ACCUSED OF IMPAIRED DRIVING IN OHIO?

Fight Back And Have The Charge Dismissed

Shane Herzner, Esq.

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TESTIMONIALS

"*In late 2014 and early 2015, Mr. Herzner represented my OVI case and defended my rights in a professional manner exceeding my highest expectations. While my case would most likely be "just another OVI defense" in the eyes of many other attorneys, Mr. Herzner made me feel as if I was his only client by keeping me informed, immediately responding to any questions I asked and allowing as much time as needed to insure I completely understood his response. In addition, whenever I placed a call to Mr. Herzner, he answers the call himself. I believe this to be a rare quality not shared by many other attorneys, doctors, etc. In closing and most importantly, Mr. Herzner is exceptionally knowledgeable in the area of OVI defense, produces positive results in an expeditious manner and his fee structure is more than fair. I would not only recommend Mr. Herzner in the future but I would not trust anyone else to defend my rights except Mr. Herzner. Thank you Mr. Herzner for all your hard work and dedication while defending my case. M.S.*"

— Mike

****

"I've had numerous consultations with Shane, he handled multiple cases for me. He's always direct, very honest, & will lay out all possibilities, he's a straight shooter, he goes above & beyond. I personally believe out of all his clients, I am the most annoying, yet he never let me down, always answered my questions, returned my calls, responded to my text messages, recommended other firms & even advised me on cases he wasn't handling for me. He is very genuine & caring, he works very hard to get great results! Shane I cannot thank you enough. God Bless you, your family, & business. Not only is he a hard worker, but you will save yourself a huge chunk choosing him as your attorney. He knows his stuff & you will not be disappointed. I highly HIGHLY recommend Shane Herzner. For privacy reasons, I won't disclose my cases or full name, but he worked hard to get my violations reduced, removed, & advised me every step of the way on other cases. More importantly, when Shane looked at one of my toughest cases, he directed me to another great attorney. He is very well connected and highly respected by many other attorneys and prosecutors, which is what you need in an attorney! Shane thank you for all your help & advice, thank you for your patience, you were indeed very patient, genuine, kind, & direct with me, I can't say enough!"

— Sam S.

****

"Shane was awesome, I was charged with marijuana OVI, after meeting with Shane for a free consultation he made me feel like I had no worries and he would help direct me in the right direction. Four months later my case was dismissed. The Judge found that the officer did NOT have probable cause to make and arrest. As a result, the prosecutor dismissed the OVI charge and you entered a plea to the assured clear distance charge. Shane even got me extra time to help pay for assured distance tickets. If you want a professional attorney who is communicates accordingly, and has your best interest Reach out to Shane Herzner."

— Aaron B.

****

"Got everything handled as promised. I was back on the road within 30 days of my high tier OVI charge and hit skip. Barley getting probation now and interlock for 6 months. No jail time and Shane saved me $2,400 in fines by getting things reduced. I actually get 10 min lectures at probation for how lucky I am by getting the deal Shane got me. Letting Shane represent me was the best decision I made!!"

— Andrew M.

****

"Very friendly and understanding. This attorney helped me through a really tough case that could have changed my life. And it did, but for the better. When I reached my hand out, there was someone to help pull me up. He was very informative of updates and status reports, and was there every step of the way. The confidence he portrayed gave me absolute trust and faith that I was in the right hands. I cannot thank him enough, nor show the gratitude he deserves."

— Tara T.

****

"Great lawyer who cares about getting the outcome you want! I would recommend his practice to anyone who is searching for a lawyer."

— Karmin F.

****

"Shane "The Shark" is absolutely amazing! He will do everything in his power to help you with your problem. He is very educated in law and knows his stuff! I highly recommend!"

— Rick S.

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About The Author

I've been practicing law since 2001. I started my career doing civil contract work and found that the part I enjoyed most about that job was being in a court room. A few years later I was offered a position as an assistant prosecutor for the Hamilton County Prosecutor's office, which I immediately accepted. During my time as an assistant prosecutor I discovered my love for trial work.

After litigating hundreds of cases, I decide it was time for a new challenge, so I left the Prosecutor's office and started working as an associate for a

criminal defense firm, where I practiced primarily OVI/DUI defense. I started my own practice in 2013, and I've been concentrating on OVI defense since then.

