

## Driving While Intoxicated - DWI, OVI

Driving while intoxicated or under the influence of drugs, or as it is known in Ohio, operating a vehicle under the influence (OVI), is a criminal offense. Although usually prosecuted as misdemeanors, these offenses may be charged as felonies in some repeat offender situations. When an accident occurs and the responsible driver is under the influence, felony charges of aggravated vehicular assault or aggravated vehicular homicide may be filed.

Most OVI cases begin when a police officer observes someone driving at a speed above the posted limits or operating his or her vehicle in an unsafe or erratic manner. If an officer observes objective factors which lead him to suspect that the driver of the vehicle is, in fact, driving while impaired, he can stop the vehicle.

After stopping a driver on suspicion of operating a vehicle under the influence of alcohol or drugs, the officer will evaluate the driver's condition for evidence of intoxication like slurred speech, red or glassy eyes, and the odor of alcohol. If the officer finds the existence of factors suggestive of intoxication, he will ask the driver to get out of his or her car. The officer will then conduct field sobriety tests at road side which may include recitation of the alphabet, balance tests, or an HGN test (horizontal gaze nystagmus) in which the driver must follow a pen or the tip of a penlight with his or her eyes. If the officer detects a certain number of "clues" indicating that the driver is impaired, he will arrest the driver and transport him or her to the station house.

At the station house, the officer must advise the arrested driver of his or her rights, including the right to the advice of counsel and the right to refuse a chemical test such as a breathalyzer, with a warning of the consequences of a refusal to submit to the testing.

The question in most OVI cases is whether the driver of a motor vehicle was "impaired" at the time the vehicle was being operated. In addition to the observations of the officer, certain chemical tests have been devised to determine impairment. Breathalyzers are one form of testing but have been the subject of considerable controversy for many years. Ohio has now begun using the Intoxilizer 8000, which uses infrared absorption to analyze breath samples. However, its reliability has been successfully challenged in several courts throughout Ohio.

As mentioned above, the arresting officer is obligated to advise the arrested driver of his or her right to contact an attorney before deciding whether or not to submit to a chemical test. Refusal to take the test, or submitting to a test that produces a blood alcohol level in excess of the permitted level (.08 breathalyzer), will result in suspension of the arrested driver's license, in addition to a charge of

OVI. A driver may be charged with the separate and additional offense of breath alcohol content (BAC) if a test is "over the limit."

The driver may then be released on bond; occasionally, an OVI defendant is held in jail until his or her initial court appearance. Suspension of his or her driver's license, as well as the limitation of driving privileges, may be addressed in subsequent court proceedings. In addition, an administrative license suspension of the operator's license may occur. The OVI defendant also faces stiff fines, court costs, and increased premiums or non-renewal of automobile insurance.