



## OVI GUIDE Court Process & Procedure

OVI is a traffic violation. However, a conviction of OVI carries penalties that include license suspension, fines and the possibility of being placed in jail ranging from anywhere from 3 days up to 5 years in jail.

Responsible drinking and driving is NOT AGAINST THE LAW. If you intend to consume alcohol and later drive, you have a responsibility to do so conscientiously so that no one is endangered by your conduct.

### The Legal System

#### Arraignment

The first court hearing is called the **initial appearance**, or **arraignment**. This is when you appear before the court to enter a plea of no contest, guilty or not guilty and appeal your administrative license suspension. Since we will be fighting the case, a “not guilty” plea will be entered. We will also file “**motions**” and other important “**pleadings**” in your case. Some courts and/or judges allow the attorney to appear on your behalf, while others require the appearance of the client as well. Please check with us prior to your arraignment date to see if your appearance is required. If your appearance is required, failure to be in court can result in **forfeiture of your bond and license**



**suspension for failure to appear.** Whenever possible, we will appear without you in order to not inconvenience you and to relieve some of the stress that you may have about your case.

Also at the arraignment, we may file motions seeking some type of “relief” related to the case. **Motions**, simply put, are requests to grant some type of “relief”. This “relief” is usually asking that an administrative license suspension be terminated or stayed (placed on hold) or that some part of the State’s evidence be **excluded** when the case goes to trial. We may seek to exclude a breath, blood or urine test result, field evaluations or a custodial statement made by you *after* your detention, but *before* any **Miranda** advisements were given to you (e.g., “*You have the right to an attorney; you have the right to remain silent...*”).

In addition, we will make a request for the Prosecutor to give us the “**discovery**” in your case. *Discovery* is a generic term that relates to production of evidence that the state intends to present against you in court. An example of “discovery” is a list of the State’s witnesses against you as well as information on how to locate them. We will also make a request to the court to preserve any audio or video recordings that may have been made in your case. Obtaining discovery allows us to be as fully prepared as possible when we enter court so that there will be no surprises. We will send you a copy of all motions and discovery once it has been filed and received by our office.



### **Limited Driving Privileges**

*About 95% of all DUI arrests* will involve an **administrative license suspension (ALS)**. You must appeal this suspension within thirty (30) days of the date of your initial appearance/arraignment. This is normally done at your initial appearance/ arraignment. In the event your license is suspended, and you do not have a prior history of license suspensions, the judge may grant you “Limited Driving Privileges” to allow you to drive during your suspension period. These privileges are usually restricted to driving to and from work and any work-related travel during your work hours. Limited driving privileges may also be granted for education and medical purposes. Some courts consider a homemaker’s obligations as employment.

If granted, you will be required to carry a certified copy of the Entry Granting Limited Driving Privileges with you when you drive. This will allow any officer who may stop you to determine whether you are within your stated restrictions when you drive. You may also be required to carry a log of your travels.

### **Pre-Trial**

Approximately 2 to 4 weeks following the arraignment, a **Pre-Trial Hearing** or **Conference** will be held. A Pre-Trial is the court appearance prior to the Motion Hearing and Trial and is an opportunity for us to speak directly with the prosecutor handling your case. This is an opportunity to provide the prosecutor with our arguments and determine



the extent of the State's evidence. At this point in the proceedings, we will attempt to review the videotape (if available) of your stop and arrest.

### **Motion Hearing**

Following the Pre-Trial, we will request a Motion Hearing. This is a very important step as it sometimes allows us to attack various aspects of the State's case prior to trial. The elimination of harmful evidence is the primary purpose and goal of "motions". There will be no jury involved at a motion hearing. Present at a typical motion hearing will be the judge, the prosecutor, the State's witness (the arresting officer(s)) you and your attorney. Some cases require additional witnesses. The judge will hear motions and argument from both sides, then grant or deny the motions.

### **Trial**

Next is the Trial. This may be a Jury Trial (an eight person jury is used in misdemeanor cases) or a Court trial (heard only by the judge).

As the time for trial draws closer, we will be coordinating **witnesses and subpoenas**. We may need your assistance in providing the necessary information on witnesses to assure that this is done timely and correctly. It is critical that you stay in touch with your fact witnesses, since we will need to be able to reach them and provide them with a subpoena to secure their appearance.



## **Continuances**

One thing that you must understand is the likelihood or probability of a **continuance** (rescheduling) of court dates. Court dates are subject to change at the last moment. Please make sure that we know where to reach you at all times. **Conflicts between cases** invariably occur for a variety of reasons. For example, it is not unusual for many jury trials to be set for the same date. In these instances, court rules require that the *older* case must be heard first.

Going to court is not like going to the doctor. We cannot make an appointment. We go when we are told to appear. If you see that you are going to have a job-threatening or life-threatening conflict, please let us know immediately.

The majority of OVI cases take approximately 4 to 6 months to resolve.

## **Obtaining Identification Card During Pendency of Case**

Our advice to Ohio residents is to obtain a **TEMPORARY STATE IDENTIFICATION CARD** for use until you can obtain a new driver's license. These may be obtained at any registrars' office. State regulations limit such identification cards to Ohio residents. Remember, this is **not** a license to drive and you must keep your Entry Granting Driving Privileges with you when driving. [Non-resident drivers licensed by another State should explore whether you can procure a replacement license or similar ID



card in your State without running afoul of your State's law]. **Do not obtain a Permanent State Identification Card. Doing so will cancel your Ohio driver's license.**

Please don't risk another possible arrest for OVI while this case is pending. Our office has represented *many* clients charged with a second OVI while the first was pending. This makes your case much more difficult to handle and a favorable outcome less likely.

