHICLE RECOVERY

When a person is arrested for OVI the vehicle is often towed and impounded. The fees associated with storage in police impound can add up fast and be quite significant. A

diligent, alert, and knowledgeable attorney will seek to have the vehicle released from impound or stored in another location to avoid these fees.

LIMITED DRIVING PRIVILEGES

Many defendants have jobs that require them to drive and, due to the relative inefficiency of public transport, almost everyone has a job that requires them to drive to and from work. Thus, a license suspension can have extremely harsh employment consequences. Any license suspension, even an ALS (imposed before a defendant is even found guilty) means that a defendant is not permitted to drive for any reason whatsoever. Moreover, it should be noted that, with any OVI there will be some period of total ineligibility for driving privileges (this period varies in length with the seriousness of the OVI).

However, an alert defense attorney will seek to obtain limited driving privileges during the suspension period and after the period of total ineligibility. A judge, in considering this request, will look at the facts of the case, a defendant's driving record, whether the defendant's license is otherwise valid and whether defendant has proper registration, insurance, etc. If limited driving privileges are granted, the court will explain what they are. Typically, a defendant will be permitted to drive to work, medical appointments, and other vital activities. Social activities are usually not considered vital activities and late-night driving is often prohibited. Depending on the circumstances, a defendant may be required to display special license plates or use an immobilizing device in order to obtain limited privileges. In some cases a defendant will be required to keep a log of driving activity. Because limited privileges really are quite limited, it is still important to challenge the ALS suspension as well as to fight the OVI charge.

A knowledgeable defense attorney should advise his client to carry a certified copy of the order granting limited driving privileges when driving. The client should also obtain a TEMPORARY State Identification Card from the BMV. The client SHOULD NOT obtain a permanent card because that will terminate the client's driver's license.

DISCOVERY

After the arraignment, a diligent defense lawyer will demand "discovery." This is a method by which a defense attorney obtains information from the prosecutor. Put simply, it is a way to find out what the other side knows. Using discovery and other

independent investigation tools, an alert lawyer will learn what there is to know about the facts of the case. This may take time and may require interviewing witnesses, examining and documenting the scene, consulting with experts, using scientific analysis to create new facts, obtaining official records, visiting the agency which conducted the chemical test and other methods specific to each case. Only with a full understanding of the events and facts in a case, can a lawyer meaningfully predict the likely outcomes of the case, negotiate a beneficial plea, or competently try the case. Thus the importance of thorough investigation and a detailed discovery demand cannot be overstated. Some common items in a well-drafted discovery demand include:

1. Statements by defendant – written or recorded;

2. Copy of defendant's driving record;

3. Copy of defendant's criminal record;

4. Witnesses contact information;

5. Witness statements – written or recorded;

6. Police reports;

7. Results of scientific tests – breath, blood, urine analysis results;

8. Records relating to tests: instrument test records, maintenance records, other documents;

9. Expert witness reports.

A demand for discovery is typically served upon the prosecutor at the arraignment thus obtaining counsel before the arraignment is of considerable importance for a defendant.

MOTIONS TO SUPPRESS

Many OVI cases are won through "motions to suppress." A motion to suppress typ-

ically challenges the reasons for the traffic stop and/or the methods by which evidence was collected. A successful motion to suppress results in the "suppression" of evidence, meaning the evidence is "thrown out" and not considered. This frequently has the effect of leaving the prosecution without any evidence that a crime has been committed and can result in a dismissal of the entire case. Common grounds for a suppression motion are these:

1. When the officer pulled the defendant over, he lacked the appropriate grounds to do so (i.e. the defendant was not violating traffic laws);

2. The officer lacked reasonable suspicion when he asked the defendant to perform roadside field sobriety tests;

3. The results of the sobriety tests are inadmissible because the officer did not appropriately administer the tests;

4. The officer lacked probable cause to arrest the defendant;

5. The results of the chemical tests are inadmissible because they were not administered according to department of health regulations;

6. Statements obtained by the officer where obtained in violation of the defendant's right to refuse to incriminate himself.

Generally speaking, police officers who believe someone is driving drunk will look for some minor traffic violation. They will pull the person over on the pretext that the person is violating the traffic law, then attempt to find evidence of an OVI. A diligent attorney will therefore obtain the footage recorded by the police officer's "dashcam." In a case tried by the author's firm, an officer claimed to have stopped the client for driving outside his marked lane. The officer eventually arrested the client and administered a chemical test. The client tested over the limit. However, because the video showed that the client was driving appropriately and not violating any traffic laws, the judge ruled that there was no cause for the stop. Since there was no cause for the initial stop, all the evidence collected after the stop, including the over-the-limit test was inadmissible (thrown out) and the case was dismissed.

Another common tactic we see officers employ after a "routine" traffic stop is to "smell" alcohol on the person's breath, use that as a basis for asking the driver to submit to a roadside test, claim that he failed the test, and then arrest the driver and require a chemical test.

