

DUI...



IT CAN *EVEN* HAPPEN TO YOU

ANSWERS TO FREQUENTLY ASKED QUESTIONS
REGARDING DUI IN PENNSYLVANIA

DAVID W. ZELLIS, ESQUIRE

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DEDICATION

I dedicate this book to my parents, Bernice and Abraham Zellis.
I am so blessed to have the two of you as my Mom and Dad.
Thank you for everything you have done for me.

With all of my love,

- David-

ACKNOWLEDGMENTS

To my wife, Sheryl, for always being there for me through all the ups and downs of life. Together, we have created a wonderful family. I'm so proud to have you as my wife, the mother of our wonderful children, and my best friend.

I also want to thank my children, Tziona, Arielle, Daniel and Chaim for inspiring me each day to be the best that I can be. Each one of my children make me extraordinarily proud to be called "Daddy".

To Linda Rickenbach, paralegal extraordinaire who devoted countless hours assisting me and encouraging me to complete this book.

PREFACE

It's difficult to write (and hard for me to believe) I'm in my thirtieth year of practicing criminal law. Thirty years in the practice of the law makes me sound old even though it seems only yesterday that I graduated from Emory University School of Law.

In all those years of practicing law, the common theme in my career has been helping people in their time of need. I've been blessed with the ability to assist so many people. A lawyer is like a doctor insofar as someone presents me with a legal problem and I need to fix it or mitigate the damage.

I'm proud of the numerous friends I've made over the years because I was able to help them during their hour of need. The great satisfaction I always feel when I help others inspired me to help as many people as I possibly could by writing this book.

I wrote it in an easy-to-read, question-and-answer format that lets me share with you my unique experience and knowledge as a former prosecutor and a current defense attorney.

Though this book contains valuable information, it should serve only as a starting point for you to become educated in DUI matters if the need arises. By no means is this book a substitute for hiring an experienced attorney in the defense of DUI charges.

I firmly believe in the old adage that knowledge is power, so read on and become empowered!

This publication is intended to educate the general public about legal issues. It is for informational purposes only and is not intended to be legal advice. Prior to acting on any information contained here, you should seek and retain competent legal counsel.

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INTRODUCTION

Life must have been so much easier when bars, pubs, and restaurants were within walking distance of home and everyone could walk to a neighbor's home for a drink. Those were the days ...

Life has changed so much since then with sprawling suburbs and multi-car families. It's difficult now to walk anywhere unless you live in a city. Most of us drive everywhere including to bars, pubs, restaurants, and friends' homes. With this development as well as other factors, over the past years, we've witnessed an eye-opening number of Driving Under the Influence (DUI) arrests.

IT CAN EVEN HAPPEN TO YOU

As defined by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), a standard drink is half an ounce of "pure" alcohol. That means one 12-ounce beer, one 5-ounce glass of wine, and one 1.5-ounce shot of distilled spirits each count as one standard drink.

A multitude of factors can influence your blood alcohol content (BAC). It's important to remember these factors are unique to you and can vary from one occasion to the next. Some common factors include:

- age
- drink strength
- rate of consumption
- fat/muscle composition
- metabolism
- medications
- alcohol tolerance
- gender
- body type
- hydration
- food consumed
- overall health
- emotional state
- carbonation of drinks

Since there are many factors affecting BAC, it's a matter of taking an educated guess as to how many drinks it would take for an "average" person to reach the legal limit of 0.08 percent blood alcohol content.

Additionally, not all drinks are created the same; a cocktail served at one bar may have double the alcohol as that served at another.

It's also important to remember that registering under .08 percent on an Intoxilyzer machine doesn't mean it's safe for you to drive. If the officer can prove you were incapable of safe driving, you could still be charged with driving under the influence even if you registered less than the legal limit. Remember, whether or not you consider yourself drunk, the law considers you as DUI if your blood alcohol level is above .08 percent.

DUI enforcement can catch anyone at any time and potentially change his or her life. Most people stopped by the police for DUI have never been in trouble before and have no idea what will happen to them.

That was the case of one of my clients who certainly wasn't in the habit of driving drunk. He was driving home and signaled for a right-hand turn, made it and drove a block before turning right onto his street. His house was just a few hundred yards away, but he had failed to signal the second right hand turn and as a result the police officer pulled him over in his driveway. Long story short, he ended up being charged with DUI, not something that he'd ever expected would happen to him.

It's normal to feel worried, scared, depressed, and angry when you're charged with DUI. A DUI defense attorney with knowledge and experience should take the time with you to alleviate your fears while providing you with realistic options to mitigate the impact of the DUI.

Although this book is *not* a substitute for retaining an experienced DUI attorney, it is a starting point for you to better understand what you're facing and what to expect.

