

IN THE KNOW – DEFENDING THE DUI

Robert Cronin, Esquire
Casale & Bonner, P.C.
33 West Third St., Suite 202
Williamsport, PA 17701
(570) 326-7044
robert@cbatty.com

My child was pulled over for a DUI:

- ① 1) Why hasn't my child been charged yet?
- ② 2) What type of punishment is my child facing?
 - a) Will my child lose his license?
 - b) Is my child eligible for ARD?
 - c) Is there an alternative to jail?
- ③ 3) Are there any defenses to this offense?

Why hasn't my child been charged yet?

Oftentimes, when blood is drawn it will take longer for the arresting officer to get the results and hence the filing of charges can be delayed.

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2 year Statute of Limitations, 42 Pa.C.S. § 5552 (unless tolled pursuant to § 5554).

§ 5552. Other offenses.

(a) General rule.--Except as otherwise provided in this subchapter, a prosecution for an offense must be commenced within two years after it is committed.

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Pa.R.Crim.P. 600 – Speedy Trial

(2) Trial shall commence within the following time periods: (a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

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Elements:

- 1) drive, operate or be in actual physical control of the movement of a vehicle
- 2) vehicle
- 3) on a highway and trafficway (3101(b))
- 4) Incapable (either refusal (1547) or below the statutory levels)
OR BAC (greater than .08, unless a minor (greater than .02) or CDL (greater than .04)) OR Controlled Substances (any level)
- 5) If BAC/Controlled Substances – test within two hours.

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Drive, operate, or be in actual physical control of the movement of a vehicle -
The accused does not need be driving the vehicle.

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Operate defined:

“The term ‘operate’ requires evidence of actual physical control of either the machinery of the motor vehicle or the management of the vehicle’s movement, but not evidence that the vehicle was in motion.” Commonwealth v. Johnson, 833 A.2d 260, 263 (Pa. Super. 2003).

Actual physical control defined:

“Our precedent indicates that a combination of the following factors is required in determining whether a person had ‘actual physical control’ of an automobile: the motor running, the location of the vehicle, and additional evidence showing that the defendant had driven the vehicle.” Commonwealth v. Woodruff, 668 A.2d 1158, 1161 (Pa. Super. 1995).

A determination of actual physical control of a vehicle is based upon the totality of the circumstances. Commonwealth v. Williams, 871 A.2d 254, 259 (Pa. Super. 2005).

“The Commonwealth can establish, through wholly circumstantial evidence, that a defendant was driving, operating or in actual physical control of a motor vehicle.”
Johnson, supra at 263

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Examples:

Commonwealth v. Bobotas, 588 A.2d 518, 521 (Pa. Super. 1991) (finding actual physical control when the defendant was found parked in an alley, where he had pulled over on the way home, with the motor running)

Commonwealth v. Crum, 523 A.2d 799, 800 (Pa. Super. 1987) (finding actual physical control where defendant was found sleeping in his parked car, along the side of the road, with the headlights on and the motor running).

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“Vehicle” defined, 75 Pa.C.S. § 102

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheel chair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.

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Examples:

- Cars, trucks, motorcycles, dirt bikes on the road, trikes, mopeds, and scooters are all considered vehicles. Even a bicycle is considered a vehicle when it is on the road for DUI purposes. Com. v. Brown, 620 A.2d 1213 (Pa.Super. 1993).
- a driver of a horse and buggy or horse-driven carriage can be charged with DUI
- Planes and boats are covered by separate statutes that govern the consumption of alcohol.

By CASEY GLYNN / CBS NEWS / July 21, 2011, 8:22 AM

Amish teen driving horse 'n buggy charged with DUI



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GETTY IMAGES/MARK WILSON

(CBS/AP) CONEWANGO, N.Y. - If you're trying to outrun a cop car, a good rule of thumb is to have an actual car yourself, instead of, say...a horse and buggy.

Police in New York say a 17-year-old Amish boy took them on a short chase when they tried to pull him over for having an open container of beer.

Cattaraugus County deputies say they were patrolling around 1 a.m. Monday in Conewango, 45 miles south of Buffalo, when they saw the boy. When they tried to stop him, they say he became belligerent and rode off.

Lewis Hostetler, 17, was charged with resisting arrest, unlawful possession of an alcoholic beverage by a person under 21, failure to yield to an emergency vehicle, insufficient tail lamps (no, not on the horse) and littering.

Hostetler was arraigned and taken to the county jail with bail set at \$500.

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<https://youtu.be/541U-Zej3Ns>

<https://youtu.be/GvoiRO7IgHU>

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"Highway" defined, 75 Pa.C.S. § 102

"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.

"Trafficway" defined, 75 Pa.C.S. § 102

"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.

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Examples:

the Pennsylvania courts have held that both normal parking garages and parking lots are trafficways as they are generally open to the public. See Commonwealth v. Zabierowsky, 730 A.2d 987 (Pa. Super. 1999); See, also, Commonwealth v. Cameron, 668 A.2d 1163 (Pa. Super. 1995).

Impaired Zamboni Driver To Be Charged

Category: Local News

Published: Monday, 21 December 2015 10:57

Written by Tammy Plett



Referees contemplate calling the game after the

Referees contemplate calling the game after the Zamboni incident.

Police were called to the Ste. Anne arena after spectators noticed a worker driving the Zamboni erratically during a hockey game.

The ice resurfacing machine struck the rink boards, missed sections and dug grooves into the ice. According to police, the operator was uncooperative during arrest at the arena.

The incident happened between the second and third periods of the bantam hockey game between the Seine River Snipers and the Southeast Blizzard. The game was called due to the rough ice conditions with the third period being played Monday night in Ste. Anne.

Ste. Anne Police Chief Marc Robichaud says, "You don't have to be driving on a road to be charged with impaired driving. Under the criminal code a motor vehicle means a vehicle that is drawn, propelled or driven by any means other than muscular power."

Ste. Anne police report that the driver will be charged with impaired driving and refusing to provide a breath sample in relation to the operation of a Zamboni.

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OR BAC (greater than .08, unless a minor (greater than .02) or CDL
(greater than .04)) OR Controlled Substances (any level)
- 5) If BAC/Controlled Substances – test within two hours.

What type of punishment is my child facing?

DUI – defined (75 Pa.C.S. § 3802)

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:

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(a)(1) – General Impairment

the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

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(a)(2) – General Impairment (.08 - .099)

the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

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(b) – High Rate (.10 - .159)

the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

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(c) - Highest Rate of Alcohol (.16 +)

the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

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(d)(1) - Controlled substances (Strict liability)

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, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or

(iii) metabolite of a substance under subparagraph (i) or (ii).

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(d)(2) - Controlled Substances

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 the vehicle.

Minimum levels of controlled substances

PA Bulletin, Vol. 45, No. 27, July 4, 2015,
pp. 3638-3639

<http://www.pabulletin.com/secure/data/vol45/45-27/1250.html>

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(e) – Minors (.02 +)

Minor – An individual who is under 21 years of age. 75 Pa.C.S. § 3801

the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle. 75 Pa.C.S. § 3802(e)

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“Refusal” defined, 75 Pa.C.S. § 1547

§ 1547. Chemical testing to determine amount of alcohol or controlled substance.

(a) General rule.--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, blood or urine 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:

(1) 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); or

(2) which was involved in an accident in which the operator or passenger of any vehicle involved or a pedestrian required treatment at a medical facility or was killed.



