

Drunk Driving or Operating a Vehicle While Impaired (Intoxicated)

Our drunk driving lawyers and OVI / DUI attorneys at the Law Offices of Jack L. Moser, Jr., understand the difficulties people face when they have been charged with an offense of drunk driving or OVI. If you have been arrested or cited for drunk-driving (commonly referred to as OVI or operating a vehicle while impaired or intoxicated, or for an offense of no-operator's license (No Ops), driving under a suspended license (DUS), or some other motor vehicle traffic offense in Columbus or a surrounding county in Central Ohio, you need skilled, experienced, and aggressive legal help immediately. In Ohio it is a serious offense to get arrested for drunk driving (commonly referred to as "OVI"). Ohio Law is clear that no person shall operate a vehicle while under the influence of alcohol, a drug of abuse, or both. Ohio recognizes a "per se" law which makes it a crime to operate a vehicle with a blood alcohol content (BAC) level at or above the prescribed threshold level of .08. Ohio has also enacted zero tolerance laws that lower that level for underage drivers and high BAC laws that impose harsher penalties for those caught with levels of .17 and above.

Other presumptive BAC levels in Ohio are:

- .04 BAC for commercial vehicle drivers;
- .02 BAC for drivers under the age of 21.

Ohio has set a per se level of 0.08 BAC (blood-alcohol content) as the presumptive level at which an adult will be considered to be an impaired driver of a vehicle. However, being under the presumptive 0.08 BAC level does not mean that an operator is not impaired. Depending on roadside sobriety checks, an operator may be charged with an OVI offense even if a BAC measures below 0.08. The presumptive BAC level is just the level at which an operator is automatically considered to be "legally" impaired. In Ohio, there is no absolute "legal limit" except "zero."

If you have been charged with drunk driving or OVI / DUI, our knowledgeable and skilled drunk driving lawyers and OVI attorneys at the **Law Offices of Jack L. Moser, Jr.**, can help you understand the drunk driving laws and penalties for your drunk driving case.

Stopped for Drunk Driving

When an operator is stopped for drunk driving (or more commonly the operator is stopped for some other reason and a police officer then believes the driver has been drinking and driving), the police officer generally will request that the driver take a series of field sobriety tests; and then a BAC test of the blood, breath, or urine, to determine the BAC level. While an operator has the right to refuse to take a BAC test, Ohio has an implied consent law which means that a driver stopped for drunk driving must comply with a test or face fines and/or a license suspension (at times right on the spot) for refusing to take the BAC test.

If the operator refuses to take the BAC test or the driver is found to have a BAC over the state limit, the operator will most likely be taken into custody; the driver's license may be temporarily suspended; and the operator's vehicle may be impounded for a period of time after the incident.

After a drunk driving arrest, the operator generally must go to court for an arraignment, negotiated disposition, or a trial, as well as the sentencing phase if found guilty. Most drunk driving convictions are classified as misdemeanors when no injury is involved, but could be classified as a felony in cases where there are multiple drunk driving convictions within a specified time, or there was serious injury or death as a result of the drunk driving by the operator.

Going to Court

Generally, an operator charged with drunk driving or OVI must go to court where a judge or a jury will decide the driver's fate. As drunk driving or OVI is considered a criminal case in Ohio, an operator charged with drunk driving or OVI has a right to a trial by jury because the driver faces the possible punishment of jail time.

There are two aspects to a drunk driving or OVI charge in Ohio. The first involves an administrative license suspension. The second involves the criminal charge(s). The administrative license suspension is governed by administrative or civil law and relates to the operator's driver's license and driving record with the Ohio Bureau of Motor Vehicles (BMV). The criminal side is governed by criminal law and dictates fines, fees, penalties, sentencing, and probation.

Under an administrative license suspension (ALS), the operator's license is taken away before the driver is convicted in court. An ALS suspension occurs where a driver fails a BAC test or the operator refuses to take a sobriety test. In order to challenge the ALS, the operator must schedule an administrative hearing within a short period of time after the arrest – generally within 5 to 10 days. The ALS hearing is independent of the driver's order to appear in court on the criminal charges.

