

DUI

*A Guide for Anyone Charged
with DUI in Pennsylvania
4th Edition*

*Read
BEFORE you
meet with a
lawyer!*



**PURCHASE GEORGE
& MURPHEY P.C.**
ATTORNEYS AT LAW

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Why All This Information & Why Now?

If you have received this book, then one of four things recently happened: (1) You found us online while looking for information about DUI in Pennsylvania; (2) You called us for information because you or someone important to you might be charged with DUI or a criminal offense; (3) You just scheduled an appointment with us about new charges; or (4) You just met with us about the DUI charges that were 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 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 will occur soon.

You need to get up to speed. And you just can't get the answers you need on most websites. You also don't have time to interview a dozen lawyers. And you know that your case is too important to simply call the lawyers who paid the most to have their ads show at the top of the page on Google. 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 1st, 2nd, and 3rd editions of *Defending Freedom: The Ultimate Guide to DUI Cases in Pennsylvania* which were published in 2010, 2014, and 2017, we decided to expand and update the topics discussed in the book. Now in 2020, we include even more changes in Pennsylvania law, and we address some topics that illustrate the far reaching effects of these changes.

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 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 information. More information is always better than less information. Better information results in smarter decisions. *How* this information applies to the unique facts of *your* case is best left between you and the lawyer you choose.

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 there. You should assume that none of the information found here applies to you.)

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, nurses, teachers, and business owners to laborers, students, and working mothers.

For most, this is the first time they've ever been in trouble. Many have never hired a lawyer. For some, the only lawyer they've ever met was the one who handled the real estate closing for their house.

So, if you have no experience with our system of criminal justice, don't have good information about what to expect, and don't 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 we have defended over the past 25 years, you have lots of questions. Here, you will find answers to the most frequently asked questions by people facing DUI. We hope that 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 difficult task of choosing the right lawyer for you and your case.

What is DUI?

DUI is short for Driving Under the Influence. People are guilty of DUI if they drive or are in actual physical control of a vehicle while under the influence of alcohol, chemical, or controlled substance to a degree which renders them incapable of safely driving.

Adults are presumed under the law to be impaired when their blood alcohol concentration (BAC) is at or above 0.08%. Minors (people under the age of 18) are presumed to be impaired when their BAC is at or above 0.02%.

How does the body respond to alcohol?

The effects of alcohol vary from person to person, but the bottom line is that driving with too much of it in your system can result in criminal charges that affect your freedom and your day to day life in ways great and small.

Alcohol enters the bloodstream by way of absorption through the lining of the gastrointestinal tract, including your mouth, esophagus, stomach, and small intestine. Once alcohol becomes one with the bloodstream (and over half of it does so within 30 minutes) it reaches the brain in seconds and exercises its depressant effect. Hearing and vision will be less efficient, muscular coordination will deteriorate, and good judgment and/or self-control will diminish.

The rate of blood-alcohol content (BAC) elevation depends on the following factors:

- **How much you drink.** The amount of alcohol consumed, with alcohol concentration varying from drink to drink.
- **Rate of Absorption.** How quickly it's absorbed (for example, an empty stomach means no absorption competition from food or nonalcoholic drinks, thus an elevated rate of absorption). Water and citrus tend to slow the absorption rate; the presence of carbonation (e.g., champagne) accelerates it.
- **Body size.** A person's weight. Generally, the same drink will elevate a larger person's BAC less than it will for a smaller person.

Alcohol exits the body in two ways: oxidation and excretion. The liver breaks down over 90% of alcohol into water and carbon dioxide (oxidation). Carbon dioxide dissolves in the blood, makes a beeline to the lungs, and gets exhaled. The rest of the alcohol is eliminated via sweat and urine (excretion). It's helpful to understand this process when you plan your

social gatherings, nights out and other special occasions. Even more helpful is a designated driver or a Lyft or Uber driver, or a willingness to call for a ride, when you think you have had too much to drink.

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 with the engine running can lead to your arrest for DUI because you are in actual physical control of the car.

The good news is that details matter. DUI allegation stemming from someone sleeping in their car turn on the unique circumstances of each case. Seemingly similar cases can be quite different and lead to different results.

What do police look for when deciding whether to stop someone on suspicion of DUI?

The following list of things police are trained to look for before stopping someone suspected of DUI 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 do police look for after stopping someone under suspicion of DUI?

