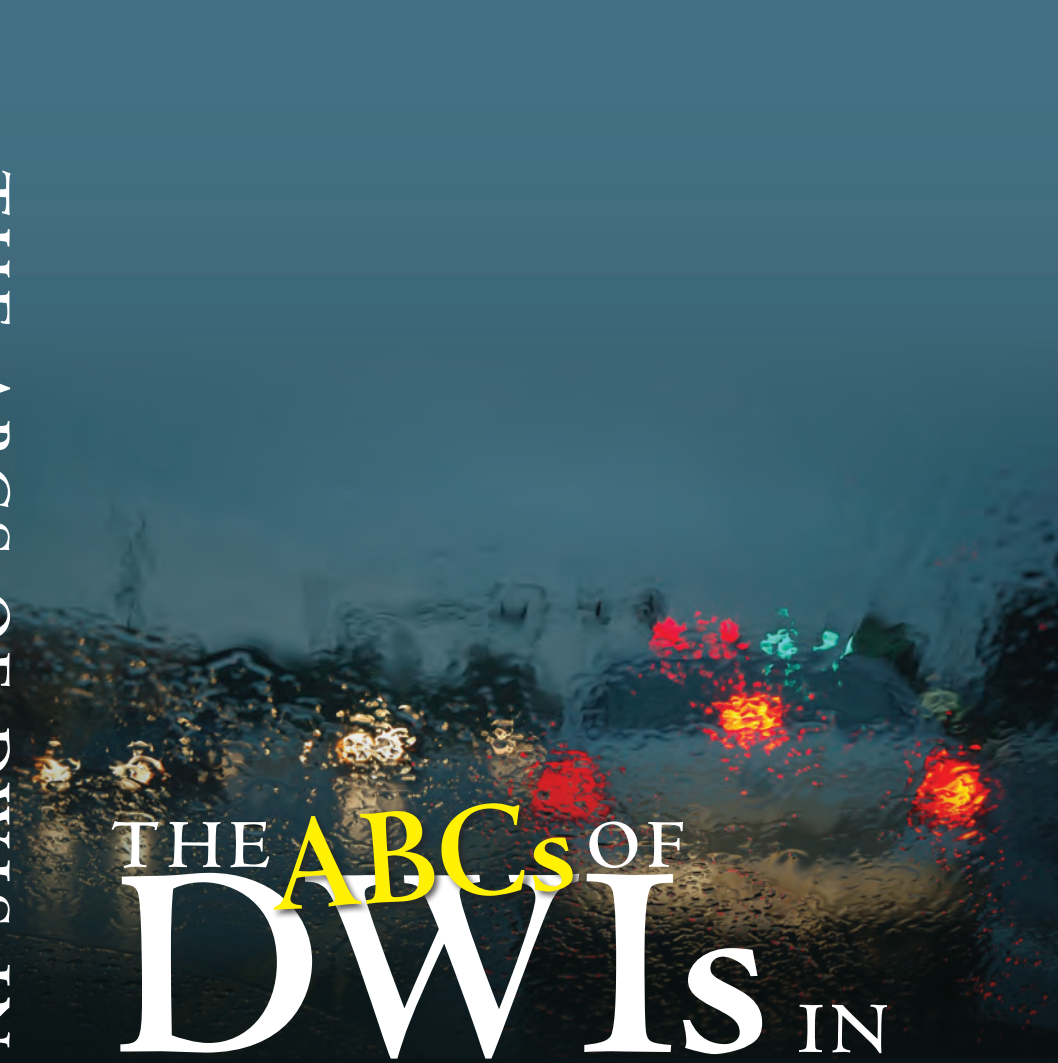


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THE **ABCs** OF  
**DWIs** IN  
**MARYLAND**

GREGORY P. JIMENO &  
FRANK C. GRAY, JR.

THE ABCs OF  
**DWIS** IN  
MARYLAND

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THE ABCs OF  
DUIs IN  
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## FOREWORD

If you are reading this book, it is probably because you or a loved one has been charged with a drinking-and-driving-related crime in Maryland. By definition, DWI simply stands for driving while impaired by alcohol. We at Jimeno & Gray understand that you probably have a lot of questions. We wrote this book to provide you with some immediate information and to answer your most pressing questions.

*The ABCs Of DWIs In Maryland* covers a wide range of topics. But, keep in mind that no book can cover every possible scenario that can arise in a case. Every situation is different, just as everyone's lives are different. Because of this, we highly recommend that anyone charged with DWI or who may face the Maryland Motor Vehicle Administration (MVA) meet with an attorney face to face. Just as you should have questions for us after reading this book, we will have questions for you. Only after answering our questions can we or any other an attorney possibly give you real advice specific to your case.

