

**DRIVING UNDER THE INFLUENCE TRAFFIC VIOLATIONS**

- Reference:**
1. 75 Pa.C.S. § 3731 (2002)  
  
Pennsylvania Consolidated Statutes  
Annotated, Title 75, Part III, Chapter 37,  
Subchapter B, Section 3731
  2. 75 Pa.C.S. §§ 1547-1548  
  
Pennsylvania Consolidated Statutes  
Annotated, Title 75, Part II, Chapter 15,  
Subchapter B, Section 1547
  3. 35 P.S. §§ 780.101 - 780.144  
  
Pennsylvania Statutes, Title 35, Chapter 6,  
The Controlled Substance, Drug Device and  
Cosmetic Act, §§ 780.101 - 780.144

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**What is considered driving under the influence?**

In Pennsylvania, driving under the influence occurs when you operate or are in actual physical control of the movement of a vehicle in any of the following circumstances:

1. While under the influence of alcohol to a degree which renders you incapable of safe driving.
2. While under the influence of any controlled substance to a degree which renders you incapable of safe driving.
3. While under the combined influence of alcohol and any controlled substance to a degree which renders you incapable of safe driving.
4. While the amount of alcohol by weight in the blood of:
  - (i) an adult (21 yrs or older) is 0.10% or greater;
  - or
  - (ii) a minor (under 21 yrs old) is 0.02% or greater.

## **What is considered to be a Controlled Substance?**

Pursuant to 35 P.S. § 780.102, a "CONTROLLED SUBSTANCE" includes:

- a. All drugs, including:
  - i. Illegal narcotics; and
  - ii. Prescription medications (See, Commonwealth v. Fick, 391 Pa. Super. 625); and
  - iii. Over-the-counter medications (See, Commonwealth v. Fick, 391 Pa. Super. 625).
- b. Substances (other than food) intended to affect the structure or any function of the human body or other animal body.
- c. Any substance which has been found to be and by regulation designates as being a principal compound used or produced primarily for use in the manufacture of:
  - i. illegal and prescription drugs; and,
  - ii. substances (other than food) intended to affect the structure or any function of the human body or other animal body.

## **What is the penalty for a DUI charge?**

The penalty for a DUI charge depends on the number of prior DUI offenses you have had. The first and second offenses are second degree misdemeanors. The third or subsequent offense is a first degree misdemeanor. Each offense imposes a fine of not less than \$300.00. A minimum term of imprisonment will be assigned as follows:

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|-----------------|-------------------------------------|
| First Offense:  | Not less than 48 consecutive hours; |
| Second Offense: | Not less than 30 days;              |
| Third Offense:  | Not less than 90 days;              |

Fourth Offense: Not less than 1 year.

In any instance where a person is sentenced to a period of imprisonment as a result of a conviction for violation of this statute, the court may, in imposing its sentence, consider assigning the individual to a daytime work release program whereby the person would be required to collect litter from public and private property, especially property which is littered with alcoholic beverage containers.

Any person convicted of violating this statute will lose his/her operating privileges within the state of Pennsylvania for 12 months.

**Is there any lesser penalty if it is only my first offense?**

At the discretion of the D.A., you may be recommended for an Accelerated Rehabilitative Disposition (ARD). See 75 Pa.C.S. § 3731 (E)(2),(6),(7), and 75 Pa.C.S. § 1548.

**When is the police officer authorized to give me a breathalyzer or other chemical test?**

Under 75 Pa.C.S. § 1547, any person operating a motor vehicle within the Commonwealth is deemed to have given implied consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcohol content of blood or the presence of a controlled substance. An officer may administer the test when he has reasonable grounds to believe that the operator of the car has been driving under the influence of alcohol or drugs, or, that the motor vehicle was involved in an accident in which another individual was seriously injured or killed.

**What happens if I refuse to take a breathalyzer or other chemical test?**

Under 75, Pa.C.S. § 1547, if you refuse to submit to a breathalyzer or other chemical test, the testing shall not be conducted but your operating privileges within the state of Pennsylvania will be automatically suspended for 12 months. It is the duty of the police officer to inform you that your operating privileges will be suspended upon refusal to submit to chemical testing. However the officer's failure to give you such warning does not automatically bar the State from suspending your license if

you refuse to submit to the chemical testing. See, Commonwealth v. Ruttle, 388 Pa. Super. 262.

If you were charged with DUI, your refusal to take a breathalyzer or other chemical test, along with other testimony concerning the circumstances of the refusal will be admissible as evidence.

You may appeal the suspension.

**Can I request a second test?**

Any individual tested may have a physician of his own choosing administer an additional test which shall also be admissible in evidence. However, the chemical testing given at the direction of the police officer shall not be delayed by a person's attempt to obtain an additional test. Additionally, the chemical test of the sample of your blood or urine shall be from a sample obtained within three hours after the person drove, operated or was in actual physical control of the vehicle.