I can confidently tell you that a DUI is an obstacle in the path of life that can be overcome with the right assistance.

Let's get on to the questions and answers.

WHAT EXACTLY IS DUI?

DUI is the crime of operating a vehicle while “under the influence” of alcohol or drugs. The definition of drugs is broad and can encompass illegal, controlled, or even over-the-counter medications.



In Pennsylvania, a vehicle is defined as “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.” So believe it or not, being charged with DUI while you’re on a bicycle is a possibility.

WHAT DETERMINES A DUI?



There are three levels of DUI:

Tier 1—General Impairment (.08 to .099% BAC)

Tier 2—High BAC (.10 to .159% BAC)

Tier 3—Highest BAC (.16% and higher)

General impairment includes a police officer's opinion that the person was under the influence to the degree that rendered the person incapable of safe driving.

Noncommercial drivers twenty-one and older are considered legally drunk when their blood alcohol level is .08 percent or greater. Drivers of commercial vehicles are legally drunk when their blood alcohol level is .04 percent or greater. School bus drivers are legally drunk when their blood alcohol level is .02 percent or greater, and drivers under age twenty-one are legally drunk when their blood alcohol level is .02 percent or greater.

Commercial drivers, school bus drivers, and minors who are involved in accidents that injure someone or cause property damage may be subject to the High BAC penalties even if their BAC is not in the high category, and offenders who refuse breath or chemical testing may be subject to the Highest BAC penalties (Tier 3).

CAN I BE ARRESTED FOR DUI WHEN DRIVING WHILE TAKING DOCTOR-PRESCRIBED MEDICATIONS?

Yes. In Pennsylvania, you'll be charged with DUI if you're taking any prescribed medications that impair your driving. Prescribed medications such as Ambien, Ativan, Xanax, and Oxycodone may impair your driving regardless of whether your doctor has prescribed them for you.



ARE DUI CHECKPOINTS LEGAL IN PENNSYLVANIA?

Yes, however,

- Any stop of a vehicle must be brief, and there can be no physical search unless the police develop reasonable suspicion that you may be DUI.
- Motorists must also receive sufficient warning prior to the checkpoint; however, courts have upheld the ruling that checkpoints don't need to be published in newspapers; sufficient warning can be a road sign ahead of the checkpoint.
- The decision to have the checkpoint as well as its location must be subject to administrative approval, not a spur-of-the-moment decision by patrol officers.
- The checkpoint must be in an area where intoxicated drivers are likely to be.
- There must be a fixed method in place to determine which drivers to stop, (i.e., every other car, every third car, and so on), and it cannot be based purely on officer discretion at the scene.



Note: a motorist can't be pulled over for turning away to avoid a checkpoint, but if the police observe any motor vehicle breaking the law, that vehicle can be pulled over.

DO THE POLICE NEED A REASON TO STOP ME?

Yes. A police officer must have reasonable suspicion that a violation of the motor vehicle code or a crime has occurred. The officer may stop a vehicle to check the vehicle's registration, proof of financial responsibility, vehicle identification number,



or a driver's license or to secure information the officer reasonably believes necessary for enforcing the vehicle code or crimes code.

WHAT ARE THE RED FLAGS THE POLICE LOOK FOR PRIOR TO STOPPING A VEHICLE FOR DUI?

- driving behavior—weaving over the lanes or other erratic driving
- driving too slow
- driving in opposing lanes or the wrong way on a one-way road
- slow response to traffic signals
- improper or unsafe lane change
- following a vehicle too closely
- slow response or failure to respond to an officer's signal
- stopping in a lane for no apparent reason
- driving without headlights on at night

WHAT KEY SIGNS OF IMPAIRMENT DO THE POLICE LOOK FOR AFTER STOPPING A VEHICLE?

- slurred speech
- appearance—glassy, red eyes or pinpoint eyes
- odor of alcohol and/or drugs emanating from person and/or vehicle
- fumbling while trying to present license, registration, etc.
- difficulty exiting the vehicle
- swaying, being unsteady on feet, difficulty balancing
- inability to follow directions, lack of comprehension, incoherent speech
- statements such as “I only had one beer”

DO THE POLICE HAVE TO READ ME MY MIRANDA WARNINGS BEFORE ARRESTING ME?



No. Police are required to read someone his or her constitutional rights (the Miranda Warnings) only before they interrogate or question someone they have *detained*, that is, put under arrest. Therefore, an officer may ask you, “How much have you had to drink?” before you’re put under arrest.

Any responses you give to such questions before arrest may be introduced against you even though Miranda Warnings weren’t read. If officers believe they have all the information they need

to prove you were DUI, they may not need to question you after your arrest and, therefore, aren't required to advise you of your Miranda rights.