This book is intended to be a guide to what lies ahead. We at Jimeno & Gray have taught classes to other lawyers on how to handle the legal issues involved in DWI cases and have written materials on the subject for other lawyers.

With this book, however, we wanted to do something different, something that other lawyers are not doing. Our purpose in writing this book is to educate you so that you can make informed decisions on how to best prepare for what is in front of you and provide you with the tools you need to find the right lawyer to handle your case.

Take a look at some lawyer advertising. All the ads look the same:

- Our mission is to aggressively fight for the rights of our clients
- Courtroom experience and results that count
- Free initial consultation
- When you need the best legal defense
- We put aggressive and experienced legal representation on your side

Slogans and catch phrases don't help to give you the information you need right away to make important decisions about your legal rights.

This book should answer most of your questions, but there may still be – and probably should be – other questions. That is normal. That is what we at Jimeno & Gray do. We educate you by providing information to help you make good, informed decisions about your case.

## **D I S C L A I M E R**

Please keep in mind that while our business is to represent persons charged with DWI in Maryland, we do not encourage or condone drinking and driving. In fact, we hope that this book might even discourage people from drinking and driving after reading about how DWIs are handled in Maryland and about the consequences a DWI can have on your driving record.

The Maryland State Bar requires that we inform you that the information in this book is not legal advice. We are not your lawyers until you enter into a written agreement for us to be your lawyers. We can offer suggestions, but please do not misinterpret anything in this book to be legal advice about your case. Each case is different and an attorney can only give you quality legal advice when they understand the specific facts pertaining to your individual case.





# TABLE OF CONTENTS

<b>FOREWORD</b> . . . . .	V
<b>DISCLAIMER</b> . . . . .	VII
<b>CHAPTER ONE</b>	
A Two-Part Process: MVA and Court . . . . .	11
<b>CHAPTER TWO</b>	
The MVA Process . . . . .	13
<b>CHAPTER THREE</b>	
What Is An MVA Hearing? . . . . .	17
<b>CHAPTER FOUR</b>	
The Court System . . . . .	19
<b>CHAPTER FIVE</b>	
What Is Probation Before Judgment? . . . . .	21
<b>CHAPTER SIX</b>	
What Is The Difference Between A DWI And DUI? . . . . .	23
<b>CHAPTER SEVEN</b>	
5 Things The Prosecutor Doesn't Want You To Know About Your Case . . . . .	25
<b>CHAPTER EIGHT</b>	
The Guide To Hiring A DWI Attorney . . . . .	27
<b>CHAPTER NINE</b>	
Standardized Field Sobriety Tests. . . . .	31

**CHAPTER TEN**

Breath Tests . . . . . 37

**CHAPTER ELEVEN**

Commercial Driver’s Licenses . . . . . 41

**CHAPTER TWELVE**

What You Can Do To Help Yourself . . . . . 45

**CHAPTER THIRTEEN**

What An Experienced DWI  
Defense Attorney Will Do For You . . . . . 47

**ABOUT THE AUTHORS**

Jimeno & Gray . . . . . 49

## CHAPTER ONE

# A Two-Part Process: MVA and Court

Being arrested and charged with an alcohol-related driving offense sets in motion a two-part process, one through the MVA and one through the courts. Let us explain. If you either refuse to submit to an alcohol concentration test after being asked to do so by a police officer, or submit to a test with a result over the legal limit, the MVA is going to attempt to suspend your driver's license. If you are not a licensed Maryland driver, the MVA is going to want to suspend your privilege to drive in the State of Maryland, which, in turn, could impact your driver's license status in your home state.

The MVA process starts when a police officer has reasonable grounds to believe that you have been driving while under the influence of alcohol. The officer is required to advise you of your rights to take or refuse a breath test and also to explain to you the driver's license consequences of either taking or refusing a breath test. The officer will notify the MVA of your decision to take or

refuse the test. If you choose to take the test, the officer will notify the MVA of the result.

The judicial process gets started when the police officer issues you a series of traffic tickets. Sometimes it can be as few as two or as many as 20, depending on variables specific to your situation. Those tickets are eventually reported to the District Court and set for a trial date.

## CHAPTER TWO

# The MVA Process

The MVA process begins when the police notifies the MVA that you have been involved in a drinking-and-driving-related incident.

