

# THE ADVOCATE

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

Newsletter



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## 3 Ways to Absolutely Ruin Your Holidays & New Year

The Holidays (even Festivus) are here and there is nothing that can ruin them like getting arrested and charged with a crime in New Jersey or Pennsylvania! While most of my readers won't run into any trouble this holiday season, they may have a friend or a family member who doesn't read our weekly E-Updates, our blogs, our books, or watch our videos!

**Here are the 3 mistakes that we often see as the most troublesome, especially during the holidays.**

**Taking prescription medicine and certain over the counter drugs before getting on the road to visit family and friends.**

Most people believe that driving under the influence (DUI) or driving while intoxicated (DWI) only occurs when an individual has imbibed or consumed too much alcohol or an illegal narcotic or drug, like marijuana, heroin, PCP, or crack cocaine. This however, is not the law in any jurisdiction and the purpose of the DUI/DWI statutes is to protect the public from **impaired** drivers who aren't able to safely operate a motor vehicle on the road.

Prescription medications, which your doctor prescribes legally to you, can sometimes

cause impairment. This impairment warning is always indicated on the label of the drug. When a person operates a motor vehicle under the influence of any substance that causes impairment, they commit a crime under the DUI/DWI statute.

Pennsylvania, like New Jersey, imposes mandatory minimum sentencing for these crimes and the law doesn't distinguish between crack cocaine and Benadryl for the purposes of the mandatory minimum sentencing laws. While obviously the ingestion an illegal substance like crack cocaine, marijuana, or heroin, as opposed to a legally prescribed or over the counter drug, like Benadryl, will likely help an individual from receiving a harsher sentence than the mandatory minimum penalty, it isn't a legal defense.

### Driving Through New Jersey with a Handgun

I've written a number of articles on New Jersey's Graves Act and its very strict firearms laws, which exposed even, first time offenders to a mandatory minimum sentence. Unlike Pennsylvania, New Jersey doesn't often issue permits to carry and an individual must satisfy a number of special criteria in order to carry outside of their home or place of business in the state.

New Jersey **does not** honor a Pennsylvania license to carry and any individual who enters the Garden State, even if it's to drive through the state to reach their ultimate destination,

commits a felony level offense under the Graves Act in New Jersey.

If you must travel through New Jersey with a handgun, it must be unloaded and secured in a separate lock box or container with the ammunition in a separate compartment. While you are never obligated to give consent to a police officer or state trooper to search your vehicle, carrying the weapon in this manner will prevent you from committing a crime in the Garden State.

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## Former WWE Superstar Tammy “Sunny” Sytch Sentenced to 17 Years for fatal DUI in Florida– What to know about serious injury and deadly driving in New Jersey (DUI) and Pennsylvania (DWI)

Recently, former World Wrestling Entertainment (WWE) Hall of Famer Tammy Sytch was sentenced in Florida following her non contest plea to a drunk driving charge. Sytch killed a 75 year old when her vehicle collided with the man’s car. Her Blood Alcohol Concentration (BAC) was four times the legal limit at the time of the incident. An open container of alcohol was also found in her vehicle at the time of the incident.

Prior to this incident, she had previous drunk driving charges in Pennsylvania and Florida. Pennsylvania had actually suspended her driver’s license and she had no Florida license at the time of this incident. Her prior criminal history likely factored heavily into her sentence. She was previously on bail but her bail was revoked following a history of alcohol related incidents

This case presents an opportunity to explain deadly drunk driving charges in New Jersey and Pennsylvania for our clients and their families. Drunk Driving can happen to anyone and our criminal defense law firm has represented clients of all ages and backgrounds in Pennsylvania and New Jersey.

### New Jersey

Here are the most common crimes associated with these deadly drunk driving or drunk driving involving serious bodily injury in New Jersey.