What Would You Want Readers To Gain From This Book?

I hope to educate people on the basics of OVIs and the court process. By providing people the dos and don'ts of OVIs, I hope they are able to avoid an OVI arrest in the future. And for those who have already been arrested for an OVI, I hope to provide them with beneficial information on the court process and expectations, which will ease the anxiousness of the experience.

CHAPTER 1

WHAT IS CONSIDERED OVI IN OHIO?

An OVI, Operating a Vehicle while Impaired, is how it's defined by statute. The two main OVI sections are what's known as the 451119(A)(i)(a) charge, the Ohio Revised Code, which is an opinion-based OVI. So, in other words, when you are on scene, and the officer places you under arrest, they are saying based on their opinion, observation, and experience, you were appreciably impaired and should not have been operating a motor vehicle. You are arrested on-scene before you're allowed

to take a breath test, and that's probably another significant misconceptions about OVIs. So you're arrested on-scene, and then they will take you back to the station after you've been arrested and offer to allow you to take a breath test. If you've never been arrested for an OVI before and you refuse to take a breath test, you don't get any additional charges, and it's just the A1a charge.

If you take a breath test and are over the prohibited level, which is a 0.08 in Ohio, you get a second OVI charge, the per se limit charge.

Does OVI Or DUI Only Apply to Alcohol-Related Impairment In Ohio?

In Ohio, an OVI or DUI could apply to any impairment, so it could even include marijuana or other drugs (legal and illegal). Most of the prohibited drugs also have a per se limit, so if you should be arrested on-scene, then offered a urine or blood test, and if those prohibited levels came back over, then you'd be cited for a second charge.

The Typical DUI Stop Or Investigation

When it comes to alcohol, typically, the first thing they do is have you get out of the vehicle if they smell alcohol after making the stop. Then the officer will put you through the standardized field sobriety testing or the SFSTs. One of the 3 tests is known as the Horizontal Gaze Nystagmus test. People refer to that test as the Pen test or the Eye test. Essentially, the officers are looking for an involuntary jerking in your eye. The second test they will do is a Walk and Turn test where you take nine steps up and nine steps back. The third standardized field sobriety test is the One Leg Stand test, where they'll have you stand on one leg and time you for approximately 30 seconds.

Those are the only standardized field sobriety tests for alcohol, and sometimes they'll also have you do an alphabet test or numbers test where they have you recite part of the alphabet or numbers or things like that. Those are not standardized testing. The biggest thing that the potential clients need to know about all of these test including standardized field sobriety tests, is they

are OPTIONAL! I always recommend that people decline to take standardized field sobriety testing. The reason being is there are numerous reasons why somebody may not do well on these tests that have nothing to do with alcohol whatsoever.

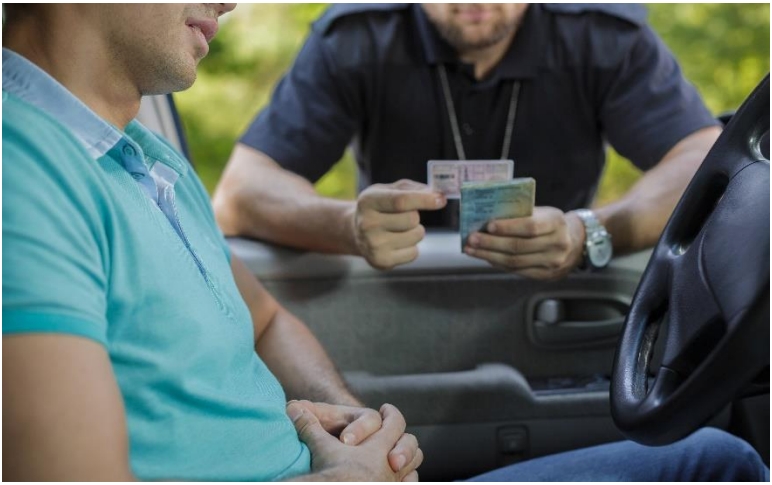
Now, if you refuse to take these standardized field sobriety tests in an alcohol-related case, the officer will likely arrest you, but they have less to present at trial. So, you generally have a stronger case if a person refuses to take these standardized field sobriety testing.

