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THE PENNSYLVANIA DUI GUIDE

A FREE LEGAL RESOURCE FOR PENNSYLVANIA DRIVERS

THE FIRST **5** THINGS TO DO

AFTER BEING ACCUSED OF DUI

SPECIAL REPORT



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FROM JUSTIN MCSHANE



Dear Reader-

You have received this *Pennsylvania DUI Guide* because you filled out a form on our website. This

document offers you information that can be helpful when you are accused of a DUI. We realize that a situation of this kind can be very stressful for you and your loved ones. The McShane Firm is committed to standing with you through this trying time.

When you are being charged with a DUI, you need to have the right information about the laws and

procedures to make the right decisions about your future. This guide will help you understand what to expect. If you have questions beyond that, please call our helpline at 1-866-MCSHANE.

Every DUI case is different, and yours is no exception. We urge you to review the information presented in this guide and contact a qualified DUI attorney to go over your case details. DUI cases can be won.

Best of luck,

Justin McShane

THE PENNSYLVANIA DUI GUIDE

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THE FIRST **5** THINGS TO DO

AFTER BEING ACCUSED OF DUI

BY TED HAAN



YOU'VE RECENTLY BEEN STOPPED BY THE POLICE AND ACCUSED OF DUI.

A million thoughts are probably racing through your head: What do I do now? Will I lose my license? What about my insurance? Who should I talk to?

The Pennsylvania DUI Guide is here to answer your most pressing questions and help you navigate this stressful time.

But first things first.

Here are the first five things you should do after being accused of a DUI. Follow these steps and you'll be well-prepared to make the right decisions for your DUI case.

1. WRITE DOWN EVERYTHING.

DUI cases are won and lost with their details. So write down everything you remember from your DUI stop, no matter how insignificant. Do it now. Your memory will fade over time, and important details that could help win your case could be lost. Here are some questions to jog your memory:

- When and where were you stopped?
- What reason did the officer give for your stop?
- Was a breath test administered? If so, with what device?
- What did you tell the officer about what you had to eat or drink?

Take some time to write down everything you can remember from the stop. You'll thank yourself later.

2. TAKE A LOOK WHAT YOU HAVE SHARED ON SOCIAL MEDIA.

Remember the phrase "anything you say can and will be used against you in a court of law?" Well, in this era of social media, anything you post online can and will be used against you too. Prosecutors often scour social media sites like Facebook or Twitter looking for incriminating photos or posts to use against DUI defendants.

Presented out of context, these public materials can damage your reputation enough to turn



Pictures of yourself drinking and partying online might be used against you in a trial.

a jury against you - even if you're innocent. Don't give the other side this ammunition. Check your privacy settings to see what you would like to share and with whom.

3. FIND WITNESSES.

Talk to your friends, family, and acquaintances - especially if they saw you right before, right after, or even during your stop. Ask them if they would be willing to testify on your behalf in court. Witnesses can go a long way to strengthen your defense, so gather as many as you can.

4. HIRE THE BEST DUI LAWYER.

The most important decision you'll make for your DUI case is which lawyer will defend you in court (see "Why Hire a DUI Lawyer", pg. 6). The expert DUI attorneys of The McShane Firm are the most qualified, most highly trained DUI attorneys in Pennsylvania.

They focus on providing professionally aggressive representation and vow to fight aggressively for your case, your license, and your rights.

5. DON'T OBSESS.

Your DUI case is likely among the most stressful events of your life. It's natural to obsess over the consequences and the outcome. An aggressive DUI lawyer like the attorneys of *The McShane Firm* will fight for your case, and can take much of the stress and burden off your shoulders. If you've completed these steps, you'll be well on your way toward defending your DUI case.



WHY HIRE A DUI LAYWER?

To answer that question, let's talk about your heart:

If you have a minor problem with heartburn, you take an antacid.

If you have a consistent problem with heartburn, you go see your primary care physician.

If you have a serious heart problem (like coronary disease), you go see a specialist: a cardiologist.

But not just any old cardiologist will do. You would probably seek out the best -

the most qualified, and the brightest for your particular ailment - one who has the highest level of education in their specialized field.

The same holds true for lawyers. If you have a minor issue, you or a general practitioner can probably handle it. But if you have a serious legal issue - like a DUI - you need to see a specialist.

The consequences of a DUI conviction are very serious. You could not only face license suspension and insurance rate increases, but also stiff fines and even jail time. You need to see a highly trained, highly qualified lawyer who specializes in DUI and knows all of the complex legal, procedural, administrative, medical, and scientific issues involved in your case.

So just as you wouldn't trust yourself or your primary care physician with open-heart surgery, don't trust yourself or a general practitioner with your DUI case. Hire a specialized DUI lawyer.



HOW TO FIND THE BEST DUI LAWYER

by Dan Spencer

HAVE YOU EVER TRIED TO FIND A GOOD MECHANIC?

If you don't know how a car engine works, you probably had a hard time determining whether a local mechanic is skilled and trustworthy.

The same is true for DUI lawyers. If you don't know about Pennsylvania DUI law, you may be anxious about which DUI lawyer is the most knowledgeable and trustworthy.

So what should you do? Just like finding a good mechanic, you should seek out information from an unbiased, experienced third party. Testimonials from peers and other clients can also help inform your decision. For this, *Avvo.com* is an excellent resource for information on DUI lawyers, including peer endorsements and former client reviews.

But your process doesn't stop there.

In order to be sure you're hiring the best DUI lawyer possible, be sure to thoroughly interview them. Here's a sampling of questions you should ask:

1. What specialized DUI training have you attended over the past year?
2. Do you actually take DUI cases to trial?
3. Do you own and know how to operate the breath test machines used by the police?
4. Are you recognized as a DUI expert by your peers?
5. Do you regularly speak at legal seminars about advanced DUI issues?

The DUI attorneys of the McShane firm won't shy away from these questions, as well as any other questions you might have.

Call 866.McSHANE today to put the best DUI lawyers in PA on your side.

IF YOU'VE BEEN ARRESTED FOR DUI, you may think there's nothing you can do to remedy the situation. Maybe you've even been told that your only option is to pray that you wind up with a lenient judge who might take pity on you and let you off with the lightest possible punishment.

But there is an alternative to simply waiting for the inevitable.

You can fight a DUI – and you could win.

