

PENNSYLVANIA DUI ARREST?

USEFUL INFO REVEALED FROM A FORMER PROSECUTOR

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I. INTRODUCTION

My name is Ellis B. Klein and I have been a practicing Criminal Defense Attorney in Pennsylvania since 1994. After graduating law school, I was hired as an Assistant District Attorney where I rose to the level of Senior Deputy District Attorney. In the five years that I was a prosecutor, I prosecuted over 4,000 criminal cases ranging from minor traffic offenses to homicide. An overwhelming majority of those cases were cases of Driving Under the Influence of Alcohol and/or a Controlled Substance.



Now, as a defense attorney for over 15 years, I have helped over 10,000 clients navigate the legal system. More than 50% of those clients were charged with Driving Under the Influence. Most clients who seek my assistance are regular, everyday people who, for whatever reason, made a bad decision and found themselves in the wrong place at the wrong time. Many of my DUI clients are first time offenders; all of my clients are concerned about losing their freedom, their driver's licenses and how having a permanent criminal record could affect their lives in the future.

If you are reading this book, it is likely that you are one of the approximate 1.4 million people per year who have been

arrested for Driving Under the Influence in the United States. I have written this book to provide basic, but accurate, information to guide people through the criminal justice system. This book is by no means all inclusive, but rather it provides a basic outline regarding what to expect once someone is arrested for DUI in Pennsylvania. DUI defense is complex and cannot be covered completely in this publication. Therefore, it is best to speak with an experienced, local criminal defense attorney to properly advise you.

DISCLAIMER:

This publication is intended to be for informational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, you should seek immediate professional legal advice.

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II. CHOOSING THE RIGHT ATTORNEY

Choosing the right attorney to represent you may be one of the most important decisions you may ever make. The first thing you should look for in a criminal defense attorney is experience. Consider not only how long this attorney has been practicing, but consider where he practices. It is very important that you obtain a local attorney familiar with the local court procedures. The DUI law is the same law throughout Pennsylvania, but every county administers the law differently. Each county has programs specific to that particular county (house arrest, work release, etc.) of which local attorneys are most familiar. It is also important that the attorney handles primarily criminal defense cases because the laws are complex and constantly changing.



It is extremely important that your lawyer have a good reputation with the prosecution because it is up to the police officer and the District Attorney to decide which cases the state is going to prosecute and whether to drop any charges.


When I was a young prosecutor, I dealt with hundreds of defense attorneys, some good and some bad. A good defense attorney, in my opinion, was somebody that was honest and whom I trusted. Many times, a reputable defense attorney whom I knew well would sometimes come to me and say,

"Look, I have a special case. I need you to take a look at this. I need you to drop something or do something for me." A lot of times, it helped the situation if I, as the DA, knew the attorney and trusted him or her. In certain situations, I may have given these attorneys special consideration as opposed to attorneys whom I did not know or trust.

Whomever you choose to represent you, do your homework. Ask questions and then ask more questions. Read reviews from former clients online on websites like [Avvo.com](https://www.avvo.com). Get second opinions. You must be comfortable with your attorney and be certain that he has the experience to properly represent you in court.

III. I AM BEING CHARGED WITH DUI - WHAT HAPPENS NEXT?

In Pennsylvania, police have the option to arrest an individual and immediately bring him or her before a magistrate for bail to be set, or to proceed by way of Summons in which the individual receives the charges in the mail. An



overwhelming majority of DUI cases proceed by summons and most individuals suspected of DUI are either driven home by police or allowed to call for a ride home after they are processed. The Summons and Criminal Complaint typically arrives by certified and regular mail approximately 3 – 8 weeks later.

1. THE PRELIMINARY HEARING:

The first hearing is an evidence hearing before the local District Justice where the crime was alleged to have been committed. **It is a very important stage in the process and should not be attended without an attorney.** At this hearing, the prosecution must demonstrate to the District Justice that there is enough evidence to bind the charges over to the Court of Common Pleas. The District Justice does not determine guilt or innocence, nor does he or she impose punishment for the offense; the judge simply determines if there is enough evidence in the case. If there is not enough evidence against you, the District Justice will dismiss the case. If the state demonstrates that there is enough evidence, the District Justice will hold over the charges and you will be given an Arraignment date in the county court. Bail is typically set at the Preliminary Hearing, which could range from unsecured bail (released on recognizance) to cash bail which would be required to be posted immediately. Most individuals charged with DUI are not required to post bail and are typically released on their own recognizance. The Preliminary hearing usually occurs within 45 days after the charges are filed and can be postponed by an attorney, if necessary.

