

# THE ADVOCATE

A Publication of Gambone Law – PA (215) 755-9000 - NJ (856) 793-7429

Newsletter



## 5 THINGS TO REMEMBER ABOUT DRINKING AND DRIVING DURING THE HOLIDAYS

The holiday season is officially here! For many, this is a time to spend with family and friends. Many use it to host and attend parties, dinners and other events. While it is our sincere hope that you and your family will enjoy this season, as I have stated a countless number of times in my blogs, videos and podcasts, a drunk driving charge can happen to anyone regardless of their station in life.

Our criminal defense law firm, which represents persons charged with crimes in Pennsylvania and New Jersey, wants to help you avoid a situation that could cost you literally thousands of dollars in legal fees in addition to personal and professional embarrassment.

The criminal penalties associated with a drunk driving conviction are harsh! Following a conviction, a person faces the possibility of jail, loss of driver's license and high insurance rates; even more important drunk driving kills thousands of people every year!

Here are 5 things to remember this holiday season:

- There is an increased local and state police presence on all major highways during the holidays
- Police don't always need probable cause to stop your car for suspicion of DUI!
- You don't need to answer police questions following a DUI/DWI stop!
- Preliminary Alcohol Screening (PAS) and Standard Field Sobriety Tests (SFST) are optional but and Evidential Breathalyzers Tests (EBT) ARE NOT!
- Never refuse a chemical test

### 1. There is an increased local and state police presence on all major highways during the holidays

Law enforcement often uses checkpoints, especially during the holidays, to identify and arrest individuals on the suspicion of drunk driving (DUI/DWI) and sometimes illegal drugs and narcotics. DUI/DWI checkpoints are constitutional.

### 2. Police don't always need probable cause to stop your car for suspicion of DUI!

Most drunk driving arrest begin with a traffic stop made because of a violation of the vehicle code (speeding, running a red light, or a stop sign). Following that traffic stop, a police officer may have a suspicion that a person has been drinking because of the person's appearance or some other sensory cue (smell of alcohol). It is important to first understand that a police officer doesn't

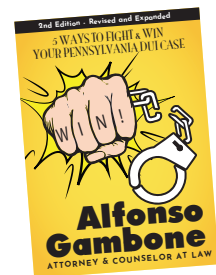
have to see or observe a specific moving violation to stop a car for suspicion of DUI.

The officer just needs reasonable suspicion that a driver is either intoxicated or perhaps in distress (falling asleep at the wheel). If, however, can't properly articulate the reason for the stop other than "I thought he was intoxicated or in some type of distress" your attorney should probably consider a motion to suppress evidence.

### 3. You don't need to answer police questions following a DUI/DWI stop!

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### Download our DUI book



#### You Will Learn:

- Blood Testing
- Field Sobriety Testing
- Probable Cause vs Reasonable Suspicion
- And Much More!

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## PHILADELPHIA HAS “DECRIMINALIZED” MARIJUANA BUT IT IS STILL A CRIME IN PENNSYLVANIA

Possession of Marijuana remains a crime in Pennsylvania. While Philadelphia and other municipalities within the Commonwealth, have decriminalized the possession of under 30 grams of marijuana as a violation of City ordinance, rather than a crime but it remains a misdemeanor offense under Pennsylvania's crimes code. Allegedly 6 out of 10 Pennsylvanians want the Commonwealth to legalize this Schedule I narcotic but it remains incredibly controversially as it is seen as gateway drug into other addictions.

## Possession with Intent to Deliver (PWID) is a felony crime in Pennsylvania

Possession with the Intent to Deliver (PWID) marijuana remains a felony even with the Philadelphia's new ordinance. If you're stopped in Philadelphia and arrested for a distribution charge, you will be prosecuted! If convicted, you will have a felony record. While the law may change in the near future regarding marijuana, it remains a schedule I substance just like heroin, methamphetamines (ecstasy), and LSD.

## What is Marijuana?

Marijuana is produced from the Hemp Plant (cannabis sativa). The most active chemical in marijuana is THC (delta-nine- Tetrahydrocannabinol). The drug is inhaled through the lungs and goes into the blood stream where it is carried to the brain and other organs throughout the body. This process leads to a state of euphoria or “high”. All marijuana isn't the same and the strength of the drug is based on the amount of THC it contains. While the US Government again considers Marijuana as a schedule I drug, some states (Washington, Colorado, Alaska) have already legalized its use. The short term side effects of marijuana are loss of coordination, motor skills and decrease reaction time. Long term use of marijuana can result in the same health problems as traditional cigarette smoke.