A person wearing a white dress shirt, a dark blue striped tie, and two large red boxing gloves. The image is used as a background for the title text.

WHY FIGHT A DUI?

By Joel Canfield

Look at it this way. 100% of people who plead guilty to DUI are found guilty of DUI. That means that if you plead guilty, you will be punished, and will automatically subject yourself to the potentially life-changing consequences that come with a DUI conviction. You will be fined hundreds or even thousands of dollars. Your insurance rates will more than likely go up. You may lose your driving privileges. You may even face time in prison.

Even worse, your DUI conviction will become a part of your permanent record. That means your employer, your next-door neighbor, the bank that carries your mortgage and other people - even complete strangers - can all find out about it. And so can any future employers, landlords or banks you may need to deal with, even 10 or 20 years from now or more.

On the other hand, if you fight a DUI, you allow for the possibility that you will not be convicted. You give yourself a chance to see your life return to normal, with no fines, no jail time and nothing on your permanent record. And even if you can't get your case dismissed, you also open up the possibility of the charges against you being reduced.

It's important to remember that an accusation of DUI is not the same thing as being convicted of DUI - in order to get from point A to point B, the state must first prove its case against you. And while every DUI

case is different - your DUI case is different - DUI cases can be won.

However, it is almost impossible to win a DUI case without the help of an aggressive, experienced DUI attorney.

DUI is not an area of the law where you even want to attempt to fight on your own. However, working with a lawyer who really understands the ins and outs of DUI law here in Pennsylvania offers you your best chance of avoiding a DUI conviction, not to mention the consequences that come with it. The key is making sure that attorney is both experienced enough to understand every nuance of the DUI laws and aggressive enough to fight and fight hard to make them work for you.

If you were seriously ill and your life was at stake, you'd want the best, most experienced, most aggressive doctor on your side to help you fight your disease. You wouldn't want to trust your health to anything less than an expert.

Well, if you've been accused of DUI, your freedom, your finances, and yes, even your future life is at stake. When you add up the fines, insurance rate hikes and other penalties you will face if you're convicted, the cost of a DUI attorney is well worth the investment.

**So why fight a DUI?
Because you can - and
because you could win.**

WHAT 'S YOUR "MAGIC NUMBER?"

Is it .091? Or .137? Or a big, scary number like .321?

Whatever your number is, if you've been accused of DUI, chances are you think that one, solitary figure – basically just a handful of digits -- holds the power to make or break your entire future.

It doesn't.



In case you're unclear, the "magic number" in question is your B.A.C. or Blood Alcohol Concentration – it's the number the police came up with when you breathed into the breathalyzer or had your blood tested when you were arrested. And whether your number indicates that you were accused of "general impairment," "highly impaired" or, worst of all, at the "highest" level of impairment, chances are you think it provides the irrefutable, concret proof the state of Pennsylvania needs to convict you of DUI.

After all, numbers don't lie, right? Well, in a DUI case, they actually can. Because, as it turns out, your "magic number" – whatever it is -- isn't really magic at all.

The reason? If you've ever had a computer, or a cell phone, or even a car, you probably know firsthand that no machine or device works perfectly all the time. For example, that breath tester the police may have used on you to "prove" you were over the legal limit is not perfect. Mistakes can be made when the machine is calibrated. There can be human error during the breath testing procedure. Sometimes, other substances in your system can even "fool" the machine and lead to "false positives" – where the machine thinks you're impaired, but you actually aren't.

And if your "magic number" came from a blood test, there is even more potential for error there. Again, there can be human error, or mistakes



The “Magic Number”

... isn't so magic.
by Lisa Canfield

in calibrating the equipment, and even instances where a blood sample can be contaminated by outside substances.

Even if that “magic number” really is magic, even if it’s absolutely, irrefutably correct, other factors can take away its powers. If the police made any mistakes when they pulled you over or questioned you – mistakes that are legally referred to as “errors in roadside procedure” – your magic number may be meaningless. Anything from an invalid reason for a stop, to a shortened observation period, to a failure to read warnings could completely invalidate that magic number the state has attached to you.

But how do you prove it? How can you take a number that the State

of Pennsylvania will regard as an unquestionable, scientific fact and take away its power to ruin your life?

The answer is simple -- by getting the right DUI attorney on your side.

A DUI attorney with a background in forensic science has the tools you

need to fight your “magic number” and take away its power. He or she will look over all the facts of your case from a scientific standpoint

and find those areas where the state may be wrong, where mistakes may have been made, where the so-called facts can be questioned. And if your attorney can cast even a shadow of a doubt, then your magic number may not be so magical – and you may even win your case.

Now that really is magic.

**NO MACHINE IS
PERFECT .**

Any number of testing
errors can make your
B.A.C. reading invalid.

DUIS ARE FOREVER

(LIKE DIAMONDS)

By Joel Canfield

The State of Pennsylvania divides DUI cases into three different categories based on Blood Alcohol Concentration or B.A.C.. This number represents the amount of alcohol the police recorded was in your bloodstream.

Tier	Description	First Offense
General Impairment	<ul style="list-style-type: none"> • B.A.C.=.08 to 0.99% • Incapable of safe driving • No injury or property damage 	<ul style="list-style-type: none"> • Up to 6 month probation • \$300 fine
High Rate	<ul style="list-style-type: none"> • B.A.C.=.10 to 0.159% • Minor B.A.C.= .02 to .159% • General Impairment BAC with an accident • School Bus Driver B.A.C.=.02 to .159% • Commercial Vehicle driver B.A.C.=.04% to .159% 	<ul style="list-style-type: none"> • Prison Sentence from 2 days up to 6 months • 12 month license suspension • \$500-\$5,000 fine
Highest Rate	<ul style="list-style-type: none"> • B.A.C.=.16% or greater • Refusal of chemical test • Controlled substance DUI 	<ul style="list-style-type: none"> • Prison Sentence from 3 days up to 6 months • 12 month license suspension • \$1,000-\$5,000 fine

Even a first DUI offense can result in fines, license suspension, and even jail. A repeat offense will result in even harsher penalties, like fines up to \$10,000 and jail time up to 5 years. Plus, a DUI conviction

at any level becomes part of your permanent record, meaning future employers and other authorities will be able to see it. In other words, that DUI stays with you forever.

IT MAY SOUND EXTREME – BUT IT’S ACTUALLY TRUE.