If the police officer took your license and issued you a temporary paper license, be aware that the temporary license will only allow you to drive for the next **45 days**. *Keep in mind that for MVA counting purposes, the “date of occurrence” as listed on the top of the temporary driver’s license is day number one.* During that 45-day period, there will be no restrictions on your driving, meaning that you can drive whenever you want, wherever you want. If you were issued a temporary driver’s license or privilege as the result of an alcohol-related offense, you may have the following options:

**OPTION #1:** Do nothing. Not a great option, but an option nonetheless. Before doing nothing, realize the penalty is a straight suspension of your license for a period of time. If you take no action, your license will be suspended on day 46. At the conclusion of the license suspension period, you must return to the MVA to obtain a valid driver’s license. Just being eligible again for

a driver's license does not mean you will get one. Remember not to drive yourself to the MVA to get your new license.

**OPTION #2:** Request an MVA hearing. You must do this in writing and there is a fee. The good news is that if you win your administrative hearing, you will be refunded your money by the State. We recommend mailing the request for an administrative hearing via certified mail with a return receipt. The postmark on the request is proof that the request was received.

If you mail the request within 30 days of the occurrence of the DWI incident, you will get an administrative hearing. If you mail it within the first 10 days, you will not only get an administrative hearing, but you will also get a letter from the MVA authorizing you to continue driving until after your hearing. If you request a hearing between days 11-30, while you will get a hearing, you will not be entitled to keep driving on that temporary license because it will expire on day 46. It is important to mail your request within 10 days, as it can take several months for your MVA hearing to even be scheduled.

**OPTION #3:** Enter into the Ignition Interlock Program. An ignition interlock is a device that is installed on your vehicle and is used to determine whether you have any alcohol in your system before the car will start. You will be required to blow into the interlock device prior to starting your vehicle. The interlock device will also require that you blow into it while you are driving during certain intervals to ensure that you have not consumed any alcohol while driving. On a periodic basis, normally monthly,

you will be required to take your car to your interlock provider to have the information from the device downloaded and sent to the MVA.

If you meet certain requirements, you will be eligible to skip the MVA hearing and opt directly into the Ignition Interlock Program. The benefit to opting into the program is that it allows you to maintain your driving privilege, so long as you only drive a vehicle with an interlock installed.

*Be aware that if you do not hold a Maryland license, you are not eligible to enter into the interlock program.*

If you meet the requirements and decide to enter into the program, simply make an appointment with a state-certified ignition interlock provider to have the device installed in your vehicle. The names and telephone numbers of the certified interlock providers are given to you along with your temporary driver's license. Once the interlock is installed, you will be given paperwork by the interlock provider showing that it has been installed in your vehicle. You must take the paperwork to the MVA and have the MVA issue a new license within **30 days** following the issuance of the temporary license. Just having the interlock installed does not mean that your license will be valid. *You must have an interlock restricted license issued by the MVA within 30 days.* During the time you are enrolled in the interlock program, the only vehicle you can drive is the one with an interlock installed.



**WARNING:** The interlock device does not know who is behind the wheel. Quite frankly, the MVA does not care who is behind the wheel. They only care about **your responsibility to that device**. If someone else gets behind the wheel of your car and does not know how to operate the device, that failure is on your interlock, and, therefore, is on you. The device does not know who is using it.

Be very careful of giving your keys to someone to use your car to run to the store, to move your car out of the driveway, or to allow the mechanic to pull your car into the shop for an oil change. These are all common mistakes people make. The device is sensitive to alcohol. It is sensitive enough to detect alcohol that you may have drunk last night. It can detect perfume in the car, hair-spray sprayed in the car, mouthwash and even cough syrup. They all contain alcohol. When beginning the interlock program, you should refrain from exposing your car to anyone and anything that can extend your stay in the program.

## CHAPTER THREE

# What Is An MVA Hearing?

An MVA hearing is held in order to determine whether your driver's license will be suspended following an arrest for suspicion of DWI. If you either refuse to submit to a breath test or take a test with results above the legal limit, the MVA will attempt to suspend your driver's license. Before a suspension is imposed, you are entitled to a hearing to determine whether the MVA is right to suspend your license.

The person making the decision at the hearing as to whether a license suspension should be imposed is not an employee of the MVA. The hearing is conducted by an administrative law judge (ALJ), who is employed by a separate agency called the Office of Administrative Hearings (OAH). OAH is a part of the executive branch of state government that conducts administrative hearings for different parts of the state government, ranging from prisoner rights cases to child abuse cases to MVA hearings.

MVA hearings are designed to be informal and rarely are witnesses ever called to justify the MVA's proposed license suspension. Instead, the MVA attempts to prove its proposed license

suspension with a series of documents provided by the arresting police officer. In addition, the formal rules of evidence which are used at trial in a court of law do not apply to MVA hearings.