Police are trained to notice the following clues that might indicate that a motorist may be under the influence of alcohol or drugs:

- 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

Police didn't read me my *Miranda* warnings. Will my DUI be dismissed?

Miranda warnings are those constitutional rights that we have to remain silent (not be forced to be a witness against ourselves) and consult with a lawyer while in police custody before answering questions. Many people are under the impression that if they've been arrested but haven't been read their *Miranda* rights, they can't be convicted of the charges.

This is not true.

If a person is in *custody*, police must inform them of their *Miranda* rights. In most states, including Pennsylvania, courts have held that (as a general rule) you're not in custody merely because the police stop your car and ask you questions.

Am I required to do roadside field 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). As a result, you may respectfully and politely decline to take. 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., poor overall health, physical disability or other physical ailments, uneven roadway, cambered road, gravel berm, poor weather, police headlamps and distracting emergency lights).

Do I have to submit to a breath or blood test?

No. But your refusal to do so has consequences. 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 one year. A license suspension for refusing chemical testing will be imposed even if you are *not* ultimately convicted or even charged with DUI. More on this next.

What happens if I refuse to submit to a breath or blood test?

In Pennsylvania, driving is a privilege and not a right. By accepting a driver's license, you have given your "implied consent" to submit to a chemical testing when reasonable grounds exist for police to request chemical testing.

Police are required to inform you of your right to refuse chemical testing *and* also explain to you that if you exercise your right to refuse testing, then you will lose your driving privileges for *at least* one year (and up to 18 months depending upon whether you have had any previous DUI).

I don't like needles. Can I choose how police test my BAC?

No. The type of sample you must give, usually breath or blood, is up to the police officer.

What are some possible defenses to an allegation of DUI?

There are many potential defenses to an allegation of DUI. 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.

Was the vehicle stop lawful? When police make a vehicle stop, a “seizure” under Article I, Section 8 of the Pennsylvania constitution and the Fourth Amendment to the United States Constitution occurs.

For the stop to be lawful, the police must have either reasonable suspicion or probable cause to do so, depending upon the circumstances. This means that the police must point to particular facts that justify stopping you. If police can't articulate a sufficient factual basis for stopping you (and your lawyer challenges the stop), then none of the evidence obtained after the stop can be used against you.

Were you “under the influence to a degree that rendered you incapable of safe driving”? While this may come as a surprise to many, merely drinking before driving is not a crime. Rather, motorists must be under the influence “to a degree that renders them incapable of safe driving” for there to be a DUI.

Were you *truly* under the influence such that you were incapable of safe driving? Maybe, there are not any BAC results. Or maybe your BAC was below .08% and there is no presumption of impairment. Even if there are BAC results, the breath and blood test results sometimes can be challenged as unreliable or inaccurate or the margin of error removes the legal presumption of impairment.

Are the results of the field sobriety tests reliable? The circumstances under which the field sobriety tests were administered can cast doubt on the conclusions made by the officer conducting such tests.

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

Was the chemical testing done correctly? There are a lot of potential challenges to chemical testing. For example, there are strict rules governing the way breath and/or blood must be collected and tested (and by whom). Further, the maintenance, testing, and use of the machines used to test breath samples must be followed in order for the results to be reliable.

Does your BAC fall below any of the thresholds when considering the margin of error? Sometimes a BAC result that is at or near (but nevertheless above) one of the threshold levels that affects your penalties (i.e. 0.02%, 0.08%, 0.10% or 0.16%) can be challenged. When applying the margin of error, a BAC sometimes falls below the applicable threshold. If it does, a lower minimum (or maximum) penalty and a shorter driver's license suspension results.

Was the breath testing machine maintained as required and working properly? The prosecution must prove that the testing complied with Pennsylvania's requirements for proper calibration and maintenance of such devices.

After all, 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 don't work correctly. How about the vacuum machine at a car wash? Works every time, right?

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

If you think you might be charged with DUI, you should learn as much as possible about DUI in Pennsylvania and then meet with an experienced DUI lawyer.

You should begin preparing for your preliminary hearing as soon as possible. The local police, Pennsylvania State Police or other law enforcement officers often have completed their investigation before you are charged with DUI. So, you and your lawyer will need to make the most of the short time you have to play catch-up and prepare your defense.

