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# ***Pennsylvania DUI Answers***

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*F. Dean Morgan, Esquire*

DUI Attorney, Trainer & Consultant

THE  
**MORGAN**  
LAW FIRM

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[www.PennDUIDefense.com](http://www.PennDUIDefense.com)  
DUI Representation in Pennsylvania

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## ***About this Guide***

*This Guide is designed to be read in digital format*

**POTENTIAL CLIENTS:** This Guide was written to provide answers to individuals charged with DUI in Pennsylvania.

If you have contacted our firm and have completed the online form at [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com), you have also received our Case Results, Client Reviews, Fee Quote and payment options. We hope you find these documents informative.

If you have not submitted your case for our [free online case evaluation](#), we encourage you to do so now. You will receive our Case Results, Client Reviews and a Fee Quote. There is no obligation to retain our services. For more information about our firm, visit us at [www.PennDUIDefense.com](http://www.PennDUIDefense.com)

**ATTORNEYS:** If you are an attorney seeking more information about DUI Law and Procedure in Pennsylvania, we encourage you to review this information as well. If you do not handle matters in the criminal courts, we appreciate referrals. If you are a Criminal Defense Attorney presently representing someone charged with DUI and you require additional services related to DUI Defense - we offer Continuing Legal Education Courses and Consulting Expert Services through DUI Trainers & Consultants, LLC. More information can be found at [www.DUITrainers.com](http://www.DUITrainers.com)



F. Dean Morgan, Esquire  
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# TABLE OF CONTENTS

**Online:** Click a Link to Go to Section  
A Link on the Bottom of Each Page  
Returns you to Table of Contents

**Online:** Click a Link at the Bottom of Each Page  
if you would like a Free Online Case Evaluation

## I. [DUI LAWS & PENALTIES](#)

### A. [DEFINITIONS](#)

### B. [DUI STATUTE](#)

1. [3802\(a\)\(1\)](#)
2. [3802\(b\)](#)
3. [3802\(c\)](#)
4. [3802\(d\)](#)
5. [3802\(e\)](#)
6. [3802\(f\)](#)

### C. [SUMMARY OFFENSES](#)

1. Traffic Offenses
2. Underage Drinking

### D. [MISDMEMEANOR OFFENSES](#)

1. Drug Offenses
2. Endangering Welfare of a Child
3. Recklessly Endangering Another Person

### E. [PENALTIES](#)

### F. [LICENSE SUSPENSION/CDL DISQUALIFICATION](#)

## II. [THE ARD PROGRAM](#)

### A. [PURPOSE OF THE ARD PROGRAM](#)

### B. [ELIGIBILITY FOR THE ARD PROGRAM](#)

### C. [LICENSE SUSPENSION](#)

### D. [NEGATIVE ASPECTS](#)

### E. [ARD HEARING](#)

### F. [EXPUNGEMENT](#)

## III. [DRIVING AFTER A DUI](#)

### A. [IGNITION INTERLOCK RESTRICTED LICENCE](#)

### B. [IGNITION INTERLOCK VIOLATIONS](#)

### C. [DRIVING UNDER SUSPENSION](#)

## IV. [OTHER VEHICLE OFFENSES](#)

### A. ACCIDENTS AND INJURIES

1. [Homicide by Vehicle](#)
2. [Homicide by Vehicle – DUI Related](#)
3. [Aggravated Assault by Vehicle](#)
4. [Aggravated Assault by Vehicle While DUI](#)

B. [FLEEING AND ELUDING](#)

V. [PRELIMINARY HEARING INFORMATION](#)

A. [CRIMINAL COMPLAINT AND OTHER DOCUMENTS](#)

B. [PRELIMINARY ARRAIGNMENT](#)

C. [BAIL CONDITIONS](#)

D. [PRELIMINARY HEARING](#)

1. [Government's Burden of Proof](#)
2. [Defense Attorney Responsibilities](#)
  - a. [Probable Cause to Stop or Detain](#)
    - a. Traffic Stops
    - b. DUI Checkpoints
  - b. [Probable Cause to Arrest](#)
    - a. Field Sobriety Tests
      - i. Horizontal Gaze Nystagmus
      - ii. Walk and Turn
      - iii. One Leg Stand
    - b. Portable Breath Test
    - c. Drug Impairment Testing
      - i. ARIDE (in field)
      - ii. DRE (at police station)
  - c. [Blood, Breath & Refusals](#)
    - a. Breath Tests
    - b. Serum Blood Tests
    - c. Headspace Gas Chromatography
    - d. Refusals
  - d. [Recommendations](#)

E. [FREQUENTLY ASKED QUESTIONS](#)

VI. [COURT OF COMMON PLEAS](#)

A. [FORMAL ARRAIGNMENT](#)

B. [DISCOVERY](#)

C. [PLEA NEGOTIATIONS](#)

D. [PRE-TRIAL MOTIONS](#)

E. [TRIAL](#)

F. [SENTENCING](#)

- VII. [COLLATERAL CONSEQUENCES](#)
  - A. [EMPLOYMENT](#)
  - B. [COMMERCIAL DRIVER'S LICENSE](#)
  - C. [PROFESSIONAL LICENSURE](#)
  - D. [IMMIGRATION](#)
  - E. [FIREARMS](#)
  - F. [CUSTODY](#)
  
- VIII. [BEFORE HIRING A LAWYER](#)
  - A. [WHAT TO CONSIDER](#)
  - B. [QUESTIONS TO ASK BEFORE HIRING A LAWYER](#)
  
- IX. [ABOUT THE MORGAN LAW FIRM / DUI TRAINERS & CONSULTANTS, LLC](#)
  - A. [ATTORNEYS & STAFF](#)
    - 1. Attorney F. Dean Morgan
    - 2. Ashlee Stewart, Case Manager/Legal Assistant
    - 3. Jerry W. Brown, Esquire, Senior Attorney
    - 4. Associate Attorneys
    - 5. [Legal Nurse Consultants](#)
  - B. [LOCATIONS](#)
  - C. [CONTACT US](#)
    - 1. [FREE ONLINE CASE EVALUATION](#)
  
- X. [REPRESENTING YOURSELF](#)
  
- XI. [INFORMATION FOR ATTORNEYS](#)
  - A. [CONTINUING LEGAL EDUCATION](#)
  - B. [CONSULTING EXPERT SERVICES](#)

## DUI LAWS AND PENALTIES

### A. DEFINITIONS

**Chemical Test or Testing:** Analysis performed on a biological material, including but not limited to breath, blood or urine, to determine the identity or concentration or both of particular constituents such as alcohol or controlled substances. Test procedures may rely on one or more physical or chemical properties of the constituent and utilize instrumental or chemical analysis techniques to accomplish the determination.

**Commercial Driver:** A person who is either a commercial driver license holder as defined in section 1603 (relating to definitions) or who is driving a commercial motor vehicle.

**Driver:** A person who drives or is in actual physical control of a vehicle.

**Highway:** The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park.

**Ignition Interlock Limited License:** A driver's license issued to an individual whose operating privilege is suspended or revoked for one or more violations under section 1547 (relating to chemical testing to determine amount of alcohol or controlled substance) or 3802 (relating to driving under influence of alcohol or controlled substance) or under former section 3731 (relating to driving under influence of alcohol or controlled substance) or a violation substantially similar to a violation under section 3802 or former section 3731 in another jurisdiction, requiring the individual to operate only motor vehicles equipped with a functioning ignition interlock system.

**Trafficway:** The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom. *This included public parking lots.*

## B. THE DUI STATUTE

### 1. DUI – Alcohol

**75 Pa.C.S.A. 3802(a)(1)**- An individual may not drive, operate, or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating, or being in actual physical control of the movement of the vehicle.

Penalties: With Breath Refusal: [Third Tier](#)  
With Blood Refusal AND a Warrant: [Third Tier](#)  
With Accident: [Second Tier](#)  
All others: [First Tier](#)

**75 Pa.C.S.A. 3802(a)(2)**- An individual may not drive, operate, or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .08% but less than .10% when tested within two hours after the individual has driven, operated, or been in actual physical control of the motor vehicle.

Penalties: [First Tier](#)

**75 Pa.C.S.A. 3802(b)**- An individual may not drive, operate, or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .10% but less than .16% when tested within two hours after the individual has driven, operated, or been in actual physical control of the motor vehicle.

Penalties: [Second Tier](#)

**75 Pa.C.S.A. 3802(c)**- An individual may not drive, operate, or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .16% or higher when tested within two hours after the individual has driven, operated, or been in actual physical control of the motor vehicle.

Penalties: [Third Tier](#)

## 2. DUI – Controlled Substances

### 75 Pa.C.S.A. 3802(d)- Controlled Substances

An individual may not drive, operate, or be in actual physical control of the movement of a vehicle under any of the following circumstances:

- (1) There is in the individual's blood any amount of a:
  - (i) Schedule I Controlled Substance<sup>1</sup>
  - (ii) Schedule II Controlled Substance without prescription
  - (iii) metabolite of a substance under subparagraph (i) or (ii).
  
- (2) The individual is under the influence of a drug or combination of **drugs to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.
  
- (3) The individual is under the combined influence of alcohol and a drugs or combination of drugs **to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.
  
- (4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. 7303 (relating to the sale or illegal use of certain solvents and noxious substances).

[Penalties:](#) [Third Tier](#)

## 3. DUI – Minor

**75 Pa.C.S.A. 3802(e)-** An Individual under the age of 21 may not drive, operate, or be in actual physical control of the movement of a vehicle after **imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .02% or higher when tested within two hours** after the individual has driven, operated or been in actual physical control of the motor vehicle.

[Penalties:](#) [Second Tier](#)

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<sup>1</sup> Although Marijuana (THC) can be purchased legally with a medical card, driving with any amount of THC (or its inactive metabolite) is illegal.

#### 4. DUI – Commercial Vehicle or School Bus

##### 75 Pa.C.S.A. 3802(f)

An individual may not drive, operate, or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

- (1) After the individual **has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:**
  - (i) **.04% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a commercial vehicle other than a school bus or school vehicle.
  - (ii) **.02% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a school bus or school vehicle.
- (2) After the individual has **imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely** driving, operating, or being in actual physical control of the movement of the vehicle.
- (3) While the **individual is under the influence of a controlled substance or a combination of controlled substances** as defined in section 1603 (relating to definitions)
- (4) While the **individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances**, as defined in section 1603.

[Penalties:](#)    [Second Tier](#)

## C. SUMMARY OFFENSES

Police will often charge drivers with summary traffic offenses in addition to the DUI charge. 18 Pa.C.S.A. 110 provides that all charges arising out of the same incident be tried at the same time. To prevent a double jeopardy claim, officers do not issue citations to drivers at the time of the DUI charge. Instead, the summary charges are added to the Criminal Complaint. The most common charges are:

75 Pa.C.S.A. 3309(1) – Disregard Traffic Lane / Roadways Laned for Traffic  
75 Pa.C.S.A. 3714(a) – Careless Driving

Generally, these and other summary offenses carry a fine. However, other summary offenses carry additional period of suspension. Those include:

75 Pa.C.S.A. 3361 – Unsafe Speed for Conditions (15 day suspension if accident)  
75 Pa.C.S.A. 3736 – Reckless Driving (6 month suspension)  
75 Pa.C.S.A. 1786(f) – Proof of Financial Responsibility (3 month suspension)  
75 Pa.C.S.A. 1543(a) – Driving Under Suspension (12 month suspension)

In addition, if you are under the age of 21, you may also be charged with **18 Pa.C.S.A. 6308** – Underage Drinking or Possession of Alcohol. This carries a 3 month suspension if convicted or entry into ARD Program.