If you are convicted of a DUI in the State of Pennsylvania, you face consequences that won’t last just for a year or two, but potentially for the rest of your life. So if you’ve been arrested for DUI, your first step is to understand exactly what you’re facing.

DUI RECORDS ARE PUBLIC!

Search for yours, your family, or your neighbors at

<http://ujportal.pacourts.us/DocketSheets/MDJ.aspx>

Second Offense	Third Offense	Fourth Offense
<ul style="list-style-type: none">• Prison Sentence from 5 days up to 6 months• 12 month license suspension• \$300-\$2,500 fine	<ul style="list-style-type: none">• Misdemeanor of the second degree• Prison Sentence from 10 days up to 2 years• 12 month license suspension• \$500-\$5,000 fine	<ul style="list-style-type: none">• Felony of the Third Degree• Prison Sentence up to 10 Years• 36 month license suspension• Up to \$25,000 in fine
<ul style="list-style-type: none">• Prison Sentence from 30 days up to 6 months• 12 month license suspension• \$750-\$5,000 fine	<ul style="list-style-type: none">• Misdemeanor of the second degree• Prison Sentence from 90 days up to 5 years• 18 month license suspension• \$1,500-\$10,000 fine	
<ul style="list-style-type: none">• Misdemeanor of the first degree• Prison Sentence from 90 days up to 60 months• 18 month license suspension• \$1,500-\$10,000 fine	<ul style="list-style-type: none">• Felony of the Third Degree• 1 year mandatory minimum and a maximum sentence of up to 7 years in prison• License suspension for 18 months• Fines up to \$15,000• \$200 surcharge• \$300 Substance Abuse Education and Demand Reduction Fund	

So as you can see, it’s clear a DUI conviction in Pennsylvania will have serious consequences that could affect you for years. However, there is something you can do about it now to protect yourself and your future. DUI cases can be won – even

your case can be won -- if you have an aggressive, experienced attorney on your side. When your future is on the line, that’s something that’s worth even more than diamonds.

WHAT IS ARD AND IS IT THE RIGHT CHOICE FOR YOU

The Pennsylvania Accelerated Rehabilitative Disposition (“ARD”) is a pretrial diversionary program offered to first time offenders under certain conditions. As conditions of the ARD program, you will be under probation supervision for 6-12 months. You will attend mandatory Highway Safety classes. You may lose your license for some time. The ARD program cost to you is approximately \$1,500 to \$2,000.

WHAT ARE THE DOWNSIDES TO TAKING THE ARD OPTION?

The one thing to keep in mind is that after completion of the ARD program, you will still have a DUI on your record. This may open you up to a number of consequences such as:

- **Higher auto insurance rates**– Depending on your driving record, you may be denied coverage or have to pay extremely high premiums just to get coverage.
- **You won’t be able to drive for Uber**– Uber and Lyft (as well as most delivery services like Postmates) will disqualify you if you have a DUI on your record in the past 7 years.
- **The DUI will show up on your PennDOT history for 10 years.** This means anyone doing a background check will be able to see your DUI.
- **CDL License Disqualification**– If you are a CDL driver, your CDL will be disqualified for a year. This is why ARD is not a viable option for commercial drivers.
- **Sanctions against Licensed Professionals**– Because the DUI will show up on your criminal and driving history, your governing body can find out about it. Many of them also have rules in place that require you to report DUI violations. Depending on your history, you may face sanctions against your professional license.
- **Penalties for Military Personnel**– The military has its own rules about criminal violations and you may face sanctions from them.

WHO IS NOT ELIGIBLE FOR ARD?

A person will not be eligible for ARD if he or she:

- 1 Has a prior criminal conviction
- 2 Was involved in a crash that resulted in serious injury or death
- 3 Was carrying a minor under the age of 14 at the time of arrest
- 4 Does not have insurance

WILL I AVOID A LICENSE SUSPENSION IF I TAKE ARD?

Under the ARD program, the mandatory license suspension depends on the Blood Alcohol Concentration.

- **No suspension for BAC less than .10**
- **30 day for BAC between .10 and .16**
- **60 day for BAC over .16 or drugs**

However, A driver suspended for ARD will be immediately eligible for an ignition interlock restricted license.

CAN THE ARD BE EXPUNGED?

At the completion of the ARD probation, you can petition the court to dismiss and expunge the charges. If granted, then your arrest information should be destroyed and charges dismissed. **But what ARD lawyers will not tell you is that even though the criminal record can be expunged, the Penn DOT records cannot be expunged for at least 10 years.**

In conclusion, many lawyers will automatically recommend ARD, not because it is best for you but because it is easy for them. Once it is done, they do not have to deal with the long term impact. At The McShane Firm, we will evaluate your case to help you make a fully informed decision as to what is best. We don't believe in cookie-cutter "one size fits all" solutions. We are here to help you make the best decision. Sometimes, that means fighting the charges and sometimes it means taking ARD. The difference is we will explain the consequences of the various options so you can choose what's right for you.

WHEN IS A DUI A FELONY IN PA?

Pennsylvania Felony DUI comes in four types:

- **3rd DUI Highest Rate,**
- **All 4th offenses,**
- **Aggravated Assault By Vehicle while DUI, and**
- **Homicide by Vehicle while DUI**

These are the classic “no mercy” cases. When the government charges these crimes, they look to come at you with the full force of the law. They believe that you are a very bad person who is bent on being a “drunken one-ton missile” on the road. There are so many consequences that come with a Felony in PA that you have to fight these charges.

WHAT ARE THE PENALTIES FOR A FELONY DUI?

3RD OFFENSE HIGHEST IMPAIRMENT RATE	4TH OFFENSE	Aggravated Assault while DUI	Homicide by Vehicle while DUI
Felony of the Third Degree	Felony of the Third Degree	Felony of the Third Degree	Felony of the Third Degree
Prison sentence up to 7 years	Maximum Prison sentence is 10 years	Prison sentence up to 10 years	Prison sentence up to 36 years
License suspension for 18 months (Interlock available after 9 months)	License suspension is 36 months	License Suspension for 12 months	License Suspension for 12 months
Fines up to \$15,000	Fine is up to \$25,000	Fines up to \$25,000	Fines up to \$15,000

If you are facing a felony DUI charge, you need a qualified DUI trial lawyer on your side. The run of the mill general attorney is not going to cut it- not when it is your name and future on the line.



