

THE  
MORGAN  
LAW FIRM

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*DUI Trainers*  
*& Consultants, LLC*  
*www.DUITrainers.com*

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*Pennsylvania*  
*DUI Answers*

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F. Dean Morgan, Esquire  
The Morgan Law Firm  
DUI Trainers & Consultants, LLC

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# I. DEDICATED DUI DEFENSE

## DUI Defense, Not “Criminal” Defense

You are not a criminal. You should not be treated like one.

My name is Dean Morgan. I am the owner and Managing Attorney of The Morgan Law Firm. In 2010, I opened my own law practice and set out to do something different. I set out to build a “DUI Defense Firm.” As a police officer and prosecutor, I pursued and prosecuted rapists, drug dealers, and violent criminals. As a lawyer, I could not fathom representing these criminals. When I started my firm, I made a commitment that my practice would be dedicated exclusively to DUI Defense.

The American Bar Association has determined that DUI Defense is a separate specialized practice area. At The Morgan Law Firm, we understand that DUI Defense is different than criminal defense. As a result, we do things a bit different.

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*In another lawyer’s office, I walked past a guy I recognized from television as being arrested for a sex offense. The lawyer made me feel like a criminal and just another case.*

*I am not a criminal. At The Morgan Law Firm, I was made to feel like a friend and a guest.*

➤ **Dan - A DUI Client 2013**

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In my career in law enforcement as well as a lawyer, I have seen a lot of folks who were caught at the intersection of alcohol/drugs and motor vehicles. These were good people who had a little too much to drink and got behind the wheel of the car. I felt empathy for these folks as they were “grouped” with criminals as part of the criminal justice system.

As a police officer, prosecutor, and defense attorney, I watched “Criminal Defense Attorneys” practice law under a “cookie-cutter” model. Many rent an office next to the courthouse, work alone or with a partner and accept every case that comes in the door with the money to pay their fee. The “Criminal Defense Attorney” considers DUI to be “just another crime.” They devote no additional time to the study of the complex law and science associated with DUI Defense. The “Criminal Defense Lawyer” would send DUI Defendants into the system and accept the first offer from the prosecutor because they don’t have the specialized knowledge and experience to spot potential defenses.

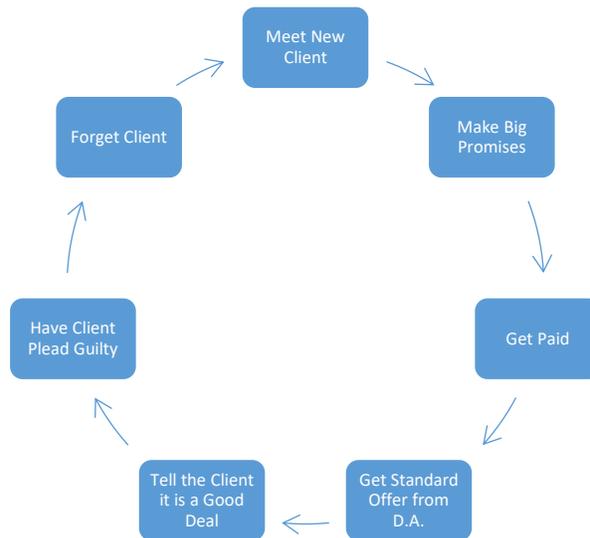
I did not believe that a DUI Defendant should not be treated like a criminal. I certainly did not like seeing good people being misrepresented by an attorney who was supposed to defend them from the system.

For a free case evaluation, [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

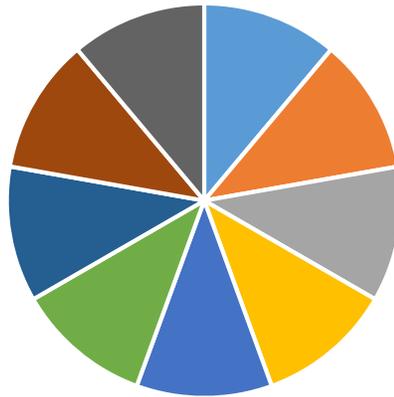
Since beginning my practice, I have constantly worked towards the goal of being the most knowledgeable DUI Defense Attorney in the nation. My training and experience includes:

- Criminal Justice career that started in 1990
- Former Police Officer
- Former Prosecutor
- Member: National College of DUI Defense
- SFST Instructor
- ARIDE Practitioner
- Drug Recognition Expert Training

### THE TYPICAL “CRIMINAL DEFENSE” BUSINESS MODEL



### A Typical Criminal Defense Attorney's Practice Areas



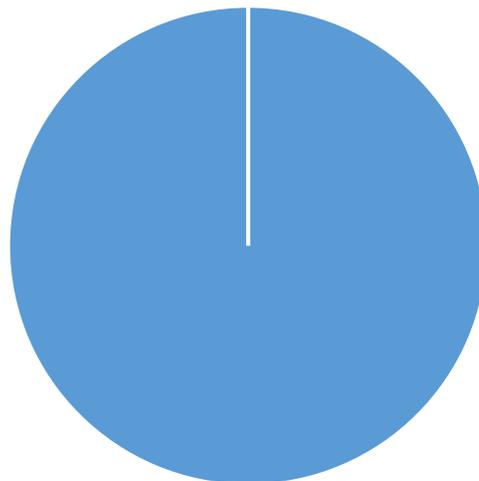
- Homicide
- Assaults
- Sex Offenses
- Burglary
- Theft
- Forgery
- Obstruction of Justice
- DUI Defense
- Traffic Defense

***I am a DUI Defense Attorney, Not a Criminal Defense Attorney. There is a difference.***

I only represent DUI Defendants, not criminals.

I focus my efforts on the representation of DUI Defendants in Pennsylvania, regardless of the venue. I do so because I believe that my clients deserve the best possible representation, not merely the representation closest to the courthouse door.

### The Morgan Law Firm's Practice Areas



- DUI
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My knowledge and experience is well-known to law enforcement officers and prosecutors. Prosecutors know that I know how to win. That enables me to achieve positive results that others cannot. I have litigated, and won, in courtrooms across Central & Eastern Pennsylvania. This is a rare ability in the present DUI Defense environment, where a positive result is seen as impossible by “Criminal Defense Attorneys” who are quick to recommend ARD or accepting a guilty plea. As a result, I am able to achieve positive results others cannot, even without trial.

I win cases in courtrooms, not behind a desk. I utilize technology to communicate with our clients and my staff instantaneously. Our Digital File Management system allows me to easily access your file from anywhere. Whether I am in a courtroom, an office, or at home, a client can expect an immediate response. Our results prove our value.

For a comprehensive case evaluation, click [here](#).

F. Dean Morgan, Esquire  
DUI Defense Attorney

## II. PENNSYLVANIA DUI LAWS & PENALTIES

<b>DUI PENALTIES</b>			
	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
<b>First Tier</b> 3802(a)(1) w/o refusal) 3802(a)(2)	6 months probation \$300 fine Community Service No License Suspension	5 days – 6 months in jail Up to \$2500 fine Community Service 12 month License Suspension Ignition Interlock	10 days – 1 year in jail Up to \$10,000 fine Community Service 12 month License Suspension Ignition Interlock
<b>Second Tier</b> 3802(a)(w/ accident) 3802(b) 3802(e) 3802(f)	48 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	30 days – 6 month in jail Up to \$5000 fine Community Service 12 month License Suspension Ignition Interlock	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock
<b>Third Tier</b> 3802(a)(1) (w/ refusal) 3802(c) 3802(d)	72 hours – 6 months in jail Up to \$5000 fine Community Service 12 month License Suspension	90 days – 5 years in jail Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock	1 year – 5 years in state prison Up to \$10,000 fine Community Service 18 month License Suspension Ignition Interlock
	<b>NOT ELIGIBLE FOR JURY TRIAL</b>	<b>ELIGIBLE FOR JURY TRIAL</b>	

- If you are convicted of DUI, regardless of the Tier or Offense, you must attend Alcohol Highway Safety School and submit to a CRN Drug & Alcohol Evaluation.
- If you have a child in your vehicle, you will be charged with a higher-level offense. 18 Pa.C.S.A. 3803.
- Alternative Programs can help you avoid a suspension or jail time may be available. However, having the right attorney is absolutely essential.

<b>IGNITION INTERLOCK</b>			
	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
<b><u>First Tier</u></b> 3802(a)(1) w/o refusal) 3802(a)(2)	➤ Not Necessary	➤ Eligible After 6 Months ➤ 12 Month Period of Interlock	➤ Eligible After 6 Months ➤ 12 Month Period of Interlock
<b><u>Second Tier</u></b> 3802(a)(w/ accident) 3802(b) 3802(e) 3802(f)	➤ Eligible Immediately ➤ 12 Month Period of Interlock	➤ Eligible After 6 Months ➤ 12 Month Period of Interlock	➤ Eligible After 9 Months ➤ 12 Month Period of Interlock
<b><u>Third Tier</u></b> 3802(a)(1) (w/ refusal) 3802(c) 3802(d)	➤ Eligible Immediately ➤ 12 Month Period of Interlock	➤ Eligible After 9 Months ➤ 12 Month Period of Interlock	➤ Eligible After 9 Months ➤ 12 Month Period of Interlock
<b>Refusal to Test</b> ➤ 1st	➤ Eligible After 6 Months ➤ 12 Month Period of Interlock	<b>Refusal to Test</b> 2nd	➤ Eligible After 9 Months ➤ 12 Month Period of Interlock

- ARD is not eligible for Ignition Interlock until October 2018

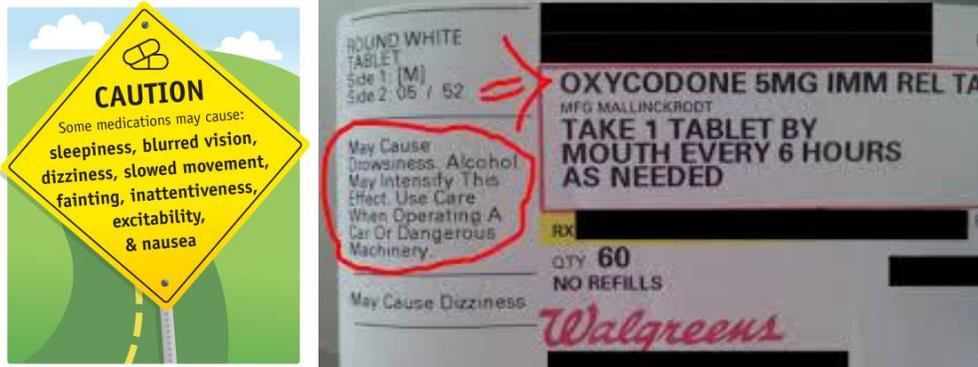
## DUI LAWS

### DRIVING AFTER IMBIBING ALCOHOL

An Individual may not drive, operate or be in actual physical control of the movement of a vehicle....