2. FORMAL ARRAIGNMENT:

Approximately 30-60 days after the Preliminary Hearing (depending on the county) the Formal Arraignment is scheduled in the Court of Common Pleas. This hearing is a procedural hearing in which a plea of Not Guilty is automatically entered and you are served with the formal

charges against you and given your trial date. Some counties, your attorney can “waive” your appearance at this hearing which excuses you from attending this formality and the paperwork will then be sent to you in the mail. Other counties require you and your attorney to attend. After the Arraignment, you are permitted to file a Motion for Discovery in which the District Attorney must turn over all of the police reports, witness statements and all other evidence against you. Additionally, you are permitted to file Motions, including a Motion to Suppress Evidence in which the prosecution must prove to a judge that the police acted constitutionally in stopping you and gathering evidence against you. If the Judge decides after a hearing that the police acted improperly, then all of the evidence in your case is suppressed (thrown out) and the charges against you are dropped.

3. TRIAL DATE / ARD DATE:

Depending on the county, the third court date occurs anywhere from 45-90 days after the Formal Arraignment. Some counties schedule Pretrial Hearings, which is a conference between your attorney, the DA and the judge. Other counties that do not have Pretrial Hearings will issue trial dates at which time the individual either enters a plea of guilty or goes to trial before a judge or jury. A majority of individuals are sentenced on this date, if found guilty. At sentencing, defendants are permitted to introduce evidence (character witnesses, AA sponsors, medical records, etc.) to assist the judge in determining the appropriate sentence.

If the individual is eligible for the ARD program for first time offenders, an “ARD” hearing date is scheduled approximately 90-120 days after the Arraignment. If accepted into the ARD program, the charges are eventually dropped after successful completion of classes and community service. The ARD program is discussed in more detail in Chapter VI: First Time Offenders.

IV. THE DUI LAW

DUI is the most prevalent crime in the state of Pennsylvania. Nationally, approximately 1,400,000 people are arrested each year for DUI and over 50,000 are arrested in Pennsylvania alone. As a result, the legislature has enacted harsh penalties for DUI convictions, including mandatory jail time and lengthy license suspension if convicted of this crime.



The DUI law is found in section 3802 of the Pennsylvania Vehicle Code. It is a misdemeanor of the second degree or first degree, depending on prior record and blood alcohol level, and may be punishable by mandatory jail time and lengthy license suspension.

The crime of Driving Under the Influence occurs when an individual “drives, operates, or is in actual physical control” of the movement of a motor vehicle while under the influence of alcohol or a controlled substance. The law sets

three tiers of intoxication with the resulting penalties becoming more severe the higher the blood alcohol content.

The lowest tier is called General Impairment and is found in section (a)(1) of the DUI law. All individuals charged with DUI are charged with General Impairment. This section states that an individual is guilty of DUI when, based upon the officer's opinion, the individual has enough alcohol or drugs in his system as to impair his abilities to operate a vehicle safely. This section is not based on a particular blood level, but rather the officer's opinion based on driving behavior, observations of intoxication (odor of alcohol, bloodshot, glassy eyes, difficulty balancing) and other evidence such as performance on field sobriety tests. The General Impairment section gives the Commonwealth a way to convict motorists when there is no blood level for those who refused chemical testing.

The remaining sections of the DUI law are based on the results of the breath or blood test. Section (a)(2) applies when the individual's blood alcohol concentration (BAC) tested between .08% and .10%; Section (b) applies where the BAC is between .10% and .16%; and Section (c) applies when the testing results are above .16%, or if drugs are present. Other sections of the DUI law include Section (d) Driving Under the Influence of Controlled Substances (both legally prescribed and illegal controlled substances), and Section (e) which covers individuals under the age of 21 who drive with a blood alcohol level greater than .02%.

The police do not necessarily have to observe a vehicle being driven in order to charge a DUI. The law states that one must “drive”, “operate” or be in “actual physical control” of the vehicle. If driving behavior is not observed by the officer, typically in situations when an accident occurred, other evidence may be used including circumstantial evidence, statements made by the driver, statements by eyewitnesses and the location of the vehicle. It does help the defense, however, when the officer does not actually see the motorist operating the vehicle.

FIELD SOBRIETY TESTING

Field sobriety testing is not required by law but rather, is evidence the police are trying to gather against you. As these tests are not required by law, the motorist may (politely) refuse the field testing without fear of any additional penalties. However, a motorist should always agree to take the blood or breath test, as refusing could lead to increased penalties, including increased jail time (if convicted) and lengthier license suspension.

Most clients incorrectly think that field sobriety testing is designed solely to test motor function and balance. This is untrue. There is a second component of these tests which tests the motorist’s mental acuity – the ability to listen and to follow instructions. I have had clients do well on the 9 step walk and turn test, for example, but in the officer’s opinion they failed because they started the test prematurely or they counted to the wrong number.

There are a variety of field sobriety tests that are given by police departments. The most common are the “9 step walk

and turn”, the “1 leg raise”, and the “index finger to nose test.” There are many other recognized field tests but these are by far the most common in Southeastern Pennsylvania.

In the 9 step walk and turn, the motorist is asked to take 9 steps touching heel to toe in a straight line, pivot, and return 9 steps heel to toe. The officer is trained to look for mistakes in counting, using the arms for balance, not touching heel to toe or falling off the “line.” There is no requirement that the test be performed on a visible line and factors such as sloping of the testing site, debris, footwear worn or prior medical condition can affect performance of this test.