DO THE POLICE HAVE A RIGHT TO SEARCH MY CAR WHEN I'M STOPPED?

Police are allowed to confiscate anything in plain view when they approach your car during a traffic stop, so it's always wise to keep things out of plain view. For the police to search your car or look



into the glove compartment or trunk, they must have probable cause to believe they'll find something illegal.

If you were pulled over for a broken headlight, for example, it would be difficult for an officer to justify the need to search your vehicle. Most drivers, however, allow police officers to search their cars, and if you consent to a police search, it's usually legal for them to do so.

Think hard before you consent to a police search of your vehicle. If you don't want to be argumentative with the police officer, you can just say nothing, which is the same as not consenting, or you could say you'd like to talk to a lawyer before answering questions or before allowing a search.

WHAT ARE FIELD SOBRIETY TESTS?



Field sobriety tests are roadside “exercises” the police may ask you to perform during a DUI stop. They might ask you to perform these exercises to establish reasonable grounds for suspicion of driving under the influence.

Though there are a number of field sobriety tests, there are only three recognized by the National Highway Transportation Safety Administration as possibly showing that a motorist is impaired:

- **The One-Leg Stand:** You might be asked to stand on one leg with your other foot about six inches off the ground for thirty seconds.
- **The Horizontal Gaze Nystagmus:** This requires you to continue looking at the officer’s finger or an object he or she will move back and forth. If your eyes cannot follow the object or the finger without hesitation, or if your eyes are “jumpy,” you might be deemed intoxicated. This test has been deemed inadmissible under Pennsylvania case law, but it’s still administered.

- **Walk and Turn:** This requires you place the heel of one foot at the toe of the other foot, take nine steps doing that, then pivot on your foot and return to where you started.

Keep in mind there are many factors other than alcohol or drugs that could cause you to fail these tests, including medical conditions, surgery, arthritis, fatigue, or simply being nervous.

While field sobriety tests can hold up in court as reliable evidence, they may successfully be challenged in court because they are based on the judgment of the arresting officer rather than on a scientific chemical test. It does, however, take an experienced lawyer who has knowledge about the procedures and limitations of the tests to effectively challenge an officer's conclusion that you failed a field sobriety test.

HOW DO FIELD SOBRIETY TESTS FACTOR INTO MY BEING CHARGED WITH DUI?

If you're administered a field sobriety test, the officer will most likely point out numerous indicators of impairment and attempt to use his or her opinion of your failure to properly perform the field sobriety test to bolster the case against you.

CAN I REFUSE TO TAKE A FIELD SOBRIETY TEST?

Yes. In Pennsylvania, you cannot be forced to take a field sobriety test. However, you could be arrested even if you refuse to take the test. It's an unfortunate reality that officers have usually made up their minds to arrest you for DUI when they ask you to perform field sobriety tests.

You must take into consideration that your refusal to “cooperate with the police” and submit to field sobriety testing will be used against you in court if your case goes to trial.

WHAT’S A PORTABLE BREATH TEST (PBT)?



It’s a handheld device the police might ask a motorist to blow into to determine if there’s sufficient cause to request a more reliable chemical test. The PBT test is given roadside at the time of the stop.

If you’re ever requested to do a portable breath test at the scene of the stop, remember that you don’t have to take it. There’s no statutory penalty for politely stating, “I don’t want to take the PBT.”

PBT results are not admissible in criminal trials¹. They’re normally used to establish probable cause to perform admissible testing such as with a certified Intoxilyzer in a police station or to draw and test your blood.

CAN I REFUSE TO TAKE A BREATHALYZER TEST (INTOXILYZER) AT THE POLICE STATION OR SUBMIT TO A BLOOD DRAW?

Yes, but Pennsylvania’s “implied consent” law says that if you’re lawfully arrested by an officer who has reasonable suspicion/

¹ The Pennsylvania Superior Court, however, clarified that while PBT results are admissible in underage drinking cases if properly obtained, they aren’t admissible if the specific PBT device isn’t on the list of approved PBT devices published in the Pennsylvania Bulletin, properly calibrated, and tested for accuracy in the manner specified by Departments of Health and Transportation regulations.

probable cause to believe you've been driving under the influence, you have automatically consented to undergoing a chemical test of your blood, breath, or urine to determine your blood



alcohol content (BAC). The blood test must be taken within two hours of driving. If the officer asks you to take an Intoxilyzer test, he or she has to observe you for twenty minutes before administering the breath test.

WHAT HAPPENS IF I REFUSE TO TAKE THE BREATHALYZER TEST OR GIVE BLOOD?