What happens in a DUI case?

Here is a summary of the procedural steps in a DUI case and a snapshot of what you can expect:

Preliminary Hearing. The first court proceeding in most DUI cases is the preliminary hearing. This can be a 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 DUI occurred and that you are probably the one who committed the offense.

A preliminary hearing also presents your first – and often best – opportunity to gather information about the evidence that will be offered against you at a trial. It sometimes is the only opportunity before trial you and your lawyer have to question the officer under oath about the circumstances surrounding your case.

At this stage, the Commonwealth doesn't have to prove your guilt beyond a reasonable doubt. 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.

Regardless of the result of this hearing, a lot of important information can be gathered that will help you evaluate your options moving forward.

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, like the lawfulness of the stop, statements attributed to you, or even the BAC results.

Some of these motions may argue that using certain evidence against you at a trial 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.

The pretrial motion stage occurs anywhere from six weeks to three months after the preliminary hearing.

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 and not enter a plea. However, you must agree to be on probation and satisfy other conditions.

Your eligibility for the ARD program depends upon various factors. These factors may vary from county to county in Pennsylvania. The initial considerations include your criminal history and the circumstances surrounding the allegations. For example, someone accused of DUI which results in “serious” injury 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.

Plea. If you enter a plea then you must state on the record before a judge 1) that you understand the facts that led to your being charged with DUI; 2) that you understand the elements of the law that must be proven in order to be convicted of DUI; 3) that you understand the minimum and maximum sentences that can be imposed upon conviction for DUI; 4) that you understand that the government has the burden of proving each element of DUI; 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 trial; 8) that if you are eligible to have your case decided by a jury, you understand that all 12 members of the jury 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 your right to have a trial in 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 TV. What you have seen on TV provides only a glimpse into what really happens at an actual trial. During a trial, each side will have the opportunity to present 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.

Sentencing. If you are convicted at trial or if you enter a plea or negotiate a plea agreement and enter a plea, the Court will sentence you. A sentence for DUI may include prison, in-home detention (“house arrest”), community service, a drug & alcohol assessment, counseling, DUI classes, driving safety classes and/or fines.

The length of a sentence depends on whether anyone was hurt or killed as a result of the DUI, the number and nature of any previous convictions for DUI or other offenses, any need for treatment, the nature of the present offense, any other charges filed with the DUI, and any other relevant considerations.

Now, repeat DUI convictions require motorists to equip their vehicle with an ignition-interlock restriction system. A new offense is created for driving *without* a required ignition-interlock system after consuming any amount of alcohol.

How long will it take to resolve my case?

Most cases require at least 6 months, or longer, to resolve. Some take up to 12 months. It will depend upon the unique nature of your case and how you and your lawyer plan to defend the allegations. Some cases are resolved at the

preliminary hearing. Others are resolved after pre-trial motions. Some are resolved with admission and successful completion of ARD. Still others are resolved only after trial.

What is the “speedy trial” rule?

The speedy trial rule prevents someone from having DUI allegations remain unresolved for an unreasonable length of time. Our understanding of fundamental fairness is violated when someone has criminal allegations “hanging over their head” for an indefinite period 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. One such exception is when delay is caused by the person accused of the crime. For example, any delay that results from postponements requested by the defense is excluded from the “speedy trial” calculation.

Do I have to appear in person for my preliminary hearing?

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

Why is there a preliminary hearing in my case?

The main purpose of a preliminary hearing is to protect you from an unlawful arrest (and possible detention in prison) while you await trial.

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

At your preliminary hearing, the Commonwealth (often only the officer who filed the charges) 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 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. To meet its burden, the Commonwealth must present only some evidence regarding each of the material elements of a DUI. If the government can't meet this burden, your case will be dismissed.

Do I have to testify at my preliminary hearing?

No. You are not required to testify at the preliminary hearing. And most lawyers will tell you that you should not

testify at your preliminary hearing. While there might come a time when you testify in your case, the preliminary hearing is not it.

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

It depends. A preliminary hearing is the first – and often best – opportunity to gather information about the evidence that will be offered against you. The preliminary hearing can help you get the information you need to make smart choices in your case. You also will make better decisions about your case with better, and more complete information.

On the other hand, the preliminary can be an opportunity to achieve satisfactory resolution of your case through negotiation.