The One Leg Raise test typically requires the motorist to stand on one leg and lift the other leg a certain height off the ground for a certain amount of time – typically 30 seconds. Failures include putting the foot down, using arms for balance, swaying and improper counting.

For the Index Finger to Nose test, the motorist is asked to close his eyes, tilt his head back and touch his nose with his index finger. Failures include not touching the nose, not closing the eyes, or balance problems.

Another Field test that is commonly given is not admissible against the motorist in court. The Preliminary Breath Test, also known as a PBT, is usually given by the officer after the field tests are administered. This device, which resembles a pen or a small flashlight is designed to give the officer a rough idea of the amount of alcohol that is present. If the number approaches the .08% limit, then the officer has the right to request further chemical testing – usually a blood test at the hospital or a breathalyzer machine at the police

station. The results of the PBT are not admissible in court because the device is not considered accurate enough to be used as evidence in court. Blood testing and breathalyzer machines are more reliable and the results are admissible. The results of the PBT are so unreliable that even the mention of the test at trial results in an immediate mistrial.

Bottom line: Field sobriety tests are not designed for the motorist to pass and are tools simply to gather evidence against the motorist. While the blood or breath test should always be taken by the motorist, the Field Sobriety Testing should be politely refused.

V. MANDATORY SENTENCING PROVISIONS

If you are found guilty of Driving Under the Influence and your BAC is above .10%, or if this is a second or subsequent offense, there is mandatory minimum jail time that is set by the Legislature. A mandatory sentence means that a judge has no discretion and is required by law to impose jail time, which can range from a minimum of 2 days in jail to a minimum of 1 year, depending on prior record. Intermediate punishment, such as Work Release or House Arrest is determined by the sentencing judge.



Pennsylvania Mandatory Minimum Sentences

Blood Alcohol Level	1st Offense	2nd Offense (w/in 10 yrs)	3rd Offense (w/in 10 yrs)
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.08 - .099% or Refusal of Testing	6 months probation \$300 fine No license suspension	5 days – 6 months jail \$300 - \$2,500 fine 1 year license suspension	10 days–2 years jail \$500 - \$5,000 fine 1 year license suspension
.10 - .159%	2 days – 6 months jail \$500 - \$5,000 fine 1 year license suspension	30 days – 6 months jail \$750 - \$5,000 fine 1 year license suspension	90 days – 5 years jail \$1,500 - \$10,000 fine 18 months license suspension
.16% + or Drugs	3 days – 6 months jail \$1,000 - \$5,000 fine 1 year license suspension	90 days – 5 years jail \$1,500 - \$10,000 fine 18 months license suspension	1 year – 5 years jail \$2,500 - \$10,000 fine 18 months license suspension

There is a 10 year “look-back period” in which the District Attorney will review an individual’s prior record to determine whether there were past DUI convictions or ARD dispositions within the previous 10 years. The look-back period is calculated by determining the date of arrest on the new case and date of conviction (or ARD) for the prior case.

MULTIPLE OFFENDERS

If this is a second or third offense within the 10 year look-back period, the mandatory minimum prison sentence is

dramatically increased ranging from 5 days in prison to 1 year. Depending on the county, house arrest, rather than incarceration, could be a possibility and is left to the sentencing judge's discretion. If house arrest is granted by the sentencing judge, the sentence is served in the individual's home rather than the county prison, and the individual is typically permitted to leave the home to work.

Application for House Arrest should be done in advance of sentencing. I recommend to my clients who are multiple offenders that they apply for House Arrest immediately after the Preliminary Hearing to avoid potential incarceration while awaiting approval from the prison after conviction.

Additionally, the chances of House Arrest are increased if the individual immediately seeks intensive alcohol treatment such as inpatient or outpatient treatment and/or attends frequent Alcoholics Anonymous (AA) meetings. If this is a second or third offense, the sentencing judge assumes that the individual has an alcohol problem. The best way to avoid jail and get house arrest is by immediately seeking alcohol counseling and abstain from the use of alcohol.

VI. FIRST TIME OFFENDERS

Many of my clients are first time offenders who have never been in trouble before and are concerned about how a DUI will affect their lives in the future. Luckily, Pennsylvania has a program for first time



offenders which gives people an opportunity to avoid going to jail and having a criminal conviction on their record.

If this is a first offense and there were no injuries, you may be eligible for the Accelerated Rehabilitative Disposition program, known as ARD. If ARD is approved by the District Attorney, an individual does not have to plead guilty, is not convicted of DUI, and the charges are eventually dismissed after successful completion of safe driving classes, community service, and a probationary period. There is no mandatory jail time and license suspension ranges from no suspension for the lowest BAC level up to 60 days suspension for levels over .16%. Once the charges are dismissed, a Motion for Expungement can be filed resulting in all of the charges being officially removed from your record, including your “rap sheet”. As a former Senior Deputy District Attorney, I approved over 1,000 people for ARD, and as a defense attorney, I have assisted over 1,000 clients gain admission into this beneficial program. Admission into the ARD program is determined solely by the District Attorney’s Office and as such, your attorney’s relationship with the DA is extremely important.

