

WHITE PAPER

August 2016

# AN EXPLANATION OF OHIO DUI AND OVI LAW

*By Daniel Gigiano – Attorney at Law*



Daniel F. Gigiano Co., L.P.A., Wadsworth, Ohio

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## AN EXPLANATION OF OHIO DUI AND OVI LAW

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In this white paper, Attorney Daniel Gigiano reviews Ohio DUI laws and Ohio Supreme Court OVI cases. DUI cases are some of the most common cases in Ohio Municipal Courts and are also quite prevalent in Ohio Courts of Common Pleas. Attorney Daniel Gigiano has practiced DUI law since 1993 and shares his legal knowledge of the offense that has touched so many lives in Ohio.

### What is the Difference between OVI and DUI in Ohio?



What is OVI in Ohio? The term DUI is used in this white paper because it is what most people commonly call the offense of driving under the influence of alcohol. Even Ohio lawyers loosely use the term DUI, rather than the official term of OVI. DWI is typically recognized as an outdated term by both laypeople and professionals.

What are DUI, OVI, DWI, and BAC in Ohio? DUI is driving under the influence. DWI is driving while impaired. DUI and DWI are acronyms that are no longer

used in Ohio since Ohio passed a law in 1982 that refers to driving under the influence of alcohol or drugs as OMVI or “operating a motor vehicle impaired.”

With OMVI being the official term at one point, that leaves us with the question of what is OVI in Ohio?

When Ohio removed the requirement that the vehicle be motorized, the offense was shortened to OVI, or “operating a vehicle impaired.”

*“When Ohio removed the requirement that the vehicle be motorized, the offense was shortened to OVI, or ‘operating a vehicle impaired.’ ”*

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Our next term, BAC, is still alive and well today in the law. BAC refers to blood alcohol content. Under Ohio OVI law, it is illegal to operate a vehicle with a BAC of .08 breath alcohol content or greater. If the driver is under 21 years of age, the legal limit is as low as .02 breath alcohol content. For many people, that can be reached with as little as one drink within the hour before testing.

## Ohio OVI Law Changes



Ohio OVI laws (more commonly known as DUI or DWI) have changed over the last several years. First, a test result of .17 or greater doubles the minimum incarceration period. For example, a first time OVI conviction normally carries a minimum sentence of three days in a driver intervention program or jail. A high test result doubles that minimum sentence to six days in jail or to both three days in jail and three days in the driver intervention program.

Before this Ohio OVI law was passed, a high test result could be considered in sentencing, but did not require mandatory minimum jail time.

Ohio OVI law also now includes a new criminal offense for refusing to take the Breathalyzer test. If a person arrested for OVI in Ohio has been previously convicted of an OVI within twenty years and refuses to take the Breathalyzer test, that person can be charged with a separate offense of refusal. The minimum incarceration period for a refusal is twice as much as those for the conviction under Ohio OVI laws.

Prior to the Ohio breathalyzer refusal law being passed, refusing to take a breathalyzer was not a crime, but simply resulted in a longer administrative license suspension (ALS).

## Ohio DUI Blood Testing Requirements



On February 10, 2016, the [Ohio Supreme Court](#) issued a decision on [Ohio DUI blood testing requirements](#), deciding whether the police substantially complied with the Department of Health regulations.

The substantial compliance standard was created by the Ohio Supreme Court years ago. Some argue that the

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substantial compliance standard provides rational flexibility while others argue that it allows court to ignore serious forensic errors by the police.

This case involved a fatal vehicle accident in which alcohol was suspected as the cause. A blood sample was taken at 1:50 a.m. Even though the officer went back to the police station to complete paperwork, he kept the sample in his cruiser until his shift ended at 6 a.m. when he mailed it to the crime lab. The lab test revealed Baker's blood alcohol level to be .095, slightly over the legal limit

of .08. [Ohio OVI law](#) stated "while not in transit or under examination, all blood and urine samples shall be refrigerated." Despite the fact that the sample was not in transit or under examination, the Ohio Supreme Court held that failure to refrigerate the sample for 4 hours and 10 minutes still substantially complied with Ohio DUI blood testing requirements. Therefore, the evidence was not automatically suppressed for failure to follow the rule.