If it is determined that a license suspension is justified, under certain circumstances, the ALJ will have discretion to modify a license suspension to allow you to drive for limited purposes, such as to and from work, to and from classes of higher education, and to and from an alcohol treatment program.

## CHAPTER FOUR

# The Court System

Maryland has two levels of trial courts, the District Court and the Circuit Court. The District Court is the lowest level of trial court in Maryland. Nearly all Maryland DWI cases begin in the District Court. The Circuit Court typically is reserved for more serious cases. A DWI case would only wind up in the Circuit Court if under the circumstances of your case you asked for the case to be transferred there or if a case was appealed from the District Court.

In both the District Court and the Circuit Court, judges preside over the cases. There are no jury trials in the District Court, only in the Circuit Court. In the District Court, the formal rules of evidence apply and live witnesses are called to testify. At the end of the case, the judge has discretion to decide your case. It is a very different system and experience than the MVA process.

There are some important things to understand about a DWI case in court. Because the rules of evidence apply, it is important to understand these rules. They make a difference as to what information comes into evidence and what does not. In addition,

all of us have certain rights given to us by the United States Constitution and by the Maryland Constitution. When the police stop our vehicles, arrest us or ask us questions, we maintain these rights. At trial, these rights stand solid and it is up to the State to prove that what the police did was legal and proper.

At the end of the trial, you will either be found guilty or not guilty. If you are found not guilty, you are free and clear. If you are found guilty, there can be serious consequences. You may be hit with enough points to suspend or revoke your license, fines and maybe even jail time.

## CHAPTER FIVE

# What Is Probation Before Judgment?

If you are a first time offender, you will be seeking the benefit of probation before judgment (PBJ). This means that although found guilty, you are not convicted and no points are assessed against your driving record. After being found guilty, the court takes back the guilty finding and places you on probation. As a result, no points are assessed against your driving record. During probation, you will be ordered to do and to not do certain things. If you disobey the probation, the judge can strike the PBJ and re-impose any otherwise legal sentence, including jail time.



## CHAPTER SIX

# What Is The Difference Between A DWI And DUI?

Maryland has two levels of alcohol-related driving offenses. The lesser of the two is a DWI, which stands for driving while impaired by alcohol. In order to secure a conviction for DWI, the State has the burden of proving beyond a reasonable doubt that your normal coordination was impaired due to the consumption of alcohol.

The more serious alcohol-related driving offense is a DUI, or driving under the influence of alcohol. The difference between a DWI and a DUI is a matter of the degree of impairment or intoxication. A conviction for a DUI requires the State to prove beyond a reasonable doubt that you were substantially impaired by the consumption of alcohol.

The State legislature has created an additional variety of a DUI called DUI per se. Under the DUI per se charge, you are guilty if the results of your breath test show .08 or above, regardless of whether that level of alcohol affected your coordination or your ability to drive.





## CHAPTER SEVEN

# 5 Things The Prosecutor Doesn't Want You To Know About Your Case

**1. You have the right to a speedy trial.** The Constitution provides that every person charged with a crime is entitled to a speedy trial. There are times when a case takes an extraordinarily long time to come to trial because of heavy court dockets, witness unavailability or other unforeseen circumstances. You must notify the court that you intend to exercise this important right.

**2. You have the right to review all police reports and witness statements prior to trial.** In District Court cases, the State is under no obligation to show you police reports or any other evidence it intends to introduce at trial unless it is requested by you specifically. Failure to request and obtain the police reports could mean that you will be caught by surprise at trial by the evidence put forward by the State.

**3. You do not have to plead guilty.** It is the job of the prosecutor to secure a conviction on behalf of the State and not to advise you of your rights. It is very important to understand that you do not have to plead guilty. Walking into a courtroom and pleading guilty without preparing a defense or entering into serious negotiations with the prosecutor is one of the worst mistakes you or your lawyer could make.

**4. You have a right to confront the witnesses against you.** One of the first questions an experienced criminal defense attorney will ask a prosecutor on the day of trial is whether the State's witnesses are present in court. Without the witnesses being present to testify, the State will not be able to prove its case against you.

**5. Certain evidence is admissible against you, unless you demand the witnesses show up in court.** If you are charged with an alcohol-related driving offense or charged with driving under the influence of drugs or the combination of drugs and alcohol, the results of any breath or blood test will be admitted into evidence without any live witnesses. However, if you make a timely request for the presence of the breath technician or analyst, or all persons in the chain of custody, those witnesses must be present at trial. If you request one of these witnesses and they fail to show up for trial, the evidence is not admissible against you.

## CHAPTER EIGHT

# The Guide To Hiring A DWI Attorney

Hiring a lawyer is perhaps the most important decision you will make in your DWI case. Go on the Internet or open a phone book and you will see that there are a lot of lawyers advertising that they represent persons charged with DWI.