In some counties, summary offenses are not included in an [ARD](#) disposition.

## D. MISDEMEANOR OFFENSES

### *Drug Offenses*

If you are in possession of marijuana or other controlled substance not prescribed to you, you may also be charged with a violation of the Controlled Substance Act (often called Act 64). Specifically, you may be charged with: **35 P.S. 780-113(a)(31)** – Possession of a Small Amount of Marijuana; **35 P.S. 780-113(a)(16)** Possession of Controlled Substance; or **35 P.S. 780-113(a)(32)** – Possession of Drug Paraphernalia. A conviction for Possession of Marijuana or a Controlled Substance can have a substantial impact on your future. Therefore, we address each of these charges in our defense.

### **Endangering the Welfare of a Child (EWOC)**

Where a child is present in the vehicle, police will often file a charge of Endangering the Welfare of a Child pursuant to 18 Pa.C.S.A. 4304(a) which provides “A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.”

This offense is a Misdemeanor 1 Offense punishable by up to five (5) years in jail. Because EWOC directly impacts a parent's duty of care, it can have collateral consequences in custody matters. Moreover, the presence of a child automatically elevates a DUI to a [Misdemeanor 1 Offense](#).

## **Recklessly Endangering Another Person (REAP)**

A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. 18 Pa.C.S.A. 2705. While not every DUI places people in danger, a REAP charge sometimes accompanies a DUI charge. Therefore, it is imperative that a defense attorney review your case to determine if the charge can be dismissed. Because REAP falls under the "assault" chapter of the crimes code, the presence of the charge can negatively impact your gun rights as well as your future.

## **E. DUI PENALTIES**

### **1. Definitions**

**Child:** Any person under the age of 18.

**Prior Offense:** A Prior Offense is any prior conviction, ARD Acceptance, delinquency adjudication or juvenile consent decree for a violation of Section 3802, or it's out of state equivalent within the last 10 years of the date of the offense for which you are to be sentenced. If you are to be sentenced for two or more DUI on the same date, the offenses shall be considered a prior offense for the purpose of grading/sentencing.

### **2. Grading:**

#### ***Misdemeanor Offenses (M)***

If a charge is graded as a Misdemeanor (ungraded), you do NOT have the right to a jury trial. The maximum penalty is 6 months incarceration and a \$5000 Fine. An ungraded misdemeanor conviction does not impact your right to own or purchase a firearm. Misdemeanor Offenses Include:

- All First Offense DUI (w/o Child in Vehicle)
- Second Offense DUI with BAC below .16% (w/o Child in Vehicle)

### ***Misdemeanor 2 Offenses (M2)***

If a charge is graded as a Misdemeanor 2, you have the right to a jury trial. The maximum penalty is 2 years incarceration and a \$5000 Fine. A Misdemeanor 2 conviction does not impact your right to own or purchase a firearm. Misdemeanor 2 Offenses related to DUI cases are limited to a [Third Offense DUI w/ BAC under .10%](#) (w/o Child in Vehicle) and Recklessly Endangering Another Person.

### ***Misdemeanor 1 Offenses (M1)***

If a charge is graded as a Misdemeanor 1, you have the right to a jury trial. The maximum penalty is 5 years incarceration and a \$10,000 Fine. If you are convicted, you may lose certain rights including the right to buy firearms. Misdemeanor 1 Offenses Include:

- Any First or Second Offense with [Child](#) in Vehicle
- [Second Offense DUI w/ BAC of .16% and above.](#)
- [Second Offense DUI- Controlled Substances](#)
- [Third Offense DUI w/ BAC of .10% - .159%](#)
- Endangering the Welfare of a Child

### ***Felony 3 Offenses (F3)***

If a charge is graded as a Felony 3, you have the right to a jury trial. The maximum penalty is 7 years incarceration and a \$15,000 Fine. If you are convicted, you may lose certain rights including the right to own firearms. In addition, you will be considered a convicted felon and may lose other rights, including the right to vote, if convicted. Felony 3 Offenses Include:

- [Third Offense DUI w/ BAC of .16% and above.](#)
- [Third Offense DUI-Controlled Substances](#)
- Any Fourth Offense DUI

### 3. Mandatory Minimum Penalties

<b>DUI PENALTIES</b>			
	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
<b>First Tier</b> <a href="#">3802(a)(1)</a> w/o refusal) <a href="#">3802(a)(2)</a>	6 months probation \$300 fine Community Service No License Suspension	5 days – 6 months in jail Up to \$2500 fine Community Service 12 month License Suspension Ignition Interlock	10 days – 1 year in jail Up to \$10,000 fine Community Service 12 month License Suspension Ignition Interlock
<b>Second Tier</b> <a href="#">3802(a)</a> (w/ accident) <a href="#">3802(b)</a> <a href="#">3802(e)</a> <a href="#">3802(f)</a>	48 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	30 days – 6 month in jail Up to \$5000 fine Community Service 12 month License Suspension Ignition Interlock	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock
<b>Third Tier</b> <a href="#">3802(a)(1)</a> (w/ refusal) <a href="#">3802(c)</a> <a href="#">3802(d)</a>	72 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock	1 year – 5 years in state prison Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock
	<b>NOT ELIGIBLE FOR JURY TRIAL</b>	<b>ELIGIBLE FOR JURY TRIAL</b>	

### 4. The Intermediate Punishment Program

The Intermediate Punishment Program is a hybrid between traditional incarceration and probation. The program replaces some, if not all, of the mandatory period of incarceration with House Arrest. In most cases, the period of house arrest will exceed the mandatory minimum period of incarceration. For example, many counties will require a 30-day period of house arrest for a first offense DUI.

The Intermediate Punishment Program is NOT a goal. It is a standard offer. We always look for a better resolution.

## F. LICENSE SUSPENSION/ CDL DISQUALIFICATION

### 1. Refusal & Appeal (Civil Suspension)

Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance ***if a police officer has reasonable grounds to believe*** the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock). **75 Pa.C.S.A. 1547(a)(emphasis added)**

If you refuse to provide a blood or breath sample after being requested by the police, you face an administrative suspension of your operating privileges for at least 12 months. If you have previously refused to provide a breath or blood sample, your operating privileges will be suspended for 18 months. In addition, you must pay a restoration fee of \$500, \$1000, or \$2000 depending on your prior DUI record and Refusal Record.

**Appeal:** If you receive a notice of suspension from PennDOT, you have thirty (30) days from the “mail date” of the notice to file an appeal. An appeal of a license suspension must be filed with the Prothonotary. It is separate from your criminal case! Therefore, if you receive a notice from PennDOT, you should act immediately to file an appeal to preserve your rights. Failure to file within 30 days will result in a loss of rights.

## 2. Conviction

If you are convicted of DUI, a suspension will be imposed as follows:

CHARGE	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<a href="#">3802(a)(2)</a>	No Suspension	12 Months	12 Months
<a href="#">3802(a)(1) w/ Accident</a> <a href="#">3802(b)</a> <a href="#">3802(e)</a> <a href="#">3802(f)</a>	12 Months	12 Months	18 Months
<a href="#">3802(a)(1) w/ Refusal</a> <a href="#">3802(c)</a> <a href="#">3802(d)</a>	12 Months	18 Months	18 Months
<a href="#">Child</a> in Vehicle	18 Months	18 Months	18 Months

Please note, your suspension credit does not count until you (a) complete any period of incarceration and (b) surrender your driver's license and all PennDOT Products (including permits, camera cards, etc.)

**If you are licensed in another state**, a reciprocal period of suspension will be imposed by your home state based upon their law.

## 3. ARD

If you enter the [ARD Program](#), your Pennsylvania operating privileges will be suspended as follows:

BAC, etc.	Suspension
Under .10%	None
.10% - .159%	30 Days
.16% and above	60 Days
Controlled Substances	60 Days
Accident	60 Days
Blood Result Not Known	60 Days
Person Under 21	90 Days

**If you are licensed in another state**, your operating privileges in your home state will not be suspended.

#### 4. Commercial Driver's License

If you are convicted of, or accept ARD for, a violation of Section 3802, your Commercial Driver's License will be disqualified for a period of 12 months. If this is your second offense while having a CDL, your CDL will be disqualified for life.

#### 5. Driving Under Suspension

If you are convicted of Driving Under Suspension – DUI Related in violation of Section 1543(b) you are subject to a mandatory minimum penalty of 60 days in jail. If you have a BAC above .02%, you are subject to a minimum penalty of 90 Days in jail.

#### 6. Ignition Interlock Restricted License (IIRL) Eligibility

Offense	Suspension	IIRL Eligible
ARD	30 Day/60 Day/90 Day	Immediately
First Offense	12 Month	Immediately
Second Offense	12 Month	6 Months
Second/Third Offense	18 Month	9 Months
Refusal (Admin Suspension)	12 Month	6 Months

If you retain our services, we will provide you all necessary petitions and documentation to obtain an Ignition Interlock Restricted License.

## THE ARD PROGRAM

***ARD is not a “gift.” ARD is definitely not a “goal.”  
IT IS THE STARTING POINT***

### **A. PURPOSE OF THE ARD PROGRAM**

The ARD program is designed to accelerate the DUI process. It is **NOT** designed to benefit you.

You must waive your formal preliminary hearing. **However, this does not mean that you must waive your preliminary hearing without a full and fair evaluation of your case to be eligible to apply for ARD.**

Each county in Pennsylvania has a different procedure for requesting ARD. Therefore, it is important that you work with an attorney, like me, who knows the application process in each county. If you have received this document, you can rest assured The Morgan Law Firm knows the application process in your county.

Following an evaluation of the defendant's prior record and the circumstances of the offense, the District Attorney will notify you of the date of the ARD admission hearing. You will also learn the terms and conditions of the ARD program.

### **B. ELIGIBILITY FOR ARD PROGRAM**

**IMPORTANT:** Every District Attorney has the discretion to establish other minimum standards.

The state **minimum** requirements for eligibility are as follows:

- First DUI in 10 years
- Only one prior DUI - Lifetime
- No one under the age of 14 in your vehicle
- Not involved in an accident involving serious bodily injury

However, many counties have additional requirements, including:

- Valid License
- No Refusal Cases or, in the alternative, if you refused, you cannot appeal the refusal.
- BAC under .25
- No Prior DUI or prior DUI must be at least 15 years ago.
- Must plead guilty to summary/misdemeanor offenses.

### C. LICENSE SUSPENSION FOR ARD

CHARGE	SUSPENSION
3802(a)(2)	Zero
3802(b)	30 Days
3802(d)	60 Days
3802(e)	90 Days
3802(f)	30 Days
Accident	60 Days
Refusal	60 Days
Minor	90 Days

### D. NEGATIVE ASPECTS OF ARD

More importantly you should be aware of the following facts:

1. If you have a CDL, if may be disqualified for 12 months and possibly for life (depending on prior record).
2. ARD remains on your driving record for 10 YEARS
3. You may have to perform up to 100 hours of community service.
4. ARD probation may restrict your right to possess firearms.
5. You may be required to pay program costs that will not be refunded if you are removed from the ARD program.
6. The District Attorney has complete discretion to admit you into the program and may act to remove you from the program.

Our job, when representing an individual applying for ARD, is to review the facts and circumstances of the case, remaining vigilant to determine whether there is a possibility that the charges may be dismissed due to an evidentiary issue or whether there is a strong possibility of acquittal. If either of these situations arises, I will make a recommendation to you as to how we should proceed.

