THE MONTGOMERY COUNTY
Criminal Law Handbook

A FREE PUBLICATION

published by

MONTGOMERY BAR ASSOCIATION

Serving the Community Since 1885
THE MONTGOMERY COUNTY CRIMINAL LAW HANDBOOK

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DISCLAIMER

The materials presented in this handbook have been prepared for informational purposes only and are not offered for and do not constitute legal advice or legal opinion on any specific fact or issue. Many complex situations are addressed in a simplified way so no one should attempt to use this book instead of competent legal advice. Access to these materials or any information herein is not intended to create an attorney-client relationship with any person associated with the Montgomery Bar Association and/or any contributor to this publication.

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FORWARD

This handbook is designed to provide basic information to anyone who becomes involved with the criminal justice system in Montgomery County. Obviously, no publication can answer all questions asked by every victim or defendant but this guide explains various processes, describes services and ways to access them, and points out areas which may require specific legal expertise.

ACKNOWLEDGMENTS

The original version of this guide was the result of a suggestion by the Rev. Charles Quann and its affirmation by other members of the MBA’s Community Outreach Committee, including J. Edmund Mullin, Esq. and Samuel D. Miller, III, Esq., who chaired the committee at that time. Then-MBA President Marc Robert Steinberg, Esq., promptly enlisted our Criminal Defense Committee. Our members contributed specific articles which were then shaped into a consistent and user-friendly text by Doris L. Freeman, COC member. Additional information came from Jane Dobkin Lichterman of the Victim/Witness Unit in the District Attorney’s Office. Each draft was reviewed, tempered and expanded by members of our committee and the document was then turned over to the highly skilled staff of the MBA, headed by Executive Director Nancy R. Paul, and moved to publication.

This current edition was revised and updated voluntarily by the member contributors listed on the opposite page, under the leadership of Criminal Defense Committee Co-Chairs Michael F. Dunn, Esq., Steven F. Fairlie, Esq., and Adam D. Zucker, Esq.

We are very pleased to be able to offer this handbook to any person in Montgomery County who becomes involved in the criminal justice system. It required countless hours of volunteer work by attorneys and interested members of our community and we sincerely appreciate their efforts.

This handbook, along with the Montgomery County Elder Law Handbook, is evidence of the Montgomery Bar Association’s continuing commitment to its long-standing tradition of public service.
Table of Contents