IMPORTANT NOTE FOR REPEAT OFFENDERS

If you are a repeat offender and you successfully completed the ARD program for one of your past offenses, a recent ruling may prove beneficial for you.

In the case of *Commonwealth vs. Chichkin*, the Superior Court of PA deemed that entry into and successful completion of the ARD program does not count as a prior offense in relation to sentencing. This means that if you had a prior DUI that was resolved through successful completion of the ARD program, a new DUI offense would count as a first offense rather than a second offense as it was previously being charged. As this is a recent ruling, the matter is still being litigated in many courts. While it seems clear to us here at The McShane Firm, prosecutors across the Commonwealth of Pennsylvania are still trying to find a way to penalize a driver for a second offense, even though the Court has ruled otherwise. It is important that you have an attorney by your side who understands this change in the law and is ready to fight for what is right.

At The McShane Firm, you will find attorneys who are knowledgeable about DUI law and can answer your questions. We pride ourselves on being on top of the law and are the ones who other attorneys turn to when they have questions or are confused. Call us today at (717) 657-3900 and let us guide you through this difficult time.

HOW A SINGLE BEER CAN END YOUR CDL CAREER

ONE AND DONE

by Joel Canfield

IF YOU MAKE YOUR LIVING BEHIND THE WHEEL,

a DUI conviction will be more than an inconvenience, an expense, and an embarrassment on your record. It may also be the end of your career.

For that reason alone, if you are the holder of a CDL, also known as a commercial driver's license, it is absolutely essential that you understand how a DUI conviction may affect your future. More importantly, you should know exactly what you can do about it NOW, before your case is finalized and it may be too late. The first thing you need to know is that for holders of a CDL in their commercial vehicle, the legal limit for B.A.C. is much, much lower – as low as .02. Or, to put it in real-world terms, that's basically the B.A.C. an average, 180-pound man would have after drinking a single beer. Yes, you read

that right. Just one beer.

And it only gets worse from there. If you drive a school vehicle, that one beer will land you in the "High Impairment" category – a school vehicle driver with a B.A.C. of 0.2% automatically lands in that higher category, and faces stiffer penalties.

For other CDL license holders, a B.A.C. of .04% -- or about two beers -- will put you in the "High" category. But what about ARD? You don't need a DUI lawyer to enroll for ARD, right? Sure, if you don't care about your CDL at all. But you do. You need your driver's license. Bear in mind that as a CDL license holder, enrollment in ARD brings with it a 12-month CDL disqualification if it is a first offense or ARD in addition to the normal license suspension period for a conviction or ARD placement. Meaning you could lose your CDL for up to two years depending on the facts. This is crucial to understand, because an attorney

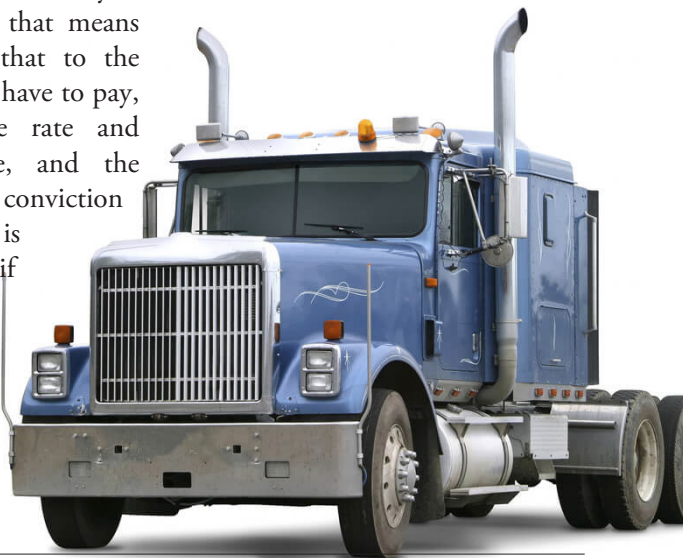


who doesn't know what he or she is doing or if you try to do it yourself can result in a CDL disqualification for a long time. If this is a second DUI or you have a prior serious traffic offense, then you face a lifetime ban for your CDL! That's right, two DUIs off company time and in a normal, non-commercial vehicle (your privately owned car), will mean a lifetime ban of your CDL! That's why you have to fight.

If you drive for a living, and your license is suspended or you don't have your CDL, that means you can't work. Add that to the higher fines you'll likely have to pay, an increased insurance rate and maybe even jail time, and the potential damage a DUI conviction can do to your life really is frightening. That's why, if you're a CDL license holder and you've been accused of DUI, your best possible bet is to talk to an attorney as soon as possible.

The right DUI attorney – someone who is both experienced and aggressive – will understand just how important it is for you to keep your license and your livelihood. And more importantly, that person will understand the best way to protect you and your career.

If you are a CDL holder and you've been accused of DUI, you owe it to yourself to contact a qualified DUI attorney as soon as possible. It could be the best career move you will ever make.



In Pennsylvania, driving under the influence of alcohol or controlled substances is against the law. Drinking alcohol while you're under the age of 21 is also against the law.

So it makes only sense that if you're arrested for DUI AND you're under the age of 21, you will face some very serious penalties – penalties that may have an extremely negative effect on your future.

UNDERAGE & OVER THE LIMIT

Underage DUI in Pennsylvania
by Lisa Canfield

First of all, any driver under the age of 21 who is arrested for DUI in the Commonwealth of Pennsylvania is automatically charged under the state's "high" B.A.C. rate. That means that even if this is your first offense, even if the amount of alcohol in your system is minimal, your punishment is probably going to be severe, if convicted.

How severe? Well, the minimum penalties for high level impairment include at least two days in prison, with a maximum sentence of 6 months behind bars. You'll be forced to pay a minimum fine of \$500, and possibly as much as \$5000. And your license

will be suspended for 12 months – meaning you won't be able to drive for a full year.

Plus, as bad as that sounds, the long-term consequences of an underage DUI are even worse. First off, there's the cost of auto insurance. Drivers under 25 pay more for auto insurance anyway – and with a DUI conviction on your permanent record, your rates will rise astronomically. You may not be able to get auto insurance at all, and if you do, you'll probably need to pay a fortune for it.