CHEMICAL TESTING WARNINGS AND REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TESTING AS AUTHORIZED BY SECTION 1547 OF THE VEHICLE CODE IN VIOLATION SECTION 3802 (relating to driving under the influence of Alcohol or Controlled Substance)

Side 1

NAME			SEX	DATE OF BIRTH		
FIRST	MIDDLE	LAST		MONTH	DAY	YEAR
ADDRESS: A P.O. Box number may be used in addition to the actual residence address, but cannot be used as the only address.				CITY	STATE	ZIP CODE
DRIVER NUMBER		STATE	CHEM TEST REQUEST DATE		SOCIAL SECURITY NUMBER	
			MONTH	DAY	YEAR	

SECTION 1647 - CHEMICAL TESTING WARNINGS

- Please be advised that you are under arrest for driving under the influence of alcohol or controlled substance in violation of Section 3802 of the Vehicle Code.
- I am requesting that you submit to a chemical test of _____ (blood, breath or urine. Officer chooses the chemical test).
- It is my duty as a police officer to inform you that if you refuse to submit to the chemical test, your operating privilege will be suspended for at least one year. In addition, if you refuse to submit to the chemical test, and you are convicted of, plead to, or adjudicated delinquent with respect to violating Section 3802(a) of the Vehicle Code, because of your refusal, you will be subject to the more severe penalties set forth in Section 3804(a) of the Vehicle Code, which include a minimum of 72 hours in jail and a minimum fine of \$1,000.00.
- It is also my duty as a police officer to inform you that you have no right to speak with an attorney or anyone else before deciding whether to submit to testing and any request to speak with an attorney or anyone else after being provided these warnings or remaining silent when asked to submit to chemical testing will constitute a refusal, resulting in the suspension of your operating privilege and other enhanced criminal sanctions if you are convicted of violating Section 3802(a) of the Vehicle Code.

I certify that I have READ the above warning to the motorist regarding the suspension of their operating privilege and gave the motorist an opportunity to submit to chemical testing.

Signature of Officer: _____ Date: _____

I have been advised of the above.

Signature of Motorist: _____ Date: _____

Motorist refused to sign, after being advised.

Signature of Officer: _____ Date: _____

AFFIDAVIT

- The above motorist was placed under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code, and there were reasonable grounds to believe that the above motorist had been driving, operating or in actual physical control of the movement of a motor vehicle while under the influence of alcohol or a controlled substance or both.

or
That the above named motorist was involved in an accident in which the operator or passenger of any vehicle involved or a pedestrian required treatment at a medical facility or was killed.

- The above motorist was requested to submit to chemical testing as authorized by Section 1547 of the Vehicle Code.
- The above motorist was read by a police officer of the chemical test warnings contained in paragraph 3 and 4 above.
- The above named motorist refused to submit to chemical testing after having been read the above warnings.

OFFICER NOTE: The refusal to sign this form is not a refusal to submit to the chemical test. You must still give the motorist an opportunity to take the chemical test after reviewing this form. If the individual was operating a commercial motor vehicle while having any alcohol or a controlled substance in their system, you must also complete the reverse side of this form. I certify that all information given in this form is true and correct.

Officer Signature: _____

Officer Name: _____
(Type or Print)

Badge Number: _____ Jurisdiction: _____

Mailing Address: _____

Phone: _____

PLEASE LIST NAME, BADGE NUMBER, AND PHONE NUMBER OF ARRESTING OFFICER IF NOT THE SAME OFFICER WHO WITNESSED THE REFUSAL:

Forward to:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 00087
Harrisburg, PA 17106-0087

Note: Any pertinent facts not covered by the affidavit should be submitted on a separate sheet and attached hereto. That sheet should include the names of additional witnesses necessary to prove the elements to which you have attested.

THIS FORM MAY BE DUPLICATED

ADDITIONAL SUPPLIES OF THIS FORM MAY BE SECURED BY COMPLETING FORM OS-511A

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Two Hour Rule – BAC must be taken within two hours of the actual physical control of the movement of the vehicle.

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Exception – 75 Pa.C.S. 3802(g)

(g) Exception to two-hour rule.--Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

(1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and

(2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

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Commonwealth v. Dye, Lycoming County Criminal Docket No. 799-2012
(Court held that blood taken 2 hours and 35 minutes after driving was admissible under 3802(g)).

“the Court does not believe that the Commonwealth is required to show that the first responders and 8 arresting officers did absolutely everything possible to get the defendant to submit to a blood draw within the two-hour window to establish good cause. This is especially true where the defendant’s own actions, in addition to a confluence of variables, caused delay and where it is conceded that defendant did not imbibe in alcohol or use controlled substances between the time of the accident and the blood draw. The Court believes the Commonwealth established good cause and that all responders acted with due diligence in the midst of many variables in order to properly and promptly attend to all urgent needs arising from a DUI crash on an extremely cold, snowy and icy night.”

<http://www.lycolaw.org/Cases/opinions/2014/dye090314g.pdf>

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- 5) If BAC/Controlled Substances – test within two hours.

IN THE KNOW – DEFENDING THE DUI

Grading depends on the following factors:

- 1) Level of BAC, or drugs, or refusal
- 2) Number of Prior Offenses
- 3) Whether there was an accident that resulted in property damage, and/or whether any bodily injury, serious bodily injury, or death occurred.
- 4) Whether there were minor occupants within the vehicle.

IN THE KNOW – DEFENDING THE DUI

§ 3803. Grading.

(a) **Basic offenses.**--Except as provided in subsection (b):

(1) An individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) and has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804 (relating to penalties).

(2) An individual who violates section 3802(a) and has more than one prior offense commits a misdemeanor of the second degree.

(b) **Other offenses.**--

(1) An individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(2) An individual who violates section 3802(a)(1) where the individual refused testing of blood or breath, or who violates section 3802(c) or (d) and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(3) An individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has more than one prior offense commits a misdemeanor of the first degree.

(4) An individual who violates section 3802(a)(1) where the individual refused testing of blood or breath, or who violates section 3802(c) or (d) and who has one or more prior offenses commits a misdemeanor of the first degree.

(5) An individual who violates section 3802 where a minor under 18 years of age was an occupant in the vehicle when the violation occurred commits a misdemeanor of the first degree.

IN THE KNOW – DEFENDING THE DUI

Tier 1. General Impairment, 75 Pa.C.S. §3802(a)

1st offense – M (Max = 6 months)

2nd offense – M (Max = 6 months)

3rd offense or greater – M2 (Max = 2 years)

Tier 2. High Rate (.10-.159), Minor Driver (.02+), and Gen. Imp.+ (property damage, bodily injury, OR serious bodily injury)

1st offense – M (Max = 6 months)

2nd offense – M (Max = 6 months)

3rd offense – M1 (Max = 5 years)

4th or subsequent offense – M1 (Max = 5 years)

Tier 3. Highest Rate (.16+), Refusal, Controlled Substances

1st offense – M (Max = 6 months)

2nd offense – M1 (Max = 5 **RC3**rs)

3rd or subsequent offense – M1 (Max = 5 years)

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RC3

In response to Commonwealth v. Musau, which held that the maximum punishment on a DUI-Refusal-2nd Offense was 6 months, the Pennsylvania Legislature enacted an amendment to 75 Pa.C.S. 3803, effective October 27, 2014, which amends language to show its intent that the maximum for a DUI-Refusal-2nd offense was 5 years.

Robert Cronin, 12/18/2015

IN THE KNOW – DEFENDING THE DUI

Grading depends on the following factors:

- 1) Level of BAC, or drugs, or refusal
- 2) Number of Prior Offenses
- 3) Whether there was an accident that resulted in property damage, and/or whether any bodily injury, serious bodily injury, or death occurred.
- 4) Whether there were minor occupants within the vehicle.