#### Assault by Auto in New Jersey

A typical charge that our law firm encounters in New Jersey are assault by vehicle auto (2C:12-1(c)(1)). If a person is charged with such a crime in New Jersey, he or she is guilty of it when he or she drives a vehicle recklessly and causes either serious bodily injury or bodily injury to another.

It is a crime of the fourth degree if serious bodily injury results and a disorderly person’s offense if just bodily injury results. Keep in mind that if the individual charged was operating a smart phone or cellphone at the time of the incident (39:4-97.3) it may give rise to inference that the Defendant was acting recklessly at the time of the incident.

Assault by vehicle is a crime of the third degree if at the time of the incident the person is under the influence of drugs or alcohol (39:4-50) and serious bodily injury occurs as a result. It is a crime of the fourth degree if only bodily injury results.

#### Leaving the Scene of an Accident Criminal Charges

Another charge that our firm handles is knowingly leaving the scene of an accident resulting in serious bodily injury or death. It is a crime of the third degree if a person knowingly leaves an accident which results in serious bodily injury to another. While a crime of the third degree normally carries with it a presumption on non-incarceration in New Jersey, that presumption does not apply in these situations (2C:12-1.1)

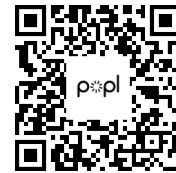
It is a crime of the second degree to knowingly leave an accident if such accident results in a

person’s death under 2C:11-5.1. In addition, the prosecution may still charge the individual with aggravated manslaughter or reckless vehicular homicide.

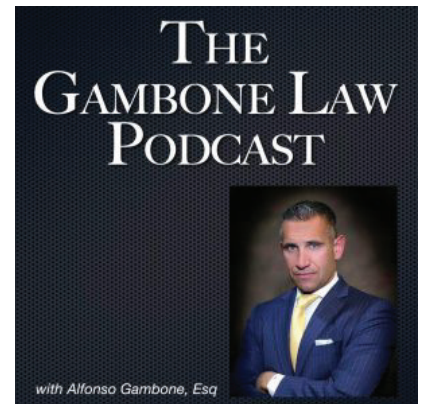
#### Vehicular Homicide

When a person is killed, as a result of an accident, the charge would become much more serious in New Jersey under 2C:11-5-Death by Auto. Criminal homicide constitutes reckless vehicular homicide when it is caused by driving a vehicle recklessly.

Proof that a person was operating a cellphone provides an inference of recklessness as well as proof that the persons under the influence (39:4-50) is also proof of recklessness. If a person is convicted of death by auto while DUI in New Jersey, it carries with it a mandatory minimum sentence of at least three (3) years of State incarceration or between one-third or one-half of the sentence imposed, whichever is greater.



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Alyssa LaMonaca, J.D.

### BAH HUMBUG.....Navigating Custody Arrangements around the Holidays

The holidays are an exciting time filled with warmth, love, and celebration. However, for divorced or separated parents, it can also be a challenging time of year. Custody arrangements and competing schedules can make it difficult to create a stable and enjoyable holiday season for children. The top 5 tips and tricks to help navigate custody arrangements around the holidays and ensure that your children have a memorable and enjoyable season are:

1. Plan ahead
2. Communicate effectively
3. Consider the holiday traditions of both parents
4. Be flexible
5. Focus on your child’s best interest

The holidays can be tricky to navigate, but, with planning and effective communication, it can be a time of joy and togetherness. Consider the holiday traditions, be flexible, and always prioritize your child’s needs. It’s a time to create beautiful memories and to celebrate what is truly

important: family, love, and joy. These tips and tricks can help parents to create a stable and enjoyable holiday season for their children. So don’t let the holidays be a source of stress and tension. With a little planning and effort, everyone can experience the magic of the season while keeping the best interests of the children at heart.

If you or anyone you know are dealing with any custody or family law matter, give one of our experienced attorney’s at LaMonaca Law a call today at 610-892-3877 or visit our website at [www.lamonacalaw.com](http://www.lamonacalaw.com).