If you refuse to take the breathalyzer test or give blood, you'll automatically lose your license for one year, and the state will charge you with the highest-level (Tier 3) DUI offense allowable under the law. And if you're later convicted of a DUI—even without the results of a chemical test—you'll have your license suspended for the DUI conviction and an additional year for the refusal.

ARE CHEMICAL TESTS ACCURATE?

Not necessarily. Just because a chemical test was taken to determine your blood alcohol level doesn't mean that the testing was done correctly, that the equipment was in good working order, that it had been stored properly, or that the lab that processed your results didn't make some errors.

WILL I BE VIDEOTAPED AFTER I'M STOPPED FOR DUI?



The Pennsylvania State Police and some local police departments are equipped with video equipment in their vehicles to record traffic

stops. Normally, the video cameras will be turned on moments prior to the activation of the police lights and sirens and continue recording through the end of the traffic stop.

Your attorney can and should compel the police to turn over such recordings. This video is important as it may show discrepancies with the police reports or show that you were operating the motor vehicle properly and that there was no traffic violation. The video may demonstrate that you didn't exhibit problems with your speech or balance but instead were coherent.

In addition, many police departments have equipped police officers with body cameras that might have recorded evidence favorable to the defense, so it's worthwhile for an attorney to request that police preserve such evidence.

CAN I BE ARRESTED FOR DUI WHEN I'M NOT DRIVING?

Yes. Generally, when a driver is behind the wheel of a vehicle and *could* make it move, even if the driver isn't trying to move the car when the officer finds him or her, it may be



considered a DUI. For example, a driver realizes he's had too much to drink, so he pulls to the side of the road to "sleep it off." While asleep behind the wheel, the person leaves the keys in the ignition and the radio on. The officer finds this person slumped over the wheel, wakes him up, smells alcohol, and arrests him. This could be enough for a Pennsylvania court to convict the driver of DUI.

AFTER I'M STOPPED FOR DUI AND THE POLICE ARREST ME, AM I IMMEDIATELY GOING TO JAIL?



Most likely no. Following an arrest for DUI, police generally file a criminal complaint at the District Court in the township or borough in which you were stopped. The court will send you a copy of the criminal complaint along with a date for your preliminary hearing.

The police do, however, have the right to bring you before the district judge for a preliminary arraignment. This is a process whereby a district judge will review your criminal history, work history, and ties to the community in determining what your bail should be. Bail is an amount of money the judge believes will secure your future appearance in court if you're released from custody. If you can't make bail, you'll go to jail.

AFTER BEING ARRESTED FOR DUI, CAN I STILL DRIVE?

Yes, unless you were driving with a previously suspended license. You'll lose your license only after you're convicted of DUI. So you can still drive until you're ordered by the Common Pleas Court to surrender your license to the Pennsylvania Department of Transportation.

I WAS ARRESTED MONTHS AGO, SO WHY HAVEN'T I RECEIVED ANY INFORMATION FROM THE POLICE?

You may not be officially notified whether you've been charged with a DUI until you receive a summons in the mail from the District Court. This usually takes several weeks after your arrest, but it can take longer depending on when the police officer files the charges (complaint and probable cause affidavit) against you.

SHOULD I TELL MY EMPLOYER I WAS ARRESTED FOR DUI?

Avoid doing so until you talk with an attorney about the specific variables of your particular case.



Remember, you're innocent until proven guilty, and telling your employer may do you more harm than good during the early phase of the proceedings.

WHEN CAN I RECEIVE A COPY OF THE POLICE REPORTS?

The first thing people want to see after they've been arrested for DUI is the report detailing the police version of events. In Pennsylvania, police reports won't be available to you until after your arraignment in the Court of Common Pleas. Since the police report will describe the evidence against you, obtaining the police report is crucial in deciding how to proceed with the charges against you.



If you were involved in an accident, the accident report might be available to you after your arrest at the police department for a fee.

WHAT HAPPENS AT THE PRELIMINARY ARRAIGNMENT?

Keep in mind that not all cases require a preliminary arraignment, but a preliminary arraignment is held before a district judge at the request of the police to decide if you can be released on your own recognizance



(R.O.R.) or have bail set to secure your future appearance in court. If you aren't released on your own recognizance or if you can't make bail, you'll go to jail.

In addition, the district judge will advise you of the charges against you, your right to an attorney, and the date of your next court appearance, which is the preliminary hearing.

WHAT HAPPENS AT THE PRELIMINARY HEARING?

The purpose of a preliminary hearing is to allow a district judge to determine whether the Commonwealth has demonstrated a *prima facie* (“on the face of it”) case against a defendant through live testimony. Simply stated, the Commonwealth needs to minimally show two things: a crime was committed, and the person charged is probably the person who committed the crime. A *prima facie* case is *not* a determination of guilt or innocence, just that there’s enough evidence to go to trial.

