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# ***Pennsylvania DUI Answers***

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DUI Attorney, Trainer & Consultant

THE  
**MORGAN**  
LAW FIRM

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DUI Representation in Pennsylvania

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## ***About this Guide***

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

This Guide was written to provide answers to individuals charged with DUI in Pennsylvania, attorneys who represent DUI Defendants, and attorneys who represent individuals who may be affected by DUI law.

**AFTER RECEIVING OUR FREE CASE EVALUATION:** If you have received this with a free case evaluation, you have also received our Case Results, Client Reviews, Fee Quote and payment options. We hope you find these documents informative.

**IF YOU HAVE NOT RECEIVED A FREE CASE EVALUATION:** If you have not submitted your case for our free online case evaluation, we encourage you to do so after you have reviewed this guide. You will receive our Case Results, Client Reviews and a Fee Quote. There is no obligation to retain our services.

**FOR ATTORNEYS:** If you are an attorney seeking more information about DUI Law and Procedure in Pennsylvania, we encourage you to review this Guide. If you do not regularly handle matters in the criminal courts, it may be in your client's best interest to refer your case to [The Morgan Law Firm](#). If you are a Criminal Defense Attorney presently representing someone charged with DUI and you require additional services related to DUI Defense - we offer Continuing Legal Education Courses and Consulting Expert Services through [DUI Trainers & Consultants, LLC](#).



F. Dean Morgan, Esquire  
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## DUI LAWS AND PENALTIES

### A. DEFINITIONS

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

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

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

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

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

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

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

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

## B. THE DUI STATUTE

### 1. DUI – Alcohol

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

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

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

**Penalties:** [First Tier](#)

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

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

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

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

## 2. DUI – Controlled Substances

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

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

(1) There is in the individual's blood any amount of a:

- (i) Schedule I Controlled Substance<sup>1</sup>
- (ii) Schedule II Controlled Substance without prescription
- (iii) metabolite of a substance under subparagraph (i) or (ii).

(2) The individual is under the influence of a drug or combination of **drugs to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.

(3) The individual is under the combined influence of alcohol and a drugs or combination of drugs **to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. 7303 (relating to the sale or illegal use of certain solvents and noxious substances).

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

## 3. DUI – Minor

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

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

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

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

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

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

(1) After the individual **has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:**

(i) **.04% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a commercial vehicle other than a school bus or school vehicle.

(ii) **.02% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a school bus or school vehicle.

(2) After the individual has **imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely** driving, operating, or being in actual physical control of the movement of the vehicle.

(3) While the **individual is under the influence of a controlled substance or a combination of controlled substances** as defined in section 1603 (relating to definitions)

(4) While the **individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances**, as defined in section 1603.

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

[For more information about the impact a DUI has on a CDL.](#)

## C. SUMMARY OFFENSES

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

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

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

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

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

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

## D. MISDEMEANOR OFFENSES

### *Drug Offenses*

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

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

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

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

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

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

## **E. DUI PENALTIES**

### **1. Grading:**

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

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

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

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

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

## Misdemeanor 1 Offenses (M1)

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

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

## Felony 3 Offenses (F3)

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

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

## 2. Mandatory Minimum Penalties

<b>DUI PENALTIES</b>			
	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
<b>First Tier</b> <a href="#">3802(a)(1)</a> w/o refusal) <a href="#">3802(a)(2)</a>	6 months probation \$300 fine Community Service No License Suspension	5 days – 6 months in jail Up to \$2500 fine Community Service 12 month License Suspension Ignition Interlock	10 days – 1 year in jail Up to \$10,000 fine Community Service 12 month License Suspension Ignition Interlock
<b>Second Tier</b> <a href="#">3802(a)</a> (w/ accident) <a href="#">3802(b)</a> <a href="#">3802(e)</a> <a href="#">3802(f)</a>	48 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	30 days – 6 month in jail Up to \$5000 fine Community Service 12 month License Suspension Ignition Interlock	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock
<b>Third Tier</b> <a href="#">3802(a)(1)</a> (w/ refusal) <a href="#">3802(c)</a> <a href="#">3802(d)</a>	72 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock	1 year – 5 years in state prison Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock

### 3. The Intermediate Punishment Program

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

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

## F. LICENSE SUSPENSION/ CDL DISQUALIFICATION

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

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

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

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

## 2. Conviction

Please note, your suspension credit does not count until you (a) complete any period of incarceration and (b) surrender your driver's license and all PennDOT Products (including permits, camera cards, etc.). Your suspension will not begin until you receive official notice from the Pennsylvania Dept. of Transportation (PennDOT) about 1 month after sentencing.

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

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

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

## 3. ARD

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

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

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

#### 4. Commercial Driver's License

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

#### 5. [Driving Under Suspension](#)

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

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

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

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

## THE ARD PROGRAM

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

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

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

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

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

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

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

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

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

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

However, some counties have additional requirements, including:

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

Therefore, it is recommended that you contact a lawyer before making application. For a free online case evaluation from The Morgan Law Firm, click [here](#).

### C. LICENSE SUSPENSION FOR ARD

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

### D. NEGATIVE ASPECTS OF ARD

More importantly you should be aware of the following facts:

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

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

### E. THE ARD HEARING

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

- Successful completion of the program offers you an opportunity to earn a dismissal of the pending charge(s).
- If you fail to complete the program, you may be subject to trial as provided by law.
- You must agree to waive appropriate statutes of limitations as well as the federal and state Speedy Trial statutes and constitutional provisions.

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

## **F. EXPUNGEMENT**

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

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

## **G. DO YOU NEED AN ATTORNEY FOR ARD? MAYBE NOT.**

Do you need an attorney for ARD? That is a question I often hear. The answer depends on a number of factors. The answer may be no.

Throughout my career I have watched attorneys who do not regularly represent either criminal or DUI defendants enter the courtroom with clients who wanted ARD. Some made a great deal of money by convincing clients to pay \$350 - \$500 to help them “get ARD.” These attorneys did very little work and were often useless in the event a complication arose.

Likewise, I have seen attorneys charge nearly \$10,000 for a case which, on its face, was not defensible. It begins with a \$2000 preliminary hearing and then the “we will fight for you” speech. Ultimately, the client is found guilty because he/she trusted the “fighter.”

Although there is a difference between the two attorneys’ financial requests, they are equal in one respect - **Their clients were ripped off.**

If your case is eligible for ARD, you understand the negative aspects of ARD and you are willing to accept those consequences, you may not need an attorney.