*“Ohio OVI law stated ‘while not in transit or under examination, all blood and urine samples shall be refrigerated.’ ”*

Ohio Supreme Court Justice O'Neill, in his dissenting opinion, criticized the opinion of the court when he stated it was "outrageous that the General Assembly assigned to experts the task of setting rules to ensure that accurate test results are admitted in drunk-driving cases only to have the rules ignored." He further exclaimed, "One man lies dead and another man faces a lengthy prison term if convicted of drunk driving. This is no time to be treating the rules regarding admissibility of evidence lightly."

As a practicing attorney at Daniel F. Gigiano Co., L.P.A. and having practiced DUI law since 1993, I agree with Justice O'Neill. The rules are there for a reason. Essentially, somebody determines the procedures necessary to properly preserve evidence. Having such rules in place avoids having an expert testify in every case to explain how to preserve evidence. I have to wonder if the blood sample in this serious fatal DUI case was truly reliable.

However, the Ohio Supreme Court did not see it that way and that high court is the last word on legal issues unique to Ohio.

Of course, the [United States Supreme Court](#) may occasionally touch on federal limitations to Ohio issues.

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## Ohio OVI Law Repeat Offender Specifications Constitutional



In 2016, the Ohio Supreme Court found the Ohio OVI law repeat offender specifications constitutional. The accused challenged the Ohio DUI sentencing laws as unconstitutional alleging that such laws violated his right to equal protection of the law. [The Ohio Supreme Court disagreed.](#)

Ohio DUI law sets up a system of increased penalties for repeat DUI offenders. First and second OVI offenses within six years is a first degree misdemeanor. A third OVI offense within six years is still a first degree misdemeanor, but the accused can be sentenced to one year in jail, rather than just six months. If one has three or four prior misdemeanor OVI convictions in the past six years, the OVI is a fourth-degree felony. If one has five or more OVI convictions in the past 20 years, the OVI is a fourth degree felony.

One with zero to one prior convictions faces a maximum of six months in jail. One with two prior OVI convictions faces a year in jail. Fourth degree OVI convictions have a base term of 30 months plus 60 or 120 days. Third degree OVI convictions have a maximum term of 5 years plus 60 or 120 days. The repeat-OVI specification applies to third degree or fourth degree offenders with five or more convictions in 20 years. This specification adds a mandatory prison term of one, two, three, four or five years in addition to the base term of imprisonment for the underlying offense.

### OHIO DUI LAW PENALTIES FOR REPEAT OFFENDERS

Offense(s)	Misdemeanor/Felony	Max. Jail/Prison Term
<b>First in 6 years</b>	1 <sup>st</sup> degree misdemeanor	6 months
<b>Second in 6 years</b>	1 <sup>st</sup> degree misdemeanor	6 months
<b>Third in 6 years</b>	1 <sup>st</sup> degree misdemeanor	12 months
<b>Fourth in 6 years or Sixth in 20 years</b>	4 <sup>th</sup> degree felony	34 months
<b>Second Felony Lifetime</b>	3rd degree felony	5 years

*Ohio DUI law sets up a system of increased penalties for repeat DUI offenders.*

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## Are Sobriety Checkpoints Legal under Ohio OVI Law?



Are sobriety checkpoints legal under Ohio OVI law? Here, we examine whether police can use sobriety checkpoints to stop drivers to see if they may be driving while impaired.

The United States Supreme Court held that sobriety checkpoints are valid. In their [decision](#), the Court found that the intrusion and inconvenience to individuals who are stopped is outweighed by the government's interest in restricting drunk driving.

Ohio courts determined that there are [four factors](#) to determining the legality of a sobriety checkpoint:

- (1) A checkpoint location must be selected for its safety and visibility to oncoming motorists
- (2) Adequate advance warning signs illuminated at night, must timely inform approaching motorists of the nature of the impending intrusion
- (3) Uniformed officers and official vehicles must be in sufficient quantity and visibility to show the police power of the community
- (4) Policy-making administrative officers must make a pre-determination of the roadblock location, time, and procedures to be employed, according to carefully formulated standards and neutral criteria.