### E. THE ARD HEARING

At the hearing, which is held in open court, the Court will formally inform you of the terms and conditions of the program. The Court will ask you if you understand the terms and the conditions of the program including:

- Successful completion of the program offers you an opportunity to earn a dismissal of the pending charge(s).
- If you fail to complete the program, you may be subject to trial as provided by law.

- You must agree to waive appropriate statutes of limitations as well as the federal and state Speedy Trial statutes and constitutional provisions.
- Upon acceptance into the ARD program, all proceedings are postponed during the term of the program.
- You must undergo a drug and alcohol assessment and complete counseling if deemed necessary.
- You must attend DUI classes.
- You must undergo a license suspension which is based upon the BAC
- If you successfully complete the Program, you may make an application to the court for an order dismissing the charges against you.

## **F. EXPUNGEMENT**

After you complete the program, your charges are dismissed. However, Expungement of the charges may not be automatic. When consulting with attorneys, make sure you discuss Expungement of the charges.

Expungement of the charges means that you will not have a criminal record. However, the District Attorney will be able to access the record if you get another offense within 10 years. In addition, your driving record will show an ARD Admission for a period of 10 years.

## **CONCLUSION**

The ARD program is not always the right choice for every person arrested for DUI. Based on the facts and the circumstances of your case, you may wish to challenge the evidence against you. However, if you choose to enter the program, we will work to help you to succeed!

## DRIVING AFTER A DUI

### A. IGNITION INTERLOCK RESTRICTED LICENSE (IIRL)

For second and third offenses, you are required to have an ignition interlock installed after you complete your period of suspension. For any offense where a suspension is imposed, you may continue driving after you obtain an Ignition Interlock Restricted License (IIRL). For first offense cases and [ARD](#), the IIRL is voluntary. The following chart shows the eligibility requirements:

Offense	Suspension	IIRL Eligible
ARD	30 Day/60 Day/90 Day	Immediately
First Offense	12 Month	Immediately
Second Offense	12 Month	6 Months
Second/Third Offense	18 Month	9 Months
Refusal (Admin Suspension)	12 Month	6 Months

If you retain our services, we will provide you all necessary petitions and documentation to obtain an Ignition Interlock Restricted License.

### B. VIOLATIONS OF IGNITION INTERLOCK LAW

**75 Pa.C.S.A. 3808** - An individual required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system under any of the following who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not less than \$300 and not more than \$1,000 and to imprisonment for not more than 90 days.

**ENHANCEMENT:** An individual required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system under any of the following who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system **and who has an amount of alcohol by weight in his blood that is equal to or greater than 0.025% at the time of testing or who has in his blood any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite** commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of **not less than 90 days**.

## **C. DRIVING UNDER SUSPENSION**

If you are not eligible for an Ignition Interlock Restricted License (IIRL), you should not drive unless/until your operating privileges are restored. This means, even if your period of suspension is over, you cannot drive until you have received authorization from PennDOT. If you drive before your operating privileges are restored., you are in danger of being charged with one of the following:

### **1. 1543(b)(1) DUS - DUI Related**

A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of [ARD, DUI Conviction, or Refusal]

**First Offense:** \$500 Fine and 60 Days in Jail

**Second Offense:** \$1000 Fine and 90 Days in Jail

**Third Offense:** \$2500 Fine and 6 Months in Jail

### **2. 1543(b)(1.1) DUS – DUI Related with Alcohol, Drugs, or Refusal**

A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of [ARD, DUI Conviction, or Refusal]

AND either

- Has a BAC of .02% or above
- Has a Controlled Substance or Metabolite of Controlled Substance in his/her system
- Refuses Testing

**First Offense:** \$1000 Fine and 90 Days in Jail

**Second Offense:** \$2500 Fine and 6 Months in Jail

**Third Offense:** \$5000 Fine and 2 Years in State Prison

## SERIOUS VEHICLE OFFENSES

### A. ACCIDENTS AND INJURIES

#### 1. Homicide by Vehicle

**75 Pa.C.S.A. 3732(a)** Any person who recklessly or with gross negligence causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3802 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a felony of the third degree, when the violation is the cause of death.

**Penalties:** Homicide by Vehicle is a 3<sup>rd</sup> Degree Felony (F3) punishable by a maximum of 7 years incarceration and a \$15,000 Fine.

**Enhancements:** Additional penalties apply under the following conditions:

- Driver is unlicensed, suspended, or revoked.
- Driver is texting
- Offense occurs in an active work zone or emergency response area.

#### 2. Homicide by Vehicle – DUI Related

Section 75 Pa.C.S.A. 3735- A person who unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802.

**Grading:**

Felony of the Second Degree (F2); or

Felony of the First Degree (F1) if, before sentencing on the present violation, the person has incurred a conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition for any of the following: (A) An offense under section 3802, (B) An offense under former section 3731 (relating to driving under influence of alcohol or controlled substance), (C) An offense which constitutes a felony under this subchapter, (D) An offense substantially similar to an offense under clause (A), (B) or (C) in another jurisdiction, (E) Any combination of the offenses under clause (A), (B), (C) or (D).

## **Mandatory Sentencing:**

The sentencing court shall order a person convicted to serve a minimum term of imprisonment of **not less than three years**. A consecutive three-year term of imprisonment shall be imposed for **each victim** whose death is the result of a violation of section 3802.

The sentencing court shall order a person convicted to serve a minimum term of imprisonment of:

**Not less than five years** if, before sentencing on the present violation, the person has one prior conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition for any of the offenses listed under paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive five-year term of imprisonment shall be imposed for each victim whose death is the result of a violation of section 3802.

**Not less than seven years** if, before sentencing on the present violation, the person has incurred at least two prior convictions, adjudications of delinquency, juvenile consent decrees, acceptances of Accelerated Rehabilitative Disposition or other forms of preliminary disposition for any of the offenses listed under paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive seven-year term of imprisonment shall be imposed for each victim whose death is the result of a violation of section 3802.

### **3. Aggravated Assault by Vehicle**

**75 Pa.C.S.A. 3732.1** - Any person who recklessly or with gross negligence causes serious bodily injury to another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic, except section 3802 (relating to driving under influence of alcohol or controlled substance), is guilty of aggravated assault by vehicle, a felony of the third degree when the violation is the cause of the injury.

**Penalties:** Homicide by Vehicle is a 3<sup>rd</sup> Degree Felony (F3) punishable by a maximum of 7 years incarceration and a \$15,000 Fine.

**Enhancements:** Additional penalties apply under the following conditions:

- Driver is unlicensed, suspended, or revoked.
- Driver is texting
- Offense occurs in an active work zone or emergency response area.

#### 4. Aggravated Assault by Vehicle While DUI

**Section 3735.1** - Any person who negligently causes serious bodily injury to another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 commits a felony of the second degree when the violation is the cause of the injury.

**(a.1) Sentencing.**--In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) and a violation of section 1501 (relating to drivers required to be licensed) or 1543 (relating to driving while operating privilege is suspended or revoked) when committed at the same time and place may be sentenced to an additional term not to exceed two years' confinement.

#### B. FLEEING AND ELUDING

**75 Pa.C.S.A. 3733** - Any driver of a motor vehicle who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer, when given a visual and audible signal to bring the vehicle to a stop, commits an offense

#### Grading

Misdemeanor 2 under most conditions

Felony 3 under any of the following conditions:

1. Commits a Violation of 75 Pa.C.S.A. 3802
2. Crosses a State Line
3. Endangers a law enforcement officer or general public due to a high speed chase.

**Defenses** It is a defense to a prosecution under this section that the pursuing police officer's vehicle was not clearly identifiable by its markings or, if unmarked, was not occupied by a police officer who was in uniform and displaying a badge or other sign of authority.

It is a defense to prosecution under this section if the defendant can show by a preponderance of the evidence that the failure to stop immediately for a police officer's vehicle was based upon a good faith concern for personal safety. In determining whether the defendant has met this burden, the court may consider the following factors: (i) The time and location of the event. (ii) The type of police vehicle used by the police officer. (iii) The defendant's conduct while being followed by the police officer. (iv) Whether the defendant stopped at the first available reasonably lighted or populated area.

## **PRELIMINARY HEARING INFORMATION**

### **A. COURT DOCUMENTS**

The Magisterial District Judge (MDJ) will send you court documents via regular first-class mail and via certified mail. You will receive the following documents from the Court:

- Criminal Complaint
  - A Criminal Complaint is a document that sets forth the charges against you as well as relevant factual information.
  - Attached to the Complaint may be an Affidavit of Probable Cause.
    - The Affidavit is NOT an official police report. Therefore, it is not unexpected that important information may not be present.
- Notice of a Preliminary Arraignment/Preliminary Hearing
  - This is notice of the first court date in your case.
- Summons to Appear
  - This legal document is a Court Order to appear. If you fail to appear, a warrant for your arrest may be issued.
- Fingerprint Order
  - If you receive a fingerprint order, you must comply with the order.
  - Previous fingerprinting for employment, prior offenses, etc. is not sufficient.
  - Failure to comply with the fingerprint order may result in incarceration.

### **B. PRELIMINARY ARRAIGNMENT**

A Preliminary Arraignment is the first time you will see a judge. The Magisterial District Judge will not question you about the offense(s) charged but will read the Complaint and advise you of the following:

- of the right to secure counsel of choice and the right to appointed counsel if you qualify financially.
- of the right to have a preliminary hearing
- The type of release on bail

### **C. BAIL CONDITIONS**

For nearly all DUI Cases, bail will either be Unsecure Bail or Release On Recognizance. In either case, no money changes hands if you comply with the bail conditions. Those conditions include:

- Appear at all Court Hearings unless excused
- If you change your address, you must notify the court
- Do not engage in Witness/Victim Intimidation
- Do not engage in criminal activity
- Comply with the Fingerprint Order
- Other Requirements as set by the Court
  - SCRAM Monitoring Bracelet
  - Drug & Alcohol Evaluation
  - CRN Evaluation
  - No Contact Provisions

## **D. PRELIMINARY HEARING**

At the preliminary hearing, a MDJ presides. In some cases, a District Attorney is present. In others, the officer represents the government. The MDJ will determine if a *prima facie* case exists demonstrating (1) a crime was committed and (2) the person charged committed the offense.

If the court finds there is a *prima facie* case, the court will bind the charges over the Court of Common Pleas and will schedule a date for arraignment. In many cases, a determination can be waived. However, you should only waive your hearing if you are certain that a *prima facie* case has been made and, preferably, with the assistance of counsel.

### **1. The Government's Burden of Proof**

The government must only prove there is evidence to show that a crime was committed and the person charged committed the offense. For a DUI case where, more often than not the identity of the driver is not in dispute, this means that the government must show some evidence that the driver (1) operated a vehicle, (2) on a highway or trafficway<sup>2</sup>, and (3) there is some evidence that alcohol or drugs were in the driver's system.

This *prima facie* standard is low. It should not be confused with the trial standard where the government is required to provide Proof Beyond a Reasonable Doubt.

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<sup>2</sup> A trafficway is defined as "The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom." It includes almost all parking lots and many private roadways.

## 2. The Defense Attorney's Responsibility

A good defense attorney understands that the preliminary hearing is an opportunity to explore the facts of the case completely to determine the appropriate course of action to take in the case. In addition to the elements necessary to establish a prima facie case, I ALWAYS investigate the factual circumstances surrounding your arrest to determine the likelihood of success at trial. **I look at three very specific criteria in EVERY Case.**

### a. Probable Cause to Stop/Detain

To stop or detain an individual for DUI, the officer must possess sufficient facts that he/she believes that the defendant (or the defendant's vehicle) is in violation of the Pennsylvania Vehicle Code, in conducting an Authorized Checkpoint, or he/she has a lawful right to investigate a criminal action or accident.