Let me repeat that... You may not need an attorney. I’m sure you did not expect a lawyer to tell you that! Other lawyers likely will tell you how complicated things are. But here is the truth:

There is very little lawyering when it comes to ARD. In fact, at the last ARD hearing I attended, not one lawyer said a word to the judge at the ARD hearing.

When The Morgan Law Firm accepts a case, we devote our knowledge, training, and experience to that case. Even if the case is otherwise deemed to be ARD eligible. We do so because we understand that ARD is not a gift or a goal. It is, instead, the lesser of two evils. We have developed methods to ensure that our clients retain their eligibility while, at the same time, investigating potentially better opportunities to defend. We have successfully done so in the past. However, because we pride ourselves on our honest approach to client representation, we recognize that some would prefer to just move forward. Therefore, we have developed two programs. The first is a fast-track program which allows us to provide representation without undue delay. The other is the ARD Guidance program.

Like all lawyers, if I have to go into the courtroom, I am going to charge you for my time. Not only for my actual time spent in court, but also for the time I spend travelling to court and the fact I may be unavailable for an extended period of time while I wait for court staff and others. If you have received a [free online case evaluation](#), you have seen our fee agreement and payment options. These are also explained **below**.

However, reviewing case information and answering questions can be done easily. Therefore, I have developed the ARD Guidance Program for qualified first offense cases. For as little as **\$175** you can receive the benefit of my assistance without the unnecessary expense. The program is fully explained [here](#).

**CAUTION:** This [ARD Guidance Program](#) is only available for first-offense cases where you are deemed to be ARD eligible AND you have considered other potential options. If you have not had an evaluation, you may visit [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## CONCLUSION

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

## DRIVING AFTER A DUI

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

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

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

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

### **B. VIOLATIONS OF IGNITION INTERLOCK LAW**

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

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

## C. DRIVING UNDER SUSPENSION

If you are not eligible for an Ignition Interlock Restricted License (IIRL), you should not drive unless/until your operating privileges are restored. This means, even if your period of suspension is over, you cannot drive until you have received authorization from PennDOT. If you drive before your operating privileges are restored., you are in danger of being charged<sup>2</sup> with one of the following:

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

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

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

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

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

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

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

AND either

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

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

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

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

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<sup>2</sup> You may also be charged with 1543(a) Driving Under Suspension. This results in a \$200 fine and a continuation of your DUI-related suspension for an additional 12 months.

## SERIOUS VEHICLE OFFENSES

### A. ACCIDENTS AND INJURIES

#### 1. Homicide by Vehicle

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

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

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

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

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

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

**Grading:**

Felony of the Second Degree (F2); or

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

## **Mandatory Sentencing:**

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

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

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

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

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

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

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

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

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

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

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

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

#### B. FLEEING AND ELUDING

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

#### Grading

Misdemeanor 2 under most conditions

Felony 3 under any of the following conditions:

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

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

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

## **PRELIMINARY HEARING INFORMATION**

### **A. COURT DOCUMENTS**

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

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

### **B. PRELIMINARY ARRAIGNMENT**

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

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

### **C. BAIL CONDITIONS**

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

Those conditions include:

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

## **D. PRELIMINARY HEARING**

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

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

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

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

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

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<sup>3</sup> A trafficway is defined as "The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom." It includes almost all parking lots and many private roadways.

## 2. The Defense Attorney's Responsibility

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

### a. [Probable Cause to Stop/Detain](#)

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

At the preliminary hearing, I evaluate whether the officer had probable cause to stop your vehicle or detain you. If not, I may recommend filing a suppression motion. More information about Probable Cause to Stop/Detain can be found [here](#).

### b. [Probable Cause to Arrest](#)

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

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

More information about the specific field sobriety tests can be found [here](#).

### c. [Blood/Breath/Refusal – Chemical Testing](#)

In Pennsylvania DUI-Alcohol cases, chemical testing must be performed within the two hour time limit. There are other procedural requirements that must be met before a Chemical Test can be admissible in court. More information about Chemical Testing can be found [here](#).

#### **d. Recommendations**

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

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

#### **E. FREQUENTLY ASKED QUESTIONS**

*If you hire The Morgan Law Firm, we will provide you with more detailed instructions regarding your first court date.*

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

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

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

You should wear something comfortable and appropriate. Do not wear shorts or tank tops. There is no need to wear a suit or dress clothes.

##### **Do I need a lawyer?**

It is not a requirement, but it is advisable. Particularly if there is a potential defense to your case. If you have not had a case evaluation, you should visit [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com) to receive a comprehensive case evaluation including a discussion of potential defenses. Our firm offers a number of representation options.

***The Morgan Law Firm does not accept cases after the preliminary hearing has been held or waived.*** We have this policy because we believe the preliminary hearing is the most important part of your case. It is the first and only opportunity for us to meet with the arresting officer directly. Moreover, we do not accept cases after another attorney has been involved. With over 1000 DUI cases behind us, we do not want to fix another attorney's errors. Therefore, if you intend to hire a lawyer, we encourage you to choose wisely.

If you are not sure, we offer an opportunity to hire us for either:

- The Preliminary Hearing Only
- [ARD Guidance Program](#)

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

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

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

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

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

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

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

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

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

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

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

You should only waive your hearing after your attorney has the opportunity to discuss your case with the officer to determine if any potential defenses exist or if there is a strong possibility of an agreement at the Court of Common Pleas. If you choose to represent yourself, officers and prosecutors will not provide additional information to you at the preliminary hearing.

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

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

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

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

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

Hearsay is an out of court statement by a person who is not present to testify. There are several exceptions to the "Hearsay" rule. The rule is quite complex. Nonetheless, the government can rely on this information to help support its case. For example, the officer can testify that a lab report indicated your BAC was above .08%

## **COURT OF COMMON PLEAS**

### **A. FORMAL ARRAIGNMENT**

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

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

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

### **B. DISCOVERY**

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

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

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

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

- **Video Review** - I review video without the assistance of a report. My method allows me to view the case from the officer's perspective to determine if a reasonable officer would believe that you operated a motor vehicle in violation of Section 3802 of the Vehicle Code.
- **Report Review** – I next review the report for completeness and accuracy. The report should be consistent with the video(s). In addition, the report should contain nothing that reasonably should have been available to view. Finally, I review the report as an indication as to the officer's communication skills.
- **Second Video Review** – My second video review is more detailed. I view the video with my notes from my earlier view as well as the police report. This secondary review ensures that nothing has been missed. It is a necessary part of any good attorney's review process.