When it comes to a drug impairment case, there are other tests they can do, which a drug recognition officer generally handles. They are much more precise and sophisticated, but if an officer is trying to arrest you for a drug-related OVI and they're putting you through the standardized field sobriety testing for alcohol, there've been no tests at all that correlate standardized field sobriety testing to drug impairment. So, although officers will do them a lot for drug-impaired cases, these standardized field sobriety testing are not applicable because there is a whole different set of tests that they can

run on you for the drug impairment cases. Similar to the standardized field sobriety tests for alcohol, I would not do any testing at all for drug impairment either. They are optional, which the officers will never tell you.

CHAPTER 2

QUESTIONS YOU ARE ASKED AT AN OVI OR DUI STOP



First and foremost, folks who are stopped are required to cooperate with the officer if they are asked to exit the vehicle. Sometimes they think they don't have to, which could be considered obstruction if you remain in your vehicle. So if the officer does ask you to get out of the vehicle, do that. Just make sure that you tell them that you're not doing any tests. When it comes to questions, they ask you your name or identifying information, you do have to provide them with that,

including your driver's license and proof of insurance, but if they start asking you questions concerning where were you coming from and if you had any alcohol, you do not have to answer those questions. I recommend you not answer them and instead tell them that you want to speak with an attorney first.

Should You Take The Breath Or Blood Test? What Are The Consequences In Ohio Of Refusing To Provide A Breath Or Blood Test?

After you've been arrested for the OVI, that's when they offer you a breath or other chemical tests. My feeling is if it's an alcohol-related OVI and you've consumed alcohol, and you're not sure if you're going to be over or not, do not take the breath test. But, again, you're already arrested, so the officer's not going to reverse it if you blew under, especially if you're not sure if you're going to. However, beating an OVI case is much more difficult if you have a breath test because then not only do I have to beat an opinion, but I have to beat a number because they'll charge you under the

per se amount, and the number is much more difficult to beat than an opinion.

Most of the time, I will tell a client not to take a breath test. If you have not had any alcohol to drink whatsoever or if you're incredibly confident that you're going to be under the 0.08 that Ohio has for their limit, then I say take the breath test because at least at that point, you will not be placed under a license suspension. You'll still be arrested for the OVI even if you test under. Still, those cases are much more defendable than cases where you test over, so the only time that I recommend that you take a breath test is if you haven't had any alcohol whatsoever or you're positive that you will not test over the per se limit, which is incredibly difficult to try to figure out.

When it comes to blood or urine test for drug impairment, never take those tests because it's so hard to tell how long certain prescription drugs or marijuana will stay in your system. For example, marijuana metabolites can remain in your system for 30 days or more, and the per se limit on marijuana is 35 Nanograms.

So anybody who routinely smokes marijuana or smoked marijuana in the last 30 days probably has more than 35 Nanograms in their system, and, in my and an expert's opinion, you're not impaired. Still, unfortunately, that's a per se limit. So even if you're not impaired and over that limit, it's still an OVI.

As far as consequences, if it's a first-time offense and you refuse to take a chemical test, you're given a one-year driver's license suspension, and you're not eligible to request driving privileges for 30 days. On the other hand, if you take a chemical test and you fail that chemical test, you have a 90-day suspension, and you're eligible for driving privileges after 15 days. Now, that's what the officers will tell you when you go to take the test. However, they do not tell you if you're convicted of an OVI at a future date that 90-day suspension for the failed chemical test becomes a one-year license suspension because the OVI penalties require that you have a one-year license suspension upon conviction of an OVI. So at the end of the day, whether you take a test or you refuse to take a test, your suspension's going to be the same in all likelihood.

If You Are On Prescription Medication, Should You Disclose This During The Investigation Or You Should Take The Urine Or Chemical Test?

I wouldn't disclose any information about prescription drugs to officers. But, suppose the officer thinks you're under the influence. If you do admit to taking prescription drugs, the office might assume you took too much medication or that the medications should not be taken if you are going to drive. So, it's always best not to say anything and ensure they know you would like to speak to your attorney before any questions are answered.

When folks are stopped, they want to be as polite and cooperative with police officers as they can be. And so officers generally, for the most part, are very courteous towards a potential client too. So even though you're nervous, the officer's trying to be as friendly as possible to get as much information out of you as possible. So That is why I always tell my clients that rather than being disrespectful or uncooperative, to inform the officer of their relationship with an attorney, and they will be politely declining any questions.

