

## Current Laws Regarding Ohio DUI / OVI

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### DISCLAIMER

This communication is intended solely for the purpose of providing helpful advice to those who choose to responsibly drink alcohol within legal limits and drive to avoid an improper DUI conviction due to unreliable field sobriety tests or an inaccurate breathalyzer test. It is not intended to serve as a guide for avoiding legitimate traffic stops or DUI arrests and convictions by individuals who choose to consume alcohol in amounts above the legal limit and drive their automobiles in violation of the law. If you are planning to consume alcohol in amounts above the legal limit, then you should not plan to drive, but you should instead arrange to have a non-drinking friend or family member or private limousine or taxi service transport you.

### A FEW “TO GO” THOUGHTS BEFORE YOU HEAD OUT THE DOOR

Before you head out the door tonight to drive to and from that party consider for a moment the following facts<sup>i</sup> concerning the mixing of alcohol and your driving privileges granted you by the State of Ohio:

- On average alcohol impairment is responsible for over **2,000,000** automobile collisions each year in the US<sup>ii</sup>.
- In 2008 (the last year for which confirmed statistics are available), **11,773** people were killed in the US by drunk drivers<sup>iii</sup>.
- In Franklin County, Ohio, over **3,100** people were arrested for DUI in 2009<sup>iv</sup>.
- With a blood alcohol content of as little as **.04%—half the legal limit**—your chances of being involved in an accident are **greater** than for a non-drinker. At **.06%—still well under the legal limit**—you are **twice**

as likely to be involved in a **fatal crash**; at **.08%-the legal limit**-you are **three** times as likely; and at **.10%-which used to be the legal limit**-you are **twelve** times as likely<sup>v</sup>.

- A breathalyzer or alcohol blood reading of **.08** or above is **not required** for a DUI conviction.
- You can **pass** a field sobriety test and still be convicted of DUI.
- Depending upon the circumstances, it is possible to **flunk** a breathalyzer test without having ever taken a sip of alcohol.

## WHAT IS THIS AND WHY IS IT SO LONG?

What follows is an attempt to thoroughly summarize of the current status of the DUI laws in Ohio and provide guidelines to follow for anyone thinking about getting behind the wheel of a car after having consumed alcohol or other drugs of impairment. Although my preference (and yours I'm sure) would normally be to provide you with a short simple standard to follow, the truth is that the subject of alcohol impairment, how it might affect your driving condition and what may happen to your driving privileges is complicated and does not necessarily lend itself to a one-size-fits-all approach. Recommended guidelines can vary depending upon the circumstance. If you are one of those who absolutely has to "cut to the chase" you can go directly to the section below entitled **SO IF I'VE ONLY HAD A COUPLE OF DRINKS AND I GET STOPPED SHOULD I TAKE THE FIELD SOBRIETY TESTS, BLOW AND GO?** and come back and read the rest of this later.

## WHAT IS THE LAW REGARDING DUI IN OHIO?

DUI is known as "Driving Under the Influence" of alcohol. Ohio's new acronym is OVI -- "Operating a Vehicle Impaired". It more accurately reflects the breadth of Ohio's DUI / OVI laws. First, you do not need to be "driving" in order to be charged with DUI or OVI. Second, a "vehicle" in Ohio includes traditional motorized vehicles as well as bicycles, golf carts, and even lawn mowers. Third, "impaired" now includes drugs of abuse or otherwise, including prescription drugs. Fourth, it basically all comes down to whether a law enforcement officer concludes you are driving your vehicle impaired, which can be subjective given the reliability of the field sobriety testing procedures. The anatomy of a DUI conviction typically goes something like this:

### Step 1 - The Traffic Stop

You will be stopped, either through exhibiting driving habits that cause law enforcement to suspect you of DUI/OVI, such as weaving (even within your own lane), speeding, wide turns or other indicators of drunk driving, or you may be stopped at a roadside sobriety checkpoint. You will be asked to provide your documents (license,

registration and insurance), and will likely be asked to perform certain field sobriety tests for more evidence which consist of tests of your physical and reactive acuity.

### **Step 2 - Breath and Blood Testing**

You will almost certainly be asked to take a breath test, and in some cases, a blood test.

