

In Pennsylvania, the laws regarding alcohol and driving may be found in the Vehicle Code, primarily under Chapter 38, Driving After Imbibing Alcohol or Utilizing Drugs. To make it easier, we will refer to this as Driving Under the Influence (DUI). The laws are quite complex, and it is recommended you consult an attorney or your District Attorney's office with any questions you have.

PER SE VERSUS IMPAIRMENT¹ — The DUI statutes do not require proof of impairment, although that may be considered in court. This is known as “per se,” a term meaning “by itself.” The prosecutor has only to prove that the level of alcohol or drugs consumed by an offender was above a set limit.

ACTUAL PHYSICAL CONTROL² — This means the operator was in control of the movement of the vehicle and not necessarily driving the vehicle. Examples would be an intoxicated driver who passes out at a traffic light, or a driver “sleeping it off” on the side of the road. This can be a controversial element which depends a lot on the police officer's observations at the scene. There are no hard and fast rules and case law is split on this issue.

VEHICLE³ — There is nothing in the DUI law which states an individual must be operating a car or truck. People have been convicted of DUI while operating bicycles, lawn tractors, snowmobiles, off-road and recreational vehicles and yes, even a horse and buggy.

THREE-TIERED APPROACH⁴ — Penalties for DUI are generally determined by an offender's blood alcohol concentration (BAC) at the time of arrest. Pennsylvania law has created three tiers, or levels, at which progressively stiffer penalties are imposed. These are:

General impairment	Incapable of safe driving; BAC is between 0.08% and less than 0.10%
High rate of alcohol	BAC is between 0.10% and less than 0.16%
Highest rate of alcohol	BAC is greater than 0.16%
Minors	BAC is greater than 0.02%

UNDER 21 - ZERO TOLERANCE⁵ — It is illegal for anyone under the age of 21 to purchase, attempt to purchase, consume, possess or transport alcoholic beverages, therefore the limit for minors is less than a person of legal drinking age.

PENALTIES FOR DUI⁶ — Penalties for DUI also take into account the number of prior convictions an offender may have within a ten-year period. Pennsylvania has created mandatory minimum penalties for DUI, which means the judge must impose a specific sentence upon conviction.

DUI GRADING⁷ — DUI can be graded as an ungraded misdemeanor, or a first or second-degree misdemeanor or a third-degree felony depending on the specific circumstances surrounding the arrest. These can include the following:

- BAC or use of controlled substances at time of arrest
- Minor child as occupant of vehicle
- Refusal of chemical testing of breath or blood
- A crash which involved serious bodily injury or death, or damage to another vehicle or property
- The number of prior DUI offenses in an individual's criminal history in the previous ten years
- Licensing class and vehicle being operated at time of arrest

MAXIMUM PENALTIES FOR DUI⁸ — First degree misdemeanors carry a maximum jail term of up to five years; second degree misdemeanors a maximum of two years; third degree felonies a maximum of seven years.⁹

CHEMICAL TESTING¹⁰ — A person who is driving, operating or in physical control of a vehicle in Pennsylvania is considered under law to have given consent to one or more tests of their breath or blood to determine the alcohol content or the presence of controlled substances. Refusing to provide a sample of breath or blood for testing will result in a driver's license suspension of at least one year, and up to 18 months.

DUI OTHER THAN ALCOHOL¹¹ — A DUI conviction can result from substances other than alcohol. This includes illegal, prescription and over the counter drugs, solvents and noxious chemicals.

IGNITION INTERLOCK¹² — An Ignition Interlock system is a device that is installed in a motor vehicle to prohibit an individual under the influence of alcohol from operating the vehicle. An individual is required to blow into the device before starting the vehicle. If the device detects alcohol, it will prevent the vehicle from starting. In addition, at periodic times during the operation of the vehicle, the individual will be prompted to blow into the device to ensure they are not under the influence. An Ignition Interlock system is leased from the Ignition Interlock vendor.

Pennsylvania law makes the Ignition Interlock requirement mandatory for first-time and repeat DUI offenders with high blood alcohol levels and for individuals who receive an operating privilege suspension as a result of a chemical test refusal violation or conviction for illegally operating a motor vehicle not equipped with an Ignition Interlock system.

OCCUPATIONAL LIMITED LICENSE (OLL)¹³ — An OLL is a limited driver's license issued to a driver whose Pennsylvania driving privilege has been suspended. An OLL authorizes driving a designated non-commercial motor vehicle, under certain conditions, only when it is necessary for the driver's occupation, work, trade, medical treatment or study.

COURT REPORTING NETWORK (CRN)¹⁴ — The CRN evaluation is required for all DUI offenders in the state of Pennsylvania. The CRN evaluation is a pre-screening tool used to determine if a first offender will be referred for a more comprehensive drug and alcohol assessment. It is also used as a statistical tool for Pennsylvania.

ALCOHOL/DRUG ASSESSMENT¹⁵ — Prior to sentencing, offenders must undergo a full assessment for alcohol or drug addiction if their BAC was above 0.16%, they had prior DUI offenses within the previous ten years or when the CRN evaluation recommends an assessment.

¹ .08 DUI Legislation PA DOT <http://www.dmv.pa.gov/Information-Centers/Laws-Regulations/pages/dui-legislation.aspx>

² Traffic Safety Case Law Digest, Law Enforcement Edition, Pennsylvania DUI Association, pp. 21-22 "Actual Physical Control," 09/2021

³ 75 Pa. C.S. § 102 Definitions. "Vehicle."

⁴ 75 Pa. C.S. § 3802

⁵ 18 Pa. C.S. § 6308

⁶ 75 Pa. C.S. § 3804

⁷ 75 Pa. C.S. § 3803

⁸ 18 Pa. C.S. § 1104

⁹ 18 Pa. C.S. § 1103

¹⁰ 75 Pa. C.S. § 1547(a)(b)

¹¹ 75 Pa. C.S. § 3802(d)

¹² PennDOT IGNITION INTERLOCK FACT SHEET <https://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Fact%20Sheets/fs-ii.pdf>

¹³ PennDOT OLL FAQ <http://www.dmv.pa.gov/Pages/FAQ%20Pages/OLL-FAQ.aspx>

¹⁴ 75 Pa. C.S. § 3816(a)

¹⁵ 75 Pa. C.S. § 3814

HIGHLIGHTS AND KEY CONCEPTS OF PA DUI LAW

**DRINKING ALCOHOL AND DRIVING IS ALWAYS A BAD DECISION.
ALCOHOL IMPAIRMENT BEGINS WITH THE FIRST DRINK. WHILE A PERSON MAY
QUICKLY ADD ALCOHOL TO THEIR BODY, IT TAKES TIME – AND ONLY TIME –
FOR THAT ALCOHOL TO BE REMOVED.**



The Pennsylvania Liquor Control Board Bureau of Alcohol Education offers a variety of materials free of charge.

For more information:

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