CHAPTER 3

IF ARRESTED AND CHARGED WITH OVI/DUI, WHEN WILL YOU BE RELEASED FROM CUSTODY?

If it's a first offense, the chances are excellent that they'll be released that night. If you are able to find someone to pick you up, the officers will generally release you to a sober person. However, if a person has prior convictions or if they are belligerent with the officers, the officers have the discretion to arrest the person and have them processed to jail. If the person

is process in jail, they will have an arraignment at the next available court date, in order for a bond to be set.

It's essential as far as the next steps getting in contact with an attorney as soon as possible so that that attorney can put that court case on their calendar. It's not uncommon for me to get a phone call one night and have to be in court the following day on that arraignment. Sometimes people are afraid of not finding an attorney quickly enough, and nothing can be further from the truth. Attorneys that do this type of work are used to that, and that's not uncommon to have somebody arrested call you on a Saturday or Sunday morning and have a court case either Monday, Tuesday or Wednesday.

What Should You Do Or Shouldn't Do After You Are Released From Jail?

If you are released from police custody and you believe that you will be under the limit, as long as it has been a few hours since the OVI arrest, you can go to a local hospital and request a blood test. However,

it can be challenging to find a hospital to grant the request because it is not something they normally do.

After that, the best advice, once you're arrested, is to call an attorney the following day, and most attorneys either have an answering service, or they'll have other phone calls forwarded to their cellphone. Overall, contacting an attorney is paramount.

What Information Do You Expect From Your Client When You Begin To Prepare Their DUI Or OVI Defense?

I have a two-phase approach to client data collection. One of the things that I think is important is just getting personal information about the client for a couple of reasons. One, I want to know a little bit more about a client. Two, personal information will help down the road because right now, when you're arrested for an OVI, the only thing a prosecutor and judge knows about you is what's on your ticket. We know that there's much more information about a person we want to provide to the judges and the prosecutors to facilitate driving

privileges as soon as possible and potential pleas in the future. So, personal information is one thing that I get. I tell clients that this is how they can cash in on all of the good things they've done throughout their lives.

The second important thing to get from a client is as many facts about the case as possible because, for me, to give them a good idea of what they're looking at, I need to know as much about the case as possible early on.

CHAPTER 4

MISCONCEPTIONS PEOPLE HAVE ABOUT OVI OR DUI ARRESTS AND CHARGES IN OHIO

One of the most prevalent misconceptions is people think that they're guilty right away, so they don't necessarily think they need an attorney. This may be because OVIs are a bit unique. After all, you get a cross-section of all people arrested for OVIs, so they're unfamiliar with the legal process, and they instantly think that they're guilty and that's the way they should go about it. I think that's probably the

biggest misconception. However, it is essential to hire an attorney for an OVI because of the potential consequences, both short and long term.

The vast majority of the people that hire my firm for an OVI are first-time offenders and have no record at all other than maybe some minor traffic offenses.

Do You Find That Those Are The People That Are Like, "Oh, I Know I Was Guilty, So I Should Plead Guilty And Get This Over With"?

Some folks are very remorseful and feel like they've done something wrong and that they either won't have any defenses or there's nothing they can do, which couldn't be further from the truth. Yet, those are the people who actually get the best plea deals offered or are the ones you can sometimes even win cases for. Thinking you're guilty because you've been arrested is probably the biggest misconception.

How Common Is It When Someone Is Facing An OVI Or A DUI Charge In Ohio That They Think There Is No Point In Fighting The Charges?

It's very common for people facing an OVI or DUI charges to assume there is no point in fighting. But, the vast majority of the people that call me don't understand the process and what they're going through. So, I'm always glad to talk to somebody to explain the options they may have available.

What Does That Initial Meeting Look Like When You Sit Down With The Client Who They're Scared, Angry, Or Ashamed?

