DEFENDING FREEDOM

The Ultimate Guide to DUI Cases in Pennsylvania
(2nd Edition)

Read BEFORE you meet with a lawyer!

- ARD: Could This be Your "Get Out of Jail Free" Card?
- Don’t Like Surprises? Then Avoid These 40 (or so) "Summary Offenses"
- Can You Afford Not to Ask These 3 Questions Before Hiring a Lawyer?
DEFENDING FREEDOM

The Ultimate Guide to DUI Cases in Pennsylvania (2nd Edition)

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# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why All This Information &amp; Why Now?</td>
<td>1</td>
</tr>
<tr>
<td>Disclaimer</td>
<td>5</td>
</tr>
<tr>
<td>Answers to Frequently Asked Questions</td>
<td>7</td>
</tr>
<tr>
<td>What is DUI?</td>
<td>8</td>
</tr>
<tr>
<td>Does the car have to be moving for me to be guilty of DUI?</td>
<td>8</td>
</tr>
<tr>
<td>What do police look for before they stop someone on suspicion of DUI?</td>
<td>9</td>
</tr>
<tr>
<td>What is the officer looking for during the initial detention at the scene?</td>
<td>10</td>
</tr>
<tr>
<td>If the police officer asks me if I have been drinking, what should I say?</td>
<td>11</td>
</tr>
<tr>
<td>Do I have the right to speak to a lawyer before I take field sobriety tests?</td>
<td>12</td>
</tr>
<tr>
<td>Am I required to do roadside sobriety tests?</td>
<td>13</td>
</tr>
<tr>
<td>Do I have to give a breath or blood test?</td>
<td>13</td>
</tr>
<tr>
<td>What happens if I do not submit to a breath or blood test?</td>
<td>13</td>
</tr>
<tr>
<td>What are some potential defenses to an allegation of DUI?</td>
<td>14</td>
</tr>
<tr>
<td>Question</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>What should I do when I think charges might be filed against me?</td>
<td>19</td>
</tr>
<tr>
<td>What are the procedural steps in a DUI case?</td>
<td>19</td>
</tr>
<tr>
<td>How long will it take to resolve my case?</td>
<td>25</td>
</tr>
<tr>
<td>What is the “speedy trial” rule?</td>
<td>25</td>
</tr>
<tr>
<td>Do I have to appear in person for a preliminary hearing?</td>
<td>26</td>
</tr>
<tr>
<td>Why is there a preliminary hearing in my case?</td>
<td>26</td>
</tr>
<tr>
<td>How does a preliminary hearing protect me from unlawful arrest &amp; detention?</td>
<td>26</td>
</tr>
<tr>
<td>I hear that many people waive their preliminary hearing. Should I waive mine?</td>
<td>27</td>
</tr>
<tr>
<td>What can my lawyer do to help me get prepared for my preliminary hearing?</td>
<td>28</td>
</tr>
<tr>
<td>What is a suppression hearing?</td>
<td>29</td>
</tr>
<tr>
<td>Do I have to testify at trial?</td>
<td>29</td>
</tr>
<tr>
<td>Will my case be decided by a jury?</td>
<td>30</td>
</tr>
<tr>
<td>What is ARD?</td>
<td>30</td>
</tr>
<tr>
<td>Will my driver’s license be suspended?</td>
<td>33</td>
</tr>
<tr>
<td>What is an Occupational Limited License (OLL)?</td>
<td>33</td>
</tr>
<tr>
<td>Will I lose my Commercial Driver’s License (CDL)?</td>
<td>35</td>
</tr>
</tbody>
</table>
How do I choose the right DUI lawyer for my case? 36

What questions should I ask before I hire a DUI lawyer? 38

How do I decide whether the lawyer is right for me? 39

More Information

The Basics: For Anyone Arrested for DUI in Pennsylvania 41

The Law 42

The Penalties 45

The Bottom Line 55

ARD: Could this be Your “Get out of Jail Free” Card? 55

Scoring Points with PennDOT: How to Avoid Surprises 62

What is a “Habitual Offender”? 66

Local Roadblock Ruled Unconstitutional 68

Read the Label: Prescription Drugs Can Result in DUI 70

How to Choose the Right Lawyer to Defend Your Freedom 72

Ask These 6 Questions Before You Meet Any Lawyers 73
The Three Dozen (or so) Questions to Ask Before You Hire a DUI Lawyer

The Secret to a Winning Relationship with Your Lawyer

**What We Do**

- We Help People & Their Families
- We Defend Freedom
- We Provide Free DUI Information
- We Have Won DUI Cases
- You Can Read About Our Success Stories
- We Have an “AV-Preeminent” Martindale-Hubbell Rating
- We Have a “10.0 Superb” Avvo.com Rating
- You Can Read What Others Say About Us
- We Don’t Take Freedom for Granted
- We Communicate With You
- We Make More Time for You
- We Focus on What’s Most Important
- We Take Good Care of You
- We Make It Easy for You
- We Don’t Accept Every Case
- We Aren’t for Everyone
## A Sampling of Our Success Stories

<table>
<thead>
<tr>
<th>Success Story</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meadville DUI Stop Ruled Illegal</td>
<td>96</td>
</tr>
<tr>
<td>Judge Says Girard DUI Stop Illegal</td>
<td>97</td>
</tr>
<tr>
<td>Allegation of DUI Withdrawn</td>
<td>99</td>
</tr>
<tr>
<td>DUI Against Minor Withdrawn</td>
<td>100</td>
</tr>
<tr>
<td>DUI Dismissed Against Erie Man “sleeping it off ” in Parking Lot</td>
<td>101</td>
</tr>
<tr>
<td>DUI Dropped Against Woman Out of Gas</td>
<td>102</td>
</tr>
<tr>
<td>DUI Reduced to Public Intoxication</td>
<td>103</td>
</tr>
<tr>
<td>“High Rate” DUI Withdrawn Due to “Two Hour” Rule Violation</td>
<td>104</td>
</tr>
<tr>
<td>DUI Charges Dropped After Stop Deemed to be Illegal</td>
<td>105</td>
</tr>
<tr>
<td>Lake Erie Boater Cleared of BUI Charges</td>
<td>106</td>
</tr>
<tr>
<td>Court Says PennDOT Cannot Suspend Pennsylvania License for DUI in Kentucky</td>
<td>108</td>
</tr>
<tr>
<td>DUI Case Dismissed at Preliminary Hearing</td>
<td>108</td>
</tr>
<tr>
<td>Drug and DUI Charges Dropped</td>
<td>110</td>
</tr>
</tbody>
</table>
A Few More of Our Success Stories

Disclaimer

Jury Acquits Meadville Man of Retail Theft

Criminal Mischief Charge Dismissed Against Albion Woman

Successful Motion Saves Nurse’s License

Simple Assault Allegations Withdrawn Against Erie Nurse

Court Excludes Confession

Woman Wins New Trial After Successful Appeal

Bad Check Case Dismissed

Search Warrant Invalid: Court Tosses Evidence

Charges Dropped Against Saegertown Man

Reckless Endangering Charges Dropped on Eve of Trial

Jury Acquits Erie Man

Man Accused of Simple Assault Wins Acquittal

Case Dropped Against Man During Trial

Local Man Acquitted of Rape

Millcreek Man Found Not Guilty
Why All This Information & Why Now?

If you have received this book, then one of three things recently happened: (1) You called for information because you or someone important to you might be charged with DUI or a criminal offense; (2) You just scheduled an appointment with me about new charges; or (3) You just met with me about the charges that were recently filed against you. Whatever the reason, you have come to the right place for information that will help you and your family through what can be a confusing, difficult and stressful time.

You may never have been in any trouble. You want to know how DUI or criminal charges will affect your family, your job and your freedom. You want to know what to expect. You want answers to your questions. You want to know how to choose the right lawyer for you and your case. The reason you received all of the information in this book is to help answer these and other questions. The purpose of this book is to allow you to get answers by reading at your own pace and in the comfort of your own home. You also can use this book to frame more questions as you understand more about your charges and what might happen in your case.
You can do all of this *before* you rush to hire the first lawyer that will meet with you.

The reason you received this information now is because you need it *now*. Your preliminary hearing might be set for as soon as 10 days from now. You need to get up to speed. And you just can’t get the answers you need in (or on) the telephone book. You also don’t have time to interview a dozen lawyers. And you know that your case is too important to simply call lawyers in the yellow pages until one agrees to meet with you tomorrow (as opposed to two days from now). That method might work for choosing a plumber to fix a burst hot water tank, but not something as important as your freedom, your driver’s license, your job or your family. (The truth is that’s not a smart way to choose a plumber either.)

After receiving overwhelming support for the first edition of *Defending Freedom: The Ultimate Guide to DUI Cases in Pennsylvania* published which was published in 2010, we decided to expand and update the topics discussed in the book. In this, our second edition, you will find everything that was in the first book plus new information about prescription drugs and DUI, the so-called “collateral consequences” of DUI, including what is means to be a “habitual offender” in Pennsylvania, and what you can expect if sentenced to either “house arrest” or prison.
I suggest that you begin with whatever portion of the book that seems to answer your most pressing questions. You don’t need to start at the beginning; that’s not how it is intended to be read. Start where you want after looking at the table of contents.
Disclaimer

What is a book written by a lawyer without a disclaimer? One certainty in law (and in life) is that no two cases are the same. Each case turns on its own unique facts and circumstances. Nothing you read here should be considered legal advice. Legal advice comes only from a lawyer in the context of a lawyer-client relationship. The purpose of this book is merely to arm you with good information. More information is always better than less information. Better information results in smarter decisions. Finally, all information found here concerns the law in Pennsylvania only. (If you were arrested in another state, you will need a lawyer who is licensed in that state.)
Answers to Frequently Asked Questions

In Pennsylvania, thousands of people are arrested every year on allegations of DUI. This offense impacts people of all ages, backgrounds and income - from lawyers, doctors and business owners to laborers, students and working mothers. For most, this is the first time they ever have been in trouble. Many have never hired a lawyer. For some, the only lawyer they ever met was the one who handled the closing for their house. So, if you have no experience with our system of criminal justice, do not have good information about what to expect, and do not know a lawyer who can help, this can be a difficult and stressful time for you and your family.

If you are like the many people that I have defended since 1992, you have lots of questions. Here, you will find answers to the most frequently asked questions by people facing DUI. These answers help you understand the nature of the allegations you now face, the complexity of DUI in Pennsylvania, the various factors that may be important in your case, and what you might expect moving forward. These answers also help you sort through the often difficult task of choosing the right lawyer for your case.
What is DUI?

DUI is short for Driving Under the Influence. A person is guilty of DUI if he or she drives or physically controls a motor vehicle while under the influence of alcoholic beverage, chemical, or controlled substance to a degree which renders him or her incapable of safely driving. A person is “under the influence” if his or her mental faculties are impaired by alcohol or controlled substances, or his or her blood alcohol concentration (BAC) is above the legal limit of .08%, at which BAC a motorist is presumed to be impaired.

Does the car have to be moving for me to be guilty of DUI?

No. You can be convicted for DUI even if you’re not actually driving the car. The key is whether you had the capability and power to dominate, direct, or control the vehicle. It doesn’t matter whether you were actually exercising that power at the time. In other words, simply sitting behind the wheel with the keys in the ignition can lead to your arrest for DUI because you are in actual physical control of the car. There are, however, exceptions to this general rule which must be considered before you decide simply to seek ARD or plead guilty.
What do police look for before they stop someone on suspicion of DUI?

Most DUI arrests occur at night. The following is a list of indicators that someone might be DUI. The list is based upon research conducted by the National Highway Traffic Safety Administration (NHTSA):

- Turning with a wide radius
- Straddling the center of lane marker
- Almost striking an object or vehicle
- Weaving
- Swerving
- Going more than 10 mph below the speed limit
- Stopping for no reason in a traffic lane
- Following too closely
- Drifting
- Running tires on the center line or lane marker
- Braking erratically
- Driving into opposing or crossing traffic
• Signaling in a way that doesn’t match driving actions (for example, signaling left and then turning right)

• Slow response to traffic signals

• Stopping inappropriately

• Turning abruptly or illegally

• Accelerating or decelerating rapidly

• Driving with the headlights off (at night)

What is the officer looking for during the initial detention at the scene?

Police officers are trained to notice the following “indicia of intoxication” or indicators that you may be under the influence of alcohol:

• Flushed face

• Red, watery, glassy and/or bloodshot eyes

• Odor of alcoholic beverage on the breath

• Slurred speech

• Fumbling when getting the driver’s license

• Failure to comprehend the officer’s questions

• Staggering when exiting the vehicle
• Swaying/instability
• Leaning on the car for support
• Soiled, rumpled, or disorderly clothing
• Stumbling when walking
• Disorientation as to time and place
• Inability to follow directions or to “divide” Attention
• Combative, argumentative, jovial or another “inappropriate” attitude or behavior

If the police officer asks me if I have been drinking, what should I say?

If the officer asks whether you have been drinking, your answer will be a significant factor in the officer’s decision whether to arrest you. Since the question is accusatory in nature, you should politely decline to answer. But remember that no one likes a “know it all”; so you must remain polite and respectful and all times.

Please also remember that the officer does have a right to ask certain routine questions. For example, you should give the officer your name, address, date of birth, etc., if asked. When the officer inquires into drinking, however, politely ask for a lawyer. The officer will then probably say
you do not have a right to a lawyer and ask you to answer the question. At this point, your best course of action, again, would be to respectfully and politely ask the officer whether you are under arrest. If the officer says that you’re not under arrest, then politely tell the officer that you want to leave. You’ll know soon enough whether you are under arrest by the response you get to that request.

Do I have the right to speak to a lawyer before I take field sobriety tests?

No. In Pennsylvania, your right to a lawyer does not “attach” – come into being – until you are formally arrested or placed in “custody.” This happens when - under all of the circumstances - a reasonable person would not feel free to drive away. The facts of each case determine this. One way to determine if you are “free to drive away” is simply to ask: “Am I free to leave?” or “Am I under arrest?”

If at any time, you believe you need a lawyer, it is always good policy to ask for one. Please remember to be polite and courteous at all times. You must refrain from any rude, disrespectful or “know it all” behavior. It's neither helpful nor necessary.
Am I required to do roadside sobriety tests?

No. In Pennsylvania, you are not legally required to take field sobriety tests (e.g., perform the walk and turn, one-leg stand or other divided-attention tests usually given on the roadside) and you can respectfully and politely decline to take them. You will not lose your license for refusing to perform roadside field sobriety tests. Most of us have reasonable explanations for why we are physically unable to perform such tests administered under what are often less than ideal circumstances (e.g., cambered road, gravel berm, poor weather, police headlamps and overhead lights flashing). You should decline to perform any field sobriety tests.

Do I have to give a breath or blood test?