### **Step 3 - The Arrest**

If as a result of the field sobriety tests or the breath/blood tests the traffic officer has probable cause (more on what "probable cause" means later) to conclude you were driving under the influence of alcohol, then you will be taken to the police station and booked. This includes fingerprinting, photos and being put in a holding cell.

### **Step 4- The Arraignment**

You will be formally charged in front of a judge and will make your plea. You will need competent counsel to help you determine what you should do. If you plead "not guilty" a date will be set for a pretrial hearing. If you plead "not guilty" you can later change your plea, but if you plead "guilty" the game is over, and you will be sentenced.

### **Step 5 - Pretrial Hearing**

This is when certain negotiations take place regarding your case. When the evidence against you is faulty in some way, this can be presented to the prosecutor and a possible case dismissal or reduced charge negotiated. If the trial is going to proceed, the date is set. You have the right to a jury trial in Ohio.

### **Step 6 - The Trial**

At the trial, witnesses for the prosecution will be put on the stand and then cross examined by your defense lawyer. Expert witnesses could be used in some cases. The prosecutor must prove "beyond a reasonable doubt" that the DUI driving took place. You will be found guilty or not guilty. If you are found not guilty, you will be released. If you are found guilty, you will be sentenced.

## **SO WHAT IS THIS THING CALLED PROBABLE CAUSE?**

Ask most people and they will tell you that probable cause for arrest and conviction of DUI means having a blood alcohol concentration (BAC) of .08% or more (.02% for anyone under the age of 21), which equates to having 80 milligrams of alcohol per 100 milliliters of blood. While .08% BAC is a threshold limit under the law, the definition of probable cause is actually much, much broader than most might expect. Probable cause to arrest someone for DUI/OVI in Ohio exists when, at the moment of arrest, the arresting office has sufficient information, derived from reasonably trustworthy sources of facts and circumstances, to cause a prudent person to believe the accused has been driving *under the influence of alcohol*. A judge must make this determination on the "totality of the circumstances." Many Ohio courts have concluded that the mere act of operating a vehicle with an **odor** of alcohol on the breath, when

coupled with one or two other shreds of evidence, supports probable cause. In fact, most Ohio appellate courts do not even require field sobriety testing to be conducted in order to support an arrest for DUI/OVI in Ohio. Also, several courts have found probable cause to arrest for DUI/OVI in Ohio after testimony established that the motorist actually passed the field sobriety tests.

## **SO WHAT IS IMPLIED CONSENT AND HOW DOES IT DIFFER FROM PROBABLE CAUSE?**

Ohio law is written in such a manner that in order to be driving with a license in the state, you are giving "implied consent" to submit to blood or breath testing for blood alcohol concentration (BAC). If you refuse to submit to these tests, you face immediate penalties under the law. As soon as you refuse, you will face a 1 year driver's license suspension. If you have refused the test earlier (within 20 years) you will face a 2 year suspension. Think of it as an implied promise you make to the State at the time you are issued your license that if broken will result in the temporary loss of your license. Implied consent is a requirement versus "probable cause" which is a set of circumstance that must be present for a DUI arrest

## **WHAT ARE THE FIELD SOBRIETY TESTS; WHY DO THEY CALL THEM DIVIDED ATTENTION TESTS, AND HOW DO THEY DIFFER FROM BREATHALYZERS AND BLOOD TESTS?**

In order to operate a vehicle safely, drivers must simultaneously control steering, acceleration and braking; react appropriately to a constantly changing environment; and perform many other tasks. Alcohol and many other drugs reduce a person's ability to divide attention. Impaired drivers often ignore the less critical tasks of driving in order to focus their impaired attention on the more critical tasks. Even when they are impaired, many people can handle a single, focused attention task fairly well. For example, a driver may be able to keep the vehicle well within the proper traffic lane, as long as the road remains fairly straight. However, most people when impaired cannot satisfactorily divide their attention to handle multiple tasks at once. Police officers use the following divided attention tests to determine if you have been driving impaired:

### **The Walk-and-Turn Test**

The Walk-and-Turn (WAT) test is a divided attention test consisting of two stages:

- Instructions Stage and
- Walking Stage.