THE MONTGOMERY COUNTY CRIMINAL LAW HANDBOOK ........................ 3
DISCLAIMER .................................................................................. 3
FORWARD ..................................................................................... 5
ACKNOWLEDGMENTS ................................................................. 5
FOUNDATIONS OF CRIMINAL LAW ........................................... 9
DESIGNATION OF CRIMES ......................................................... 9
DEFENDANTS ............................................................................... 10
Choosing a Defense Attorney ....................................................... 10
   Attorney Client Relations ....................................................... 10
   Rules of Professional Conduct ............................................. 10
   Professional Fees ................................................................ 10
Criminal Investigations ............................................................... 11
   Providing Information ......................................................... 11
   Investigatory Stops ............................................................. 11
   Miranda Rights .................................................................. 11
   Search and Seizure ............................................................ 12
Arrest and Indictment ................................................................. 12
   Arrest .................................................................................. 12
   Resisting Arrest .................................................................. 12
   Use of Force in Making Arrests .......................................... 12
   Probable Cause .................................................................. 13
   Arrest Warrants ................................................................. 13
After the Arrest ........................................................................... 13
   Booking .............................................................................. 13
   Dealing with the Media ...................................................... 14
Preliminary Arraignment ............................................................ 14
   Right to Counsel .................................................................. 15
   Setting of Bail .................................................................... 15
Line-Ups ..................................................................................... 16
The Preliminary Hearing ............................................................ 17
   The Prima Facie Case ......................................................... 17
   Behavior of a Defendant ................................................... 17
   Need for Guidance ........................................................... 17
   First-Time, Non-Violent Offenders .................................... 18
   Defendant’s Testimony ...................................................... 18
Arraignment ............................................................................... 18
   Charges ............................................................................. 18
Discovery .................................................................................... 18
Writ of Habeas Corpus ............................................................. 19
Accelerated Rehabilitative Disposition (ARD) .............................. 19
Pre-Trial Conference ................................................................. 20
   The Plea ............................................................................ 20
   Plea Bargaining .................................................................. 20
On To The Trial .......................................................................... 20
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Trial Motions</td>
<td>20</td>
</tr>
<tr>
<td>Bench Trial or Jury Trial</td>
<td>21</td>
</tr>
<tr>
<td>The Trial: A Summary</td>
<td>21</td>
</tr>
<tr>
<td>Selecting the Jury</td>
<td>21</td>
</tr>
<tr>
<td>Presenting Evidence</td>
<td>21</td>
</tr>
<tr>
<td>Sentencing</td>
<td>22</td>
</tr>
<tr>
<td>Sentencing Guidelines</td>
<td>22</td>
</tr>
<tr>
<td>Mitigating Circumstances</td>
<td>23</td>
</tr>
<tr>
<td>Pre-Sentence Investigation</td>
<td>23</td>
</tr>
<tr>
<td>Decision by the Judge</td>
<td>23</td>
</tr>
<tr>
<td>Probation</td>
<td>23</td>
</tr>
<tr>
<td>Parole</td>
<td>23</td>
</tr>
<tr>
<td>Restitution</td>
<td>24</td>
</tr>
<tr>
<td>Appeals</td>
<td>24</td>
</tr>
<tr>
<td>Driving Under the Influence of Alcohol and Controlled Substances (DUI)</td>
<td>24</td>
</tr>
<tr>
<td>Penalties</td>
<td>25</td>
</tr>
<tr>
<td>Driving Under the Influence and the Accelerated Disposition</td>
<td>25</td>
</tr>
<tr>
<td>Rehabilitation (ARD) Program (See also page 19)</td>
<td>25</td>
</tr>
<tr>
<td>Suspension of Driving Privileges</td>
<td>25</td>
</tr>
<tr>
<td>Implied Consent to Take Tests</td>
<td>25</td>
</tr>
<tr>
<td>Expungement</td>
<td>26</td>
</tr>
<tr>
<td>Restricted Licenses and Ignition Interlock Devices</td>
<td>26</td>
</tr>
<tr>
<td>Driving Under Suspension</td>
<td>26</td>
</tr>
<tr>
<td>Drug Cases</td>
<td>27</td>
</tr>
<tr>
<td>Property Forfeitures</td>
<td>27</td>
</tr>
<tr>
<td>Juvenile Defendants</td>
<td>28</td>
</tr>
<tr>
<td>Initial Encounter</td>
<td>28</td>
</tr>
<tr>
<td>Youth Aid Panel</td>
<td>29</td>
</tr>
<tr>
<td>Preparation for Juvenile Court</td>
<td>29</td>
</tr>
<tr>
<td>Intake Interview</td>
<td>29</td>
</tr>
<tr>
<td>Consent Decree</td>
<td>29</td>
</tr>
<tr>
<td>Court Hearings</td>
<td>29</td>
</tr>
<tr>
<td>Detention Hearing</td>
<td>29</td>
</tr>
<tr>
<td>Adjudication Date</td>
<td>29</td>
</tr>
<tr>
<td>Trial</td>
<td>29</td>
</tr>
<tr>
<td>Planning for Disposition</td>
<td>30</td>
</tr>
<tr>
<td>Disposition Hearing</td>
<td>30</td>
</tr>
<tr>
<td>Placement</td>
<td>30</td>
</tr>
<tr>
<td>Probation Conditions</td>
<td>30</td>
</tr>
<tr>
<td>Caution</td>
<td>31</td>
</tr>
<tr>
<td>VICTIMS</td>
<td>31</td>
</tr>
<tr>
<td>Pennsylvania’s Basic Bill of Rights for Victims,</td>
<td>31</td>
</tr>
<tr>
<td>Victim’s Responsibilities</td>
<td>32</td>
</tr>
<tr>
<td>Agencies Assisting Victims in Montgomery County</td>
<td>32</td>
</tr>
<tr>
<td>Court Issues</td>
<td>32</td>
</tr>
<tr>
<td>Additional Agencies for Victim Assistance</td>
<td>32</td>
</tr>
<tr>
<td>Services for Special Groups</td>
<td>33</td>
</tr>
<tr>
<td>Victims and Witnesses at a Criminal Trial</td>
<td>33</td>
</tr>
<tr>
<td>On-Call Procedures</td>
<td>33</td>
</tr>
<tr>
<td>Planning Ahead for the Trial</td>
<td>34</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>On The Day of The Trial</td>
<td>34</td>
</tr>
<tr>
<td>Testifying at the Trial</td>
<td>34</td>
</tr>
<tr>
<td>Intimidation of Victims or Witnesses</td>
<td>35</td>
</tr>
<tr>
<td>At the Sentencing</td>
<td>35</td>
</tr>
<tr>
<td>Special Provisions</td>
<td>35</td>
</tr>
<tr>
<td>Pennsylvania Program for Victim Compensation</td>
<td>36</td>
</tr>
<tr>
<td>Victim Eligibility</td>
<td>36</td>
</tr>
<tr>
<td>Allowable Expenses</td>
<td>36</td>
</tr>
<tr>
<td>Expenses Not Covered</td>
<td>37</td>
</tr>
<tr>
<td>Additional Rules</td>
<td>37</td>
</tr>
<tr>
<td>Decisions on Compensation</td>
<td>37</td>
</tr>
<tr>
<td>The Victim Assistance Unit</td>
<td>37</td>
</tr>
<tr>
<td>Collateral Consequences</td>
<td>39</td>
</tr>
<tr>
<td>Crimmigration:</td>
<td>39</td>
</tr>
<tr>
<td>The Intersection of Criminal and Immigration Law</td>
<td>39</td>
</tr>
<tr>
<td>CONTRIBUTORS</td>
<td>40</td>
</tr>
<tr>
<td>Peter C. Amuso, Esquire</td>
<td>40</td>
</tr>
<tr>
<td>Thomas J. Carroll, Esq.</td>
<td>40</td>
</tr>
<tr>
<td>David J. Cohen, Esq.</td>
<td>40</td>
</tr>
<tr>
<td>Michael F. Dunn, Esq.</td>
<td>40</td>
</tr>
<tr>
<td>William I. English, Jr., Esq.</td>
<td>41</td>
</tr>
<tr>
<td>Steven F. Fairlie, Esq.</td>
<td>41</td>
</tr>
<tr>
<td>Cary B. Hall, Esq.</td>
<td>42</td>
</tr>
<tr>
<td>Bonnie-Ann Brill Keagy, Esq.</td>
<td>42</td>
</tr>
<tr>
<td>David A. Keightly, Esq.</td>
<td>43</td>
</tr>
<tr>
<td>Leigh P. Narducci, Esq.</td>
<td>43</td>
</tr>
<tr>
<td>Modesta B. Paris, Esq.</td>
<td>43</td>
</tr>
<tr>
<td>Mary C. Pugh, Esq.</td>
<td>43</td>
</tr>
<tr>
<td>Peter H. Thomas, Esq.</td>
<td>44</td>
</tr>
<tr>
<td>Francis M. Walsh, Esq.</td>
<td>44</td>
</tr>
<tr>
<td>Adam D. Zucker, Esq.</td>
<td>45</td>
</tr>
<tr>
<td>INDEX</td>
<td>46</td>
</tr>
<tr>
<td>DIRECTORY</td>
<td>49</td>
</tr>
</tbody>
</table>
FOUNDATIONS OF CRIMINAL LAW

Democracy in this country is based on the rule of law enshrined in the Constitution and our full respect for the rights of individuals. One of the fundamental precepts in our legal system is the presumption of innocence, meaning those accused of crimes are legally innocent until they either plead guilty or are convicted in a trial. The burden of proof is on the prosecutors, not on the defendants. For a jury to convict, Prosecutors must prove the accused is guilty “beyond a reasonable doubt.”