Unlike field sobriety tests, your failure to give breath or blood samples when under suspicion of DUI will result in a suspension of your driver’s license for at least 12 months. The type of sample you must give is up to the police officer.

What happens if I do not submit to a breath or blood test?

In Pennsylvania, driving is a privilege and not a right. By accepting driver’s license, you have given your “implied consent” to submit to a chemical testing when suspected of
DUI. So, if you refuse to submit to chemical testing, PennDOT will suspend your driver’s license for at least one year. Another consequence of refusing to submit to a breath or blood test is that if you are charged with DUI, you will face enhanced penalties. (This will be discussed elsewhere in the book.) Still another consequence is that your refusal can be used against you at trial as evidence of your consciousness of guilt. In all, there are several reasons why, as a general rule, refusing such tests is not a good idea.

**What are some potential defenses to an allegation of DUI?**

There are many potential defenses to an allegation of DUI because of the complexity of the offense. Some of the possible defenses depend upon the answers to the following questions:

*Were you driving?* If you were neither driving nor in “actual physical control” of the vehicle, there cannot be a DUI.

*Did the police have a good reason or cause to stop you?* When police initiate a motor vehicle stop, a “seizure” under Article I, Section 8 of the Pennsylvania constitution occurs. (This is the article in our state constitution that is akin to the Fourth Amendment to the U.S. Constitution.)
In order for the stop to be lawful, the police must have cause to do so. This means that the police must point to particular facts that justify stopping you. If they can't articulate a sufficient factual basis for stopping you, then none of the evidence gathered after the stop can be used against you. As for sobriety roadblocks, they may be legal, but the topic is complex. Special rules apply to how the location is chosen and how the road block is set up and administered.

*Were you under the influence?* Were you *truly* under the influence? The observations made by the police, and their opinions about whether you were under the influence, can be called into question.

*Under what circumstances were you asked to perform the field sobriety tests?* The circumstances under which the field sobriety tests were administered can cast doubt on the results of those tests.

*Were you tested within the time proscribed by the statute?* If the police want to use your BAC, it must be shown that your breath or blood sample was obtained within two hours of your operating a vehicle absent a showing of “good cause” for the delay. Sometimes either the Commonwealth
cannot prove when you last operated the vehicle or unreasonable delay causes the “two hour” rule to be violated.

Did you drink alcoholic beverages after driving? DUI means that a person is impaired while operating a vehicle. If you drink after operating a vehicle, then you may have a defense based upon your impairment not coinciding with your operation of a vehicle.

Was the blood-alcohol testing done correctly? There are a lot of potential challenges to blood, breath and urine testing. For example, there are strict rules governing the way breath, blood or urine must be collected and tested (and by whom).

Does your alleged BAC square with your alcohol consumption? You can arrange for an independent laboratory to test one of the samples of blood you provided to police when the alleged BAC seems excessive relative to your alcohol consumption, eating history and other factors which contribute to your BAC.
Does retrograde extrapolation support impairment at the time you were driving? If testing takes place sometime after you were actually in control of the motor vehicle, the law presumes that you were impaired. However, you might be able to establish that your BAC was, in fact, not in excess of the legal limit with independent testing. To do this, a process called “retrograde extrapolation” must be performed. A number of complex physiological problems are involved here, any of which might be used to challenge the conclusions reached by the police. The amendment to the recent DUI statute makes it so that any testing done within two hours of driving is presumed to reflect your BAC at the time you were driving. (This does not necessarily square with science but it is nevertheless the law.) In certain circumstances, you nevertheless might challenge this presumption by hiring a toxicologist to perform retrograde extrapolation.

Does your BAC fall within the margin of error for laboratory blood testing? Sometimes when the BAC result is at or near (but nevertheless above) one of the threshold levels that affects the mandatory penalties upon conviction (i.e. 0.08% or 0.16%) you also might challenge the BAC result on the basis that the result falls within the margin of error in an effort to reduce the BAC and thereby eliminate your exposure to enhanced penalties.
Was the breath testing machine working? The prosecution must prove that the testing complied with Pennsylvania’s requirements for proper calibration and maintenance of such devices. Further, breathalyzers are machines and, as such, are fallible. Have you ever put correct change into a vending machine and still not received your soda? Sometimes machines just do not work correctly. How about the vacuum machine at a car wash? Works every time, right?

Was the BAC derived from breath using a Intoxilyzer 5000EN device? On December 31, 2012, a court in Dauphin County Pennsylvania held that the Intoxilyzer 5000EN device manufactured by CMI, Inc. is not capable of providing a legally acceptable BAC outside the linear dynamic range of .05% to .15%. The case was on appeal at the time this book went to print. The takeaways for you are that machines are not always reliable and science can play a role in the defense of your freedom.

Did you receive your *Miranda* warnings while in custody? Although you are not entitled to be informed of your right to counsel at a routine motor vehicle stop because you are not in “custody” then, sometimes circumstances change such that *Miranda* warnings are required. If you weren’t read your rights at the appropriate time and under the
appropriate circumstances, and if you said something incriminating, your statement might not be admissible in court.

**What should I do when I think charges might be filed against me?**

If you think charges might be filed against you, you should learn as much as possible about DUI in Pennsylvania and then meet with your lawyer *immediately*. You want to begin to prepare for the preliminary hearing as soon as possible. The government, often the local police, Pennsylvania State Police, their detectives, or other law enforcement have completed either most or all of their investigation already. You and your lawyer will need to make the most of the short time you have to prepare your defense.

**What are the procedural steps in a DUI case?**

Here is a summary of what you can expect:

*Preliminary Hearing.* The first court proceeding in most cases is the preliminary hearing. This is often the most crucial hearing in your case. The preliminary hearing is not a trial. The purpose of a preliminary hearing is to protect
your right against an unlawful arrest and detention. At this hearing the Commonwealth must prove at least a _prima facie_ case – that is, at least a minimal showing – that a particular crime was committed and that you are probably the one who committed it. (A preliminary hearing also presents your first – and often best – opportunity to gather information about the evidence that will be offered against you at trial.) At this stage, the Commonwealth doesn’t have to prove your guilt beyond a reasonable doubt. In order to meet its burden the Commonwealth must present some evidence regarding each of the elements (or parts) of the crime charged. If the government can’t meet this burden, your case will be dismissed. If it can, then your case will be held for trial on a later date.

**Formal Arraignment.** If the Commonwealth meets its burden of proof at the preliminary hearing, then you will be scheduled for formal arraignment about one month later. At an arraignment you will receive a copy of the “information” which is a document containing the allegations you face and deadlines for filing certain papers with the court. Sometimes the document provided to you at the formal arraignment also includes a schedule of the upcoming events in your case.

**Suppression Hearing.** If your case cannot be resolved to your satisfaction at the preliminary hearing and you want to challenge certain evidence being offered against you, you
can request a suppression hearing. A suppression hearing allows you to challenge the admissibility of certain evidence that will be offered against you. Some of these motions may argue that using certain evidence against you would violate your constitutional rights. A ruling in your favor can result in evidence being excluded from your trial and increase your odds of winning. Some examples include constitutional challenges which question the basis for the police pulling you over in the first place, or stopping your car at a roadblock. Other topics include challenging the results of blood, breath or field sobriety tests or certain statements that you made while in custody. The pretrial motion stage occurs anywhere from six weeks to three months after the preliminary hearing.

You can learn more about suppression hearings at page 29.

**ARD Hearing.** ARD is an acronym for Accelerated Rehabilitative Disposition. ARD is a diversion program for first time, non-violent offenders and enables some people, who meet the eligibility requirements, to avoid having to make the decision about whether to go to trial or enter a guilty plea. If you are permitted to resolve your case with ARD, you will not admit any wrongdoing, enter a plea or otherwise be convicted of DUI. However, you must agree
to be on probation for up to two years and complete a number of other conditions while on supervision (which is a lot like probation).

Your eligibility for the ARD program depends upon a number of factors. The initial considerations include your criminal history and the circumstances surrounding the allegations. For example, someone accused of DUI which results in “serious” injuries or death is not eligible for ARD. Likewise, a person accused of DUI with a child passenger is also not eligible. Not every county has the same eligibility policy. So, whether you meet the eligibility requirements may depend on where the offense occurred.

You can learn more about ARD at pages 30 - 32 and 55 - 62.

Plea. If you enter a plea (sounds like “plee”) then you must state on the record before a judge 1) that you understand the facts that led to your being charged with the offense; 2) that you understand the elements of the law that must be proven in order to be convicted of the offense; 3) that you understand the maximum sentence that can be imposed upon conviction; 4) that you understand that the government has the burden of proving each element of every offense you face; 5) that you understand that you do
not have to prove your innocence; 6) that you understand that you are presumed to be innocent; 7) that you have the right to a jury trial; 8) that you understand that in order to be convicted at trial, all jurors must come to a unanimous agreement that the government has met its burden of proof as to each and every element of the offenses charged (otherwise the verdict must be “not guilty”); and 9) that you, by entering a plea of guilty, give up the right to have a jury decide your case.

This is, for obvious reasons, an extremely important proceeding. Much time and thought must be put into such a decision which has long lasting and far reaching effects.

**Trial.** Everyone has watched at least small portions of trials on television programs. What you have seen on TV provides only a glimpse into what really happens at a real trial. In essence, during a trial, each side will have the opportunity to present its evidence and to challenge evidence presented by the other side. In some DUI cases, a jury of 12 citizens will hear all of the testimony and consider all of the evidence and then decide what happened. The jury will learn about the law from the judge and then apply the law to the facts (which the jury has determined based on what they heard and saw during the trial) before rendering a verdict.
In many other DUI cases, a motorist is not entitled to a trial by Jury. Rather, a judge will decide whether the motorist is guilty of DUI, or not. We talk about this more elsewhere in the book.

**Sentencing.** If you are convicted at trial, or if you negotiate a plea agreement and enter a plea, the Court will sentence you. A sentence for DUI may include jail time, in-home detention ("house arrest"), community service, a drug & alcohol assessment, counseling, DUI classes, driving safety classes and/or fines. The maximum period of time for which a county can imprison and/ or supervise most offenders ranges from six months to five years. The length of a sentence depends on the number and nature of any previous convictions, any need for treatment, the nature of the present offense and the like.

All repeat DUI offenders must have their cars equipped with an Ignition-Interlock Restriction System for at least one year. A new offense is created for driving without a required ignition- interlock system after consuming any amount of alcohol. For more information about the penalties for a DUI conviction and a discussion of the so-called “collateral consequences” of DUI, keep reading.
How long will it take to resolve my case?

It depends upon the unique nature of your case. Some cases are resolved at the preliminary hearing. Others are resolved after pre-trial motions. Others are resolved either before or after trial. Still others are not resolved until after an appeal.

What is the “speedy trial” rule?

The speedy trial rule prevents someone from having allegations remain unresolved for an unreasonable period of time. Our understanding of fundamental fairness is violated when someone has criminal allegations “hanging over their head” for an indefinite period of time without being afforded a chance to defend the allegation at a public trial.

In Pennsylvania, the speedy trial rule requires, in general, that a case be called to trial within 365 days of the date the criminal complaint was filed. If a person remains in jail while awaiting trial, the speedy trial rule requires that the case be called for trial within 180 days. As with any general rule, exceptions exist.
Do I have to appear in person for a preliminary hearing?

Yes. You must appear in court on the date and time set for your preliminary hearing. If you fail to appear a warrant for your arrest will be issued, called a bench warrant.

Why is there a preliminary hearing in my case?

The main purpose of a preliminary hearing is to protect your right against an unlawful arrest and detention. There are other good reasons to have a preliminary hearing scheduled in your case. Keep reading.

How does a preliminary hearing protect me from unlawful arrest & detention?

The Commonwealth must show that your arrest meets the minimum requirements established by law. At this hearing the Commonwealth must make at least a *prima facie* case – that is, at least a minimal showing – that a particular crime was committed and that you are probably the one who committed it. At this stage, the Commonwealth doesn’t have to prove your guilt beyond a reasonable doubt. In order to meet its burden the Commonwealth only must
present some evidence regarding each of the material elements of the crime charged. If the government can’t meet this burden, your case will be dismissed.

I hear that many people waive their preliminary hearing. Should I waive mine?

It depends. A preliminary hearing is important because it helps you and your lawyer learn more about the circumstances surrounding the allegations. A preliminary hearing is the first – and often best – opportunity to gather information about the evidence that will be offered against you. More information is always better than less information. You also will make better decisions about your case with better information.

The preliminary hearing can help you obtain the information you need to make smart choices in your case. A preliminary hearing presents an opportunity for your lawyer to learn about the evidence that the Commonwealth will try to offer against you in support of the charges. This also means that you must be prepared for this important hearing.

If you can get all of the best information available without a preliminary hearing, then maybe you can waive the hearing. In other cases, the only way to obtain important
information which will be necessary to execute your plan (develop all of your defenses or preserve legal issues and arguments) is to have a preliminary hearing. And the testimony will need to be recorded by a court reporter who will prepare a transcript of the testimony.

What can my lawyer do to help me get prepared for my preliminary hearing?

Many things. Your lawyer can prepare for the preliminary hearing by spending time with you, learning about you, learning about what happened (or didn’t happen) that resulted in your charges, and begin to develop defenses and outline a strategy for success.

Your lawyer can learn about the circumstances surrounding the allegations, conduct his own investigation (perhaps even work with a private investigator), interview witnesses, inspect the scene, take photographs, identify legal issues, conduct legal research (and do various other things which depend on the unique circumstances of your case). All of this preparation is made in an effort to identify and develop possible defenses to the charges.
What is a suppression hearing?

If your case is not dismissed (or resolved to your satisfaction) at the preliminary hearing, your lawyer might file pretrial motions, resulting in another hearing. Some of these motions may argue that using certain evidence against you would violate your constitutional rights.

A ruling in your favor can result in evidence being excluded (or “suppressed”) from your trial, which may reduce the prosecution’s odds of winning. For example, statements that you made while in the custody of police, the results of blood, breath, or field sobriety tests might be considered by the Court to be inappropriate for a jury to hear because it would be unfair to you and our system of justice.

Do I have to testify at trial?

Under the Fifth Amendment to the U.S. Constitution, you will not be required to testify yourself. Whether or not you do testify on your own behalf is something that must be discussed at length and on more than one occasion with your lawyer. Time with your lawyer is crucial to your making the best decision about whether or not to testify.
Will my case be decided by a jury?

In Pennsylvania, there is no right to a jury trial when you face an “ungraded misdemeanor” charge. All first, and nearly all second, DUI offenses are ungraded misdemeanors. Therefore, if your DUI is an ungraded misdemeanor, a judge, rather than a jury, will hear the evidence and enter a verdict of “guilty” or “not guilty.” If you are arrested on a second offense DUI with an alleged BAC of .16% or higher (or if you refuse testing), or a third offense DUI, you will have the right to a jury trial. When determining whether you have prior offenses and a right to a trial by jury, the court will look back 10 years.