Application for ARD is typically made at the Preliminary Hearing. After the Hearing, you will be Court ordered to attend a self reporting alcohol evaluation called a CRN evaluation. The results of this evaluation determine the length of Alcohol Highway Safety Classes (typically 16 or 32 hours) and if deemed necessary, you may have to attend alcohol counseling. Most counties also require a period of

community service and fines are imposed totaling approximately \$1,500 or more, on average.

Depending on the county, ARD probation typically lasts either six months or one year. Once classes and community service are complete the individual must stay arrest free during that period of time. Once completed, the charges are dropped by the DA and then the entire case may be expunged by filing a Motion for Expungement in the Court of Common Pleas. Just because the charges are dropped does **not** mean that the criminal record is also dropped. As DUI is a misdemeanor criminal offense, fingerprints and a “mug shot” are required which will remain on a criminal history, otherwise known as a rap sheet, until the case is expunged. Once the Judge approves the Expungement, all agencies are ordered to destroy all records of the arrest, including the State Police who keep the rap sheet, local police, and the courts. Upon receipt of the Expungement Order, all agencies are required to destroy all record of the arrest and send an affidavit of compliance to the defendant. If ARD is denied by the prosecutor, it is possible to request that the DA reconsider his decision. In this situation, your attorney’s relationship with the District Attorney is of the utmost importance. If a client is initially denied ARD, I usually send a letter to the DA requesting reconsideration, listing the reasons why my client should have the benefit of the ARD program. Sometimes, I will call the arresting officer and ask him to personally call the DA to “put in a good word” for my client in an attempt to convince the DA to reconsider. I do this because when I myself was a DA,

when a police officer took the time to call me personally, I gave his opinion great weight because he knew the case better than I. It has been my experience that most police officers are more than willing to assist first time offenders who were cooperative. This exact situation occurred to one of my clients recently and the police officer literally took it upon himself to sit outside the District Attorney's office until the assigned DA walked by (the officer left the DA several messages but did not receive a return call). This is not a typical situation by any means, but this particular police officer felt very strongly about my client getting ARD. Eventually, the District Attorney changed his mind and admitted my client into the ARD program.

Just because you were arrested for DUI does not mean that you will automatically go to jail and have a permanent criminal record. If you are a first time offender, hopefully the District Attorney will admit you into the ARD program so that the charges will eventually be dismissed against you after you attend classes, possible alcohol counseling, community serves and the payment of fines. The ARD program is designed for people who are not criminals; it is for people who made a bad decision to drive and did not seriously hurt anyone as a result of their actions. It is a program designed to teach first time offenders a lesson so they do not repeat the same behavior in the future.

VII. DEFENSES TO DUI

Just because you are charged with a DUI does not mean that you automatically have to plead guilty. There may be a defense to the charges and you have the right to go to trial before a judge or a jury in which the Commonwealth must prove guilt beyond a reasonable doubt. Some of the most common defenses are listed below.

A. PROBABLE CAUSE (REASONABLE SUSPICION)

In order for a vehicle stop to be constitutional, the police must have “reasonable suspicion” or probable cause for the vehicle stop. Police officers cannot pull over a vehicle for no reason, as courts have held that these stops infringe on the motorist’s constitutional rights. Typically, for a stop to be valid, a police officer must observe a motor vehicle violation or observe criminal activity. Valid reasons for vehicle stops include speeding, careless or reckless driving, substantial drifting outside the lane of travel and other motor vehicle violations observed by the officer.

If the police did not have a valid reason to stop a vehicle, a Motion to Suppress Evidence can be filed in the Court of Common Pleas. At this hearing, which occurs prior to the trial, the police must prove that they had a right to stop the motorist. If the judge rules that the stop was unconstitutional, then all of the evidence of the case is suppressed and the case gets dismissed.

Courts have held that stops were unconstitutional in situations where the police observe a “momentary and

minor” drifting of a vehicle outside its lane of travel; when police officers did not follow a vehicle for the proper distance while attempt to gauge speed; or if there were other improper reasons for the stop.

Probable cause is not needed when the vehicle is not being pulled over by the police. I have seen many cases where clients have “tried to do the right thing” by pulling over to the side of the road to “sleep it off” when they realized they were too impaired to drive. Unfortunately, Pennsylvania does not have a “sleep it off” policy and these offenders are charged just the same as if they were pulled over for a motor vehicle violation. In situations where the motorist pulls over voluntarily, police need no reason to approach the vehicle and probable cause does not apply.

Probable cause is also not needed when there is an accident. A police officer may approach and question a driver if he believes the driver was involved in an accident. Probable cause is also not needed for DUI Checkpoints, also known as DUI roadblocks. The United States Supreme Court has held that DUI Checkpoints are constitutional, but only if certain guidelines are met such as the checkpoint must be well advertised and in an area known to be frequented by drivers who are under the influence.