Whether you waive your preliminary hearing is ultimately a decision that you should make only after careful consideration in consultation with your lawyer.

What can a lawyer do to help me prepare for my preliminary hearing?

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

Your lawyer can learn about the circumstances surrounding the allegations, conduct additional 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. Such preparation is done with the goal of getting you the best result possible.

Finally, your lawyer can help you plan for possible outcomes. Being prepared for what may happen gives you time to consider your potential options, helps to reduce any fears and anxiety, and puts your energy to good use.

What is a suppression hearing?

If your case is not dismissed (or resolved to your satisfaction) at the preliminary hearing or later by entering a plea, 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 increase your odds of winning. For example, the lawfulness of the vehicle stop, statements attributed to you while in custody, or the results of any chemical testing could be considered by the Court to be inadmissible at trial. Such a favorable ruling could result in your case being dismissed.

Do I have to testify at trial?

Under the Fifth Amendment to the United States Constitution, you are not required to testify yourself. Whether or not you decide to testify is something that should be discussed at length and on more than one occasion with your lawyer. Time with your lawyer is crucial to your making the best decisions in your case, including whether or not you should testify at trial.

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 some second DUI offenses are ungraded misdemeanors. In such cases, a judge, rather than a jury, will hear the evidence and decide the verdict.

If you face a DUI that is graded as a felony or a misdemeanor of the first or second degree, then you are entitled to a trial by jury. You also will have the right to a jury trial if your DUI is accompanied by a criminal offense that affords the right to a jury trial.

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 certain eligibility requirements, avoid having to choose between going to trial or entering a plea.

If you resolve your case with ARD, you will not be required to admit any wrongdoing or enter a plea or otherwise be convicted of DUI. However, you will be expected to enter an agreement which includes a term of supervision, like probation, complete other conditions, like paying for any lab testing and other costs imposed by the Court.

The district attorney in each county establishes the eligibility requirements for ARD. In most counties, your eligibility for the ARD program depends upon other 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 your arrest for DUI. 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. 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. Such convictions also often create points on your driving record and could result in a suspension of your driver’s license.

Some other 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 or undergo a drug and alcohol evaluation.

While in ARD, 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, but such payment arrangements can result in *civil* judgment being entered against you.

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., in most cases a mandatory minimum prison sentence and/or work release and/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 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 receive 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, whether you caused any property damage, and other factors.

When will my driver's license be suspended?

If your driver's license is suspended because you are admitted into ARD or are convicted of DUI after a plea or trial, you must surrender (physically hand over) your driver's license to PennDOT.

When this must occur depends upon the county where your DUI occurred. For example, in Crawford and Warren Counties the practice for many years has been to surrender your license on the same date that you enter ARD or enter your guilty plea. By contrast, in Erie County, you keep your driver's license until PennDOT mails you a letter later and then you surrender your license by U.S. Mail. You should discuss this with you lawyer as you plan for what lies ahead in your case.

Does an ARD less than 10 years ago for a previous DUI count as a "conviction" when determining sentencing enhancements?

Yes. In Pennsylvania, this is so even though, by definition, someone who enters the diversion program known as ARD does not admit any wrongdoing, does not enter a plea of guilty, and is not technically convicted of DUI.

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.

More Information

The Basics: 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.

You need to have a basic understanding of the law and the penalties arising from a DUI conviction in Pennsylvania. The more you know, the better. This knowledge may help you avoid a DUI. Or, if you face a DUI, you can be prepared for what lies ahead.

A summary of various DUI offenses and the penalties for each (as of the date of publication) appears in the following tables:

Tier 1. General Impairment (BAC .08% - .099%)				
OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
1st Offense	M	Probation	\$300 flat fine	None
2nd Offense	M	5 days minimum / 6 mos. maximum	\$300 min. / \$2,500 max.	1 year
3rd Offense	M2	10 days min. / 2 years max.	\$500 min. / \$5,000 max.	1 year
4th or More	F3	10 days min. / 7 years max	\$500 min. / \$5000 max	18 months

Tier 2. High Rate (BAC .10% - .159%)				
OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
1st Offense (ARD)	M	Probation	\$500 min. / \$5,000 max.	30 days
1st Offense (Not ARD eligible)	M	48 hours min. / 6 mos. max.	\$500 min. / \$5,000 max.	1 year
2nd Offense	M	30 days min. / 6 mos. max.	\$750 min. / \$5,000 max.	1 year
3rd Offense	M1	90 days min. / 5 years max.	\$1,500 min. / \$10,000 max.	18 months
4th or More	F3	1 year min. / 7 years max.	\$1,500 min. / \$10,000 max.	18 months