In the *Instructions Stage*, the subject must stand with feet in heel-to-toe position, keep arms at sides, and listen to the instructions. The Instructions Stage divides the

subject's attention between a balancing task (standing while maintaining the heel-to-toe position) and an information processing task (listening to and remembering instructions).

In the *Walking Stage* the subject takes nine heel-to-toe steps, turns in a prescribed manner, and takes nine heel-to-toe steps back, while counting the steps out loud, while watching their feet. During the turn, the subject keeps his/her front foot on the line, turns in a prescribed manner, and uses the other foot to take several small steps to complete the turn. The Walking Stage divides the subject's attention among a balancing task (walking heel-to-toe and turning); a small muscle control task (counting out loud); and a short-term memory task (recalling the number of steps and the turning instructions).

Officers administering the Walk-and-Turn test observe the suspect's performance looking for *eight possible clues the subject is impaired*:

- Can't balance during instructions;
- Starts too soon;
- Stops while walking;
- Doesn't touch heel-to-toe;
- Steps off line;
- Uses arms to balance;
- Loses balance on turn or turns incorrectly; and,
- Takes the wrong number of steps.<sup>vi</sup>

## **One-Leg Stand**

The One-Leg Stand (OLS) test is a divided attention test consisting of two stages:

- Instructions Stage and
- Balance and Counting Stage.

In the *Instructions Stage*, the subject must stand with feet together, keep arms at sides, and listen to instructions. This divides the subject's attention between a balancing task (maintaining a stance) and an information processing task (listening to and remembering instructions.).

In the *Balance and Counting Stage*, the subject must raise one leg, either leg, approximately six inches off the ground, toes pointed out, keeping both legs straight. While looking at the elevated foot, count out loud in the following manner: "one thousand and one," "one thousand and two," "one thousand and three," until told to stop at "one thousand thirty." This divides the subject's attention between balancing (standing on one foot) and small muscle control (counting out loud).

Officers carefully observe the suspect's performance and look for *four specific clues the subject is impaired*:

- sways while balancing;
- uses arms to balance;
- hops; or
- puts foot down.

Inability to complete the One-Leg Stand test occurs when the suspect:

- puts the foot down three or more times, during the 30-second period or
- cannot do the test.

### **Horizontal Gaze Nystagmus**

Horizontal Gaze Nystagmus (HGN) refers to an involuntary jerking occurring as the eyes gaze toward the side. In addition to being involuntary, the person experiencing the nystagmus is unaware that the jerking is happening. Involuntary jerking of the eyes can become noticeable when a person is impaired. As a person's blood alcohol concentration increases, the eyes can begin to jerk sooner as they move to the side. In administering the HGN test, the officer has the suspect follow the motion of a small stimulus with the eyes only. The stimulus may be the tip of a pen or penlight, an eraser on a pencil or the officer's finger tip, whichever contrasts with the background. Each eye is examined for three specific clues as the eye moves from side to side:

- When directed to move to the side at ear height does either eye move smoothly or does it jerk noticeably?
- When directed to move to the side at ear height and hold the side gaze for several seconds, does either eye jerk distinctly?
- When directed to move to the side at an angle towards the shoulder does either eye start to jerk prior to a 45-degree angle?

As a person's blood alcohol concentration increases, it is more likely the involuntary jerking motions will appear. It is important to note that other physical conditions can cause the same type of jerking movement of the eye.

### **Just How Accurate Are the Field Sobriety Tests**

As you may have gathered from the descriptions above, these road side exercises can be challenging and hard to successfully pass, whether or not you have been drinking, let alone if you're scared, aged, have bad balance, language difficulties, physical imparities, etc. In terms of evidentiary accuracy the tests are considered marginally accurate in the opinion of DUI defense counsel. In terms of documented reliability, most courts recognize the HGN test as being the most reliable of the bunch, but its accuracy is only 77% (meaning that 23% of the time it could be used to falsely accuse a suspect of DUI), followed by the WAT test, which is only 68% accurate, and

the OLS test, which has an accuracy rate of about 65%. Accurate or not, if you take these tests and fail them, they will be used against you by the prosecutor to prove you were impaired.