What is ARD?

ARD is an acronym for Accelerated Rehabilitative Disposition. ARD is a diversion program for first time, non-violent offenders and enables some people, who meet the eligibility requirements, to avoid having to make the decision about whether to go to trial or enter a plea.

If you are permitted to resolve your case with ARD, you will not be required to admit any wrongdoing, enter a plea or otherwise be convicted of DUI. However, you must agree to be on probation for up to two years and complete a number of other conditions while on supervision (which is a lot like probation).
The district attorney establishes the eligibility requirements for ARD. In most counties, your eligibility for the ARD program depends upon a number of factors. Not everyone who is facing DUI for the first time is eligible for ARD. The initial considerations include your criminal history and the circumstances surrounding the allegations. For example, someone accused of DUI which results in “serious” injuries or death is not eligible for ARD. Likewise, a person accused of DUI committed with a child passenger is also not eligible. There may be other scenarios that preclude entry into the program.

If you meet the eligibility requirements and decide that ARD is the right choice for you, there will be expectations placed upon you. You will be expected to enter pleas of guilty to any summary offenses filed against you, which result in fines and costs and such convictions also often create points on your driving record. Some of the things you can expect while on ARD include being assigned to a probation officer. You will not be permitted to consume alcohol while on supervision. You will be required to obtain permission from your probation officer before leaving the county. You will be required to attend any classes or counseling the probation officer deems appropriate for you. You might be
required to submit to random drug and alcohol testing. You must pay for your supervision in most counties. (The cost depends upon the duration of probation, any laboratory fees or restitution.) Payment plans are usually available.

Although there are requirements imposed on those who receive ARD, the decided advantages of the program are many. First, you avoid the expense and uncertainty of trial. Second, you avoid the penalties which come with a conviction (e.g., mandatory minimum prison sentence or work release or “house arrest”). Third, although your driver's license may be suspended as a result of ARD, the suspension will not be for more than 60 days (90 days for minors) compared to a suspension of at least 12 months upon conviction for DUI. Fourth, if you complete all of the requirements of ARD and pay the costs in full, your case will be dismissed. Fifth, your record of arrest will be expunged from the public record. (However, this advantage is not entirely helpful because despite the expungement, your fingerprints will remain on record with the Pennsylvania State Police, a record of your ARD will be maintained by the district attorney, and your official driving record maintained by PennDOT will reflect that you received a DUI for at least the next 10 years.)
Will my driver’s license be suspended?

A DUI can result in a suspension of your driver's license. Whether you received a license suspension (and if so for how long) will depend on your driving history, whether your case results in a conviction (or ARD), the level of your BAC and other factors. You can learn more about the variety of factors which affect your driver's license and commercial driver's licenses (CDL) elsewhere in the book.

What is an Occupational Limited License (OLL)?

An Occupational Limited License (OLL) is a driver’s license issued to a driver whose Pennsylvania driving privilege has been, or will be, suspended. An OLL allows you to drive a designated motor vehicle under certain conditions when it is necessary for your occupation, work, trade, medical treatment or study pursuant to 75 Pa.C.S.A. §1553. The Pennsylvania Department of Transportation (PennDOT) will evaluate whether or not you are eligible for an OLL based upon your driving history after you complete an application for an OLL. An OLL is available under certain circumstances to a motorist convicted of a DUI after serving 60 days of the mandatory license suspension. An OLL is also available to
motorists who refused chemical testing under some circumstances after serving one year of the 18 month suspension, having no more than one previous DUI, driving only interlock-equipped vehicles and certifying to PennDOT that each motor vehicle you own or is registered in your name is equipped with an interlock ignition system.

If you are now, or soon will be, suspended for any of the following violations, you are not eligible for an OLL:

§3345 - Passing a school bus
§3367 - Racing on highways
§3732 - Homicide by vehicle
§3733 - Fleeing a police officer
§3734 - Driving without lights
§3735 - Homicide by vehicle while DUI
§3736 - Reckless driving
§3742 - Accident involving death or injury
§3743 - Leaving scene of an accident
§3802 - DUI (with possible exceptions)
§1533 or §6416 - Failure to respond to a citation
§1543 - Driving while suspended (with possible exceptions)

§1547 - Refusal to submit to chemical testing (with possible exceptions)

§1786 - Failure to maintain financial responsibility

You also will be ineligible for an OLL for the period of the driver's license suspension which results from acceptance of ARD for DUI, a drug conviction, underage alcohol violations (with possible exceptions), any serious traffic offenses, and any violations relating to accidents and accident reports.

In light of the importance your driving history plays in determining your eligibility for an OLL, we recommend that you obtain a certified copy of your driving record from PennDOT before submitting an application for an OLL. You should bring a copy of your driving record when you meet a lawyer and before you decide to enter a plea of guilty.

**Will I lose my Commercial Driver’s License (CDL)?**

A commercial driver’s license (CDL) enables many people to earn a living while operating a commercial motor vehicle.
A conviction for DUI results in a CDL being disqualified for one year even when the motorist was not driving a commercial vehicle at the time of the offense. The disqualification of the CDL pursuant to 75 Pa.C.S.A. §1611(a)(1) occurs even when the DUI does not affect an ordinary, non-commercial, driver’s license under the first offender provisions of 75 Pa.C.S.A. §3804(e)(2)(iii). Your CDL may be suspended even upon acceptance of ARD.

**How do I choose the right DUI lawyer for my case?**

Many people who face DUI allegations have never been in trouble before. For this reason, they have not needed a DUI lawyer until now and do not know how to choose one. If this sounds like you, you have made a smart decision by reading this book.

You will *not* find the answers you need in the yellow pages. All of the ads there appear to be mostly the same except for maybe the size and the amount of color in the advertisement. Most claim to be “aggressive” or “experienced” but, you probably ask yourself, “What does that really mean?” Like any other important decision you make, you need information. The more information you have, the better. The better the information, the better your decision. And the information you need to choose the right
DUI attorney for you and your case cannot be found inside (or on) a telephone book. You have to ask questions to get good information. And the answers you receive can make all the difference to you and your family.

You should hire only a lawyer who has experience with DUI cases. Not just any lawyer will do. Just as you wouldn't hire an eye doctor to perform open heart surgery, you shouldn't hire a real estate lawyer to defend you freedom. This may be easier said than done – but it can be done, especially with all of the information now available online. Search for lawyers in your geographic location who defend allegations of DUI with regularity.

You should consider what other lawyers and judges think about a lawyer. This can be done by reviewing their Martindale-Hubbell rating. (Do they have an AV rating, which is the highest available peer rating?) You should weigh what lawyers and other clients think about the lawyer by reviewing their AVVO.com rating. (“10.0 Superb” is the highest possible.) You also should see what others say about their ability and customer service by looking at online reviews provided on online sites. This process will help you narrow your search for the right lawyer for you and your case.
Before you meet any lawyers who meet the search criteria above, ask them to send you free information about DUI. Ask them to send you more information about their experience fighting DUI for others. Will they send you any information? What will they send to you? Is it helpful and informative?

What questions should I ask before I hire a DUI lawyer?

In the end, choosing the right DUI lawyer for you and your case begins with asking the right questions at the beginning, narrowing your search and getting information before you waste valuable time interviewing lawyers during the “free consultations” that everyone offers. After you read the materials sent to you and you are satisfied that the lawyer really handles DUI then schedule a meeting.

You can start with, “Have you ever defended a DUI case?” A slight variation of this question might be, “Have you defended DUI cases successfully?” While a certain result that a lawyer had in another DUI case does not guarantee that you will get the same result in your case, you at least should know whether the lawyer has handled cases like
yours. If he has, then you can assess whether he is familiar with the issues that might arise in your case. Another question should be, “Where can I read about your other DUI cases? Still another question should be “What can you do to help me make this the last DUI I ever have to face?” There are many other questions that you will want answered before you make such an important decision. For more questions, read Three Dozen (or so) Questions to Ask Before You Hire a DUI Lawyer at page 50 and Can You Afford Not to Ask These 3 Questions Before Hiring a Lawyer.

How do I decide whether the lawyer is right for me?

In addition to your lawyer being knowledgeable about the issues likely to appear in your case, you will want to assess whether you can work with him or her. You will want to determine how well the lawyer listens, how often he will meet with you and how much administrative support is available to assist you and your lawyer. You will want to know whether the fundamentals of real communication are in place for a successful relationship.
You can learn more about how to choose a DUI lawyer by reading our book *How to Choose a DUI Lawyer in Pennsylvania: Let Facts NOT Fear Drive Your Decision*. Visit [www.FreeDUIBooks.com](http://www.FreeDUIBooks.com) to download an e-book or call Purchase & George, P.C. at (814) 833-7100 to get a free copy.
More Information

The Basics: For Anyone Arrested for DUI in Pennsylvania

We all are familiar with the saying, “Ignorance is no defense.” It means that just because we don’t know the law doesn’t excuse our behavior or insulate us from the punishment that follows. A basic understanding of the law and the penalties arising from a DUI conviction in Pennsylvania is essential. The more you know, the better. Such knowledge may help you avoid a DUI. Or, if you face a DUI, you can be prepared for what may follow.

As of February 1, 2004, the laws concerning driving under the influence of alcohol (DUI) were changed in many important ways. In this article, we discuss the law and how our Legislature created three tiers of DUI offenses, each with different legal requirements, or elements. The penalties for a DUI conviction depend on the number of previous DUI convictions and the tier of the current offense.

The three tiers of offenses are determined largely by the level of the blood alcohol concentration, or BAC. In essence, the higher the BAC, the greater the penalties. There are special rules for minors, drug use and for the
refusal to provide a BAC. In addition, you will see that many other requirements are imposed on someone who is convicted of DUI.

The Law

The three tiers of DUI offenses are General Impairment, High Rate, and Highest Rate. The elements for each offense are as follows:

75 Pa. C.S. §3802 (a) - **General Impairment** - (1) a person may not be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the person is rendered incapable of safely driving, operating or being in actual physical control of the vehicle; (2) a person may not 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 person’s blood or breath is at least .08% but less than .10% within two hours after the person has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa. C.S. §3802 (b) - **High Rate** of Blood Alcohol - a person may not 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 person’s
blood or breath is at least .10% but less than .15% within two hours after the person has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa. C.S. §3802(c) - **Highest Rate** of Alcohol - a person may not 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 person’s blood or breath is at least .16% or higher within two hours after the person has driven, operated or been in actual physical control of the movement of the vehicle.

**Drugs.** The rule for DUI of drugs provides the following:

75 Pa. C.S. §3802 (d) - **Controlled Substances** - a person may not be in actual physical control of the movement of a vehicle under any of the following circumstances: (1) there is in the person’s blood any amount of (i) Schedule I controlled substance, as defined in the Controlled Substance, Drug, Device and Cosmetic Act or (ii) Schedule II or Schedule III controlled substance, as defined by the Controlled Substance, Drug, Device and Cosmetic Act which has not been medically prescribed for the person or (iii) metabolite of a substance under paragraph (i) or (ii).

**Minors.** The rule for people under the age of 21 involves a lower threshold BAC (.02% instead of .08%).
75 Pa. C.S. §3802 (e) - Minors - a minor (a person under 21 years of age) may not be in actual physical control of the movement of the vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the person’s blood or breath is .02% or higher within two hours after the person has driven, operated or been in actual physical control of the movement of a vehicle.

When motorists refuse to provide a BAC, the refusal is treated as a third tier violation (highest rate) and their driver’s license for one year, among other things, as follows:

**Refusal of Breath, Blood or Urine Test.** If you refuse to take a breath, blood or urine test after being arrested for DUI in Pennsylvania, your license will be suspended for a period of not less than one year and you will be sentenced to incarceration for a mandatory minimum period of three days. A person should take immediate action if chemical tests are refused. The arresting officer must forward a Notice of Refusal (DL-26 Form) to inform the Pennsylvania Department of Transportation (PennDOT) of your refusal. PennDOT then must notify you that your license shall be suspended. You then have only thirty (30) days from the date of the notice from PennDOT to appeal your license suspension in a civil proceeding.
The Penalties

In Pennsylvania, the blood alcohol concentration (BAC) of a motorist and the number of other times the person has committed a DUI will determine what punishment a person receives. As of February 2, 2004, there are three categories into which a person will fall based upon the level of alcohol in their blood stream (BAC). The three categories are as follows:

1. 0.08% - 0.099% (General Impairment);
2. 0.10% - 0.159% (High Rate); and
3. 0.16% and higher and any refusal to submit to a test (Highest Rate)

All of these categories require a person to participate in a Court Reporting Network (CRN) evaluation. The first and second categories also require a person to complete an Alcohol Highway Safety Program (AHSS). If a person falls into the third category of a BAC equal to 0.16% or higher (or refused to submit to a blood or breath test) and all subsequent offenses require a Drug and Alcohol (D&A) assessment and treatment. Further, all second and subsequent DUI offenses require the installation of an Ignition and Emission Interlock System in your car or other motor vehicle.
**FIRST OFFENSE (No other DUI within 10 years)**

*BAC is .08% to .099%.* This offense is an ungraded misdemeanor (M) which results in a maximum term of probation of 6 months and a fine in the amount of $300.00. This offense also requires CRN, AHSS and possible D&A. In this category, there would be no loss of license and no jail time.

*BAC is .10% to .159%.* This also is an ungraded misdemeanor (M); however, there is a mandatory period of imprisonment for not less than 48 hours and not more than 6 months, together with a fine of not less than $500.00 and not more than $5,000.00. Required CRN, AHSS and possible D&A. The driver’s license will be suspended for 12 months; however, there remains the possibility that a driver could apply for and receive an Occupational Limited License (OLL) after serving at least 2 months of the license suspension.

*BAC is .16% or higher (or where there was a refusal to give a blood or breath sample).* This is also an ungraded misdemeanor (M); however, there is a mandatory term of imprisonment of not less than 72 hours and not more than 6 months, together with a fine in the amount of not less than $1,000.00 and not more than $5,000.00. Required
CRN, AHSS and a full D&A. The driver’s license is suspended for 12 months; however, there is the possibility that the person could apply for and receive an Occupational Limited License (OLL) after serving 2 months of the license suspension.

SECOND OFFENSE

BAC is .08% to .099%. This is an ungraded misdemeanor (M) with a mandatory period of imprisonment of not less than 5 days and not more than 6 months, together with a fine in the amount of not less than $300.00 and not more than $2,500.00. The driver’s license is suspended for 12 months. Required CRN, AHSS, D&A and Ignition Interlock for a period of 12 months.

BAC is .10% to .159%. This is an ungraded misdemeanor (M) with a mandatory period of imprisonment of not less than 30 days and not more than 6 months, together with a fine in the amount of not less than $750.00 and not more than $5,000.00. The driver's license is suspended for 12 months. Required CRN, AHSS, D&A and Ignition Interlock for a period of 12 months.

