

PENNSYLVANIA DUI LAWS

§ 3802

Pennsylvania has just enacted § 3802 regarding the new DUI laws. The penalties under the new statute have become more severe. The BAC has been lowered from .10% to .08. The sentencing phase of §3802 just took effect on February 1, 2004. The current law breaks down DUI into 3 major categories:

Driving under influence of alcohol or controlled substance:

a) General impairment –

1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

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

b) High rate of alcohol –

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .10% but less than .16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

c) Highest rate of alcohol –

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is .16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

d) Controlled substances –

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

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

(i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance Act; or

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

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

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

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

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

e) Minors –

A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is .02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

f) Commercial or school vehicles

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

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

(i) .04% or greater within two hours after the individual has

driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.

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

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

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

4) While the individual is under the combined influence of alcohol and a controlled substances, as defined in section 1609.

g) Exception to two-hour rule.

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

1) Where the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours; and

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

DUI REFUSAL

Under current Pennsylvania law, anyone driving a motor vehicle on a roadway may be requested to submit to a field sobriety test, breathalyzer and/or blood test. Failure to comply will result in a mandatory one year license suspension, whether or not you are charged or convicted of DUI.

If you have been arrested and/or accused of refusing any of the above, contact this office immediately. In many cases, we can assist you in avoiding certain suspensions. In short, you should never refuse a blood test unless there has

been an accident involving serious or life-threatening injuries.

DUI SENTENCES

As of February 1, 2004, Pennsylvania DUI sentencing is now graded according to your blood alcohol level (BAC). The higher the BAC, the greater the penalties.

A) General Impairment – BAC .08% – .099%

Incapable of safe driving.

1st Offense:

- 1) Ungraded misdemeanor
- 2) 6 months probation
- 3) \$300 fine plus court costs

2nd Offense:

- 1) Ungraded misdemeanor
- 2) Mandatory minimum – 5 day imprisonment followed by probation
- 3) \$300-\$2,500 fine plus court costs
- 4) Twelve (12) month license suspension
- 5) One (1) year interlock

3rd and subsequent Offense(s):

- 1) Second (2nd) degree misdemeanor
- 2) Mandatory minimum – 10 days imprisonment followed by probation
- 3) \$500-\$5,000 fine
- 4) Up to two (2) full years in state prison

B) High Rate of Alcohol – BAC-.10% – .159%

Incapable of safe driving.

1st Offense:

- 1) Ungraded misdemeanor
- 2) Mandatory minimum –48 hours consecutive hours imprisonment
- 3) 12 month license suspension
- 4) \$500-\$5,000 fine plus court costs

5) Possible Occupational Limit License after imprisonment

2nd Offense:

- 1) Ungraded misdemeanor
- 2) Mandatory minimum – 30 days imprisonment
- 3) \$750-\$5,000 fine plus court costs
- 4) 1 year driver's license suspension followed by 1 year ignition interlock

3rd Offense:

- 1) 1st degree misdemeanor
- 2) Mandatory minimum – 90 days imprisonment
- 3) Up to 5 years state imprisonment
- 4) \$1,500 - \$10,000 fine plus court costs
- 5) 18 month driver's license suspension
- 6) Mandatory 1 year ignition interlock

4th and subsequent offense(s):

- 1) 1st degree misdemeanor
- 2) Mandatory minimum – 1-2 year(s) state imprisonment
- 3) \$1,500 - \$10,000 fine plus court costs
- 4) 18 month driver's license suspension
- 5) Mandatory 1 year ignition interlock

C) Highest Rate of Alcohol – BAC – .16% and higher

Incapable of safe driving

1st Offense:

- 1) Ungraded misdemeanor
- 2) Mandatory minimum – 72 hours state imprisonment
- 3) \$1,000-\$5,000 fine plus court costs
- 4) 12 month driver's license suspension
- 5) Possible OLL after 60 days

2nd Offense:

- 1) 1st degree misdemeanor
- 2) Mandatory minimum – 90 days state imprisonment
- 3) Up to 5 years in state prison
- 4) \$1,500 minimum fine plus court costs
- 5) 18 month driver's license suspension followed by 1 year ignition interlock

- interlock
6) Possible OLL after 12 month suspension

3rd and subsequent Offense(s):

- 1) 1st degree misdemeanor
- 2) Mandatory minimum – 1-2 year state imprisonment
- 3) \$2,500 minimum fine
- 4) Up to 5 years in state prison
- 5) 18 month license suspension followed by 1 year ignition interlock

IGNITION INTERLOCK

What is the Ignition Interlock law?