I think the biggest thing that I try to do in that initial meeting is to make them feel at ease, let them know that this is not the crime of the century and that a judge is not looking to throw them in jail for the rest of their life. Unfortunately, this is a common charge that people get, but I walk them through the process and explain the potential penalties for an OVI conviction. I explain what the process looks like as far as timeline and

court hearings and things like that. Then after getting some facts concerning the case, I give them an idea of what they can reasonably expect as far as an outcome to their case. As I said, I try to put them at ease as much as possible and explain to them when they can start driving. I just try to make them feel more comfortable and to continue to go about their lives. This is not a life-ending event, but this is something where, once you hire an attorney, let the attorney do the worry, and you go back to the day-to-day activities and live your life as usual with the limitations that you have.

CHAPTER 5

WHAT IF YOU CAN'T RECALL ALL DETAILS OF YOUR ARREST AND WHAT HAPPENED AFTER THAT?

Fortunately, nowadays, it's becoming more and more common for cruiser or body cameras to be present on many law enforcement agencies around here. Let's face it, you're nervous, you may forget details because of the nerves and everything else, and everything happens so quickly. So I don't expect the client to remember everything verbatim or in accurate detail. The good news is these videos will generally

capture almost everything we need. Unfortunately, if no cameras are being used, it makes a case much more difficult, but a lot of it will depend on how detailed the police officer is in their report.

Sometimes you get police officers that just put maybe a quarter of a page of details, which -- and I think defending the case is very helpful for supporting the case because that means they weren't very detailed in what they observed. Their opinions are going to be very weak. The officers who put a lot of detail into their notes make cases more challenging if a client doesn't remember anything and has no video. If there is a video, I don't care how much a police officer writes because we can always make arguments based on the video.

At What Point In My DUI Or OVI Case Will I Enter A Plea Of Guilty Or Not *Guilty? Do You Have All The Discovery Or The Evidence Before You Have To Make That Decision?*

I always wait until I have all of the discovery information and until I've reviewed it with the client

before I enter a plea on any kind because I don't believe a client can make an informed decision on whether they should enter a plea unless they have all the information necessary including the discovery and video. So, I always send clients copies of discover once I receive it. If there is a video, I always invite the client to my office to review it. If, however, the client prefers not to view the video, I will review it on my own and discuss my thought on the video. In that case, I'm not going to force anybody to do it but generally speaking, most clients want to see their video, so I will always make that available.

Guilty pleas generally will come after all discussions, after reviewing discovery and discussing with them the potential outcomes, after plea negotiations with the prosecutor so that I can tell the client, again, with a pretty high likelihood of certainty of what's going to happen in a case. I hate surprises, and I know clients don't like them either. So, I never want to enter a plea unless I feel pretty certain about an outcome and always give them an excellent idea of what to expect reasonably.

In very few circumstances, I'll have a client plea a case out before review and discovery, and that only happens for specific reasons. For instance, the client isn't from Ohio or Kentucky, and there's just no way that they're going to be able to come back to Ohio, and the prosecutors want to do some plea deal, or if there are extenuating circumstances that require a plea to occur before review and discovery. However, these are a rare occurrence.

After A Plea Is Entered, What Are The Next Steps As You Prepare The Defense For A DUI Or OVI Case?

As I said, at the initial appearance, we enter a not guilty plea and set it out for a pre-trial almost all of the time. We set it out for a pre-trial to request driving privileges because, generally, clients' number one concern is how soon they can drive. You do not get your driver's license back, but you can request limited driving privileges. I don't want a client to take a half-

day off work to come down for 15 minutes. So, if I can waive their presence for a hearing, I will do that.

If it's something where we're working out a plea, we'll generally set it for a plea hearing or trial hearing and enter a plea at that time. If it's something that we're going to litigate, we'll either set it for a motion or a bench trial or a jury trial. A typical case will range between 30 and 90 days. Most cases are done within 90 days. Now, if you're litigating a case, it could take up to a year for litigation purposes. Most of the time, it's six months but up to a year, depending on who your judge is.

CHAPTER 6

WHAT DOES THE PROSECUTION HAVE TO PROVE FOR A DUI OR OVI CONVICTION IN OHIO?

For a per se case, all they have to do is prove that you're over the legal limit, and that's why I said don't take these breath tests or chemical tests. For the opinion-based OVI, the 451119(A)1(a), they have to prove beyond a reasonable doubt that you were impaired by whatever amount of alcohol you had in your system. That is a much more difficult charge to

prove, especially if you're stopped for something like speeding or an equipment violation.