- **75 Pa.C.S.A. 3802 (a)(1) - GENERAL IMPAIRMENT:**...after imbibing a sufficient amount of alcohol such that the individual is rendered **incapable of safely driving**, operating, or being in actual physical control of the movement of the vehicle.
  - **PENALTIES:** First Tier Offense (w/o refusal), Third Tier Offense (w/ Refusal), Second Tier Offense (w/ Accident)
  
- **75 Pa.C.S.A. 3802(a)(2) - GENERAL IMPAIRMENT:** ...after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is **at least .08% but less than .10%** when tested within two hours after the individual has driven, operated or been in actual physical control of the motor vehicle.
  - **PENALTIES:** First Tier Offense
  
- **75 Pa.C.S.A. 3802(b) - HIGH RATE:** ...after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is **at least .10% but less than .16%** when tested within two hours after the individual has driven, operated or been in actual physical control of the motor vehicle.
  - **PENALTIES:** Second Tier Offense
  
- **75 Pa.C.S.A. 3802(c) - HIGHEST RATE:** ...after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is **at least .16% or higher** when tested within two hours after the individual has driven, operated or been in actual physical control of the motor vehicle.
  - **PENALTIES:** Third Tier Offense

[For a free comprehensive online case evaluation, click here](#)



## DUI CONTROLLED SUBSTANCES

### 75 Pa.C.S.A. 3802(d)- Controlled Substances

An individual may not drive, operate, or be in actual physical control of the movement of a vehicle under any of the following circumstances:

- (1) There is in the individual's blood any amount of a:
  - (i) Schedule I Controlled Substance
  - (ii) Schedule II Controlled Substance without prescription
  - (iii) metabolite of a substance under subparagraph (i) or (ii).
  
- (2) The individual is under the influence of a drug or combination of **drugs to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.
  
- (3) The individual is under the combined influence of alcohol and a drugs or combination of drugs **to a degree which impairs the individual's ability to safely** drive, operate or be in actual physical control of the movement of a vehicle.
  
- (4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. 7303 (relating to the sale or illegal use of certain solvents and noxious substances).

**PENALTIES:** Third Tier Offense

## DUI- PERSON UNDER THE AGE OF 21

**75 Pa.C.S.A. 3802(e):** An Individual under the age of 21 may not drive, operate, or be in actual physical control of the movement of a vehicle after **imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least .02% or higher when tested within two hours** after the individual has driven, operated or been in actual physical control of the motor vehicle.

## DUI - COMMERCIAL VEHICLE OR SCHOOL BUS

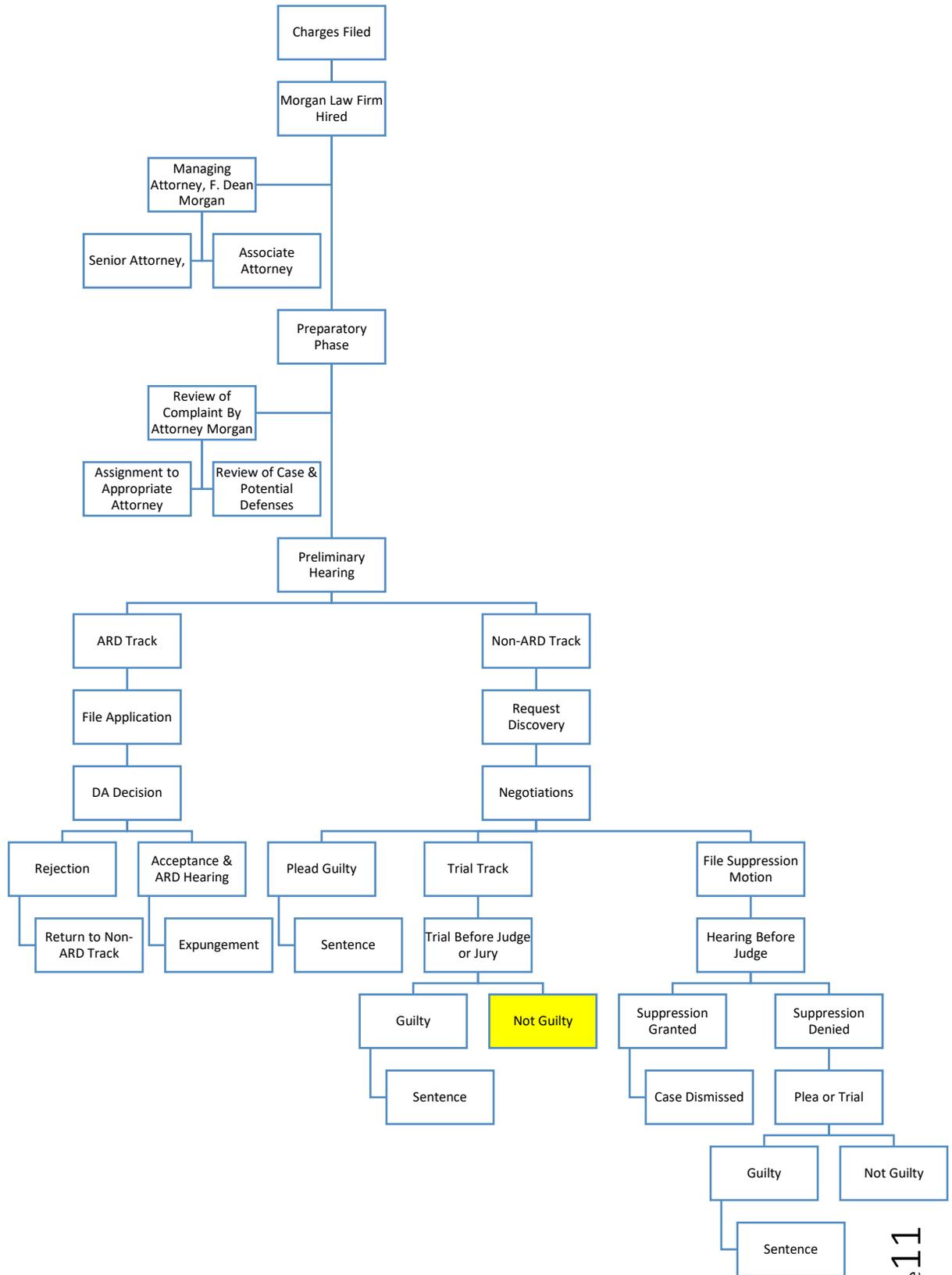


An individual may not drive, operate, or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

- (1) After the individual **has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:**
  - (i) **.04% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a commercial vehicle other than a school bus or school vehicle.
  - (ii) **.02% or greater within two hours** after the individual has driven, operated, or been in actual physical control of the movement of a school bus or school vehicle.
- (2) After the individual has **imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely** driving, operating, or being in actual physical control of the movement of the vehicle.
- (3) While the **individual is under the influence of a controlled substance or a combination of controlled substances** as defined in section 1603 (relating to definitions)
- (4) While the **individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances**, as defined in section 1603.

**PENALTIES:** Second Tier Offense

### III. THE ANATOMY OF A DUI CASE



## A. Preparation Phase of Representation

### HIRING THE RIGHT ATTORNEY

If you are reading this pamphlet, you are considering The Morgan Law Firm to represent your interests. We are honored that you have chosen us for consideration. Unlike many attorneys, our firm is dedicated to DUI Defense 100%. This concentration on this very specialized area of law makes him the ideal choice to represent you.

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*Dean is like an encyclopedia of DUI knowledge. He was able to cite specific sections of the vehicle code from memory. It was clear that he was the smartest guy in the room. When he corrected the judge on the law, it was clear that I had the right lawyer on my side.*

➤ Mike - DUI Client 2013

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### OUR KNOWLEDGE BASE

*“DUI Defense, not Criminal Defense.” Why is that important?*

Each day we monitor cases throughout the state that affect our client’s potential for success. Attorney Morgan is the author of several briefs that resulted in changes in new DUI Law during its infancy. While other lawyers are thinking about rape charges, murder charges, and theft charges, Dean is concentrated on DUI Defense.

Having represented hundreds, if not thousands, of DUI Defendants in the past couple of years, we are willing to Attorney Dean Morgan is among the most experienced DUI Defense Attorneys in the state. [For a free online case evaluation, click here.](#)

Dean began his career in the Criminal Justice system in 1990 as a police officer. His most recent law enforcement position was that of a DUI and Traffic Specialist just prior to entering the practice of law. As a prosecutor, Dean prosecuted DUI Defendants. As a defense attorney, Dean uses his knowledge base to “read between the lines” of police reports and negotiate with prosecutors.