The Constitution also contains a Bill of Rights, which provides specific protections for the rights of those accused of committing a crime:

- The Fourth Amendment - prohibits arrest without probable cause and against unwarranted search and seizure;
- The Fifth Amendment - allows the accused to remain silent during questioning to protect against self-incrimination;
- The Sixth Amendment - ensures the right to counsel, to a speedy and public trial, and the right to call witnesses and cross-examine the government’s witnesses;
- The Eighth Amendment - prohibits excessive bail and cruel and excessive punishments, such as any form of torture or an unreasonably long sentence;
- The Fourteenth Amendment - ensures all people are granted equal protection under the law.

Additional guarantees of our individual rights have been added through federal legislation (fix paragraph break) and case law, i.e., the rulings of federal courts year after year. Also important are the various laws of the Commonwealth of Pennsylvania, case law in our state and the ordinances of our county’s various municipal governments.

DESIGNATION OF CRIMES

Crimes in the Commonwealth of Pennsylvania are divided into these categories:

- Felonies: the most serious crimes which include murder, rape, aggravated assault, robbery, burglary, kidnapping, arson, possession of a controlled substance with intent to deliver, and other offenses;
- Misdemeanors: generally, less serious crimes including driving-under-the- influence, simple assault, minor thefts, and other offenses;
- Summary offenses or infractions: include harassment, disorderly conduct, defiant trespass, and most traffic offenses;
- Violations of local ordinances: Cover a wide range of topics and include rules regarding parking on snow removal routes or applying for a permit before burning leaves, among other offenses.

Over the years many state legislatures have responded to community pressures and have passed laws regarding drunk driving, physical abuse of children, family violence, sexual harassment, and other behaviors. Since the laws are constantly changing, most states now list their current statutes, criminal codes, and criminal procedure codes on-line. Pennsylvania rules and regulations are available at www.pacode.com. Go to http://www.legis.state.pa.us/ for Pennsylvania’s laws. Hard copy is available at the Montgomery County Law Library located at the lower level of the Court House.
DEFENDANTS

Choosing a Defense Attorney

If you become involved in the criminal justice system as a defendant, you will most likely need help to guide you through the legal process, which is not as simple as we see depicted on television. You should review your options and consider how to find an attorney to help you. Each defendant has different needs, depending on the details of their case and the crime charged. For recommendations about attorneys, you may consult friends, relatives, business colleagues, clergy and others. The internet is also a useful tool for finding an attorney in your area. Another good source of information is the Montgomery Bar Association Lawyer Referral Service, telephone 610-279-9660, ext. 201 or 1-800-560-5291.

If you are unemployed or believe you qualify under low-income guidelines, you may contact the Montgomery County Public Defender’s Office on the second floor of the Court House at Swede and Airy Streets in Norristown, telephone 610-278-3295.

As you make your choice you should look for an attorney who specializes in criminal defense. Attorneys who work in criminal defense law are specialists in an intricate and ever-changing body of knowledge including legislation, case law, regulations and procedures, and are experts of the specific challenges facing criminal defendants. These lawyers are experts at using their energies and talents to counter the power and resources of law enforcement agencies and government prosecutors. The unique demands of the criminal defense process usually require additional training and experience for those who engage in this branch of the legal profession.

Attorney Client Relations

You want to develop a productive partnership with your criminal defense attorney. In your initial consultation you should ask about his or her background, legal training, experience in cases similar to yours, and familiarity with the procedures and staff of the local court system. Remember that your lawyer will be speaking for you and helping you make decisions throughout the case, so you should be comfortable and at ease with that person. You want to be represented by someone who will answer your questions, research relevant laws, review police records, gather evidence, question witnesses, work out a defense strategy, and present your case to judges and jurors with confidence.

Our democratic tradition protects the innocent by guaranteeing the rule of law through our court system. In our country it is judges and jurors, not the police, who decide who is guilty of a crime. Even if you have committed a crime, your lawyer is bound by professional rules to give you the best possible defense.

Rules of Professional Conduct

The American Bar Association’s Model Rules of Professional Conduct guide professional practice. You should know that under these rules no defense attorney can make promises about the outcome of a criminal case. You should also know that even if someone else is paying the fee, your lawyer’s duty is to you alone as the client. He/she is expected to keep your confidential communications strictly confidential, to inform you about developments in your case, to answer your questions, and to give you candid advice about your options.

Professional Fees

Two basic rules you should remember: 1) contingency fees, where lawyers get paid only if they win, are never allowed in criminal cases; 2) fee agreements should always be in writing. Usually your attorney’s fees are based on the complexity of your case, their experience, and the range of legal fees in your community.
Providing Information

As outlined above, the United States Constitution, the Bill of Rights and subsequent court decisions impose many rules regarding law enforcement and it is very important that the police follow them to respect our rights as individuals. However we as citizens also rely on police officers to protect our communities from crime; to meet that challenge they obviously need to conduct criminal investigations.

Police do not need probable cause to investigate a crime. An officer or detective can ask you to provide information without having any level of suspicion that you committed a crime or were involved in a crime. At the same time, the law does not require a citizen to respond when an officer seeks information. You are under no obligation to assist in any criminal investigation. This is especially true if you are the subject or focus of the investigation because you have the right not to incriminate yourself, granted by the Fifth Amendment to the United States Constitution. Anytime an individual who may be the focus of an investigation is asked to speak with law enforcement officers that person should consider retaining counsel first.

Investigatory Stops

At times police have a reasonable suspicion that criminal activity is taking place. When they do, they can perform an “investigative detention.” Such a detention is not an arrest; it is a stop that subjects you to a brief period of detention so that the officer can determine if, in fact, there is criminal activity going on. However, all investigative stops must be reasonable in scope and nature; the officer called upon to testify in court must be able to point to specific and articulable facts of a certain nature that warrant that initial stop.

When a police officer actually observes unusual conduct which leads him/her reasonably to conclude in light of his/her experience that criminal activity may be afoot, the officer may briefly stop you as a suspicious person and ask questions aimed at confirming or dispelling those suspicions. The officer may also search your person if there is reason to believe that you are armed and dangerous. Any evidence located during such a search may or may not be suppressed if you are subsequently arrested.