#### ***Traffic Stops***

Often, DUI cases arise from a traffic stop. Whenever a police officer is engaged in a systematic program of checking vehicles or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe necessary to enforce the provisions of this title. 75 Pa.C.S.A. 6308(b).

Traffic stops based upon reasonable suspicion: either of criminal activity or a violation of the motor vehicle code under the authority of Section 6308(b) must serve the stated investigatory purpose. ***Commonwealth v. Chase***, 980 A.2d 108, 116 (Pa. 2008).

Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. ***Commonwealth v. Feczko***, 10 A.3d 1285 (Pa.Super 2010).

In such an instance, "it is encumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*" *Id.* Citing ***Commonwealth v. Gleason***, 785 A.2d 983, 989. **See also *Chase***, 960 A.2d at 116 (reaffirming ***Gleason's*** probable cause standard for non-investigative detentions of suspected Vehicle Code violations).

## ***DUI Checkpoints***

To be valid, a DUI Checkpoint must:

- Be advertised in advance (signs, media, etc.) but the specific location of the checkpoint need not be provided.
- Be chosen by police administrators (usually in consultation with the prosecutor) based upon a history of DUI arrests or incidents at that location.
- Be limited to a brief interaction with the driver to determine if there is reasonable suspicion to believe DUI or other vehicle code violation is found.
- The “stop criteria” must be based on an objective standard created by police administrators.

A driver is legally permitted to take legal actions to avoid a DUI checkpoint. Police may not stop a driver based solely upon a suspicion the driver is avoiding the checkpoint. Rather, they must comply with the traffic stop standards noted above.

### **b. Probable Cause to Arrest**

To be constitutionally valid, a warrantless arrest must be supported by probable cause. The Pennsylvania Supreme Court has held “probable cause exists where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. Mere suspicion alone will not support a finding of probable cause.”

Unlike many attorneys I go beyond the Standardized Field Sobriety Tests (SFST) to determine whether or not probable cause exists. I am a Field Sobriety Test Instructor. Moreover, I teach other attorneys how to analyze SFST. As a SFST Instructor, I can state that Field Sobriety Tests are designed to make you fail. The requested tests are inconsistent with our daily activities.

We use the following NHTSA Manuals:

- NHTSA Standardized Field Sobriety Test Student Manual
- NHTSA ARIDE Student Manual
- NHTSA DRE Student Manual

## **ALCOHOL FIELD TESTS**

### ***Standardized Field Sobriety Tests***

To be valid, Field Sobriety Tests must be administered in a prescribed standardized manner; the standardized clues must be used to assess the suspect’s performance; and the standardized criteria must be employed to interpret that performance. If any one of

the standardized field sobriety test element is changed, the validity is compromised. Please note that when the tests are administered properly, they are only accurate less than 80% of the time. They are rarely administered properly.

There are three Standardized Field Sobriety Tests:

*(1) Horizontal Gaze Nystagmus (HGN)*

There are four clues police look for when administering the HGN test. They are:

- Lack of Smooth Pursuit
- Distinct & Sustained Nystagmus at Maximum Deviation
- Onset of Nystagmus prior to a 45 degree angle.

Alcohol is not the only drug that causes HGN. However, 4 or more clues (1 clue per eye per test) is indicative of alcohol impairment. Officers will also administer a Vertical Gaze Nystagmus (VGN) test. The presence of VGN is indicative of high doses or drugs or alcohol.

The HGN test is the most difficult to “pass” and is also the most difficult to score. Of the hundreds of videos I have viewed, I have found that less than 20% of officers properly conduct these evaluations. In many cases, this can be the difference between a conviction and a better result.

*(2) Walk and Turn*

The Walk and Turn test is a divided attention test. It includes two stages: The instructions stage and the walking stage. Police look for the following either clues with two or more clues said to be indicative of impairment. The clues are:

- Cannot keep balance
- Starts too soon
- Stops while walking
- Misses Heel-to-Toe
- Steps off line
- Uses arms for balance
- Improper Turn
- Incorrect number of steps

If you have a medical condition, suffer from obesity, or you are above the age of 65, it is unlikely you will “pass” this test. Unfortunately, officers will, despite knowing you had a medical condition, offer to “let you try” or “take that into account.” Unfortunately, these statements are not consistent with National Highway Traffic Safety Administration protocols.

### *(3) One Leg Stand*

The One Leg Stand test has two stages: The Instruction Stage and the Balance & Counting Stage. Officers are looking for four clues. They are as follows:

- Sways while balancing
- Uses arms to balance
- Hopping
- Puts foot down.

If two or more clues are detected, this is said to be evidence of impairment. As with the Walk & Turn test - if you have a medical condition, suffer from obesity, or you are above the age of 65, it is unlikely you will “pass” this test. Unfortunately, officers will, despite knowing you had a medical condition, offer to “let you try” or “take that into account.” Unfortunately, these statements are not consistent with National Highway Traffic Safety Administration protocols.

### **Portable Breath Test**

For alcohol-related cases, police will then ask a driver to submit to a portable breath test (PBT). It is important to remember that these devices are not calibrated and are not admissible in court for the purpose of demonstrating a particular level of alcohol concentration. There is no legal requirement in Pennsylvania to submit to a PBT. They are to be used solely for the purpose of confirming alcohol is present.

### **DRUG IMPAIRMENT CASES**

With the rise of illegal and prescription drug impairment cases, some police officers have received advanced training to detect driver's suspected of being impaired by drugs. However, because many drivers use prescription medications legally, it is important to understand the testing process.

There are seven drug “categories.”

- CNS Depressants
  - Alcohol
  - Barbiturates
  - Valium
- CNS Stimulants
  - Cocaine
  - Amphetamines
  - Adderall/Ritalin

- Hallucinogens
  - LSD
  - Peyote
  - Ecstasy
- Dissociative Anesthetics
  - PCP
  - Ketamine
  - Dextromethorphan (DXM) – Cough Suppressants
- Narcotic Analgesics
  - Heroin
  - Morphine
  - Codeine
- Inhalants
  - Paint
  - Glue
  - Nitrous Oxide
- Cannabis
  - Marijuana
  - Hash
  - K-2 (spice)

Each drug category causes the human body to exhibit certain clues. For example, some drugs cause you to move slowly while other cause to your speed up. Some drugs cause your eyes to exhibit nystagmus. Some drugs cause you to exhibit body or eyelid tremors. Unfortunately, in an effort to create programs to combat drug-impairment case, the National Highway Traffic Administration (NHTSA) has failed to standardized some of the tests.

### ***ARIDE Testing***

ARIDE is an acronym for Advanced Roadside Impaired Driving Enforcement. Unlike SFST, the ARIDE Battery is not standardized. Therefore, this subjective evaluation of indications of impairment can be challenged. Therefore, I ALWAYS look beyond the tests and determine whether the things we do in normal, everyday life, such as standing and walking normally were indicative of intoxication. Following my discussion with the police officer or prosecutor, I will give you my opinion as to whether the Probable Cause to Arrest issues can successfully be resolved in our favor by filing a Pre-trial motion.

#### *(1) Lack of Convergence*

The Lack of Convergence (LOC) is a non-standardized field test that is administered by having a driver follow the officer's finger (or other stimulus) as he makes a series of circles before bringing the finger/stimulus toward the driver's nose without touching it. The object

is for the driver to cross his/her eyes. If an individual is unable to cross his/her eyes, this is evidence of impairment due to marijuana.

### *(2) Conjunctiva*

Officers may ask the driver to pull down his/her bottom eye lid. If there is redness in the conjunctiva (below lower eyelid) this is said to be evidence of impairment. However, there are a number of medical explanations for red conjunctiva.

### *(3) Modified Romberg Balance Test*

The Romberg Balance Test is administered by asking the driver to close his/her eyes, lean his/her head back and estimate the passage of 30 seconds. Depending on the results of this test, the officer will likely make a determination as to whether he believes that the person is under the influence of a controlled substance. For example, a fast “internal clock” is indicative of stimulant usage. A slow internal clock is indicative of use of a depressant.

## **DRUG RECOGNITION EXPERT (DRE) Testing**

The term Drug Recognition Expert (DRE) is a vernacular term for an officer who has received advanced training through the Drug Evaluation and Classification (DEC) Program. They are not actually “Experts.” The DEC program is extensive. The officers, to their credit, generally do a good job in making a determination. However, the program is inherently flawed.

The most important flaw is that officers are being asked to perform a medical examination that includes the following:

- Checking a Pulse
- Checking Blood Pressure
- Checking Body Temperature
- Checking Muscle Tone

The officers are then asked to make an assessment based upon suggested standards. However, every individual’s body is different, such standards may suggest impairment when there could be another medical reason. Therefore, at our firm, we utilize the services of [Legal Nurse Consultants](#) – Registered Nurses, each having over 25 years of experience – on staff. If you are an attorney reading this Guide, we can help you if you follow this [link](#).

DRE Testing is a post-arrest test. Therefore, the requirements of *Miranda* apply.

The 12 step DRE process, which must be complete in order, is as follows:

(1) *Breath Alcohol Test*

A Breath Alcohol Test, usually a PBT, is used to rule out alcohol.

(2) *Interview of Arresting Officer*

The DRE Officer is usually not the arresting officer. Any statement made to the officer in the field can be relied upon by the DRE Officer. Therefore, the “objective” aspect of the remainder of the evaluation is inherently flawed.

(3) *Preliminary Physical Examination*<sup>3</sup>

The preliminary evaluation is to assess the driver’s appearance, behavior, speech and breath as well as automatic bodily responses for signs of drug-induced impairment. The evaluation consists of questions regarding injuries and medical conditions. In addition, the officer will take the driver’s **pulse**, and **estimate pupil size**.

(4) *Eye Examination*

At this stage, the officer will conduct another HGN, VGN, and LOC evaluation.

(5) *Divided Attention Tests*

At this stage, the officer will conduct the Modified Romberg Balance Test, the Walk and Turn Test, the One Leg Stand, and the Finger to Nose test. It is important for a defense attorney to compare these results to those in the field. Because the tests are conducted indoors, they should differ from those conducted in the field. If the tests are identical, this is indicative of a missed/copied test. All DRE examinations are to be conducted. Acceptance of field results invalidates the tests.

(6) *Vital Signs*

The vital signs that are indicators of drug influence include blood pressure, temperature, and pulse<sup>4</sup>. However, because we each have our individual “standard” it is imperative that any DRE case involve the assistance of a [Legal Nurse Consultant](#). If you are charged with a DUI involving a DRE, insist that your chosen attorney either have an LNC on staff, as we do, or they consult with an LNC.

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<sup>3</sup> For this reason, having a [Legal Nurse Consultant](#) on staff is critically important to a defense strategy. If you are an attorney who does not have an LNC on staff or available, please consider consulting with us by following this [link](#).

<sup>4</sup> At this stage, a second pulse is taken.

(7) *Dark Room Checks*

Certain types of drugs will affect the pupils of the eyes by either causing the pupils to dilate or constrict. A dark room allows the officer to change the amount of light entering the eyes and observe the pupils' appearance and reaction.

(8) *Check for Muscle Tone*

Certain categories of drugs cause the user's muscles to become tense or rigid while others cause the muscles to be flaccid, loose, or rubbery. Although evidence of muscle tone may be apparent during divided attention tests as well as during the vital sign examination, step 8 of the DRE evaluation requires the officer to place his hands on the driver to feel whether there is any change.

Again, we all have different anatomical reactions. Therefore, having a [Legal Nurse Consultant](#) involved in your case can be essential.

(9) *Check for Injection Sites*

Some drugs are injected using hypodermic needles. Evidence of injection sites can be evidence of drug use.