And the impact of your DUI conviction won't be limited to your ability to get and afford auto insurance. Your DUI conviction will automatically become part of your permanent record. That means if you want to apply to college, the admissions departments at the schools you apply to will know about your DUI. When you apply for a job, your prospective employers will know about your DUI. When you go to rent your first apartment, the landlord will know about your DUI.

But if you've been accused of DUI, there's still something you can do to

prevent all of this from happening.

You can hire an experienced DUI attorney to fight for you

If you are over 18, you can hire a DUI attorney without your parents even knowing about it -- you're protected under attorney-client

privilege, which means no one will know you've hired a lawyer unless you decide to tell them. This is not the case if you're under 18 – a parent or guardian will need to sign any lawyer's contract – but since your parents will have been notified about your DUI arrest anyway, asking

them for help in protecting your future may be the next logical step.

And protecting your future is exactly what a DUI attorney will do. While underage drinkers without representation are likely to be convicted of DUI, an experienced DUI attorney will look at the facts of your case and use them to defend you against the state's charges. The right attorney will know how to fight your case, as well as how to win.

Remember – it's your future on the line. Now is the time to protect it.



Any driver under the age of 21 who is arrested for DUI in Pennsylvania is automatically charged under the state's "high" B.A.C. rate.



3 THINGS YOU SHOULD KNOW ABOUT BREATH TEST REFUSAL

By Martin Heder

IN THE STATE OF PENNSYLVANIA,

you have the right to refuse a roadside portable breath test when stopped by the police. You also have the right to say NO to the standardized field sobriety tests. A smart DUI attorney will advise you not to do them when requested.

The police infrequently administer the roadside tests correctly. And the roadside portable breath testers are almost never calibrated, inspected or used correctly. Plus it is your right to refuse these roadside tests and this cannot be held against you.

But when it comes to post-arrest blood or breath test requests, it is entirely different. You have a constitutional right to refuse a blood test, but the police officer could get a warrant. You also have the right to say NO to a breath test, but before you say NO, keep these three things in mind:

1. Double the TROUBLE

Under Pennsylvania DUI law, a refusal of a breath or blood test will affect you in two different ways.

1. The result itself is a civil offense that carries a one-year license suspension for a first offense or 18 months if you have a prior DUI or a prior refusal. You can challenge the basis for the reasonable grounds for the test. PennDOT prosecutes the case. They have to prove that there was reasonable grounds for the test demand and that you actually refused by words or deeds upon a proper demand being issued.

2. If you are convicted of the DUI charge which is a criminal offense, and you refuse to submit to a breath test, you will face enhanced penalties as if you were at the highest rate (BAC greater than 0.16%) that carries the following penalty range for a first offense:

- Prison time: Three days to up to six months
- License suspension: One year (plus the one year civil Pen DOT penalty of 12 months so that means 24 months overall)
- Fines: \$1000-\$5000
- Mandatory DUI School

Pursuant to *North Carolina v. Birchfield*, there are no enhanced criminal penalties for refusal to submit to a blood test. As with all DUI cases, a conviction of the criminal charge will remain on your criminal history for background checks and your driving record for the rest of your life. And if you have prior DUIs or penalties, it only gets worse.

2. Time is of the Essence

There is a separate set of hearings called the *PennDOT License Appeal* that safeguards against arbitrary loss of your license. There is, however, a very strict time limit to challenge a standalone PennDOT suspension pursuant to a refusal.

If it is not appealed within 30 days of the mail date on the notice sent by regular mail to your last registered address, then you are out of luck, even if later on in the criminal matter you are found “not guilty” or the charges are dismissed. You cannot use the criminal acquittal to re-open the PennDOT suspension. So it is appeal within those 30 days or risk losing your driving privileges for at least a year or more, even if you are found Not Guilty.



**YOU HAVE
30 DAYS
TO APPEAL A
PENNDOT LICENSE
SUSPENSION.**

So don't delay.

3. Don't Plead Guilty

There are several successful strategies to defending DUI refusal cases. A qualified DUI attorney can examine the evidence in your case and help chart a course of action. It's not hopeless.



DUI

MARIJUANA

Marijuana is classified as a controlled substance in Pennsylvania. While other states have moved to legalize its recreational use, marijuana remains illegal in PA, except in certain circumstances.

With the passage of the “medical marijuana” bill, a very specific class of patients with certified histories are now allowed to own, possess and use non-smokable forms of THC. The legal quantities and mediums are strictly regulated. In addition, having a valid prescription for medical marijuana does not change the DUI law regarding marijuana and having any amount in your system is enough to be charged with DUI. For the foreseeable future, the Driving Under the Influence of Drugs or DUID laws in Pennsylvania will lag way behind the times and popular sentiment despite this change in the law.

DUID Marijuana cases carry some very serious possible penalties for those who are charged.

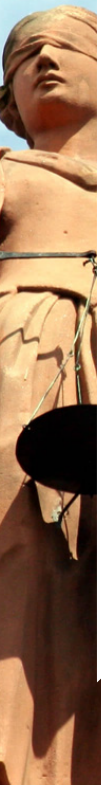
At The McShane Firm, we use our experience and knowledge to challenge all types of drug charges, including:

- ♦ Marijuana Possession
- ♦ Marijuana Sale or Distribution
- ♦ Drug Trafficking
- ♦ Marijuana Cultivation
- ♦ Drug Paraphernalia
- ♦ DUID of Marijuana
- ♦ Aggravated Assault by Vehicle While DUID of Marijuana
- ♦ Homicide by Vehicle While DUID of Marijuana

We can safely say that NO ATTORNEY IN PENNSYLVANIA has this level of training in DUID marijuana cases.

The government may also take blood tests to see if the substance is in your system. All of these tests must be done in a specific way or else the tests may be deemed unreliable or hold no weight in court.

It is also well known and well-studied that the crash risk associated with marijuana is much less than alcohol and overlaps the crash risk for sober driving. This is essential for Aggravated Assault by Vehicle While DUID of Marijuana and Homicide by Vehicle While DUID of Marijuana where the government has to prove beyond a reasonable doubt that the DUID of marijuana was the direct and proximate cause of the death or serious bodily injury.