A person convicted of a second or subsequent offense of driving under the influence must have an ignition interlock system installed on each vehicle owned by the driver. This system must remain on the vehicle for one year before the driver can qualify for an unrestricted driver's license and restoration of driving privileges. A driver has to serve at least one year of a suspension before becoming eligible for ignition interlock.

If a driver was convicted for Driving Under the Influence on or after September 30, 2000, they must comply with the ignition interlock system, regardless of the date of the offense.

All DUI offenses will be counted as prior offenses regardless of the date they occurred.

Accelerated rehabilitative disposition (ARD), consent decree and adjudication of delinquency dispositions counted as prior offenses.

What is Ignition Interlock?

It is a device that is installed on motor vehicles to prohibit individuals under the influence of alcohol from operating the vehicle. The individual must blow into the device before starting the vehicle. If the system detects alcohol, the car will not start. The individual may be prompted to blow into the device periodically while operating the vehicle.

The Ignition Interlock system is leased through different providers. The individual is responsible for the cost of the system, which varies depending on the provider, but averages \$1,000 per system.

Failure to have the Ignition Interlock System installed results in the driver being ineligible to have their driving privileges restored for an addition one-year period.

An individual will receive a suspension notice and ignition interlock information. 30 days prior to the eligibility date, the individual will receive a Restoration Requirements Letter which lists approved ignition interlock providers, as well as an application for an Ignition Interlock License.

Forms Needed To Apply

In addition to the Restoration Requirements letter, an individual who qualifies for an Ignition Interlock license must fill out and return the following forms:

- Application for an Ignition Interlock License/Return of Regular Driver License (DL-3731)
- Self-Certification of Vehicle(s) Owned/Operated (DL-21SC) These are also available at www.state.pa.us (click on the e-Government Services logo, click on Citizen Services, then select Driver and Vehicle Services, and click on 'Forms').

The Ignition Interlock License

After restoration requirements are met, forms are completed, and a vendor has installed the approved device in each vehicle owned by the individual, the vendor will inform the Court, who will then send certification to PennDOT. PennDOT will then issue an Ignition Interlock License.

The Ignition Interlock License has a red banner with the words "Limited License" contained within. A red map of Pennsylvania is located in the lower right corner, with "Ignition Interlock" inside the map.

Fees

The fee for Ignition Interlock License varies. The Restoration Requirements letter will include a list of installation service centers (ISC). There are currently seven approved ignition interlock systems to choose from. Listed below is a list of ISC's who carry the approved systems.

- Interlock Installation Services.....1-800-452-1739
- Consumer Safety Technology, Inc.....1-877-777-5020
- National Interlock, Inc.....1-866-342-4984
- American Interlock Services.....1-877-273-2841
- Pennsylvania Interlock.....1-866-718-8606
- Draeger Interlock, Inc.....1-800-332-6858

The Ignition Interlock System can be installed on a vehicle owned by a family member, friend, or company for the defendant's use. An individual whose job requires them to drive a company vehicle can only do so if the ignition interlock device has been installed on that vehicle. Anyone who uses that vehicle must go through the breath test to start the vehicle.

Currently, there is no ignition interlock system for motorcycles. Unless the individual has the ignition interlock device installed on another vehicle, they will be ineligible for restoration for an additional year.

An individual can have the ignition interlock device installed and apply for an Ignition Interlock License at any time during their additional one-year suspension. The device must remain on the vehicle for one year regardless of when the device is installed.

Thirty days before the expiration date of the Ignition Interlock License the individual will receive an Application for Ignition Interlock License/Return of Regular Driver License (DL-3731) form in the mail to apply.