(10) *Interrogation and Observation*

At this juncture, the DRE may have developed a suspicion the driver is impaired due to drug usage. However, the statement made by the driver can be used to confirm this suspicion. As stated earlier, a DRE evaluation is post-arrest. Therefore, *Miranda* warnings must be read to the driver before any questioning.

(11) *Opinion of the Evaluator*

The DRE will have, at this point, formed an opinion as to whether or not the driver is under the influence of a drug or drugs. The DRE will then also form an opinion as to the probable category or categories of drugs causing the impairment. The DRE will record these opinions and the factual basis for the opinions in a narrative summary on the DRE Report.

(12) *Toxicological Sample*

See below for information about blood testing.

**c. Blood/Breath/Refusal – Chemical Testing**

In Pennsylvania DUI-Alcohol cases, chemical testing must be performed within the two hour time limit. There are other procedural requirements that must be met before a Chemical Test can be admissible in court.

## ***Breath Test***

To determine if evidence is admissible, (which does not mean the same thing as being “accurate”) a good defense attorney will require:

- Certificate of Accuracy;
- Breath Test Operator Certification;
- Certification of Calibration;
- Certification of Breath Test Operator responsible for testing the device for accuracy and calibration; and
- Simulator Solution Certification; and Ampoule Certification.

## ***Blood Test***

To determine if a Serum Blood Test is Admissible (**which does not mean “accurate”**), a good defense attorney will require the following:

- Full name of Phlebotomist who drew blood of the defendant;
- Full name and CV/Resume of any witness the Commonwealth intends to call to testify as to the results of the blood testing;
- Plasma/Serum Testing Documentation;
- Copy of any and all documentation, including Standard Operating Procedures, relied upon by Medical Technician in conducting the testing of the Defendant’s blood serum;
- Copy of any and all documentation regarding the device/machine utilized to analyze the serum of the defendant including, but not limited to the following:
- Device Manufacturer, model number, serial number, Date placed in service, maintenance reports, calibration reports, and out of service documentation within 180 days prior to the testing of the defendant’s serum and 90 days after the testing of the defendant’s blood serum;
- The title of any document, treatise, book, study, or report upon which the conversion factor relied upon by the hospital/laboratory to convert the amount of alcohol in a subject’s plasma/serum to a whole blood equivalent value;
- The name, title, and qualifications (CV) of the individual responsible for choosing the document, treatise, book, study, or report upon which the conversion factor relied upon by the hospital/laboratory to convert the amount of alcohol in a subject’s plasma/serum to a whole blood equivalent value.

If the blood was subject to Gas Chromatography Testing, a good defense attorney will request:

- A copy of the Laboratory Report;
- A copy of the Analyst's Bench Notes;
- A copy of the documentation for all calibrators, controls, blanks, internal standards and standard mix and ALL associated Chromatographs;
- A copy of the Calibration Curve Result;
- A copy of all maintenance logs for the Gas Chromatograph device; A copy of all maintenance logs for all pipettes in use at the time defendant's blood was tested.

### ***Refusal***

If you refuse to provide a blood or breath sample after being requested by the police, you face an administrative suspension of your operating privileges for at least 12 months. If you have previously refused to provide a breath or blood sample, your operating privileges will be suspended for 18 months. In addition, you must pay a restoration fee of \$500, \$1000, or \$2000 depending on your prior DUI record and Refusal Record.

**Appeal:** If you receive a notice of suspension from PennDOT, you have thirty (30) days from the "mail date" of the notice to file an appeal. An appeal of a license suspension must be filed with the Prothonotary. It is separate from your criminal case! Therefore, if you receive a notice from PennDOT, you should act immediately to file an appeal to preserve your rights. Failure to file within 30 days will result in a loss of rights.

### **d. Recommendations**

Following a Preliminary Hearing, an experienced DUI Defense Attorney will be able to categorize your case as:

- **Suppressible / Winnable (Trial Recommended)**
  - There is a constitutional error that could lead to have the charged withdrawn.
  - There is a substantial likelihood that your case can be won at trial
- **Defensible (Negotiations will likely result in a Plea to a reduced charge)**
  - There are a number of potential defenses to your case
- **Vulnerable, or Guilty Plea/ ARD Recommended:**
  - You may not be successful at trial, but I will zealously represent your interests in plea negotiations or ARD.

## E. FREQUENTLY ASKED QUESTIONS

**Please note: If you retain our services, you will receive more specific and comprehensive instructions regarding your preliminary hearing.**

### **What time should I arrive?**

You should arrive approximately 15 minutes prior to your scheduled hearing. If you are represented by my firm, you should bring your folder with you.

### **What should I wear?**

You should wear something comfortable and appropriate. There is no need to wear a suit.

### **Will I go to jail at the preliminary hearing?**

No. The court will set “bail.” Bail means that you are released. You will either be released on your own recognizance or unsecured bail. Either way, no money changes hands and you are free to leave. There are no restrictions on your ability to travel anywhere in the United States. International travel is on a case by case basis.

### **Will I lose my license at the preliminary hearing?**

No. The loss of operating privileges will not occur, if at all, until the final resolution of the case.

### **Will I have to testify?**

You have the right to testify, but you are not required to do so.

### **Can I plead guilty at a preliminary hearing?**

In most cases, no. In some cases, yes. This will be discussed with you prior to your hearing.

### **Can the charges be dismissed at the preliminary hearing?**

Yes. However, the charges can only be dismissed on agreement or if the government cannot meet their burden of proving a *prima facie* case.

## **Why should I waive my hearing?**

You should only waive your hearing after I have the opportunity to discuss your case with the officer to determine if any potential defenses exist or if there is a strong possibility of an agreement at the Court of Common Pleas.

## **Does a waiver mean I am guilty?**

No. A waiver means that you agree that there would be enough evidence against you for the government to meet its burden of proof. (That there is **some evidence** you drove or operated a motor vehicle on a roadway or trafficway after imbibing alcohol or consuming a controlled substance.)

## **What happens if a hearing is held?**

If a hearing is held, the judge will determine if the government has proven a *prima facie* case. The judge does not rule on credibility (i.e.; he doesn't try to determine if someone is lying).

## **Can the government rely on hearsay?**

Hearsay is an out of court statement by a person who is not present to testify. There are several exceptions to the "Hearsay" rule. The rule is quite complex. Nonetheless, the government can rely on this information to help support its case. Below are two examples:

1. The officer can testify that a lab report indicated your BAC was above .08%
2. The officer can testify that he saw the injuries and the victim told him that you did it.

## **COURT OF COMMON PLEAS**

### **A. FORMAL ARRAIGNMENT**

A Formal Arraignment is a court proceeding that begins your case in the Court of Common Pleas. At an arraignment, you will receive a copy of the Criminal Information. An Information is a formal document, filed by the District Attorney's Office setting forth the charges against you. That document will be the guide for all actions in your case including, if your case goes to trial, the charges the judge/jury will be asked to decide.

Many counties allow you to waive your formal arraignment if you have an attorney. To do so, you and your lawyer will complete a Waiver of Arraignment form. The form replaced the arraignment process described below.

At an arraignment, you will enter a plea of Not Guilty. You will be advised of the charges listed on the Information as well as your rights and responsibilities under the Pennsylvania Rules of Criminal Procedure. The two most important rights and responsibilities are: (1) Right to request Discovery and (2) Right to file an Omnibus Pre-Trial Motion.

### **B. DISCOVERY**

Discovery is the process by which the government must provide certain information to the defense upon request. While there is a formal rule that outline discovery requirements, discovery usually consists of the following:

- Police and Accident Reports
- "Dashcam" and "Bodycam" video footage
- Prior Criminal History
- Prior Driving History
- Witness Statements.

I request Discovery in every case, including those cases where ARD is the initial recommendation. Other attorneys may opt not to request discovery. The reason that I request Discovery is to ensure that my initial recommendation was correct. An example of a first offense case with a positive result is described below.

Every attorney has a different procedure for requesting and reviewing discovery. I review discovery using a 3-step process.

- Video Review - I review video without the assistance of a report. My method allows me to view the case from the officer's perspective to determine if a reasonable

officer would believe that you operated a motor vehicle in violation of Section 3802 of the Vehicle Code.

- Report Review – I next review the report for completeness and accuracy. The report should be consistent with the video(s). In addition, the report should contain nothing that reasonably should have been available to view. Finally, I review the report as an indication as to the officer's communication skills.
- Second Video Review – My second video review is more detailed. I view the video with my notes from my earlier view as well as the police report. This secondary review ensures that nothing has been missed. It is a necessary part of any good attorney's review process.

### **C. PLEA NEGOTIATIONS**

Following a review of Discovery, you will need to decide which course of action to take based upon your attorney's recommendation. It is my policy that the client, not the attorney, decides the course of action. Therefore, it is my policy that I will provide my client with a full and fair evaluation of the case.

If the case cannot be won, it may be advisable to accept the standard offer from the District Attorney's Office. These "standard offers" are usually involve the same or slightly less of a sentence than you would receive if you went to trial.

If there is a defect in the case or there is another basis, such as medical condition, to request leniency, negotiations with the District Attorney's Office should be pursued. For example, we are often able to assist our clients who have medical conditions avoid jail by participating in house arrest or other program. While we cannot guarantee a particular outcome, our Legal Nurse Consultant, plays an invaluable role in achieving such a result.

### **D. PRE-TRIAL MOTIONS**

Within 30 days after arraignment, you may file an Omnibus Pre-Trial Motion. In other words, any potential errors you wish you allege (not factual guilt) must be resolved these errors may include issues of jurisdiction, double jeopardy allegations, and more often than not motions to suppress evidence due to Constitutional violations.

A Suppression Motion is a motion to suppress evidence (asking the court to make evidence inadmissible) due to a violation of your state and/or federal constitutional rights. More often than not, it is alleged that your detention or arrest was unconstitutional. In the event the court finds in your favor, the evidence, and any evidence that resulted thereafter will be inadmissible.

For example, in a recent case, my client was detained for being parked in a parking lot after dark. He was subsequently arrested for DUI. Because the parking lot is open to the public, we argued the officer lacked reasonable suspicion to believe my client was engaged in criminal activity before he was detained. The Court of Common Pleas agreed with our argument. The government appealed. The Superior Court agreed with our argument. Therefore, the charges against my client were dismissed.

There are other procedural motions that may be filed. For example, if the government fails to bring your case to trial within 365 days, the case may be dismissed. If the government fails to join all charges from a single incident, the case may be dismissed. Having an experienced DUI Defense Attorney assist you is imperative to a positive outcome.

If the defense wins the motion hearing and the motion is granted, the government has an automatic right to immediately appeal if the decision of the court substantially prevents the government from pursuing prosecution. If the motion is denied, the defendant must wait until after trial and sentencing to file an appeal.

## **E. TRIAL**

There are two types of trial available. A non-jury (Bench) trial is available to any person charged with DUI. A jury trial is only available to persons charged with a Misdemeanor 1, Misdemeanor 2, or Felony offense. That means that a jury trial is denied to anyone who has a first-offense case or a second offense case with a BAC below .16%. Because the maximum penalty of an ungraded misdemeanor is 6 months incarceration, there is no Constitutional right to a jury trial.

Regardless of whether the case is heard before a judge or a jury, certain tenets of trial remain. You are presumed innocent until you are proven guilty beyond a reasonable doubt. The government has the burden of proof. The Defendant has no burden of proof or production. You have the right to testify in your own behalf, but cannot be compelled to do so.