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§ 3806. Prior offenses.

(a) General rule.--Except as set forth in subsection (b), the term "prior offense" as used in this chapter shall mean a conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for any of the following:

- (1) an offense under section 3802 (relating to driving under influence of alcohol or controlled substance);
- (2) an offense under former section 3731;
- (3) an offense substantially similar to an offense under paragraph (1) or (2) in another jurisdiction; or
- (4) any combination of the offenses set forth in paragraph (1), (2) or (3).

(b) Repeat offenses within ten years.--The calculation of prior offenses for purposes of sections 1553(d.2) (relating to occupational limited license), 3803 (relating to grading) and 3804 (relating to penalties) shall include any conviction, whether or not judgment of **sentence has been imposed for the violation, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition within the ten years before the sentencing on the present violation** for any of the following:

- (1) an offense under section 3802;
- (2) an offense under former section 3731;
- (3) an offense substantially similar to an offense under paragraph (1) or (2) in another jurisdiction; or
- (4) any combination of the offenses set forth in paragraph (1), (2) or (3).

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Prior Offense, 75 Pa.C.S. 3806

sentence has been imposed for the violation, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition within the ten years before the sentencing on the present violation

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RC2

The amendment to 3806 became effective on October 27, 2014. Prior to this amendment, Commonwealth v. Haag held that an accused could be charged with two offenses graded the same. The amendment now results in two subsequent offenses.

However, this language has created a new loophole for offenders whose sentencing date is scheduled near or after the ten year mark.

Robert Cronin, 12/18/2015

What type of punishment is my child facing?

Mandatory minimum punishments

§ 3804. Penalties.

(a) **General impairment.**--Except as set forth in subsection (b) or (c), an individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) shall be sentenced as follows:

(1) For a first offense, to:

- (i) undergo a mandatory minimum term of six months' probation;
- (ii) pay a fine of \$300;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing).

(2) For a second offense, to:

- (i) undergo imprisonment for not less than five days;
- (ii) pay a fine of not less than \$300 nor more than \$2,500;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third or subsequent offense, to:

- (i) undergo imprisonment of not less than ten days;
- (ii) pay a fine of not less than \$500 nor more than \$5,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

IN THE KNOW – DEFENDING THE DUI

Mandatory minimum punishments

§ 3804. Penalties.

(b) High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents.--Except as set forth in subsection (c), an individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property or who violates section 3802(b), (e) or (f) shall be sentenced as follows:

(1) For a first offense, to:

- (i) undergo imprisonment of not less than 48 consecutive hours;
- (ii) pay a fine of not less than \$500 nor more than \$5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(2) For a second offense, to:

- (i) undergo imprisonment of not less than 30 days;
- (ii) pay a fine of not less than \$750 nor more than \$5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third offense, to:

- (i) undergo imprisonment of not less than 90 days;
- (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(4) For a fourth or subsequent offense, to:

- (i) undergo imprisonment of not less than one year;
- (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

IN THE KNOW – DEFENDING THE DUI

Mandatory minimum punishments

§ 3804. Penalties.

(c) Incapacity; highest blood alcohol; controlled substances.--An individual who violates section 3802(a)(1) and refused testing of blood or breath or an individual who violates section 3802(c) or (d) shall be sentenced as follows:

(1) For a first offense, to:

- (i) undergo imprisonment of not less than 72 consecutive hours;
- (ii) pay a fine of not less than \$1,000 nor more than \$5,000;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(2) For a second offense, to:

- (i) undergo imprisonment of not less than 90 days;
- (ii) pay a fine of not less than \$1,500;
- (iii) attend an alcohol highway safety school approved by the department; and
- (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third or subsequent offense, to:

- (i) undergo imprisonment of not less than one year;
- (ii) pay a fine of not less than \$2,500; and
- (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

Will my child lose his license?

Mandatory minimum punishments

3804 (e) Suspension of operating privileges upon conviction.—

(1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a certified record of the individual's conviction of or an adjudication of delinquency for:

- (i) an offense under section 3802; or
- (ii) an offense which is substantially similar to an offense enumerated in section 3802 reported to the department under Article III of the compact in section 1581 (relating to Driver's License Compact).

(2) Suspension under paragraph (1) shall be in accordance with the following:

- (i) Except as provided for in subparagraph (iii), 12 months for an ungraded misdemeanor or misdemeanor of the second degree under this chapter.
- (ii) 18 months for a misdemeanor of the first degree under this chapter.
- (iii) There shall be no suspension for an ungraded misdemeanor under section 3802(a) where the person is subject to the penalties provided in subsection (a) and the person has no prior offense.
- (iv) For suspensions imposed under paragraph (1)(ii), notwithstanding any provision of law or enforcement agreement to the contrary, all of the following apply:
 - (A) Suspensions shall be in accordance with Subchapter D of Chapter 15 (relating to the Driver's License Compact).
 - (B) In calculating the term of a suspension for an offense that is substantially similar to an offense enumerated in section 3802, the department shall presume that if the conduct reported had occurred in this Commonwealth then the person would have been convicted under section 3802(a)(2).

(v) Notwithstanding any other provision of law or enforcement agreement to the contrary, the department shall suspend the operating privilege of a driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3802.

State	Citation	Year Of Joinder
Alabama	Code of Ala. 1975 Secs. 32-6-30 to 32-6-36	1966
Alaska	Alaska: AS Secs. 28.37.010 to 28.37.190	1986
Arizona	A.R.S. Sec. 28-1851	1963
Arkansas	Ark. Code Ann. Secs. 27-17-101 to 27-17-106	1969
California	West's Ann. Cal. Veh. Code Sec. 15000 et seq.	1963
Colorado	C.R.S. Secs. 24-60-1101 to 24-60-1107	1965
Congress	72 Stat.635	1958
Connecticut	C.G.S.A. Secs. 14-111c	1993
D.C.	DC Code Secs. 50-1001, 50-1002	1985
Delaware	21 Del. C. Secs. 8101, 8111, to 8113	1964
Florida	West's F.S.A. Sec. 322.43 et seq.	1967
Hawaii	HRS Secs. 286C-1, 286C-2	1971
Idaho	I.C. Secs. 49-2001 to 49-2003	1963
Illinois	625 ILCS 5/6-700 et seq.	1970
Indiana	IC 9-28-1-1 to IC 9-28-1-6	1967
Iowa	I.C.A. Secs. 321C.1, 321C.2	1965
Kansas	K.S.A. 8-1212 et seq.	1965
Louisiana	LSA-R.S. 32:1420 et seq.	1968
Maryland	Md. [Transp.] Code Ann. Secs. 16-701 to 16-708	1987
Massachusetts	ALM GL 90:30B	1988
Minnesota	M.S.A. Sec. 171.50 et seq.	1989
Mississippi	Code 1972, Secs. 63-1-101 to 63-1-113	1962
Missouri	V.A.M.S. Secs. 302.600, 302.605	1985
Montana	MCA Title 61, Ch. 5, part 4	1963
Nebraska	R.S.N. Vol. 2A Appendix Sec. 1-113	1963
New Hampshire	RSA 263:77-263:81	1986
New Jersey	N.J.S.A. 39:5D-1 et seq.	1967
New Mexico	NMSA 1978 Secs. 66-5-49 to 66-5-51	1963
New York	McKinney's Vehicle & Traffic Law Sec. 516	1965
North Carolina	G.S. Secs. 20-4.21 to 20-4.30	1993
Ohio	RC 4507.60-4507.63	1987
Oklahoma	47 Okl. St. Ann. Sec. 781 et seq.	1967
Oregon	ORS 802.540, 802.550	1983
Pennsylvania	75 Pa. C.S.A. Sec. 1581 et seq.	1996
South Carolina	Code 1976, Secs. 56-1-610 to 56-1-690	1987
South Dakota	SDCL Sec. 32-12-56.1	1986
Tennessee	T.C.A. Sec. 55-50-702	1979
Texas	V.T.C.A. Tran. 523.001 et seq.	1993
Utah	U.C.A. 195353-3-601 to 53-3-607	1965
Vermont	V.S.A. 23 Sec. 3901 et seq.	1987
Virginia	Code 1950, Secs. 46.2-483 to 46.2-488	1968
Washington	RCW 46.21.010 et seq.	1963
West Virginia	W. Va. Code, Secs. 17B-1A, 17B-1A-2	1972
Wyoming	W.S. Secs. 31-7-201, 31-7-202	1987