THE FOLLOWING TABLE DEFINES THE PENALTIES FOR FIRST, SECOND AND THIRD OFFENSES FOR DUI MARIJUANA:

First Offense

Jail sentence from 3 days to 6 months

License suspension for 12 months

Fines between \$1,000 and \$5,000

Second Offense

First degree misdemeanor conviction

Jail sentence of 90 days to 5 years

License suspension for 18 months

Fines ranging from \$1,500 to \$10,000

Third Offense

First degree misdemeanor conviction

Jail sentence from 1 to 5 years

License suspension for 18 months

Fines ranging from \$2,500 to \$10,000

By letting The McShane Firm represent you, you benefit from our extensive courtroom experience in fighting drug related charges and DUID cases involving marijuana.

The McShane Firm

is on the cutting edge of DUID and Drug Defense:

1 Attorney McShane has lectured for 35 different organizations in 22 different states as well as internationally

2 We have the most scientific experience out of any law firm in Pennsylvania when it comes to DUI, DUID and drug related charges

3 All of our attorneys have received extensive training in the scientific analysis of drugs performed in a laboratory

It's definitely worth mentioning here that Attorney McShane is an instructor for drug identification and pharmacology courses for the American Chemical Society. He has been on the faculty of The Robert F. Borkenstein Course, at the Center for Studies of Law in Action for DUID through Indiana University.

All of our attorneys have received extensive training in the scientific analysis of drugs performed in a laboratory. So don't hesitate to get in touch with The McShane Firm to represent you when you are accused of Marijuana use or possession or a DUID marijuana case in Pennsylvania.

PENNSYLVANIA DUID LAWS

When you get arrested for Driving Under the Influence of Drugs or DUID, the penalties can be very severe. DUID cases are quite different from DUI alcohol cases because the laws and penalties are unique.

Please note: DUID charges are not only for illegal drugs like Schedule I drugs like marijuana or Schedule II drugs like cocaine. In fact, there is a large number of people who are charged with DUID for using prescription drugs. Even if they are lawfully prescribed and used in accordance with doctor's orders, some police officers will jump to the conclusion that you must be impaired and a DUID. We here at The McShane Firm, LLC call such a person by their proper name—a patient, and not a criminal.

There are several things that happen when you are convicted of a DUID. The worst of this is that your conviction will become a permanent public criminal record. The fallout includes trouble because your potential employer, landlord, or loan officer, can easily carry out a background check and find your DUID conviction. Your job applications may be rejected as a result and you might face high insurance rates years later.

Below are the penalties you can be awarded when you are found guilty of a DUI-D:

01
OFFENSE

- Jail sentence from 3 days to 6 months
- License suspension for 12 months
- Fines between \$1,000 and \$5,000

02
OFFENSE

- First degree misdemeanor conviction
- Jail sentence of 90 days to 5 years
- License suspension for 18 months
- Fines ranging from \$1,500 to \$10,000

03
OFFENSE

- Felony of the third degree conviction
- Jail sentence from 1 to 5 years
- License suspension for 18 months
- Fines ranging from \$2,500 to \$10,000

A DUID conviction really can change your life. This is why you must fight back with an aggressive DUID attorney on your side with specific experience in DUID cases, like yours.

HERE'S HOW **The McShane Firm** CAN HELP YOU FIGHT BACK:

Every DUID case is unique, including yours. We understand the pharmacology. We understand addiction. We understand that for prescription drugs that you were following doctor's orders.

Only a qualified and experienced lawyer with a heavy focus on DUID cases can prove your innocence to the court. We have the education, training and experience in pharmacology and in analytical chemistry to spot both bad conclusions of impairment as well as bad blood results. We have been on the forefront of finding, exposing and shutting down several bad forensic and hospital laboratories.

The McShane Firm can help you. With our highly-trained attorneys specializing in the nuances of DUID cases. We possess superior knowledge of forensic science. We give you the confidence to believe that we explore every possibility to fully protect your rights.

If you're ready to fight the DUID charge leveled against you, contact The McShane Firm today for your free initial consultation. We're ready to fight for you.

JUSTIN J. McSHANE

is the CEO of The McShane Firm, Pennsylvania's top DUI and criminal defense law firm. With over 1,000 hours of specialized DUI training in the past two years alone, Justin has seen countless DUI cases through to favorable outcomes for drivers throughout the state. The Guide sat down with Justin after a recent trial to discuss the secret to his success.

Q: WHY DO YOU SPEND SO MUCH TIME IN DUI TRAINING?

A: Education has always been important to me. I got my B.A. at Franklin & Marshall College right here in Pennsylvania, and I was named a Marshall Scholar, which is college's highest academic scholarship. That scholarship gave me a chance to study European Criminal Law and Procedure at the University of Limerick in the Republic of Ireland, which gave me a unique perspective on our own American laws and legal system.

After I graduated from Franklin and Marshall College, I stayed in Pennsylvania to attend the Pennsylvania State University Dickinson School of Law. That was where I really became interested