BAC is .16% or higher (or a refusal). This is graded as a misdemeanor of the first degree (M1) with a mandatory term of imprisonment of not less than 90 days and not
more than 5 years, together with a fine in the amount of not less than $1,500.00 and not more than $10,000.00. The driver’s license is suspended for 18 months. Required CRN, AHSS, D&A and Ignition Interlock for a period of 12 months.

**THIRD OFFENSE**

*BAC is .08% to .099%.* This is graded as a misdemeanor of the second degree (M2) with a mandatory period of imprisonment of not less than 10 days and not more than 2 years, together with a fine in the amount of not less than $500.00 and not more than $5,000.00. The driver’s license is suspended for 12 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.

*BAC is .10% to .159%.* This is graded as a misdemeanor of the first degree (M1) with a mandatory period of imprisonment of not less than 90 days and not more than 5 years, together with a fine in the amount of not less than $1,500.00 and not more than $10,000.00. The driver’s license is suspended for 18 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.
**BAC is .16% or higher (or a refusal.)** This is graded as a misdemeanor of the first degree (M1) with a mandatory term of imprisonment of not less than 1 year and not more than 5 years, together with a fine in the amount of not less than $2,500.00 and not more than $10,000.00. The driver’s license is suspended for 18 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.

**FOURTH OFFENSE**

**BAC is .08% to .099%**. This is graded as a misdemeanor of the second degree (M2) with a mandatory period of imprisonment of not less than 10 days and not more than 2 years, together with a fine in the amount of not less than $500.00 and not more than $5,000.00. The driver’s license is suspended for 12 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.

**BAC is .10% to .159%**. This is graded as a misdemeanor of the first degree (M1) with a mandatory period of imprisonment of not less than 1 year and not more than 5 years, together with a fine in the amount of not less than $1,500.00 and not more than $10,000.00. The driver’s license is suspended for 18 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.
BAC is .16% or higher (or a refusal.) This is graded as a misdemeanor of the first degree (M1) with a mandatory term of imprisonment of not less than 1 year and not more than 5 years, together with a fine in the amount of not less than $2,500.00 and not more than $10,000.00. The driver’s license is suspended for 18 months. Required CRN, D&A and Ignition Interlock for a period of 12 months.

In addition to all of the penalties described above, a conviction would appear on your record and the Court would impose various costs and assessments in addition to a fine. In some counties in Pennsylvania, people who receive a term of probation following a period of incarceration must pay a monthly fee while they remain on probation.

**REFUSAL OF BAC TEST TRIGGERS LICENSE SUSPENSION**

If you refuse to take a breath, blood or urine test after being arrested for DUI in Pennsylvania, your driver’s license will be suspended for a period of not less than 12 months and, if you are convicted of DUI, you will receive still another license suspension on top of the suspension for the refusal.
If you refuse a BAC test, the arresting officer will forward a Notice of Refusal (DL-26 Form) to inform the Pennsylvania Department of Transportation (PennDOT) of your refusal.

Once received, PennDOT will send you a notice that your license will be suspended. You then must send your driver’s license to PennDOT within 30 days of such notice.

You also have 30 days from the date you receive the letter from PennDOT to file an appeal in a civil proceeding and request a stay of any suspension until the question of whether you refused to submit to a breath or blood test is decided in the Court of Common Pleas.
## PENNSYLVANIA DUI

### Tier 1 - General Impairment (BAC .08% to 0.99%)

<table>
<thead>
<tr>
<th>Section</th>
<th>Offense</th>
<th>Suspension</th>
<th>Fine</th>
<th>Grade</th>
<th>Prison Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>75 P.S. §3802(a)</td>
<td>First</td>
<td>None</td>
<td>$300 fine</td>
<td>M</td>
<td>Probation</td>
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<tr>
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<td>Second</td>
<td>1 year</td>
<td>$300 min to $2500 max</td>
<td>M</td>
<td>5 days min to 6 months max</td>
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<td></td>
<td>Third (or more)</td>
<td>1 year</td>
<td>$500 min to $5,000 max</td>
<td>M2</td>
<td>10 days min to 2 years max</td>
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### Tier 2 - High Rate (BAC .10% to 0.159%)

<table>
<thead>
<tr>
<th>Section</th>
<th>Offense</th>
<th>Suspension</th>
<th>Fine</th>
<th>Grade</th>
<th>Prison Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>75 P.S. §3802(b)</td>
<td>First</td>
<td>1 year</td>
<td>$500 min to $5,000 max</td>
<td>M</td>
<td>2 days min to 6 months max</td>
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<tr>
<td></td>
<td>Second</td>
<td>1 year</td>
<td>$750 min to $5,000 max</td>
<td>M</td>
<td>30 days min to 6 months max</td>
</tr>
<tr>
<td></td>
<td>Third</td>
<td>18 months</td>
<td>$1,500 min to $10,000 max</td>
<td>M1</td>
<td>90 days min to 5 years max</td>
</tr>
<tr>
<td></td>
<td>Fourth (or more)</td>
<td>18 months</td>
<td>$1,500 min to $10,000 max</td>
<td>M1</td>
<td>1 year min to 5 years max</td>
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### Tier 3 - Highest Rate (BAC ≤ .16% or Refusal)

<table>
<thead>
<tr>
<th>Section</th>
<th>Offense</th>
<th>Suspension</th>
<th>Fine</th>
<th>Grade</th>
<th>Prison Time</th>
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</thead>
<tbody>
<tr>
<td>75 P.S. §3802(c)</td>
<td>First</td>
<td>1 year</td>
<td>$1,000 min to $5,000 max</td>
<td>M</td>
<td>3 days min to 6 months max</td>
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<tr>
<td></td>
<td>Second</td>
<td>18 months</td>
<td>$1,500 min to $10,000 max</td>
<td>M1</td>
<td>90 days min to 5 years max</td>
</tr>
<tr>
<td></td>
<td>Third (or more)</td>
<td>18 months</td>
<td>$2,500 min to $10,000 max</td>
<td>M1</td>
<td>1 year min to 5 years max</td>
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</table>
### Specific DUI Offenses / Additional Penalties

<table>
<thead>
<tr>
<th>Section</th>
<th>Offense</th>
<th>Applicable Sentence Tier</th>
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</thead>
<tbody>
<tr>
<td>§3802(d)</td>
<td>DUI involving controlled substance</td>
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<tr>
<td>§3804(c)</td>
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<td></td>
</tr>
<tr>
<td>§3802(e)</td>
<td>Minor Driver (BAC ≥ .02%)</td>
<td>2</td>
</tr>
<tr>
<td>§3804(b)</td>
<td>General Impairment + property damage</td>
<td>2</td>
</tr>
<tr>
<td>§3804(b)</td>
<td>General Impairment + bodily injury</td>
<td>2</td>
</tr>
<tr>
<td>§3804(b)</td>
<td>General Impairment + serious bodily injury or death</td>
<td>2</td>
</tr>
<tr>
<td>§3804(c)</td>
<td>General Impairment + refused chemical testing</td>
<td>3</td>
</tr>
</tbody>
</table>

**ARD Ineligibility:** Passenger under the age of 14 in vehicle; accident involving bodily injury or death; or, non-qualified second offense in 10 years. See, 75 P.S. §3807(a)(2).

**ARD License Suspensions:** Tier 1 = None; Tier 2 = 30 days; Tier 3 = 60 days.

**ARD License Suspension for Minors:** 90 days. See, 75 P.S. §3807(d)(4).

**Other ARD License Suspensions:** Unknown BAC; bodily injury or property damage; or DUI involving controlled substance = 60 days. See, 75 P.S. §3807(d)(3)(ii)-(iv).

**Refusal to Submit to Chemical Testing:** License suspension = 1 year for first offense and 18 months for second or subsequent offenses. See, 75 P.S. §1547 for other refusal-related suspensions.

**Ignition Interlock:** Second (or subsequent) DUI conviction within 10 years. See, 75 P.S. §3805.

**Mandatory:** Highway Safety Class for 1st & 2nd DUls. Drug/alcohol treatment for all DUls. See, 75 P.S. §3804(a)-(c).
**Discretionary:** Community service and/or victim impact panel for all DUI. See, 75 P.S. §3804(f) and (f1).

**Fines Double:** In active work zones and emergency response areas. See, 75 P.S. §3326 and 75 P.S. §3327.

**NOTE** – None of the information in this Chapter (or in the tables on pages 52 - 53) is a substitution for meeting with an experienced DUI lawyer armed with knowledge of all of the facts and circumstances of your particular case and your certified driving record in hand.
The Bottom Line

You will see that a conviction for DUI impacts your freedom in many ways great and small. A conviction can result in prison, loss of your driver’s license, mandatory counseling, driver training, an ignition interlock device and a host of other penalties. The more you know, the more likely you will be to avoid a DUI. Or if you face a DUI now, the better prepared you will be to deal with (and try to avoid) these consequences.

ARD: Could this be Your “Get out of Jail Free” Card?

For someone facing DUI or other criminal allegations, the thought of a prison sentence (or even just a permanent criminal record) can be frightening. The uncertainty about the impact on your job (or your future employment) and your family makes things even worse. Fear of the unknown for someone facing DUI or criminal charges for the first time can be overwhelming.

The more you know, the better. The better the information you receive, the better you can plan your case and your future. In Pennsylvania, for some people, DUI allegations can be resolved without a trial, without a conviction and
without prison. Even better, the charges can be dismissed and your record cleared if you qualify for a program known as ARD.

**What is ARD?** ARD is short for Accelerated Rehabilitative Disposition. ARD is a pre-trial program designed to divert first-time, non-violent offenders from the criminal justice system. The ARD program suspends the formal criminal prosecution before trial on the condition that you comply with certain conditions, such as making restitution, completing substance abuse treatment, maintaining employment and the like. You don’t have to admit any wrongdoing when applying for ARD; however, in some counties you must plead guilty to any summary offenses (which are usually traffic violations which trigger points, costs and fines).

A person who is accepted into an ARD program is placed on supervision, like probation. The Court also may impose costs and assessments, but not a fine. The maximum period of supervision for someone on ARD is two years. If you successfully complete the ARD program, the underlying criminal charges are dismissed and you are entitled to an expungement of the arrest record and of the ARD disposition. However, in most cases, your *driving record* will still show that your license was suspended for a
The DA controls the eligibility requirements. The district attorney controls admission into an ARD program, and has nearly unfettered discretion when formulating polices or criteria to determine which cases will be referred to the ARD program. This discretion is not unlimited, however, and in rare occasions, a district attorney has been found to have abused that broad grant of discretion when refusing to recommend a particular accused for entry into the ARD program.

Conditions are generally not negotiable. The conditions imposed upon you are normally not negotiable and not subject to challenge. You, however, do not have to accept the conditions imposed by the Court. If you reject the conditions which would be imposed upon entry into the ARD program, then you may proceed to trial. The decision whether ARD is right for you is, therefore, something you should discuss at length with your lawyer after careful consideration of the evidence that is expected to be offered against you at trial, together with consideration of the nature and quality of your defenses.

ARD is available before trial only. It is also important to recognize that ARD is a pre-trial diversion program, you
may not apply for admission into an ARD program after conviction, in lieu of sentencing. Once you have gone to trial and are found guilty, admission into an ARD program is no longer an option for you.

**Some factors that prevent ARD.** While 75 Pa.C.S.A. §1552 requires that each county in Pennsylvania has an ARD program for motorists accused of DUI, there are a number of things that can prevent someone from being considered for ARD under Pa.C.S.A. §3807(a)(2) such as if:

1. You were found guilty of or accepted ARD of a charge brought under §3802 within ten (10) years of the date of the current offense unless the charge was for an ungraded misdemeanor under §3802(a)(2) and was your first offense under §3802.

2. An accident occurred in connection with the events surrounding the current DUI offense and someone other than you was killed or suffered serious bodily injury as a result of the accident.

3. There was a passenger under 14 years of age in the car you were driving.

In addition, there are a whole host of other factors that can prevent admission into the ARD program. These factors
vary from county to county.

**Changes in the law.** There are some important differences between the new Pennsylvania DUI law which became effective February 11, 2004 and the old law. The major changes include the so-called “look back” period for prior DUI convictions or ARDs. The “look back” period under the new law is now 10 years, rather than 7 years under former §3731(d). Another important change in the law is the new prohibition that prevents motorists into ARD if they had a passenger in the vehicle who was under 14 years of age. No longer is a disqualifying factor the commission of another offense involving DUI that amounts to a violation of any of the offenses set forth in 75 Pa.C.S.A. §1542 (relating to habitual offenders).

The mere fact that you are not excluded from ARD consideration by any of the prohibitions set forth in 75 Pa.C.S.A. §3807(a) (2) does not *entitle* you to ARD. The prohibitions set forth in §3807(a)(2) are only the *minimum criteria* and a District Attorney is free to establish tougher standards for recommending cases for ARD. In other words, even if you meet the minimum requirements, you still might not get ARD.

**Should you seek ARD on a DUI charge?** In short, just
because you meet the eligibility requirements for the ARD program in a particular county does *not* mean that you should automatically seek ARD. A number of factors should be considered by both you and your lawyer when determining whether ARD is the best course of action for you. Some of those factors include: (1) the strength of the Commonwealth’s case; (2) the weaknesses of your case; (3) the particular circumstances of your violation and DUI arrest; (4) the importance of avoiding jail; (5) your prior record; and (6) your personal circumstances and situation. The decision whether to seek admission into an ARD program is ultimately yours, and that decision should only be made after your lawyer has fully informed you of the options available and the consequences of each.

**What happens to someone who accepts ARD?** If you agree to be accepted into the ARD program, you must agree to be on supervision, much like probation. There will be a number of conditions, or obligations, placed upon you while on supervision. These obligations can include things like meeting regularly with a probation officer, abstaining from alcoholic beverages (i.e., no “drinking”), maintaining employment, completing alcohol or substance abuse counseling, submitting to random urinalysis, attending educational programs, paying any restitution and paying all court costs and assessments. In some counties, you will be
expected to sign a contract which sets forth each of the conditions placed upon you.

When the term of supervision is completed and all costs and assessments are paid, the case (which was suspended during the time that you participated in the ARD program) will be dismissed. Your criminal record also will be expunged. However, your driving record will show a suspension arising from a DUI.

**Can you be removed from ARD?** Yes. The District Attorney may file a motion with the Court seeking to remove you from the ARD program if you violate a condition of ARD. Examples of grounds for removal include:

1. You are charged with or commit another offense set forth in either the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, or in 75 Pa. C.S.A. §1542;

2. You fail to make required restitution;

3. You fail to complete the mandated highway safety school program;

4. You fail to complete any other program mandated as a condition of ARD; or

5. You violate the terms and conditions of ARD in any other way.

A hearing is then held on the District Attorney’s motion for
removal from ARD and, if the Court finds that you violated any conditions of ARD, the Court may remove you from ARD. At that point, the underlying DUI prosecution is reinstated and the case proceeds as if it had never been diverted to the ARD program.

