



OVI: Prohibited Alcohol Levels vs. Impairment

By Scott R. Mergenthaler

In Ohio, motorists are prohibited from operating a vehicle while under the influence of alcohol (“OVI”). The law forbids two types of driving misconduct: (1) operating a vehicle with a prohibited alcohol level, and (2) being under the influence of alcohol while operating a vehicle. The first OVI charge requires evidence of alcohol content in one’s blood, breath or urine while the second is proven by actual evidence of impairment. In instances where blood, breath or urine testing is performed by law enforcement personnel, both OVI charges will be filed against the motorist. In that case, however, the person can only be convicted of one of the two OVI charges.

Persons over the age of 21 are prohibited by statute from operating a vehicle with a concentration of more than .08% by weight of alcohol in their blood. Drivers under 21 may be charged with an offense if their alcohol levels at the time of operation exceed .02% by weight of alcohol in their blood. Commercial drivers can be charged with a violation of the OVI statute where their blood alcohol levels exceed .04%. In all instances, stricter penalties can be imposed for high levels of alcohol content in one’s blood.

An experienced attorney will analyze, among other things, the police reports, videotapes, and alcohol testing methods to determine whether a successful challenge to the admissibility of alcohol test results may be asserted in court. If unsuccessful, a test of one’s blood, breath or urine, which exceeds prohibited levels of alcohol, will ordinarily be a conclusive presumption of one’s guilt.

There are certain instances where a person may be arrested for operating a vehicle while under the influence (OVI) without there being a test of their blood, breath or urine. Such circumstances may occasionally arise in accident set-tings or when a person refuses to submit to blood, breath or urine testing. While no positive alcohol test may exist, which would ordinarily serve as a conclusive presumption of guilt, the person may still be charged with an OVI offense. At trial, the prosecution’s task would be to prove that the person was under the influence of alcohol. Such evidence may be in the form of actual driving signs, performance on sobriety tests, and other indicia of intoxication. The trier of fact must be convinced, beyond a reasonable doubt, that the person’s consumption of alcohol adversely affects and impairs to an appreciable degree, his or her ability to operate a vehicle.

The prosecution need not show that the consumption of alcohol actually impaired one’s driving. A motorist, there-fore, could be charged and convicted of an OVI offense without showing actual impaired driving usually thought to be associated with the drunk driver. Rather, one’s ability to operate a vehicle may be shown to be impaired to an appreciable degree, if the results of sobriety tests and other indicia of intoxication convince the trier of fact of one’s level of impairment. Where there are no field sobriety tests, adverse driving, incriminating admissions and other indications of intoxication, the burden of proof on a prosecutor becomes much more difficult.

For more information about the defense of OVI charges, please contact Scott R. Mergenthaler or your CPM attorney at (614) 228-6135.