SHOULD I WAIVE MY PRELIMINARY HEARING?

It depends. If you believe you’re eligible for Accelerated Rehabilitative Disposition (ARD), which I cover in the next question and answer, many District Attorneys’ offices require you to waive your right to a preliminary hearing to be considered for ARD. In the event that ARD isn’t an option, it’s usually beneficial to have the Commonwealth present its evidence and attempt to establish a *prima facie* case.

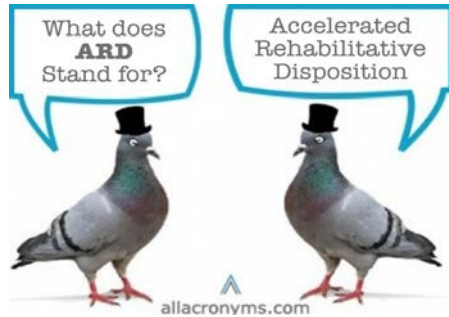
The preliminary hearing is important because it will allow your attorney to gather more information about the allegations against you. It also locks in testimony from the officer(s) and any witnesses. Prior to trial, a lawyer will be able to uncover any discrepancies between the testimony at the preliminary hearing and the information contained in the complaint and police reports.

Finally, in the event your case has a pre-trial hearing or a trial, the notes of testimony from the preliminary hearing may be crucial in establishing inconsistencies or important discrepancies in the evidence against you.

ARE THERE ANY PROGRAMS AVAILABLE FOR FIRST-TIME OFFENDERS?

Accelerated Rehabilitative Disposition (ARD) is a program available to first-time offenders who meet all the eligibility requirements set out by the District Attorney's office. If you're accepted into the ARD program

and successfully complete the program, your case will be eligible for expungement, that is, being completely wiped out of court records.



IF MY CASE ISN'T DISMISSED AT THE PRELIMINARY HEARING, WHAT HAPPENS NEXT?

At the conclusion of the hearing, you'll be told the date of your next court appearance, your arraignment in the Court of Common Pleas. In addition, you'll be instructed to obtain an appointment for a Court Reporting Network (CRN) evaluation.

WHAT'S A CRN EVALUATION?

CRN is an acronym for Court Reporting Network. This is an Alcohol and Other Drug evaluation required by the state of Pennsylvania for each DUI.



Each CRN appointment takes about forty-five minutes to complete. A CRN evaluation is a set of roughly 115 questions pertaining to alcohol or drug use with specific questions about the month and the day leading up to the DUI charge. Based on this evaluation, the state may require that you complete an alcohol and other drug assessment as a requirement for a DUI charge. Ultimately, you may be required to obtain drug and alcohol treatment depending on the results of the evaluation.

WHAT'S AN ARRAIGNMENT?

It's when the Court of Common Pleas has to advise you about the charges filed against you. In addition, you'll be advised of your rights to file for discovery (that is, finding out what evidence the commonwealth has against you; see the next question and answer) as well as pretrial suppression motions (in which your lawyer can ask that certain evidence be declared inadmissible by the court). The court will also inform you of the date of your next required court appearance.

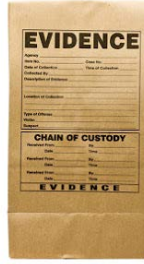
During the arraignment, you'll be asked to enter a plea to the charges, and you'll most likely enter a plea of not guilty.

WHAT'S DISCOVERY?

Discovery typically involves the prosecutor disclosing to your attorney any information or evidence the prosecutor intends to use against you at trial, which may include:



- crime-scene evidence such as photographs and other forensic (legal) evidence.
- statements of witnesses and law-enforcement officers as well as the names and addresses of all witnesses expected to testify at trial.
- any statements you've made
- police reports, booking reports, toxicology results, and DNA evidence
- any expert witness report intended to be called at trial



WHAT ARE PRE-TRIAL MOTIONS?

After the arraignment in the Court of Common Pleas but before a criminal case goes to trial, your attorney may file pre-trial motions, which are requests that certain evidence or testimony be kept out of the trial. Pre-trial motions may contain legal arguments in support of the motions. The pre-trial motions may also ask that the case against you be dismissed due to specific violations of your constitutional rights by the police.

WHAT'S A PRE-TRIAL CONFERENCE?

In many counties, a pre-trial conference or “Call of the List” is a meeting during which negotiations may occur between the Commonwealth and the defense, and a plea bargain may result. This is often the first time a prosecutor will be prepared to



discuss the facts of a case and a proposed resolution with the defense.

Often, a sentence is agreed upon that may convert the mandatory minimum jail time into a series of weekends and/or home monitoring to entice the defendant to enter a guilty plea. The withdrawal of other charges may accompany this offer.

