

THE ADVOCATE

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

Newsletter



Add me to your contacts!

What Fireworks are illegal in New Jersey?

What fireworks are illegal in New Jersey & Pennsylvania? How serious of a crime is illegal sale or possession of them?

National Holidays like the 4th of July would not be complete without fireworks! Many of our clients, friends, and my family, especially pet owners, have asked about New Jersey and Pennsylvania laws on fireworks. While these are not common offenses and crimes that our law firm defends, we nevertheless want to be a source of information for clients and their families.

When did fireworks become legal in Pennsylvania and New Jersey?

Most of us remember a time when fireworks were strictly forbidden (unless you “knew a guy”) so this area of the law is confusing. In Pennsylvania and New Jersey, there are two types of fireworks, Display and Consumer and both remain illegal.

Display fireworks are those that you see during large shows. They are not available to the general public. Consumer fireworks

are available to the public in many states but they are illegal to use or possess in Pennsylvania unless you are a dealer. In the family of Consumer fireworks are other items that are considered sparkling devices, novelties and caps. The packaging of these items may say “fireworks” to entice consumers to buy them but they are not considered “Consumer Fireworks” under Pennsylvania and New Jersey law.

Fireworks in Pennsylvania

Consumer Fireworks in Pennsylvania include firecrackers, bottle rockets, skyrockets, and Roman candles among others. Again, these items remain illegal. Use or possession of these items is a misdemeanor summary offense.

What is the penalty for selling or using fireworks in Pennsylvania?

Any person found guilty of selling these items commits a second degree misdemeanor offense in Pennsylvania. A person found using consumer fireworks illegally for the first time may receive a summary offense, punishable by a fine of up to \$500. Repeat offenses within three years of a prior conviction could prompt another summary

offense, this time punishable by a fine of up to \$1,000.

The following items are legal in Pennsylvania.

Ground and hand-held sparkling devices produce a shower of sparks or a cloud of smoke, do not rise into the air or shoot projectiles into the air, and do not explode. They include: cylindrical fountain, cone fountain,

Continued on Page 4...

Download my Criminal Defense Strategy Books



DISCOVER INFORMATION ABOUT CRIMINAL CHARGES, YOUR RIGHTS AND MORE WITH OUR FREE BOOKS



Criminal Defense
Visit GamboneLaw.com

(PA) (215) 755-9000 Email: alfonso@gambonelaw.com (NJ) (856) 793-7429

NFL Rookie Khyree Jackson Killed as a Car Passenger – Drunk Driving is suspected – What to know about mandatory minimums state sentences, and DUI/DWI fatality criminal charges

Recently, Khyree Jackson, a 4th round pick for the Minnesota Vikings was killed in car accident involving three vehicles. Jackson was in the vehicle with two other men who he knew from high school. The persons in the other cars did not sustain any serious injuries. Police continue to investigate this incident. Criminal charges are pending but drunk driving is suspected. Mr. Jackson was not driving, and this sad story reminds us all how quickly life can change or end.

Our criminal defense law firm, represents individuals charged in Pennsylvania and New Jersey with misdemeanor and felony offenses. In addition to representing persons accused of the illegal possession of drugs, narcotics, illegal handguns and firearms, our law firm represents those charged with driving while intoxicated or impaired (New Jersey) and driving under the influence (Pennsylvania).

Most people fail to realize that drunk driving, like an illegal gun or a narcotic, can lead to felony charges and a possible state prison sentence. Normally people assume drunk driving is simply a misdemeanor offense in the Commonwealth (Title 75, Section 3802) and a traffic offense in the Garden State (N.J.S.A. 39:4-50).

There are, however, a number of drunk driving crimes that could lead to a state prison sentence. Not all these crimes and offenses involve a fatality but obviously a death elevates the level of the allegation!

While this incident did not occur in Pennsylvania or New Jersey, it still presents an opportunity to explain drunk driving charges involving death or serious bodily injury and consequences of them. These are serious criminal charges! If you or a loved one is charged with drunk driving, contact a criminal defense lawyer today!

Pennsylvania – Homicide by Vehicle– 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). There is a 3 year mandatory minimum sentence, further if the person has a prior drunk driving charge, there is a 5 year mandatory minimum state prison sentence.

Pennsylvania – 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.

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. 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.

New Jersey – Assault 2C: 12-1(c)(2) & Death by Auto 2C:11-5 while DWI

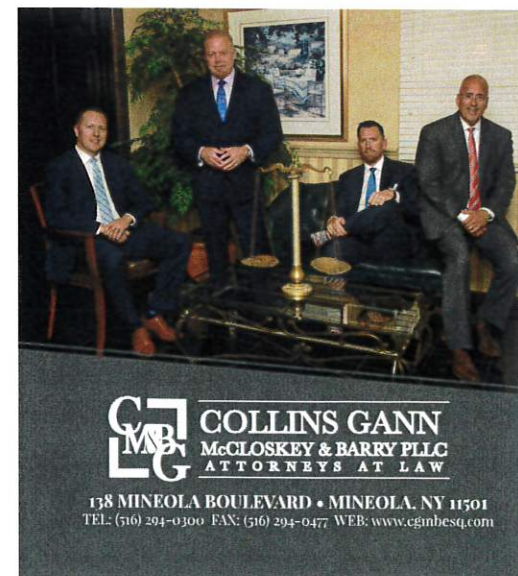
Assault by Auto while DUI is a crime of the 3rd degree in New Jersey under 2C: 12-1(c)(2) and is a crime of the 2nd degree if serious bodily injury occurs as a result of the incident while DUI (New Jersey DWI statute RS 39:4-50).