Having an experienced DUI Defense Attorney assist you is your best option. For example, where the case involves a determination of impairment, having an attorney, like me, who knows and understands the SFST and ARIDE protocol can be an important advantage on cross-examination.

You should expect that your attorney will take a case to trial when it is appropriate. You should expect your attorney to be a competent trial attorney who is comfortable in front

of the jury. Most importantly, you should expect your attorney to know more about DUI than anyone else in the room. Hiring me allows you that confidence.

If you are acquitted after trial, your charges can be expunged. In the event you are convicted, you will be sentenced and then have the right to file an appeal.

## **F. SENTENCING**

In Pennsylvania, courts are required to consider the Pennsylvania Sentencing Guidelines. Every crime in Pennsylvania is assigned an Offense Gravity Score (OGS) between 1 and 14. All Ungraded Misdemeanor DUI offenses are given an OGS of 1. All Misdemeanor 1 DUI offenses are given an OGS of 5. All Felony offenses are given an OGS of 5.

The court will also consider a defendant's Prior Record Score (PRS). A PRS is calculated based upon the individual's prior criminal convictions. A sentencing matrix has been created assigning a "standard range" for minimum sentences for each OGS and PRS.

For DUI cases, the court must also consider the Mandatory Minimum Sentence prescribed by statute. For more information about DUI sentencing, [click here](#).

## **G. APPEALS**

Following trial and sentence, you have the right to file a Post-Sentence Motion to the Trial Court within 10 days of sentence. You also have the right to file a Notice of Appeal to the Pennsylvania Superior Court within 30 days. On appeal, you may raise any issue that was preserved at the Court of Common Pleas.

Upon filing an appeal, the court will require both parties file briefs. No additional evidence or information can be raised on appeal that was not preserved at the trial court level. In other words, the court will only determine if the correct decision was made by reviewing transcripts. In some cases, an Oral Argument will be scheduled. At Oral Argument, lawyers from both sides will be before a panel of 3 judges. Each will restate his case and argue the merits as set forth in the briefs. In addition, they will respond to questions from the Superior Court judges.

A decision of the Superior Court often takes months to decide. The party that loses the appeal can then petition the Pennsylvania Supreme Court for allowance of appeal. An appeal to the Pennsylvania Supreme Court is not a right. Instead, the Supreme Court will determine if the issues raised in the appeal are of such importance that they must intervene.

## **COLLATERAL CONSEQUENCES**

DUI charges can impact every aspect of your life. Whether it is a job, a CDL, a professional license, immigration, firearms rights, or custody. These collateral consequences of DUI are important. My firm is limited exclusive to DUI. However, because we believe in a holistic approach to DUI defense, we pay special attention to the following matters to ensure we achieve the best possible outcome for our clients.

**ATTORNEYS:** If you represent a client in the following matters and they have receive a DUI, we highly recommend you contact us immediately to ensure a coordinated effort to benefit the client.

### **A. EMPLOYMENT**

Many clients want to know how this will affect their job. For most, there will be no impact. Unless you drive for a living, there is nothing that will prevent your from getting to and from work if this is a first offense.

However, we recognize that many employers overreact to news that someone has been arrested for DUI. Unless you are subject to a contract or a specific rule that requires you inform your employer of an arrest, we recommend that you do not provide the information to the employer. If and when it becomes necessary to provide the information, I will work with you to ensure your employer has the pertinent facts necessary to make an informed decision to keep you employed.

I am proud to say that 100% of my clients who have requested my assistance with an employment matter were able to keep their jobs.

If this is a second or subsequent offense, there may be an impact as second and third offenses often involve incarceration. If are subject to a sentence that involves incarceration in the county jail, you will be eligible for work release. If you are subject to a sentence that involves house arrest, you will be able to go to and from work as normal. Of course, you may have to find a ride.

If you are subject to a sentence that is one year or greater, there is a possibility that you may be able to serve that sentence in the county jail. If you are sentenced to state prison, you will not be eligible for work release.

Obviously, it is important to look for every potential defense to prevent or mitigate these consequences.

## **B. COMMERCIAL DRIVERS LICENSE**

If you are convicted of, or accept ARD for, a violation of Section 3802, your Commercial Driver's License will be disqualified for a period of 12 months. If this is your second offense while having a CDL, your CDL will be disqualified for life. The same rules apply for a refusal of a breath or blood test.

## **C. PROFESSIONAL LICENSURE**

If you are licensed by a State Board, such as the Medical Board, Nursing Board, etc., there are rules and regulations that require you to report certain arrests. We have represented dozens of licensed professionals. We will work with you to mitigate the consequences associated with a DUI arrest. Moreover, we will assist you in navigating the board's processes and procedures.

## **D. IMMIGRATION**

DUI may impact your immigration status. Generally, a first offense DUI does not result in deportation or other significant immigration consequence. However, a second or subsequent offense can. If you are not a Citizen of the United States, we will work with your Immigration attorney to achieve the best possible outcome.

## **E. FIREARMS**

A first offense DUI does not impact your ability to own or possess firearms. However, if you are charged with a violation of Section 3802(d) you may be prohibited from buying a firearm for a period of one year. If you are convicted of a Misdemeanor 1 DUI you will be prohibited from purchasing firearms for life. The law, with respect to possession of firearms is not settled. If you are convicted of a Felony DUI, you will be prohibited from purchasing, owning, or possessing firearms for life.

## **F. CUSTODY**

Although we do not practice Family Law, we are aware that a conviction for certain [Misdemeanor crimes](#) such as Drug Use/Possession, Endangering the Welfare of a Child, or any DUI or Ignition Interlock charge can be a factor in determining custody. See 23 Pa.C.S.A. 5328, 5329, and 5330. Moreover, these statutes not only apply to the parent but also any member of the parent's household.

## **BEFORE YOU HIRE A LAWYER**

### **A. BEFORE YOU HIRE A LAWYER**

Hiring a lawyer to defend you against a DUI charge is one of the most important decisions you will make. The lawyer you choose will have a substantial impact on your case. If you hire the wrong lawyer, you will likely not know what could have been done to help you. If you hire the right lawyer, you will know that everything was done and you will likely see a positive result.

**QUALIFICATIONS:** Before you hire a lawyer, you should insist on the following:

1. Verifiable Case Results
2. Verifiable Client Reviews ([See ours here](#))
3. Verifiable Qualifications

**IF YOU ARE A LAWYER READING THIS BOOK:** The information in this book is free. We provide it to anyone who asks. We know other lawyers use our guidebooks and websites for information. We have always been available to answer questions in courtrooms and brief emails. However, quick responses to “quick questions” are no substitute for a comprehensive DUI education. We are proud to provide consulting expert services to lawyers throughout the country. Thus, if you are a lawyer reading this book, we welcome you. Be sure to sign up for one of our courses at [www.DUITrainers.com](http://www.DUITrainers.com) or consider bringing us in to help you as a [Consulting Expert](#).

**IN-PERSON MEETINGS:** Lawyers are masters in the art of persuasion. Therefore, **we do not recommend in-person interviews**. Simply put, there is too much pressure during an in-person interview to sign a contract. Therefore, we recommend a phone consultation or, as is our procedure, an [online case evaluation](#).

**CLIENT COMMITMENT:** At our firm, we have developed an online case evaluation. We do not offer in-person interviews because, quite simply, we treat our lawyer-client relationship as just that. We have an obligation to work hard for our clients and not, as some lawyers do, spend time chasing down the next client.

**OUR QUESTIONNAIRE:** If you are charged with a DUI, we believe it is beneficial to contact a number of attorneys. We recognize that you may not know the right questions to ask. For this reason, we have developed a [questionnaire](#) to help you interview lawyers before you make the hiring decision. We also recognize that you may wish to [represent yourself](#) or may be in a financial position where self-representation is your only option. If so, our Consulting Expert services may be beneficial.

## B. QUESTIONS TO ASK TO CHOOSE THE BEST DUI ATTORNEY FOR YOUR CASE

### OUR ANSWERS

#### BACKGROUND, EXPERIENCE, AND PRACTICE

##### 1. Are you an experienced DUI Attorney?

- a. **Yes.** Since 1990, I have viewed DUI cases from every possible angle. As a former police officer, prosecutor, and now as a defense attorney, I have reviewed hundreds of DUI cases. I know and understand the procedures and tactics used by law enforcement officers. I understand the weaknesses of the field sobriety tests, the blood & breath tests, and report writing skills of law enforcement and, more importantly, how to use those weaknesses to the advantage of my client.

##### 2. Who will represent me?

- a. [Attorney Morgan](#) supervises every case in the office. With over 1000 DUI (not criminal) cases behind him, he knows everything there is to know about DUI law.
- b. You have your choice of lawyers to represent you in the courtroom. Our fee agreement provided to you in advance of your decision to retain us outlines each attorney's responsibilities.

##### 3. Do you negotiate fees? Will you match another attorney's rate?

- a. **No.** I pride myself on setting fees based upon formula set forth above. That formula has been developed over many years of representing over 1000 people charged with DUI.
- b. We offer reasonable payment plans designed to fit almost any budget.
- c. If an attorney is willing to negotiate his fees (*the very thing that feeds his/her family*) he is not going to work hard for you.
- d. There are a lot of lawyers out there who charge a minimal fee and do ZERO work. If you hire a cheap lawyer, you will get a cheap lawyer's work.

##### 4. Will there be any hidden fees?

- a. Unlike some attorneys who charge only for the preliminary hearing and then hit you with a large bill afterward, I believe in transparency. Our fees for nearly every possible scenario are listed in our Fee Schedule. We also let you know if they are usual or unusual. Most importantly, YOU are in charge of the decision to obtain more services. We never charge a fee without your expressed authorization.

## 5. How are Fees Calculated?

- a. We offer ONLY a fixed fee service. The fee you pay us is the only fee that is required unless certain enumerated circumstances occur. We encourage communication. Therefore, we do not charge for phone calls, emails, or other factors that arise in the ordinary course of representation.
- b. Fees are calculated based upon the following factors:
  - i. My knowledge and experience
    1. 27 years in the Criminal Justice System
    2. Representation of over 1000 DUI Defendants
    3. Instructor of Attorneys
    4. Advanced knowledge of Field Sobriety Tests, etc.
  - ii. Complexity of the Case
  - iii. Accident or non-accident
  - iv. Blood Alcohol Concentration
  - v. Venue (Location)
  - vi. Number of prior DUI arrests
  - vii. Prior Criminal History
  - viii. License Status (CDL, etc)
  - ix. Professional Impact (Doctors, Nurses, Truck Driver, Mechanic)

## 6. Are you a DUI Specialist:

- a. In the past 10 years, I have represented over 1000 people charged with DUI in Pennsylvania. My practice is 100% dedicated to DUI Defense.
  - i. I do not represent criminals, divorce cases, or write wills. I only represent DUI Defendants.
- b. I am a Standardized Field Sobriety Test (SFST) Instructor. In addition, I also train other attorneys in the area of Advanced Roadside Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) Programs.
- c. Through my company, [DUI Trainers & Consultants, LLC](#), I teach other attorneys how to defend DUI cases through state accredited Continuing Legal Education. I am a recognized authority in the area of pre-arrest testing.

## 7. Are you a former prosecutor? / How does this impact my case?

- a. **Yes.** I am a former prosecutor. I have worked for:
  - i. The Las Vegas, Nevada District Attorney's Office,
  - ii. The Cumberland County Pennsylvania District Attorney's Office,
  - iii. The Lancaster County Pennsylvania District Attorney's Office.

- b. I know and understand the prosecutor's manner of preparing cases, the goals of the prosecutor, and the best way to utilize those factors to the benefit of my client.