In addition, Dean regularly attends training sessions sponsored by the National Association of Criminal Defense Lawyers (NACDL) and National College of DUI Defense (NCDD) as well as private providers. Dean is a Standardized Field Sobriety Test Instructor. Dean has received training at the Drug Recognition Expert (DRE) Course in Atlanta, GA. He now possesses the same knowledge as the officers in the field purporting to be DRE “experts.”

## PREPATORY PHASE

With over 27 years of experience in the Criminal Justice System as police officer, DUI prosecutor, and DUI defense attorney, Dean has the ability to “read between the lines” of a police report to determine potential defenses.

Dean will recommend a course of action including potential legal research to be conducted as well as potential investigative steps to be taken prior to your preliminary hearing. These steps may include:

- Review of Applicable Statutory & Case Law
- Review of Scene (in some cases)
- Review of Officer’s History with our firm
- Review of Case with Client
- Review of Case with Legal Nurse Consultant

Dean will contact you directly to answer all your questions. Above all, we want to make sure you have all of the information necessary to make informed decisions regarding your case.

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*The Staff and Attorneys were extremely well prepared and knowledgeable. If I had a question, the answer was usually immediate and certain. If the answer was not immediate, Dean would find the answer and contact me as soon as possible.*

- DUI Client 2013

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## B. THE PRELIMINARY HEARING

### DO NOT WAIVE YOUR PRELIMINARY HEARING UNTIL A QUALIFIED DUI DEFENSE ATTORNEY HAS REVIEWED YOUR CASE COMPLETELY

The first court appearance is called the Preliminary Hearing.

#### What Happens at the Preliminary Hearing?

The purpose of a preliminary hearing is to allow a neutral magisterial district judge to determine whether the government can demonstrate a prima facie case against the defendant that is charged with a criminal offense. A prima facie case requires, in layman's terms, the government to demonstrate that it is more likely than not that: (1) a crime was committed and (2) the individual charged is the person who committed the crime. A prima facie case is not a determination of guilt. A finding of a prima facie case merely results in the charges being bound over to the Court of Common Pleas.

To establish a prima facie case for DUI, the Commonwealth must establish that you operated a motor vehicle on a public roadway and, there is evidence your blood contained drugs or alcohol. This is not a difficult burden to meet. However, an experienced defense attorney understands that the preliminary hearing is an opportunity to explore the facts of the case completely to determine the appropriate course of action to take in the case.

In addition to the elements necessary to establish a prima facie case, Dean will ALWAYS investigate the factual circumstances surrounding your arrest to determine the likelihood of success at trial. We always evaluate a DUI case as if the matter will be resolved through trial. That being said, we look at three very specific criteria to determine whether we will recommend trial, a negotiated guilty plea, or ARD.

#### 1. Did the Officer have Probable Cause to Stop and Detain You?

First, we will evaluate the officer's probable cause to stop/detain. To stop or detain an individual for DUI, the officer must possess sufficient facts that he/she believes that the defendant (or the defendant's vehicle) is in violation of the Pennsylvania Vehicle Code, in conducting an Authorized Checkpoint, or he/she has a lawful right to investigate a criminal action or accident.

In your case, the basis for the detention may not meet the legal standard outlined above. Therefore, it is **absolutely necessary that a full and complete evaluation of the case**, including a discussion with the officer occur prior to making any recommendation about the outcome of your case.

After that discussion, we will have sufficient facts to render an opinion on whether or not there is a likelihood of success at trial. Following the discussion with the police officer,

we will give you our opinion as to whether the issues can successfully be resolved in our favor by filing a pre-trial motion.

## 2. Did the Officer have Probable Cause to Arrest You?



Second, we will evaluate the officer's probable cause to arrest. To be constitutionally valid, a warrantless arrest must be supported by probable cause. The Pennsylvania Supreme Court has held "probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. Mere suspicion alone will not support a finding of probable cause.

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*Dean Morgan is a  
Standardized Field Sobriety Test Instructor!*

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Unlike many attorneys we will go beyond the field sobriety tests to determine whether or not probable cause exists. Simply stated, Field Sobriety Tests are designed to make you fail. The requested tests are inconsistent with our daily activities.

To be valid, Field Sobriety Tests must be administered in a prescribed standardized manner; the standardized clues must be used to assess the suspect's performance; and the standardized criteria must be employed to interpret that performance. If any one of the standardized field sobriety test element is changed, the validity is compromised. It has been my experience that most police officers do not administer the field sobriety tests properly. Please note that when the tests are administered properly they are only accurate less than 70% of the time. [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

*Note: Neither the HGN (eye-tracking test) nor the Preliminary Breath Test (PBT) are admissible in trial.*

We have copies of the same training manuals utilized to train law enforcement officers. As you may expect, the officers are often surprised to be cross-examined about their own training at trial. Rest assured that Dean knows the tests as well as, if not better, than the officer who administered the test.

These common phrases show up in nearly every DUI case:

- Red, bloodshot eyes
- The odor of an alcoholic beverage
- Staggered gait
- Disheveled appearance
- Slurred speech

However, there are a number of reasons, notwithstanding the influence of alcohol that such symptoms do appear. Therefore, we look beyond those common phrases to examine the actual facts of the case.

Thus, we will look beyond the tests and determine whether the things we do in normal, everyday life, such as standing and walking normally were indicative of intoxication. Following his discussion with the police officer, Dean will give you my opinion as to whether the Probable Cause to Arrest issues can successfully be resolved in our favor by filing a Pre-trial motion.

### **3. Chemical Testing/ Refusal**



See Section VI for a full discussion of chemical testing.

## After the Preliminary Hearing

After we have fully examined the potential success of these, and other, defenses, Dean will provide you with results of the evaluation including a categorization and recommendation as to how to proceed.

I will categorize your case as:

- Suppressible:
  - There is a constitutional error that could lead to have the charged withdrawn.
- Winnable:
  - There is a substantial likelihood that your case can be won at trial
- Defensible:
  - There are a number of potential defenses to your case
- Vulnerable, or Guilty Plea/ ARD Recommended:
  - You may not be successful at trial, but we will zealously represent your interests in plea negotiations or ARD.

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*Every other lawyer told me that ARD was my only hope. One even told me to waive the hearing and hire him because he said he would “fight to make sure you get ARD.”*

*I hired Dean because told me that there may be a better alternative. He listened to the facts of my case. He clearly explained the benefits and risks of each decision I was to make and made a clear recommendation. DUI Charges were dismissed. I could not be happier.*

- John, a DUI Client 2011

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## C. THE ARD PROGRAM

***ARD is not a “gift.” ARD is definitely not a “goal.”  
IT IS THE STARTING POINT***

### PURPOSE OF THE ARD PROGRAM

The ARD program is designed to accelerate the DUI process. It is NOT designed to benefit you. [For a free online DUI & ARD Case Evaluation click here.](#)

You must waive your formal preliminary hearing. **However, this does not mean that you must waive your preliminary hearing without a full and fair evaluation of your case to be eligible to apply for ARD.**

Each county in Pennsylvania has a different procedure for requesting ARD. Therefore, it is important that you work with an attorney, like me, who knows the application process in each county. If you have received this document, you can rest assured The Morgan Law Firm knows the application process in your county.

Following an evaluation of the defendant's prior record and the circumstances of the offense, the District Attorney will notify you of the date of the ARD admission hearing. You will also learn the terms and conditions of the ARD program.

### ELIGIBILITY FOR ARD PROGRAM

**IMPORTANT:** Every District Attorney has the discretion to establish other minimum standards. In many cases, a high BAC (above .24/.25) is not eligible. In some cases, a Refusal Charge is not admissible. There are other restrictions that apply.

The **minimum** requirements for eligibility are as follows:

- First DUI in 10 years
- Valid License
- Valid Insurance (If you are the owner of the vehicle)
- No one under the age of 14 in your vehicle
- Not involved in an accident involving serious bodily injury

### THE RIGHT ATTORNEY FOR THE ARD PROGRAM

You need THE RIGHT experienced DUI Defense Attorney evaluate your case before you enter the ARD Program is essential to protect your rights. Surrendering your rights to the government, without the full knowledge of the program requirements, potential defenses available to you, and a full evaluation of your case, does not make sense.

## THE NEGATIVE ASPECTS OF A.R.D.



More importantly you should be aware of the following facts:

1. Your license may be suspended for 30, 60, or 90 days.
2. If you have a CDL, it may be disqualified for 12 months and possibly for life (depending on prior record).
3. ARD remains on your driving record for life.
4. You may have to perform up to 100 hours of community service.
5. ARD probation may restrict your right to possess firearms.
6. You may be required to pay program costs that will not be refunded if you are removed from the ARD program.
7. The District Attorney has complete discretion to admit you into the program and may act to remove you from the program.

Our job, when representing an individual applying for ARD, is to review the facts and circumstances of the case, remaining vigilant to determine whether there is a possibility that the charges may be dismissed due to an evidentiary issue or whether there is a strong possibility of acquittal. If either of these situations arises, I will make a recommendation to you as to how we should proceed.