Some lawyers do not request discovery. They feel it is a waste of time, in particular where the client is ARD eligible or the client has a high BAC or drugs. However, I request discovery in every case possible. Moreover, I review discovery with a more careful eye than most. As a SFST Instructor and an accredited DUI Instructor, I see things other attorneys miss. Therefore, it is imperative you ask every attorney you interview about his qualifications and if he requests discovery in every case.

### **C. PLEA NEGOTIATIONS**

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

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

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

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

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

### **1. Motion to Suppress**

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

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

When we evaluate a case, we look at the following areas where a potential suppression issue may arise.

#### **a. Probable Cause to Stop/Detain**

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

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

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

Traffic stops based upon reasonable suspicion: either of criminal activity or a violation of the motor vehicle code under the authority of Section 6308(b) must serve the stated investigatory purpose. Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation.

In such an instance, "it is encumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*"

### ***DUI Checkpoints***

To be valid, a DUI Checkpoint must:

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

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

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

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

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

We use the following NHTSA Manuals & Additional Materials:

- NHTSA Manuals (All editions)
  - NHTSA Standardized Field Sobriety Test Student Manual
  - NHTSA ARIDE Student Manual
  - NHTSA DRE Student Manual
- NHTSA Studies
  - Psychophysical Tests for DWI Arrests
  - Visual Detection of Driving While Intoxicated
  - Development and Field Test of Psychophysical Tests
  - Field Evaluation Study
  - Colorado Field Validation Study
  - NHTSA Detection of DWI below .10%
  - Police Officers' Detection of Breath Odors
  - Florida Validation Study
  - Robustness of HGN
  - DRE Validation Study 1985
  - DRE Validation Study 1994
- Other Materials
  - Deposition of Dr. Burns, Ph.D., founder of NHTSA SFST Studies
  - DRE Materials
    - Evaluator's Log

## **ALCOHOL FIELD TESTS**

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

To be valid, Field Sobriety Tests must be administered in a prescribed standardized manner; the standardized clues must be used to assess the suspect's performance; and the standardized criteria must be employed to interpret that performance. If any one of the standardized field sobriety test element is changed, the validity is compromised. Please note that when the tests are administered properly, they are only accurate less than 80% of the time. They are rarely administered properly.

There are three Standardized Field Sobriety Tests:

#### ***(1) Horizontal Gaze Nystagmus (HGN)***

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

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

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

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

### ***(2) Walk and Turn***

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

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

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

### ***(3) One Leg Stand***

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

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

If two or more clues are detected, this is said to be evidence of impairment. As with the Walk & Turn test - if you have a medical condition, suffer from obesity, or you are above the age of 65, it is unlikely you will “pass” this test. Unfortunately, officers will, despite

knowing you had a medical condition, offer to “let you try” or “take that into account.” Unfortunately, these statements are not consistent with National Highway Traffic Safety Administration protocols.

### **Portable Breath Test**

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

## **DRUG IMPAIRMENT CASES**

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

### ***ARIDE Testing***

ARIDE is an acronym for Advanced Roadside Impaired Driving Enforcement. Unfortunately, in an effort to create programs to combat drug-impairment case, the National Highway Traffic Administration (NHTSA) has failed to standardized the procedure or the clues for the test. Therefore, this subjective evaluation of indications of impairment can be challenged. Therefore, I ALWAYS look beyond the tests and determine whether the things we do in normal, everyday life, such as standing and walking normally were indicative of intoxication.

Following my discussion with the police officer or prosecutor, I will give you my opinion as to whether the Probable Cause to Arrest issues can successfully be resolved in our favor by filing a Pre-trial motion.

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

The Lack of Convergence (LOC) is a non-standardized field test that is administered by having a driver follow the officer's finger (or other stimulus) as he makes a series of circles before bringing the finger/stimulus toward the driver's nose without touching it. The object is for the driver to cross his/her eyes. If an individual is unable to cross his/her eyes, this is evidence of impairment due to marijuana.

#### ***(2) Red Conjunctiva***

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

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

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

#### **c. *Miranda* Warnings**

One of the most commonly asked questions I receive relates to *Miranda* Rights. *Miranda* applies when someone is subject to custodial interrogation. In other words, there must be: (1) an arrest and (2) questions. A *Miranda* violation only results in the suppression of statements. It does not, as some believe, result in a dismissal of the charges. Nor does *Miranda* impact other evidence such as the odor of an alcoholic beverage, physical demeanor (balance issues, etc.) or driving behavior.

The United States Supreme Court has held that "once a motor vehicle has been lawfully [detained] for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." After a driver leaves his vehicle, any indication of impairment gives rise to a potential suspicion for DUI.

The Supreme Court has also held that police may restrict an individual's freedom of movement for a limited period of time in order to conduct an investigation when specific and articulable facts give rise to a reasonable suspicion of criminal activity.

In 1984, United States Supreme Court ruled that the roadside questioning of a driver did not rise to the level of custodial interrogation. The Court concluded that the "noncoercive aspect of ordinary traffic stops prompts as to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*." The Court reasoned that although the stop was a seizure within the meaning of the Fourth Amendment, such traffic stops typically are brief, unlike a prolonged station house interrogation. Second, the Court emphasized that traffic stops commonly occur in the "public view," in an atmosphere far "less 'police dominated' than that surrounding the kinds of interrogation at issue in *Miranda* itself.

Pennsylvania courts have reached similar conclusions. In summary, both federal and state courts have clarified that police need only give *Miranda* warnings while detaining a suspect by the side of a public highway when the suspect is actually placed under arrest or when the questioning of the suspect is so prolonged or coercive as to approximate the

atmosphere of a station house interrogation. Thus, in the typical situation in which a motorist is temporarily ordered to remain by the side of his car, *Miranda* warnings are not essential.

However, this does not mean that every *Miranda* challenge will fail. Therefore, we will examine every detail of your arrest to determine if any statements can be excluded.

#### **d. Post-Arrest Procedures**

##### **Drug Recognition Experts**

The term Drug Recognition Expert (DRE) refers to an officer who has received advanced training through the Drug Evaluation and Classification (DEC) Program sponsored by the International Association of Police Chiefs (IACP) and the National Highway Traffic Safety Administration (NHTSA). They are not actually, “experts.” The officers generally do a very good job. However, the program is inherently flawed.

There are seven drug “categories.”