Note that there can be a significant difference between an investigatory stop and an arrest. Ultimately, the courts determine whether contact with the police was merely investigatory or was indeed custodial in nature. Remember that you are up against the power and resources of the law enforcement community. That means that it is important for you to contact an attorney immediately if you are placed under arrest following a stop by the police. Your attorney will review the details and explain to you whether or not the police followed the rules. You may face serious repercussions so you should review your options.

Miranda Rights

The United States Constitution guarantees every citizen the right to remain silent. Under the Fifth Amendment to the Constitution, you cannot be compelled to incriminate yourself. In the famous case of Miranda v. Arizona, the United States Supreme Court ruled that your privilege against self-incrimination is triggered when you are placed in custody or your freedom is otherwise deprived and you are subjected to questioning. Most people know that the police must advise you of your rights but many do not realize that both of those conditions must exist before the police are required to do so. The Miranda Court defined custodial interrogation as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his/her freedom of action in any significant way.”

Immediately prior to undergoing a custodial interrogation, a suspect must be apprised of his/her Miranda rights. If the warnings are not given, any statement made during a custodial interrogation cannot be used in the prosecution of your case, subject to certain exceptions. The most effective way to secure your right to remain silent is to ask for a lawyer because police must

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then terminate any interrogation until your lawyer is present. Note that the remedy for a Miranda violation is suppression of the evidence obtained illegally and not automatic dismissal of all charges.

**Search and Seizure**

The Fourth Amendment to the United States Constitution prohibits “unreasonable” searches and seizures by the government. With certain exceptions, the police need to apply to a Judge for a warrant (permission) if they want to search your home or personal belongings. This search warrant must be based upon “probable cause” — the probability that evidence of a crime will be located in your home. The warrant cannot be based on speculation or conjecture and it must specifically identify the residence to be searched and the possible evidence to be found. A neutral and detached magistrate must issue the warrant after reviewing the facts submitted by the police.

The police also need a search warrant to search your motor vehicle, unless certain exceptions exist that would allow them to search without a warrant. Because automobiles are highly mobile and evidence in them can be quickly lost, an illegal warrantless search often occurs.

If you are arrested, the police will undoubtedly search your person. They do not need a search warrant to do so if they have lawfully arrested you. Any evidence of a crime or illegal contraband that they find during a search incident to your arrest will be used against you in court. If you are arrested while driving your car, the police must obtain a search warrant to search your vehicle unless certain circumstances exist.

The government cannot normally tap your telephone lines and listen to your conversations because that is considered an unreasonable search and seizure. However, if a law enforcement agency can show probable cause, they can obtain a wiretap order which is issued by a Judge and then proceed within the law.

Evidence obtained in an unreasonable search or seizure cannot be used against you in Court. This is known as the “exclusionary rule.” This and other related rules are complicated and they change constantly so it is important that you obtain legal counsel to determine if any of the evidence found by the police will be admitted in Court and thus used against you.

**Arrest and Indictment**

**Arrest**

Arrest is usually the first step in a criminal case and you should be aware of various problems which can begin immediately. You should of course answer any questions about your identity but if you voluntarily offer more than that you could be adding to the case against you. You have your rights as outlined above but any statements you volunteer could later work to your disadvantage.

**Resisting Arrest**

You should remember that if you are arrested your behavior toward law enforcement officers can become part of your case. You are better off if you do not struggle or threaten or shout because your attempts to resist arrest might be used against you and could jeopardize your safety. Courts have ruled that even if there is clearly no probable cause, arrestees do not have a right to use force against an officer of the law. The issue is one for the Court, not for the street, and this protects both you and the law enforcement officer.

**Use of Force in Making Arrests**

Every community should be concerned that the local police enforce laws fairly, working under policies and using procedures which are appropriate to the needs of each case. And common sense tells us that as individuals we should be very careful in situations that could lead to violence. Generally officers are only allowed to use “reasonable” measures but in cases where a suspect threatens or seems to threaten an officer with a weapon or what appears to be a weapon, they
are authorized to use deadly force. If you believe more than reasonable force is used, you should discuss this problem with your attorney.

**Probable Cause**

The law requires that police have “probable cause” before making an arrest or taking you into custody to face any charge for any crime. Probable cause exists if the officer has reasonably trustworthy information that would lead a reasonable and cautious person to believe that you committed or are actually committing a crime.

**Arrest Warrants**

You can be arrested with or without an arrest warrant. To get an arrest warrant — permission of a neutral person — the police must apply to the local District Justice and they must support their request with written, sworn affidavits. They are required to obtain warrants to make arrests for most misdemeanors unless the crime is committed in the presence of the police officer. Police must have a warrant to arrest you inside your home, unless emergency circumstances exist that would justify a warrantless arrest. However, the police do not need a warrant to arrest you if they have probable cause to believe that a felony such as murder, robbery or rape has been committed and that you are the felon.

An arrest made without probable cause is not a lawful arrest. The rules are complex and consequences can be serious if the police do not follow procedures when they arrest you. A criminal defense attorney can determine whether this first step was lawful and advise you on the action you should take to defend your position. You should therefore seriously consider immediately hiring an attorney who has the expertise to assist you.

**After the Arrest**

**Booking**

If you are arrested, police are of course allowed to ask questions to establish your identity: your name, address, date of birth and Social Security number. Beyond that, as a general rule it is best to treat law enforcement officers with courtesy but to refrain from answering questions beyond identification unless so advised by your lawyer. Remember that everything you say is “on the record” and that, in fact, everything you say can and will be used against you in court. Remaining silent is always your right. Officers may press for information about the case or even a confession because it is in their interest to get on with their investigations. However, the wisest course for you is to keep silent and ask your lawyer to guide you. You can never go wrong following these three rules:

1. Clearly ask for an attorney; and then
2. Remain silent.
3. Be respectful to the law enforcement officers at all times.