*“The United States Supreme Court held that sobriety checkpoints are valid.”*

Once a driver is stopped at a sobriety checkpoint, the officer determines if the driver is suspected of operating a motor vehicle under the influence of alcohol or drugs. If there is no suspicion of OVI or other legal wrongdoing, the driver is permitted to leave. If there is suspicion of DUI, the officer detains the driver and administers field sobriety tests and a breath test. If the testing establishes probable cause to believe the driver is impaired, the driver may be arrested.

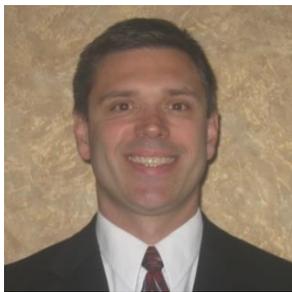
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## For More Information on Ohio OVI Law

Contact Daniel Gigiano at 330-336-3330 or [gigianolaw.com](http://gigianolaw.com) if you need additional information about Ohio OVI law or have been accused of OVI. The initial 30 minute consultation is always free.

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### About The Author – Daniel Gigiano, Esq.



Daniel Gigiano, Esq. graduated from Loyola University Chicago School of Law and is the owner of [Daniel F. Gigiano Co., L.P.A.](http://Daniel F. Gigiano Co., L.P.A.) located in downtown Wadsworth, Medina County, Ohio.

Attorney Gigiano regularly represents individuals accused of DUI and/or OVI in the courts in Medina County, Wayne County and Summit County. Daniel Gigiano, attorney at law, has fought hard to win many DUI and/or OVI cases, winning dismissals in several courts, including Medina County and Wayne County courts.

Attorney Daniel Gigiano has practiced law since 1993. In addition to DUI/OVI, he also practices law in the following areas: Bankruptcy, Business Law, Civil Litigation, Collections, Criminal Defense, Divorce & Family Law, Estate Planning, Foreclosure Defense, Personal Injury, Probate, and Real Estate.

## Appendices

### Legal Terms Related to Ohio OVI Law

#### OVI

Operating a Vehicle While Impaired. Impairments can be caused by alcohol or drugs.

#### OMVI

Operating a Motor Vehicle While Impaired. Ohio removed the word “motor” in the OMVI law many years ago.

#### DUI

Driving Under the Influence. The DUI acronym stopped being used in Ohio after Ohio enacted a law in 1982 that refers to driving under the influence of alcohol or drugs as OMVI or “operating a motor vehicle impaired.”

#### DWI

Driving While Intoxicated. The DWI acronym stopped being used in Ohio after Ohio enacted a law in 1982 that refers to driving under the influence of alcohol or drugs as OMVI or “operating a motor vehicle impaired.”

#### BAC

Blood Alcohol Content. Under Ohio OVI law, it is illegal to operate a vehicle with a BAC of .08 breath alcohol content or greater. If the driver is under 21 years of age, the legal limit is as low as .02 breath alcohol content.

### FIELD SOBRIETY TESTS

These are a series of tests that an officer may administer to a driver suspected of operating a vehicle while impaired. These tests include the horizontal gaze nystagmus test (HGN), the walk and turn test (heel to toe), and the one-legged stand test.

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## Ohio Legal Links and Resources

### *Medina County, Medina City & Wadsworth Legal Sites*

- [Medina Domestic Relations Court](#)
- [Medina County Auditor](#)
- [Medina Juvenile & Probate Courts](#)
- [Medina County Recorder's Office](#)
- [Medina City Clerk of Courts](#)
- [Medina Municipal Court](#)
- [Wadsworth Municipal Court](#)



### *Summit County Legal Sites*

- [Summit Domestic Relations Court](#)
- [Summit County Clerk of Courts](#)
- [Summit Juvenile Court](#)
- [Summit County Fiscal Office](#)
- [Barberton Municipal Court](#)



### *Wayne County Legal Sites*

- [Wayne County Clerk of Courts](#)
- [Wayne County Government](#)



### *Ohio State/Regional Legal Sites*

- [Supreme Court Listing of Ohio Courts](#)
- [Northern District of Ohio Bankruptcy Court](#)
- [Ohio Supreme Court](#)
- [Ohio Bureau of Motor Vehicles](#)

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## Dan Gigiano Reviews

Reviews from Daniel Gigiano clients can be found below. Additional Daniel Gigiano reviews can be found on the web sites listed in the sidebar.