- CNS Depressants
  - Alcohol
  - Barbiturates
  - Valium
- CNS Stimulants
  - Cocaine
  - Amphetamines
  - Adderall/Ritalin
- Hallucinogens
  - LSD
  - Peyote
  - Ecstasy
- Dissociative Anesthetics
  - PCP
  - Ketamine
  - Dextromethorphan (DXM) – Cough Suppressants
- Narcotic Analgesics
  - Heroin
  - Morphine
  - Codeine
- Inhalants
  - Paint
  - Glue
  - Nitrous Oxide

- Cannabis
  - Marijuana
  - Hash
  - K-2 (spice)

Each drug category causes the human body to exhibit certain clues. For example, some drugs cause you to move slowly while other cause to your speed up. Some drugs cause your eyes to exhibit nystagmus. Some drugs cause you to exhibit body or eyelid tremors.

The most important flaw is the officers, who often lack any medical training, are asked to perform a pseudo-medical examination that includes the following:

- Pulse Checks (3)
- Blood Pressure Check
- Body Temperature Check
- Muscle Tone (rigid/flaccid) Check

Officers are asked to make an assessment based upon suggested standards. However, we all have individual norms. For example, a person with hypertension may exhibit a BP of 95/145 which would be outside the norm. As we all know, blood pressure and pulse increase under stress. I can think of few things more stressful than being arrested. Others may have medical issues that cause hypertension, increased temperature, muscle rigidity or other medical problems. All NHTSA manuals, particularly the ARIDE and DRE Manual include a brief section related to medical conditions that mimic drug impairment. Therefore, my firm employs a [Legal Nurse Consultant](#) to review medical records as necessary.

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

The 12-step DRE Process is as follows:

(1) *Breath Alcohol Test*

The DRE must rule out alcohol as a factor.

(2) *Interview of Arresting Officer*

Because the arresting officer is usually not the DRE, the DRE will interview the officer. This can be a flaw in the procedure as any statements made to, or evidence found by, the arresting officer can skew the evaluators opinion. For example, if the arresting officer finds a baggie of marijuana, the DRE can no longer be presumed to be conducting an objective evaluation of physical signs.

(3) *Preliminary Physical Examination*

The preliminary evaluation is to assess the subject's appearance, behavior, speech and breath as well as automatic bodily responses for signs of drug-induced impairment. The

evaluation consists of questions regarding injuries and medical conditions. In addition, the DRE will take the driver's pulse and estimate pupil size.

The officer will ask seemingly innocuous questions for the purpose of "ruling out" a medical reason. However, when answering these questions, particularly about prescribed medications, the subject is in danger of incrimination.

#### (4) *Eye Examinations*

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

#### (5) *Divided Attention Tests*

At this stage, the officer will conduct the Modified Romberg Balance Test, the Walk and Turn Test, the One Leg Stand and the Finger to Nose Test. It is important for a defense attorney to compare the results of steps 4 and 5 to those conducted in the field. Because the tests are conducted indoors, there should be some difference between the results. Moreover, if the test results are identical, it is important to determine if the field results were used instead of separate testing. Acceptance, without retesting, may invalidate the results.

#### (6) *Vital Signs*

The vital signs that can indicate drug influence include blood pressure, temperature, and pulse. At this stage, a second pulse is taken. However, as stated above, we all have our own personal standard condition. Therefore, every defense attorney representing a person who was subject to a DRE Evaluation should consult with a [Legal Nurse Consultant](#) as part of the representation. At The Morgan Law Firm, we utilize our LNC for every DUI-Drug case. If you are an attorney, DUI Trainers is able to provide this service as part of our [Consulting Expert](#) services.

#### (7) *Dark Room Checks (Pupils)*

Pupils react differently to light. Certain drugs can impact the pupil reaction by causing dilation or constriction. A dark room allows the officer to control and change the amount of light to test pupil reactivity. Based upon the information learned, the officer can assess whether he/she believes the person to be under the influence of a drug.

#### (8) *Muscle Tone Checks*

Certain categories of drugs cause the user's muscles to become either tense/rigid while others cause the muscles to be flaccid/rubbery. Although evidence of muscle tone may be apparent during divided attention tests and vital sign examination, the officer should take deliberate steps to check for muscle tone during this phase.

If a subject suffers from a condition that affects muscle tone, our Legal Nurse Consultant will determine whether this may have affected the results of the DRE Evaluation.

(9) *Check for Injection Sites*

Many drugs are injected. Evidence of injection sites, and in particular, the specific coloration and scabbing of sites, may be important evidence.

(10) *Interrogation and Observation*

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

(11) *Evaluator Opinion*

The evaluator is, at this point, prepared to reconcile the clues he has developed by comparing those clues which would indicate a specific category or categories of drugs. The officer will use a matrix which lists those specific clues. The DRE will record those opinions as well as a factual basis for the opinions in a narrative summary on the DRE Report.

(12) *Toxicological Examination*

The DRE will request a blood sample to confirm his opinion. See below for more information about blood samples.

## **Blood, Breath or Refusal**

### **Breath Test**

To determine if evidence is admissible, (which does not mean the same thing as being “accurate”) we require:

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

### **Blood Test**

To determine if a [Serum Blood Test](#) is Admissible (**which does not mean “accurate”**), we require the following:

- Full name of Phlebotomist who drew blood of the defendant;
- Full name and CV/Resume of any witness the Commonwealth intends to call to testify as to the results of the blood testing;
- Plasma/Serum Testing Documentation;

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

If the blood was subject to [Gas Chromatography Testing](#), we will request:

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

### ***Refusal***

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

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

## **PRE-TRIAL PROCEDURAL MOTIONS**

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

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

### **E. TRIAL**

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

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

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

You should expect that your attorney will take a case to trial when it is appropriate. You should expect your attorney to be a competent trial attorney who is comfortable in front of the jury. Most importantly, you should expect your attorney to know more about DUI than anyone else in the room. Hiring me allows you that confidence.

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

## **F. SENTENCING**

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

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

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

## **G. APPEALS**

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

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

A decision of the Superior Court often takes months to decide. The party that loses the appeal can then petition the Pennsylvania Supreme Court for allowance of appeal. The Supreme Court will determine if the issues raised in the appeal are of such importance that they must intervene.

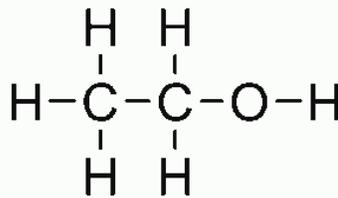
## FORENSICS & SCIENCE OF BREATH AND BLOOD TESTING

### A. BREATH TESTING

Unfortunately, the breath test is wrong over 89% of the time.... **Sometimes it produces a higher result. Sometimes it produces a lower result.**

The point is this... The number that is produced by the breath testing device is wrong and I can usually prove it with one easy step. If you have been charged with DUI based upon a breath test, you likely received a receipt produced by the device. On that receipt you will see two results based on your two samples. Are those results the same? Chances are, they are not the same. Did your BAC change? Of course not... Therefore, the machine must not be 100% accurate, right?