## **Breathalyzers**

The body doesn't digest alcohol like it does food. Alcohol is absorbed through the membranes in a person's mouth, throat, stomach, and intestines. Once absorbed by the body, alcohol passes into the bloodstream, where about 10% is eventually excreted through respiration, perspiration and urine. The rest is metabolized by the liver. Alcohol present in a person's breath is expelled through evaporation in the lungs. Evaporation occurs because alcohol is "volatile" in a solution, meaning that its molecules do not combine with the liquid with which it mixes. Due to this volatility, as the blood passes through the lungs, some of the alcohol passes over the lungs' air sacs, allowing it to be released by the person's breath.<sup>vii</sup>

Most breath test machines used by law enforcement agencies use a laser beam of infrared light to measure alcohol in a subject's breath sample. The beam of light directed through a sample chamber where the test subject's breath is passed by blowing into the machine. The machine then compares the intensity of the infrared light that was measured before the subject sample to the intensity of the infrared light when the sample is accepted into the machine. Because alcohol "absorbs" some infrared light at a known wavelength, the decrease in intensity of this light can be translated into a breath alcohol reading. The beam requires a clean sample chamber and pathway that is obstruction free. Otherwise, the beam will be deflected and adversely affect the accuracy of the breath test result. Current breath testing machines are based upon 1980s technology. Handheld breath test machines use electrochemical reactive fuel cells to measure the presence of alcohol in breath.

Like any "machine" all breath testing devices are subject to variance from systematic error, random causes or mere sampling variability endemic to all breath testing devices. The more common variances are as follows:

- Operator error;
- Deviations from the test subject's normal body temperature;
- Abnormal hematocrit (red blood count);
- Disease;
- Failure of machine to distinguish between alcohol and other substances;
- Changes in barometric pressure;
- Hyperventilation (which is not uncommon when you've been pulled over by the police);
- Excessive blowing in to the machine beyond that which is required (which officers almost always tell the subject to do);
- Improper machine maintenance;
- Problems with simulators; and

- Radio-frequency interference.

### **What's the Accuracy of Breathalyzers?**

In one large study called the "Harger Study" it was found that less than 50% of breath tests are within 10% of the actual blood alcohol level. These studies were done with breath test machines and corresponding blood tests in a controlled setting. As a result, most DUI defense attorneys maintain that it is impossible to get perfectly accurate and reliable BAC tests based upon breath analysis. If your BAC is .02% to .04% or so, then variances in the accuracy of breath machines probably won't matter to you, but if your BAC is .06% or .07% (which is below the legal limit), then inaccurate results could mean the difference between a trip home and a ride to the police station. In 2009, the Ohio Department of Health approved the installation of a new breath test machine, the Intoxilyzer 8000. The Intoxilyzer 8000 has and continues to be challenged in many states for producing inaccurate results and having potential flaws in its operating software. In numerous instances, motorists have attempted to blow into these machines only receive an "Invalid Sample" result, which has prompted some overzealous officers to threaten these apparently cooperative motorists with jail or license suspensions for "playing around" with the machine or "not blowing correctly."

### **Air Bags and Breathalyzers**

If you are in an accident in which the airbags inflate, it is actually possible to flunk a breath test without having had a drop of alcohol. It can happen while the driver of the vehicle gets his or her bearings after the crash by remaining in the vehicle long enough to inhale this airbag powder. The inhalation of this dust reaches the mouth, trachea, and lungs. Many people have reported coughing up this dust for several hours after an accident. The problem arises when the motorist blows into a breath test machine after inhaling this powder. This very fine powder is blown into the sample chamber by the motorist. The dust acts like little mirrors deflecting and diffusing the infrared laser beam inside the breath test machine and mimicking alcohol molecules.

### **Blood Alcohol Testing Under Ohio OVI / DUI Law**

Ohio law is quite clear--motorists who refuse a breath test are subject to have their blood drawn against their will. Police officers are permitted to request a search warrant from a local judge in order to secure a blood test for use against the DUI / OVI suspect. In Ohio, although it's not common, more and more judges are willingly signing the search warrant for police officers in the middle of the night if requested. This is particularly true in the counties adjacent to Franklin County, where officers and judges are much more willing to request and obtain blood tests. In Franklin County the trend is growing - of the 15 judges who handle these types of matters, 7 will sign a search warrant for a blood draw and 8 will not. For the most part, however, you only see blood draws in Franklin County on predetermined "no refusal" surveillance weekends –

Memorial Day, 4<sup>th</sup> of July, Labor Day, New Years, St. Patrick's Day and high school prom weekends.