The more you know, the better you can prepare your case, plan your future and reduce the anxiety caused by fear of the unknown. In Pennsylvania, the consequences of a conviction for DUI are far reaching and the effects can be long lasting. If you qualify for ARD and believe that you can fulfill the conditions of supervision and accept the collateral consequences that even ARD creates (i.e., driver’s license suspension of up to 60 days for adults and 90 days for minors, loss of CDL, driving record that shows that you had a DUI, etc.), ARD just may be the right solution for you.

**Scoring Points with PennDOT: How to Avoid Surprises**

While the criminal and collateral penalties for a DUI can be far reaching, careful attention also should be paid to the summary offenses that often accompany an allegation of DUI. These traffic offenses for things like moving violations carry additional consequences and can come as a surprise if you think that your only problem is a DUI charge.
The Pennsylvania Department of Transportation (PennDOT) maintains a driving record for every licensed driver in Pennsylvania. When motorists are convicted of certain moving violations, points are added to their driving records.

A conviction for certain moving violations will not only add points to a driving record, it also can trigger a driver’s license suspension, fines and court costs. When you accumulate 11 points or more, your driver’s license will automatically be suspended. The length of suspension depends upon how many times your license was suspended in the past.

Here, you will find a summary of the moving violations which, upon conviction, result in points and the number of points given for committing each violation (plus a few common moving violations that trigger driver’s license suspensions):
<table>
<thead>
<tr>
<th>Vehicle Code Section</th>
<th>Description</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1512</td>
<td>Violation of restriction on driver’s license – wearing glasses, etc.</td>
<td>2</td>
</tr>
<tr>
<td>1571</td>
<td>Violation concerning license</td>
<td>3</td>
</tr>
<tr>
<td>3102</td>
<td>Failure to obey authorized persons directing traffic</td>
<td>2</td>
</tr>
<tr>
<td>3112(a)(3)(i) or (ii)</td>
<td>Failure to stop for a red light</td>
<td>3</td>
</tr>
<tr>
<td>3114(a)(1)</td>
<td>Failure to stop for a flashing red light</td>
<td>3</td>
</tr>
<tr>
<td>3302</td>
<td>Failure to yield half of roadway to oncoming vehicle</td>
<td>3</td>
</tr>
<tr>
<td>3303</td>
<td>Improper passing, overtaking driver to maintain speed; passing driver to pull in at safe distance</td>
<td>3</td>
</tr>
<tr>
<td>3304</td>
<td>Improper passing on the right</td>
<td>3</td>
</tr>
<tr>
<td>3305</td>
<td>Improper passing on the left, clear distance ahead</td>
<td>3</td>
</tr>
<tr>
<td>3306(a)(1)</td>
<td>Improper passing on a hill</td>
<td>4</td>
</tr>
<tr>
<td>3306(a)(2)</td>
<td>Improper passing at a railroad crossing or intersection</td>
<td>3</td>
</tr>
<tr>
<td>3306(a)(3)</td>
<td>Improper passing at a bridge or tunnel</td>
<td>3</td>
</tr>
<tr>
<td>3307</td>
<td>Improper passing in a no-passing zone</td>
<td>3</td>
</tr>
<tr>
<td>3310</td>
<td>Following too closely</td>
<td>3</td>
</tr>
<tr>
<td>3321</td>
<td>Failure to yield to driver on the right at intersection</td>
<td>3</td>
</tr>
<tr>
<td>3322</td>
<td>Failure to yield to oncoming driver when making left turn</td>
<td>3</td>
</tr>
<tr>
<td>3323(b)</td>
<td>Failure to stop for stop sign</td>
<td>3</td>
</tr>
<tr>
<td>3323 (c)</td>
<td>Failure to yield at yield sign</td>
<td>3</td>
</tr>
<tr>
<td>3324</td>
<td>Failure to yield when entering or crossing roadway between intersections</td>
<td>3</td>
</tr>
<tr>
<td>3332</td>
<td>Improper turning around – illegal U-turns</td>
<td>3</td>
</tr>
<tr>
<td>3341(a)</td>
<td>Failure to obey signal indicating approach of train</td>
<td>2</td>
</tr>
<tr>
<td>3341(b)</td>
<td>Failure to comply with crossing gate or barrier 30-day suspension</td>
<td>4</td>
</tr>
<tr>
<td>Vehicle Code Section</td>
<td>Description</td>
<td>Points</td>
</tr>
<tr>
<td>----------------------</td>
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<td>--------</td>
</tr>
<tr>
<td>3342(b) or (e)</td>
<td>Failure to stop at railroad crossings</td>
<td>4</td>
</tr>
<tr>
<td>3344</td>
<td>Failure to stop when entering from alley, driveway or building</td>
<td>3</td>
</tr>
<tr>
<td>3345(a)</td>
<td>Failure to stop for school bus with flashing red lights</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td><strong>30 days suspension</strong></td>
<td></td>
</tr>
<tr>
<td>3361</td>
<td>Driving too fast for conditions (If violation occurs in an active work zone and in conjunction with an accident, <strong>15 day suspension</strong>)</td>
<td>2</td>
</tr>
<tr>
<td>3362</td>
<td>Exceeding maximum speed (Miles Over Speed Limit):</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>6 to 10</strong></td>
<td>2</td>
</tr>
<tr>
<td></td>
<td><strong>11 to 15</strong> (if violation occurs in an active work zone, <strong>15 day suspension</strong>)</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td><strong>16 to 25</strong> (if violation occurs in an active work zone, <strong>15 day suspension</strong>)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>26 to 30</strong> (if violation occurs in an active work zone, <strong>15 day suspension</strong>)</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td><strong>31 and over</strong> Departmental Hearing and Sanctions provided under Section 1538(d)</td>
<td>5</td>
</tr>
<tr>
<td>3365(b)</td>
<td>Exceeding special speed limit in school zone</td>
<td>3</td>
</tr>
<tr>
<td>3365(c)</td>
<td>Exceeding special speed limit for trucks on downgrades</td>
<td>3</td>
</tr>
<tr>
<td>3542(a)</td>
<td>Failure to yield to pedestrian in crosswalk</td>
<td>2</td>
</tr>
<tr>
<td>3547(a)</td>
<td>Failure to yield to pedestrian on sidewalk when entering from a driveway or alley</td>
<td>3</td>
</tr>
<tr>
<td>3549(a)</td>
<td>Failure to yield to blind pedestrians</td>
<td>3</td>
</tr>
<tr>
<td>3702</td>
<td>Improper backing</td>
<td>3</td>
</tr>
<tr>
<td>3714(a)</td>
<td>Careless driving</td>
<td>3</td>
</tr>
<tr>
<td>Vehicle Code Section</td>
<td>Description</td>
<td>Points</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>3714(a)</td>
<td>Careless driving</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 month suspension</td>
<td>-</td>
</tr>
<tr>
<td>3736</td>
<td>Reckless driving</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 month suspension</td>
<td>-</td>
</tr>
<tr>
<td>3643</td>
<td>Accidents involving damage to attended vehicle or property</td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 months suspension</td>
<td>-</td>
</tr>
</tbody>
</table>

I don’t like surprises and it is likely that you don’t like them, too. If any of these moving violations accompany an allegation for DUI, you and your lawyer should address them in an effort to avoid unnecessary fines, costs, points – and additional suspensions.

The failure to address any so called “minor traffic offenses” and other offenses which trigger points or a suspension of your license could result in unnecessary expense and the unexpected loss of your driving privileges. It’s the best way to spoil any surprises after your DUI case is over.

**What is a “Habitual Offender”?**

In Pennsylvania, a “habitual offender” is used to describe a motorist who accumulates at least three convictions for any of the following offenses within a period of five years:
1. Any violation of Subchapter B of Chapter 37 (Relating to serious traffic offenses).¹

2. Any violation of Chapter 38 (Relating to DUI) except for §3808(a)(1) and (b) and (Relating to illegally operating a motor vehicle not equipped with ignition interlock) and §3809 (Relating to restriction on alcoholic beverages).

3. Any violation of §1543(b)(1.1) (Relating to driving while operating privileges suspended or revoked).

4. Any violation of §3367 (Relating to racing on highways).

5. Any violation of §3742 (Relating to accidents involving death or personal injury).

6. Any violation of §3742.1 (Relating to accidents involving death or personal injury while not properly licensed).

7. Any violation of §3743 (Relating to accidents involving damage to attended vehicle or property).

¹ Subchapter B of Chapter 37 (Serious Traffic Offenses) includes homicide by vehicle, driving without lights to avoid identification or arrest, homicide by vehicle while DUI, aggravated assault by vehicle or while DUI, reckless driving, fleeing or attempting to elude police officer.
Any “conviction” for the purpose of determining whether a motorist is a habitual offender under 75 Pa.C.S.A. §1542 includes not only convictions which result from a plea or trial but also whenever these offenses result in acceptance of Accelerated Rehabilitative Disposition, or ARD. When a motorist accumulates three such convictions within any period of five years, his driver’s license will be revoked by PennDOT for a period of five years. A revocation is different than a suspension. A suspension is a temporary denial of the privilege of driving whereas a revocation is the termination of your driver’s license. When the period of revocation is completed, the habitual offender must start the driver’s license application process from the beginning by obtaining a learner’s permit and taking a driving test. Every additional offense of this nature committed within a period of five years results in a revocation for an additional period of two years.

Local Roadblock Ruled Unconstitutional

On March 24, 2010, an Erie judge ruled that a “traffic safety check point” set up on State Route 20 in Millcreek Township was unconstitutional because the time of day when the roadblock occurred was selected improperly. As a result, none of the evidence from a DUI arrest (including BAC results) could be used against an intoxicated motorist.
who was stopped at the roadblock.

The Court relied upon other cases handed down by our appellate courts which require the decision about when and where to set up a roadblock to be based upon empirical data. For example, traffic volume, traffic tickets, DUI arrests or PennDOT accident statistics must be considered when choosing the time and location of a checkpoint.

In a four-page opinion, the Court summarized the rules that police must follow when setting up a roadblock as follows:

“The *Tarbert* case and its progeny speak repeatedly of data-driven decisions. Accordingly, the Court expected to find some analysis of data in selecting this roadblock: traffic volume, traffic tickets, DUI arrests, and PennDOT accident statistics might have been consulted. Certainly, the township engineer has data on traffic flow and volume. The police have data on tickets and arrests, and PennDOT has accident data. Judging from the hearing testimony, none of this data was consulted in formulating this roadblock. At the hearing, the only justification offered was the intoned mantra that there was a prior successful roadblock at the same location almost a year earlier.”

The Court concluded that the arbitrary selection of the time
for the roadblock was “fatal to its constitutionality.” As a result, all evidence seized from the motorist charged with DUI, including the blood test results and any other indicators of intoxication, were suppressed. Erie lawyer (and friend) Paul Susko represented the motorist in this successful constitutional challenge. The effect of the decision meant that no evidence obtained at the roadblock could be used against the motorist.

This case underscores the role our Constitutions (both Federal and State) play in the evaluation of DUI cases. This case also speaks to the importance of a thorough investigation of all possible defenses.

A lawyer with experience defending the freedom of people facing DUI allegations should be able to explain the constitutional implications of motor vehicle stops. As this opinion makes clear, what might appear to be a “routine” arrest for DUI and other offenses may not pass constitutional muster.

Read the Label: Prescription Drugs Can Result in DUI

In Pennsylvania, when we hear that someone is charged with DUI, we tend to assume that the person was driving
under the influence of alcohol, illegal drugs (like marijuana or cocaine), or a combination of both. However, DUI simply means driving while impaired by any substance to a degree that renders one incapable of driving safely.

The “impairment” which triggers a DUI can even include legal drugs like prescription medicines you probably have in your medicine cabinet at home. Some prescriptions and even some over-the-counter medications are powerful enough to impair your ability to safely operate a vehicle – and many even say so right on the label. Many of these legal drugs cause you to feel drowsy and can impair your ability to react quickly or affect your otherwise sound judgment. Common legal drugs that can impair one’s driving ability include stimulants, sedatives, antidepressants, and narcotic analgesics.

One of the issue unique to DUI based upon prescription drugs in the lack of an objective method of measuring impairment. For example, when someone is driving under the influence of alcohol, his or her blood-alcohol level (BAC) can be measured in numerical form. That numerical form is often determined by a laboratory and the results are deemed by statute to be either above or below the minimum threshold at which a motorist is presumed to be impaired, e.g., .08%. This is not so with prescription drugs,
for which the statute is silent concerning a minimum threshold for many pharmaceuticals. At Purchase & George, P.C., we have defended motorists facing allegations of DUI (Prescription Drugs) when the amount of lawfully prescribed medicine was even within the therapeutic range, according to the prescribing doctor.

So, a word to the wise. Read the labels on your prescription medications and over-the-counter drugs. If drowsiness is a potential side-effect, or a warning states that you should not operate a motor vehicle or heavy equipment when using the medicine, exercise caution, ask a friend or family member to drive for you.

**How to Choose the Right Lawyer to Defend Your Freedom**

Many people who face DUI or criminal allegations have never been in trouble before. For this reason, they have not needed a criminal defense lawyer until now and do not know how to choose one. If this sounds like you, you have made a good decision by looking for information.

You will not find the answers you need inside (or on) the telephone book. All of the ads there appear to be the same except for maybe the size and the amount of color in the advertisement. Most claim to be “aggressive” or
“experienced” but, you probably ask yourself, “What does that really mean?”

Like any other important decision you make, you need information. The more information you have, the better. The better the information, the better your decision. You have to ask questions to get good information. And the answers you receive can make all the difference to you and your family.

Ask These 6 Questions Before You Meet Any Lawyers.

A truly “experienced” DUI lawyer will be pleased to answer all of your questions even before you schedule an appointment. The information you seek cannot be found in the telephone book. And the answers you receive can make all the difference. In the end, choosing the right DUI lawyer for you and your case starts with asking the right questions at the beginning. Before you even agree to meet any DUI lawyer (and certainly before you hire one) ask the lawyer these five questions:

1. Do You Offer Any Free DUI Information, Like Books, Articles or DVDs? First, ask for free information about DUI in Pennsylvania. Ask the lawyer to send you any books or articles he has written on the subject. Ask the
lawyer where you can download an e-book (or two) which provide information about DUI, the elements of proof, the penalties upon conviction or any alternatives to prison. Ask the lawyer to provide any other educational information that may help you understand what you can expect when facing an allegation of DUI.

You want to overcome fear of the unknown and minimize unnecessary anxiety as you prepare yourself for what lies ahead. More information helps you get smart faster. The better the information, the better the decisions you will make. If the lawyer does not offer any free information without insisting upon a consultation, keep looking. Narrow your list of potential lawyers based upon the quality of information they provide to you before you spend the time to meet with them.