When you are booked, the details of your case are made part of the police records and you may be fingerprinted and searched. Your personal effects will be inventoried and put away to be returned when you are released; you should receive a receipt for these items. You will be allowed to make at least one phone call and then you will most likely be put into a cell to await your meeting with the Magisterial District Judge (commonly referred to as the “DJ”). Some police departments allow some prisoners to make several phones calls but permission may hinge on your attitude and actions while you are in custody. Visiting privileges may also hinge on your behavior. You should be aware that once you are under arrest, you have limited rights to privacy. The only “privileged” communication — that can not be used against you — is between you and your counsel. Since officials can legally listen to your other conversations you must remember that anything you say to others can be used against you. Discussions with your religious adviser, personal doctor or therapist may be privileged but laws are changing and you should ask your attorney.
Your should be careful of your behavior while you are in custody. Do not trust other inmates who could become informants against you. You should accept nothing from them and should certainly refrain from fighting or other negative action.

You should remember that police officers are not responsible for determining your sentence so they can not make definitive promises about leniency. In Pennsylvania it is the prosecutor and the Judge who bring about those decisions in criminal justice cases.

You should be aware that once you are under arrest, you have limited rights to privacy. The only “privileged” communication — that cannot be used against you — is between you and your attorney. Since officials can legally listen to your other conversations (including those with family members and loved ones), you must remember that anything you say to others can be used against you. Discussions with your religious adviser, personal doctor or therapist may be privileged but laws are changing and you should ask your attorney.

Dealing with the Media

Your case may become a focus of attention by the media and you are wise to resist any temptation to try to defend yourself by answering questions or explaining your side of the story. You should respond by politely referring to your attorney, and then remaining silent. You can also gently refuse to pose for photographs but if a camera is pointed in your direction you should face it squarely and in a serious manner. If you snarl or try to hide you might appear to be less than law-abiding and that will not help your defense. Indeed, lashing out at the media will only increase their interest in your case.

Keeping silent will also give you the best chance of minimizing your situation’s digital record. Even if you are eventually found not guilty or get your record otherwise expunged (erased), the media is not subject to expungement orders.

Preliminary Arraignment

The next step in the criminal justice process is a court proceeding called the preliminary arraignment when you appear before a District Justice. You receive a copy of the criminal complaint and/or the arrest warrant with the supporting affidavits which explain the circumstances of your arrest.

At the preliminary arraignment the District Justice reads the complaint to you and informs you about the following:

1. the right to secure counsel of choice and/or the right to assigned counsel; if you are unemployed or believe you qualify under low-income guidelines, you should contact the Montgomery County Public Defender’s Office on the second floor of the Court House at Swede and Airy Streets in Norristown, telephone 610-278-3295.

2. the right to have a preliminary hearing;

3. if your offense is bailable, the Magisterial District Judge will set the bail. Bail is cash or cash equivalent, which you give to a Court to insure that you will reappear when so ordered. If you appear, the Court refunds the bail; if you do not, bail will be revoked, may be forfeited and a warrant will be issued for your arrest.

4. the date and time for the preliminary hearing which cannot be less than three (3) or more than ten (10) days after the preliminary arraignment.
The time for the preliminary arraignment usually depends on the type of crime for which you were arrested. In arrests for a felony or for some misdemeanors, the preliminary arraignment is held without unnecessary delay. If you are arrested for a less serious charge, the preliminary arraignment is not held until the date and time fixed for the preliminary hearing. In most misdemeanor cases, you are released after you are arrested and are given notice of the preliminary hearing with a summons mailed to your home address.

If you are arrested for a less serious offense called a summary offense a preliminary arraignment is often not required. You have to appear for a preliminary arraignment only if an arrest warrant is issued or if you are arrested without a warrant and the arresting officer finds that detention may be appropriate.

**Right to Counsel**

Perhaps the most important purpose of a preliminary arraignment is to notify you of your right to counsel. As outlined earlier, your best first step as a defendant in a criminal process is to obtain counsel. If you do not have a personal lawyer, you should contact people in the community whom you trust or call the Lawyer Referral Service of the Montgomery Bar Association, 100 West Airy Street, Norristown, PA 19404 at 610-279-9660, ext. 201 or 1-800-560-5291.

If you believe you qualify under low income guidelines you should contact the Montgomery County Public Defender's Office at 610-278-3295. If you are free on bail, you must appear in person at the Public Defender’s Office on the second floor of the Montgomery County Court House in Norristown. If you are incarcerated and incapable of making bail, you can obtain the services of the Public Defender by submitting a request to Social Services in the prison.

**Setting of Bail**

Another important part of the preliminary arraignment is the setting of bail which can be one of five types:

- **a. Release on recognizance (ROR)**
  You are released, conditioned only upon your written agreement to appear. ROR is generally granted only in cases when you and/or your family have a firm standing in the community, you are employed and have little or no record of recent wrong-doing, and/or the offense is so minor in nature that you are likely to show up for Court.

- **b. Release on non-monetary conditions**
  You are released upon your agreement to comply with certain non-monetary conditions, such as having no contact with the victim of the crime.

- **c. Release on unsecured bail bond**
  You are released upon your written agreement to be liable for a fixed sum of money if you fail to appear as required or fail to comply with the conditions of the bail bond.

- **d. Release on nominal bail**
  You are released after depositing a nominal amount of cash such as $1 which the bail authority determines is sufficient security for your release.

- **e. Release on monetary conditions**
  You are released upon compliance with a monetary condition imposed upon you with one or more combinations of the forms of security listed below. Note that the Court refunds bail money at the end of your case if you have followed all of the rules such as attending each court session as ordered and paying your fines on time.
  
  - Cash in the full amount of bail or, in certain cases, a deposit of ten per cent
  - (10%) of the full amount;
  - Bearer bond of the U.S. Government, the Commonwealth of Pennsylvania, or any other political subdivision of the Commonwealth;
• Real Estate;
• Security bond of a professional bondsperson, who are listed under Bail Bonds in the yellow pages. In this instance you pay a bond seller to post a certain amount of money with the Court and the Court keeps the bond in case you don’t appear as ordered. You can usually buy a bail bond for about ten per cent (10%) of the amount of your bail; this fee is paid to the bondsperson for taking the risk and thus it will not be refunded to you.