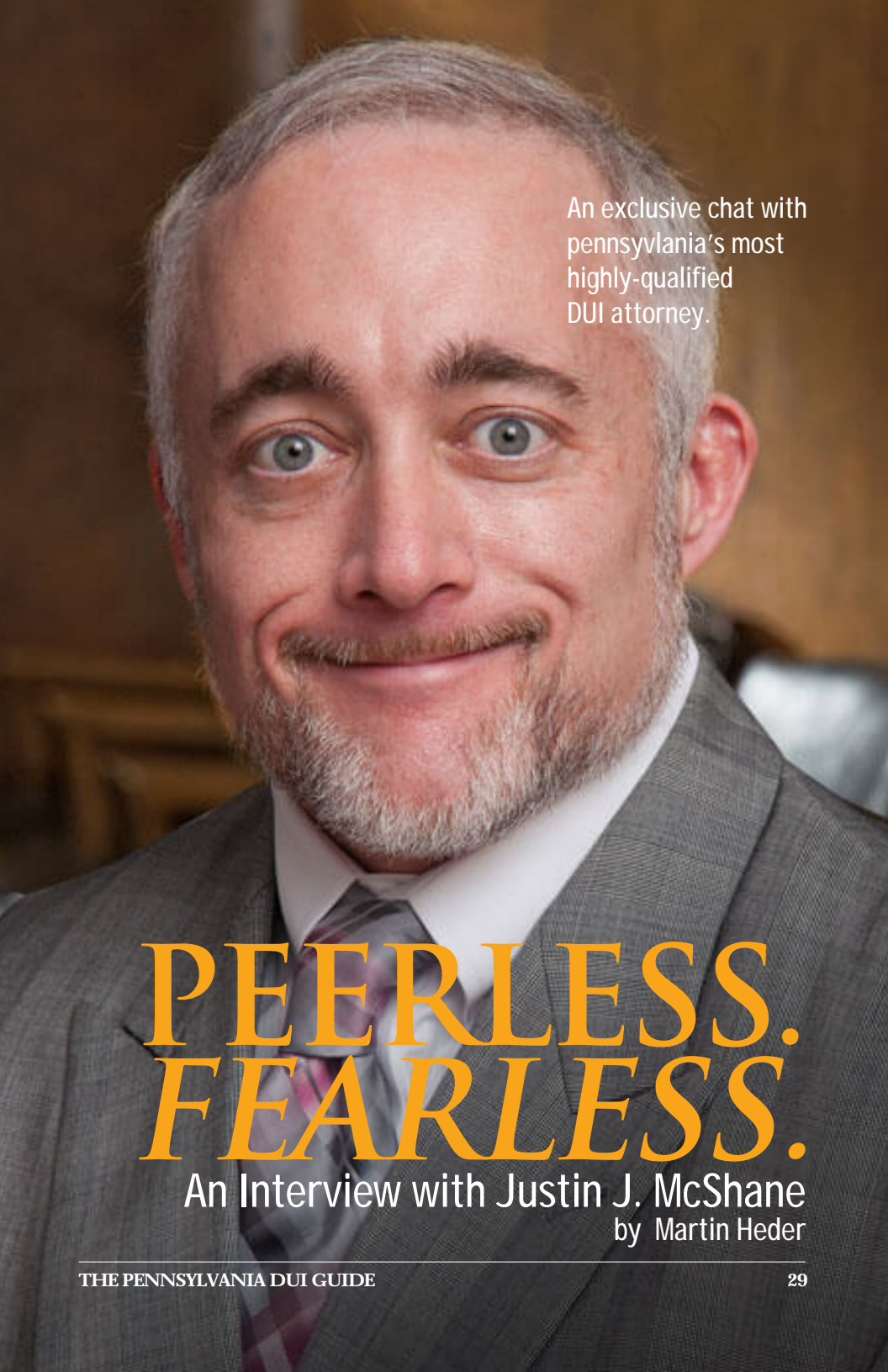
in criminal defense and the whole concept of being an advocate for people who need them. And I never looked back – I've never spent a single day working on the prosecutorial side.

I went to work in the Dauphin County Public Defender's office and spent 3 ½ years there helping people who couldn't afford legal defense. That experience gave me a real education in what happens to people who don't have decent representation. They honestly don't have a chance against the system – ordinary people have no idea how stacked the system is against them. I think that's why I fight so hard.

Since building my firm, I have represented thousands of clients in every stage of the criminal process. I have represented everyone, from rock stars and politicians to homeless people. And I've tried some very high-profile cases. But my goal with each case to give everyone the same level of care and attention. After all, when you're accused of DUI, it's your life that's suddenly on the line. That's why everyone gets the same passion and dedication, the same long hours. Because everyone deserves a chance.

Q: WHY DID YOU CHOOSE TO SPECIALIZE IN DUI LAW ?

A: A DUI conviction can ruin a person's life. One DUI conviction and suddenly a decent, law-abiding,

A close-up portrait of Justin J. McShane, a middle-aged man with grey hair, a goatee, and blue eyes. He is wearing a grey suit jacket, a white shirt, and a patterned tie. He has a slight smile and is looking directly at the camera. The background is a warm, out-of-focus brown.

An exclusive chat with
pennsylvania's most
highly-qualified
DUI attorney.

PEERLESS. *FEARLESS.*

An Interview with Justin J. McShane
by Martin Heder

hard working American citizen is a criminal in the eyes of the Commonwealth of Pennsylvania. And just like that, everything changes for that person. Back when I was with the Public Defender's Office, I saw it happen over and over again. The Commonwealth of Pennsylvania prosecutes these DUI cases very aggressively. They have experienced prosecutors, police officers, and forensic technicians all working together on their side – all for one reason -- to prove somebody guilty . How can an ordinary person stand up to all of that?

“I have a reputation for being an extremely aggressive litigator, and I don't apologize for that.”

Q: WHAT'S YOUR PERSONAL DEFENSE PHILOSOPHY?

A: Well, if you check the official records, they'll tell you I'm the only Pennsylvania licensed attorney who is both, a Board Certified DUI Defense Specialist as recognized by the National College of DUI Defense, as well as a Board Certified Criminal Trial Advocate by the National Board of Trial Advocacy. If you ask a regular person – someone in the legal world or one of my clients – they'll tell you I'm tough. I have a reputation for being an extremely aggressive litigator, and I don't apologize for that. My clients need someone who will fight for their rights. That's why they hire me, so that's what I do. In other words, if you want a goalalong-to-get-along defense attorney, I'm not your man. I'm the guy who wants to show up at the preliminary hearing and try to get the charges dropped or at least reduced right away. And I'll be there every step of the way for as many steps as it

takes, working every day to get the best possible outcome. I feel comfortable in the courtroom and am not shy about taking my cases to court. I don't promise to win every case, but I do promise that when all is said and done, my clients know that I have gone to the mat for them.

Q: HOW DOES YOUR BACKGROUND IN FORENSIC SCIENCE HELP YOUR CLIENTS ?

A: I lecture to lawyers, judges, policy makers, and even scientists from across the nation. Being an expert in forensic science means I'm an expert in how the law works. I'll spend over 500 hours this year attending and speaking at advanced legal training and certification courses all over the country. I have attended many levels of DUI Defense training. This includes attending training course that are based on the National Highway Traffic Safety Administration (NHSTA) curriculum.



The team of experienced attorneys at The McShane Firm

That even includes the Advanced Roadside Impaired Driving Enforcement (ARIDE) course – and I was the first DUI attorney in the nation to be trained on this material. I also have attended instructor level training on the Standardized Field Sobriety Tests (the roadside DUI tests) – which is actually means that I know more about those tests that most of the Pennsylvania police officers who administer them. What that means, in plain English, is that I know more about DUI law than just about anyone, and definitely more than most of the people who are trying to convict my clients. So during the process, if any mistake has been made, if a necessary step has been omitted, if one single, solitary little slip-up happens that gives my client a chance at freedom, I will see it, I will exploit it, and I will make sure it benefits my client.