**8. Are you a former police officer? / How does this impact my case?**

- a. **Yes.** I am a former law enforcement officer. I was first sworn in as a Police Officer in 1990. I left law enforcement in 1999.
- b. I was my unit's traffic enforcement/DUI Specialist. I received advanced training in the administration of breath testing as well as Field Sobriety Testing.
- c. I personally administered the SFST on hundreds of occasions. I know the weaknesses of these tests at a different level than most attorneys.

**9. I want an attorney who will devote time and energy to my case: Do you limit the number of people you represent?**

- a. **Yes.** I devote my practice to helping my clients achieve the best possible outcome for their case. To do so, I must devote more time and energy to each case. As a result, I only accept clients that I know will benefit from my assistance.

**10. I want an attorney who will communicate with me: Do you return phone calls / emails promptly?**

- a. **Yes. Communication is the key to a successful lawyer-client relationship!** Email is preferred, because my assistant and I can respond to your question immediately, even while in court, during the evening, or on the weekend. If you call and leave a message, we will contact you within minutes or hours, not days. We have a 100% client satisfaction rate for communication.
- b. **If you do not have an email, we encourage you to get one through gmail.com, yahoo.com, or Hotmail.com.** All are free.

**APPROACH TO YOUR CASE**

**11. I just want to apply for the ARD program: Do I need an attorney?**

- a. **Need?** No.
- b. **Are you better off with an Attorney?** That depends on the quality of the attorney. If your first contact with an attorney leaves you feeling like ARD is

your **only** goal, without evaluating your case fully, you must evaluate whether or not his/her services are worth your hard-earned money.

- c. **ARD is NOT your ONLY option.** It is a good program, but not a great program. You should ONLY hire a lawyer like me who will fully and fairly evaluate your case before you make any decision about ARD. **Our case results are full of cases where ARD was offered, but a better outcome was achieved.**

## 12. What are your goals for my case?

- a. Dismissal of Charges
- b. Avoid Jail
- c. Avoid License Suspension
- d. Keep your job

## 13. Can we see examples of your successful cases?

- a. **Yes!** I provide a copy of our [case results](#). I cannot guarantee any particular result in your case. What I do guarantee is that I have the knowledge and experience necessary to ensure that every detail is examined and every defense pursued.
- b. If an Attorney cannot show you his successful cases, you should not hire him/her.

## 14. Is there an independent website where I can see your client reviews?

- a. Yes, you can go [here](#).
- b. Relying on a lawyer's on recitation of his client reviews is foolish. Insist on seeing the reviews on an independent site.
- c. We have learned of another law firm paying clients for positive reviews. We find this practice to be unethical.

## 15. Do you request and review discovery in every case?

- a. I request discovery in every case.
- b. I review discovery videos and police reports in every case, even when ARD is recommended. This 3-part process ensures every issues is addressed and every potential defense is explored.

## 16. Do you take DUI cases to trial?

- a. An Attorney who is unwilling to go to trial is NOT your best option.
- b. **Yes. IF it is in your best interest** to take a case to trial, I will recommend trial. Trial is about achieving the best result for your case. It isn't about padding my resume.

- c. Most of my cases resolve favorably without trial because my knowledge, experience, and opinions are trusted by prosecutors and the courts.

**17. Do you recommend ARD in some cases?**

- a. **Yes.** Your charges may be resolved by ARD if it is in your best interest.

**18. Have you had a DUI case dismissed completely at the preliminary hearing?**

- a. **Yes.** Although I cannot guarantee this result. It is something I strive for in every case.

**19. Are you able to negotiate a reduction in charges at a preliminary hearing?**

- a. **Yes.** In most cases, I am able to obtain a reduction of charges or dismissal of some charges at your preliminary hearing.

**KNOWLEDGE OF DEFENSE STRATEGIES**

**Medical Condition**

**20. I have a medical condition, does this matter?**

- a. DUI involves science. An attorney who understands medicine may be an essential asset in your case.
- b. Your medical condition can affect your ability to perform field sobriety tests, your breath testing results, and/or your blood test results. Your medical condition is vitally important to your defense.
- c. **Trauma affects BAC.** If you were involved in a motor vehicle accident as part of your case, your Blood Alcohol Content result can be affected.
- d. If I recommend your case for trial, I may ask for your authorization to release your medical records.
- e. A [Legal Nurse Consultant](#) (A Registered Nurse with over 25 years of experience) is available to review your records.

**Field Sobriety Tests & Drug Recognition Experts**

**21. Have you received advanced training in the area of Field Sobriety Testing?**

- a. **Yes.** I have the following certifications/qualifications:
  - a. NHTSA Qualified SFST Instructor.
    - i. This means I am qualified to teach police officers how to administer field sobriety tests.
  - b. ARIDE Qualified
    - i. This means I have received the same training as the officer who arrested you.

- ii. I regularly teach other attorneys the inside information about this program through my company DUI Trainers & Consultants, LLC.
- c. DRE Trained
  - i. I have received the same training as Drug Recognition Experts
  - ii. I regularly teach other attorneys the inside information about this program.
- b. I was first certified in the use of Field Sobriety Tests in 1990 as a police officer. I subsequently was certified in 1994 and 1998. I currently possess all manuals utilized by police officers since 2004.
- c. I also teach attorneys how to analyze SFST and ARIDE cases as part of my firm, *DUI Trainers & Consultants, LLC.* ([www.DUITrainers.com](http://www.DUITrainers.com))

**22. I “failed” my field sobriety tests (FST) does this mean I am guilty?**

- a. **No.** Field Sobriety Tests were designed to determine whether or not a person has a blood alcohol level above a .10%. Even when properly administered, they are effective less than 75% of the time. They are rarely administered properly.
- b. I am a Field Sobriety Test Instructor.

**23. The officer who examined me was a Drug Recognition Expert (DRE). Does this mean I am guilty?**

- a. **No.** Recognition of a police officer as an “Expert” has not been accepted in all counties in Pennsylvania. Moreover, even if the officer is certified as an “expert,” he is subject to cross-examination based upon his personal observations. Police Officers should not be performing medical examinations. I have been taught the same procedures used by Drug Recognition Experts and did complete the certification course.

**Blood & Breath Testing**

**24. My Blood Alcohol Concentration (BAC) / Breath Alcohol Concentration (BrAC) was above the legal limit. Does this mean I am guilty?**

- a. **No.** It means that law enforcement has provided an estimate of your blood alcohol concentration. The Commonwealth must prove, beyond a reasonable doubt, that your BAC/BrAC was above the legal limit.

**25. Drugs were found in my blood; does this mean I am guilty?**

- a. **It depends.** In some cases, the Commonwealth need only establish that you blood contained a certain level of certain Schedule I or II controlled substances. In other cases, the Commonwealth must establish that the drugs in your system impaired your ability. They must do so with the assistance of an expensive expert. Therefore, the Commonwealth may be willing to reduce your charges. Or, in the alternative, you may take the case to trial.

**26. How does a Breathalyzer work?**

- a. **Poorly.** In simple terms, an infrared light is produced and is shone through the particles of your breath to determine whether there is a presence of the molecules consistent with ETOH (Ethyl Alcohol). The device then calculates the amount of alcohol to determine the grams of alcohol which would be present in 210 liters of breath. If the result is 8 grams of alcohol per 210 liters (the equivalent of 105 2-liter bottles of soda) you will be subject to charges.
- b. Operator error impacts the reliability of the device.
- c. It is not accurate (Think of your two results, are they identical? In most cases no)

**27. Are you able to challenge a Breathalyzer in court?**

- a. **Yes.** Absolutely. This is particularly true when the consequences are high (second or third offense) or the result is close to a lower level (.110 or .170).

**28. I've heard that blood testing is more accurate than breath testing. How is my blood tested?**

- a. There are two primary means of testing your blood for the presence of alcohol. The blood can be tested utilizing serum or through Headspace Gas Chromatography.

**29. What is the difference between Serum Testing and Laboratory (Gas Chromatography) Testing?**

- a. Serum testing is less accurate than whole blood testing and is known to produce a higher result that must be converted using mathematics and a conversion rate found in a book. The medical technicians often testify that they do not know why they utilize a particular conversion rate.

**30. Are you able to challenge a blood test in court?**

- a. Absolutely.

### 31. Why should I hire you?

- a. You should hire my firm if you are committed to a successful resolution of your DUI Case.
- b. Some attorneys will tell you that you are guilty or recommend ARD but will still expect to be paid for their “services.”
- c. Other attorneys will tell you that you can expect to go to trial because they “fight for you.”
- d. Attorney Morgan seeks to achieve a successful result. This means that he wants you to avoid a conviction, avoid jail, and avoid a license suspension.
- e. This document explains how we do our job. Other documents tell you about our team, our case results, and our client reviews. ***Does any other lawyer or law firm provide you this much information?***

QUESTIONS TO ASK BEFORE HIRING A LAWYER  
*FOR USE IF YOU SPEAK WITH OTHER LAWYERS:*

**BACKGROUND, EXPERIENCE, AND PRACTICE**

1. Are you an experienced DUI Attorney?
2. Who will represent me?
3. I want a specialist: How much of your practice is dedicated to representing DUI Defendants?
4. Are you a former prosecutor? / How does this impact my case?
5. Are you a former police officer? / How does this impact my case?
6. I want an attorney who will devote time and energy to my case: Do you limit the number of people you represent?
7. I want an attorney who will communicate with me: Do you return phone calls / emails promptly?

**APPROACH TO YOUR CASE**

8. I just want to apply for the ARD program: Do I need an attorney?
9. What are your goals for my case?
10. Can we see examples of your successful cases?
11. Is there an independent website where I can see your client reviews?
12. Do you Request/Review Discovery in every case?

13. Do you take DUI cases to trial? How many cases have you taken to trial in the last two years?

14. Do you recommend ARD in some cases?

15. Have you had a DUI case dismissed completely at the preliminary hearing?

16. Are you able to negotiate a reduction in charges at a preliminary hearing?

### **KNOWLEDGE OF DEFENSE STRATEGIES**

#### **Medical Condition**

17. I have a medical condition, does this matter?

#### **Field Sobriety Tests & Drug Recognition Experts**

18. Have you received advanced training in the area of Field Sobriety Testing?

19. I “failed” my field sobriety tests (FST) does this mean I am guilty?

20. The officer who examined me was a Drug Recognition Expert (DRE). Does this mean I am guilty?

#### **Blood & Breath Testing**

21. My Blood Alcohol Coconcentration (BAC) / Breath Alcohol Concentration (BrAC) was above the legal limit. Does this mean I am guilty?

22. Drugs were found in my blood; does this mean I am guilty?

23. How does a Breathalyzer work?

24. Are you able to challenge a Breathalyzer in court?

**25. I've heard that blood testing is more accurate than breath testing. How is my blood tested?**

**26. What is the difference between Serum Testing and Laboratory (Gas Chromatography) Testing?**

**27. Are you able to challenge a blood test in court?**

**28. Why should I hire you?**

## **ABOUT US**

### **100% DUI DEFENSE**

The first question many people ask is: “Why do you have two firms?” The simple answer is this. Over the years, I became the “go-to guy” in the courtroom when [attorneys](#) had a “quick question.” Often, these brief two-minute conversations were about their cases and, unfortunately, I was presented with minimal facts and did my best to help.

I have spent 27 years in the criminal justice system. The last ten years have been spent exclusively representing DUI Defendants. I have represented over 1000 people charged with DUI. My practice is limited exclusively to DUI Defense. That means that I do not accept divorce cases, write wills, or represent traditional criminal defendants like drug dealers, thieves, and violent thugs. I am proud of my [case results](#) and [client reviews](#).