**ACKNOWLEDGMENT OF SUSPENSION/
REVOCATION/DISQUALIFICATION/CANCELLATION
AS REQUIRED UNDER SECTION 1541 OF THE VEHICLE CODE**



pennsylvania
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
P.O. Box 68693 • Harrisburg, PA 17106-8693

PLEASE TYPE OR PRINT IN BLUE OR BLACK INK ALL INFORMATION

If you have a valid License, Permit(s) and/or Camera Card in your possession, you **MUST** surrender the valid product to earn suspension credit. You may not retain your PA Driver's License for photo identification purposes.

This form may **ONLY** be used under the circumstances listed in Section B.

ALL information in Section A, B, & C **MUST** be completed with a Signature and Date or credit will not be given.

A PA DRIVER'S LICENSE/PERMIT NUMBER		LAST NAME		JR, ETC.	FIRST NAME	MIDDLE NAME
DATE OF BIRTH (must be listed)		TELEPHONE NUMBER		E-MAIL ADDRESS (if applicable)		
Month	Day	Year				
CHANGE OR CORRECTION ONLY						
ADDRESS CHANGE: A POST OFFICE BOX NUMBER MAY BE USED IN ADDITION TO THE ACTUAL RESIDENCE ADDRESS, BUT CANNOT BE USED AS THE ONLY ADDRESS.						
NEW STREET ADDRESS						
CITY				STATE	ZIP CODE	
If you are a registered voter in PA, would you like us to notify your county voter registration office of this change?						<input type="checkbox"/> YES <input type="checkbox"/> NO
If you are not a registered voter, you may contact your county voter registration office.						
B You MUST mark the appropriate box(es) and provide the requested information.						
1. <input type="checkbox"/> Never licensed in Pennsylvania.						
2. License, Permit(s) and/or Camera Card issued by Pennsylvania is:						
<input type="checkbox"/> Expired						
<input type="checkbox"/> Lost						
<input type="checkbox"/> Stolen						
<input type="checkbox"/> Mutilated: When? _____						
<input type="checkbox"/> Surrendered to or confiscated by the Police. When: _____						
What Police Department? _____						
3. <input type="checkbox"/> Other: You must indicate the reason that you are unable to surrender your valid License, Permit(s) and/or Camera Card if items 1 or 2 do not apply: (If you have a valid PA Driver's License you may not retain it for photo identification purposes): _____						
C ACKNOWLEDGMENT						
I, _____ hereby acknowledge that my driving privilege is Suspended/Revoked/Disqualified in Pennsylvania.						
AND						
I certify that all information given on this acknowledgment is true and correct and hereby apply for proper credit. I understand that upon restoration, I will be required to apply for the issuance, renewal, or replacement of my Driver's License, Learner's Permit, or Camera Card, whichever is needed, in order to be licensed in Pennsylvania. If using a messenger service, I hereby authorize the Department to furnish them with my driving record for the purpose of processing this form.						
X _____ DATE _____						
SIGNATURE IN INK						
WARNING: Misstatement of fact is a misdemeanor of the third degree punishable by a fine of up to \$2,500.00 and/or imprisonment up to one year (18 PA C.S. Section 4904(b)).						
D ADDITIONAL INFORMATION						
Unless this document is being submitted by a Court of Record following sentencing, this form must be mailed to:						
PennDOT • Bureau of Driver Licensing • P.O. Box 68693 • Harrisburg, PA 17106-8693						
Upon receipt, review and acceptance of this acknowledgment, PennDOT will send you a receipt confirming the date that credit began. If you do not receive this receipt within 3 weeks of your mailing, please contact PennDOT at the telephone numbers listed below to verify that credit has begun:						
INFORMATION MONDAY THROUGH FRIDAY (8:00 a.m. to 5:00 p.m.)						
+ In State: 1-800-932-4600 + TDD: 1-800-228-0676 + Out-of-State: 1-717-412-5300 + TDD Out-of-State: 1-717-412-5380						

IN THE KNOW – DEFENDING THE DUI

Occupational limited license:

A DUI conviction qualifies only if the violation is your first offense and given a one year suspension. However, the OLL cannot be issued until the 60 days have been served for the suspension of the DUI.

On an 18 month license suspension, you may be eligible for an OLL after 12 months, as long as you only have had one previous license suspension within the last ten years and you must have ignition interlock installed before approval.

Occupational limited license:

<http://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Form/DL-15-15A.pdf>

Tier 1. General Impairment: (BAC .08-.099)

SECTION	OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
75-3802(a)	1st Offense (ARD or non ARD)	M	Probation	\$300 flat fine	None
	2nd Offense	M	5 days min. / 6 months max.	\$300 min. / \$2500 max.	1 year
	3rd or more offenses	M2	10 days min. / 2 years max.	\$500 min. / \$5000 max.	1 year

Tier 2. High Rate: (BAC .10-.159)

SECTION	OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
75-3802(b)	1st Offense (ARD)	M	Probation	\$500 min. / \$5000 max.	30 days
	1st Offense (ARD ineligible)	M	48 hours min. / 6 months max.	\$500 min. / \$5000 max.	1 year
	2nd Offense	M	30 days min. / 6 months max.	\$750 min. / \$5000 max.	1 year
	3rd Offense	M1	90 days min. / 5 years max.	\$1500 min. / \$10,000 max.	18 months
	4th or more offenses	M1	1 year min. / 5 years max.	\$1500 min. / \$10,000 max.	18 months

Tier 3. Highest Rate: (BAC .16 and above)

SECTION	OFFENSE	GRADE	SENTENCE	FINE	SUSPENSION
75-3802(c)	1st Offense (ARD)	M	Probation	\$1000 min. / \$5000 max.	60 days
	1st Offense (ARD ineligible)	M	72 hours min. / 6 months max.	\$1000 min. / \$5000 max.	1 year
	2nd Offense	M1	90 days min. / 5 years max.	\$1500 min. / \$10,000 max.	18 months
	3rd or more offenses	M1	1 year min. / 5 years max.	\$2500 min. / \$10,000 max.	18 months

To determine prior DUI offenses, use a 10 year look-back period. See, 75 – 3806 (and check current case law).

Specific DUI Offenses / Additional DUI Sanctions

SECTION	OFFENSE	DUI TIER
75 – 3802(d) & 75 – 3804(c)	DUI involving controlled substance +/- or metabolite.	3
75 – 3802(e) & 75 – 3804(b)	Minor driver (BAC \geq .02).	2
75 – 3804(b)	General impairment + property damage.	2
75 – 3804(b)	General impairment + bodily injury.	2
75 – 3804(b)	General impairment + serious bodily injury or death.	2
75 – 3804(c)*	General impairment + refused chemical testing.	3

IN THE KNOW – DEFENDING THE DUI

(5) An individual who violates section 3802 where a minor under 18 years of age was an occupant in the vehicle when the violation occurred commits a misdemeanor of the first degree.