If a District Justice sets a monetary condition for bail, he/she can accept payment immediately. Thereafter if you cannot secure bail, you are committed to jail as provided by law.

**Line-Ups**

The prosecution must prove beyond a reasonable doubt all elements of crime[s] charged. Witness Identification is an element in all crimes. Witness Identification occurs outside of court and in court. There are several different types of Witness Identification that can be used by the police [arresting agency] and prosecution [District Attorneys] to identify the one who committed the crime[s].

Some types of witness identification are: the Show-Up; Photographic Array; Line-Ups, Voice, Video, Audio, and Handwriting Identification; all of which occur at different stages of prosecution, both outside of court, and in court, at the preliminary hearing, and at trial.

This section is about Line-Ups, so, briefly, the Show-Up is when the police take a suspect who was apprehended shortly after the alleged crime took place, and take the suspect back to the crime scene for identification. The Photographic Array is when witnesses look at photographs, with or without the perpetrator in the photos.

There is no right to an attorney at Show-Up’s if the defense will be able to use the photos. The Pennsylvania Supreme Court has yet to address whether one has a right to an attorney at the Photographic Array. However, the Pennsylvania Superior Court stated that as long as the photos used to identify an offender are available to the defense there is no right to an attorney at a Photographic Array.

At the preliminary hearing, and at trial, witnesses will identify the alleged offender in court, on the record. Although, one has a right to an attorney at all critical stages of prosecution, an attorney will not be provided, unless the alleged offender is incarcerated, or cannot afford an attorney.

A Line-Up is where the arresting government agency places the suspected offender in a group of people, who fit the description of the suspected offender, who committed the alleged crime that was initially reported by the complainant/victim, and/or other witnesses, to establish the identity of the person[s] who committed the alleged crime[s].

Under Federal and Pennsylvania Constitutions pretrial line-ups are critical stages of prosecution, thus, an alleged offender has a right to counsel at the pretrial Line-Up, especially since absence of counsel may take away the accused’s right to a fair trial and the line-up procedure is one “riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial.” See United States v. Wade, 388 U.S. 218 (1967), United States v. Ash, 413 U.S. 300 (1973), and U.S. Const. amend. VI, Commonwealth v. Jackson, 323 A.2d 799, 804 (Pa.Super. 1974), and Commonwealth v. McKnight, 457 A.2d 931, 934 (Pa.Super. 1983).

When one is arrested whether by summons or arrest warrant, get a Montgomery County Attorney to defend you at all critical stages of prosecution, including Line-Ups [Witness Identification] especially if you want the best of the best.

For more information about Witness Identification and the Right to an Attorney, see the United States Constitution, Pennsylvania Constitution, Sixth Amendment Article I, Section 9, United States v. Wade, 388 U.S. 218 (1967), United States v. Ash, 413 U.S. 300 (1973), Commonwealth

The Preliminary Hearing

You must appear at the time and day set by the District Justice for the preliminary hearing. In this session, the District Justice serves as the first level of our justice system for he/she is the neutral person who must decide whether or not to hold you over for trial.

The Prima Facie Case

The question which the District Justice must answer is this: have representatives of the Commonwealth (either a police officer or representatives of the District Attorney’s office) provided enough evidence to make a prima facie case against you as the defendant?

To answer that question, the District Justice hears testimony and reviews the evidence presented by the Commonwealth. At this preliminary hearing level, representatives of the Commonwealth do not have to prove the case beyond a reasonable doubt. They need only to present enough evidence to show that a crime was committed and that you probably committed that crime. The prima facie case is one which is true, valid or sufficient at the first impression.

During the preliminary hearing, representatives of the Commonwealth have no obligation to present all evidence in their possession or to call all witnesses they would call at trial. They usually present the least amount of evidence and testimony possible to have you held over for trial.

Behavior of a Defendant

You can help your defense by trying to make a positive impression at all times. You are innocent until proven guilty so you should try to underscore the reasonable doubts about the charges against you. This means dressing as well as possible and using your best manners to show full respect for the Court and the people you see there. It is also very important to be punctual for every session for which you are ordered to be present.

Need for Guidance

Some people think that they do not need a lawyer at these early stages of criminal proceedings. You could ask yourself before you move further into the process if you feel confident that you can do the following:

- make all of the legal arguments in your favor that a prima facie case has not been made by the Commonwealth at the preliminary hearing;
- negotiate with the police officer or Assistant District Attorney to allow for reduction of bail or the dropping of some or all of the charges against you;
- arrange for a court reporter to be present at your preliminary hearing because a transcript of the proceedings can be used to pin witnesses down to their story at an early stage of the proceedings and can also provide the basis for filing motions with the Court of Common Pleas to show that that the Commonwealth failed to make a prima facie case;
- question witnesses in order to elicit useful information in preparation for trial;
- move for sequestering witnesses so that each is barred from listening to the testimony of others;
- ask for removal of the Judge if there is good reason to believe he/she has a bias against you;
- invoke all of the various unforeseeable constitutional issues that might arise, such as the need for a line-up before being viewed by witnesses.

You may conclude that the earlier you involve an attorney in your case, the stronger will be your defense.
First-Time, Non-Violent Offenders

There are several courts in Montgomery County that serve the special needs of first-time non-violent offenders. These are Drug Court, Veterans’ Court and Mental Health Court and you may be eligible for these programs which could avoid a conviction on your record. First time offenders may also be eligible for ARD.

If you are a first-time, non-violent offender, you may be allowed by the District Attorney to move into the ARD program. Primarily used in driving-under-the-influence (DUI) cases, ARD can provide for shorter terms of license suspension, community service and probation if you waive your preliminary hearing. New procedures in Montgomery County require you to make decisions about ARD at the preliminary hearing so it is critical to have your own attorney at the preliminary hearing if you plan to apply. For more information about this program, see page 17.