B. "THE POLICE DIDN'T SEE ME DRIVING" - DRIVING, OPERATING OR ACTUAL PHYSICAL CONTROL OF A VEHICLE

The police do not necessarily have to observe a vehicle being driven in order to charge a DUI. The law states that the Commonwealth must prove that a motorist drove, operated, or was in "actual physical control" of the movement of a motor vehicle. Courts have held that if there is no movement of the vehicle observed by the police officer, at a minimum, the vehicle must be running with the defendant behind the wheel. Additionally, there must be other evidence to indicate that the vehicle was driven to that location while the motorist was intoxicated. Factors courts will consider include the location of the vehicle, statements from the driver and any other circumstantial evidence that the vehicle was driven while intoxicated. These situations typically arise when a motorist falls asleep at a traffic light or is found in a disabled vehicle from an accident.

I have successfully defended cases where the motorist fell asleep behind the wheel in a parking lot of an establishment that serves alcoholic beverages. In these cases the Commonwealth was unable to prove that the vehicle was driven to that location while the driver was intoxicated. The driver could have been drinking inside the establishment and simply went to his vehicle to make a call or listen to the radio and fell asleep without having driven the vehicle.

C. ATTACKING CHEMICAL TESTING PROCEDURES

The law states that the police officer, not the motorist, may decide whether to request a chemical test of the motorist's blood, breath or urine. Typically, blood testing has become the most common as fewer and fewer police departments are relying on the old-fashioned breathalyzer machines. Blood testing is scientifically determined to be more accurate than breath or urine tests, and are about 90 – 95% accurate. From a defense attorney's standpoint, I would rather see a breath test administered, because breath tests can be up to 20% inaccurate.

The typical defense to blood and urine testing is attacking the "Chain of Custody". The Commonwealth must prove that the blood was tested at an approved facility and that the blood is indeed this motorist's blood. The Commonwealth must account for the blood from the moment it is drawn by the nurse to the moment the results are received by the crime lab. Mistakes can be made and therefore, the Commonwealth must prove that the blood test results are from your blood – they must show the Chain of Custody.

For a breath test, the Commonwealth must prove that the breath testing machine is an approved device and that it was tested for accuracy and calibrated within certain time frames. Certificates of accuracy and calibration must be produced in court in order for the results to be valid. Additionally, records must be kept of all results and if there are any deviations greater than .02%, then the machine must be taken out of service and recertified for accuracy and

calibrated. If the machine was not immediately taken out of service, then all results after the .02% deviation could be attacked and possibly thrown out of court.

VIII. REFUSAL OF CHEMICAL TESTING

I have seen clients refuse testing for a variety of reasons: not wanting to incriminate themselves further, fear of needles, to “spite” the officer or, usually, because they simply did not understand what their rights were.

No matter what the reason for the refusal, the consequences are severe.



In Pennsylvania, when a motorist initially receives his driver's license, he automatically agrees to a chemical test of his blood, breath or urine if a police officer reasonably suspects that the motorist is under the influence of alcohol or a controlled substance. This is called “Implied Consent.” If the motorist refuses chemical testing, he will be charged with DUI and will lose his license for an additional one year for a first offense, and an additional 18 months for a second offense. This suspension is in addition to any loss of license for the DUI itself.

When requesting the test, the officer is required to read the motorist certain rights, called Implied Consent or “O'Connell Warnings”. These rights inform the motorist that he is required to take the test, and if he refuses, there

will be increased license suspension. If the motorist refuses, Penndot sends a letter to the motorist suspending the license for at least one year. This suspension is **in addition** to any suspension the motorist incurs for the DUI offense. There is an appeal process whereby the motorist can appeal the suspension to the County Court of Common Pleas, which puts the suspension on hold until the court makes a decision. At the appeal hearing, the police officer must prove to the judge that he went through the proper procedures in requesting the motorist to take the test. If proper procedure was not followed, they then the suspension will be nullified. Generally speaking, license suspension appeals for refusals are extremely difficult for the defense to win because police usually read to the motorist the Implied Consent form supplied to them by Penndot. Additionally, courts have held there is no right to have an attorney present when taking the blood or breath test.

If your case involved a refusal of testing, it is best to immediately contact an attorney. I have had cases where I was able to contact the arresting officer immediately and convinced him not to notify Penndot about the refusal. If the officer does not send in the refusal notification to Penndot, then there is no additional suspension for the refusal.

IX. AN INTERVIEW WITH A FORMER DUI PROSECUTOR

The following is an excerpt of a recent interview with Ellis B. Klein, Esquire.

Interviewer: You started your career as an Assistant District Attorney; how did you enjoy that experience?

Ellis: I absolutely loved being a Prosecutor. As a new lawyer, being an Assistant DA is by far the best, and scariest, experience you can have as a new attorney. I was in court literally every day, litigated thousands of cases and gained invaluable experience. Being a DA is a lot like a trial by fire – sometimes I was handed a case 5 minutes before the trial was set to begin and expected to try the case before a jury. Being a DA teaches you to think on your feet and be ready for anything that comes your way. I enjoyed my time with the District Attorney's office immensely and it has prepared me well for my job as a defense attorney.