Suppose you refused to take field sobriety tests. In that case, I think they have a significant challenge in trying to overcome that because they can't show impairment. They have to show that your ability to drive a vehicle was impaired or that you have dexterity issues, or that your physical abilities are impaired somehow. Without field sobriety tests, they're not going to be able to show your physical abilities are impaired.

Accidents and major marked lane violations are different, and then their case is much, much more challenging. Now, even for those cases, though, there are reasons that they call them accidents. People have accidents all the time, and people make marked lanes violations all the time, but it's just one thing that a prosecutor will hang their hat on. But again, we need to find reasons why the person was either involved in the accident, or the marked lane's violation occurred.

What Are Plausible Defenses To OVI Or DUI Charges In Ohio?

I believe the biggest one is that there is no evidence whatsoever of impairment. It's not illegal to drink and drive; it's illegal to drive while impaired. So, the prosecution needs some proof of impairment. Other possible defenses are they didn't have grounds to stop you.

More often than not, a client will have some defenses, especially if you refuse to take a chemical test. If you take a chemical test, that's a little more difficult because you must show why that machine was wrong in its analysis. Often, that requires that you hire an expert witness to analyze the device and determine whether there are issues with it, and that does happen more often than people know. I've had cases where we've hired expert witnesses, and in one case, a person was an engineer. He worked with cleaning chemicals. He automatically had a higher rating because of the substances he worked with and him breathing them in even though it wasn't ethyl alcohol. So expert witnesses can help you out in cases of a breath test.

Also, I think videos help out in defending a case. If you just read their narrative, you would think that it was the most significant case in a world for the prosecution, and then you look at the video, which ends up being lackluster. That's why I prefer fighting an A1a case versus a per se case because opinions can be attacked, especially with specific evidence such as videos or lack of particular notes or things that they may or may not have in their police reports. In a plausible defense, the best thing to do is to have disputable evidence that can be either shown by inconsistencies in the officer's testimony and inconsistencies in what the videos show and what their notes show.

At What Point In An OVI Or DUI Case, Will The Prosecution Generally Offer A Plea Deal And What Could That Look Like For A First Time Or A Repeat Offender?

For first-time offenders, quite frankly, it's not uncommon for them to offer a reduction, as long as there are not any egregious facts or a high breath test. In

Ohio, there is not a lesser included defense to OVI. So you're either convicted of an OVI, or there's nothing less than an OVI under the OVI statute. So essentially, prosecutors and defense attorneys have created what's known as a reckless operation, a misdemeanor of the 4th degree most of the time. Essentially, that is their way of offering a reduction. A reckless is a non-OVI offense, which is why your defense attorneys like it because it keeps an OVI conviction off your record, which is incredibly important for enhancement purposes.

They've created the reckless operation or wet reckless as a way of offering a plea negotiation to a client who is being charged with an OVI. They may also offer a first-time offender what's known as physical control. Now, physical control shows up under the statute as being under the physical control of a motor vehicle while impaired. So it's still an alcohol-related offense, but it is a non-moving alcohol-related offense. Sometimes it's beneficial to a client to get physical control versus a reckless op.

When it comes to repeat offenders, if you have a prior conviction, to be quite honest with you, it's challenging to get prosecutors to plea deals when it comes to non-OVI offenses. I can provide you with a chart that shows the penalties but say, for instance, it was a second OVI in ten years, and it's a refusal. The penalties are different for a second OVI refusal versus the second OVI A1A charge. Sometimes they'll reduce it to treat it as if it were an A1A charge versus a refusal.

Most of the time, when it comes to plea negotiations, they do not offer non-OVI offenses for people who have prior convictions unless there's something egregious about the first offense, such as a high breath test or an accident; they'll generally offer you something like a reckless op.

CHAPTER 7

WHAT ARE THE PENALTIES FOR DUI/OVI IN OHIO? WILL THEY BE SEVERER IF MY CASE GOES TO TRIAL AND I'M CONVICTED?

For a first-time offender, if this is your first OVI, first ever in your life, or if it's a first in ten years, the mandatory minimum for a low-tier test is three days and jail. They consider jail time, but most of the time, a person never does it in jail; they do it in a Driver's Intervention Program or a Residential Driver's Intervention Program instead of jail. But the judge

could technically send you up to 180 days in jail, yet I've never seen that happen for a first-time offender. The overwhelming majority of the time, you get the mandatory minimum, again, unless there's something egregious about the case.