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*The Morgan Law Firm helped me achieve speedy resolution with my case despite the complexities involved. They thoroughly explained the DUI/ARD process to me and answered many questions quickly and accurately. I cannot more highly recommend Dean and his team for the situation you encounter that would necessitate the use of his services.*

**- Jennifer**

## THE ARD HEARING



At the hearing, which is held in open court, the Court will formally inform the defendant of the terms and conditions of the program. The Court will ask the defendant if he understands the terms and the conditions of the program including:

- Successful completion of the program offers you an opportunity to earn a dismissal of the pending charge(s).
- If you fail to complete the program, you may be subject to trial as provided by law.
- You must agree to waive appropriate statutes of limitations as well as the federal and state Speedy Trial statutes and constitutional provisions.
- Upon acceptance into the ARD program, all proceedings are postponed during the term of the program.
- You must undergo a drug and alcohol assessment and complete counseling if deemed necessary.
- You must attend DUI classes.
- You must undergo a license suspension which is based upon the BAC
- If you successfully complete the Program, you may make an application to the court for an order dismissing the charges against you.

## EXPUNGEMENT

After you complete the program, your charges are dismissed. However, Expungement of the charges may not be automatic. When consulting with attorneys, make sure you discuss Expungement of the charges.

Expungement of the charges means that you will not have a criminal record. However, the District Attorney will be able to access the record if you get another offense within 10 years. In addition, your driving record will show an ARD Admission for a period of 10 years.

## CONCLUSION

The ARD program is not always the right choice for every person arrested for DUI. Based on the facts and the circumstances of your case, you may wish to challenge the evidence against you. However, if you choose to enter the program, we will work tirelessly to help you to succeed! [For a free online case evaluation click here](#)

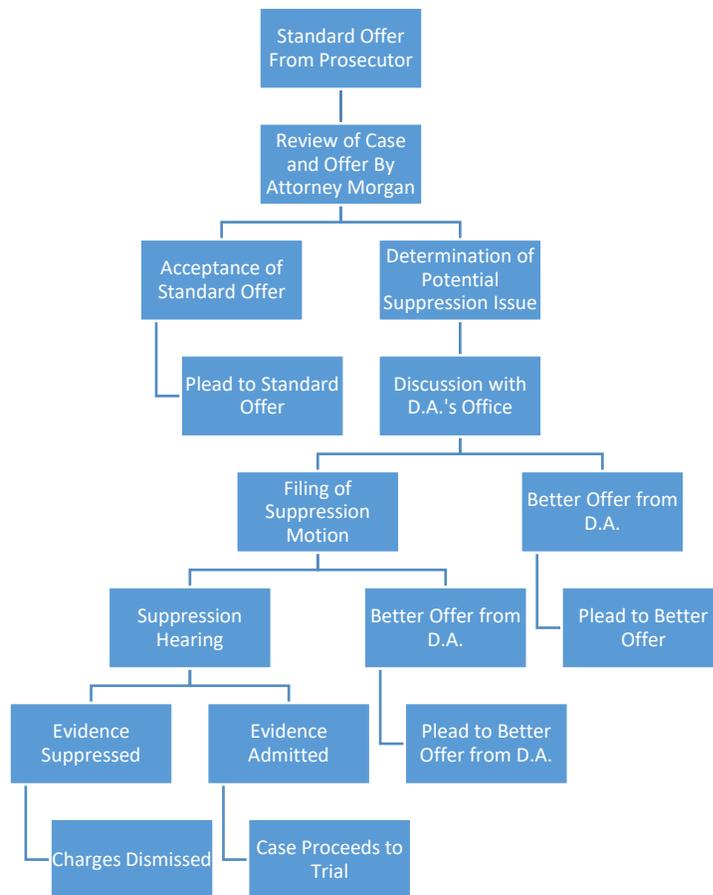
## D. PLEA OFFERS & FILING SUPPRESSION MOTIONS

### PLEA OFFERS

For the most part, the District Attorney in each individual county establishes a standard “plea offer.” In some counties, this standard offer is for the minimum sentence. In other counties, there may be an offer of house arrest. In still others, the standard offer may be above the minimum.

At The Morgan Law Firm our preliminary investigation allows us to determine the potential positive resolution of your case. In some cases, we may be constrained to recommend accepting the “standard offer.”

In other cases, we may recommend rejecting the offer outright. In between those extremes lies a grey area where a better deal can be negotiated.



## FILING SUPPRESSION MOTIONS

When a violation of the United States or Pennsylvania Constitution occurs, the government is precluded from using any information gained thereafter in the prosecution of an individual charged with a crime. The evidence must be suppressed.

When we represent an individual charged with DUI, we pay careful attention to the Basis for the Detention. [For a free online case evaluation, click here.](#)

To stop or detain an individual for DUI, the officer must possess sufficient facts that he/she believes that the defendant (or the defendant's vehicle) is in violation of the Pennsylvania Vehicle Code, in conducting an Authorized Checkpoint, or he/she has a lawful right to investigate a criminal action or accident.

Whenever a police officer is engaged in a systematic program of checking vehicles or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe necessary to enforce the provisions of this title. **75 Pa.C.S.A. 6308(b).**

Traffic stops based upon reasonable suspicion: either of criminal activity or a violation of the motor vehicle code under the authority of Section 6308(b) must serve the stated investigatory purpose.

Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, "it is incumbent upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*"

In the event the stop is not consistent with Pennsylvania law, Dean will recommend the filing of a Motion to Suppress Evidence. If successful, the motion will be granted and the charges against you will be dismissed. If unsuccessful, the case will proceed as normal.

### **NOTE: You cannot file a motion to suppress and still have ARD Consideration**

In certain cases, the filing of a suppression motion will result in a "better deal" being offered by the prosecution. Attorney Morgan's reputation with the prosecution and law enforcement is based upon a fair and accurate reading of the law and aggressive advocacy based upon established precedent.

We do not attempt to “change the law,” nor do we present outrageous claims to enhance our media reputation. Over 75% of our suppression motions have been met with offers to reduce or dismiss charges. Not one of our suppression motions has been met with any greater penalty than that which was offered by the prosecution as part of their initial plea offer.

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*Dean was able to negotiate a no incarceration sentence for a 3rd DUI in less than 10 years at the highest level of punishment.  
I was facing up to 15 months of incarceration.*

*Dean successfully filed a suppression motion that resulted in the DA responding with an offer of a 6 month probationary sentence.  
Dean’s skills are second to none and I would highly recommend him to anyone that finds themselves in need of a solid DUI defense attorney.*

**- Rick - A DUI Client 2011**

## GOING TO TRIAL

The decision to go to trial is not one to be taken lightly. 95% of all cases resolve through a non-trial resolution. [For a free online case evaluation, click here](#)

In the United States, every person accused of a crime punishable by incarceration for more than six months has a constitutional right to a trial by jury. The Supreme Court has ruled that if imprisonment is for six months or less, trial by jury is not required, meaning a state may choose whether or not to permit trial by jury in such cases.

### NON-JURY TRIAL (a/k/a “Bench Trial”)

Under Pennsylvania Law, the following DUI Charges must be tried by a judge, sitting without a jury.

- First Offense DUI Cases
- Second Offense DUI with BAC below .16%

A non-jury trial is rarely a good idea because most studies have shown that judges are more likely to convict than a jury. Moreover, from our own independent research we have learned that judges are more likely to convict. Nonetheless, there are some cases where a trial must occur either due to an outside influence, such as a CDL, or to preserve evidence for appeal.

When preparing a case for a Bench Trial, we need not draft jury instructions, but must still refer to these instructions to develop our closing argument. In addition, we spend less time on the “show” aspect of trial. Our demeanor, argument, and presentation is based upon “just the facts.”

A non-jury trial consists of the following:

- Brief Opening Statement By Prosecutor
- Brief Opening Statement by Defense Counsel
- Prosecutor’s Case in Chief
  - Testimony of Witnesses
  - Cross Examination of Witnesses by Defense Counsel
- Defendant’s Case in Chief (if any)
- Defense Counsel’s Brief Closing Argument
- Prosecutor’s Brief Closing Argument

### JURY TRIAL

In Pennsylvania, a jury must be unanimous for either a guilty or not guilty decision. A hung jury results in the defendant’s release, however charges against the defendant are not dropped and can be reinstated if the state so chooses.

Juries usually weigh the evidence and testimony to determine questions of fact, while judges usually rule on questions of law. A judge cannot order the jury to convict, no matter how strong the evidence is.

A DUI jury is made up of 12 members. Juries decide whether the defendant committed the crime as charged. Verdicts in criminal cases must be unanimous. A jury's deliberations are conducted in private, out of sight and hearing of the judge, litigants, witnesses, and others in the courtroom.

Under Pennsylvania Law, the following DUI Charges must be tried by a judge, sitting without a jury.

- Second Offense DUI with BAC above .16%, Controlled Substances, or Refusal
- Third Offense DUI

When preparing a case for a Jury Trial, we put more emphasis in the arguments we will make before the jury. We recognize that the jury has a more open mind than a judge. The jury knows nothing about the law and has a more “common sense” approach to the case. A jury trial is a lot like a show. The jury expects to not only be informed, but in some respects, expects to be entertained.

A jury trial consists of the following:

- Opening Statement By Prosecutor
- Opening Statement by Defense Counsel
- Prosecutor's Case in Chief
  - Testimony of Witnesses
  - Cross Examination of Witnesses by Defense Counsel
- Defendant's Case in Chief (if any)
- Defense Counsel's Closing Argument
- Prosecutor's Closing Argument

A jury trial takes weeks to prepare. If the case is to be heard by a jury, our clients should expect to be actively involved in the preparation of the case.