The reality is that you only have one chance to hire the right person for the job. Here are some things to look for when interviewing an attorney to handle your DWI:

**Has the defense attorney also been a prosecutor?** Having experience working with police officers in DWI cases offers an insider's view of how these cases work. DWI prosecutors spend countless hours preparing for trial and in court litigating serious traffic cases. This preparation and private conversations with police officers expose attorneys to information most do not get to see, like watching the planning and execution of a field sobriety checkpoint.

After having read literally thousands of DWI police reports, the reports become more about what is not in them than what is in them. There are hundreds of different factual observations the officers can make from the time they see you driving your car until the time they serve you with your paperwork after you are arrested. *If these observations are not in the police report, they did not happen.* Without a broad base of knowledge built from years of experience, an attorney would not know what is missing.

**Has the defense attorney been trained and certified to conduct standardized field sobriety tests?** The best way to learn and understand field sobriety tests is to literally sit in a police academy and take the 40-hour class alongside new police recruits. Seeing how the officers are taught to administer the tests, to record their observations and to later testify about them in court is insight that can only be gained from watching it happen.

How can an attorney who has not been properly trained to administer field sobriety tests spar with a police officer who has been properly trained? Attorneys who are not knowledgeable about the administration of the tests can get eaten alive during trials by experienced police officers.

**Has the lawyer taught classes for new police recruits or other lawyers about handling DWI cases?** Being asked by prosecutors, police officers who run police academies, bar associations or professional legal associations to train other professionals is an honor. It is an honor that is earned from years of having a solid reputation, years of hard work and years of handling cases with

successful results. The requests, or the lack thereof, speak for themselves.

**Has the attorney been recognized by their peers in publications such as *Super Lawyers Magazine*?** The magazine identifies attorneys in each state who have received the highest ratings by their peers and through independent research.

**Does the attorney have experience actually trying cases?** Any lawyer can go to court and plead a person guilty. The best experience a lawyer can have is to actually fight the charges against their client at trial.

**Make sure that the lawyer you interview with is the lawyer who will come to court with you.** Some firms have you meet with the experienced partner at the initial consultation. Instead of sending the partner to court, an inexperienced associate shows up. Make sure you find out who will be handling your case before making a final decision about which lawyer to hire.

**Be wary of lawyers who ask you how much money another lawyer quoted you to handle your case.** Lawyers who ask this question usually try to undercut the first attorney you visit by offering to handle your case for less money. Saving money is great. However, we believe retaining an attorney to handle your DWI case shouldn't be like buying a used car. We charge a fee we believe represents the amount of time and effort we will have to put into your case to provide a vigorous defense. Lawyers who try to undercut other lawyers rely on having a high volume of cases

and often do not have the ability to spend a lot of time on your case. Simply put, we believe our services are worth more than a few hundred dollars less than the firm down the street.

**Has the lawyer handled appeals to the Appellate Courts in criminal or DWI cases?** Handling appeals in the Appellate Courts is an important aspect of a DWI practice. Finding issues for the Appellate Courts shows a different level of thinking than shown by attorneys who simply walk in with a thin file and no plan but to plead you guilty and see what happens. Hoping you get a good result is not a valid plan in our eyes.

Finding appellate issues takes planning before a trial so the issues can be preserved. It shows careful legal research and preparation for a client's case before walking into court. Appellate cases are the higher courts' instructions to the trial courts on what to do in particular circumstances if it happens again. Not all appeals are taken because the defendant loses. Many, especially in the MVA context, are taken by the State because the defendant won on a new issue.

## CHAPTER NINE

# Standardized Field Sobriety Tests

As an essential part of any investigation for DWI, the police rely on the results of standardized field sobriety tests. Even though the police will not tell you this, you are not required to take the field sobriety tests. While there is no such thing as “passing” or “failing” field sobriety tests, the tests are not designed for most people to perform very well. More often than not, the results of the field sobriety tests aid the State in its prosecution.

The standardized field sobriety tests were developed by the National Highway Transportation and Safety Administration after exhaustive research and analysis. There are only three recognized standardized field sobriety tests – horizontal gaze nystagmus, walk and turn, and one-leg stand. Regardless of what you have seen on television or in the movies, reciting the alphabet and touching finger to nose are not part of the standard field sobriety tests administered by the police.



Police officers are taught to administer the tests the same way every time. Although there are three tests, the police are instructed to observe and document details about every aspect of their encounter with you. This begins with their observations of your driving and progresses from there.