2. Have You Won DUI Cases? Second, you should ask whether the lawyer has successfully defeated DUI charges in other cases. Although past successes do not guarantee any particular result in your case, you should know whether or not your lawyer has meaningful experience handling cases like yours. A DUI case can be challenged in a number of different ways. For example, it might be that the police lacked a good enough reason to stop your car in the first place; a defense of this nature would challenge the
constitutionality of the motor vehicle stop. A DUI lawyer with experience defending cases that involve questionable motor vehicle stops or evidence collection issues would be pleased to discuss these topics with you.

3. Where Can I Read About Your Other Cases? Third, you should ask where you can read about other DUI cases that the lawyer has defended. Lawyers should be able to share with you either copies of transcripts or opinions (while protecting the names of the former clients) or summaries of other cases. Again, while past successes will provide you with no particular guarantee in your case, you can at least be comforted in knowing that your lawyer has handled cases like yours and handled them well.

4. Where Can I Learn About What Other Lawyers, Judges and Your Clients Think About Your Legal Abilities and Ethics? The Martindale-Hubbell Peer Review Ratings are designed to help people identify, evaluate and choose the best lawyer for their case. According to Martindale-Hubbell, the ratings are "an objective indicator that a lawyer has the highest ethical standards and professional ability and are used by buyers of legal services to justify their hiring decisions."
Martindale-Hubbell asks judges and lawyers who know a lawyer to rate the lawyer. Only if a lawyer is considered to have "Very High" general ethical standards is a lawyer considered for a rating. If considered, judges and other lawyers will rank a lawyer on a scale of 1 to 5 (with 5 being the highest) in five areas: Legal Knowledge; Analytical Capabilities; Judgment; Communication Ability; and Legal Experience.

Lawyers who receive a rating above 3.0 are considered "Ranked"; lawyers who receive a rating above 4.5 are considered "BV-Distinguished" which "is an excellent rating for a lawyer with some experience [and] a widely respected mark of achievement, it differentiates a lawyer from his or her competition."

Finally, the highest ranking is “AV-Preeminent.” The AV Preeminent rating "is a significant rating accomplishment - a testament to the fact that a lawyer’s peers rank him or her at the highest level of professional excellence" and is the highest possible ranking a Pennsylvania lawyer can receive. Only the highest rated Pennsylvania lawyers receive a rating of 4.5 or better and receive an “AV-Preeminent” ranking.
According to Martindale-Hubbell, an “AV- Preeminent” ranking “shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.”

5. Where Else Can I Learn About a Lawyer? Another source of information about lawyers can be found at www.Avvo.com. According to Avvo, “The Avvo Rating is our effort to evaluate a lawyer’s background, based on the information we know about the lawyer. The rating is calculated using a mathematical model that considers the information shown in a lawyer’s profile, including a lawyer’s years in practice, disciplinary history, professional achievements and industry recognition - all factors that, in our opinion, are relevant to assessing a lawyer’s qualification.”

Here’s why the Avvo Rating can help you find the right lawyer, according to Avvo.com:

- **It’s unbiased.** Because ratings are calculated using a mathematical model, all lawyers are rated by the same standards.
• **There's no favoritism.** Here at Avvo, all lawyers are treated equally. They can’t pay to change the ratings, and we don’t play favorites to lawyers we know.

• **It’s developed by legal experts for non-experts.** The model used to calculate the Avvo Rating was developed with input from hundreds of attorneys, thousands of consumers, and legal experts.

• **It’s easy to understand.** With simple ratings from 1 to 10 or “Attention” or “No Concern,” we hope to make clearer the murky process of understanding lawyers’ backgrounds.

Avvo.com reminds that the Avvo Rating is not intended to be the only thing you use in choosing a lawyer. It is only one tool and it is “our effort to provide a snapshot evaluation of the lawyer’s background, so you can more effectively compare the available background information of different lawyers.”

6. **Will You Help Me Make This the Last DUI I Ever Face?** Finally, you should ask the lawyer what he can do to help ensure that this is the last DUI you ever have to face. Being a lawyer means more than simply knowing the
law and being a courtroom advocate. A lawyer is a problem solver. If you think that you might benefit from alcohol counseling or even in-patient treatment for addiction, the lawyer should be familiar with where you can get help. He should support your efforts to make sure that this is the last DUI you ever face.

Three Dozen (or so) Questions to Ask Before You Hire a DUI Lawyer

According to a news report, in 2008 a record number of motorists were charged with driving under the influence (DUI) in Pennsylvania. The Pennsylvania State Police reported that more than 16,156 motorists were charged with DUI in 2008, which was the highest number in Pennsylvania history and a 3% increase over the number of arrests in 2007. For many, this was the first time they ever faced allegations of DUI (or allegations of wrongdoing of any kind).

For someone facing a DUI, this may be the first time that you ever hired a lawyer. You may ask yourself, “How do I choose the right lawyer for me and my case?” You look in the yellow pages for guidance. However, all of the ads in the yellow pages appear to be the same except for maybe the size and the amount of color in the advertisement.
Every lawyer seems to offer a free consultation. Most claim to be “aggressive” or “experienced” but, you probably ask yourself, “What does that really mean?”

Like any other important decision you make, you need information. The better the information, the better the decision. And the information you need to choose the right DUI lawyer for you and your case cannot be found inside (or on) the telephone book. Here are three dozen or so questions that will help you get the information you need.

• Do you offer a free initial consultation?
• Do you have malpractice insurance?
• How long have you been in practice?
• For how many years have you defended DUI cases?
• Have you successfully challenged a DUI stop on constitutional grounds?
• Have you successfully challenged the admissibility of blood or breath test results?
• Where can I read about your other cases?
• Do you offer free written materials?
• Can you explain both the strengths and weaknesses of my case?
• What will happen at every stage of my case?
• What is ARD?
• Do I qualify for ARD?
• What would ARD supervision be like?
• Is ARD the right choice for me?
• What are the disadvantages of ARD?
• If I don’t qualify for ARD, will I lose my driver’s license?
• If I don’t qualify for ARD, will I go to jail?
• Have you ever defended DUI cases before a jury?
• Have you ever prosecuted DUI cases?
• Why does it matter if you have prosecuted DUI cases in the past?
• Will you meet with me in person before and after all court appearances?
• If I think that a drug or alcohol evaluation might be beneficial to me, can you help me find a counselor?
• Do you discuss your fees in advance?
• Do you put your fee arrangement in writing?
• Can I see the written fee arrangement today?

• Do you accept credit cards?

• Do you accept payments?

• Do you have a toll free number?

• Do you return telephone calls the same day that you receive them?

• How often do you check your email?

• Do you answer emails the same day that you receive them?

• If you are not available, do you have administrative assistants who can give me basic information about my case?

• Will you give me the names of other DUI lawyers that I can interview before I make a decision?

Here are several questions to ask yourself either during or after that “free initial consultation” that almost every lawyer offers:

• Did the lawyer listen to me?

• Did the lawyer speak in plain English and in a way that I could understand?

• Did the lawyer welcome all of my questions?

• Did the lawyer answer all of my questions to my satisfaction?
• Did the lawyer seem defensive or avoid altogether any of my questions?

These questions may not be exhaustive. There may be other questions important to you because each case is different and your goals may involve considerations unique to your situation. The lawyer that you choose should be pleased to answer all of these questions, together with any other questions unique to your special circumstances.

An allegation of DUI places both your freedom and your finances in jeopardy. In Pennsylvania, the number of arrests for driving under the influence has been rising. The penalties for a conviction have become more harsh. Our judges have less discretion because of mandatory sentencing schemes imposed by the Legislature. The sentences can include a mandatory term of imprisonment. A conviction of DUI triggers a one year driver’s license suspension.

Your decision to hire a DUI lawyer may be the most important decision you make this year. Much hangs in the balance for you and your family. You should feel free to ask all of the questions suggested here. A truly “experienced” DUI lawyer will be pleased to answer all of your questions. The information you seek cannot be found in the telephone book. And the answers you receive will make all the
difference to you and your family. In the end, choosing the right DUI lawyer for you and your case starts with asking the right questions at the beginning.
The Secret to a Winning Relationship with Your Lawyer

When many of us think of lawyers and communication, we envision a courtroom, a jury and a passionate closing argument. The lawyer talks (and talks) and everyone else just listens. The roles never change. However, the kind of communication that makes for a winning relationship with your lawyer is quite different.

Real communication involves far more than just a lawyer talking. Meaningful communication requires listening, seeing one another, and time. Time to listen. Time to talk. Time to meet in person. Time to explain. And doing each of these things with enough frequency to make sure that you truly understand the process, your choices, and the best way ahead for you and your family.

As you consider the right DUI defense lawyer for you, think about whether the fundamentals of successful communication are in place. Consider these keys to meaningful communication with your lawyer:

• Does the lawyer listen to you, or just talk?

• Does the lawyer limit the number of cases he accepts in order to make more time for real communication with you?
• Will the lawyer meet with you in person before every court appearance so that you have both enough time and information to make smart decisions?

• Will he meet with you after each significant event in your case to make sure you know what will happen next so you can get ready for the next event in your case?

At our office, we (by “we” I mean our administrative assistants and me) value communication. We understand that real communication - the kind that makes for a successful relationship for our clients - requires listening, frequent meeting and time.

How do we make more time for our clients? For starters, we accept fewer clients. We simply do not accept every case. We often decline cases. Fewer clients means more time for you. More time to listen. More time to meet in person. More time to meet longer. More time to prepare a winning strategy.

We employ enough professionals to provide administrative support. This lets the lawyer give his full attention to clients. Our experienced administrative support team lets me focus on our clients and their cases (and not the telephone, copier, scanner, fax or countless other tasks which, although important and necessary, consume time that could be devoted to clients and their cases).
We assign at least one paralegal to each client. This provides our clients with immediate and personal attention (without playing “phone tag”) when the lawyer is in court or meeting with another client. More information given sooner by someone familiar with the case always seems to please our clients.

I happen to think that a winning relationship requires meaningful communication. And successful communication involves more than just talk. It requires listening (my listening). It requires that clients see me, and see me often. And, most important, meaningful communication requires time - time that exists only when the fundamentals of successful communication are in place.
WHAT WE DO

We Help People & Their Families.

If you face DUI or criminal allegations in Pennsylvania, you may feel overwhelmed, confused or even frightened by the possibility of losing your freedom, your job or driver’s license. Many good and decent people, hardworking citizens with families and good jobs, make mistakes. Most are over-charged. Others are, quite simply, wrongfully charged with DUI and other crimes. You are not alone. We can help.

We Defend Freedom.

We defend people accused of DUI throughout Northwestern Pennsylvania. One case at a time. One person at a time. Since 1992, I have helped people get through the tough times after an arrest for DUI and other offenses. The weight of a mere criminal allegation can result in not only the loss of freedom (such as the imposition of bond or a probation detainer), but such allegations also can result in loss of employment, anxiety, stress and emotional strain for you and your family.
We Provide Free DUI Information.

We provide lots of free DUI information including books, articles, answers to frequently asked questions, a DVD and online videos. In 2010, Tim George wrote *Defending Freedom: The Ultimate Guide to DUI Cases in Pennsylvania*. In 2012, he authored this Second Edition which is revised and expanded to include even more information than the popular First Edition.

You also can get lots of free information by visiting [www.TimGeorge.us](http://www.TimGeorge.us) where you can read many articles about DUI, see a sampling of our success stories, watch online videos and get answers to dozens of frequently asked questions. You also can get a free subscription to our newsletter which provides useful and interesting information about DUI and a host of other related topics throughout the year.

We Have Won DUI Cases.

We have a record of success. Each case is different. Every case turns on its own unique set of facts. So, the details surrounding your arrest will determine the outcome, as past successes of a lawyer provide you with no guarantees in your case. However, you should know whether a lawyer has meaningful experience handling cases like yours.
Look, experienced lawyers win some and lose some. What a good lawyer does in every case is give you a fair chance to keep your freedom (or minimize the damage caused by a poor decision or a mistake that you made).

You Can Read About Our Success Stories.

With this in mind, you can read a sampling of our success stories. Every case is different and your case will turn on the facts unique to your circumstances. You will get no guarantees from an honest lawyer. But aren’t you better informed when you know that your lawyer has actually defended allegations of DUI before and defended them well?

We Have an “AV-Preeminent” Martindale-Hubbell Rating.

Purchase & George, P.C. is a law firm with an “AV-Preeminent” Martindale-Hubbell rating. Both Tim George and Eric Purchase have “AV-Preeminent” Martindale-Hubbell rankings based upon the criteria used by the oldest lawyer ranking service in America. This is the highest ranking lawyers can receive from their peers.
We Have a “10.0 Superb” Avvo.com Rating.

The lawyers at Purchase & George, P.C. also have “10.0 Superb” Avvo.com ratings. This is the highest rating lawyers can receive.

You Can Read What Others Say About Us.

In addition to what other lawyers and judges say about us, you can read what others we’ve helped say about us by visiting www.TimGeorge.us. Read the reviews written by others there.

We Don’t Take Freedom for Granted.

More importantly, we won’t take your freedom for granted. Most of us take our freedom for granted. Like many other things, we often fail to appreciate the value of our freedom until we are faced with the possibility of losing it. If you face DUI charges, then you understand this better than most people. The weight of a mere criminal allegation can result in not only the loss of freedom (such as the imposition of bond or a probation detainer), but such allegations also can result in loss of employment, anxiety, stress and emotional strain for you and your family. The case - your case - becomes the central focus of your life.
We appreciate that people accused of these offenses need more than just representation by a skilled advocate, but also an experienced professional who will listen, care and counsel. Our singular objective is to defend freedom and, in the end, help people and their families.

**We Communicate with You.**

The kind of service we provide can’t be achieved through the efforts of only one person. We have a team. And everyone plays a role in taking good care of our clients, many of whom have never been in trouble before. Our clients are supported by four full-time administrative support personnel. We also often work with an investigator to develop all of the important facts about a case. We embrace the efficiencies of technology and, in particular, the many ways such advancements can improve the quantity, quality and timeliness of the services provided to our clients. We believe that a winning relationship with your lawyer requires meaningful communication. And successful communication involves more than just talk. It requires listening (our listening). It requires that you see us, and see us often. And, most important, meaningful communication requires time - time that exists only when the fundamentals of successful communication are in place.
We Make More Time for You.

For starters, we simply don’t accept every case. We often decline cases. We can’t be everything to everyone. We are careful to limit the number of cases we accept because case preparation and real communication require time, especially with clients who have never faced a DUI before. Fewer cases means more time for clients. Fewer clients allows more time to meet, listen and explain, and doing so with enough frequency to ensure that clients truly understand the process, their options and the best way ahead.

We Focus on What’s Most Important.