IN THE KNOW – DEFENDING THE DUI

If the passenger is under 18: (in addition to the penalties pursuant to the mandatory minimum and/or sentencing guidelines)

- 1) For first offense, fine not less than \$1000 and complete 100 hours of community service
- 2) For second offense, fine not less than \$2500 and one month to six months imprisonment.
- 3) For third offense, six months to two years imprisonment.

PA Title 75 Section 3803(b)

IN THE KNOW – DEFENDING THE DUI

Should the mandatory minimum be greater than the sentencing guidelines, the mandatory minimum must be ordered. If the guidelines are greater than the minimum, the Court may sentence within the guideline range.

Sentencing Guidelines:

204 Pa.Code. 303.1 et. Seq

PENNSYLVANIA COMMISSION ON SENTENCING

Listing of DUI Offenses (Effective February 1, 2004)

For Sentences Imposed on or after 11/29/04 the Grade and Penalty are Determined by the 10 year Look-back Period

<i>Statutory Grading Determined by 10 year Look-back Period</i>					<i>Mandatory Penalties Determined by 10 Year Look-back Period</i>		
Title	Section	Sub-Section	Offense Description	Grade	6th Edition OGS	Mandatory Penalty	Mandatory Fine
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely - 1st Offense	M	1	6 mo. Probation	\$300
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely - 2nd Offense	M	1	5 days	\$300-\$2,500
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely - 3rd & Subsq.	M2	3	10 days	\$500-\$5,000
75	3802	(a)(2)	DUI: General Impairment - (BAC .08 - < .10) - 1st Offense	M	1	6 mo. Probation	\$300
75	3802	(a)(2)	DUI: General Impairment - (BAC .08 - < .10) - 2nd Offense	M	1	5 days	\$300-\$2,500
75	3802	(a)(2)	DUI: General Impairment - (BAC .08 - < .10) - 3rd & Subsq.	M2	3	10 days	\$500-\$5,000
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely(refused testing) - 1st Offense	M	1	72 hours	\$1,000-\$5,000
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely - (refused testing) - 2nd Offense	M1	5	90 days	\$1,500
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely - (refused testing) - 3rd & Subsq.	M1	5	1 year	\$2,500
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely/Accident resulting in BI/SBI or Death or damage to veh/property - 1st Offense	M	1	48 hours	\$500-\$5,000
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely/Accident resulting in BI/SBI or Death or damage to veh/property - 2nd Offense	M	1	30 days	\$750-\$5,000
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely/Accident resulting in BI/SBI or Death or damage to veh/property - 3rd Offense	M1	5	90 days	\$1,500-\$10,000
75	3802	(a)(1)	DUI: General Impairment/Incapable of Driving Safely/Accident resulting in BI/SBI or Death or damage to veh/property - 4th & Subsq.	M1	5	1 year	\$1,500-\$10,000
75	3802	(b)	DUI: High Rate of Alcohol - (BAC .10 - < .16) - 1st Offense	M	1	48 hours	\$500-\$5,000
75	3802	(b)	DUI: High Rate of Alcohol - (BAC .10 - < .16) - 2nd Offense	M	1	30 days	\$750-\$5,000
75	3802	(b)	DUI: High Rate of Alcohol - (BAC .10 - < .16) - 3rd Offense	M1	5	90 days	\$1,500-\$10,000
75	3802	(b)	DUI: High Rate of Alcohol - (BAC .10 - < .16) - 4th & Subsq.	M1	5	1 year	\$1,500-\$10,000

PENNSYLVANIA COMMISSION ON SENTENCING

Listing of DUI Offenses (Effective February 1, 2004)

For Sentences Imposed on or after 11/29/04 the Grade and Penalty are Determined by the 10 year Look-back Period

<i>Statutory Grading Determined by 10 year Look-back Period</i>					<i>Mandatory Penalties Determined by 10 Year Look-back Period</i>		
Title	Section	Sub-Section	Offense Description	Grade	6th Edition OGS	Mandatory Penalty	Mandatory Fine
75	3802	(c)	DUI: Highest Rate of Alcohol - (BAC .16+) - 1st Offense	M	1	72 hours	\$1,000-\$5,000
75	3802	(c)	DUI: Highest Rate of Alcohol - (BAC .16+) - 2nd Offense	M1	5	90 days	\$1,500
75	3802	(c)	DUI: Highest Rate of Alcohol - (BAC .16+) - 3rd & Subsq.	M1	5	12 months	\$2,500
75	3802	(d)	DUI: Controlled Substances - 1st Offense	M	1	72 hours	\$1,000-\$5,000
75	3802	(d)	DUI: Controlled Substances - 2nd Offense	M1	5	90 days	\$1,500
75	3802	(d)	DUI: Controlled Substances - 3rd & Subsq. Offense	M1	5	12 months	\$2,500
75	3802	(e)	DUI: Minors - 1st Offense	M	1	48 hours	\$500-\$5,000
75	3802	(e)	DUI: Minors - 2nd Offense	M	1	30 days	\$750-\$5,000
75	3802	(e)	DUI: Minors - 3rd Offense	M1	5	90 days	\$1,500-\$10,000
75	3802	(e)	DUI: Minors - 4th & Subsq. Offense	M1	5	1 year	\$1,500-\$10,000
75	3802	(f)	DUI: Commercial or School Vehicles - 1st Offense	M	1	48 hours	\$500-\$5,000
75	3802	(f)	DUI: Commercial or School Vehicles - 2nd Offense	M	1	30 days	\$750-\$5,000
75	3802	(f)	DUI: Commercial or School Vehicles - 3rd Offense	M1	5	90 days	\$1,500-\$10,000
75	3802	(f)	DUI: Commercial or School Vehicles - 4th & Subsq.	M1	5	1 year	\$1,500-\$10,000



§303.16(a). Basic Sentencing Matrix.

7th Edition Amendment 3 (09/25/2015)