## HOW DO I KNOW IF I'VE HAD TOO MUCH TO DRINK?

It's a good question, and one that can be difficult to answer definitively, unless you carry your own breathalyzer, because the effect a given quantity of alcohol will have on you is dependent upon a number of factors, including your age, gender, weight, physical condition, race, genetics, breathing patterns, stress level and even the amount of sleep you've had.

## THE "INS" AND "OUTS" OF BLOOD ALCOHOL

Many people erroneously believe it takes 90 minutes to **eliminate** a drink from the blood stream after consumption. Actually, the exact opposite is true. On average, depending upon what you've been eating, it can take up to 90 minutes for one drink to be completely absorbed **into** the blood stream - much quicker on an empty stomach. So it's up to 90 minutes "**in**", not 90 minutes "**out**." And when it comes to "**out**," it takes a lot longer to get alcohol **out** of your system completely than it does to get it **in**. In general people tend to metabolize alcohol at a constant rate of approximately .015 of BAC every hour. This rate is true regardless of the size of your body. So a 5'2 female burns off alcohol at the same rate as a 6'1 obese male. If you have a BAC of .10 it will take you approximately 6.66 hours to metabolize the alcohol; at .08 BAC (the legal limit) it's 5.33 hours; at .05 BAC it's 3.33 hours; and at .02 it's 1.33 hours. **So the wishful concept of instantly "sobering up" to climb into your car to drive home is unfortunately a total fallacy.**<sup>viii</sup>

While a person's size may not matter in terms of the rate of metabolism, it can make a huge difference in determining the rate at which a person's BAC rises. One drink in a small female of low weight constitutes a much larger percent of her BAC (think of it as the dilution rate of the alcohol consumed as compared to her body water content) than the same drink would for a larger male.

## REMEMBER ITS AMOUNT OF ALCOHOL CONSUMED, NOT THE NUMBER OF DRINKS YOU'VE HAD

The other common misbelief is that all you have to worry about is the **number** of drinks you have. While the number of drinks is important as a relative guide to how much you've had, it is the **amount** of alcohol, not the number of drinks, which is most important. Most beers are about 4% alcohol by volume. Most wines hover between 12%-14% alcohol. Gin, vodka, bourbon, scotch, and whiskeys are typically 40% alcohol. You've probably heard that you get the same amount of alcohol in what is referred to as a "standard" drink, meaning one 12 oz. beer = one 1.5 oz. shot of spirits = one 5 oz. glass of wine. The problem is that while a 12 oz. beer will always be a 12 oz. beer, rarely do drinks of spirits or wine, whether in a bar or at home, conform to their 1.5

oz. (spirits) and 5 oz. (wine) *clinical* measurement standards. In most cases, if you were served a spirits drink with only 1.5 oz. of hard liquor or a glass of wine with only 5 oz., you and the restaurant manager would probably have a little chat about portion size. That's why when unbeknownst to you your 1.5 oz. shot of spirits becomes a generous 3.0 oz. or 4.0 oz. pour and your 5.0 oz. glass of wine comes to you in a 10.0 oz goblet filled to the brim your standard drink is no longer standard. So practically speaking, when it comes to alcohol consumption, all drinks are not created equal by bartenders and residential party hosts – two beers are probably not the equivalent of one large straight up martini, regardless of whether it's stirred or shaken.

When in doubt, the best bet is to always refrain from driving if you're going to be drinking anything (see listing of limousine and taxi services below). But if you plan on driving after drinking, don't think of the number of drinks; think about the grams of ethanol you are introducing into your blood stream. The safest ethanol-beverage to consume socially and safely is probably **beer** because it comes in consistently measurable quantities (i.e., 12 oz. bottles, as opposed to open kegs). As long as you limit your pre-driving consumption to no more than two 12 oz. beers (not pub pints) in 2 hours (which should result in a BAC of .02% to .04%), then you should not be impaired, under the influence or DUI. The question always comes up as to whether the same two-drink rule applies to wine and spirits. Theoretically, it should, but practically speaking it typically doesn't because, as has already been noted, standard isn't always standard when it comes to hard liquor and wine.

