

## OHIO WELCOMES PHLEBOTOCOPS

By: Jon Saia

On September 30, 2008, Ohio's new OVI law goes into effect. The new law is designed to "get tough" on repeat offenders. Other than raising minimum fines by \$50 (from \$325 to \$375) and increasing the driver's license reinstatement fee from \$425 to \$475, the law changes very little for first time offenders. Repeat OVI offenders are in store for some big changes.

Repeat OVI offenders will have increased time without driving privileges, be required to have a substance abuse assessment and treatment programs, refrain from the consumption of alcoholic beverages, have vehicles equipped with interlock ignition devices and possibly wear "secure remote continuous alcohol monitoring" (SCRAM) devices.

In what is presumed by most defense lawyers (and some well respected judges), as the most prevalent flaw in the law is the "burden shifting" with regard to the element of prior convictions in felony cases. Prior to the new law taking effect, if a Defendant presented evidence that a prior OVI conviction may have been unconstitutional, the State had the burden of proving constitutionality of the prior conviction. Under the new law, the State need only introduce a BMV record indicating prior convictions, and the Defendant must prove that the convictions were unconstitutional. This provision may very well be in violation of the U.S. Constitution.

So much for "innocent until proven guilty."

The most compelling change in the law affecting multiple OVI offenders is the introduction of "Phlobotocops." A Phlobotocop is a law enforcement officer that comes armed with both gun and needle. To become a Phlobotocop, a law enforcement officer must first obtain training in the withdrawal of blood from an individual. Then the same officer that stops the vehicle and determines probable cause for arrest will also be able to use whatever reasonable means necessary to withdraw blood. The scariest part is that this can all be done without judicial intervention. No more waking judges up in the middle of the night to determine probable cause to issue a warrant to withdraw blood. Simple reliance on BMV records will do the trick.

Look for Phlebotocops coming to your Ohio town in the near future.

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### Tap Into This...

"Sometimes when I reflect on all the beer I drink, I feel ashamed. Then I look into the glass and think about the workers in the brewery and all of their hopes and dreams. If I didn't drink this beer, they might be out of work and their dreams would be shattered. I think, "It is better to drink this beer and let their dreams come true than be selfish and worry about my liver."

~ Babe Ruth

### For the Bar... OVI Case Law Update

A prior conviction for Being in Physical Control of a Vehicle cannot be used to enhance a 6th OVI in 20 years to a felony level offense. Although the Defendants conviction was upheld, the conviction was for a misdemeanor offense. State v. Schultz (Ohio App. 8th Dist.) 2008 Ohio 4448.



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## Who's On Tap...

**Robert E. Calesaric** graduated with honors from Capital University Law School in 1994. He began his career as an Assistant Licking County Prosecuting Attorney where he obtained extensive court experience litigating vehicular related crimes for the prosecutor's office. In 2001, Mr. Calesaric opened his law practice in Newark, Ohio with the primary focus of the practice being in the areas of OVI and criminal defense. He is a past seminar lecturer on DUI topics and serves as a committee member on the OACDL's DUI Committee. NPAS has certified Mr. Calesaric in the operation, diagnostic verification and calibration of the BAC DataMaster Breath Alcohol Testing Instrument. Mr. Calesaric is also certified in Standardized Field Sobriety Tests that are established by the NHTSA. Mr. Calesaric is on the teaching staff of a three day Driver Intervention Program where he educates those charged with OVI of the legal issues involved.



*Robert E. Calesaric*

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