WHAT ARE MY CHANCES OF BEATING A DUI?

Every case is unique and can present many opportunities to challenge the legalities of your arrest. That's why it's critical to hire an experienced attorney familiar with DUI in the Commonwealth of Pennsylvania. Some examples of potentially successful avenues of attacking a DUI case are:



- Was the stop legal? Did the police have reasonable suspicion to stop the vehicle?
- Was there a violation of the vehicle code?
- Was field sobriety testing (FST) administered correctly? Are those tests admissible? What were the conditions when and where the FST was given?
- Was the officer trained in FST?
- Do you have medical conditions that could have affected your FST performance?
- Was your car searched without your permission?
- Was there a lack of probable cause for your arrest?

- Was the breathalyzer calibrated? Was it licensed and approved?
- Were you aware of implied consent? Did you sign the consent form?
- Did the officer mislead you about your right to refuse the test?
- Were you properly given your Miranda Warnings?
- Was your blood drawn properly? In a timely manner?
- Were the police officers' and witnesses' statements inconsistent?

CAN I WIN MY CASE BEFORE GOING TO TRIAL?

You could win your case if you prevail at the pre-trial suppression hearing. In other words, if the judge rules that the police violated your constitutional rights and decides to suppress (keep out of the trial) certain evidence or determine that the stop of your vehicle was illegal, you may very well win your case before having to go to trial.

WHAT ARE THE PENALTIES FOR DUI IN PENNSYLVANIA?

Pennsylvania divides DUI into three tiers based on blood alcohol content (BAC). These tiers are officially referred to as “general impairment,” “high rate,” and “highest rate.” The following charts break down and describe the penalties involved:

General Impairment Penalties (Undetermined BAC or .08 to .099% BAC)

No prior DUI offenses	<ul style="list-style-type: none"> • ungraded misdemeanor • up to 6 months of probation • \$300 fine • alcohol highway safety school • treatment when ordered
1 prior DUI offense	<ul style="list-style-type: none"> • ungraded misdemeanor • 12-month license suspension • 5 days to 6 months jail time • \$300 to \$2,500 fine • alcohol highway safety school • treatment when ordered • 1-year ignition interlock
2 or more prior DUI offenses	<ul style="list-style-type: none"> • 2nd degree misdemeanor • 12-month license suspension • 10 days to 2 years prison
	<ul style="list-style-type: none"> • \$500 to \$5,000 fine • treatment when ordered • 1-year ignition interlock

High BAC penalties (.10 to .159% BAC)

No prior DUI offenses	<ul style="list-style-type: none"> • ungraded misdemeanor • 12-month license suspension • 48 hours to 6 months prison • \$500 to \$5,000 fine • alcohol highway safety school • treatment when ordered
1 prior DUI offense	<ul style="list-style-type: none"> • ungraded misdemeanor • 12-month suspension • 30 days to 6 months prison • \$750 to \$5,000 fine • alcohol highway safety school • treatment when ordered • 1-year ignition interlock
2 or more prior DUI offenses	<ul style="list-style-type: none"> • 1st degree misdemeanor • 18-month license suspension • 90 days to 5 years prison • \$1,500 to \$10,000 fine • treatment when ordered • 1-year ignition interlock

3 or more prior DUI offenses	<ul style="list-style-type: none"> • 1st degree misdemeanor • 18-month license suspension • 1 to 5 years prison • \$1,500 to \$10,000 fine • treatment when ordered • 1-year ignition interlock
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Important Note: Drivers under the influence of controlled substances and those who refuse breath or chemical testing are subject to the highest BAC category penalties as set forth below.

Highest BAC penalties (.16% and higher) or Controlled Substance

No prior DUI offenses	<ul style="list-style-type: none"> • ungraded misdemeanor • 12-month license suspension • 72 hours to 6 months in prison • \$1,000 to \$5,000 fine • alcohol highway safety school • treatment when ordered
1 prior DUI offense	<ul style="list-style-type: none"> • 1st degree misdemeanor • 18-month license suspension • 90 days to 5 years prison • \$1,500 to \$10,00 fine • alcohol highway safety school • treatment when ordered • 1-year ignition interlock
2 or more prior DUI offenses	<ul style="list-style-type: none"> • 1st degree misdemeanor • 18-month license suspension • 1 to 5 years prison • \$2,500 to \$10,000 • treatment when ordered • 1-year ignition interlock

WILL MY LICENSE BE SUSPENDED IF I'M ACCEPTED INTO THE ACCELERATED REHABILITATIVE DISPOSITION (ARD) PROGRAM?



It depends; the law requires courts to impose suspensions for ARD based on the following BAC ranges:

- Less than .10%—no suspension
- .10% to less than .16—30 day suspension
- .16% and above or a controlled substance—60 day suspension

HOW LONG WILL MY LICENSE BE SUSPENDED IF I PLEAD GUILTY?