Tier 3. Highest Rate: (BAC .16% and above)				
OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
1st Offense (ARD)	M	Probation	\$1,000 min. / \$5,000 max.	60 days
1st Offense (ARD ineligible)	M	72 hours min. / 6 months max.	\$1,000 min. / \$5,000 max.	1 year
2nd Offense	M1	90 days min. / 5 years max.	\$1,500 min. / \$10,000 max.	18 months
3rd or more	F3	1 years min. / 7 years max.	\$2,500 min. / \$15,000 max.	18 months

Another Disclaimer

None of the information in this book or in any of these tables is a substitute for meeting with a knowledgeable DUI lawyer, armed with an understanding of the facts in your case.

The information contained in this book is only a summary and includes a synopsis of the law through only the date of publication. The law in Pennsylvania changes from time to time. Good DUI lawyers track these changes and can explain them to you.

The Bottom Line

You will see that a conviction for DUI impacts your life in many ways. A conviction can result in prison, loss of your driver's license, 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.

More Good Information

A Search Warrant is Now Required for Blood Tests (Unless You Consent)

In a landmark decision, the U.S. Supreme Court set new rules for testing motorists suspected of DUI, ruling that the Fourth Amendment allows warrantless breath tests but requires police to get a search warrant for blood tests.

“The impact of breath tests on privacy is slight, and the need for BAC testing is great,” Justice Samuel Alito wrote for the Court in *Birchfield v. North Dakota* and its consolidated cases. “We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test.”

The decision arises from three cases from lower courts in the Midwest. All of them involved state laws criminalizing the refusal of blood and breath BAC tests.

Justice Alito analyzed the tests under the Fourth Amendment’s search-incident-to-arrest exception. This exception to the warrant requirement allows police officers to search a person’s body and immediate surroundings without warrant - after their lawful arrest. *Breath* BAC tests, he wrote, “don’t rise to the level of intrusiveness the Fourth Amendment protects: they leave no permanent sample in the government’s possession and don’t undermine the arrestee’s dignity in any significant way.”

But the justices in the majority of the 7–1 decision refused to apply that logic to *blood* BAC tests, citing both the greater intrusiveness of obtaining blood and the wealth of other information that can be obtained from it. “It is another matter, however, for a State not only to insist upon an intrusive blood test, but also to impose criminal penalties on the refusal to submit to such a test,” Justice Alito wrote. “There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.”

Although the new, general rule requires police to obtain a search warrant before getting a blood sample from a motorist suspected of DUI, an exception exists to the warrant requirement. When a motorist consents to a blood test, a warrant is not required. However, for consent to be valid it must be voluntarily and unequivocal and cannot be coerced, for example, by threat of increased criminal penalties for the refusal to consent.

This development in the law will change how DUI is prosecuted in Pennsylvania and can create new defenses to some cases.

Read the Label: Prescription Drugs & 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 you incapable of safe driving. In fact, according to a press release from the Pennsylvania State

Police, drug-related DUI are increasing throughout Pennsylvania.

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 issues unique to DUI based upon prescription drugs is 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 and that measurement corresponds with (albeit imperfect because it’s based upon various assumptions) scientific research showing the degree of impairment. That numerical measurement 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 (i.e., .08%).

This is not so with prescription drugs, for which the statute is silent concerning a minimum threshold for many pharmaceuticals. So, a DUI arrest can occur even when the amount of lawfully prescribed medicine was *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, and ask a friend or family member to drive for you.

DUI & Marijuana: What Even Occasional Smokers Need to Know

In recent years, the number of marijuana-related DUI arrests have increased, according to the Pennsylvania State Police. While possession of small amounts of marijuana is being de-criminalized in some cities across the Commonwealth, DUI stemming from marijuana use nevertheless occurs in greater numbers every year.

Here's the bottom line when it comes to marijuana and DUI in Pennsylvania: It takes only one nanogram of active THC per milliliter of blood and you can be DUI. That's right. If you have *any amount* of marijuana metabolite in your system, you can be convicted of DUI.