For a low-tier or an A1A case, you're looking at a mandatory minimum of three days and a driver's intervention program, and at least a one-year driver's license suspension by the court up to three years. If you test over a 0.170 or above, the mandatory minimum penalty is six days in jail. Now, there are no 6-day driving programs, so the client will either have to do three days in jail and three days in a driver's intervention program or just the six days in jail, which is why I'd say don't take the breath test because you're just making your situation worse. You don't get that six days for a first offense refusal on there. So it's always better to try to keep away from that high-tier test because not only do you have to do a more extended time in jail, but you also have to have what is known as Restrictive Plates. You'd have to have the DUI plates, which are different license plates than usual. The court could require that you have an ignition

interlock device installed in your car if you're going to be granted any driving privileges.

What Can Having An Experienced OVI Or DUI Attorney Do To Mitigate The Potential Severity Of A DUI Or OVI Conviction At That Sentencing Or Plea Stage?

Get an excellent experienced OVI attorney. They're going to give you advice on what you need to do in preparation for your plea and sentencing, and if you follow their advice when it comes to certain things like alcohol assessments, you will likely be better off in the long run.

What I have found is that that sentencing memorandum works out tremendously when it comes to mitigating a case, even one that could be pretty severe because then, like I said, instead of looking at my client as just a piece of paper, if somebody who did something that they should have been doing by driving while having too much alcohol, they look them in terms of their entire personal history.

So, an experienced attorney could provide sound mitigation in the form of advice for what you need to do in preparation or provide the court with a sentencing memorandum that would help tremendously when it comes to sentencing.

Should Anyone Ever Try And Defend Him Or Herself In A DUI Or OVI Case?

No one should ever attempt to defend themselves in an OVI or DUI case. I recommend that a client should always hire a person who does or concentrates in OVI and DUI defense when it comes to this because an OVI is not expungable, so if you get found guilty of an OVI, it's going to be on the record for the rest of your life. Nobody plans on getting one OVI, so it's incredibly important for them to get an attorney on the case for that.

It is still essential to find an attorney who predominantly practices OVI and DUI defense.

CHAPTER 8

WHAT WOULD YOU SAY TO SOMEONE WHO WANTS TO PLEAD GUILTY INSTEAD OF PAYING TO AN ATTORNEY?

I would never suggest pleading guilty because it stays on your record forever. A judge could sentence you up to 180 days in jail, and a judge could give you up to five years of probation. A judge could also suspend your license for up to three years; you need to know how the system works to request driving privileges, and you need to understand how the system works to file motions

to get off probation early. It's probably the worst thing in the world you could do is go in unrepresented.

Often, judges will even tell you they won't accept a plea until you consult an attorney on your case because they understand the severe consequences, mandatory jail time, and mandatory license suspensions, so they don't want to see somebody going to a case without an attorney. Suppose you cannot afford an attorney. In that case, they don't have the funds, and excellent OVI attorneys are expensive, especially nowadays because of the cross-section of people. I'm representing an NFL football player right now. Still, some people won't have the money. If they do not have the money, I highly recommend that they see if they qualify for a public defender so they can at least talk to somebody about their potential defenses. You can get a public defender, and some of these public defenders are incredible attorneys as well. Never go in there unrepresented. At the very least, see if you qualify for the public defender's office so that you can talk to a public defender about your case.

What Can And Will You Do As My DUI Or OVI Attorney That I Cannot Do For Myself?

First and foremost, an attorney can save the client time from going to court. For example, in Hamilton County, if it's your first offense, an attorney can generally waive your appearance to the arraignment. So, you don't have to take work off to go to court for all the pre-trials. In other words, I may have to go to two or three pre-trials before I get the discovery just because the prosecutor's been so busy or just hasn't made it a priority to give me a discovery.

There are just so many uncertainties going in without an attorney that I think it's crazy not to. Attorneys can help you with all that, save your time from going to court and negotiate plea deals with the prosecutors because most prosecutors will not talk to you unless you have an attorney.

CHAPTER 9

WHAT SETS YOU AND YOUR LAW FIRM APART IN OVI OR DUI DEFENSE?