Free online case evaluation at [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## IV. FORENSIC SCIENCE & MEDICINE

### A. DUI- BLOOD AND BREATH TESTING

#### BREATH TESTING

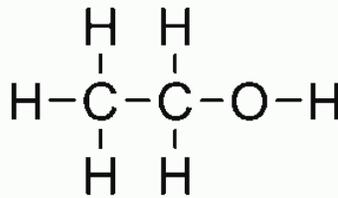
Unfortunately, the breath test is wrong over 89% of the time.... **Sometimes it produces a higher result. Sometimes it produces a lower result.**

The point is this... The number that is produced by the breath testing device is wrong and I can usually prove it with one easy step. If you have been charged with DUI based upon a breath test, you likely received a receipt produced by the device. On that receipt you will see two results based on your two samples. Are those results the same? Chances are, they are not the same. Did your BAC change? Of course not... Therefore, the machine must not be 100% accurate, right?

If your breath was tested, there is a very good chance that the test was conducted using an Intoxilyzer 5000. This clunky old machine has been around since the 1970s. It relies on technology from 1985. And, unfortunately, that technology is based upon unreliable scientific principles.



The Intoxilyzer 5000 uses infrared (IR) light and five ethanol specific IR filters to identify the ethyl alcohol molecule and determine the percent of alcohol in a breath sample. When Infrared light is passed through a substance, some of the infrared light will be absorbed. If a variable infrared light source is directed through a group of molecules, such as ethyl alcohol, an infrared spectrum can be produced. Each substance has its own particular spectrogram. Ethyl Alcohol consists of Six Hydrogen Atoms, Two Carbon Atoms, and one oxygen atom. [Free online case Evaluation](#)



### ***The Structure of Ethyl Alcohol***

#### **How does the breath test device calculate my Blood Alcohol Content?**

First, you must understand that there is a 10% margin of error. So, your BAC of .10 could be as low as .09 or as high as .11 and be within the acceptable margin of error. The difference between a .10 and a .09 under the law is actually quite significant, if this is your third offense, a .09 will result in a 10 day jail sentence. If the BAC is reported as a .10, you will serve a minimum of 90 days in jail

44 1/2% of all results will be below the reported result. 44 1/2% of all results will be above the reported result. The Commonwealth has the burden of providing your guilt beyond a reasonable doubt.

The machine will report your results as grams of alcohol per 210 liters of breath. Think of 105 2-liter bottles of soda. Compare that to 8 grams (about 1 1/2 crayons). Visualize that for a minute and you will see why accuracy matters. If the device reports a .10 (2 crayons), you can go to jail for a minimum of 2 days for your first offense. If the device reports a .05 (one crayon), you go free...

#### **What else can cause an error?**

In addition to the inherent margin of error present in the breath testing device, your breathing patterns can affect a breath testing device. It has been established that a person who hold his/her breath will produce a higher result. Short rapid breaths that flush out the lungs will produce a lower reading. Think back to the breath test... Were you told to hold your breath before blowing into the device? Yep, I bet you were.

Were you told to stop by the breath test operator? He is making sure that the two numbers agree. Does that seem fair?

Every breath testing device in America is programmed to expect a breath temperature of 34 degrees Celsius. However, the average person has a breath temperature of 35 degrees Celsius. Why does this matter? Each degree of variance produces a 8.6% variance in breath test results. Thus, if your breath temperature is 35 degrees Celsius, you are likely to have produced a n estimated BrAC 8.6% above your actual BrAC.

Your own hemocratic ratio affects the breath testing device's accuracy.

The presence of mouth alcohol can affect the results. Did you burp, belch, or bring anything into your mouth, even a micro-burp?

## Does it matter that this device is inaccurate?

**It depends.** To be candid, most judges just accept the breath test as accurate. The Courts have held that breath testing is acceptable in the Commonwealth and have made it incredibly difficult for juries to hear the evidence of inaccuracy. In many cases, this requires an expensive expert to testify. **However, if your BAC is close to the limit** or you are charged with Homicide by Vehicle, it matters a great deal. In many cases, our challenges are accepted as part of negotiations.

[www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## BLOOD TESTING



**FACT:  
They don't actually test  
your blood.**

## SERUM/PLASMA TESTING

When the prosecution relies upon serum testing, it is important to remember that the serum is only part of your blood, it is not your "whole blood." After your blood is drawn, the lab technician will place your blood vial in a centrifuge for the purpose of separating your plasma from your red blood cells. Thereafter, a silver straw is placed in the vial to "suck up the serum from the specimen and moves it into the analyzer so it squirts it down

into a cup and mixes it with a reagent for the alcohol. The reagent “causes an enzymatic reaction to react a color which is read by a spectrophotometer and then it’s measured at a certain rate and calculated into a percentage.” The computer then generates an electronic report.

The general rule for alcohol related DUI cases is that only tests performed on whole blood will sustain a conviction under Section 3802. The testing of plasma or serum is based upon non-whole blood. Thus, evidence of blood serum, plasma or supernatant testing, without conversion, will not suffice to support a conviction under 3802. See e.g., *Commonwealth v. Renninger*, 682 A.2d 356 (Pa.Super.1996); *Commonwealth v. Michuck*, 686 A.2d 403 (Pa.Super.1996); *Commonwealth v. Wanner*, 605 A.2d 805, 808 (1992); *Commonwealth v. Bartolacci*, 598 A.2d 287 (Pa.Super.1991).

With respect to conversion evidence, this Court has required evidence of a conversion factor to calculate the whole blood alcohol content of the original whole blood sample from the non-whole blood result. *Commonwealth v. Newsome*, 787 A.2d 1045, 1049 (Pa.Super.2001). “The Commonwealth may apply different conversion factors in different cases, as long as **they [the conversion factors]** are generally accepted within the scientific community.” *Kohlle*, 811 A.2d at 1015. (emphasis added).

**IN OTHER WORDS... The Courts know that the test is inaccurate, but they allow it anyway.**

Before we concede that a Serum Blood Test is Admissible (**which does not mean “accurate”**), I require the government to provide me with the following: Full name of Phlebotomist who drew blood of the defendant; Full name and CV/Resume of any witness the Commonwealth intends to call to testify as to the results of the blood testing; Plasma/Serum Testing Documentation; Copy of any and all documentation, including Standard Operating Procedures, relied upon by Medical Technician in conducting the testing of the Defendant’s blood serum; Copy of any and all documentation regarding the device/machine utilized to analyze the serum of the defendant including, but not limited to the following: Device Manufacturer, model number, serial number, Date placed in service, maintenance reports, calibration reports, and out of service documentation within 180 days prior to the testing of the defendant’s serum and 90 days after the testing of the defendant’s blood serum; The title of any document, treatise, book, study, or report upon which the conversion factor relied upon by the hospital/laboratory to convert the amount of alcohol in a subject’s plasma/serum to a whole blood equivalent value; The name, title, and qualifications (CV) of the individual responsible for choosing the document, treatise, book, study, or report upon which the conversion factor relied upon by the hospital/laboratory to convert the amount of alcohol in a subject’s plasma/serum to a whole blood equivalent value. [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## Does it matter that this device is inaccurate?

**It depends.** To be candid, most judges just accept the breath test as accurate. The Courts have made it incredibly difficult for juries to hear the evidence of inaccuracy. In many cases, this requires an expensive expert to testify. **However, if your BAC is close to the limit** or you are charged with Homicide by Vehicle, it matters a great deal. In many cases, our challenges are accepted as part of negotiations.

## HEADSPACE GAS CHROMATOGRAPHY (HGC) TESTING

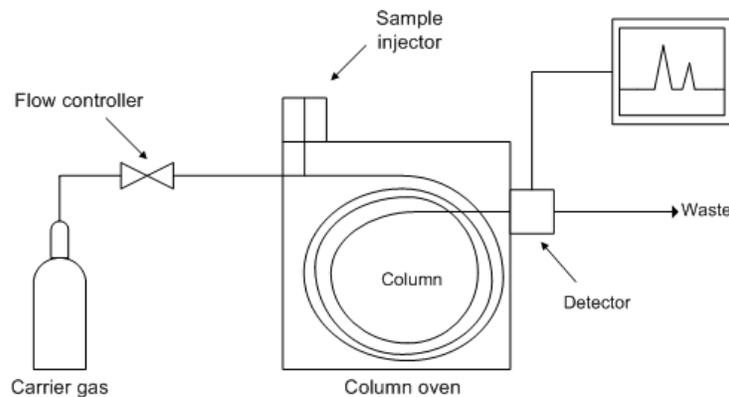


Headspace Gas Chromatography (HGC) is the most common type of testing in Pennsylvania. **Gas chromatography (GC)**, is a common type of chromatography used in analytical chemistry for separating and analyzing compounds that can be vaporized without decomposition.

In gas chromatography, the *mobile phase* (or "moving phase") is a carrier gas, usually an inert gas such as helium or an unreactive gas such as nitrogen. The *stationary phase* is a microscopic layer of liquid or polymer on an inert solid support, inside a piece of glass or metal tubing called a column (an homage to the fractionating column used in distillation). The instrument used to perform gas chromatography is called a *gas chromatograph* (or "aerograph", "gas separator").

The process of gas chromatography involves the use of an instrument called a gas chromatograph (GC) to separate and analyze compounds that can be vaporized without decomposing the compound. Gas chromatography is particularly well suited to the separation of volatile organic compounds.

## ***The Inner Workings of a Gas Chromatograph***



Human blood is a mixture of various substances and left alone, it is very difficult to analyze. However, some of the components of blood are volatile organic compounds, and the point of GC is to separate and analyze the volatile organic compounds that may be within the blood sample.

Thus, with the proper extractions procedures or for volatiles such as alcohols by use of a method called “head space,” various foreign components of the blood such as drugs, drug metabolites, and alcohols in blood can be measured and identified. In a DUI case we are primarily interested in the volatile ethyl (beverage) alcohol, but there are other potential volatiles of interest, such as acetone, which might be of interest where the driver was experiencing a diabetic episode.