The Breathalyzer uses infrared (IR) light and five ethanol specific IR filters to identify the ethyl alcohol molecule and determine the percent of alcohol in a breath sample. When Infrared light is passed through a substance, some of the infrared light will be absorbed. If a variable infrared light source is directed through a group of molecules, such as ethyl alcohol, an infrared spectrum can be produced. Each substance has its own particular spectrogram. Ethyl Alcohol consists of Six Hydrogen Atoms, Two Carbon Atoms, and one oxygen atom. [Free online case Evaluation](#)



*The Structure of Ethyl Alcohol*

### **How does the breath test device calculate my Blood Alcohol Content?**

First, you must understand that there is a 10% margin of error. So, your BAC of .10 could be as low as .09 or as high as .11 and be within the acceptable margin of error. The difference between a .10 and a .09 under the law is actually quite significant, if this is your third offense, a .09 will result in a 10 day jail sentence. If the BAC is reported as a .10, you will serve a minimum of 90 days in jail

44 1/2% of all results will be below the reported result. 44 1/2% of all results will be above the reported result. The Commonwealth has the burden of providing your guilt beyond a reasonable doubt.

The machine will report your results as grams of alcohol per 210 liters of breath. Think of 105 2-liter bottles of soda. Compare that to 8 grams (about 1 1/2 crayons). Visualize that for a minute and you will see why accuracy matters. If the device reports a .10 (2 crayons), you can go to jail for a minimum of 2 days for your first offense. If the device reports a .05 (one crayon), you go free...

### **What else can cause an error?**

In addition to the inherent margin of error present in the breath testing device, your breathing patterns can affect a breath testing device. It has been established that a person who hold his/her breath will produce a higher result. Short rapid breaths that flush out the lungs will produce a lower reading. Think back to the breath test... Were you told to hold your breath before blowing into the device? Yep, I bet you were.

Were you told to stop by the breath test operator? He is making sure that the two numbers agree. Does that seem fair?

Every breath testing device in America is programmed to expect a breath temperature of 34 degrees Celsius. However, the average person has a breath temperature of 35 degrees Celsius. Why does this matter? Each degree of variance produces a 8.6% variance in breath test results. Thus, if your breath temperature is 35 degrees Celsius, you are likely to have produced a n estimated BrAC 8.6% above your actual BrAC.

Your own hemocratic ratio affects the breath testing device's accuracy.

The presence of mouth alcohol can affect the results. Did you burp, belch, or bring anything into your mouth, even a micro-burp?

### **Does it matter that this device is inaccurate?**

**It depends.** To be candid, most judges just accept the breath test as accurate. The Courts have held that breath testing is acceptable in the Commonwealth and have made it incredibly difficult for juries to hear the evidence of inaccuracy. In many cases, this requires an expensive expert to testify. **However, if your BAC is close to the limit** or you are charged with Homicide by Vehicle, it matters a great deal. In many cases, our challenges are accepted as part of negotiations.

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

## **B. `BLOOD TESTING**

### ***SERUM/PLASMA TESTING***

When the prosecution relies upon serum testing, it is important to remember that the serum is only part of your blood, it is not your “whole blood.” After your blood is drawn, the lab technician will place your blood vial in a centrifuge for the purpose of separating your plasma from your red blood cells. Thereafter, a silver straw is placed in the vial to “suck up the serum from the specimen and moves it into the analyzer so it squirts it down into a cup and mixes it with a reagent for the alcohol. The reagent “causes an enzymatic reaction to reacted a color which is read by a spectrophotometer and then it’s measured at a certain rate and calculated into a percentage.” The computer then generates an electronic report.

The general rule for alcohol related DUI cases is that only tests performed on whole blood will sustain a conviction under Section 3802. The testing of plasma or serum is based upon non-whole blood. Thus, evidence of blood serum, plasma or supernatant testing, without conversion, will not suffice to support a conviction under 3802.

With respect to conversion evidence, this Court has required evidence of a conversion factor to calculate the whole blood alcohol content of the original whole blood sample from the non-whole blood result. The Commonwealth may apply different conversion factors in different cases, as long as **they [the conversion factors]** are generally accepted within the scientific community.

**IN OTHER WORDS... The Courts know that the test is inaccurate, but they may allow it anyway.**

Before we concede that a Serum Blood Test is Admissible (**which does not mean “accurate”**), I require the government to provide me with the following: Full name of Phlebotomist who drew blood of the defendant; Full name and CV/Resume of any witness the Commonwealth intends to call to testify as to the results of the blood testing; Plasma/Serum Testing Documentation; Copy of any and all documentation, including Standard Operating Procedures, relied upon by Medical Technician in conducting the testing of the Defendant’s blood serum; Copy of any and all documentation regarding the device/machine utilized to analyze the serum of the defendant including, but not limited to the following: Device Manufacturer, model number, serial number, Date placed in service, maintenance reports, calibration reports, and out of service documentation within 180 days prior to the testing of the defendant’s serum and 90 days after the testing of the defendant’s blood serum; The title of any document, treatise, book, study, or report upon which the conversion factor relied upon by the hospital/laboratory to convert the amount

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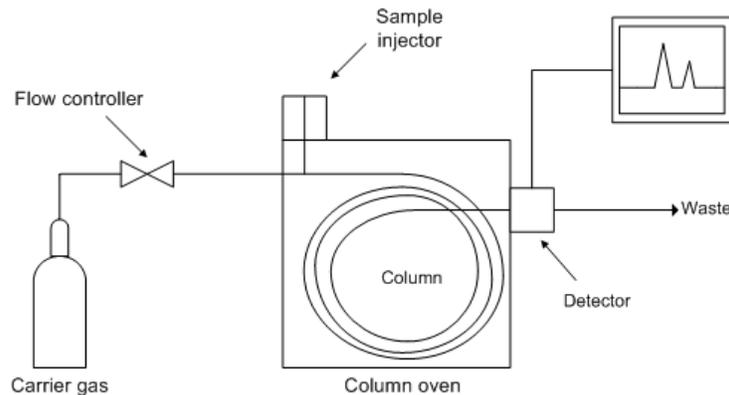
### **HEADSPACE GAS CHROMATOGRAPHY (HGC) TESTING**

Headspace Gas Chromatography (HGC) is the most common type of testing in Pennsylvania. **Gas chromatography (GC)**, is a common type of chromatography used in analytical chemistry for separating and analyzing compounds that can be vaporized without decomposition.