Level	OGS	Example Offenses	Prior Record Score								
			0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
LEVEL 5 State Incar	14	Murder 3 Inchoate Murder (SBI) Rape (victim <13 yrs)	72-5L	84-5L	96-5L	120-5L	168-5L	192-5L	204-5L	SL	-/-12
	13	Inchoate Murder (No SBI) Weapons Mass Destr-Use PWID Cocaine (>1,000 g)	60-78	66-84	72-90	78-96	84-102	96-114	108-126	240	+/- 12
	12	Rape-Forcible Compulsion IDSi-Forcible Compulsion Robbery-inflicts SBI	48-66	54-72	60-78	66-84	72-90	84-102	96-114	120	+/- 12
	11	Agg Assault-Cause SBI Voluntary Manslaughter Sexual Assault PWID Cocaine (100-1,000 g)	36-54 BC	42-60	48-66	54-72	60-78	72-90	84-102	120	+/- 12
	10	Kidnapping Agg Indecent Assault F2 Arson-Person in Building Hom by Vehicle-DUI & Work Zone PWID Cocaine(50-<100 g)	22-36 BC	30-42 BC	36-48 BC	42-54	48-60	60-72	72-84	120	+/- 12
	9	Sexual Exploitation of Children Robbery-Commit/Threat F1/F2 Burglary-Home/Person Present Arson-No Person in Building	12-24 BC	18-30 BC	24-36 BC	30-42 BC	36-48 BC	48-60	60-72	120	+/- 12
LEVEL 4 State Incar/ RIP trade	8 (F1)	Agg Assault -Cause BI w/DW Theft (Firearm) Identity theft (3rd/+ & Vic)>=60 yrs) Hom by Veh-DUI or Work Zone Theft (>\$100,000) PWID Cocaine (10-<50 g)	9-16 BC	12-18 BC	15-21 BC	18-24 BC	21-27 BC	27-33 BC	40-52	NA	+/- 9
LEVEL 3 State/ Cnty Incar RIP trade	7 (F2)	Robbery-Inflicts/Threatens BI Burglary-Home/No Person Present Statutory Sexual Assault Theft (>\$50,000-\$100,000) Identity Theft (3rd/subq) PWID Cocaine (5-<10 g)	6-14 BC	9-16 BC	12-18 BC	15-21 BC	18-24 BC	24-30 BC	35-45 BC	NA	+/- 6
	6	Agg Assault-Cause Fear of SBI Homicide by Vehicle Burglary-Not a Home/Person Prsnt Theft (>\$25,000-\$50,000) Arson-Endanger Property PWID Cocaine (2<5 g)	3-12 BC	6-14 BC	9-16 BC	12-18 BC	15-21 BC	21-27 BC	27-40 BC	NA	+/- 6
LEVEL 2 Cnty Incar RIP RS	5 (F3)	Burglary F2 Theft (>\$2000-\$25,000) Bribery PWID Marij (1-<10 lbs)	RS-9	1-12 BC	3-14 BC	6-16 BC	9-16 BC	12-18 BC	24-36 BC	NA	+/- 3
	4	Indecent Assault M2 Forgery (Money, Stocks) Weapon on School Property Crim Trespass F2	RS-3	RS-9	RS-<12	3-14 BC	6-16 BC	9-16 BC	21-30 BC	NA	+/- 3
	3 (M1)	Simple Assault-Attempt/Cause BI Theft (\$200-\$2000) Carrying Explosives Simple Possession	RS-1	RS-6	RS-9	RS-<12	3-14 BC	6-16 BC	12-18 BC	NA	+/- 3
LEVEL 1 RS	2 (M2)	Theft (\$50-<\$200) Retail Theft (1st/2nd Offense) Bad Checks (\$500-<\$1,000)	RS	RS-2	RS-3	RS-4	RS-6	1-9	6- <12	NA	+/- 3
	1 (M3)	Most Misd. 3's;Theft (<\$50) DUI (M) Poss Small Amount Marij	RS	RS-1	RS-2	RS-3	RS-4	RS-6	3-6	NA	+/- 3

1. Designated areas of the matrix indicate restrictive intermediate punishments may be imposed as a substitute for incarceration.
2. When restrictive intermediate punishments are appropriate, the duration of the restrictive intermediate punishment programs are recommended not to exceed the guideline ranges.
3. When the range is RS through a number of months (e.g. RS-6), RIP may be appropriate.
4. All numbers in sentence recommendations suggest months of minimum confinement pursuant to 42 Pa.C.S. 9755(b) and 9756(b).
5. Statutory classification (e.g., F1, F2, etc.) in brackets reflect the omnibus OGS assignment for the given grade.

Key:
 BC = best case
 RIP = restrictive intermediate punishments

Is my child eligible for ARD?

§ 3807. Accelerated Rehabilitative Disposition.

(a) Eligibility.—

(1) Except as set forth in paragraph (2), a defendant charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) may be considered by the attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county if the program includes the minimum requirements contained in this section.

(2) The attorney for the Commonwealth shall not submit a charge brought under this chapter for Accelerated Rehabilitative Disposition if any of the following apply:

(i) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under section 3802 within ten years of the date of the current offense unless the charge was for an ungraded misdemeanor under section 3802(a)(2) and was the defendant's first offense under section 3802.

(ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.

(iii) There was a passenger under 14 years of age in the motor vehicle the defendant was operating.

IN THE KNOW – DEFENDING THE DUI

3807 (b) – ARD Conditions

(iv) The defendant must remain subject to court supervision for at least six months, but not more than 12 months.

IN THE KNOW – DEFENDING THE DUI

3807(d) Mandatory suspension of operating privileges.--As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant's license suspended as follows:

(1) There shall be no license suspension if the defendant's blood alcohol concentration at the time of testing was less than 0.10%.

(2) For 30 days if the defendant's blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%. (3) For 60 days if:

- (i) the defendant's blood alcohol concentration at the time of testing was 0.16% or higher;
- (ii) the defendant's blood alcohol concentration is not known;
- (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense; or
- (iv) the defendant was charged pursuant to section 3802(d).

(4) For 90 days if the defendant was a minor at the time of the offense.

IN THE KNOW – DEFENDING THE DUI

The standard of review when considering the trial court's denial of admission to ARD is an abuse of discretion. Commonwealth v. Fleming, 955 A.2d 450, 453 (Pa. Super. 2008).

A district attorney has broad discretion in submitting or denying a case for ARD. Commonwealth v. Lutz, 495 A.2d 928 (Pa. 1985)

“A district attorney may base a decision to grant or deny admission to ARD on any consideration related to the protection of society and the rehabilitation of the defendant.” Commonwealth v. Sohnleitner, 884 A.2d 307, 313 (Pa. Super. 2005) (quoting Commonwealth v. Jagodzinski, 729 A.2d 172, 176 (Pa. Super. 1999)).

IN THE KNOW – DEFENDING THE DUI

“[T]he prosecution is barred only from considering impermissible criteria, such as race, religion, or other obviously prohibited factors.” Commonwealth v. Barton-Martin, 5 A.3d 363, 367 (Pa. Super. 2010).

Commonwealth v. Gano, 781 A.2d 1276, 1278 (Pa. Super. 2001)
(Court found a manifest abuse of discretion, in that the appellant in Gano “was admitted when he was seen as an average citizen, and denied when he was known to be a law enforcement officer.”)

Commonwealth v. Gefsky, 2015 Pa. Super. Ct. (Court upheld DA’s denial of ARD for Attorney, who was alleged to have committed theft by taking money from clients. Even though other thefts by non-attorneys have been approved for ARD, the Court held that the Commonwealth considered factors related to the protection of society and the rehabilitation of the defendant.)

IN THE KNOW – DEFENDING THE DUI

Factors in Lycoming County:

- 1) Any prior criminal contact, regardless of age of prior offense (ex: 70 year old man denied for ARD because he had a Robbery at age 18). RC5
- 2) Failure to disclose arrest history (even if charges were dismissed or expunged)
- 3) Driving without a license

Slide 60

RC5

If the offender had a DUI offense outside of ten years, though eligible for ARD in other Counties, the Lycoming County District Attorney believes that having a prior DUI in a lifetime warrants an aggravated sentence.

Policy - if .08-.099 - 10 additional days per prv. DUI

if .10-.159 - 20 additional days per prv. DUI

if .160 + - 30 additional days per prv. DUI

Robert Cronin, 12/24/2015

Is there an alternative to jail?

Alternatives to Jail

- 1) Inpatient Treatment
- 2) DUI Treatment Court
- 3) Electronic Monitoring RC7

Slide 61

RC7

Electronic Monitoring is only available for Defendants who qualify for intermediate punishment (IP).

Though available in many jurisdictions, this is unlikely in Lycoming County unless there are medical reasons. EM is generally only available for DUI Treatment Court participants.