Alyssa was born and raised in Delaware County, Pennsylvania. She received her undergraduate education from West Chester University where she earned her degree in Business Management She earned her Juris Doctorate from Widener University Delaware Law in 2023 and will sit for the Pennsylvania Bar Exam in February 2024! For information on this topic or another family law matter, contact the LaMonaca Law Firm at 484-440-9284 or [info@lamonacalaw.com](mailto:info@lamonacalaw.com)

**Vehicular Manslaughter**

Manslaughter in New Jersey under 2C:11-4 is considered aggravated manslaughter when a person acts recklessly under circumstances manifesting extreme indifference of the value of human life or where a person causes the death of another while fleeing or attempting to flee law enforcement.

In all other the cases, criminal homicide constitutes manslaughter only when it is committed recklessly or where it is committed in the heat of passion resulting from reasonable provocation (imperfect self-defense; deadly force without justification). Aggravated manslaughter is a crime of the first degree in New Jersey while manslaughter is a crime of the second degree in New Jersey.

It is also important to understand that manslaughter charges in New Jersey (aggravated assault including) are considered no early release crimes in the Garden State (NERA). This means that a person who is convicted of such crimes will be sentenced to serve 85% of the term imposed before being eligible for parole.

**Pennsylvania**

Here are the most common crimes associated with these deadly drunk driving or drunk driving involving serious bodily injury in New Jersey.

**Homicide by Vehicle While DUI– Title 75 § 3735**

Under Title 75 § 3735, homicide by vehicle while DUI is a felony of the 2nd degree (max sentence is 10 years state prison). This felony is committed when a person unintentionally causes the death of

another person as the result of a violation of Section 3802 (DUI statute). If a person is convicted under this section, he or she faces a mandatory minimum 3 year state prison sentence and if there are multiple fatalities the sentences would run consecutively as opposed to concurrently (at the same time.)

Homicide by vehicle while DUI is a felony of the 1st degree (20 year max sentence) if a person has a prior conviction for DUI. In this situation a person would face a 5 year mandatory minimum state prison sentence.

**Aggravated Assault by Vehicle while DUI – 3735.1**

Under this section of the Pennsylvania traffic code (Title 75), any person who negligently causes serious bodily injury to another as the result of a violation of section 3802 commits a felony of the 2nd degree. Unlike homicide by DUI there is no mandatory minimum sentence for this felony offense.

**Homicide by Vehicle (NON DUI)– Title 75 § 3732**

In addition to DUI felony related offenses, there are also traffic offenses involving homicide and aggravated assault which are graded as felony offenses in Pennsylvania. Under section 3732, a person is guilty of Homicide by Vehicle when he or she recklessly, or with gross negligence, causes the death of another person while in operation or in use of a vehicle. This offense is graded as a felony of the 3rd degree (7 year max) and there is no

mandatory minimum associated with this offense.

**Aggravated Assault by Vehicle (NON DUI)– 3732.1**

Under section 3732.1, a person is guilty of aggravated assault by vehicle when this person recklessly, or with gross negligence, causes serious bodily injury to another person while engaged in the operation of a motor vehicle. This is also graded as a felony of the 3rd degree and carries with it no mandatory minimum sentencing.

Our firm wishes you and your family a happy holiday season!



**Start Your 2024 Strong!**  
Schedule Your 2024 Appointment with Dr. Carabello Today



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the day to reach your goal.

**Lose weight.** Learn your recommended calorie intake, the amount of food calories you’re consuming, and the energy calories you’re burning off with different levels of physical activity.

When lifestyle changes alone don’t control the conditions related to metabolic syndrome, your health care professional may prescribe medications to control blood pressure, cholesterol and other symptoms.

Dr. Rita Carabello is a Board Certified Family Physician with The Jefferson Health System. She is bilingual (Italian) and has over 20 years of experience providing health care to thousands of families throughout The Philadelphia Metropolitan Area and South Jersey.