### 5.0 stars Posted by Lisa 12/16/13

I hope I don't need to hire a lawyer again, but if I do, I'm calling Dan. I spoke to Dan several times on the phone about my situation. He was very attentive, asked many questions and followed up promptly with the answers I needed. While we did not end up in court, I felt very comfortable with how he handled my case and would call him again if I ever need a lawyer.

### 5.0 stars Posted by Paul 9/2/2014

Responsive, trustworthy and respectful extremely responsive and knowledgeable! I was stopped and cited with an OVI charge late on a Saturday night (1am Sunday). I contacted Dan before lunch that same Sunday and he walked me through what to expect for the entire process. Dan's knowledge of the law and his ability to communicate it in terms that were easy to understand was extremely helpful. Dan never overpromised the outcome and was very factual in our conversations which were appreciated. The process of working through our court systems is slow and tedious but I'm very happy to say that Dan kept in constant communication each and every step of the journey. If you are looking for a lawyer who really cares and is willing to listen to your concerns...Dan is your man. Thanks Dan!

*Attorney/Lawyer Sites  
with Daniel Gigiano Reviews*

[Daniel Gigiano Reviews  
Lawyers.com](#)  
[Avvo's Attorney Reviews](#)  
[Avvo's Client Reviews](#)

*Other Sites  
with Daniel Gigiano Reviews*

[Daniel Gigiano Yelp Site](#)  
[Daniel Gigiano Yahoo Site](#)  
[Daniel Gigiano Facebook Page](#)  
[Daniel Gigiano Google Plus Site](#)  
[Daniel Gigiano YP  
\(Yellowpages\) Listing](#)  
[Daniel Gigiano Superpages Listing](#)

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**5.0 stars** Posted by [Michael D. Warner Jr.](#)

I've known Dan for a few years now and he is an excellent Lawyer and good friend... He took care of my divorce for me and I have to say the as a male, we usually get the worse end of that deal but I came out WAY better off than I imagined! Thanks Dan!

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**5.0 stars** Posted by Anonymous 12/16/13

Dan and I spoke on the phone several times and he was very helpful and knowledgeable. He took the time and asked me many questions and called me back promptly with the answers I needed. I would definitely call Dan again if needed.

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Posted by GinaA 2/25/2010

Dan is the nicest attorney I have met. He is very down to earth and understands what I need. Many attorneys are intimidating but he made me feel at ease and was very easy to work with. I recommend using him for your legal needs.

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Posted by Anonymous 11/21/2014

Dan is extremely knowledgeable in his field and is always looking out for the best interests of his clients. His accessibility and responsiveness are refreshing in the business world of today.

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Posted by cm\_didonato 5/31/2015

If you need an experienced attorney who knows the law. I would highly recommend Daniel Gigiano. Daniel looks out for his client's best interest. He'll even go as far as working on your case till the wee hours of the night. I've been working with Daniel for the last year and half and he's gone above and beyond what any attorney would have done. Daniel has represented me to the highest ability that anyone could have ever done as a lawyer and now a friend!

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Posted by Anonymous 8/08/2014

Attorney Gigiano did an excellent job with my case. He explained everything that would happen in court and he kept me informed throughout the whole process. I will definitely use his services again should the need arise for future legal help.

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Posted by [Jimm Fowler](#) 7/2016

Dan is a personable lawyer who is easy to get along with, yet is aggressive in the courtroom to help you win your case. Very knowledgeable. Highly recommended.  
A+++++