Like all chromatographic methods, with gas chromatography there is a “mobile phase,” in this case a gas, which is used to carry the mixture over a “stationary phase.” The gas is more fully called “headspace gas.” With DUI cases, the stationary phase is typically a tube or capillary column. The components in the mixture containing a driver’s blood leave this column in the order of their volatility, with the most volatile (first to vaporize) leaving the column first.

In the forensic lab testing blood for DUI cases, the gas chromatographic system might include the following:

- The blood sample
- The headspace vial
- The internal standard
- The carrier gas
- The capillary column
- The “oven”
- The flame ionization detector (FID)
- The computer
- The printer

The capillary column is contained within an oven. The headspace gas is injected into the column and is measured as it come out of or “elutes” from the column.

Before an unknown volatile can be measured, it is important for the lab analyst to prepare a standard mix which usually includes several different volatiles including isopropyl alcohol, ethyl alcohol, methanol, acetone, acetaldehyde and toluene. This standard mixture allows the laboratory to determine the specific retention times of the various volatiles of interest.

Once the known standards mixture is tested with a specific column and the retention times recorded, the lab analyst can then use the gas chromatograph to qualitatively test unknown compounds.

A calibration curve is also produced in the laboratory. This involves passing known quantities of alcohol through the column. The specific laboratory’s protocol will dictate how many different levels of alcohol are measured, but they will usually span from well below the legal limit to well above. This calibration curve “tests” the column to be sure that it is capable of measuring specific known quantities. Subtle changes in carrier gas flow; the flow of gases to the FID detector (if used) and subtle changes in the column are few of the reasons that the GC must be recalibrated very frequently.

Now that the column has been calibrated, the lab analyst is ready to begin the blood test. The analyst starts by removing a very small amount of the driver’s blood from the blood draw vial and placing it, along with a very small amount of an internal standard, into a separate testing vial. This testing vial is called a “headspace” vial. Internal standards are alcohols that would not be expected to occur in human blood except in minute quantities. More importantly, the boiling point of these standards is different from the boiling point of ethanol. This difference is important because it will result in a GC peak for the internal standard that is clearly distinguishable from the peak for ethanol. The internal standards that are typically used include *n-propyl* and *t-butyl* alcohol.

This headspace vial is then shaken to mix the chemicals and heated to produce the headspace gas. An injector system is used to introduce the sample to be tested into the GC column. In the case of headspace method, a small amount of air (gas) above the liquid in the headspace vial which has become saturated with volatile components from the liquid sample is taken and injected into column via a micro syringe. On its way into the headspace vial, the syringe passes through a rubber gasket. With the headspace method no blood is directly being sampled because headspace testing involves an analysis of only the air above the blood sample.

Once the blood sample has been heated to produce the headspace gas, this gas is swept into and through the column by the carrier gas stream. This phase is known as the mobile phase. A high pressure gas cylinder serves as the source of the carrier gas. There are several carrier gases that can be used, including helium, nitrogen and hydrogen.

Today, columns used in forensics are generally capillary columns up to 30 meters in length and are made of glass. The diameters of these columns are generally in the range of 0.25 mm. Modern capillary columns typically do not have “packings” as they once did but instead have a coating deposited onto the internal wall of the column. The capillary column consists of a solid support phase and a bonded liquid phase. In capillary columns, the solid support phase is the column itself.

The capillary column separates the sample into its component parts. The oven helps control the speed and amount of separation. The detector detects the presence of and can measure the amount of the volatiles as they exit out of the column. A common detector used in GC systems is the flame ionization detector (FID). However there are many other detectors that are used for special detection requirements.

The FID is located at the end of the column. Because the volatiles involved are flammable, they can be burned in the flame ionization detector. Thus, as the chemicals exit or “elute” from the end of the column the FID incinerates them, and this combustion produces an electronic charge in the form of ions.

These ions are then measured by the detector and subsequently converted by the instrument’s computer into a graph which usually contains two peaks. One of these peaks represents the internal standard and the other the ethyl alcohol. The retention time of the peak for the ethyl alcohol must match the expected retention time in order to qualitatively confirm its identity. The expected size and retention time of the peak for the internal standard will be known because of prior testing and because a precise amount of it was placed by the analyst into the headspace vial. The area beneath this peak, called the “area under the curve” is compared with the peak for the ethyl alcohol. This ratio is compared with the calibration curve and converted into the driver’s blood alcohol level. [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

### **So.... What the Hell does that mean?**

Think of an Olympic swimming competition where at the beginning of the competition all the swimmers are anonymous. Your goal in this fictitious competition is to figure out the identity of the swimmers. As usual, at the beginning of the race the swimmers all begin at the starting line and as the race begins the swimmers jump into the pool and quickly begin to separate as they race toward the finish line.

While you watch the competition unfold the same event is repeated over and over again and you see the same swimmers compete against each-other several times. As you watch you begin to notice that the each individual swimmer seems to finish each race at the same time. If you were keeping notes of each individual swimmer’s time, pretty soon you’d be able to identify the swimmer based on the amount of time it took him or her to finish the race.

Similarly, in the world of GC, the volatile organic compounds finish the “race” at different rates depending on their various chemical and physical properties and their interaction with a specific column. The volatiles are qualitatively identified based on the amount of time it takes to finish the “race” to the GC’s detector. In gas chromatography this is what happens when the lab analyst runs the standards mixture and records the time the various volatiles elute from the column. This is the qualitative part of gas chromatography, and answers the question “what am I.”

To carry our metaphor a step further, the swimming pool would be similar to the column in the GC. The solid phase is a bit like the water in the swimming pool in that the water creates a resistance against which the swimmers must race through as they continue toward the finish line. This resistance helps to separate out the fast swimmers from the slow swimmers, and this separation makes it easier to determine the swimmer’s identity.

### **What do we do about it?**

If the blood was subject to Gas Chromatography Testing, I require the government to provide me with the following: A copy of the Laboratory Report; A copy of the Analyst’s Bench Notes; A copy of the documentation for all calibrators, controls, blanks, internal standards and standard mix and ALL associated Chromatographs; A copy of the Calibration Curve Result; A copy of all maintenance logs for the Gas Chromatograph device; A copy of all maintenance logs for all pipettes in use at the time defendant’s blood was tested.

### **Does it matter?**

**It depends.** To be candid, most judges just accept the breath test as accurate. The Courts have made it incredibly difficult for juries to hear the evidence of inaccuracy. In many cases, this requires an expensive expert to testify. **However, if your BAC is close to the limit** or you are charged with Homicide by Vehicle, it matters a great deal. In many cases, our challenges are accepted as part of negotiations.

### **REFUSAL**

In addition, the specific factual circumstances regarding a refusal are important. This includes whether or not you were fully advised of the consequences of the refusal including the reading of the DL-26. Please note that the refusal may result in a separate civil penalty, including the loss of license for a period of 12 or 18 months. If retained quickly, I may be able help you avoid a suspension from PennDOT.

From an Administrative standpoint, fighting a refusal can be done. Our firm is dedicated to defending you against these civil penalties. If you do receive notice of suspension, you may wish to file an appeal. That would be separate and distinct from the criminal case. [www. DUI-case-evaluation.com](http://www. DUI-case-evaluation.com)

## B. DRUG RECOGNITION EXPERTS

A **Drug Recognition Expert** (DRE) is a law enforcement officer trained to identify people whose driving is impaired by drugs. DREs often testify in court, where the term "expert" has important legal implications. Some jurisdictions do not allow the term Drug Recognition *Expert*.

The acronym 'DRE' has been used to refer not just to the DRE officers, but also to the examination they perform, the "Drug Recognition Examination," or "Drug Recognition Evaluation." The confluence of acronyms leads to confusion, and the IACP now calls the evaluation done by DRE officers the "Drug Influence Evaluation," DIE.

### DRE Training

DRE training and certification standards are defined by the International Association of Chiefs of Police. IACP standards require DREs training to be done using an official Student Manual. This manual is widely cited in court as defining standards for the performance of a Drug Influence Evaluation. We own this manual. We use it!

### The 12 Step DRE process

A DIE involves the following 12 steps (a detailed description for each step is given at the DECP.org)

1. **Breath Alcohol Test:** The arresting officer reviews the subject's breath alcohol concentration (BrAC) test results and determines if the subject's apparent impairment is consistent with the subject's BrAC. If so, the officer will not normally call a DRE. If the impairment is not explained by the BrAC, the officer requests a DRE evaluation.
2. Interview of the Arresting Officer
3. Preliminary Examination and First Pulse
4. Eye Examination
5. Divided Attention Psychophysical Tests
6. Vital Signs and Second Pulse
7. Dark Room Examinations
8. Examination for Muscle Tone
9. Check for Injection Sites and Third Pulse
10. Subject's Statements and Other Observations
11. Analysis and Opinions of the Evaluator
12. **Toxicological Examination :** After completing the evaluation, the DRE normally requests a urine, blood and/or saliva sample from the subject for a toxicology lab analysis.

Attorney Morgan has recently attended Advanced Drug Recognition Expert Training offered by on the premier Trainers in the United States. Very few Attorneys possess the knowledge and experience of Attorney Morgan. [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## C. MEDICAL DEFENSES TO DUI

“..after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least...”

***These few words are the reason that DUI defense requires medical & scientific expertise.***



The absorption, distribution, and elimination of ethyl alcohol is a science. Because it is the science of the human body, it requires specialized medical knowledge. **The Morgan Law Firm is the ONLY Defense firm in Pennsylvania with a Registered Nurse/ Legal Nurse Consultant on Staff.** [www.dui-case-evaluation.com](http://www.dui-case-evaluation.com)

We recognize that DUI, unlike any other criminal offense, is not based upon the intent to commit a particular offense.