## **Disposition Options**

### **Overview**

There are only three methods to resolve any traffic case: 1) Dismissal; 2) Plea Bargain Agreement; or 3) Trial. A good attorney should do everything possible to have your case dismissed, but this does not happen very often. If it is not dismissed, it is your right under Ohio and U.S. law that you decide whether or not to plead guilty or have a Trial. This is NOT an attorney decision. Your attorney should give you sufficient information for you to make an intelligent choice.

Statistically speaking, most cases are resolved by plea bargain agreement. About 1% are dismissed, and the remaining 8% go to trial. If you elect to plead guilty and enter a plea bargain agreement, you should thoroughly understand all terms and conditions of your agreement. In most OVI cases, whether or not convicted of OVI, probation is required. Standard special conditions of OVI probation include: 1) 72 hour



Driver Intervention Program, 2) Driver's Rights Suspension, 3) Probation (Reporting or Non-Reporting), and 4) Fines and Costs. Please note clients with prior OVI history may face longer periods of suspension and/or the possibility of the red and yellow license plates.

If your case is resolved by a plea bargain agreement, you will be asked to formally waive or give up your right to a court or jury trial, to require the State to prove your guilt beyond a reasonable doubt, to confront your accusers, to compel witnesses to testify on your behalf, your right to remain silent and appellate review. After documents affecting this waiver are executed, you will appear before a judge to enter your plea. The judge must be sure you are waiving these rights knowingly, voluntarily and intelligently before your plea will be accepted. Once the agreement is accepted, you will be given specific provisions for your sentence and in all likelihood, meet with a probation officer to discuss exactly what is expected of you during your probationary period.

If you are found guilty, a record of your conviction will be made and forwarded to the BMV. The BMV will maintain a record of your conviction. This is a permanent record that cannot be erased/expunged unless pardoned by the Governor of Ohio or the President of the United States. This conviction can be resurrected and used against you should you ever be charged or suspected of criminal activity in the future.



## **Dismissal**

As indicated, dismissals of OVI charges are rare. Less than 1% of OVI cases are dismissed outright. A dismissal is the ultimate goal in every case but it is very difficult to achieve. There are a number of ways to obtain a dismissal of an OVI case. The primary reason for dismissal of OVI cases are due to procedural errors in the legal process. Your attorney should review all procedures in the case to determine if your case can be disposed of by dismissal based upon “technical grounds.” “Technical grounds” usually involve a violation of a Constitutional right or a failure of law enforcement to follow a mandatory procedure.

Another basis for a dismissal is facts that are exceptionally in favor of the defense. Such facts may involve an illness or medical condition which gives the appearance of impairment when the individual is not really impaired. Dismissals based upon factual scenarios are rare but do occur.

## **Plea Bargain**

There are three major elements of your OVI case: 1) your side, 2) the police version, and 3) videotapes. If you took a chemical test, there is a fourth element: the administrative procedures used to obtain a BAC result and the maintenance history of the machine used in your case. Once all information is received, we review the



elements to determine what type of “picture” your OVI case presents. Every aspect of your case will be reviewed. If there is a mistake, we will find it.

We also meet with the Prosecutor assigned to your case to learn the officer’s version of your case. We gather all facts supporting your initial traffic stop, field sobriety testing, testing conditions, interrogation, and videotaping. We will review our findings with you.

We are required to discuss a plea bargain disposition of your case to you. This is done as an “insurance policy” on your case. Usually, whatever we negotiate will be the worst possible outcome of your case and will only get better as your case proceeds through the system.

If available, we retrieve all videos of your stop, arrest and processing. We will obtain copies of any and all videos taken of you during your stop, arrest and processing, and give you the opportunity to review those videos.

After all of your information has been gathered, we will meet again to review the evidence and discuss the options available for disposition of your case. We will review all reports, videotapes and negotiations with the Prosecutor. In this meeting, we can tell you what to expect if you enter a plea bargain agreement and your chances of winning if you elect to go to trial.



If you elect to “plea bargain” your case, we will appear with you in Court before the judge. At that hearing, we will continue to negotiate your punishment in any way we can. We will appear before the judge and again try to obtain any further concessions possible. Our office will remain available throughout your probationary period to assist you in successfully completing all conditions of your probation.

### **Trial**

Not all clients require or want to go to trial. Preparing for and presenting a full trial on the merits takes considerable time and effort that is not required with any other type of representation.

There are many trials set on the same date. On the court date, the court will select which case will go to trial. The others will be rescheduled. We must be prepared for each trial date. A typical trial will last 1-3 days. This time may vary depending on your facts and the court. While we are in court, we have no other clients. We will be with you from beginning to end. This helps many clients, as trials are an anxious time if you have never been through one before.

Trial skills are learned through experience and training. All attorneys associated with 888OVIOHIO.com are “trial lawyers.” They have been specifically selected for their above-average performance in the courtroom.



Approximately only 8% of cases are ultimately disposed of by a trial. Good criminal defense lawyers are “constitutional watchdogs.” As such “Not Guilty” has two meanings: 1) you are innocent of the accusation or 2) there is insufficient proof to establish your guilt beyond a reasonable doubt. Again, it is YOUR DECISION whether or not your case goes to trial. If you select a trial or are even considering one, you should be sure that the attorney you hire has trial experience in OVI cases. Trial skills can be learned, but experience is the best teacher.

You should evaluate all of the good and bad facts of your case. Your attorney should provide you with insight as to how your facts will appear in Trial and what he believes a jury will do with those facts.

It is important to note that in most cases, the punishment is not increased if you are found guilty after a Trial. Although it occasionally happens, it is against the law for a Judge to punish someone for exercising their right to have a Trial.