More bad news. The Commonwealth does not have to prove that you are impaired by marijuana (unlike alcohol-related DUI cases). This is true despite the universal acknowledgement that active marijuana metabolites can remain in your system for weeks after smoking.

There is also no "two hour" rule that applies, like alcohol-related DUI cases. This means that if any active marijuana

metabolite is in your system at the time of your arrest (and not necessarily when you were driving), then you can be DUI.

The rest of the bad news (if that wasn't enough already) is that *all* marijuana DUI cases are considered Tier 3 DUI (just like an alcohol-related DUI with the highest BAC of .16% or more) for the purpose of determining penalties.

The takeaways are that even occasional marijuana smokers who aren't impaired when driving and who haven't smoked pot for several days or sometimes weeks still can be DUI.

Your Second Amendment Rights: How DUI Can Be Disarming

A DUI conviction can result in your losing the right to buy and own firearms in Pennsylvania.

A Third Circuit Court of Appeals decision handed down in early 2020 held that a DUI conviction can be a “serious crime” that precludes citizens from owning a firearm. The precedent-setting opinion hinged on the federal government’s definition of a “serious crime” — the level a crime must reach to trigger an individual being barred from buying firearms.

Under federal law, a serious crime is one that can carry a state-prison sentence of two or more years. In the case of a Montgomery County resident (we'll call him “the motorist” to protect his privacy) that came as the result of a DUI.

According to the decision, in 2016, the motorist tried to buy a firearm and was told that his DUI conviction in 2005 meant he was barred from doing so. The motorist had filed a lawsuit against the U.S. Attorney General, the FBI, and other officials, claiming a violation of his Second Amendment rights.

In 2002, the motorist was first charged with a DUI with a blood-alcohol concentration (BAC) at least twice the legal limit of .08%. That charge was wiped from his record after he completed the Accelerated Rehabilitation Program (ARD).

Three years later in 2005, the motorist pleaded guilty to another DUI — with another BAC reading of at least twice the legal limit. The second time a person is convicted of DUI at the highest rate, it is a first-degree misdemeanor that carries up to five years in prison. The motorist was sentenced to 90 days — the mandatory minimum — after he pleaded guilty to the 2005 charge.

“The Legislature’s mandate that repeat DUI offenders receive at least three months in jail reflects its judgment that such offenses are serious,” Judge Schwartz wrote in the split opinion.

So, on top of all the other penalties and consequences of a DUI, you also can lose your right to own a firearm.

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 your 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, we have helped people get through the tough times after an arrest for DUI and other offenses. We understand that 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, and online videos. In 2010, we wrote *Defending Freedom: The Ultimate Guide to DUI Cases in Pennsylvania*. In 2012, we

revised and expanded the book to include even more information. In 2017, we published a third edition and now in 2020 we have updated the book again with more changes in the law and other helpful information.

You also can get lots of free information by visiting www.YourErieLawyers.com where you can read many articles about DUI, see examples of our success stories, read what others say about us, and watch informational videos.

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

You can read about some of our success stories. Every case is different. 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 Are Recognized on the Pennsylvania Super Lawyers® List

Purchase, George & Murphey, P.C. is a law firm whose partners are all recognized on the Pennsylvania Super Lawyers® list. Tim George has received this honor every year since 2016 in the field of criminal defense. Eric Purchase has made the list every year since 2013 in the area of personal injury. So has Craig Murphey.

The patented multiphase peer review selection process, combined with independent research, results in only 5% of attorneys in Pennsylvania receiving this distinction.

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

Purchase, George & Murphey, P.C. is a law firm with an “AV-Preeminent” Martindale-Hubbell rating. Tim George, Eric Purchase, and Craig Murphey have “AV-Preeminent” Martindale-Hubbell ratings based upon the criteria used by the oldest lawyer rating service in America. The rating is based upon how other lawyers rate other lawyers on both ability and ethics. “AV-Preeminent” is the highest rating lawyers can receive from their peers.

We Have a “10.0 Superb” Avvo.com Rating

Tim George, Eric Purchase and Craig Murphey also have “10.0 Superb” Avvo.com ratings. The ratings are based upon what clients and other lawyers think of us.

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.YourErieLawyers.com. There, you can read more than 100 testimonials from people we've helped.