Police are trained in the administration of the Standardized Field Sobriety Tests (SFSTs). These tests are designed to help officers guess if the person being tested will have a BAC over the legal limit. While many people debate the accuracy and reliability of these "tests," they can be used as evidence against you if the officer administered the test to you in accordance with the national standards developed by the National Highway Traffic Safety Administration (NHTSA). Ohio recognizes three SFSTs: 1) the Horizontal Gaze Nystagmus (HGN); 2) the Walk and Turn (WAT); and 3) the One Leg Stand (OLS). Officers are trained that if they do not administer these tests in accordance with the manual, the tests are definitely not reliable. Here, it is critical for your OVI defense to have the same training in the administration of the SFSTs as do the officers because only with this training can the OVI defense attorney determine whether the SFSTs were properly administered. The cruiser's video from the stop can be crucial to litigating the motion to suppress because the video can show whether the officer followed his training or not.

A classic example of this occurred in one of our cases in Licking County. There, the officer stopped our client for failing to dim his bright headlights to on-coming traffic. The officer claimed to have smelled the "strong odor of an alcoholic beverage" from our client's breath. The officer, after removing our client from his vehicle, testified he administered the WAT and OLS tests and that our client failed these tests as well.

The officer's cruiser video, on the other hand, showed the officer attempting to administer the HGN test. Although he properly positioned our client to perform the test, he merely waived his pen around our client's face in a series of figure eights for about thirty seconds. Suffice it to say that this is not how officers are trained to administer the HGN test. Following that pen-waiving, the officer asked our client to perform the WAT test. Not only did our client perform the test exactly as instructed, the video showed perfect balance and coordination throughout the test, even though our client was wearing flip-flops and walking on an uneven surface. As trained, the officer

then administered the OLS test, and again our client exhibited extraordinary balance and performed the test exactly as instructed by the officer. The judge agreed that our client had passed the WAT and OLS tests, and that the officer clearly did not know how to administer the HGN. As a result, the trial judge suppressed the Field Sobriety test results.

Because the faulty Standardized Field Sobriety Test results formed the basis for our client's arrest, the arrest was illegal. And because our client's breathalyzer test was given after an illegal arrest, those results (more than 3 times over the limit) were also thrown out. With no Field Sobriety test results and no breathalyzer test results, no evidence was left to prosecute the case. As a result, the case was dismissed.

PRETRIAL HEARING

After the arraignment, the court will schedule a pretrial hearing. Typically this follows the arraignment by anywhere from two to four weeks but can be rescheduled or "continued" if necessary. At this meeting, the prosecutor and defense counsel should discuss discovery issues, schedule hearings for motions if necessary, and set a date for trial.

MOTION TO SUPPRESS HEARING

If there is to be a motion to suppress, a hearing will most likely have been scheduled at the pretrial hearing. An alert attorney will schedule the motion hearing far enough after the arraignment to make sure that he has all the discovery and information there is regarding the particular part of the traffic stop, arrest, or test that he wishes to challenge in order to maximize his chances of success. If successful, a suppression hearing can result in the court throwing out all the evidence in the case and the prosecutor having no choice but to dismiss the charges.

In addition, because it is sometimes hard to predict what a witness will say until they are on the witness stand in court, the suppression hearing, even if not successful in getting the evidence suppressed, often provides a good insight into what an officer or witness may plan to say at trial. Then, in the time between the hearing and trial, a diligent attorney should search for ways to neutralize the witnesses' damaging testimony and capitalize on their beneficial testimony.

PLEA BARGAIN OR JURY TRIAL

If the case is not dismissed or resolved early in the litigation, there will come a point when the client must chose whether to accept a plea deal or go to trial. While it is true that the great majority of all cases are resolved without a jury trial, it is important to keep that option available. Pleading "not guilty," making a jury demand, preparing each case as if it were going to be tried in front a jury, are all things that a good lawyer will do to ensure that the prosecution knows that if they do not make an excellent plea deal, they will be forced to shoulder the burden of proof in front of a jury of the defendant's peers.

Ultimately, the client is the only one who can decide whether to go to trial or to accept a plea bargain and plead "guilty" or "no contest." The lawyer is responsible for all strategy and preparing the case. Thus, if a case is not dismissed or resolved early in the litigation, the good lawyer has two main roles: First, to prepare each case as if it is going to trial in order to give his client the best possible range of options. Second, once those options are established and defined, to inform the client as fully as possible about his options to allow the client to make an intelligent, and hopefully, good decision.

In the event that a client chooses to go to trial, if an alert lawyer has followed this guide, the client should go with his rights intact and be in the most advantageous situation possible under the circumstances of his case.

CHOICE OF COUNSEL

It is critical for any person charged with Drunk Driving in Ohio to select an experienced OVI Defense Attorney. That attorney, at a minimum, must have 1) the same training in the administration of Standardized Field Sobriety tests as does the police officer who made the arrest, and 2) a proven record of successful OVI defense. Otherwise, the prosecutor will not take your defense seriously, and the case will likely result badly. This Ohio Drunk Driving Defense Guide describes how a good attorney should defend the OVI prosecution and it describes the things the author's firm believes are important in every OVI defense.

Contact Koenig & Long

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