In the Garden State an Aggravated Assault by vehicle (non DWI) is committed when a person recklessly causes serious bodily injury to another person. It is a crime of the 4th degree if serious bodily injury occurs but it is only a disorderly person's offense (non-indictable) if the prosecution can only establish bodily injury.

One important point to keep in mind is that a person who is operating a hand-held device at the time of the incident allows the court to draw an inference that the person was driving recklessly.

Death by Auto in New Jersey (2C:11-5) is committed when a person causes the death of another by driving recklessly and is a crime of the 2nd degree. Death by Auto (aka Vehicular Homicide) is a crime of the 1st degree where the person is DWI or under the influence of some narcotic or other drug. Death by Auto while DWI in Jersey, like Pennsylvania, carries with it a 3 year mandatory minimum state prison sentence.

Our law firm wishes you a Happy Summer but please enjoy it responsibly! Don't drink and drive!



What to learn from Justin Timberlake's alleged New York drunk driving charge on Long Island

Justin Timberlake was recently arrested in Sag Harbor, New York (Long Island) on suspicion of drunk driving. Our law firm is not licensed in New York State but many of clients and their families frequently travel there for work or to see family.

If you, a friend or family member is arrested for drunk driving in New York, our law firm strongly encourages you to contact our good friends and colleagues at COLINS GANN McCLOSKEY & BARRY PLLC (www.cgmbesq.com). We trust this law firm with all of our matters in New York State!

What happened to Justin Timberlake in Sag Harbor New York?

Local police stopped his vehicle after they observed his BMW fail to acknowledge a stop sign, and swerve in between lanes. This provided police with sufficient probable cause to initiate a traffic stop!

Following the stop, police observed his "bloodshot and glassy" eyes and smelled strongly of alcohol. Further Timberlake failed field sobriety tests, including the walk and turn test and standing on one leg stand test. This gave police sufficient probable cause to arrest Timberlake for suspicion of drunk driving.

Timberlake told police that he only had a single drink before driving but it is important to understand that he had no obligation to make any statement to police.

What pre-trial legal arguments are available to Justin Timberlake

Timberlake's criminal defense lawyer should evaluate possible pre-trial motions which should focus on suppressing the evidence against him. Remember that a motion to suppress will focus on the reasonable suspicion and or probable cause to stop a driver and or the reasonable suspicion and or probable cause to arrest the driver for drunk driving. This is often the best way

to fight a drunk driving charge before trial.

Timberlake was arrested after police stopped his vehicle for failing to stop at a stop sign. This set of circumstances probably means that his attorney won't be able to successfully argue a motion to suppress for lack of probable cause to stop him. The failing to stop and the swerving provides police with sufficient probable cause to stop a driver for suspicion of drunk driving (DUI).

What did Justin Timberlake do wrong after police stopped his car and how did he make his defense weaker?

Timberlake allegedly refused the chemical test (breathalyzer) which was the wrong thing to do here. Regardless of what happens, this chemical test refusal will result in an automatic license suspension in New York, along with most states including Pennsylvania and New Jersey.

Further he should not have made any statements about where he was going, where he had been or what he consumed that evening. Statements will never help your criminal case and they will not help Sherman with this drunk driving charge. The prosecution will use this statement against if the case proceeds to trial.

How could have Justin Timberlake made his case better from a defense standpoint?

Timberlake should have not made any statements to police. He should have simply been cooperative and provide the troopers with his driver's license, registration and proof of insurance. This is all that is required following a drunk driving stop!

How serious is this drunk driving charge? Can he receive a criminal diversion program?

At the minimum, Timberlake faces a license suspension, fines and possibly jail if he is convicted of this drunk driving charge.

In New York, a first-time refusal to take a chemical test for driving while intoxicated (DWI) or under the influence (DUI) can result in a one-year driver's license revocation and a \$500 civil penalty. The license suspension is automatic and cannot be appealed. The driver may also be charged with a misdemeanor, which could result in up to \$500 in fines and 15 days in jail.