We Don't Take Freedom for Granted

We don't take freedom for granted. More importantly, we won't take *your* 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 main 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 several full-time paralegals and administrative support personnel. We also often work with investigators to develop all of the important facts about a case.

We embrace the efficiencies of technology and 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. Here, the lawyers 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 and one lawyer 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.

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 at (814) 833-7100.

SOME 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.*

Fairview Township DUI Dismissed

On June 29, 2014, Pennsylvania State Police followed a motorist for a short distance as he traveled west on Tow Road in Fairview Township before stopping the vehicle and later charging the motorist with DUI and violations of the Motor Vehicle Code. The basis for the stop was the failure of the motorist to maintain his vehicle within the appropriate lane of travel.

After a suppression hearing, at which Tim George cross-examined the officer and introduced other evidence, the suppression court held that the stop was unlawful and excluded evidence, including the BAC of .26%, obtained after the stop. The Court concluded that there were no clearly marked lines on the center of the roadway and no oncoming traffic on the flat road where visibility was good.

As such, the manner in which the motorist drove did not justify a motor vehicle stop. As a result of the suppression ruling, the Commonwealth dismissed the case.

Judge Rules Fort LeBoeuf Township DUI Stop Unconstitutional

On September 4, 2015, Pennsylvania State Police stopped a motorist in LeBoeuf Township on allegations of weaving within the lane of travel and crossing the center and fog lines on multiple occasions. After interviewing the motorist at the scene and conducting field sobriety tests, police charged the motorist with DUI. A blood test revealed a BAC of .14%.

On August 29, 2016, after Tim George filed a suppression motion on behalf of the motorist and the Court considered evidence, including testimony from the troopers and video from their dashboard camera, the suppression court upheld that the stop was unconstitutional. In so ruling, the Court determined that all evidence obtained after the motor vehicle stop, including the blood test results, was the product of an illegal stop. As a result, the Commonwealth dismissed the case.

Summit Township DUI Dismissed After Illegal Stop

On August 28, 2015, Pennsylvania State Police stopped a motorist in Summit Township on allegations that the motorist failed to remain within the lane of travel and drove on the wrong side of the roadway. After performing field sobriety tests, the motorist submitted to chemical testing which resulted in a BAC in excess of .10%.

Tim George filed a suppression motion on behalf of the motorist, and a suppression hearing was held on February 29, 2016. After hearing testimony and reviewing the MVR, the Court reviewed written legal briefs submitted on behalf of the motorist and the prosecution. On May 13, 2016, the Court ruled that the police lacked probable cause to stop the motorist for any violation of the motor vehicle code. The Court further determined that the police lacked reasonable suspicion to believe that the motorist was DUI. As a result, the evidence obtained after the motor vehicle stop was excluded from evidence which resulted in the Commonwealth dismissing all allegations against the motorist.

Motorist Found Not Guilty of DUI

On October 26, 2014, Pennsylvania State Police followed a motorist for about one-half mile before initiating a motor vehicle stop for an alleged violation of § 3309 (Roadways Laned for Traffic) and later charged the motorist with DUI when his BAC was .085%. After the motorist lost at the suppression hearing, the motorist proceeded to trial. After a two-day trial, during which Tim George challenged both the reliability of the breath test results and the field sobriety tests under the unique circumstances of this case, the motorist was found not guilty of DUI and related traffic violations.

DUI Withdrawn in Washington Township

In October 2014, the Pennsylvania State Police followed a motorist for some distance before initiating a motor vehicle stop when the motorist turned into a parking lot in

Washington Township. According to the complaint, the motorist was stopped because he was weaving within his own lane, traveled over the fog line and on the center lines, before turning into the parking lot.

Tim George filed a motion to suppress evidence on behalf of the motorist. In the motion, the defense argued that the MVR employed at the time of the stop revealed no violation of the Motor Vehicle Code and, therefore, there were inadequate facts to justify the stop. When the Commonwealth had an opportunity to review the suppression motion and the MVR, the DUI was dropped. The motorist entered a plea of guilty to a summary offense which resulted in only a fine and court costs. The motorist avoided prison and any suspension of his driver's license.