Interviewer: How does your past experience as a DA help you as a defense attorney?

Ellis: My past experience has been invaluable to me as a defense attorney. I have maintained an outstanding relationship with the police and with my former colleagues in the DA's Office. Most police officers remember me from my tenure in the DA's office when I worked with them on thousands of cases. Many DA's that are currently senior prosecutors are people that I helped train and who remain my friends. Several of the lawyers that I worked with are

now Common Pleas Court Judges or local District Justices. Most importantly, my experience allows me to look at a case from both sides to look for all of the little “tricks” that the prosecution uses to gain convictions. Simply stated, my past experience put me in a very unique situation which allows me to get the best results for my clients.

Interviewer: Who is the typical person, if any, who gets arrested for DUI?

Ellis: It can really happen to anybody. I have represented teenagers and I once represented a client in his 90’s who was pulled over for a DUI. It used to be that mainly males were arrested for DUI, but over the past several years I have seen a large increase in females getting arrested for DUI.

Interviewer: Is there a particular back story you hear from a lot of DUI arrestees, such as, “I only had two beers.”?

Ellis: Most of the back stories I hear are very similar. Nobody usually intends to go out, get drunk, drive, and get pulled over or get into an accident. Most people say: “I was at a restaurant”, “I was at sporting event” or “I was at a wedding and I had a couple of glasses of wine, a couple of beers.” Most of my clients come in and are obviously very upset and concerned about what is going to happen to them. Most say “I made a terrible mistake. I’m scared. I don’t know what is going to happen to me. Please help me.”

Interviewer: What was your favorite case as a defense attorney?

Ellis: There are so many, but my all-time favorite case was

when I successfully defended the “Bread Squeezer”, a bizarre case that received international attention. It was a sensationalized case where my client was accused of felony charges for vandalizing bread and cookies in one of the local supermarkets.

The case was featured on every local TV station, local and national newspapers, Court TV and Time magazine. It was on the BBC and CNN Headline News. It was one of the strangest cases in county history, and it was especially nice for me because I got to try it against my former boss and mentor, who is now a judge.

The jury wound up acquitting the client of all criminal charges. It was a once in a lifetime trial and it also happened to be my very first jury trial as a defense attorney. So my first jury trial as a defense attorney was my most memorable case.

Interviewer: I will bet you have seen some humorous things happen in court.

Ellis: One of the funniest things I ever saw in court was before I was even a licensed lawyer, when I was in law school and interned for the District Attorney’s Office. The first week as an intern we got to shadow an experienced DA at Preliminary Hearings. We were observing a hearing when the defendant fell asleep at counsel table and began snoring loudly. At the end of the hearing, the defense attorney stood up to argue the charges and said to the judge: “Your Honor, I was going to say the defense rests, but appears that he has been resting for quite awhile now.” It was at that point that I thought to myself, “I’m really going to like this job.”

The saying that truth is stranger than fiction ring very true, especially in the courtroom. That is one of the reasons why I love what I do for a living.

Interviewer: What is the highest blood alcohol level you ever dealt with?

Ellis: The highest level I ever prosecuted was someone whose blood level was .48%, basically one drink away from being in an alcohol induced coma. I recently represented a first time offender who was a .43%. She was a really nice woman who obviously had a problem. We got her into treatment, which convinced the District Attorney to place her into the ARD program and she did not have to go to jail. Luckily, the blood alcohol level does not affect ARD eligibility.

Interviewer: Are the people you see mostly first-time offenders?

Ellis: Well over 50% of my cases involve first-time offenders; people who have never in their lives ran afoul of the law. Most are very nice people who made a bad decision to drive. Luckily, Pennsylvania has a program for first-time offenders, for people who have not been in trouble before and did not harm anyone as a result of their actions. I have also represented a defendant who had 10 prior DUI cases.

Interviewer: What is the first time offender program called?

Ellis: The acronym for the program is A.R.D. It is short for Accelerated Rehabilitative Disposition. Basically, it is a pretrial program that enables the charges to be dismissed after the person pays a fine, goes to classes and completes community service. It gets people out of the charges

without a conviction and without having to go to jail. People who are approved for ARD do not have to plead guilty or admit to anything and, assuming they comply with all of the conditions, the charges are eventually dropped. Once the charges are dropped, their record can be expunged so that any fingerprints, mug shot and the individual's rap sheet are destroyed.

Interviewer: Is the Accelerated Rehabilitative Disposition available to all 1st time DUI offenders?

Ellis: It is available to first-time offenders who have never been in trouble in their lives, who did not hurt anybody as part of this incident, and who are properly licensed and insured. It is solely up to the DA to determine who gets ARD and who goes to jail. As a DA, I approved well over 1,000 people for ARD and, as a defense attorney, I have assisted another 1,000 people gain entry into the ARD program.

Interviewer: What happens to young people under age 21 who are charged with DUI?