When the police approach your car and begin to ask you questions, they are looking at every aspect of your behavior:

- **HOW YOU SPEAK:** Too slow, too fast, slurred speech, confused speech
- **HOW YOU SMELL:** Alcohol, powerful masking scents like mouthwash
- **HOW YOU LOOK:** Disheveled clothes, red, glassy or blood-shot eyes
- **HOW YOU ACT:** Slow deliberate movements, difficulty with motor skills like opening your wallet and producing your driver's license

Once the police officer determines that he or she has reasonable suspicion to ask you to take the actual field sobriety tests, you will be asked to get out of the car. The officer will again observe your behavior and motor skills as you take off the seatbelt, get out of the car and walk to the back of the car.

Field sobriety tests are normally administered on the roadside where you are stopped. The initial test is normally performed

between your car and the police car, with your back to the police car. This is so you are not looking into the police car's bright, multi-colored flashing lights.

**Horizontal gaze nystagmus** – the first standardized field sobriety test to be performed is the horizontal gaze nystagmus test (often called the HGN test). When performing the HGN test, the police officer is looking for nystagmus, which is an involuntary jerking of the eyes. Normally, our eyes track and move smoothly back-and-forth and do not jerk as they move. Nystagmus is the jerking or bouncing of the eyes. One of the causes of nystagmus is alcohol in the system. You can exhibit nystagmus and not know it, meaning your eyesight is not affected and you cannot stop or control the nystagmus.

Under Maryland law, the results of the HGN test cannot be used to show that a person is under the influence of alcohol. Instead, the HGN test can only be used to show that the person has alcohol in their system.

**Walk and turn** – the second standardized field sobriety test given is the walk and turn test. During the walk and turn test, the police are looking for eight (8) clues. The test has two parts – instruction and walking.

During the instruction stage, the police will tell you to stand with one foot in front of the other, keep your arms at your side and to listen to the instructions. The police will then instruct you to take nine (9) steps forward, walking heel-to-toe on an imaginary line

while keeping your arms at your side. On the ninth step, while keeping your left foot planted as a pivot base, take a series of small steps in a circle with your right foot, eventually returning to the instructional position where you began, with your right foot in front of your left. You will be instructed to repeat the first nine (9) steps forward, walking heel-to-toe on an imaginary line while keeping your arms at your side.

While performing the walk and turn test, the police are looking for:

- Balance during the instructions
- Starting too soon
- Stopping while walking
- Inability to perform heel-to-toe
- Stepping off the line
- Using arms for balance
- Losing balance or turning incorrectly
- Taking the wrong number of steps

**One leg stand** – the final test is the one leg stand test. This test is also divided into two phases – instructional and balance/counting. In the instructional stage, the police officer will instruct you to stand with your feet together, keep your arms at your side and to listen to the instructions.

When the test begins, called the balance/counting stage, you will be instructed to raise the leg of choice six (6) inches off the ground, keeping the raised foot parallel to the ground while looking at it, and to count out loud up from one thousand (*one thousand one, one thousand two, one thousand three*) until you are told to stop.

During this test, the police are looking for:

- Swaying while balancing
- Using your arms for balance
- Hopping
- Putting the raised foot down

Once these tests are done, the police may move on to the preliminary breath test, or they may make their decision to arrest or release you. Just because the tests are over, do not think the police are still not observing and documenting details. They are. They are watching your balance and other physical characteristics as they try to build a case against you.



## CHAPTER TEN

# Breath Tests

The term “breath test” is often thrown around without any real understanding of what it really is. There are two types of breath tests – the preliminary breath test (PBT) and the Intoximeter breath test.

**Preliminary breath test** – the preliminary breath test is usually administered by a police officer on the side of the road to help the police to determine if there is probable cause to arrest you. The PBT is a small, hand-held device about the size of an old tape recorder. The State cannot use the results of the PBT against you when you go to court, but can use them against you at an MVA hearing. If the results help your case, you may be able to use them in court. There is no penalty imposed against your driver’s license for refusing to submit to a PBT, nor is there any penalty for having a reading over the legal limit.

**Intoximeter breath test** – the breath test given at the police station is commonly referred to as the Intoximeter breath test, named after the manufacturer of the instrument. The results of

the Intoximeter test can be used against you in court and at an MVA hearing. The police are required to tell you the ramifications of taking or refusing the test. Taking – or not taking – this test can affect your driving record and chance for criminal prosecution for drinking and driving. Therefore, a very specific procedure has been established about how you must be treated.

The police are required to produce a form labeled the Advice Of Rights Form or, as it is more commonly known, the DR-15 form. The DR-15 form contains all of your legal rights. The police must either read you the form or give you a copy to read. It is confusing to read on your best day and under the best conditions. Any time this form is given to you by a police officer, it is obviously not your best day. Therefore, the form becomes a confusing puzzle to try to fit together.