If the refusal occurs within five years of a previous

DWI-related charge or chemical test refusal, the penalties increase to an 18-month license revocation and a \$750 civil penalty. Drivers under 21 and commercial drivers may also face longer license revocation periods

Drunk Driving in New York

In New York, a first offense for driving while ability impaired (DWAI) by alcohol is a traffic offense that can result in penalties such as:

- A fine of \$300-\$500, plus a surcharge of \$255-\$260
- Up to 15 days in jail, though there is no minimum sentence
- A license suspension of at least 90 days, though you may be eligible for a conditional license
- A driver responsibility assessment (DRA) of \$250 per year for three years
- A victim impact panel
- Court fees of about \$250

Fines and penalties substantially increase for Aggravated Driving While Intoxicated (BAC .18 or higher)



Schedule Your Appointment with Dr. Carabello Today



RITA C. CARABELLO, D.O.
Einstein Center One Family Medicine
9880 Bustleton Avenue, Suite 301
Philadelphia, PA 19115
(215) 827-1666

of whole grains such as brown rice or whole grain pasta

• **Meal Prep** - Weigh and measure food whenever possible

• **Read food nutrition labels**

• **Aim for an average of 60 to 90 minutes** or more of moderate to intense physical activity **three to four days each week** such as walking a 15-minute mile. Running or playing sports are examples of more intense activities.

• **Find ways to add 10 or 15 minutes of some type of activity** during the day. Walking around the block or up and down a few flights of stairs is a good start

YOUR HEALTH

How should families address an obesity problem?

Obesity continues plague children and adults in the United States. Sadly, families often ignore it especially when it comes to kids! Many parents believe that a child will "grow out of it" or that a growth spurt will fix it. While children's metabolisms will change, the eating and exercise habits that they develop or that families promote (or fail to promote) will often dictate if they will have a weight problem in future.

Eating habits and increasing physical activity play a vital role in preventing obesity. Here are some recommendations for every family even if they don't have a weight problem.

There are many situations where young adults develop a weight problem despite not having any

issue during their early childhood years.

• **Eat three to five serving of green (non-starchy) vegetables daily.** A vegetable serving is 1 cup of raw vegetables or 1/2 cup of cooked vegetables or vegetable juice.

• **Eat one to three serving of fruit daily with a focus on lower glycemic/high fiber** choices such dark berries such as blueberries, strawberries and raspberries. A fruit serving is one piece of small to medium fresh fruit, 1/2 cup of or fresh fruit.

• **Avoid processed foods** made with refined white sugar, white flour, high fructose corn syrup and saturated fat; this includes meals and snacks!

• **Eat a plate focused on lean proteins and green vegetables** with no more than one serving

Criminal Defense
Visit GamboneLaw.com

(PA) (215) 755-9000 Email: alfonso@gambonelaw.com (NJ) (856) 793-7429

What Fireworks are illegal in New Jersey? (Cont.)

illuminating torch, wheel, ground spinner, flitter sparkler, toy smoke device and wire sparkler.

Novelties include small items such as party popper, snapper, toy smoke devices snakes / glow worms and wire sparklers.

Fireworks in New Jersey

Similar to Pennsylvania, New Jersey has lifted the complete ban on the sale and possession of fireworks. The law created an exemption for certain devices while keeping all other fireworks illegal in the state.

New Jersey permits devices such as hand-held sparklers and ground-based sparklers, and novelty items, including party poppers and snappers.

All other fireworks remain illegal, including all explosive and aerial fireworks such as firecrackers, sky-rockets, bottle rockets, Roman candles and similar devices. New Jersey also restricts the sale of sparklers to

only those who are 16 and over.

What is the penalty for illegal possession or sale of fireworks in New Jersey?

In New Jersey a person is guilty of a fourth-degree crime if he sells, offers or exposes for sale, or possesses with intent to sell, any fireworks, other than sparkling devices and novelties to persons 16 years of age or older stated above.

A person is guilty of a petty disorderly persons offense if he purchases, uses, discharges, causes to be discharged, ignites, fires or otherwise sets in action, or possesses fireworks without having the required permit.

Please enjoy Summer responsibly.

YOUR RIGHTS AND MORE WITH OUR FREE BOOKS



Watch Our Videos!
You Can Watch More Than 400 Instructional Videos Right Now On Our YouTube Page.



Disclaimer: The content of this newsletter has been prepared by Gambone Law Offices, P.C. for informational purposes only and should not be construed as legal advice. The material in this newsletter is not intended to create, and receipt of it does not constitute, a lawyer-client relationship, and readers should not act upon it without seeking professional counsel of a licensed attorney. Case result may vary depending on the facts and circumstances of each matter.

Add me to your contacts!



Question of the Month
Who must introduce the issue of self-defense into a criminal trial?
While the defense has no burden to prove self-defense, it must be raised by them. The burden goes to the Commonwealth or the State once the defense makes this argument. If the defense introduces this argument, the prosecution must establish beyond a reasonable doubt that the defendant was not justifiable in self-defense.
In these situations, the prosecution must establish at least one of the following:
• The defendant did not reasonably believe that he was in danger of death or seriously bodily injury.
• The defendant provoked or continued to use force.
• The defendant had a duty to retreat, and retreat was possible with complete safety.

<<First>> <<Last>>
<<Firm Name>>
<<Street>>
<<City>>, <<State>> <<Zip>>



GAMBONE LAW
123 East Main Street
Moorestown, NJ 08057
(215) 755-9000
(856) 793-7429
alfonso@gambonelaw.com