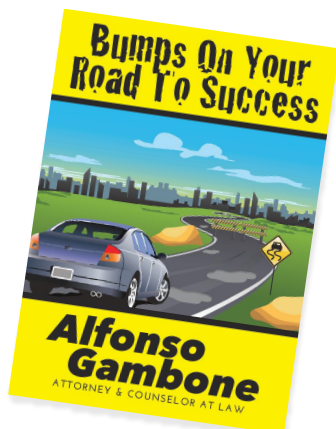
## How serious is marijuana charge in Pennsylvania?

With regards to marijuana and criminal liability, in Pennsylvania, a marijuana dealer previously faced a mandatory minimum of one year in jail if he possessed between 2 and 10 pounds of marijuana or 10 to 20 live plants and a 3 year mandatory minimum (first offense) if this person was found with between 10 and 50 pounds of the drug or 21 to 50 live plants. Mandatory minimums, however, in Pennsylvania for all drugs are now unconstitutional.

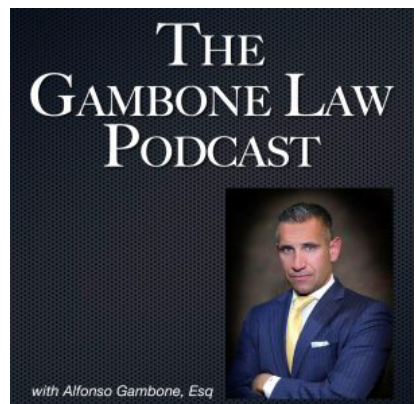
At the federal level, however, a marijuana dealer still faces mandatory minimum sentences. Federal law even contains a mandatory minimum sentence of 15 days in prison for a second time simple marijuana possession conviction, and a mandatory minimum of 90 days for a subsequent simple possession of marijuana conviction.

## When Did Pennsylvania Legalize Medical Marijuana (Cannabis)?

- April 17, 2016 Governor Tom Wolf signed Pennsylvania's Medical Marijuana Act into Law
- The Medical Marijuana Act took effect on May 17, 2017
- Medical Marijuana is now available through state licensed dispensaries
- Pennsylvania is the 24th state to adopt a Medical Marijuana Program



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YOUR RIGHTS AND MORE WITH OUR FREE BOOKS



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### Who Is Eligible To Receive Medical Marijuana (Cannabis)?

- A person must have a terminal illness, suffer from cancer, HIV/AIDS or the following conditions:
- Amyotrophic lateral sclerosis,
- Parkinson's disease,
- Multiple sclerosis (MS),
- Epilepsy,
- Inflammatory bowel disease,
- Neuropathies,
- Huntington's disease,
- Crohn's disease,
- Post-traumatic stress disorder,
- Intractable seizures,
- Glaucoma,
- Autism,
- Sickle cell anemia,
- Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity,
- Severe chronic or intractable pain of neuropathic origin,
- In addition to these conditions, Pennsylvania and New Jersey can approve additional debilitating medical conditions.

Marijuana remains a criminal offense at the federal and state level and a proper criminal defense strategy focuses on the same issues that arise in other drug cases.

Focusing on issues such as reasonable suspicion and probable cause at the pre-trial level and constructive and actual possession at the trial level are good starting points for any criminal defense. For more information I encourage you to read my [books](#), subscribe to my monthly newsletter, and weekly e-newsletter.

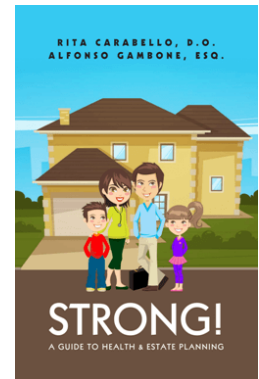
### Questions?

Our law firm is ready to answer your questions. If we can't answer it, we will direct you to an attorney who focuses his or her practice in that area.



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**Limit Alcohol** - Consuming excessive amounts of alcohol can result in liver damage, the loss of fertility, high blood pressure, and increase your chances for a heart attack. Alcohol offers practically no nutritional benefits and adds unnecessary calories usually in sugars to meals.

**Proper Diet** - Diets rich in sugar, saturated fats, and processed flours found most breads create stress on the body. This increases our chances for cardiovascular disease and Type 2 Diabetes. Some studies show that obesity can shorten your life more than smoking. Focus your diet on whole foods such as low glycemic fruits, vegetables, lean proteins, plain Greek yogurt, and healthy fats (Monounsaturated and polyunsaturated).