The police are not allowed to make any comments about the information on the form, to make any promises (*You will keep your license, even if you fail the test. But if you refuse the test, you will lose your license*), threats (*If you don't take the test, you will get in more trouble*), or inducements (*You will get out of here quicker if you refuse the test*) to influence you to either take or refuse the test. These rights should be given to everyone in the same manner, uninfluenced by the individual officer who is processing you. Sometimes the police are actually trying to help you make the best of a bad situation with their comments, but they are still not allowed to give you advice.

You are allowed to try to contact a lawyer before deciding whether or not to take a breath test. This is often contested in the courtroom for a variety of reasons. Just remember that it never hurts to ask to talk to a lawyer before making any important decisions. And the decision of whether or not to take a breath test certainly is important.

The breath test instrument you will be asked to use at the police station is a different animal altogether from the PBT instrument the officer took out of their trunk. Every breath test instrument across the State of Maryland is serviced by technicians employed by the Maryland State Police. All of the instruments themselves, the operators who work the instruments, the service technicians, and the different parts of the testing instrument like the alcohol reference solution are all overseen by the State toxicologist. The toxicologist creates the testing protocols and service protocols, and certifies every operator and technician.

At the end of the test, the instrument prints out something that looks like a cash register receipt. It contains the following important information, some of which is easy to reproduce, as well as other important information your attorney will need to help build your case.

- Your name
- The arresting officer's name
- The technician's name



- The instrument number
- The alcohol reference solution batch number
- The time the police started observing you
- The time you took each test
- An internal sampling of the reference solution before and after your readings

Each of these pieces of information is important in its own way. For example, to use the test against you in court, the police must show that the test was done within two (2) hours of your being apprehended by the police. While the time of apprehension can sometimes be difficult to capture, the instrument captures the time of the test, so we can work backward.

If you are injured and, thus, unable to refuse the test (sort of a double negative), the police can instruct the hospital personnel to take your blood. Maryland is an implied consent state. This means in Maryland, by driving a car on a public roadway or obtaining a Maryland driver's license, you have presumptively consented to take a test when asked to do so by the police. In order to stop your otherwise implied consent, you have to say no.

## CHAPTER ELEVEN

# Commercial Driver's Licenses

Anyone who has a Commercial Driver's License (CDL) knows how complicated and burdensome the laws regarding CDLs can be. The stakes can be high because most commercial driver's license holders depend on their commercial driver's licenses for their livelihood.

It is against the law for you to drive, operate or be in control of a commercial vehicle with any amount of alcohol in your system. Along the same lines, if you refuse to take a breath or blood test, or take a breath or blood test with the result being .04 or greater while operating a commercial motor vehicle, your CDL can be revoked for a period of one (1) year. These are stiff consequences.

Normally, the MVA consequences for a drinking-and-driving-related offense begin after you submit to a breath test with a result of .08 or greater, or refuse a blood or breath test after arrest. We've already explained how the police officers mail a copy of the temporary driver's license and temporary order of suspension to

the MVA to begin the MVA process. But if the police officer takes your Commercial Driver's License away, what happens? You have a temporary paper license, but not your laminated CDL.

The temporary license issued by the police when the laminated Maryland driver's license is confiscated allows you to continue driving using that paper license as your driver's license. This is true, but there are multiple laws that require anyone driving a commercial motor vehicle to have their CDL *in their possession*. That means that the temporary license given by the police, while a valid driver's license, does not allow you to continue to drive a commercial motor vehicle. **Your CDL must literally be in your possession when you are behind the wheel of a commercial motor vehicle.**

If you choose to have an MVA hearing, and are fortunate enough to be given a work restricted license (meaning you took the breath test and had a result of .08 to .14), it can seem as though work restriction would allow you to continue driving a commercial motor vehicle for employment purposes. Unfortunately, this is not so. The work restricted license issued at the administrative hearing is not a commercial driver's license and does not allow a CDL holder to continue driving a commercial vehicle.

If you take an alcohol breath or blood test with a test result indicating .15 or greater, you can either opt into the Ignition Interlock Program or request an MVA hearing knowing that if you lose the MVA hearing, the only outcome can be either suspension of your license outright or participation in the Ignition Interlock

Program. The latter is really no better because **the Ignition Interlock Program does not allow you to hold a CDL.**

Finally, you must beware that, depending on the charge, even a PBJ equals a conviction in the eyes of the MVA. This means a one-year mandatory disqualification of the CDL.