Q: I READ ON-LINE THAT YOU ARE AN AMERICAN CHEMICAL SOCIETY CHEMISTRY AND THE LAW DIVISION FORENSIC-LAWYER SCIENTIST. DOES THAT MEAN?

A: This is most prized and valued professional achievement. It is the highest form of recognition that a

lawyer can achieve in law and science.

Like "poet-warrior" or "philosopher-king," there are lawyers of a new breed known as the **ACS-CHAL Forensic Lawyer-Scientist**. The **ACS-CHAL Forensic Lawyer-Scientist** is one who uses validated and legitimate science for the benefit of justice. These are lawyers who study the science and apply it legitimately in the courtroom. They expose invalid or non-validated science and use valid science in the courtroom. They eschew the smoke and mirrors techniques of old and embrace the science for the benefit of all.

I am also very proud of the fact that I have earned the designation as a "Fellow" with the American Institute of Chemists. This is a scientific organization and not a legal organization. Further, I am a full voting member of the American Academy of Forensic Science. I also sit as a voting member of the ASTM E30 community. I was also honored to be elected by my peers in the American Chemical Society Chemistry and the Law division, which has over 1600 members, to be their chairman in fall of 2015.

Q: IS THAT WHY THEY CALL YOU 'ENCYCLO PEDIA MCSHANE'?

A: Yes, that is my nickname. Another well recognized DUI defense named Allen Trapp of

Georgia called me that at a presentation that I once gave. He said it was due to the fact that you could ask me anything having to do with the science of DUI or DUID and I would know the answer. He has now passed away, but the name sticks with me.

And I'm always learning more about the subject, and about forensic science in general. I like to pass on my knowledge to other lawyers, judges and scientists freely. I've attended and taught at hundreds of national forensic and DUI seminars. I have lectured internationally as well. So my perspective and experience is really deep and very broad on the subject.

Q: WHAT SETS YOU APART FROM THE REST ?

A: Some attorneys have guts, but they don't know the science and the law. So while they have courage, it's fool's courage. Some attorneys have experience, but lack guts. They might be in the sunset of their careers or just don't have that spark any more.

It is rare to find a lawyer who has a combination of experience, knowledge, education and guts who is willing to put it all on the line to fight

for you, your family and your career. That is me. That is all of us at The McShane Firm.

Whatever a client might be facing, whatever the unique circumstances are, chances are I've been there. I've argued successfully before the Superior Court and have argued before the Pennsylvania Supreme Court, and I am admitted to the United States District Court-Middle District, the Third Circuit Court of Appeals and the United States Supreme Court. And the resources at my firm are top notch. We thoroughly investigate each and every case. We use the nation's top experts on the stand. We even have a highly qualified appeals attorney in case we can't get justice the first time around.

So, whatever charges and whatever type of punishment they might be facing, my clients can rest easy knowing that everything is being taken care of – and that they have the very best chance of obtaining the best possible outcome in their case. I give them peace of mind, and I'm happy to do it.



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TELL HIM
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SENT ME!"

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IF YOU'VE BEEN ACCUSED OF DUI, the scariest part can be not knowing what to expect. The legal process is a mystery to most people who haven't had first-hand experience with it, and the DUI process is no exception. So here is a brief overview of the typical DUI case procedure.



DUI CASE PROCEDURE STEP-BY-STEP

WHAT HAPPENS NOW

by Lisa Canfield

1 Step 1: The Preliminary Hearing

The first step is the “Preliminary Hearing.” This is where the police officer who is filing the complaint against you first presents the case to a Magisterial District Judge. The point of the hearing is for the court to decide if there is enough evidence to move forward and try you for DUI.

At the Preliminary Hearing, the “burden of proof” – the amount of evidence the state needs to show to move forward – is lower than it the amount of proof needed to convict you. However, there is still a possibility that the charges against you can be lowered or even dismissed at this phase. Having the help of an experienced Pennsylvania DUI

attorney will ensure that, if there is a chance that your case can be dismissed, it will be.

2 Step 2: The Formal Arraignment

Anywhere from two weeks to 60 days after your preliminary hearing, you'll have your “Formal Arraignment.” This is where you hear the charges against you and are advised of your rights. If you have an attorney representing you, you may not have to attend the formal arraignment provided that they have filed the right paperwork and they have entered their appearance. If you don't have an attorney, you have to go or a warrant for your arrest may be issued.

3 Step 3: The Discovery Phase

After the arraignment, you enter the “Discovery Phase.” At this point, the court gives a copy of the evidence they have against you – the Breathalyzer and/or blood test results, photographs, statements from witnesses and other evidence -- to you or your lawyer. If you have an experienced DUI Defense Lawyer working for you, he or she will use the evidence to construct the best possible defense for you, possibly negotiating a plea agreement and maybe even getting your case dismissed.

4 Step 4: Trial Preparation

If the case is not dismissed, you move into the “Trial Preparation” period. This will include the filing of what is called the “Omnibus Pretrial Motion” – which is basically a request from you (via your attorney) asking the court to look at your case and make sure none of your rights and no state laws have been violated. Specifically, the court will be asked to consider:

1. whether the traffic stop and your detention was legal
2. whether there was sufficient Probable Cause to arrest you
3. whether the chemical test was administered legally
4. whether the results of the chemical test (or a report of your refusal to take one) are valid
5. anything else that is suitable



If you have an experienced DUI attorney on your side during this phase, you increase your chances of uncovering a reason to have your case dismissed.

5 Step 5: The Trial

If your case is not dismissed and you do not negotiate a plea to a lesser charge, you move into the final phase, which is the Trial. The state will present its case against you. You will, of course, have an opportunity to present your side of the story -- but you don't need to go it alone. An experienced DUI attorney will guide you through this process to the best possible result for you.

The bottom line is this – if you face the legal process for DUI alone, your chances of coming out on top are slim. But with the help of an experienced DUI attorney who fully understands the process, you have a real chance of winning your case.

Then you can put the whole thing behind you and get on with your life.

WE FIGHT FOR YOUR LICENSE AND YOUR FREEDOM



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A D V E R T I S E M E N T

THE PENNSYLVANIA DUI GUIDE is a free legal resource for Pennsylvania drivers accused of DUI. Packed with useful information on DUI and DUI- related topics, The Pennsylvania DUI Guide aims to inform you about your legal options and help you make the right decision regarding your DUI case.