- Operating a motor vehicle is not illegal.
- Consuming alcoholic beverages is not illegal.
- Operating a motor vehicle after consuming an alcoholic beverage is not illegal.

It is illegal to operate a motor vehicle after imbibing (drinking) a sufficient amount of alcohol such that you are either incapable of safely operating a motor vehicle or your Blood Alcohol Concentration is above a .080% (If your entire blood volume was divided into 100,000 equal containers, alcohol would be in only 80 of those containers. 80/100,000). The government cannot actually prove that you had a BAC of .08%.

To make this measurement, the government is utilizing a breath test device that is well-known to be inaccurate or they rely on a blood testing system that is either wholly inaccurate (Serum testing at a hospital) or Gas Chromatography Testing that does not test the blood, it tests gas in a headspace. More importantly, the conclusions they reach are a generalization **comparing you to everyone else** based upon standards established with limited scientific study.

## **YOUR MEDICAL CONDITION IS IMPORTANT**

Your medical condition can affect your ability to perform field sobriety tests, your breath testing results, and/or your blood test results. Your medical condition is vitally important to your defense.

Therefore, we want to know if you have now or have ever been diagnosed with any of the following:

- Diabetes,
- Hypoglycemia,
- Multiple Sclerosis,
- Epilepsy,
- Herniated Disk,
- Liver Disease,
- Kidney Disease,
- Anemia, or
- any other medical condition which affects your balance such as back problems, leg problems, or difficulty balancing.

In addition, we will want to know if, at the time of the DUI arrest, you were suffering from the following:

- Concussion or Head Injury,
- Blunt Force Trauma (car accident), or
- Fever.

If I recommend your case for trial, I may ask for your authorization to release your medical records to my firm for the purpose of a full review to determine if your medical condition impacted your case.

Our Legal Nurse Consultant has over 20 years of experience as a Registered Nurse including the following:

- Nursing Administration
- Trauma Coordinator
- Kidney/Liver Transplant Coordinator
- Surgical Intensive Care Unit (SICU)
- Emergency Room nurse

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The Nurse reviewed my records and we determined that drugs did not cause my impaired driving. My charges were significantly reduced.

- **D.S. A DUI Client**

## D. EXPERT WITNESSES

The use of an Expert Witness in a DUI Case can be an investment. **After you have been charged with DUI, the court process begins.** During the trial, it is possible that we will call on expert witnesses to testify in an attempt to weaken the prosecution's case. This is one of the many reasons why it's imperative that you hire an experienced DUI Defense attorney.

There are scientific and medical facts that surround each DUI case and an expert witness may be called in any of these areas. For instance, a medical expert witness can explain to the judge or jury why your breath or blood test result may not be an accurate indicator that you were driving under the influence.

The Expert Witness may discuss the many flaws associated with the breath test for example. This could be something as simple as the machine was not properly calibrated and thus resulted in a higher BAC reading. [www.dui-case-evaluation.com](http://www.dui-case-evaluation.com)

An expert witness may also discuss the subject of your blood alcohol level at the time you were driving and how it can be different from the time you were tested. Many people assume that the more time passes, the lower your BAC will be, which means that your BAC result was actually lower at the time of testing than when you were driving. An expert will explain that your BAC level actually rises as time passes and more alcohol is absorbed into your blood. This means that your BAC could have actually been lower when you were driving.

A scientific expert may also be called to testify about the inaccuracies of the field sobriety tests you took. For example, if your coordination, balance and listening skills were fairly well, the expert may determine that you were not DUI. The expert may also explain to the judge or jury that alcohol always influences your mind before your body, so if you only showed physical impairment this could be a cause from something else.

**If your DUI involved an accident, an accident reconstruction expert may be called to testify on your behalf if he or she believes that the accident was not your fault or just could not have been avoided.**

## **v. QUESTIONS TO ASK TO CHOOSE THE BEST DUI ATTORNEY FOR YOUR CASE** *(And Our Answers)*

### **BACKGROUND, EXPERIENCE, AND PRACTICE**

#### **1. Are you an experienced DUI Attorney?**

- a. **Yes.** Since 1990, I have viewed DUI cases from every possible angle. As a former police officer, prosecutor, and now as a defense attorney, I have reviewed hundreds of DUI cases. I know and understand the procedures and tactics used by law enforcement officers. I understand the weaknesses of the field sobriety tests, the blood & breath tests, and report writing skills of law enforcement and, more importantly, how to use those weaknesses to the advantage of my client.

#### **2. Who will represent me?**

- a. You have a choice of attorney. Regardless of your choice, Attorney Morgan will be actively involved in your defense. We will never transfer your case to an associate below the grade chosen by you at the outset of your representation.

#### **3. I want a specialist: How much of your practice is dedicated to representing DUI Defendants?**

- a. 95% of my practice is dedicated to DUI Defense (Not Criminal Defense). The remaining 5%?? Legal issues brought by current or former clients who would prefer to work with someone they trust rather than looking for a new lawyer.

#### **4. Are you a former prosecutor? / How does this impact my case?**

- a. **Yes.** I am a former prosecutor. I have worked for the Las Vegas, Nevada District Attorney's Office, the Cumberland County District Attorney's Office, and the Lancaster County District Attorney's Office. I know and understand the prosecutor's manner of preparing cases, the goals of the prosecutor, and the best way to utilize those factors to the benefit of my client.

#### **5. Are you a former police officer? / How does this impact my case?**

- a. **Yes.** I am a former law enforcement officer. I was first sworn in as a Police Officer in 1990. In my most recent capacity, I was my unit's traffic enforcement/DUI Specialist. I received advanced training in the administration of breath testing as well as Field Sobriety Testing. I personally administered the tests on hundreds of occasions. I know the weaknesses of these tests at a different level than most attorneys.

**6. Where is your local office? How do I contact you?**

- a. We are a successful DUI Defense firm because of our action in the courtroom, not behind a desk.
  - i. On average, I am in a courtroom 32 hours per week.
  - ii. My team and I are equipped with the latest technology that allow me to access an electronic copy of any file in our office. This allows me to respond immediately to any communication from our clients. From anywhere in the world, I can send you copies of documents from our files.
- b. I am a DUI Defense Attorney. I do not represent criminals. I do not advertise or market my services to represent individuals facing divorce, bankruptcy, personal injury, or any other type of law other than DUI Defense.
  - i. Because we limit my practice to one specialized area of law, I do not take any case that walks through the door. I only represent DUI Defendants.
  - ii. Because I only represent a limited number of clients, having a “sticks and mortar” office in every county would require us to charge clients more to pay for the electricity, phone system, and rent.
- c. If you need to meet with me in person, we can arrange for a meeting at a location that is mutually convenient including the courthouse or even your home. If you need to speak with us by phone, just call. Email is always available.

**7. I want an attorney who will devote time and energy to my case: Do you limit the number of people you represent?**

- a. **Yes.** I devote my practice to helping my clients achieve the best possible outcome for their case. To do so, I must devote more time and energy to each case. As a result, I only accept clients that I know will benefit from my assistance.

**8. I want an attorney who will communicate with me: Do you return phone calls / emails promptly?**

- a. **Yes. Communication is the key to a successful lawyer-client relationship!** Email is preferred, because I can respond to your question immediately, even while in court. If you call and leave a message, we will contact you within minutes or hours, not days. We have a 100% client satisfaction rate for communication.
- b. **If you do not have an email, we encourage you to get one through gmail.com, yahoo.com, or Hotmail.com.** All are free.

## APPROACH TO YOUR CASE

### 9. I just want to apply for the ARD program: Do I need an attorney?

- a. **Need?** No.
- b. **Are you better off with an Attorney?** That depends on the quality of the attorney. If your first contact with an attorney leaves you feeling like ARD is your **only** goal, without evaluating your case fully, you must evaluate whether or not his/her services are worth your hard-earned money.
- c. **ARD is not your ONLY option.** It is a good program, but not a great program. You should ONLY hire a lawyer like me who will fully and fairly evaluate your case before you make any decision about ARD.

### 10. What are your goals for my case?

- a. Dismissal of Charges
- b. Avoid Jail
- c. Avoid License Suspension

### 11. Can we see examples of your successful cases?

- a. Yes! I provide a copy of our case results. I cannot guarantee any particular result. However, if an Attorney cannot prove his worth to you, you should not hire him/her.

### 12. Do you take DUI cases to trial?

- a. An Attorney who is unwilling to go to trial is NOT your best option.
- b. **Yes. IF it is in your best interest** to take a case to trial, I will recommend trial. Trial is about achieving the best result for your case. It isn't about padding my resume.

### 13. Do you recommend ARD in some cases?

- a. **Yes.** Your charges may be resolved by ARD only IF your case is not winnable.

### 14. Have you had a DUI case dismissed completely at the preliminary hearing?

- a. **Yes.** Although I cannot guarantee this result. It is something I strive for in every case.

### 15. Are you able to negotiate a reduction in charges at a preliminary hearing?

- a. **Yes.** In most cases, I am able to obtain a reduction of charges or dismissal of some charges at your preliminary hearing.

[www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

## **KNOWLEDGE OF DEFENSE STRATEGIES**

### **Medical Condition**

#### **16. I have a medical condition, does this matter?**

- a. DUI involves science. An attorney who understands medicine may be an essential asset in your case.
- b. Your medical condition can affect your ability to perform field sobriety tests, your breath testing results, and/or your blood test results. Your medical condition is vitally important to your defense.
- c. **Trauma affects BAC.** If you were involved in a motor vehicle accident as part of your case, your Blood Alcohol Content result can be affected.
- d. If I recommend your case for trial, I may ask for your authorization to release your medical records.
- e. **A Legal Nurse Consultant** (A Registered Nurse with over 20 years of experience) is available to review your records.