Suspensions will be imposed as follows:

- **BAC below .10% and incapable of safe driving:** No license suspension for first offense if the driver meets certain criteria; 12-month license suspension for second or subsequent offense.
- **BAC greater than or equal to .10% but less than .16%:** 12-month license suspension for first and second offense; 18-month suspension for third or subsequent offense.



- **BAC greater than or equal to .16% or a controlled substance:** 12-month license suspension for first offense; 18-month suspension for second or subsequent offense.

WILL I BE REQUIRED TO HAVE AN IGNITION- LOCKING DEVICE ON MY CAR?



Under Pennsylvania's Ignition Interlock Law, those convicted of a second or subsequent DUI offense are required to have approved ignition interlock systems installed on each motor vehicle they own, operate, or lease for one year before they're eligible to apply for

an unrestricted driver's license.

WHEN DOES SENTENCING OCCUR?

Sentencing will occur in conjunction with a guilty plea or after trial. There are mandatory minimum penalties that apply to any DUI conviction. In some instances, particularly when a defendant is a repeat offender or was involved in an accident with injuries, the District Attorney may seek to have a sentence greater than the mandatory minimum set by law.

The defendant, victims, and other affected parties may testify at the sentencing hearing, after which the judge will consider their testimony, all the facts of the case, and sentencing guidelines to fashion the appropriate sentence.

WILL MY EMPLOYER FIND OUT I HAVE A DUI CONVICTION?



It's possible your employer will find out if she or he performs random record checks on the employees or if your conviction is reported in the news.

If you're convicted of DUI and hold a CDL license or your occupation requires you to drive, your license will most likely be suspended and will impact your employment.

IS MY ARREST A PUBLIC RECORD?

Yes. Pennsylvania criminal records are considered public and are available on request or online. Individuals may request their own criminal record or those of a third party. Employers, landlords, licensing agencies

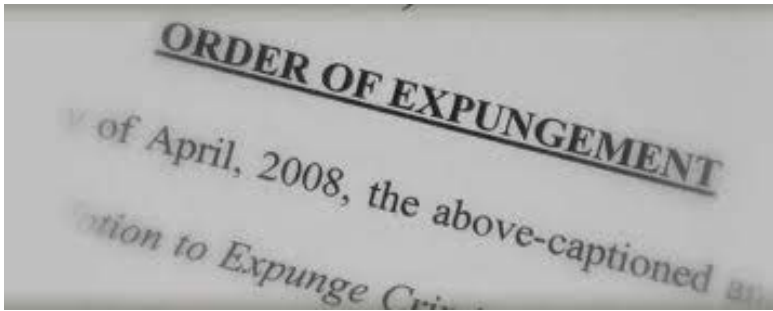
(such as those for nurses, doctors, electricians, and many other professions), and other state agencies may also request a criminal record check on third parties. Criminal records include all arrests whether they resulted in convictions or not.



CAN MY DUI RECORD BE EXPUNGED?

It can if you successfully complete the Accelerated Rehabilitative Disposition (ARD) program. ARD is a process that allows first-time DUI offenders to serve a nonreporting probationary period (you won't be reporting to a probationary officer), pay fines and

costs, attend alcohol and highway safety courses, and perform community service as an alternative to a guilty plea.



When a person completes the ARD requirements, the charges can be expunged if the person obtains a court order that makes certain agencies expunge their records.

The area of law concerning expungement of crimes in Pennsylvania has undergone revision by the legislature and is awaiting the Governor's signature as of the writing of this book. Please review your circumstances with a qualified attorney to determine if your record may be subject to some form of expungement.

DO I NEED AN ATTORNEY?



Getting wrapped up in the criminal justice system can be a very intimidating and overwhelming experience. In Pennsylvania, the potential penalty for a DUI conviction can range from probation to five years in jail. Because the stakes are so high, you'd be very wise to seek the legal advice of an experienced attorney who understands Pennsylvania DUI law.

WHEN SHOULD I CONTACT AN ATTORNEY?

If you've been arrested for DUI, you should contact an experienced attorney immediately to understand what you're potentially facing and your potential defenses.

WHAT CAN I EXPECT TO HAPPEN DURING MY FIRST MEETING WITH AN ATTORNEY?

You should expect the attorney to take time to listen to you and be compassionate. The attorney should alert you to the importance of giving him or her any documents you receive from the court and give you useful information. Most important, your attorney should be someone you feel comfortable with, someone you believe has your best interests at heart.

ABOUT THE AUTHOR



Photo by Barbara Pellegrino

Attorney David W. Zellis has spent his thirty-year career working in the criminal justice system.