First and foremost, the level of communication I offer sets me apart from other attorneys. I do not have an office number. Every phone call that comes into my firm goes straight to my cellphone, so all the calls are forwarded to me. I think being accessible to clients is a big thing that separates me from other people. I'm excellent about returning phone calls and very good about returning text messages.

Also, I'm a former assistant prosecutor, and there are not very many OVI/DUI defense attorneys that are former prosecutors. So, I know what a prosecutor does when it comes to preparing for a case. I have that relationship with the officers as a prosecutor and now for being a defense attorney for so long, so I know most of the police officers who make these types of requests.

Also, I think a big thing that our firm does that other firms do not is we do sentencing memorandums on cases and a two-fold approach. Number one, I always look to see if we can beat a case because the client's best outcome is to win it. Alternatively, I think it's crucial to mitigate a case as much as possible. We start that from the first meeting, getting the mitigating information, preparing sentencing memorandums and recommendations to clients, and providing information to get the best possible outcome. I have a list I give all my clients when they come in to meet with me of potential treatment places, where to get alcohol assessments, what insurance companies are accepted at that location, what their address is, and contact information because I think it's incredibly important to approach a case proactively. Do not wait until a prosecutor offers you a plea deal to

start mitigating your case. That should be done from the very first meeting providing clients with that information.

At this point, I've had my practice for almost ten years, and I try a lot of cases because I am not afraid to litigate cases. So, I think it's important to find attorneys that are trying to avoid litigation. I mean, for instance, some attorneys would charge one fee for a negotiated plea, and they'll charge you additional fees to fight your case. To me, I think that's crazy because if a client pays you a price, that should cover all your representation, including the trial.

I would much rather charge a client a reasonable fee that includes everything to decide whether to litigate a case, not on how much more money they have to give me but on the merits of the case.

Is There Anything Else That We Didn't Cover That You Can Think Of Off Top Of Your Head?

License suspension is incredibly complicated because people don't understand that there are two

different suspensions. The BMV suspension is what you get as soon as you're arrested, but once your case is resolved, the court gives you a suspension. So you have that BMV suspension known as the Administrative License Suspension, and then you have a court-ordered suspension. So eventually, when your case is resolved, if you're convicted of anything at all, whether it's a reckless Op. or an OVI, the court's going to suspend your license. And so that BMV suspension goes away. They terminate that suspension and waive the reinstatement fee. Then you're facing the court-ordered suspension.

Of course, the officers don't explain that to you when you have the minute to decide whether you want to take a breath test or refuse. It's just so complicated trying to understand these two suspensions that kind of go into place when it comes to determining the outcome of your case.

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NOTES

Accused Of Impaired Driving In Ohio?

Fight Back And Have The Charge Dismissed

"Shane was awesome, I was charged with marijuana OVI, after meeting with Shane for a free consultation he made me feel like I had no worries and he would help direct me in the right direction. Four months later my case was dismissed. The Judge found that the officer did NOT have probable cause to make and arrest. As a result, the prosecutor dismissed the OVI charge and you entered a plea to the assured clear distance charge. Shane even got me extra time to help pay for assured distance tickets. If you want a professional attorney who is communicates accordingly, and has your best interest Reach out to Shane Herzner."

- Aaron B.

"Got everything handled as promised. I was back on the road within 30 days of my high tier OVI charge and hit skip. Barley getting probation now and interlock for 6 months. No jail time and Shane saved me $2,400 in fines by getting things reduced. I actually get 10 min lectures at probation for how lucky I am by getting the deal Shane got me. Letting Shane represent me was the best decision I made!!"

- Andrew M.

"Shane "The Shark" is absolutely amazing! He will do everything in his power to help you with your problem. He is very educated in law and knows his stuff! I highly recommend!"

- Rick S..

Shane Herzner, Esq.

I've been practicing law since 2001. I started my career doing civil contract work and found that the part I enjoyed most about that job was being in a court room. A few years later I was offered a position as an assistant prosecutor for the Hamilton County Prosecutor's office, which I immediately accepted. During my time as an assistant prosecutor I discovered my love for trial work. After litigating hundreds of cases, I decide it was time for a new challenge, so I left the Prosecutor's office and started working as an associate for a criminal defense firm, where I practiced primarily OVI/DUI defense. I started my own practice in 2013, and I've been concentrating on OVI defense since then.

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