Ellis: I see a lot of young people getting pulled over for DUI and the consequences could potentially affect them for the rest of their lives. The law says if you are under 21 and the BAC is .02% or greater, then you are under the influence. If found guilty, there is a mandatory minimum of two days in jail, a one-year license suspension and a criminal record that would remain until age 70. Hopefully, ARD is available to the minor in these situations. Parents are concerned about their children having a criminal record for the rest of their lives but if they get ARD, the charges will eventually be dropped and the case will be expunged from their record.

Interviewer: When a person decides he wants to retain a private attorney, what traits should he look for to determine if he is speaking to the right person?

Ellis: Experience is the most important factor, by far; how long this attorney has been practicing and in particular, where he practices. It is very important that you obtain a local attorney familiar with all the local rules and procedures. It is the same law throughout the Pennsylvania, but every county administers it differently. You need a lawyer who has an excellent relationship with the local police and prosecutors in order to get the best outcome.

Interviewer: Once someone is arrested and charged with DUI, what consequences do they face?

Ellis: Pennsylvania takes DUI very seriously. It is a misdemeanor in Pennsylvania if you get arrested for a DUI. In a lot of other states, DUI is only a traffic offense. However, in Pennsylvania you are fingerprinted. You get a mug shot. You get booked. You have a rap sheet. The consequences could stick with you for the rest of your life as the law states that convictions cannot be expunged until 70 years of age.

If you are found guilty and your blood level is above .10%, there is mandatory jail time that the judge is required to impose which ranges from a minimum of 2 days for a first offense to a one year minimum for a third offense. There is a minimum one-year license suspension and a criminal record.

Interviewer: A lot of people say, "Well, it is my fault. I did this and I just want to get it over with and plead guilty." What is wrong with this approach?

Ellis: People come in and say to me, "I'm guilty." My response is that I am not concerned if you *feel* that you guilty, but rather, whether the police can prove that you are guilty.

As far as pleading guilty, I tell clients, "You might not have to. You might be eligible for ARD;" "You might have a defense and we can go to trial and fight the case." An experienced criminal defense attorney looks at all of the evidence, requests discovery and determines exactly what evidence the Prosecution has against the client before making a decision. I will never tell somebody to plead guilty unless I am 100% sure that there is no other alternative.

Interviewer: People say, "The police did not read me my rights. The whole case should be thrown out." How does Miranda work, and when do Miranda rights apply?

Ellis: Almost every client says to me, "The police officer did not read me my rights" and the case should be thrown out as a result. I think that this misconception is a product of T.V. and Hollywood. Everybody thinks the minute they are arrested they have to be read rights. This is simply untrue. Miranda warnings - the warnings where police have to advise suspects of their right to remain silent, the right to obtain an attorney, etc. - only apply when someone is in custody and are asked incriminating questions.

With most DUI cases, it really does not matter what the motorist has to say, as far as answering questions. This is because the case is based on the officer's observations and ultimately on the testing results. If you answered questions

and Miranda should have been given, the most that can happen is that the statements are thrown out. The case stays open, and they still prosecute the case based upon the officer's observations and tests. However, they would have to do it without your statements.

Interviewer: What happens to the person's driver's license?

Ellis: If the client gets ARD, there could be a short license suspension. If the BAC is between 0.10% and 0.16%, there is a mandatory 30 day suspension. If the BAC is above 0.16%, or drugs are found, there is a mandatory 60 day suspension. There is no loss of license for a BAC below .10%. If the individual is under age 21, there is a 90 day suspension.

If the motorist is convicted and it is a first offense and the BAC is over .10%, there is a loss of license for one year. There is a "bread and butter" license available after serving 60 days on suspension, and if approved, it allows the individual to drive to and from his place of employment.

For a second offense or greater, license suspension is anywhere from a one year to 18 months, based on blood level and priors. There is no occupational (bread and butter) license if it is a second offense or greater.

Interviewer: Are there any penalties if you refuse to take a blood, breath or urine test at the police station or hospital?

Ellis: There are very harsh penalties for refusing chemical testing. In Pennsylvania, when you are given a driver's license you automatically agree to chemical testing if a police officer suspects you are under the influence. The police officer does have to read you certain rights before you make the decision to submit to the test. If you refuse, there

is a one-year suspension for refusing which is in addition to the suspension for the DUI.

Interviewer: What about clients who have more than one offense in their past?

Ellis: The consequences are severe and involve mandatory jail time ranging from 5 days in jail for a 2nd offense in the lowest level to one year minimum jail sentence for a 3rd offense in the highest level. Additionally, mandatory license suspension ranges from 1 year to 18 months. If my clients have more than one offense in their past, I recommend that they obtain treatment as soon as possible. The clients who seek intensive treatment such as inpatient or outpatient counseling and also attends frequent Alcoholics Anonymous meetings are the clients who generally get breaks at sentencing like house arrest or work release.

Interviewer: Finally, what advice would you give people who have been arrested for DUI?