After graduating with a Bachelor's degree from the University of Michigan, he earned a Doctor of Law degree from Emory University School of Law.

His first job after law school was as an Assistant District Attorney in the Bucks County District Attorney's Office. During his time as a prosecutor, he rose through the ranks and became the First Assistant District Attorney (that's second in command of the whole office). As a prosecutor, David handled thousands of cases, many of which involved DUI.

David founded Zellis Law, LLC, a law firm that focuses on DUI criminal defense and "solutions for your legal issues."

He co-authored a chapter entitled "Legal Issues and Autism Spectrum Disorder" in the recently published book *Autism Spectrum Disorders in Adolescents and Adults*.

He's appeared as a legal expert on NBC 10, Channel 6 ABC's Action News, CBS-3, and Fox-29 News. Nationally, David has

been featured on Dateline NBC and Investigation Discovery Channel's shows entitled "True Crimes with Aphrodite Jones," "Solved," "Snapped," and "Nightmare Next Door."

He's also appeared as a legal expert in the *Legal Intelligencer*, the oldest law journal in the United States, as well as the *Philadelphia Inquirer*.

David enjoys his free time with his wife and four children, Tziona, Arielle, Daniel, and Chaim.

He's put his knowledge and vast experience to work for the benefit of hundreds of clients who have found themselves in dire straits as a result of being arrested for DUI.

David is dedicated to providing his clients with the individualized attention they deserve and to obtaining the best possible results.

Feel free to contact him at dzellis@zellislaw.com, 215-860-3303, or visit his website, **zellislaw.com**.

Here's what his clients have said about him:

I always felt I was in the hands of the best lawyer who genuinely cared about me as well as my case. Highly recommend! Thank you.

~ E

Mr. Zellis was more than helpful in my court case. He kept me in high spirits and made everything he said he was going to do happen. I highly recommend hiring Mr. Zellis as your lawyer. He knows the law and knows how to take your case and make the best possible outcome happen for your situation.

~ Alex

Dave went above and beyond his job. He spoke to me so I could understand. He has many years' experience, and I would not recommend anyone other than Dave Zellis.
~ Jarrod

David is the best lawyer I could have ever had. I've gotten in trouble so much in my life and have been with ten different attorneys. This guy is the real deal. Nobody ever gave a damn about me as did David. And he's completely affordable—no BS. Thank you so much.
~ David

David didn't make any outrageous promises to me, and he stated the facts and consequences clearly. He spoke in terms that were understandable considering the way that the laws were written. He advised me and kept me in the loop every step of the way. I was always able to reach him, and he always responded to my inquiries in a reasonable time frame. He did exactly what he said he was going to do, and I was completely satisfied with my legal outcome.
~ Nicholas

Obviously, with his experience, Mr. Zellis is extremely knowledgeable and well respected. In addition, he is incredibly dedicated and trustworthy. He is truly respectful of and responsive to his clients. In addition to being an excellent attorney, Mr. Zellis is a very good person!
~ M

I chose Zellis Law for my son because of a recommendation from a trusted friend, and I'm so glad I did. My son was treated with dignity and respect at all times, and that meant a lot. I would highly recommend David.

Thanks, David, for being more than just an attorney.

~ K

David, I want to thank you for everything you have done for my son. If it wasn't for your determination and faith in him he wouldn't be where he is today. You pleaded his case to the courts and proved to them he was worth the chance. Words cannot express the gratitude and relief I am feeling, to have my son back... clean and healthy and on a path to getting well. Thank you from the bottom of my heart.

~T

WA

DUI...

IT CAN **EVEN** HAPPEN TO YOU

Attorney David Zellis has been practicing criminal law for over thirty years, and he's particularly well versed in the ins and outs of the Commonwealth of Pennsylvania's DUI laws.

He's succeeded in helping a great number of clients who find themselves uncharacteristically charged with DUI, and he's helped them cope with the fallout—legal, professional, and personal.

David wrote this book in a question-and-answer format; the questions are those his clients needed answers to, and his answers are all based on his extensive experience in this particular field of law:

- What are the red flags the police look for prior to stopping a vehicle for DUI?
- Do the police have to read me my Miranda Warnings before arresting me?
- What are field sobriety tests?
- What's a portable breath test?
- Can I refuse a blood test?

Find the answers to these and many more questions in his book; you'll be in a better position to know and protect your rights.

In addition to practicing law, David Zellis speaks to groups and organizations interested in learning their rights under Pennsylvania's DUI laws.



ZELLIS LAW

1701 Langhorne-Newtown Road, Langhorne, PA 19047

Phone: 215-860-3303 -- Fax: 215-860-3304

Website: www.zellislaw.com -- Email: dzellis@zellislaw.com

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