## CHAPTER TWELVE

# What You Can Do To Help Yourself

Repairing the damage that can be done to your life after being charged with a DWI should begin immediately after being charged. The very first piece of advice we give to every client charged with a DWI is to immediately undergo an evaluation by a State certified alcohol counselor. Keep in mind that we are lawyers, not alcohol counselors, and, as such, we cannot give you specific advice about what type program to enter.

A State certified alcohol assessor or counselor will conduct a thorough evaluation to determine the appropriate program for you. The findings of this evaluation will normally result in your being placed into one of two district programs – either a 12-hour education program or a 26-week treatment program. We say normally because in certain circumstances, in-patient treatment or a more intensive outpatient program might be more appropriate. While we are not the professionals who make those decisions, there are plenty of resources we can help you find.

We cannot overstate the importance of being in or having completed an alcohol program prior to going to court. Over the years, we have seen cases where the level of treatment our clients received has made the difference between whether or not the clients received a PBJ or not, went to jail or not, or even, in some instances, whether or not the prosecutor decided to prosecute the case. It is that important.

Gone are the days of waiting until the day of your court hearing to have an assessment done in the courthouse on the morning of your trial. There is an expectation that you will take these steps to help yourself, and if you do not, you will stand out. In a bad way.

If you do not select a program and you are placed on probation, a program will be selected for you. They will care very little about your desires in terms of location or time. A word to the wise: Take control of your situation and enroll yourself before a stranger makes the decision for you.

## CHAPTER THIRTEEN

# What An Experienced DWI Defense Attorney Will Do For You

Listed below are tasks that an experienced DWI defense attorney should do when handling your case. Keep in mind that each case is different and that not everything will need to be done in every case.

- Conduct an initial interview with you
- Review all documents you have regarding the incident
- Review the options regarding your driver's license
- Obtain your version of the events that led to the arrest
- Provide you with recommendations for alcohol treatment
- Obtain the names, phone numbers and addresses of all witnesses



- Interview all potential witnesses
- File motion for a speedy trial
- Demand presence of a breath technician
- Demand discovery from the State Attorney's Office
- Review all police reports
- Develop a trial strategy
- Negotiate a potential resolution of the case with the prosecutor
- Discuss any plea offer with you and determine whether to accept a plea bargain or go to trial
- Make a motion to suppress evidence against you based on a violation of your constitutional rights
- Make a motion to suppress evidence against you based on the police violating DWI procedure
- Take the case to trial
- If found guilty, present any mitigation on your behalf
- Discuss any appeal rights with you following the verdict

## ABOUT THE AUTHORS

# Jimeno & Gray

Jimeno & Gray is a different type of law firm. We – Greg Jimeno and Frank Gray – are former Assistant State Attorneys for Anne Arundel County, Maryland. We understand that not every case – and not every client – is the same. Some law firms are content with charging low fees, walking into court just to plead guilty, then going onto the next courthouse to do the same thing. Not us. We realize that our services are not for everyone and that we simply cannot represent everyone who contacts us.

We have been recognized as leaders in the field of DWI defense and have been asked to speak at continuing education programs for other lawyers. In addition, we have been recognized by our peers in *Super Lawyers Magazine*, *Baltimore Magazine* and *What's Up? Annapolis* for our work on behalf of our clients.

When you hire Jimeno & Gray to represent you in a DWI defense case, you work directly with Greg Jimeno or Frank Gray, not our associates. We will discuss all options and strategies about the case and will work with you to help prepare your case for trial.



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WA

# THE **ABCs** OF DWI'S IN MARYLAND

Drinking and driving are never a good combination. The safety issues alone should be enough to keep you from getting behind the wheel of a vehicle if you've been drinking. You could cause an accident and hurt yourself or someone else. Worse of all, the results could be fatal.

In addition to not wanting to hurt yourself or someone else, another reason to avoid a drinking-and-driving-related offense is that it can damage your driving record, sometimes to the point of losing your driver's license. In Maryland, drivers charged with DWI—driving while impaired by alcohol—face stiff consequences, including heavy fines, loss of your driver's license, and jail time.

“Repairing the damage that can be done to your life after being charged with a DWI should begin immediately after being charged,” write Maryland attorneys Gregory Jimeno and Frank Gray, Jr. Jimeno & Gray have handled DWI cases throughout Maryland and in doing so helped their clients through the ordeal of having been arrested and the aftermath.

In *The ABCs Of DWIs In Maryland*, Jimeno & Gray guide you along an entire DWI case so you can understand what you are legally responsible to do to restore your driving record. “We understand that you probably have a lot of questions. . . This book is intended to be a guide to what lies ahead.”

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