## **SO IF I'VE ONLY HAD A COUPLE OF DRINKS AND I GET STOPPED SHOULD I TAKE THE FIELD SOBRIETY TESTS, BLOW AND GO?**

As Clint Eastwood once asked in the movie, *Dirty Harry*, "do you feel lucky?" That question symbolizes the dilemma you face when you have been drinking any quantity of alcohol and driving, and you are stopped by law enforcement. On the one hand, if you've been a responsible adult citizen and truly only had the proverbial two beers over the course of two hours, then theoretically, you should have nothing to worry about. On the other hand, if you've been drinking wine or spirits or if you truly had two beers, but you are not particularly talented when it comes to standing on one leg, then you could be taking a real risk by agreeing to cooperate, even if your BAC is below .08%. The advice from learned DUI counsel depends upon your circumstances. In general, you should do the following:

- **STOPPING** – Pull over as quickly and as safely as is possible, generally the right edge of the roadway, on a safe side street or a convenient public driveway. Always remember to use your blinker to signal you are pulling off the road or turning and do not rub or jump the curb. **MAKE SURE TO PUT CAR IN PARK** – you'd be surprised how many people forget.
- **DRIVER'S SIDE INTERVIEW** – Have your insurance card and registration (which you should keep clipped together and placed in your visor) and your

license ready. Keep your hands on top of the steering wheel. Don't act scared. Roll down the window as the officer approaches. Don't put gum or a mint in your mouth. Don't look away from the officer. Tell your passengers not to speak. The police officers will look to see if you fumble with your license, registration and insurance card because it is a test of your manual dexterity. **BE POLITE, NONCONFRONTATIONAL and LIKABLE.**

- **ADMIT** – Admit to whatever you've consumed and where you drank it – **this assumes of course that you were responsible and kept the number of "standard" drinks to two.** Admitting to more than two is not advisable. If/when the officer asks you if you feel like you should be driving, you should answer "Yes, I know what I drank, when and how much. I am fine." Any statements to the effect that you "feel impaired, hot, woozy, flushed, etc." will be used against you as evidence. **BE POLITE, NONCONFRONTATIONAL and LIKABLE.**
- **EXIT VEHICLE** – Only get out of the vehicle if asked to do so by the police officer. Under Ohio law you **MUST** exit the car if requested to do so by a police officer, so don't sit in the car and play games. Make sure you remember to **TAKE OFF YOUR SEATBELT** before trying to exit the car and make sure your **WALLET** and other items are not on your lap before exiting. Forgetting about your seatbelt or dropping your wallet onto the ground are all considered evidence of impairment. Keep your hands out of your pockets. **REMEMBER** – once you are out of the car, your every action and word is being videotaped by a dash mounted camera in the cruiser. **BE POLITE, NONCONFRONTATIONAL and LIKABLE.**
- **FOLLOWING THE OFFICER** – You must go where the officer directs you up to, **but not past,** the point of participating in the field sobriety tests and breathalyzer. The lights of the police car and the spot light will be on you in blinding fashion. You should always comment on how bright the lights are and explain for the video record that you are having difficulty seeing because of the lights. Demonstrate your difficulty by putting your hand over your eyebrow like you are blocking the sun or squint your eyes. **BE POLITE and NONCONFRONTATIONAL.**
- **FIELD SOBRIETY TESTS AND BREATH TEST** – This is the point at which you will come to a legal fork in the road depending upon your circumstances.
  - **If you've truly only had two 12 oz. beers over the course of two hours,** then you should tell that officer that is the case and offer to blow into the officer's portable breathalyzer, **but you should respectfully decline to participate in any of the field sobriety tests, except for the Horizontal Gaze Nystagmus, i.e., the follow the pen, finger or flashlight test.** In doing so you should state "Officer, I will do whatever you want, I've done nothing wrong, but I feel like I should talk to a lawyer before doing the Walk-and-Turn or One-Leg Stand field

**sobriety tests** [repeat as often as necessary]. The refusal of the Walk-and-Turn and One-Leg Stand field sobriety tests shouldn't be an issue once the officer sees the breathalyzer BAC reading you will register (which should be in the .02%-.04% range, even with calibration errors variances in all likelihood). **BE POLITE, NONCONFRONTATIONAL and LIKABLE.**