Defendant’s Testimony

Defendants should almost never testify in their own behalf at a preliminary hearing; there is little justification for you to reveal your version of the facts since that can forecast your (and your lawyer’s) strategy for the long-term resolution of the case and has little or no effect on the District Justice’s decision of whether to hold the case over for trial. What very often happens at a preliminary hearing is that the Commonwealth representatives call their witnesses and then your lawyer cross-examines these witnesses and makes legal arguments to show that a prima facie case does not exist.

Arraignment

At the preliminary hearing, the District Justice gives you written notice of the date, place and time of the arraignment. Arraignment is the point in your criminal prosecution when you appear before the Court to hear the charges alleged by the prosecutor and to enter your plea. You are required to appear at the arraignment unless you are represented by an attorney and you have filed a written waiver of the arraignment, signed by your attorney, with the Clerk of Courts and the District Attorney’s office prior to the arraignment date.

You should be aware that a warrant for your arrest will be issued if you do not appear at arraignment or if you fail to waive arraignment according to the rules. If you fail to appear for any scheduled appearance in Court you put yourself in a position to be hit with fines and other penalties including forfeiture of bail and incarceration.

Charges

The District Attorney’s office has some latitude in deciding what charges to bring in your case; they review the arrest reports, victims’ statements and your prior criminal record. They may have to wait for laboratory test results or information from forensic experts. Then they will decide whether to file charges on each offense listed by the police or they may decide not to file any charges at all, depending on their assessment of the strength and seriousness of the case. It is possible that the prosecution will file more charges than they actually intend to prove at trial, to facilitate plea bargaining.

Discovery

After the arraignment, you are entitled to the information in the possession of the prosecution that is material to the case. The information sought may include police reports, examination of physical evidence, statements by witnesses and yourself, your prior criminal record, and reports from experts. Once discovery is complete, you and your attorney can determine how best to proceed with your defense.
Writ of Habeas Corpus

Under our Constitution, you have the right to seek dismissal of all charges through a petition for a *writ of habeas corpus* which is a request to a Judge to review the legality of those charges. Depending on what transpired at the time of the preliminary hearing, you may have the right to confront the witnesses needed by the Commonwealth to support the charges. As at the preliminary hearing, the Commonwealth's burden of proof here is less than it would be at trial.

Accelerated Rehabilitative Disposition (ARD)

ARD is a way for the District Attorney and Defendants to resolve certain minor cases. It is very important to the District Attorney, because it allows them to handle approximately 1/3 of all of their cases through the program. It's important to the Defendant, because the consequences of a crime are minimized and the Defendant has a chance to get the arrest expunged (to have the arrest “wiped-clean”) from his record.

Most ARD matters are Driving Under the Influences cases. In the typical DUI case, a Defendant would end up with a one-year license suspension. In ARD, however, his or her suspension will probably be reduced to one or two months. Further, in most DUI cases that are resolved by ARD, the Defendant does not have to serve a jail sentence.

Many Defendant are understandably embarrassed when they get arrested for DUI or other offenses. On the day of the ARD hearing, you will find out that you are not alone in having done something stupid. The Courthouse will be crowded with people similar to you who have made the mistake and want to get the case over with. Defendants are also usually very nervous when they have to go to the courthouse. There is no need to be nervous. There is a lot of security, and helpful people everywhere. If you have trouble finding your way around, just ask someone.

All of the various costs involved in an ARD DUI case usually amount to more than $2,000. Even still, ARD is usually the way most people choose to handle their first time minor offense cases. Most people who admit their crime are better off applying for ARD and meeting the requirements for the program.

Anyone who goes through the ARD program must keep in mind that the consequences are very severe if they drive during their period of license suspension. These cases are taken very seriously by the authorities and by the Department of Transportation. You will almost certainly serve at least 60 days in jail if you are caught driving while you are suspended for a DUI related case.

Please keep in mind that ARD is available for many other kinds of minor offenses. For example, minor theft cases often result in ARD. In those cases there would be no license suspension. Most Magisterial District Judges in Montgomery County will be able to provide you with an application form for ARD. Fill the form out carefully and mail it in to the District Attorney. As of December, 2015, an average waiting time from application to ARD hearing date is about seven months. However, new District Attorney Keven R. Steele has indicated that he will study whether it makes sense to devote additional personnel to the ARD unit, so that these cases can be handled much more quickly.

The legal implications of a case like this can be overwhelming. It is not required to have a lawyer, but many people prefer to have representation to make sure everything goes smoothly and to answer their questions. If you don’t know how to find a lawyer, the Montgomery Bar Association has an excellent lawyer referral service. They can be contacted at 610-279-9660, extension 201, 1-800-560-5291, direct dial at 610-994-3656, or email at lrs@montgomerybar.org.

Remember, ARD is not cheap or easy, but it is cheaper and easier than going to trial.
Pre-Trial Conference

The pre-trial conference is scheduled after the formal arraignment and is conducted by the Judge to whom the case has been assigned. At the conference, the Judge is available to discuss pre-trial issues with your counsel and the attorney for the Commonwealth. The conference is usually held in the Judge’s retiring room outside the courtroom though it may be held in open Court for those defendants who are not represented by an attorney. It usually will be the first opportunity to learn what the Commonwealth is offering for sentencing should you decide to plead guilty.

The Plea

At the pre-trial conference you face the crucial decision: whether to plead guilty or advise the court you wish a trial. Your attorney is the one to give you guidance. If you do plead guilty, you are admitting that you committed the crime and thus you are convicted without going through a trial. You may be sentenced that day and immediately incarcerated.

Another seldom-used option is to plead no contest, meaning that you will not admit the charges but that you will not contest them. In the eyes of the law, no contest is the same as pleading guilty but you have one advantage in that if you are sued later for damages in a civil suit, your plea cannot be used as evidence. Obviously these are factors which your attorney will review with you. A no contest plea can only be made with the consent of the Commonwealth and the Judge.

Plea Bargaining

Sometimes you, your lawyer and the District Attorney come to a "plea agreement" and the Judge decides whether or not to accept that agreement. Your best move may be to negotiate a plea bargain wherein you plead guilty which usually allows you a lesser sentence. The great majority of criminal cases are settled through negotiation which saves the Commonwealth the cost of those trials, a considerable issue. Again, your attorney tries to argue in your behalf and to bargain to find the least worst, most positive scenario for your case.