Robert Cronin, 1/7/2016

IN THE KNOW – DEFENDING THE DUI

Inpatient Treatment

Credit against the maximum term and any minimum term shall be given to the defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. Credit shall include credit for time spent in custody prior to trial, during trial, pending sentence, and pending the resolution of an appeal. 42 Pa.C.S. § 9760(1)

IN THE KNOW – DEFENDING THE DUI

Inpatient Treatment

While Section 9760, or any other provision of the Sentencing Code, does not define the phrase “time spent in custody,” “[c]ourts have interpreted the word ‘custody,’ as used in Section 9760, to mean time spent in an institutional setting such as, at a minimum, an inpatient alcohol treatment facility.”

Commonwealth v. Fowler, 930 A.2d 586, 595
(Pa. Super. 2007)

IN THE KNOW – DEFENDING THE DUI

Inpatient Treatment

For voluntary inpatient treatment, a DUI defendant is not entitled to such credit as of right, but instead, it is awarded at the trial court's discretion. Commonwealth v. Conahan, 589 A.2d 1107 (Pa. 1991)

IN THE KNOW – DEFENDING THE DUI

Lycoming County DUI Treatment Court

Eligibility:

- 1) 2nd or 3rd offense in 10 years, with a maximum punishment of five (5) years
- 2) IP eligible (no past or present record of violent felony offenses)^{RC6}

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RC6

4th offense in ten years does not qualify for DUI Treatment Court because it does not qualify for an IP Sentence. Section 9763 only authorizes a sentence of county intermediate punishment for a first, second or third DUI offense. 42 Pa.C.S.A. §9763(c); see also 42 Pa.C.S.A. §9804(b)(5)(relating to eligibility for county intermediate punishment programs).

Robert Cronin, 1/7/2016

IN THE KNOW – DEFENDING THE DUI

DUI Court offenders are sentenced to a five year maximum intermediate punishment sentence. The DUI Participant will be eligible for electronic monitoring for all or part of the mandatory minimum incarceration portion of the sentence.

At a minimum, the first year will require active participation in the DUI Treatment Court Program followed by one year of aftercare and another year of intensive probation supervision.

Upon sentencing and/or release from inpatient treatment or incarceration, the participant enters Phase 1 of the DUI Treatment Court Program and will be placed on GPS or electronic monitoring, a drug patch and/or a SCRAM unit.

IN THE KNOW – DEFENDING THE DUI

What happens if the child drives during his license suspension?

MANDATORY JAIL TIME – Driving under suspension (DUI Related) that may carry a greater punishment than a DUI itself.

IN THE KNOW – DEFENDING THE DUI

While the general charge of driving under suspension in violation of section 1543(b)(1) is a summary offense, a conviction carries a mandatory minimum sentence of 60 to 90 days incarceration and a \$500 fine. 75 Pa.C.S. 1543(b)(1)

More severe penalties are imposed if the driver has a DUI-suspended license and is caught driving with a blood alcohol concentration of at least .02 percent, has any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, or refuses to submit to chemical testing and the person is currently under a DUI-related suspension. Such a charge, under 75 Pa.C.S.A. § 1543(b)(1.1), subjects a first-time offender to a mandatory sentence of 90 days incarceration and a \$1,000 fine. **TRC8** grading of a second offense increases to a misdemeanor of the third degree and carries a minimum sentence of six months in jail and a \$2,500 fine. A third and subsequent offense is a misdemeanor of the first degree and carries a fine of \$5,000 and two years in jail.

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RC8

Lifetime lookback, not ten years.

Robert Cronin, 1/7/2016

IN THE KNOW – DEFENDING THE DUI

Additional License Suspension

As an added penalty, a conviction of Driving Under Suspension in violation of section 1543(b) also results in an additional suspension of driving privileges. If the person's driving privileges were under suspension at the time of driving, the person receives an additional one-year suspension of driving privileges. However, if the driving privileges were revoked, then the suspension is for an additional two-year period.

This additional suspension time counts as a DUI-Related Suspension.

75 - 1543(a) DRIVING WHILE SUSPENDED OR REVOKED.

FINE \$200

SUSPENSION 1 year, but if license revoked at time of offense/
2 year revocation. 75 - 1543(c).

2ND OR SUBSEQ. OFFENSE:

FINE \$200 min. / \$1000 max. + Discretionary jail time up to
6 mos. in addition to, or instead of, fine. 75 - 6503(a).

SUSPENSION Same as above.

6TH OR SUBSEQ. OFFENSE:

FINE \$1000 + Mandatory 30 days jail, w/ discretionary jail time
up to 6 mos. 75 - 6503(a.1).

SUSPENSION Same as above.

75 - 1543(b)(1) DRIVING WHILE SUSPENDED OR REVOKED
(DUI RELATED).

FINE \$500 + Mandatory 60 days jail, w/ discretionary jail time
up to 90 days.

SUSPENSION 1 year, but if license revoked at time of offense/
2 year revocation. 75 - 1543(c).

75 - 1543(b)(1.1) DRIV. W. SUSP. OR REVKD. (DUI REL./
REFUSAL/ALC. BY WEIGHT OR DRUGS).

1ST OFFENSE (SUMMARY):

FINE \$1000 + Mandatory 90 days jail.

SUSPENSION 1 year, but if license revoked at time of offense/
2 year revocation. 75 - 1543(c).

2ND OFFENSE (M3):

FINE \$2500 + Mandatory 6 mos. jail.

SUSPENSION Same as above.

3RD OFFENSE (M1):

FINE \$5000 + Mandatory 2 years jail.

SUSPENSION Same as above.

IN THE KNOW – DEFENDING THE DUI

What happens if the child drives without a required ignition interlock device?

Ignition interlock is required for most second or subsequent DUI offenses – See 75 Pa.C.S. 3805

Individuals convicted of driving a motor vehicle not equipped with an ignition interlock device or tampering with an ignition interlock device is subject to fines and imprisonment.

IN THE KNOW – DEFENDING THE DUI

75 Pa.C.S. § 3808. Illegally operating a motor vehicle not equipped with ignition interlock.

(1) 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.

(2) BAC 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.

IN THE KNOW – DEFENDING THE DUI

In addition to criminal punishments, the individual's ignition interlock period is extended for 1 year from the conviction date for the 1st offense. Second and subsequent offenses will result in a 1 year suspension. Upon restoration, the individual will be required to hold an Ignition Interlock license for one year plus the balance of the ignition interlock time that remained prior to the suspension being imposed.

Are there any defenses to this offense?

RC9

- 1) Did the officer possess reasonable suspicion to effectuate a traffic stop – Suppression?
- 2) Did the officer have reasonable suspicion to request a BAC test? – Suppression?
- 3) If no BAC, was offender incapable of safely operating the motor vehicle?
- 4) BAC testing

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RC9

Any DUI which is an ungraded DUI (punishable by 6 months maximum) are not eligible for a jury trial. You should take this into consideration when addressing defenses with your client.

Robert Cronin, 1/8/2016

IN THE KNOW – DEFENDING THE DUI

Did the officer possess reasonable suspicion to effectuate a traffic stop – Suppression?

75 Pa.C.S. 6308(b)

Whenever a police officer is engaged in a systematic program of checking vehicles or drivers 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 to be necessary to enforce the provisions of this title. RC10

See also, Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108 (Pa. 2008).

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RC10

This 2004 Amendment actually resulted in lowering the standard required to effectuate a traffic stop. The previous standard was articulable and reasonable grounds. The language now is reasonable suspicion.