### **Field Sobriety Tests & Drug Recognition Experts**

#### **17. I “failed” my field sobriety tests (FST) does this mean I am guilty?**

- a. **No.** Field Sobriety Tests were designed to determine whether or not a person has a blood alcohol level above a .10%. Even when properly administered, they are effective less than 70% of the time. They are rarely administered properly.
- b. Dean Morgan is a Field Sobriety Test Instructor.

#### **18. Have you received advanced training in the area of Field Sobriety Testing?**

- a. **Yes.** I am a NHTSA Qualified SFST Instructor. This means I am qualified to teach police officers how to administer field sobriety tests.
- b. I was first certified in the use of Field Sobriety Tests in 1990 as a police officer. I subsequently was certified in 1994 and 1998. I currently possess all manuals utilized by police officers since 2004.

#### **19. The officer who examined me was a Drug Recognition Expert (DRE). Does this mean I am guilty?**

- a. **No.** Recognition of a police officer as an “Expert” has not been accepted in all counties in Pennsylvania. Moreover, even if the officer is certified as an “expert,” he is subject to cross-examination based upon his personal observations. Police Officers should not be performing medical examinations. In 2014, I attended a seminar where I was taught the same procedures used by Drug Recognition Experts and did complete the certification course.

## **Blood & Breath Testing**

### **20. My Blood Alcohol Content (BAC) / Breath Alcohol Content (BrAC) was above the legal limit. Does this mean I am guilty?**

- a. **No.** It means that law enforcement has provided an estimate of your blood alcohol content. The Commonwealth must prove, beyond a reasonable doubt, that your BAC/BrAC was above the legal limit.

### **21. Drugs were found in my blood; does this mean I am guilty?**

- a. **It depends.** In some cases, the Commonwealth need only establish that you blood contained a certain level of certain Schedule I or II controlled substances. In other cases, the Commonwealth must establish that the drugs in your system impaired your ability. They must do so with the assistance of an expensive expert. Therefore, the Commonwealth may be willing to reduce your charges. Or, in the alternative, you may take the case to trial.

### **22. How does a Breathalyzer work?**

- a. **Poorly.** In simple terms, an infrared light is produced and is shone through the particles of your breath to determine whether there is a presence of the molecules consistent with ETOH (Ethyl Alcohol). The device then calculates the amount of alcohol to determine the grams of alcohol which would be present in 210 liters of breath. If the result is 8 grams of alcohol per 210 liters (the equivalent of 105 2-liter bottles of soda) you will be subject to charges.
- b. Operator error impacts the reliability of the device.
- c. It is not accurate (Think of your two results, are they identical? In most cases no)

### **23. Are you able to challenge a Breathalyzer in court?**

- a. **Yes.** Absolutely. This is particularly true when the consequences are high (second or third offense) or the result is close to a lower level (.110 or .170).

### **24. I've heard that blood testing is more accurate than breath testing. How is my blood tested?**

- a. There are two primary means of testing your blood for the presence of alcohol. The blood can be tested utilizing serum or through Headspace Gas Chromatography.

### **25. What is the difference between Serum Testing and Laboratory (Gas Chromatography) Testing?**

- a. Serum testing is less accurate than whole blood testing and is known to produce a higher result that must be converted using mathematics and a conversion rate found in a book. The medical technicians often testify that they do not know why they utilize a particular conversion rate.

**26. Are you able to challenge a blood test in court?**

- a. Absolutely. [www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

**27. Why should I hire you?**

- a. You should hire Attorney Morgan if you are committed to a successful resolution of your DUI Case. Some attorneys will tell you that you are guilty or recommend ARD but will still expect to be paid for their “services.” Other attorneys will tell you that you can expect to go to trial because they “fight for you.” Attorney Morgan seeks to achieve a successful result. This means that he wants you to avoid a conviction, avoid jail, and avoid a license suspension.
- b. This document explains how we do our job. Other documents tell you about our team, our case results, and our client reviews. ***Does any other lawyer or law firm provide you this much information?***

*A good DUI Defense attorney is an investment. What is it you are afraid of losing? If you can think of at least one thing you would lose by choosing the wrong lawyer, then you should choose Attorney Morgan.*

*Dean and his team literally saved my career, my marriage, and my life.*

- Matt - A 2012 DUI Client

## VI. ABOUT ATTORNEY MORGAN & OUR FIRM

Attorney F. Dean Morgan is a premier DUI Defense attorney in Pennsylvania. He practices in nearly every county in Central and Eastern Pennsylvania.

His reputation as a DUI Defense Attorney is well known to prosecutors and law enforcement officers. When we represent a client, our opponents know that they are facing an adversary that has the willingness and capability to see the matter through to a positive result. This is a rare capability in the present DUI Defense environment, in which a positive result is seen as impossible by many “Criminal Defense Lawyers.”

### ***Attorney Morgan is a DUI Defense Lawyer, Not a Criminal Defense Lawyer:***

You are not a criminal. Attorney Morgan does not represent criminals. He represents good people, like you, charged with DUI. He recognizes that DUI Defense is not synonymous with Criminal Defense. DUI requires specialized knowledge and techniques. He has developed these techniques through training and experience.

After a career as a police officer, prosecutor, and defense attorney that began in 1990, Dean had watched hundreds of “Criminal Defense Attorneys” practice law under a “cookie-cutter” model. They rented an office next to the courthouse, worked alone or with a partner (whom they competed against) and accepted every case that came in the door with the money to pay their fee.

This approach comes at a price to individuals charged with DUI. The “Criminal Defense Lawyer” simply sends DUI Defendants into the system and accept the first offer from the prosecutor because that is what they do with their Criminal clients. On the other hand, those who will take a case to trial don’t understand the complexities of DUI Defense.

DUI Defense requires specialized knowledge. Attorney Morgan has that knowledge:

- 25+ Years in the Criminal Justice System
- Former Police Officer
  - DUI/Vehicle Crimes Specialist
- Former DUI Prosecutor
- Over 900 DUI Defense Clients
- SFST (Field Sobriety Tests) Instructor
- SFST Practitioner
- ARIDE Trained (Drug-Related SFST)
- DRE (Drug Recognition Expert) Training
- One of the very few attorneys across the country that has been recognized by prosecutors as an Expert in DUI.

Recognizing that the individuals charged with DUI are NOT Criminals, Dean was, and remains, dedicated to building a different kind of practice. One exclusively devoted to representing individuals charged with DUI, NOT criminals.

***Specialized Knowledge = Positive Results:***

It is no secret that most criminal defense attorneys, especially at one and two-lawyer criminal defense firms, do not have the time to develop the specialized DUI Defense knowledge and experience necessary to defend DUI Defendants. After being charged with DUI, your career, reputation, and family's well-being may be in play. This is not a time for learning on the job or worse, making decisions without understanding the issues. Unlike criminal defense firms, he goes to trial, he files suppression motions, and his specialized knowledge of DUI law, procedure, and the unique aspects of DUI Defense gives him an "upper hand" over prosecutors.

By eliminating every other area of "Criminal Law," Dean can focus on the exclusively on the representation of individuals charged with DUI. Dean attends specialized legal education courses offered by state and national organizations including the National College of DUI Defense. He also attends training regarding Field Sobriety Testing, Blood Testing, and Drug Recognition Experts.

In addition, we have a Registered Nurse/Legal Nurse Consultant available to assist Dean in DUI Defense. We recognize that Field Sobriety Testing as well as Blood/Breath Testing are medical tests affected by our clients' physical conditions. When necessary, we examine our clients' medical records to achieve the best possible outcome.

Prosecutors know that he knows how to win. That reduces the "delay" factor when Dean represents defendants and enables us to achieve positive results than others cannot. We cannot guarantee any particular outcome. Dean has litigated, and won, in courtrooms across Pennsylvania.

***The Courtroom is our Office:***

When he started The Morgan Law Firm, Dean had an idea for a law firm that tossed out the traditional law firm trappings. Dean believed that neither lavish offices in prestigious buildings nor small offices adjacent to courthouse are the secret to winning cases. Office space inflates overhead and ultimately results in higher fees for our clients. Success and prestige comes from doing excellent work and winning cases, not from the artwork on the wall or a great parking space.

Our Digital Document Management System is specifically designed to assure access to our documents at a moment's notice. While we still maintain a hardcopy file containing your documents, our state-of-the-art technology provides a flexible, accessible, and secure online document system. We can access and retrieve your digital file from anywhere in the world. We can send you copies of documents that are important to your case.

In addition, we can access our entire library of legal research materials, training materials, and other information that may be necessary while we are in the courtroom. As a result, we don't need to "go back to the office" to get the materials we need.

We win cases in courtrooms, not behind a desk. We utilize technology to communicate with our clients instantaneously. Our clients have come to rely upon an immediate response. Whether we are in a courtroom, an office, or at home, a client can expect an immediate response. Our clients report 100% satisfaction with our communication as part of a 99% overall satisfaction rate.

***DUI Defense is NOT Criminal Defense...  
Insist on a DUI Defense Attorney.***

## CONTACT US

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### ON THE WEB:

Firm Website: [www.fdeanmorgan.com](http://www.fdeanmorgan.com)

### FREE ONLINE CASE EVALUATION

[www.DUI-Case-Evaluation.com](http://www.DUI-Case-Evaluation.com)

### WHERE WE PRACTICE:

We practice throughout Pennsylvania  
DUI Expertise is more important than locality.

We have litigated and won in nearly every county in Central and Eastern Pennsylvania