In gas chromatography, the *mobile phase* (or "moving phase") is a carrier gas, usually an inert gas such as helium or an unreactive gas such as nitrogen. The *stationary phase* is a microscopic layer of liquid or polymer on an inert solid support, inside a piece of glass or metal tubing called a column (an homage to the fractionating column used in distillation). The instrument used to perform gas chromatography is called a *gas chromatograph* (or "aerograph", "gas separator").

The process of gas chromatography involves the use of an instrument called a gas chromatograph (GC) to separate and analyze compounds that can be vaporized without decomposing the compound. Gas chromatography is particularly well suited to the separation of volatile organic compounds.

## ***The Inner Workings of a Gas Chromatograph***



Human blood is a mixture of various substances and left alone, it is very difficult to analyze. However, some of the components of blood are volatile organic compounds, and the point of GC is to separate and analyze the volatile organic compounds that may be within the blood sample.

Thus, with the proper extractions procedures or for volatiles such as alcohols by use of a method called “head space,” various foreign components of the blood such as drugs, drug metabolites, and alcohols in blood can be measured and identified. In a DUI case we are primarily interested in the volatile ethyl (beverage) alcohol, but there are other potential volatiles of interest, such as acetone, which might be of interest where the driver was experiencing a diabetic episode.

Like all chromatographic methods, with gas chromatography there is a “mobile phase,” in this case a gas, which is used to carry the mixture over a “stationary phase.” The gas is more fully called “headspace gas.” With DUI cases, the stationary phase is typically a tube or capillary column. The components in the mixture containing a driver’s blood leave this column in the order of their volatility, with the most volatile (first to vaporize) leaving the column first.

In the forensic lab testing blood for DUI cases, the gas chromatographic system might include the following:

- The blood sample
- The headspace vial
- The internal standard
- The carrier gas
- The capillary column
- The “oven”
- The flame ionization detector (FID)

- The computer
- The printer

The capillary column is contained within an oven. The headspace gas is injected into the column and is measured as it come out of or “elutes” from the column.

Before an unknown volatile can be measured, it is important for the lab analyst to prepare a standard mix which usually includes several different volatiles including isopropyl alcohol, ethyl alcohol, methanol, acetone, acetaldehyde and toluene. This standard mixture allows the laboratory to determine the specific retention times of the various volatiles of interest.

Once the known standards mixture is tested with a specific column and the retention times recorded, the lab analyst can then use the gas chromatograph to qualitatively test unknown compounds.

A calibration curve is also produced in the laboratory. This involves passing known quantities of alcohol through the column. The specific laboratory’s protocol will dictate how many different levels of alcohol are measured, but they will usually span from well below the legal limit to well above. This calibration curve “tests” the column to be sure that it is capable of measuring specific known quantities. Subtle changes in carrier gas flow; the flow of gases to the FID detector (if used) and subtle changes in the column are few of the reasons that the GC must be recalibrated very frequently.

Now that the column has been calibrated, the lab analyst is ready to begin the blood test. The analyst starts by removing a very small amount of the driver’s blood from the blood draw vial and placing it, along with a very small amount of an internal standard, into a separate testing vial. This testing vial is called a “headspace” vial. Internal standards are alcohols that would not be expected to occur in human blood except in minute quantities. More importantly, the boiling point of these standards is different from the boiling point of ethanol. This difference is important because it will result in a GC peak for the internal standard that is clearly distinguishable from the peak for ethanol. The internal standards that are typically used include *n-propyl* and *t-butyl* alcohol.

This headspace vial is then shaken to mix the chemicals and heated to produce the headspace gas. An injector system is used to introduce the sample to be tested into the GC column. In the case of headspace method, a small amount of air (gas) above the liquid in the headspace vial which has become saturated with volatile components from the liquid sample is taken and injected into column via a micro syringe. On its way into the headspace vial, the syringe passes through a rubber gasket. With the headspace

method no blood is directly being sampled because headspace testing involves an analysis of only the air above the blood sample.

Once the blood sample has been heated to produce the headspace gas, this gas is swept into and through the column by the carrier gas stream. This phase is known as the mobile phase. A high-pressure gas cylinder serves as the source of the carrier gas. There are several carrier gases that can be used, including helium, nitrogen and hydrogen.

Today, columns used in forensics are generally capillary columns up to 30 meters in length and are made of glass. The diameters of these columns are generally in the range of 0.25 mm. Modern capillary columns typically do not have “packings” as they once did but instead have a coating deposited onto the internal wall of the column. The capillary column consists of a solid support phase and a bonded liquid phase. In capillary columns, the solid support phase is the column itself.

The capillary column separates the sample into its component parts. The oven helps control the speed and amount of separation. The detector detects the presence of and can measure the amount of the volatiles as they exit out of the column. A common detector used in GC systems is the flame ionization detector (FID). However, there are many other detectors that are used for special detection requirements.

The FID is located at the end of the column. Because the volatiles involved are flammable, they can be burned in the flame ionization detector. Thus, as the chemicals exit or “elute” from the end of the column the FID incinerates them, and this combustion produces an electronic charge in the form of ions.

These ions are then measured by the detector and subsequently converted by the instrument’s computer into a graph which usually contains two peaks. One of these peaks represents the internal standard and the other the ethyl alcohol. The retention time of the peak for the ethyl alcohol must match the expected retention time in order to qualitatively confirm its identity. The expected size and retention time of the peak for the internal standard will be known because of prior testing and because a precise amount of it was placed by the analyst into the headspace vial. The area beneath this peak, called the “area under the curve” is compared with the peak for the ethyl alcohol. This ratio is compared with the calibration curve and converted into the driver’s blood alcohol level.  
[www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

### **So.... What the Hell does that mean?**

Think of a track meet where at the beginning of the competition all the runners are anonymous. Your goal in this fictitious competition is to figure out the identity of the

runners. As usual, at the beginning of the race the runners all begin at the starting line and as the race begins the runners quickly begin to separate as they race toward the finish line.

While you watch the competition unfold the same event is repeated over and over again and you see the same runners compete against each-other several times. As you watch you begin to notice that each individual runner seems to finish each race at the same time. If you were keeping notes of each individual runner's time, pretty soon you'd be able to identify the runner based on the amount of time it took him or her to finish the race.

Similarly, in the world of HGC, the volatile organic compounds finish the "race" at different rates depending on their various chemical and physical properties and their interaction with a specific column. The volatiles are qualitatively identified based on the amount of time it takes to finish the "race" to the GC's detector. In gas chromatography this is what happens when the lab analyst runs the standards mixture and records the time the various volatiles elute from the column. This is the qualitative part of gas chromatography, and answers the question "what am I."