Ellis: The best advice is to immediately speak with an experienced local defense attorney who practices in the county where you have been charged. Most attorneys, like myself, offer free consultations. You must be comfortable with your attorney and confident that he is an expert in his field. Seek a second opinion if you are not sure, but be aware of attorneys who tell you what you want to hear or who scare you into retaining them. Ask a lot of questions and then ask some more questions. Research the attorney's reputation on the internet on websites like [Avvo.com](https://www.avvo.com), where you can read former client reviews. Choosing the right

criminal defense attorney to represent you could be one of the most important things you may ever do, so do so wisely

X. CLIENT TESTIMONIALS*

(*SOURCE: AVVO.COM CLIENT REVIEWS)

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“Ellis Klein is a terrific attorney who represented my son in a DUI case. Ellis was understanding and sympathetic yet very forthright regarding the seriousness of the issue. He was extremely knowledgeable of the process and kept us informed at every step. He had a very professional presence, was confident (but not arrogant) and kept us calm throughout a very traumatic situation. He was a critical factor in my son receiving the best possible outcome from this DUI event.” – Mark

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“Having a trusted advisor at a time like this is priceless. Ellis treated me with respect, warmth, and compassion. He was almost always available when I called. When he was in court or with another client, he returned my calls/emails the same day and often within an hour. Ellis was extremely patient and took the time to make sure I understood what was happening. During my court appearances, I observed how Ellis interacted with judges, police officers, ADAs, and court personnel. He clearly is well respected and has very good relationships within the legal community. Mr. Klein was direct and honest with me. He did not promise anything other than to work diligently on my behalf. The only reason I avoided jail time is because Ellis represented me.” – Heather

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“Against all odds, my husband received the minimum sentence with house arrest for 90 days, rather than 1 year in jail. Ellis was worth every penny we paid. If he does not answer his phone immediately, he returns calls promptly. He kept us informed and prepared us for trial. If you are facing DUI, Ellis is your guy!! Thank you Ellis.” – Gail

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“I hired Ellis after being arrested for DUI (2nd offense, 1st in PA). I was not ARD eligible, so I was facing serious repercussions. I knew immediately Ellis was the lawyer I wanted to represent me. Professional, knowledgeable, honest and responsive, Ellis provided me with realistic expectations and advised me he would do everything in his power to have me receive the best outcome. He delivered! From the first court date to the final, he kept me informed and was always available to discuss any concerns/questions I had. If you want a lawyer you can trust and need the very best outcome, contact Ellis.” - Michael

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“I had a difficult DUI case to defend and Ellis Klein provided the genuine effort and superior strategic planning skills that my case desperately needed. Ellis was more than a lawyer, he acted like a friend. He really cared about me and put forth every bit of energy he could and helped me achieve the very best result possible. I was lucky to have him for my lawyer.” – Jim

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“Ellis Klein served as my lawyer in a very difficult case that I was facing and with his help, the outcome of my case turned out wonderful. Mr. Klein helped me very much with his knowledge of my case. Thanks Ellis!” – Lauren

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“Mr. Klein helped me out with a criminal charge in which the outcome was the best possible situation for me. Ellis worked with me as far as a payment plan, knew the judge and officer and I couldn’t ask for anything more out of a lawyer. I’m very happy with his performance and would recommend him to anyone.”

– Anthony

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“Ellis literally gave me a new lease on life. I was facing a DUI, which would have affected my livelihood, my freedom and would have left me with a criminal record. Mr. Klein was able to have all the evidence suppressed by challenging the officer’s cause for pulling me over. He was very thorough, leaving no stone unturned. His demeanor in court was confident and knowledgeable. He saved my reputation and my family from facing serious economic hardship. Thank You”–Phil

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****Source: Avvo.com client reviews. Read additional client reviews at www.Avvo.com.***

XII. CONCLUSION

The consequences of a DUI conviction can have far-reaching effects on a person's life, including mandatory incarceration, lengthy loss of license and a permanent criminal record. The best advice I can offer is to immediately speak with an experienced local defense attorney who practices in the county where you have been charged. Most attorneys, like myself, offer free consultations either over the phone or in person. I gladly speak with new clients at length over the phone to guide them in the right direction and explain how I can help them. You must be comfortable with your attorney and confident that he is an expert in his field and in his county. Seek second opinions if you are not sure, but be aware of attorneys who scare you into retaining them or who tell you what you want to hear just to get the case. Ask a lot of questions and then ask more questions. Research the attorney's reputation online on websites like Avvo.com, where you can read reviews from former clients. Choosing the right criminal defense attorney to defend you could be one of the most important decision you may ever make, so do so wisely. Good luck.

A handwritten signature in blue ink, appearing to read 'EBK', with a stylized flourish at the end.

Ellis B. Klein, Esquire

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Awards and Accolades



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in Pennsylvania by the National
Advocacy for DUI Defense
(NAFFD)*



*Ranked as one of the
Top 100 Criminal Defense
Attorneys in Pennsylvania
by the American Society of
Legal Advocates (ASLA)*



*Voted as one of the
10 Best DUI Attorneys
in Pennsylvania for
Client Satisfaction by
the American Institute
of DUI Attorneys*