We employ enough professionals to provide administrative support. Our team is trained to put you and your concerns first. This lets your lawyer give his full attention to you and your defense. Our experienced administrative support teams lets us focus on you and your case (and not the telephone, copier, scanner, fax or countless other tasks which, although important and necessary, consume time that could be devoted to preparing your defense and preparing you for what lies ahead).
We Take Good Care of You.

We assign at least one paralegal to each client. This provides our clients with prompt and personal attention when the lawyer is in court or helping someone else (without endless waiting for a return call or playing “phone tag”). More information given soon by someone familiar with the case always seems to please our clients.

We Make it Easy for You.

In 2004, we moved our main office to 2525 West 26th Street in Erie after overseeing extensive renovations made there. The location is centrally located and easily accessible, just one block west of I-79. The location is convenient for clients throughout northwestern Pennsylvania and offers free parking.

We recently remodeled again - this time to move the reception area to the lower level and thereby eliminate all stairs and steps. Now, those with difficulty walking and climbing can park in front and walk with ease to our lobby and meeting rooms. In 2010, we opened a second office in Meadville to better serve people in Crawford County.

www.TimGeorge.com
www.FreeDUIBooks.com
We Don’t Accept Every Case.

We simply do not accept every case. We cannot be everything to everyone. We are careful to limit the number of cases we accept because case preparation and real communication requires time, especially with clients who have never faced a DUI or criminal allegations before. Fewer cases means more time for client. Fewer clients allows more time to meet, listen and explain, and doing so with enough frequency to ensure that clients truly understand the process, their options and the best way ahead.

We Aren’t for Everyone.

Our job isn’t to tell you just what you want to hear. We tell you how it really is. We don’t accept every case. We want to defend people who want good advice, smart information, and an excellent defense - not a cheap one. As a result, we’re not a good fit for everyone. And if we’re not a good fit for you, we will tell you - and then help you find another lawyer. If you think we might be right for you, call us toll free at (888) 748-9909.
A SAMPLING OF OUR SUCCESS STORIES

DISCLAIMER - No two cases are exactly the same. The facts of each case often are in dispute. You cannot expect that your case will be resolved just like these cases. You, however, can expect our best effort, personal attention and a commitment to the defense of your freedom.

Meadville DUI Stop Ruled Illegal

A Crawford County Judge ruled that the Pennsylvania State Police lacked reasonable suspicion when troopers stopped a Meadville motorist suspected of DUI last summer. As a result, none of the evidence obtained from the motorist can be used against the motorist at trial. The ruling means that his BAC results, his statements at the scene, and all of the field sobriety test results cannot be considered by the judge or jury at trial. The District Attorney has 30 days to appeal the decision.

The stop occurred on August 26, 2012 at about midnight when the Meadville motorist was traveling north on Old Plank Road just after making a turn onto Cemetery Road. The Pennsylvania State Police alleged that on one occasion the motorist "abruptly swerved" into the
southbound lane causing "one-half" of his vehicle to cross into the oncoming lane, before over-correcting and returning to the northbound lane. No other vehicles were on the roadway. The trooper also testified at the suppression hearing that the motorist then activated his left turn signal for longer than unusual before negotiating a left turn onto Cemetery Road.

After a suppression hearing, the Court recently issued a decision holding that the trooper lacked the requisite factual and legal basis to justify the stop. In so doing, the Court granted the suppression motion filed on behalf of the motorist by his Erie DUI and criminal defense lawyer, Tim George.

**Judge Says Girard DUI Stop Illegal**

An Erie County Judge granted our request to suppress all evidence obtained after a motorist was stopped by police and arrested on DUI and drug charges. The ruling followed lengthy suppression and preliminary hearings which focused on why the police followed a motorist for more than 4 miles on an early Friday morning last spring through Fairview and Girard Townships before stopping him at about 3:00 a.m.
The police officer testified that the motorist crossed over the center yellow line and the white fog line on 3 to 4 separate occasions. During this time, the officer also said that the motorist weaved within the westbound lane of State Route 5. When the motorist turned onto Route 18, near his home, the police stopped him. After the driver failed field sobriety tests and admitted to smoking marijuana earlier in the evening, the police questioned the passenger who retrieved a marijuana pipe from the center console. Tim George argued that the mobile video recorder (MVR) which was mounted on the dashboard of the police cruiser told a different story. The Court agreed. In the decision written by the Court, the Judge found that:

Next, with regard to suspicion of DUI, while [the officer's] testimony of [the motorist's] driving on certain sides of his lane comports with the video evidence, under the totality of the circumstances test, the officer's conclusion [the motorist] was driving under the influence is not a reasonable conclusion. [The motorist] was not weaving, as one customarily defines weaving – side to side motions that are close in time and pace. [The motorist] was simply following the natural path of Route 5, which contains bends, dips, rises and patchwork... the conduct was nothing more than ordinary driving.
In light of these findings, the Court ultimately held that the police “did not have reasonable suspicion to believe that [alleged violations] of the Motor Vehicle Code had been violated. Thus, the officers conducted an unconstitutional stop… and all the evidence obtained as a result of the stop must be suppressed.” A month later, the District Attorney’s Office filed a motion to dismiss all of the charges filed against the motorist, including the drug offense. This enabled the motorist to retain his driver’s license, avoid the possibility of prison or probation, as well as all of the mandatory fines and costs associated with DUI and drug convictions.

**Allegation of DUI Withdrawn**

A Pittsburgh man facing his second DUI in 10 years was stopped by an off-duty Sheriff near the entrance of Presque Isle State Park for suspicion of DUI.

The Sheriff testified at the preliminary hearing that the motorist appeared to “have some difficulties” crossing on the south side of Sixth Street to the north side of Sixth Street and later observed the motor vehicle “lurching” at the same location. After following the motorist for about one- eighth of a mile, the Sheriff observed the motorist cross the center line on “three occasions” while traveling within the posted speed limit. After the motorist turned left
onto Peninsula Drive, he apparently remained on the dotted line which divided two northbound lanes of travel for “more than a few seconds but not tremendously long.”

On the date set for the suppression hearing, the Commonwealth agreed to withdraw the allegation of DUI in return for the entry of a guilty plea to public intoxication, a summary offense for which the Pittsburgh area man received only a fine.

**DUI Against Minor Withdrawn**

On a Saturday morning at 4:00 a.m., a Pennsylvania State Police Trooper followed an underage motorist for more than a mile under the belief that the motorist may be under the influence of alcohol “due to the time of the night.” Although the Trooper could not establish any Motor Vehicle Code violations due to erratic or other bad driving, he nevertheless initiated the motor vehicle stop because “an item was hanging from the rearview mirror of the vehicle.”

After a preliminary hearing, the defense filed a pretrial motion arguing that the stop violated the constitution and the rights of an underage motorist. Shortly before an evidentiary hearing on the issue, the Commonwealth agreed to withdraw the charge of DUI.
DUI Dismissed Against Erie Man “sleeping it off” in Parking Lot

 Shortly after midnight, the City of Erie Police noticed a car parked in the parking lot of the Holiday Inn. The driver was asleep behind the wheel, with the key in the ignition and the parking lights on. An open bottle of beer was in his right hand and an empty beer bottle was behind the passenger seat. The police also observed a marijuana pipe on the front seat armrest. After the motorist was awakened and determined to be under the influence of alcohol or other controlled substance, he submitted to a blood test, which revealed a BAC of 0.14%. No one witnessed the motorist drive or otherwise move the vehicle while under the influence of alcohol. The motorist waived his preliminary hearing on the advice of another lawyer in return for the drug charge being withdrawn. After his formal arraignment, the motorist hired our office and, rather than enter a plea of guilty to DUI, proceeded to trial.

After jury selection, the defense presented a trial memorandum and a motion for judgment of acquittal on the basis that the evidence expected at trial would fail to establish that the motorist was “driving, operating or in actual physical control of the moving vehicle” while under the influence of alcohol. Further, the defense argued that
the motorist created no danger to public and merely “sleeping it off” in the parking lot was consistent with what the public policy encouraged responsible people to do. The charges were then dismissed.

DUI Dropped Against Woman Out of Gas

In the early morning hours of November 9, 2007, an off-duty U.S. Border Patrol Agent came upon a North East woman who was walking alone on the berm of Interstate 90. The woman had run out of gas about a mile back on the same highway. The agent offered to give the woman a ride to a nearby gas station because it was dark and raining heavily. In the course of assisting the woman, the agent suspected that the woman might be intoxicated because she tended to repeat herself, emitted an odor of alcoholic beverage, and had difficulty pumping gasoline. The agent contacted his dispatch operator who in turn contacted the Pennsylvania State Police.

After the agent returned the woman to her car, she refueled and prepared to leave the scene. The off-duty U.S. Border Patrol Agent then prevented her from leaving by activating the overhead light on his marked Border Patrol vehicle. The two then stood in heavy rain in the dark alongside Interstate 90 until a Trooper arrived at the scene. After the trooper interviewed the woman for a short time, she was
taken into custody where a blood test revealed a BAC of 0.092%. It was the woman’s second arrest for DUI in two years.

After taking testimony from the law enforcement officer at the preliminary hearing, the defense prepared a pre-trial narrative challenging the lawfulness of the arrest, violations of *Miranda* and lack of reasonable suspicion, and sought the suppression of all evidence obtained after the woman was prevented from leaving the scene after refueling her car.

At the time set for the suppression hearing, the Commonwealth withdrew the allegation of DUI in return for a plea to a summary offense which resulted in only a $300.00 fine and court costs.

**DUI Reduced to Public Intoxication**

On the evening of August 3, 2008, an officer employed by the Pennsylvania Fish & Boat Commission stopped a vehicle leaving the North East Marina for exiting the parking lot in the wrong lane of travel. (One lane is designated for entry and the other, separate lane is designated for exiting the marina parking lot.) In addition to traveling in the wrong direction, the officer believed that the
car was traveling at an “unusually high-rate of speed.”

After the stop the officer said that the driver's movements were “very slow” as he retrieved his driver’s license and registration. The officer then asked the driver whether he had been drinking, and the driver admitted that he did have “a couple.” The officer then required the driver to perform field sobriety tests before requesting that he submit to a blood sample, which later revealed a BAC of 0.201%.

When the defense challenged the reasons for the motor vehicle stop, the Commonwealth agreed to withdraw the DUI charge. The motorist entered plea to the summary offenses of Public Intoxication and a traffic citation, which resulted in no license suspension and only fines and costs.

“High Rate” DUI Withdrawn Due to “Two Hour” Rule Violation

After a one-car accident, a Corry man faced a number of allegations, including DUI-High Rate, DUI-General Impairment, careless driving, restrain systems and failure to report an accident. Our client lost control of his vehicle while negotiating a turn and struck a tree. He telephoned a friend, who then transported him to a local hospital where he received treatment for minor injuries. In the meantime,
law enforcement discovered his car, which remained at the scene of the accident. Upon learning that he was at the hospital, the police obtained a search warrant for his blood test results. The test revealed a BAC of 0.137%, which falls into the “High Rate” Impairment under the DUI statute.

Our investigation showed that the blood used to form the basis of the BAC result was drawn from our client more than two hours after the time of the accident. At the preliminary hearing the defense successfully argued that a violation of the “two hour rule” prevented the use of this evidence against the motorist. The Commonwealth agreed. All charges, except DUI-General Impairment, were withdrawn.

Our client applied for and was admitted to the ARD program. Because he faced only a DUI-General Impairment (instead of DUI-High Rate as was originally charged) he received no suspension of his driver’s license.

**DUI Charges Dropped After Stop Deemed to be Illegal**

Late at night, a driver turned right at a stop light and crossed into the oncoming lane of traffic. No other cars were on the roadway at the time. Police stopped him,
administered field sobriety tests, and then obtained a blood sample. His BAC was over the legal limit. He was charged with DUI, a lane violation and careless driving.

The Harbor Creek man faced a mandatory prison sentence if convicted of DUI. He did not qualify for ARD. A suppression motion was filed by the defense. After an evidentiary hearing, the Court ruled that the stop violated his constitutional rights and that none of the information obtained after the stop could be used against him. All charges were later dropped. As a result, our client avoided a prison sentence and a one year driver’s license suspension.

Lake Erie Boater Cleared of BUI Charges

The Coast Guard received a report of an intoxicated boater. A short time later, a boating under the influence (BUI) patrol stopped an Erie man’s boat supposedly “at random” for the purpose of inspecting the safety equipment on the boat.

Upon boarding the vessel, the officers asked the owner of the boat whether he had been drinking and observed other signs of intoxication. The officers transported the boater to shore where he performed field sobriety tests. The officers
later obtained his BAC, which was over the legal limit. The boater was charged with BUI. After the preliminary hearing, the defense filed a suppression motion which asserted that the stated reason for stopping the boat (i.e., to inspect the safety equipment and manifest) was merely a pretext, and that stopping and boarding the boat violated both the U.S. and Pennsylvania Constitutions.

After an evidentiary hearing, the Court ruled that the stop violated the rights of the boater. The Court ordered the exclusion of all evidence seized after the stop, including the observations of the officers, statements made by the boater and his BAC. In short, the ruling meant that none of the evidence obtained after the officers boarded the boat could be used against our client.

The Commonwealth filed an appeal to the Superior Court. The Superior Court affirmed the lower court and agreed that none of the evidence obtained could be used against the boater. The Commonwealth then filed an appeal to the Supreme Court of Pennsylvania. After filing briefs and arguing in Harrisburg before the highest court in Pennsylvania, the Court then denied the appeal, ending the case. The Commonwealth later dropped all charges against the boater.

Court Says PennDOT Cannot Suspend Pennsylvania License for DUI in Kentucky

A Pennsylvania driver was convicted of DUI in the State of Kentucky. As a result of the out-of-state conviction, PennDOT then suspended his Pennsylvania driver’s license for one year. An appeal was filed on behalf of the driver.

After an evidentiary hearing, the Court granted our appeal and ordered that PennDOT lift the suspension because PennDOT could not prove that Kentucky was a member of the Driver License Compact. PennDOT filed an appeal to the Commonwealth Court. After briefs, the appellate court agreed that PennDOT could not suspend his license. During the appeal he was permitted to drive, and continued to drive in Pennsylvania lawfully after he won the appeal. 800 A.2d 1004, 2002 Pa.Cmwlth. LEXIS 509 July 13, 2001.
DUI Case Dismissed at Preliminary Hearing

On an early Sunday morning just after two o’clock in the morning, local police stopped a vehicle driven by a North East man suspected of DUI. According to the patrolman, the suspect’s car was driving on the wrong side of the street and at an excessive speed. A blood test obtained later indicated that he had a BAC of 0.22%.

At the preliminary hearing, the defense offered evidence of aerial photographs and other photographs which showed that the street in question had no lines marking the lanes for travel. A police officer also conceded, on cross examination, that it is not uncommon for cars to park on both sides of the street. Finally, the officer conceded that he did not use a speed timing device to determine the speed of the motorist on this occasion and no conditions existed that otherwise showed that his speed was unsafe.