To carry our metaphor a step further, the track would be similar to the column in the GC. The solid phase is a bit like the dirt on the track in that the dirt creates a resistance against which the runners must race through as they continue toward the finish line. This resistance helps to separate out the fast runners from the slow runners, and this separation makes it easier to determine the runner's identity.

### **What do we do about it?**

If the blood was subject to Gas Chromatography Testing, I require the government to provide me with the following: A copy of the Laboratory Report; A copy of the Analyst's Bench Notes; A copy of the documentation for all calibrators, controls, blanks, internal standards and standard mix and ALL associated Chromatographs; A copy of the Calibration Curve Result; A copy of all maintenance logs for the Gas Chromatograph device; A copy of all maintenance logs for all pipettes in use at the time defendant's blood was tested.

### **Does it matter?**

**It depends.** To be candid, most judges just accept the breath test as accurate. The Courts have made it incredibly difficult for juries to hear the evidence of inaccuracy. In many cases, this requires an expensive expert to testify. **However, if your BAC is close to the limit** or you are charged with Homicide by Vehicle, it matters a great deal. In many cases, our challenges are accepted as part of negotiations.

## **COLLATERAL CONSEQUENCES**

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

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

### **A. EMPLOYMENT**

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

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

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

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

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

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

### **B. COMMERCIAL DRIVERS LICENSE**

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

### **C. PROFESSIONAL LICENSURE**

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

### **D. IMMIGRATION**

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

### **E. FIREARMS**

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

### **F. CUSTODY**

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

## **BEFORE YOU HIRE A LAWYER**

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[FREE Online DUI Case Evaluation](#)

## A. BEFORE YOU HIRE A LAWYER

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

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

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

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

**THE IN-PERSON MEETING TRAP:** Lawyers are masters in the art of persuasion. Therefore, **we do not recommend in-person interviews**. Simply put, there is too much pressure during an in-person interview to sign a contract based upon a flashy sales pitch or scare tactics.. Therefore, we recommend a phone consultation or, as is our procedure, an [online case evaluation](#). We also recommend making a lot of comparisons. We don't mind if you compare our skills, knowledge, experience, case results, and clients to others.

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

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

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

### OUR ANSWERS

#### BACKGROUND, EXPERIENCE, AND PRACTICE

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

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

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

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

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

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

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

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

## 5. How are Fees Calculated?

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

## 6. Are you a DUI Specialist:

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

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

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

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

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

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

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

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

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

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

**APPROACH TO YOUR CASE**

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

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

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

- c. **ARD is NOT your ONLY option.** It is a good program, but not a great program. You should ONLY hire a lawyer like me who will fully and fairly evaluate your case before you make any decision about ARD. **Our case results are full of cases where ARD was offered, but a better outcome was achieved.**
- d. **The ARD Guidance Program** is an option if you would like to use our knowledge and experience to your advantage without paying full price.

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

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

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

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

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

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

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

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

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

- a. An Attorney who is unwilling to go to trial is NOT your best option.

- b. **Yes. IF it is in your best interest** to take a case to trial, I will recommend trial. Trial is about achieving the best result for your case. It isn't about padding my resume.
- c. Most of my cases resolve favorably without trial because my knowledge, experience, and opinions are trusted by prosecutors and the courts.

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

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

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

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

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

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

**KNOWLEDGE OF DEFENSE STRATEGIES**

**Medical Condition**

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

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

**Field Sobriety Tests & Drug Recognition Experts**

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

- a. **Yes.** I have the following certifications/qualifications:
  - a. NHTSA Qualified SFST Instructor.
    - i. This means I am qualified to teach police officers how to administer field sobriety tests.

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

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

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

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

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

## **Blood & Breath Testing**

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. Absolutely.

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

- a. You should hire my firm if you are committed to a successful resolution of your DUI Case.
- b. Some attorneys will tell you that you are guilty or recommend ARD but will still expect to be paid for their “services.”
- c. Other attorneys will tell you that you can expect to go to trial because they “fight for you.” In reality, it is because their tactics have alienated prosecutors to the point where there are no negotiations available.
- d. Attorney Morgan seeks to achieve a successful result. This means that he wants you to avoid a conviction, avoid jail, and avoid a license suspension.
- e. This document explains how we do our job. Other documents tell you about our team, our case results, and our client reviews. ***Does any other lawyer or law firm provide you this much information?***

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

**BACKGROUND, EXPERIENCE, AND PRACTICE**

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

**APPROACH TO YOUR CASE**

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

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

14. Do you recommend ARD in some cases?

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

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

### **KNOWLEDGE OF DEFENSE STRATEGIES**

#### **Medical Condition**

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

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

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

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

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

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

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

23. How does a Breathalyzer work?

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

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

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

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

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

## **ABOUT US**

### **100% DUI**

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

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

I have received advanced training far beyond most, if not all, criminal defense lawyers in the area. I am a qualified National Highway Traffic Safety Administration (NHTSA) Standardized Field Sobriety Test (SFST) Instructor. I have been accredited by Pennsylvania as well as several other states<sup>4</sup> to teach attorneys the practical aspects of SFST and other NHTSA DUI and DUI-Drug testing protocols.

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

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

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<sup>4</sup> Including Ohio, Virginia, New Jersey, Delaware, West Virginia

## **ATTORNEYS & STAFF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ASHLEE STEWART**  
Case Manager / Coordinator

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

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

Senior Attorney

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

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

### **ASSOCIATE ATTORNEYS**

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

### **LEGAL NURSE CONSULTANT**

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

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

### **LOCATIONS SERVED**

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

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

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

**2010 – 2019 DUI CASE RESULTS**

**1058** DUI Defendants represented

**97.03%** of all cases results in LESS than the Mandatory Minimum Sentence.

**92.7%** of all cases NOT ELIGIBLE FOR ARD resulted in LESS than the Mandatory Minimum Sentence.

**66.6%** of all Non-ARD cases resulted in a DISMISSAL or REDUCTION of charges

**2010 – 2019 DUI CASE RESULTS**

ARD	Not Guilty or Charges Dismissed	Reduced Charges, Sentence, and/or Suspension	Intermediate Punishment (Lesser) Sentence	As Charged/Mandatory Sentence
64.3%	3.9%	24.8%	4.9%	2.1%
93% of all cases do NOT result in as-charged/Mandatory Sentence				

**NON-ARD CASE RESULTS**

Not Guilty or Charges Dismissed	Reduced Charges, Sentence, and/or Suspension	Intermediate Punishment (Lesser) Sentence	As Charged/Mandatory Minimum Sentence
8.3%	74.4%	13.0%	4.3%

**CLIENT REVIEWS**

Our client reviews can be found on a third-party site.