Erie Texting While Driving DUI Case Dismissed

On August 14, 2013, the Court ruled that police lacked sufficient evidence to stop a motorist who was holding an illuminated cell phone for two or three seconds while driving after midnight through the Borough of Albion in Erie County, Pennsylvania. The police stopped the motorist, who exhibited no other signs of poor driving, under the belief that he violated 75 P.S. § 3316(a) which is commonly known as the "No Texting While Driving" statute in Pennsylvania. The police alleged that the motorist "could have" been texting and the manner in which the motorist held the cell phone may have blocked his vision of the roadway. The suppression court disagreed and suppressed all evidence obtained after the motor vehicle stop, which

included observations of intoxication, failed field sobriety tests and BAC results. The Commonwealth later withdrew all charges, including DUI, against the motorist.

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 did not 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 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 Vehicle Code had been violated. Thus, the officer 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, Tim George 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, Tim George 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 Tim George challenged the reasons for the motor vehicle stop, the Commonwealth agreed to withdraw the DUI charge. The motorist entered pleas 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, restraint 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 Harborcreek man faced a mandatory prison sentence if convicted of DUI. He did not qualify for ARD. A suppression motion was filed by Tim George. 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, Tim George 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's 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.

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, Tim George 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. The Magisterial District Judge dismissed all 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, Tim George 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 a guilty plea to a summary offense of disorderly conduct. As a result, our client received only a fine.

ABOUT THE AUTHOR

Tim George is a founding partner at Purchase, George & Murphey, P.C. For almost 30 years, he has defended the freedom of people facing felony and misdemeanor charges, including DUI, throughout northwestern Pennsylvania.

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, about 90 kilometers southeast of Baghdad in the desert between the Tigris and Euphrates Rivers. As trial counsel, he handled military justice cases.

Tim understands that most people looking for a lawyer are worried, afraid, want answers – and they want excellent results. Tim helps people the same way he helped soldiers prepare for war in Iraq and Afghanistan. Tim says, “Young soldiers leaving their families behind have lots of questions, want information, and battle fear of the unknown, much like our clients who have never been involved in the civil or criminal justice system. For most soldiers, it was their first war. For many of our clients, it's the first time facing

criminal charges or the first time you were hurt in an accident. You want – and deserve – answers to your questions and time to work through your options. You also want the best results possible. We help you do that here.”

Since 2016, Tim has been on the Pennsylvania *Super Lawyers*® list in the area of criminal defense. *Super Lawyers*® is an independent service that uses a patented selection process to identify outstanding lawyers in particular practice areas. Tim is rated *10.0 Superb* by Avvo and has the highest rating for ethics and legal ability, *AV-Preeminent*®, given by Martindale-Hubbell, the oldest law lawyer rating company in the country.

More importantly, more than 100 former clients have posted favorable online reviews about the lawyers at Purchase, George & Murphey, P.C. After all, it is what our clients think of us that matters the most.

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. 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 at **(814) 833-7100**.



PURCHASE GEORGE
& MURPHEY P.C.
ATTORNEYS AT LAW

Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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What Other People Say

"Tim handled every emotion I had and every question I asked to the point that I thought I was talking to a dear friend. Tim's attitude was positive but realistic. The judge listened to his every word. He is not a good lawyer. He's an exceptional lawyer! Thanks for truly caring. I know you will change a lot of lives for the better. Thank you."

Sandy, July 2016

"I desired a particular outcome in order to prevent harm to my job, my family, as well as my credibility. The desired outcome was a dream come true because Attorney George fought for my rights and freedom and did not give up on me! Not only was Tim an outstanding lawyer, but he truly took the time to calm my stress levels down. When I hit a very low moment in my life due to excessive panic and worry, he lifted my spirits and hope back up. I cannot say enough about Tim and his awesome staff! There are not enough words to thank him enough! He is worth every cent."

Jacob, August 24, 2016

"Tim George was very helpful to me during a very stressful time in my life. I found Tim to be informative, responsive, and compassionate. He understood the sensitivity of my case, and I am thankful that I had Tim by my side."

M.L., July 11, 2013



Tim George

- ✓ Pennsylvania Super Lawyers® List
- ✓ AV-Preeminent Martindale-Hubbell Rating
- ✓ 10.0 Superb Avvo Rating
- ✓ Avvo Client's Choice Award
- ✓ Author of Two DUI Consumer Books
- ✓ Co-Author of Car Accident Consumer Book
- ✓ Former Criminal Prosecutor
- ✓ Iraq War Veteran



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