After hearing testimony and considering other evidence at a preliminary hearing, the allegations of DUI against our client were dismissed. Although the Magisterial District Judge dismissed all charges, the Commonwealth is now weighing whether or not to re-file charges.
Drug and DUI Charges Dropped

While stopped at a red light on Peach Street in Millcreek Township, an off-duty police officer noticed that the driver of the vehicle next to him had a marijuana bowl in his hand. According to the officer, the other driver had the bowl “to his mouth and he was lighting it with a butane lighter.” The officer radioed for assistance from police on duty, before initiating a motor vehicle stop himself. According to testimony at the preliminary hearing, the officer stopped the vehicle on suspicion of DUI, a misdemeanor, despite the absence of any violations of the Motor Vehicle Code. The off-duty officer then seized the drug paraphernalia before the arrival of local police.

After the preliminary hearing, the defense filed a pre-trial motion seeking to suppress all evidence seized after the motor vehicle stop for various reasons, including that the off-duty officer had not been requested to aid or assist local police, he was not on official business at the time, he viewed what he believed to be a criminal offense, and the offense he observed before initiating the stop was not a felony. The defense also argued that the off-duty officer lacked the authority to initiate the stop, question the suspect, and/or seize the item of paraphernalia, all of which occurred beyond the territorial limits of the jurisdiction.
On the date set for the suppression hearing, the Commonwealth agreed to withdraw felony drug allegations, two misdemeanor drug charges, and resisting arrest in return for the entry of guilty plea to summary offense of disorderly conduct. As a result, our client received only a fine.
A Few More Success Stories

DISCLAIMER - No two cases are exactly the same. The facts of each case often are in dispute. You cannot expect that your case will be resolved just like these cases. You, however, can expect our best effort, personal attention and a commitment to the defense of your freedom.

Jury Acquits Meadville Man of Retail Theft

After two days of trial, a Crawford County jury found a Meadville man not guilty of retail theft stemming from the purchase of five rolls of roofing material from a local business. Erie retail theft lawyer, Tim George, defended the man who maintained his innocence throughout the case which began in September 2011. The jury deliberated only 20 minutes in late 2012 before deciding that the Commonwealth had failed to prove the allegations.

Criminal Mischief Charge Dismissed Against Albion Woman

After two hours of testimony at a preliminary hearing on March 28, 2011, a Magisterial District Judge dismissed allegations of criminal mischief against an Albion, Pennsylvania woman. The charges stemmed from a claim that a man was assaulted and his car damaged following a
disturbance at a retirement party in November 2010. The man claimed that the Albion woman kicked his car repeatedly, resulting in damage to the passenger’s side of his car. Erie criminal attorney Tim George, successfully argued that the evidence presented at the hearing was not sufficient to hold the case for trial. The Court agreed and dismissed the charges. A separate allegation of harassment, a summary offense, will be decided at a summary hearing before the same Magisterial District Judge later this year.

**Successful Motion Saves Nurse’s License**

A Millcreek Township nurse was suspected of taking medication from a patient. When questioned by police, she was told, in effect, that if she cooperated by waiving her right to consult with a lawyer that she would receive ARD and avoid a conviction. This would enable her to retain her nurse’s license. She then gave a statement. She was then charged with theft. The Commonwealth later denied her application for ARD.

A suppression motion was filed on her behalf. After an evidentiary hearing, the Court held that the statement could not be used against her. Without the benefit of her incriminating statement, the Commonwealth then agreed to
approve her application for ARD. The nurse avoided a conviction, retained her nurse’s license and later had her arrest record expunged.

**Simple Assault Allegations Withdrawn Against Erie Nurse**

An Erie nurse facing allegations of simple assault had criminal charges withdrawn at the time set for his preliminary hearing. After Erie criminal defense lawyer Tim George played a voice mail for the prosecutor which recorded the exchange between the man and the aggressor. The recording preserved the verbal exchange which demonstrated that the Erie man was defending himself and attempting to assist the woman who attacked him. Her cell phone dialed his during the course of the physical struggle thereby leaving a voice mail for him which supported his claim of self-defense.

**Court Excludes Confession**

A Cleveland man was arrested in Erie for an alleged sex offense. He faced a mandatory minimum sentence of 5 years in prison. The police read *Miranda* warnings to him, and he initially agreed to waive his right to a lawyer. After some questioning by the police, he changed his mind and
told the police that he would like to speak with a lawyer. Nevertheless, he continued to answer questions. As a result, he made statements that tended to prove that he was guilty. A suppression motion was filed by the defense. After an evidentiary hearing, the Court ruled that most of what the man told the police could not be used against him at trial.

**Woman Wins New Trial After Successful Appeal**

A Crawford County woman was convicted of 15 felonies and six misdemeanors arising from allegations that she stole money from her employer. She was not represented by us at trial. She retained us to represent her on appeal. After a review of the trial transcript and other papers filed with the trial court and conducting additional legal research, a brief was drafted and filed with the Superior Court of Pennsylvania. On her behalf, we argued that she was denied the fundamental right to present testimony and other evidence at trial which tended to prove her innocence. The appellate court agreed, set aside the conviction, and granted our client a new trial.
Bad Check Case Dismissed

A case involving an allegation of bad checks, filed under §4105(a) of the Pennsylvania Crimes Code, was dismissed at the preliminary hearing. The case arose from a claim by a local car dealership that a customer paid for car repairs with a personal check drawn on an account with insufficient funds. The evidence revealed that the car dealership agreed to accept payment for the repairs in the form of cash and a post-dated check. However, the dealership then deposited the check without waiting until the date set forth on the check. The dealership never telephoned the customer, a Crawford County man, when the check was returned. Instead, a certified letter was sent to him, followed by criminal charges.

At the time set for the preliminary hearing, the customer produced a copy of the check at issue, together with a statement from his checking account which proved that if the dealership waited to deposit the check as agreed, sufficient funds would have been available to honor the check. As a result, the charge, a misdemeanor of the third degree which is punishable up to a year in prison, was dismissed. Further, the accused was not required to pay any court costs.
Search Warrant Invalid: Court Tosses Evidence

Local police arrested seven men from Detroit at a local hotel after receiving a tip from housekeeping that room 324 contained three or four bags of marijuana. The men paid cash for rooms 324 and 419. The cleaning staff also observed a towel underneath the door of room 419 and the odor of marijuana coming from the room. In addition, a drug dog hit on room 419 of the hotel.

The defense challenged the search on the basis that the search warrant lacked probable cause to search room 419 of the hotel. The trial court agreed and all evidence seized from room 419, including a large sum of cash, marijuana and drug paraphernalia was excluded from evidence and could not be used against the men at trial.

Charges Dropped Against Saegertown Man

An elderly man facing allegations of open lewdness and indecent exposure, arising from an incident at a department store men’s room in Edinboro, will not face trial. The 79 year old man, who maintained his innocence throughout the case, was prepared for trial when the Commonwealth dismissed all charges on the date set for jury selection. The defense planned to call as an expert
witness the man’s family physician who was expected to testify about the complications the man experienced following prostate surgery.

**Reckless Endangering Charges Dropped on Eve of Trial**

A man was accused of reckless endangerment and endangering the welfare of children when he left his six-year-old daughter on the porch of his estranged wife. When he drove away, the child wandered out of the neighborhood and near State Route 20 in Fairview Township. A concerned motorist called the police after assisting the girl.

After awaiting trial for more than six months, and being prepared to defend the charges at trial, the Commonwealth dropped all charges on the Friday before jury selection.

**Jury Acquits Erie Man**

An Erie man was cleared of charges that he intentionally injured one of the passengers in a sport utility vehicle which was run off the road by him. He faced charges of aggravated assault, recklessly endangering another person and an accident involving death or personal injury.
After a three day trial, a jury acquitted the man of all charges. The Court found him guilty of a traffic citation and imposed costs and a fine in the amount of $240.00.

**Man Accused of Simple Assault Wins Acquittal**

A man facing allegations of simple assault defended the charges before a jury. At the close of evidence, the defense moved for a judgment of acquittal. The Court granted the request for acquittal, thereby ending the case.

**Case Dropped Against Man During Trial**

After jury selection and opening statements, the Commonwealth dropped charges against a man accused of witness intimidation. The judge entered a judgment of acquittal in favor of the defense. Earlier in the week, allegations of armed robbery and theft were also dropped against the man arising from the same case.

**Local Man Acquitted of Rape**

An Erie man accused of raping a woman he had met at a local night spot was acquitted by a jury after a three day trial.
Millcreek Man Found Not Guilty

An instructor at a local high school was accused by a student of indecent assault on the last day of school. The assault, which included a claim of inappropriate sexual contact, allegedly occurred while other students enjoyed a party and movie in a nearby classroom.

After four days of trial, the jury acquitted the instructor of all charges. The evidence tended to show that the student fabricated the allegations after being caught skipping school. The defense team included David G. Ridge (an excellent lawyer and close friend) who delivered the opening statement and conducted a number of direct and cross-examinations.

Tim George cross-examined the female student who leveled the allegations against her instructor. Tim also gave the closing argument.

Police Officer Cleared of Rape & All Other Charges

A local police officer faced allegations of rape, simple assault, and other charges involving an altercation with his estranged wife. A jury cleared the man, a Gulf War Veteran, following five days of trial.
The defense team included David G. Ridge and Tim George. Mr. Ridge (an excellent lawyer and good friend) gave the opening statement, cross-examined medical experts and questioned other witnesses. Tim George cross-examined the estranged wife and delivered the closing argument.

**Aggravated Assault Charge Dropped During Trial**

An Erie man faced a maximum sentence of 27 years in prison after he stabbed another man with a butcher knife in an altercation on his front porch. The wounds required the man to be admitted to a local hospital. The charges included aggravated assault (F1), possessing instruments of crime (M1), and recklessly endangering a person (M2), which exposed the accused to a maximum aggregate sentence of 27 years in prison, if convicted.

At trial, the defense argued that the injured man was, in fact, the aggressor in a home invasion. After the opening statement and cross-examination of several witnesses, including the alleged victim, the Commonwealth withdrew all charges in return for a plea to a misdemeanor of the third degree, punishable by only up to one year in prison. The accused accepted the offer. Later, he received a
mitigated range sentence and was paroled on the same day he was sentenced.

**Franklin Man Acquitted of Terroristic Threats**

The City of Erie Police, acting on a complaint from an ex-girlfriend, filed terroristic threat charges against a Franklin man. Police alleged that the man telephoned his ex-girlfriend repeatedly and, in the course of an argument, threatened to “slice her throat” and harm others in her family. As a result, the man was detained in the Erie County Prison on a probation violation for five months while he awaited trial.

After three days of trial, a jury returned a verdict of not guilty.
REMEMBER - No two cases are exactly the same. The facts of each case often are in dispute. You cannot expect that your case will be resolved just like these cases. You, however, can expect our best effort, personal attention and a commitment to the defense of your freedom.
“Erie and Northwestern Pennsylvania is our home and has been the community where our families have worked for more than a century,” says Tim George. “My wife, Kathy Scibetta, is also a lawyer, and we have three children in elementary school; my great-grandfather was a longshoreman in Erie. My maternal grandfather taught Math for decades at Gannon College (now Gannon University) and Cathedral Prep High School; in 1944, my paternal grandfather founded WESPEN Audio Visual Company, which is now owned by my Dad and brother, John. And, for 20 years my mother worked at Mercyhurst College.”

After graduating from St. Bonaventure University and receiving a law degree from The Dickinson School of Law (now Penn State Dickinson), Tim George returned home in 1992 to practice law. In 1996, he founded J. Timothy George, P.C. and in 2010 became a founding partner at Purchase & George, P.C. He credits the training provided by more experienced lawyers with whom he has worked, his time as a criminal prosecutor, and his experience as an Army lawyer with shaping his practice.
After the attacks of September 11, 2001, Tim joined the Pennsylvania Army National Guard and completed training at the Judge Advocate General’s Law School & Legal Center in Charlottesville, Virginia. In January 2009, he was called to active duty in support of Operation Iraqi Freedom and served for 11 months as trial counsel for the 28th Combat Aviation Brigade. The primary mission of the 28th CAB was to provide helicopter support to the multi-national security forces protecting southern Iraq. He was stationed at Contingency Operating Base Adder near Nasiriyah, Iraq. The Base was located about 90 kilometers southeast of Baghdad, in the desert between the Tigris and Euphrates Rivers. As trial counsel, he handled military justice cases.

Over the years, Tim has attended continuing education (CLE) programs all over the country. He has attended regional seminars held by the Trial Lawyer’s College, which was founded by Gerry Spence. He also attended a five day seminar in Philadelphia sponsored by the National Institute for Trial Advocacy, and completed numerous classes administered by the JAG School.

In 2006, he was recognized by Judge Michael Palmisano and the Erie County Bar Association (ECBA) for his efforts leading a committee of lawyers who revise the local criminal rules. He has held leadership positions in the
ECBA and, in 2012, he was chairman of the Criminal Practice Section after serving as the Vice-Chair in 2011.

Tim George has an “AV-Preeminent” peer review rating from Martindale-Hubbell which surveys other lawyers and judges in the community. He is rated “10.0 Superb” by Avvo.com which considers the reviews of other lawyer and clients. In 2015, Avvo.com presented Purchase & George, P.C. with its prestigious “Client’s Choice Award” based upon the number and quality of favorable online reviews.

Want to Discuss Your Case?  We want to defend people who want good advice, smart information, and an excellent defense - not a cheap one. As a result, we’re not a good fit for everyone and we do not accept every case. In fact, we limit the number of cases we accept for all of the reasons discussed elsewhere in this book. If we’re not a good fit for you, we will tell you - and then help you find another lawyer. If you think we might be right for you, call us toll free at (888) 748-9909.

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ABOUT THE AUTHOR

Tim George has defended freedom in Pennsylvania since 1992. He is a founding partner at Purchase & George, P.C. He was born and raised in northwestern Pennsylvania and graduated from Cathedral Prep High School, St. Bonaventure University and The Dickinson School of Law, now Penn State Dickinson. He is the author of Let Facts Not Fear Drive Your Decision: How to Hire a DUI Lawyer and Defending Freedom: The Ultimate Guide to DUI Cases in Pennsylvania (2nd Edition).

TIM GEORGE

* Has Been Defending Freedom Since 1992
* Has an “AV-Preeminent” Peer Review Rating from Martindale Hubbell
* Has a “10.0 Superb” Rating from Avvo.com
* Is the Author of Two Consumer DUI Books
* Is the Co-Author of a Third Consumer Book
* Is a Former Criminal Prosecutor
* Is a JAG Officer and Iraq War Veteran

Visit www.TimGeorge.us for lots of useful information, videos, articles, a sampling of success stories. You can subscribe to our free newsletter there, too. Or call Toll Free (888) 376-2595 for more information.