The administrative license suspension (ALS) hearing does not deal with whether the driver or operator is "guilty" of a criminal act, but rather the ALS hearing addresses the particular circumstances surrounding the arrest such as:

- **was the arrest based on reasonable grounds?**
- **did the officer request that the operator take a test?**
- **Was the operator made aware of the consequences if the driver refused or failed the test?**
- **Did the driver refuse or fail the test?**
- **Should the driver's license be suspended or revoked?**

An operator who defends against the drunk driving charge in criminal court will go through a series of events with the court as the case progresses, such as an arraignment, pre-trial, and trial.

A skilled, experienced, and aggressive drunk driving lawyer or OVI / DUI attorney will obtain "discovery" from the state and file certain motions with the court to contest particular parts of the case. If the case makes it to trial, and during court proceedings, a skilled and knowledgeable drunk driving lawyer or OVI / DUI attorney may challenge the traffic stop or the lack of probable cause that the operator was driving under the influence of alcohol or drugs. Among other tactics, the drunk driving lawyer or OVI / DUI attorney may also contest the reliability of the blood alcohol testing. A skilled lawyer may also offer defense expert evidence that the driver was not under the influence.

If an operator is found guilty and is convicted, the judge will determine what punishment the driver receives. Under certain circumstances, Ohio law calls for mandatory punishments and consequences that deny the judge any discretion at all as to the punishment - such as if the operator's BAC is of a certain level, or if the operator has refused to take a mandatory test. For each prior conviction of drunk driving, the punishment may become progressively more severe, and there may be mandatory minimum sentences in jail that the operator must serve.

If you have been charged with drunk driving or OVI / DUI, the drunk driving lawyers, OVI attorneys, and motor vehicle traffic offense lawyers at the **Law Offices of Jack L. Moser, Jr.**, (614) 478-8005, 107 West Johnstown Road, Columbus / Gahanna, Ohio 43230, can assist you right now. Our drunk driving lawyers and OVI / DUI attorneys aggressively defend each case and we fight hard to reduce sentences and fines for our clients.

When a Driver is Found Guilty

If an operator of a vehicle is found guilty of drunk driving or OVI in Ohio, most courts will:

- impose fines and court costs;
- suspend or revoke the operator's license (the Ohio Bureau of Motor Vehicles may suspend the license even if Court does not);
- require participation in a drunk driver education program;
- add points to the operator's license (and insurance premiums will most likely increase);
- sentence the operator to jail or require community service work as an alternative;
- put the operator on "probation"

Some judges may also require the operator to participate in an alcohol or drug treatment program as part of a probation sentence. Or the judge may order that the driver have installed an ignition interlock device on the operator's vehicle. The operator may also receive a condition of probation that the driver not drink any alcoholic beverage while on probation.

Driving Privileges / Getting a License Back

Ohio law allows for provisional, conditional, hardship, or temporary licenses (called “driving privileges”). Our knowledgeable and skilled drunk driving lawyers and OVI / DUI attorneys at the **Law Offices of Jack L. Moser, Jr.**, can assist the operator in trying to secure such driving privileges. However, whether the driving privileges are granted varies greatly and generally it will depend on the judge and the particular circumstances of the case. The operator must be prepared to show proof of liability insurance to get driving privileges or to get the driver’s license back.

Once the time period of a driver’s license suspension has run, the operator has paid all court costs and fines, and any applicable terms of probation have been satisfied, the operator may desire to re-obtain the operator’s driver’s license. The operator will have to petition the Bureau of Motor Vehicles to get back the operator’s license. Generally, there is a substantial reinstatement fee involved, as well as the operator will have to demonstrate proof of liability insurance.

How Drunk Driving Affects a Driver’s Record

It is a serious reality that convicted drunk drivers will have a criminal record. A drunk driving conviction may remain on your record forever, as Ohio law to date does not permit the conviction to be taken off (expunged). Accordingly, the conviction will be there in the public eye for all to see, such as neighbors, employers, insurance companies, credit bureaus, and government agencies.

In Ohio, there are point penalties on an operator’s license that will be assessed as well. After so many points (currently 12) the driver’s license may be suspended by the Bureau of Motor Vehicles (BMV) for a 12 point violation, independent of the driver’s license suspension ordered by the court or the ALS suspension mandated by law.

Also, the conviction will have implications on future misconduct of the operator. The state’s practice of maintaining records of convictions may have effect if a prosecutor later has reason to allege “prior convictions” against a future drunk driving offense to increase the penalties if

the operator is convicted.

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