## FAMILY MEDICINE UPDATE

### Five Ways to Live Stronger & Longer

In my family medicine practice I often discuss various conditions with patients and ways to prevent them. These are my most common recommendations to patients:

**Stop Smoking** – not only will shorten your life it will lower your quality of life. This harmful habit may not only cause cancer but also insomnia and shortness of breath. It is never too late to quit smoking and even those who quit much later into life will improve their health substantially.

**Know Your Numbers** – If you don't know your numbers, you can't know if your current health regimen is working or how at-risk you are for such things as heart disease, stroke, and/or diabetes. Knowing your numbers means an understanding of the following:

- Cholesterol
- Blood Pressure
- Blood Glucose
- Hemoglobin A1c (HBA1C)
- Body Mass Index

**Exercise** – regular exercise along with just moving more throughout the day can dramatically change your health. Not exercising and remaining sedentary increases your risk for a number of conditions and illnesses, specifically cardiovascular disease and diabetes.

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## 5 THINGS TO REMEMBER ABOUT DRINKING AND DRIVING DURING THE HOLIDAYS – (Continued)

Once a stop is made, a major issue in DUI/DWI cases is whether the officer is permitted to question a driver about what he/she did prior to getting behind a wheel that day. Pennsylvania and New Jersey Courts have ruled that a custodial interrogation doesn't require that police make formal arrests. It exists whenever an individual being interrogated "reasonably believes his freedom of action is being restricted". This means you have a constitutional right to not answer questions. You are only required to provide the police officer with your license, registration and proof of insurance. Respect the police officer but don't answer questions about where you were or what you were doing prior to the stop.

### 4. Preliminary Alcohol Screening (PAS) and Standard Field Sobriety Tests (SFST) are optional but and Evidential Breathalyzers Tests (EBT) Are NOT

#### Preliminary Alcohol Screening (PAS)

Police use PAS tests to assist with a probable cause determination. These devices do not provide precise amounts of alcohol within a person's system. They are small and portable which makes them convenient but they aren't always accurate. If the results of a PAS indicate the presence of alcohol, police can use it along with other factors (field sobriety failure, odor of alcohol, slurred speech, glassy eyes) to arrest a person for suspicion of DUI/DWI. Following that arrest, police will want a more accurate

measurement (EBT) to determine a driver's BAC with the goal of obviously putting together enough evidence to result in a conviction in court.

#### Evidential Breathalyzer Tests (EBT)

Evidential breathalyzer tests (EBT) are the easiest way to provide a precise BAC outside of a blood test. A blood test is more accurate as an EBT device requires the device to convert a breath sample to the alcohol estimated to be within a person's blood

#### The Right to Refuse

While a person can refuse any chemical DUI/DWI test, an EBT refusal will result in an automatic license suspension. Remember that Pennsylvania and New Jersey will impose an administrative license suspension regardless of the outcome of criminal proceedings

#### Standard Field Sobriety Test

The Standard Field Sobriety Test (SFST) are frequently administered at roadside when police or state troopers come upon an individual who they believe to be intoxicated. Police use these tests in addition to observing a person's pattern of speech, disorientation, odor of alcohol, and other movements. Unlike physical presentations (speech, odor, and movements), the scoring of the field sobriety test are subjective. Officers are trained to look for certain errors or "clues" which are believed to have a correlation to a person's

blood alcohol content (BAC). While failure on these tests isn't required for police to have the probable cause to arrest someone the results are still important. You are not obligated, however, to take any of these tests and can refuse them!

#### 5. Never refuse a chemical test (blood or breathalyzer)

A big question that we get, should I refuse a blood breath test. No, you should not refuse either of these chemical tests. If you do not submit to a blood test in Pennsylvania and New Jersey will suspend your driver's license. The results of the criminal prosecution are absolutely irrelevant.

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### Question of the Month

**Question - Do criminal bench warrants expire or become invalid after a certain period of time in Pennsylvania or New Jersey?**

**Answer – No!** When a person fails to appear for a Court proceedings or violates a condition of release, probation or parole, a bench warrant is issued! Bench warrants are very serious matters in Pennsylvania and New Jersey. If a person has an existing bench warrant, they will likely be arrested during a routine traffic stop or perhaps going through a security check point at an airport, train station, or bus depot; even during the holiday season!

If you have a bench warrant, it will not simply go away or become invalid or expire with time. This means that a bench warrant will remain in existence and on your criminal record until it is completely addressed. If you, a loved one, or a friend believe they have a bench warrant, contact our law firm today for help!