I have received advanced training far beyond most, if not all, criminal defense lawyers in the area. I am a qualified National Highway Traffic Safety Administration (NHTSA) Standardized Field Sobriety Test (SFST) Instructor. I have been accredited by Pennsylvania as well as other states<sup>5</sup> to teach attorneys the practical aspects of SFST and other NHTSA DUI and DUI-Drug testing protocols.

The Criminal Defense market is competitive. DUI cases are complex. Like any business, attorneys want to maximize their profits, but often find themselves in over their heads with the complexities of DUI. Although the other attorneys' questions became more frequent and complex the attorneys were unwilling to either refer their clients to me. For that reason, I started DUI Trainers & Consultants, LLC. This training and consulting firm provides consulting expert services to attorneys who need expert DUI assistance or Continuing Legal Education courses.

At the same time, I enjoy practicing law. I enjoy being in the courtroom. I enjoy meeting with the people who will benefit from my assistance. While I cannot guarantee that every client a positive outcome, my team and I have been successful at achieving some great results for great people. We hope we can help you. If you have not already done so, we encourage you to submit your case to us at [www.dui-case-evaluation.com](http://www.dui-case-evaluation.com)

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<sup>5</sup> Including Ohio, Virginia, New Jersey, Delaware, West Virginia

## **ATTORNEYS & STAFF**

### **F DEAN MORGAN, ESQUIRE**

DUI Defense Attorney  
DUI Consulting Expert,  
DUI Trainer / SFST Instructor

Dean Morgan is a DUI Defense Attorney, Consulting Expert, and Trainer. Whether he is representing a client in a Pennsylvania Courtroom, providing expert consulting services to an attorney in another state or teaching a Continuing Legal Education (CLE) Class to attorneys throughout the nation, Dean is singularly focused on DUI.

Dean was born and raised in a poverty-stricken community in California. He is the first male in his family to graduate from high school. He is the first person in his family to graduate from college. Dean's rural roots and common-sense work-ethic guide him in his every day activities and the practice of law.

Dean started his law enforcement career in 1990 for the Hanford Police Department in Hanford, California. In 1994, Dean joined the United States Marine Corps, dedicated to serve his country as he had served his community. As a military police officer assigned to MCB Quantico, Virginia, Dean took part in substantial public safety changes aboard base and had the opportunity to train at the FBI Academy. In 1997, while still a U.S. Marine, Dean joined the Stafford Sheriff's Office in Stafford, Virginia. He was assigned as his squad's traffic and DUI Enforcement Officer. He received advanced training in Standardized Field Sobriety Testing (SFST) as well as a certification from the Virginia Department of Criminal Justice Services as a Breathalyzer Operator. While a member of law enforcement, Dean made hundreds of arrests for DUI and other offenses.

In 1999, Dean left law enforcement to pursue his education and a law degree. He worked full-time while attending college. While in law school, Dean worked for the appellate division of the Cumberland County Pennsylvania District Attorney's Office from 2004 to 2006. Dean drafted a number of briefs to the Pennsylvania Superior, Commonwealth, and Supreme Court. Many dealt with the change to the Pennsylvania DUI law.

Following Dean's graduation from Penn State Dickinson School of Law, Dean joined the appellate division of the Clark County (Las Vegas) Nevada District Attorney's Office. Dean specialized in Death Penalty and Sex Crime appeals. Dean drafted appellate briefs to the Nevada Supreme Court and the United States Supreme Court.

Dean returned to central Pennsylvania where he joined the Lancaster County District Attorney's Office. There he prosecuted juvenile, misdemeanor, and felony offenses.

In 2010, Dean started his own law firm. Since 2010, Dean has represented over 1000 people charged with DUI. Dean limits his practice exclusively to DUI Defense.

He subsequently took advanced training to become a Standardized Field Sobriety Test Instructor. In addition, he received advanced training in the NHTSA Advanced Roadside Impaired Driving Enforcement (ARIDE) program as well as Drug Recognition Expert (DRE) Program.

In 2017, Dean started DUI Trainers & Consultants, LLC ([www.DUITrainers.com](http://www.DUITrainers.com)). Through DUI Trainers, Dean received the accreditation to teach Continuing Legal Education (CLE) Courses to attorneys in Pennsylvania, Ohio, Virginia, West Virginia, New Jersey, Delaware and others. In 2019, Dean is offering four courses to attorneys including:

- NHTSA SFST Student Course (3 Days)
- DUI Boot Camp: SFST/ARIDE/DRE Overview (3 Days)
- DUI Mini Camp: SFST/ARIDE/DRE Overview (2 Days)
- Drugged Driving: ARIDE/DRE Overview (2 Days)

In addition, Dean offers his specialized knowledge and experience to attorneys across the country as an Expert Consultant. In this role, Dean offers case review and analysis services to civil and criminal defense attorneys including:

- Video and Written Discovery Review
- Written Evaluation Report (w/ Citation to NHTSA Manuals)
- Trial Preparation Assistance

The combination of experience from these roles provides Dean with the specialized knowledge, training, and experience to effectively represent clients in Pennsylvania.

### **ASHLEE STEWART**

Case Manager / Coordinator

Ashlee joined The Morgan Law Firm in 2013 as a Receptionist/Marketing Assistant. Since that time, Ashlee has risen to direct our administrative operations. Ashlee is responsible for communicating with clients, communicating with the courts, scheduling hearings, phone conferences, and requests for Discovery. Ashlee is an essential part of your defense.

## **JERRY W. BROWN, ESQUIRE**

Senior Attorney

Jerry Brown, Esquire is our Senior Attorney. With over 25 years of experience in the practice of law, Jerry is an essential part of our defense team. Jerry handles first and second offense cases through the Court of Common Pleas. If your case is to be tried, Attorney Morgan will provide your defense with Jerry's assistance.

Jerry is responsible for all PennDOT matters including license suspension appeals and license restoration issues. In addition, Jerry provides assistance in Driving Under Suspension and Traffic Ticket cases.

### **ASSOCIATE ATTORNEYS**

Associate Attorneys play an integral role in our defense. If selected by a client, Associate Attorneys provide representation for simple first offense cases. They provide assistance by drafting motions, conducting legal research and keeping up to date on current trends in DUI law in Pennsylvania and throughout the country.

### **LEGAL NURSE CONSULTANT**

DUI is the only criminal offense that is impacted by one's ability to metabolize a substance. Specifically, alcohol and controlled substances impact each individual differently depending on their body's ability to absorb and eliminate the substance. Medical conditions such as diabetes, gastric bypass, arthritis, and your prescribed medications may be misinterpreted as signs of impairment.

Our Legal Nurse Consultants each have over 25 years of experience in diverse fields such as Emergency Department, Organ Transplantation, Adult Trauma, Pediatric Trauma, Geriatrics, and Surgical Intensive Care. Our Legal Nurse Consultants review medical charts and provide assistance in defending DUI Cases and/or provide assistance in analyzing alleged victims injuries.

### **LOCATIONS SERVED**

The Morgan Law Firm provide DUI Defense services throughout the Commonwealth of Pennsylvania. Our administrative offices are centrally located in Hershey, PA. We have litigated and won cases throughout Pennsylvania. We strongly believe that the best DUI Defense lawyer is superior to the best "local lawyer" just as the best heart surgeon is

better than the best local family doctor. If your freedom is on the line, you should have the best. We will travel to you to make sure we achieve the best possible outcome.

[DUI Trainers & Consultants, LLC](#) provides training and consulting services throughout the United States and Canada.

## **CONTACT**

### **On the Web**

The Morgan Law Firm

[www.PennDUIDefense.com](http://www.PennDUIDefense.com)

DUI Trainers & Consultants, LLC

[www.DUITrainers.com](http://www.DUITrainers.com)

### **Administrative Offices**

The Morgan Law Firm

151 W. Chocolate, Suite 145

PO Box 767

Hershey, PA 17033

### **Phone**

717-220-4300

### **Fax**

717-585-6574

### **Email**

Ashlee Stewart

Case Manager/Legal Assistant

[ASTewart@fdeanmorgan.com](mailto:ASTewart@fdeanmorgan.com)

### **New Client Case Evaluation**

[www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## **REPRESENTING YOURSELF**

Every person has the right of self-representation. However, it is not advisable to do so. In the event you choose to represent yourself, you must be aware of the following:

1. You will be held to the same standard as an attorney.
2. You must comply with all rules of Criminal Procedure.
3. Any ineffective or ill-advised actions on your part will not be excused.
4. Legal research can be difficult and complex.

Nonetheless, if you wish to act as your own attorney in the courtroom, [DUI Trainers & Consultants, LLC](#) will provide you the same assistance we provide to attorneys. Our advice will be limited to practical reviews of the Criminal Complaint and discovery. You must be aware that, in acting as a Consulting Expert, we are not acting as your attorney and no lawyer-client relationship is formed. For more information and our fee schedule, please go to [www.duitrainers.com/consulting-expert](http://www.duitrainers.com/consulting-expert)

## **INFORMATION FOR ATTORNEYS**

**WE KNOW:** We recognize that attorneys often come to our website seeking information. We appreciate the opportunity to help you learn more about DUI law in Pennsylvania. Although our brief conversations about your cases in the courtroom is likely helpful to you, there is no substitute for the information we can provide as Consulting Experts. We also know that you have had the opportunity to read our guidebook in the past when your clients bring them to your attention. We welcome the opportunity to help you.

Knowledge and experience are essential qualifications to represent a DUI Defendant. If you are reading this manual because it was given to you by a client or if you found it online, please know that we are here to help you through our consulting firm, DUI Trainers & Consultants, LLC. We want you to be successful in your endeavors because your client's future is on the line. For more information about our services, please go to [www.DUITrainers.com](http://www.DUITrainers.com)

We provide a number of options to help you better defend clients charged with DUI. These include:

## Continuing Legal Education Courses

In 2019, we are offering the following Continuing Legal Education Courses:

COURSE NAME	DESCRIPTION	CREDIT HOURS
<a href="#">DUI BOOT CAMP</a>	A 3-day intensive overview of the NHTSA SFST, ARIDE, and DRE Protocol including Trial Strategies	18.5
<a href="#">DUI MINI CAMP</a>	A 2-day intensive overview of the NHTSA SFST, ARIDE, and DRE Protocol	13.5
<a href="#">DRUGGED DRIVING</a>	A 2-day intensive overview of the NHTSA ARIDE & DRE Protocol including Trial Strategies	12.0
<a href="#">NHTSA SFST STUDENT COURSE</a>	The NHTSA Student Practitioner's Course. The same course used to train state and local police officers.	16.0

## Consulting Expert Services

We also offer case consulting services to assist attorneys throughout the country. For more information go to: <https://www.duistrainers.com/consulting-expert> We offer the following services:

CONSULTING SERVICE	DESCRIPTION
Preliminary Discovery Review and Report	Review Video, Police Report & Accident Report Email Assessment & Phone Consult
Intermediate Discovery Review and Report	Review Video, Police Report & Accident Report Report on Letterhead w/ citation to NHTSA SFST & ARIDE Manuals. Two Phone Consultations
Comprehensive Discovery Review and Report	Review Video, Police Report & Accident Report Report on Letterhead w/ citation to NHTSA SFST & ARIDE Manuals. Citation to DRE Manual. Legal Nurse Consultant Review, Three Phone Consultations
Trial Report/Cross Examination	Review Video, Police Report & Accident Report Report on Letterhead w/ citation to NHTSA SFST & ARIDE Manuals. Citation to DRE Manual. Legal Nurse Consultant Review. Cross Exam "script." Four Phone Consultations
Civil Litigation Support	Discovery Preparation and/or Review Trial Preparation