- **If your couple of drinks were spirits or wine**, leaving you guessing as to whether they were "standard" or overly generous pours, then the best advice from counsel is to **politely refuse to perform BOTH the breathalyzer and the field sobriety tests in the manner suggested below.** In doing so you should state "**Officer, I will do whatever you want, I've done nothing wrong, but I feel like I should talk to a lawyer before doing anything else** [repeat as often as necessary]. **Keep in mind, however, #1 until you've been arrested you don't technically have right to counsel and #2 refusing to perform the tests will most certainly result in your arrest.**

You will be **hand cuffed**, put in the back of a **cruiser** and taken to the **police station**. The officer will likely attempt to finesse, manipulate or intimidate you into making statements that can be taken as admissions of guilt and into blowing into the breathalyzer. He or she will typically say that "if you've done nothing wrong, then it won't matter if you blow into the breathalyzer" and will talk about how "all you have to do is blow into the machine and you can go home." As a practical matter, reaching an attorney at this point will do you little good because any attorney under these circumstances will tell you not to take the field sobriety tests or blow into the breathalyzer. You will be **booked, finger printed** and likely thrown a **holding cell** (by yourself or with your new BFFs who have been arrested that night) to await the posting of bail by a friend or relative. **You license will be suspended for 1 year, subject to your attorney negotiating driving privileges.** **BE POLITE, NONCONFRONTATIONAL and LIKABLE.**

## **WHAT DO I DO IF I GET ARRESTED FOR DUI?**

Basically, you need to make two phone calls. The first call should be to a friend or family member who can come to the police station and bail you out. Once you are out of jail, your next call should be to an attorney who is reputable and wise in Central Ohio DUI.

## **WHY PLAY ROULETTE?**

So now that you know the cost, hassle and heartache of getting arrested for DUI, the question to ask isn't "do you feel lucky," instead it's more like "given the risk, why would you even bother," particularly with so many other smart options around. These days it's getting easier and more acceptable to find a non-drinker to serve as a designated driver, and if you can't find a designated driver, limousine and taxi services are readily available at reasonable rates, especially when compared to the cost of defending a DUI case. The following is a partial list of local recommended limousine and taxi transportation services:

- **JDT Transportation\***  
2862 Johnstown Road  
Columbus, Ohio 43219  
David Thornton, proprietor  
Office Phone: 614-428-7789  
David Thornton's Cell Phone: 614-452-0792  
David's E-Mail Address: [david@jdttransportation.com](mailto:david@jdttransportation.com)  
\* Used frequently by several members of the family.
  
- **Cardinal Transportation Ltd.**  
2800 Fisher Road  
Columbus, Ohio  
Office Phone: 614-274-2500  
E-Mail Address: [www.cardinaltransportationltd.com](http://www.cardinaltransportationltd.com)
  
- **Columbus Coach**  
2999 Switzer Avenue  
Columbus, Ohio 43215  
Office Phone: 614-372-0355  
E-Mail Address: [sales@columbuscoach.com](mailto:sales@columbuscoach.com)

## **ODDS & ENDS**

What follows is a collection of odds and ends related to the DUI laws:

- **TRAVELING WITH ILLEGAL SUBSTANCES AND PRESCRIPTION MEDICATIONS** – Do not travel with illegal substances in your car, such as marijuana. Keep any Rx medicine that you are required to take with you in the applicable Rx bottle, not a Ziploc bag or other generic container. Remember that it is illegal in Ohio to drive under the influence of a lawfully prescribed drug – which is why Rx medicines will often tell you not to operate heavy machinery when taking them. Ohio DUI/OVI is what is called a strict liability offense. Essentially, what this means is that you may not argue that you were just following your doctor's advice. Ohio courts have held that whether an offender took medication prescribed to him or ingested an illegal drug bought off the street is irrelevant. The question becomes whether your ability to operate a motor vehicle was impaired as a result of being under the influence. This determination

is made taking into consideration common-sense observations, field sobriety tests, breath, blood, urine, or hair tests to determine the amount of drugs in an offender's system. So if you believe the drug you are prescribed tends to deprive you of the clearness of intellect and control of oneself that you would otherwise possess, then **DON'T DRIVE**.