We invite you to review Attorney Dean Morgan’s client reviews found [here](#).

**SERVICES AND FEES**

**Comprehensive Representation** – This is our standard representation. We will provide assistance and representation at your preliminary hearing and throughout the common pleas to a non-trial resolution. Fees vary based upon a number of factors. If you have

received a comprehensive case evaluation, please see your Fee Agreement. If you have not yet received a comprehensive case evaluation, please [click here](#).

**OUR STANDARD FEE INCLUDES THE FOLLOWING SERVICES:**

<b>DISTRICT COURT</b>	<b>Responsible Attorney</b>
<b>PREPARATION FOR PRELIMINARY HEARING</b>	
<ul style="list-style-type: none"> <li>➤ Review of Criminal Complaint</li> <li>➤ Review of Applicable Law related to potential defenses</li> </ul>	<b>Attorney Morgan</b>
<b>PRELIMINARY HEARING REPRESENTATION</b>	
<ul style="list-style-type: none"> <li>➤ Representation at Magisterial District Court including: (1) Consultation with arresting officer and/or District Attorney, (2) review of facts/law not found in criminal complaint, (3) Analysis of potential defenses and/or resolutions</li> </ul>	Chosen Attorney
<b>COURT OF COMMON PLEAS</b>	
<b>PRE-TRIAL DISCOVERY<sup>5</sup></b>	
<ul style="list-style-type: none"> <li>➤ Request, Receive, and Review of all police reports, accident reports, and law enforcement videos</li> <li>➤ Review of all applicable law related to facts ascertained in Discovery</li> <li>➤ Recommendation to Defendant as to course of action.</li> </ul>	<b>Attorney Morgan</b>
<b>PRE-TRIAL NEGOTIATIONS</b>	
<ul style="list-style-type: none"> <li>➤ Negotiation with District Attorney regarding potential non-trial resolution of case.</li> </ul>	<b>Attorney Morgan</b>
<b>COURT OF COMMON PLEAS REPRESENTATION</b>	
<ul style="list-style-type: none"> <li>➤ Representation at three<sup>6</sup> (3) Court of Common Pleas hearings<sup>7</sup> following Arraignment.</li> </ul>	Chosen Attorney

**Fast-Track Representation** – Fast-Track Representation is available for ARD cases and those cases where guilt is not in question. At the preliminary hearing, we will determine whether there are any potential defenses. If not, we will represent you at an ARD hearing and throughout the process until sentencing. Please note, we do not conduct discovery during a Fast-Track case. However, if the preliminary hearing reveals potential defenses, we may suggest a higher level of representation. If you have not yet received a comprehensive case evaluation, please [click here](#).

<sup>5</sup> Not applicable to Fast Track Cases

<sup>6</sup> One (1) for Fast Track Cases.

<sup>7</sup> Does not include Trial or Suppression

**Preliminary Hearing Representation** – Preliminary Hearing representation is the best choice for those clients who want flexibility in their representation. We will provide representation at a preliminary hearing. If, after the preliminary hearing, you would like us to continue representing you, we will do so under either the fast-track or comprehensive representation fee structure outlined on your fee agreement. If you have not yet received a comprehensive case evaluation and fee agreement, please [click here](#).

**\$175 ARD Guidance-** Sometimes, you just need a guide. We offer the ARD Guidance program. Although we will not be in the courtroom with you, we will be available to answer your questions and concerns as you enter and complete the program. [Click here for more information](#).

**Suppression and Trial Representation** – Attorney Morgan will file a suppression motion to suppress evidence and/or represent you at trial. Fees vary. For more information, see your fee agreement or, if you have not received a comprehensive case evaluation, click [here](#).

**Appellate Representation** – If you are unhappy with your result, we will assist you by filing an appeal to the Superior Court on your behalf. Fees vary. For more information, click here.

**PennDOT Representation** - We provide representation to appeal license suspensions, restore your license following an appeal, and to assist you to obtain an Occupational Limited License or Ignition Interlock Restricted License.

## **CONTACT**

### **On the Web**

The Morgan Law Firm  
[www.PennDUIDefense.com](http://www.PennDUIDefense.com)

DUI Trainers & Consultants, LLC  
[www.DUITrainers.com](http://www.DUITrainers.com)

### **Administrative Offices**

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151 W. Chocolate, Suite 145  
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Hershey, PA 17033

### **Phone**

717-220-4300

### **Fax**

717-585-6574

### **Email**

Ashlee Stewart  
Case Manager/Legal Assistant  
[AStewart@fdeanmorgan.com](mailto:AStewart@fdeanmorgan.com)

### **New Client Case Evaluation**

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

## **REPRESENTING YOURSELF**

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

1. You will be held to the same standard as an attorney.
2. You must comply with all rules of Criminal Procedure.
3. Any ineffective or ill-advised actions on your part will not be excused.
4. Legal research can be difficult and complex.
5. Neither the District Attorney nor the Officer will enter into negotiations with you, except to offer ARD, and discovery may be limited due to regulations and law.

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

**\$175 ARD Guidance-** If you would prefer to have some help navigating the system, but do not want to pay full price for representation, we can assist you. Here is how it works: You retain our services for ARD Guidance. You agree that we will not enter our appearance with the court, nor will we appear in court with you. Instead, we will provide you basic assistance to enter the program as well as be available to answer any questions or concerns you may have. To retain our services for ARD Guidance, [click here](#) and enter “**ARD Guidance**” under the “payment option” prompt. If you have already had a case evaluation, we will send you a secure invoice for payment. If you have not, we will ask you to submit some additional information before we begin representation.

## **INFORMATION FOR ATTORNEYS**

**WE KNOW YOU'RE HERE:** We recognize that attorneys often come to our website or read this guide seeking information. We appreciate the opportunity to help you learn more about DUI law in Pennsylvania as well as the national standards for use of SFST, ARIDE, and DRE testing.

We enjoy the brief conversations about your cases in the courtroom. However, there is no substitute for the information we can provide as Consulting Experts. We also know that you have had the opportunity to read our previous guidebook in the past when clients bring them to your attention. We remain committed to not accept clients after they have used another lawyer's services. We find it to be unprofessional and, more importantly, we have seen that some lawyers have caused irreparable damage to the case.

We welcome the opportunity to help you better serve your clients before it is too late..

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

### **Continuing Legal Education Courses**

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

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

## Consulting Expert Services

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

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