Robert Cronin, 1/8/2016

IN THE KNOW – DEFENDING THE DUI

An officer must point to specific and articulable facts which, together with the rational inferences therefrom, reasonably warrant the intrusion. “In ascertaining the existence of reasonable suspicion, we must look to the totality of the circumstances to determine whether the officer had reasonable suspicion that criminal activity was afoot.”

Commonwealth v. Barber, . 889 A.2d 587, 593 (Pa. Super. Ct. 2005).

“... [P]olice officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including ‘tips’ from citizens.” Id.

IN THE KNOW – DEFENDING THE DUI

Suppression

(A) Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

Pa.R.Crim.P. 579

IN THE KNOW – DEFENDING THE DUI

Did the officer have reasonable suspicion to request a BAC test? – Suppression?

police may not perform a chemical test of a driver's blood alcohol content (i.e., a breath test or a blood test) unless there is "reasonable grounds" to believe that the driver was operating a vehicle under the influence of drugs or alcohol. The police use field sobriety tests to help develop these "reasonable grounds" to submit motorists to chemical testing.

IN THE KNOW – DEFENDING THE DUI

If no BAC, was offender incapable of safely operating the motor vehicle?

“Evidence of erratic driving is not a necessary precursor to a finding of guilt [for driving under influence (DUI)-general impairment.]”

Commonwealth v. Mobley, 14 A.3d 887, 890 (Pa. Super. 2011).

IN THE KNOW – DEFENDING THE DUI

[t]o establish that one is incapable of safe driving ... the Commonwealth must prove that alcohol has substantially impaired the normal mental and physical faculties required to operate the vehicle safely; "substantial impairment" means a diminution or enfeeblement in the ability to exercise judgment, to deliberate or to react prudently to changing circumstances and conditions.

Commonwealth v. Kerry , 906 A.2d 1237, 1241 (Pa. Super. 2006).

IN THE KNOW – DEFENDING THE DUI

The types of evidence that the Commonwealth may proffer in a subsection 3802(a)(1) prosecution include but are not limited to, the following: the offender's actions and behavior, including manner of driving and ability to pass field sobriety tests; demeanor, including toward the investigating officer; physical appearance, particularly bloodshot eyes and other physical signs of intoxication; odor of alcohol, and slurred speech.

Commonwealth v. Segida, 985 A.2d 871, 879 (Pa. 2009)

DUI Update

Reasonable Suspicion and Probable Cause

Commonwealth v. Barnes, __ A.3d __ (No. 111 MAP 2014, filed August 25, 2015).

In the early morning hours of March 18, 2012, Trooper Jason Rogowski observed Tiffany Lee Barnes pull off the roadway, park between two car dealerships and turn off her vehicle lights. Rogowski had not observed any traffic violations but decided to investigate. He pulled up behind Barnes, activated his overhead lights, got out of his patrol car and approached Barnes' vehicle. Rogowski observed indicia of intoxication and administered field sobriety tests, which Barnes failed. Barnes was arrested and charged with DUI. She filed a motion to suppress all evidence, arguing that Rogowski had conducted an investigative detention without reasonable suspicion of criminal activity. The trial court granted the motion and the Commonwealth appealed.

On review, the Supreme Court affirmed by per curiam order. The Court rejected the Commonwealth's characterization of the initial interaction between Trooper Rogowski and Barnes as a mere encounter, holding that it constituted a seizure that required reasonable suspicion. In support, the Court cited Rogowski's testimony that he was investigating the possibility of criminal activity and that Barnes was not free to leave, as well as Barnes' testimony that she did not believe she could leave after Rogowski activated his overhead lights. The Court further held that Rogowski did not have reasonable suspicion to support an investigative detention because his testimony lacked any specific observations that led him reasonably to conclude, in light of his experience, that criminal activity was afoot.

DUI Update

Reasonable Suspicion and Probable Cause

Commonwealth v. Salter, 2015 PA Super 166 (Pa. Super. Ct. 2015)

Trial court erred in suppressing evidence because court's finding that officer lacked probable cause for a traffic stop for an unilluminated license plate and for subsequent arrest of appellee under suspicion of DUI was in error.

DUI Update

DUI – Drugs

Commonwealth v. Jones, 121 A.3d 524 (Pa. Super. 2015)

The Pennsylvania Superior Court addressed whether probable cause evidence exists to conduct an arrest for driving under the influence (DUI), when the driver of a motor vehicle is the sole occupant and an officer smells the odor of burnt marijuana.

The Superior Court specifically addressed whether the officer had the right to detain Mr. Jones and request a blood test based solely on the smell of marijuana emanating from the vehicle. The Court determined that a police officer merely needs reasonable grounds to believe that a person was driving under the influence of alcohol or a controlled substance to be able to administer a blood test. The reasonable grounds standard is the equivalent of probable cause. Therefore, the Court advised that an officer who has “knowledge of sufficient facts and circumstances, gained through trustworthy information, to warrant a prudent man in the belief that a crime has been committed” may detain a suspect. *Jones*, 121 A.3d at 528. Applying the facts of the case to the law, the Superior Court held that the officer possessed reasonable grounds to detain Mr. Jones and request he submit to a blood draw, since the officer unquestionably smelled burnt marijuana and Mr. Jones was the sole occupant of the vehicle.

DUI Update

Evidence of Test Results or Refusal

Commonwealth v. Myers, 2015 PA Super 140 (Pa. Super. Ct. 2015) (requiring a warrant to request BAC of unconscious person presumed to have been driving under the influence).

the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.

Missouri v. McNealy, 133 S.Ct. 1552 (2013)

DUI Update

Search and Seizure

Commonwealth v. Best, 2015 Pa. Super. 151 (Pa. Super. Ct. 2015)

The Pennsylvania Superior Court found that there was probable cause to search the Defendant's car following a traffic stop for DUI even though he wasn't in custody at the time of the search (holding that the inherent mobility of a car allows police to search the vehicle if they have **probable cause** based on the statements and movements of the Defendant).

DUI Update

Search and Seizure

Commonwealth v. Nguyen, 116 A.3d 657 (Pa. Super. Ct. 2015)

The Pennsylvania Supreme Court ruled that evidence should be suppressed following a traffic stop in which the driver was initially “free to go” and then was subsequently questioned by the police officer. The questioning ultimately led to the driver’s arrest. The court here found that the driver was never “free to go” and all of the questioning violated the Defendant’s constitutional rights under the Fourth, Fifth, and Sixth Amendments.

DUI Update

DUS

Commonwealth v. Postie, 2015 Pa. Super. 34 (Pa. Super. Ct. 2015)

A person convicted of a sixth or subsequent offense under section 1543(a) shall be sentenced to pay a fine of not less than \$1,000 and to imprisonment for not less than 30 days but not more than six months.” 75 Pa.C.S. § 6503(a.1).

Section 9756 of the Sentencing Code provides that in imposing total confinement, the trial court shall specify a maximum period, as well as a minimum sentence that does not exceed one-half of the maximum. 42 Pa.C.S. § 9756(a), (b)(1).

These subsections, independently and read together, do not provide for a flat sentence.

Appellant’s flat sentence of four months is illegal under Section 9756, and the Court remanded for the trial court to impose a sentence that complies with that statute. See 42 Pa.C.S. § 9756(a), (b)(1).

DUI Update

Merger

Commonwealth v. Kimmel, 2015 Pa. Super. 226 (Pa. Super. Ct. 2015)

Defendant's fleeing conviction, graded as a third-degree felony because it occurred while he was driving under the influence, did not merge with his DUI conviction for sentencing purposes because the crimes did not arise from a single criminal act.