

I. NEW PENNSYLVANIA DUI LAWS.

On February 1, 2004, the laws concerning driving under the influence of alcohol (DUI) changed in many important ways. The new law is as follows:

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

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

75 Pa.C.S. Section 3802 (c) - *Highest Rate of Alcohol* - an person may not be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the person's blood or breath is at least .16% or higher within two hours after the person had driven, operated or been in actual physical control of the movement of the vehicle.

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

75 Pa.C.S. Section 3802 (e) - *Minors* - a minor (an person under 21 years of age) may not be in actual physical control of the movement of the vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the person's blood or breath is .02% or higher within two hours after the person has driven, operated or been in actual physical control of the movement of a vehicle.

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

II. PENNSYLVANIA DUI PENALTIES.

In Pennsylvania, the blood alcohol concentration (BAC) of the accused, along with the number of previous times the person has committed a DUI, will determine a person's punishment.

As of February 2, 2004, there are three categories into which a person will fall, based upon the level of alcohol in their blood stream (that is, based upon their BAC). The three categories are as follows:

- a. .08% - .099%;
- b. .10% - .159%;
- c. .16% and higher (and any refusal to submit to a test).

Regardless of category, a defendant will be required to participate in a Court Reporting Network (CRN) evaluation. The first and second categories also require a person to complete an Alcohol Highway Safety Program (AHSS). If a person falls into the third category (or refused to submit to a blood or breath test), or if it's not a first offense, the defendant must undergo a Drug and Alcohol (D&A) assessment and treatment. Further, all second and subsequent DUI offenses require the installation of an Ignition and Emission Interlock System to be installed in the defendant's car or other motor vehicle.

A. FIRST OFFENSE (No Other DUI within the Past 10 Years).

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

BAC is .10% to .159%. This also is an ungraded misdemeanor (M); however, the defendant must go to jail for at least 48 hours (the maximum is six months). There is also a fine of between \$500.00 and \$5,000.00. A CRN, AHSS and possible D&A are required. The defendant's driver's license will be suspended for one year; however, he or she may be able to get an Occupational Limited License (OLL) after serving at least two months of the license suspension.

BAC is .16% or higher (or there was a refusal to give a blood or breath sample). In this category, the jail time is increased to at least 72 hours, and the minimum fine is \$1000. Otherwise, the penalties are the same as when the BAC is .10%.

B. SECOND OFFENSE.

BAC is .08% to .099%. This is an ungraded misdemeanor (M) with a mandatory period of imprisonment of at least five days and up to six months. The minimum fine is \$300, with a maximum fine of \$2500. This offense level also carries a one-year driver's license suspension. A CRN, AHSS, and D&A are required, along with an Ignition Interlock for a period of 12 months.

BAC is .10% to .159%. Jail time is increased to at least 30 days, with no change in the maximum sentence. The fine ranges from \$750 to \$500. Otherwise, the terms are the same as if the BAC is .08%.

BAC is .16% or higher (or the defendant refuses testing). This is graded as a misdemeanor of the first degree (M1), with jail time between 90 days and 5 years. The fine ranges from \$1,500 and \$10,000. Otherwise, the terms are the same as if the BAC is .08%.

C. THIRD OFFENSE.

BAC is .08% to .099%. This is graded as a misdemeanor of the second degree (M2). The defendant will be sentenced to between ten days and two years, and the fine range is \$500-\$5,000. Otherwise, the penalties are the same as for a second offense.

BAC is .10% to .159%. Prison time for this M1 misdemeanor is 90 days to five years. The fine range is \$1,500-\$10,000. The defendant's driver's license is suspended for 18 months. Other terms are the same as a second offense.

BAC is .16% or higher (or a refusal to take the test). This is graded as a misdemeanor of the first degree (M1) which carries a prison term of between one and five years. The fine is \$2,500-10,000. License suspension is for eighteen months, and the CRN, D&A, and Ignition Interlock terms apply.

D. FOURTH OFFENSE.

BAC is .08% to .099%. This M2 misdemeanor has an imprisonment range of ten days to two years. The fine is between \$500 and \$5,000. The defendant's license is suspended for twelve months, and the CRN, D&A, and Ignition Interlock terms apply.

BAC is .10% to .159%. Imprisonment for this M1 misdemeanor ranges from one to five years, with a fine range of \$1,500-\$10,000. The offense carries an 18-month license suspension, and the CRN, D&A, and Ignition Interlock terms apply.

BAC is .16% or higher (or a refusal to test). This is graded as a misdemeanor of the first degree (M1) with a mandatory term of imprisonment ranging from one to five years. The offense carries a fine between \$2,500 and \$10,000. The CRN, D&A, and Ignition Interlock terms apply.

In addition to all of the penalties described above, the court will impose various costs and assessments. In some counties in Pennsylvania, persons who receive a term of probation following a period of incarceration must pay a monthly fee while they remain on probation.

E. REFUSAL OF BREATH TEST.

WARNING. If you refuse to take a breath, blood or urine test after being arrested for DUI in Pennsylvania, your driver's license will be suspended for at least one year. Furthermore, if you're convicted, you'll have to serve at least three days

In refusal cases, the arresting officer must forward a Notice of Refusal (DL-26 Form) to inform the Pennsylvania Department of Transportation (PennDOT) of your refusal. Once received, PennDOT must notify you of your license suspension. You must then turn in your license within 30 days. You have thirty days to appeal; if you do appeal, you'll be able to drive until the matter is resolved in the Court of Common Pleas.

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