- **BICYCLES** - In 1986, Ohio amended the DUI statute to specifically include bicycles.
- **BOATING** - If you are under the influence of alcohol or other drugs and in control of a motor boat, sailboat, canoe, rowboat, inflatable manually-powered boat, water skis or jet skis, you are violating Ohio's DUI laws on a boat. The acronym is "BUI" - boating under the influence. The same penalties apply to BUI as DUI. You go to the same court as you would on a DUI case. You will have the same prosecutor as you would on a DUI case. However, the biggest difference between BUI and DUI is that your driver's license cannot be suspended. **However**, if you are found guilty of BUI, you cannot operate a watercraft or register one for 12 months. **Most importantly, a BUI conviction is a deemed a "prior offense" in the event you are subsequently charged with DUI.** In other words, if you get a BUI in 2010 and a DUI in 2015, you will be facing 2d offense DUI penalties in 2015. Also, people under the age of 21 must not have a blood alcohol level of .020% or greater if doing any of the above activities. That may be less than one beer for most young adults.
- **THINK TWICE BEFORE TRYING TO GREASE AN OFFICER'S PALM** - Under Ohio law, it is a 3<sup>rd</sup> degree felony to try and influence a public official in the discharge of his or her duties. This includes police officers in DUI cases. This is known as bribery and is punishable with a minimum prison term of 1 year. Most experienced officers will exercise a level of restraint when listening to offers of remuneration from scared or desperate motorists and balance the seriousness of the statement against the seriousness of the crime. A DUI is a misdemeanor. Bribery is a 3<sup>rd</sup> degree felony. Most police officers will chalk these statements up as foolish statements made by naïve and intoxicated people. You should always be extremely careful when making statements during traffic stop investigations or the booking process. Bribery can be a vindictive charge filed by a police officer when the suspect never truly contemplated the seriousness of what he/she was saying.
- **ADJACENT COUNTIES ARE TOUGH ON CRIME** - Many other Ohio counties are much tougher on DUI stops and driving privileges than Franklin County. In fact, nearly every contiguous county has stricter policies on issuing limited driving privileges. This is especially true in Fairfield, Licking, Union, Delaware, and Pickaway counties.

- **DUI SHIFT** – The 11 p.m. to 7 a.m. law enforcement shift is the one most likely to make a DUI arrest. As police and DUI lawyers often say, nothing good happens when the sun goes down.
- **RELAX AND MAKE YOURSELF COMFORTABLE** – On average a DUI arrest takes two hours for police officers to process start to finish, plus whatever time you wind up spending in the holding cell.

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<sup>i</sup> Except as otherwise indicated below, much of the information contained in this summary was provided by Koffel Law or obtained from the firm’s website.

<sup>ii</sup> Information made available by the National Highway Transportation Safety Administration.

<sup>iii</sup> Information made available on the Mothers Against Drunk Driving website, which was obtained from the National Highway Transportation Safety Administration.

<sup>iv</sup> Extrapolated from information contained in a Columbus Dispatch article on December 19, 2009.

<sup>v</sup> Information from the Unofficial DMV Guide located at [www.dmv.org/oh-ohio/automotive-law/dui.php](http://www.dmv.org/oh-ohio/automotive-law/dui.php).

<sup>vi</sup> [www.massdui.com](http://www.massdui.com)

<sup>vii</sup> [E-how.com](http://E-how.com); [dummies.com](http://dummies.com); [alcoholism.com](http://alcoholism.com); and David J. Hanson, Ph.D., [How Long Does Alcohol Stay in the Body](http://www2.potsdam.edu/hansondj/Driving%20Issues), [www2.potsdam.edu/hansondj/Driving Issues](http://www2.potsdam.edu/hansondj/Driving%20Issues).

<sup>viii</sup> [Intox.com](http://Intox.com), [Alcohol and the Human Body](http://Alcohol%20and%20the%20Human%20Body) & David J. Hanson, Ph.D., [How Long Does Alcohol Stay in the Body](http://www2.potsdam.edu/hansondj/Driving%20Issues), [www2.potsdam.edu/hansondj/Driving Issues](http://www2.potsdam.edu/hansondj/Driving%20Issues).