**FAMILY MEDICINE UPDATE**

**Family Medicine Update - What is metabolic syndrome?**

Rita Carabello, D.O.,

Metabolic syndrome greatly raises the risk of developing diabetes, heart disease, stroke, or all three. Here are the most common symptoms:

**Abdominal obesity.** This means having a waist circumference of more than 35 inches for women and more than 40 inches for men. An increased waist circumference is the form of obesity most strongly tied to metabolic syndrome.

**High blood pressure** of 130/80 mm Hg (millimeters of mercury) or higher. Normal blood pressure is defined as less than 120 mm Hg for systolic pressure (the top number), and less than 80 mm Hg for diastolic pressure (the bottom number). High blood pressure is strongly tied to obesity. It is often found in people with insulin

resistance.

**Impaired fasting blood glucose.** This means a level equal to or greater than 100 mg/dL

**High triglyceride levels** of more than 150 mg/dL. Triglycerides are a type of fat in the blood

**Low HDL (good) cholesterol.** Less than 40 mg/dL for men and less than 50 mg/dL for women is considered low.

What can do starting today?

**Eat better.** Adopt a diet rich in vegetables, fish, nuts, low-fat dairy products, lean meats. Eliminate processed foods, trans fats, and sugars. Hint – Shop the perimeter of the supermarket and try to eat single ingredient foods (whole

**Get active.** Aim for at least 150 minutes of moderate-intensity physical activity a week. Walking is the easiest place to start. If needed, break your exercise up into several short sessions throughout

### 3 Ways to Absolutely Ruin Your Holidays & New Year (continued)

Like DUI/DWI in New Jersey, a person who commits a crime under the Graves Act is exposed to mandatory minimum sentencing. New Jersey has enacted safety valve provisions which prevent a person from serving time in state prison following a conviction under this act; all of these programs are at the discretion of the prosecutor in that particular county.

It's also important to understand that in many of these cases the prosecutors won't offer pre-trial intervention (PTI), but rather a plea to a felony level offense, which simply allows a person to serve a probation sentence but still results in a criminal conviction that could seriously impact a person's professional and educational opportunities.

#### Hosting Parties where Alcohol is Served to Minors

It is very common for people to host parties and other events at their homes for friends and family. While these are often casual events, the law doesn't distinguish between a formal affair held

at your home and one where people are sitting around a pool, your shore or lake house.

In Pennsylvania, social host liability applies to adults who serve alcohol to minors. Adults are responsible for the consequences of their own drinking but minors are the exception. New Jersey, however, doesn't limit lawsuits to minors, but also allows adults to bring claims against social hosts if these individuals leave an event clearly intoxicated.




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**Question of the Month**  
**Question - Who has the authority to call in the National Guard?**  
**Answer:** The recently elected Mayor of Philadelphia, Chelle Parker, has indicated her intent to use the National Guard to address Philadelphia's skyrocketing crime rate. Specifically, Parker wants to use the National Guard to combat the open-air drug markets in the Kensington section of Philadelphia. The National Guard is a special part of the United States military which answers both to State Governors and the President of the United States. It is a different force than the Army. Historically the Guard was originally designed to serve as a reserve for military operations, but over the years it has been called in to address domestic crisis as well as overseas conflicts. The Posse Comitatus Act prohibits federal troops from participating in civilian law enforcement. This law incorporates an American principle that sees military interference in civilian affairs as a threat to both democracy and personal liberty. While this Act applies to the Army, it only applies to National Guard if they are mobilized under Presidential Order. Members of the National Guard, however, are rarely covered by the Posse Comitatus Act because they usually report to their governor. The Guard can participate in law enforcement within a State but in cases where there is a specific problem and a source of that problem such as a riot or some civil unrest caused from a specific issue. The Guard is not meant to supplement police indefinitely which is what Parker wants in this situation.

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