When you, your lawyer and the District Attorney cannot agree on a recommendation, you may enter an open plea, which is otherwise known as throwing yourself on the mercy of the Court thus leaving the decision of the sentence to the Judge.

If two sides reach a resolution of the case, which is agreeable to the Judge, the case will be called that day, usually before noon. If no resolution is reached, the Judge directs that the case is placed on the trial list. Soon thereafter, notice of the trial date is sent to you and the Commonwealth representatives.

On To The Trial

All criminal defendants have an absolute right to a speedy public trial, the process through which evidence is tested to determine guilt or innocence. In Montgomery County that process normally moves ahead on the first available trial date determined at the Call of the Trial List. The Trial Judge inquires whether the case will be resolved by a guilty plea, trial by a judge or trial by a jury or by other disposition. Your lawyer explains the status of your case if you are represented or you advise the Judge of the status yourself if you are not. If a plea bargain is worked out, the guilty plea will be entered then; cases called for trial are normally rescheduled to a later date.

Pre-Trial Motions

Pre-trial motions in Montgomery County are typically handled on the day the trial begins but they must be filed within thirty days of the formal arraignment date. These might include a motion to suppress illegally obtained evidence; motions in limine which seek advance rulings on the admissibility of evidence, requests that the prosecution show their additional evidence, and
requests to split your trial from your co-defendants if any, a request to change the trial’s location or any of numerous other potential motions. Once any pre-trial motions have been resolved, a trial on any remaining charges can begin.

**Bench Trial or Jury Trial**

Your trial may be a bench trial before a single trial Judge or a jury trial before a jury of twelve citizens and you should consult your attorney about this important decision. You should consider whether the prosecutor would be more likely to convince one Judge or twelve jurors of your guilt, whether your defense turns on questions of law or fact or if you foresee a potential for juror prejudice. The Commonwealth has an equal right to a jury trial even if you do not choose to have one.

**The Trial: A Summary**

Generally procedures include the review of issues about evidence to decide what can be admitted or excluded; the opening statements; presentation of the main case with direct examination of prosecution witnesses by the prosecutor; cross-examination by the defense; the redirect wherein the prosecutor reexamines its witnesses and then rests his/her case. Then the defense can make a motion to dismiss the case which can be accepted but if denied the defense presents its case through direct examination of defense witnesses.

At this point, the prosecutor then cross-examines the defense witnesses followed by the redirect by the defense and resting of his/her case. The prosecution has the opportunity for rebuttal and in the case of a jury trial, the prosecution and the defense work with the Judge to agree on instructions to be given by the Judge to the jury. Both sides are then given the opportunity to make their closing arguments.

The Judge then takes up the case or in a jury trial, instructs the jury about what law should be applied in the case. The jury proceeds to deliberate and agree on a unanimous verdict. If they deliver a guilty verdict, the defense often makes post-trial motions for retrial but the Judge almost always denies these requests and moves on to sentencing of the accused. If the jury cannot agree on a unanimous verdict, the Judge usually declares a mistrial and the prosecution can decide whether to force a second trial.

**Selecting the Jury**

If you decide on a jury trial, potential jurors are selected from a pool of the registered voters and licensed drivers in Montgomery County; this program is administered by the Montgomery County Jury Commission whose members are elected officials. Through a process called *voir dire* both sides are allowed to ask questions of the prospective jurors as they try to create the most favorable jury panel from their special perspective.

**Presenting Evidence**

The Commonwealth representative - the prosecution - has the burden of presenting evidence and must state a *prima facie* case or risk having the charges against you dismissed. They are required to prove these charges beyond a reasonable doubt. Witnesses are called, take an oath to tell the truth, and the prosecutor uses direct examination to ask them questions which are intended to support their view of the criminal action. Your defense attorney then may cross-examine these witnesses, asking questions to bring out your side.

The defense also has the right to present witnesses, documents and physical objects into evidence, sometimes through use of the *subpoena* power which requires the person to be present at the trial, either as a witness or as the person in custody of the document or object. You are entitled to present as much evidence as you wish or none at all and you have the right to testify in your own defense, but also the right not to testify. The prosecutor is not allowed to comment on the fact that you have not taken the stand nor presented evidence; however these are critical decisions for you and your attorney who has your best interests as the highest priority.
Recent changes in the law provide that children who are victims of sexual abuse are allowed to testify via closed circuit TV and the trial may be closed to the public. However, in all cases, the defendant can view the testimony and the defense attorney can cross-examine the child.

Witnesses almost always discuss their testimony ahead of their appearance. Attorneys almost always urge witnesses to limit their answers to the questions asked, warning them about offering extra information and reminding them to ask that a question be repeated or rephrased if they do not understand it.

All evidence is presented according to the rules of evidence which are developed by the Pennsylvania Supreme Court. Judges have a great deal of responsibility in interpreting these guidelines and in instructing jurors about considering evidence. Your attorney has the responsibility to question the admissibility of any documents or statements which he/she thinks do not meet the standards. Basically, witnesses must have personal knowledge in order to offer firsthand information, evidence must be relevant and must fit into a logical prosecution. But not all relevant evidence is admitted, particularly if it is prejudicial or unfair. Character testimony, documenting that your are a law-abiding person in a way which is relevant to your alleged crime, is always admissible.

More rules govern “hearsay” evidence, out-of-court statements, government records, expert testimony, chain-of-custody regarding evidence, the manner of testimony, forensic evidence, DNA reports, polygraph reports, handwriting and fingerprints. Again, it is the Judge who is required to determine what will be considered in your trial and again you can see that it is important to have an attorney you trust to employ every avenue in your best interests.

After all evidence is presented and both sides summarize their arguments, the Judge instructs the jury about the laws which are relevant in your case, the meaning of “reasonable doubt” and how they should go about their deliberations. The jury then retires to analyze each offense, deciding if the prosecution has proven beyond a reasonable doubt that you should be found guilty of that offense. In a jury trial the verdict must be unanimous. If the jury cannot reach a unanimous decision, the Judge declares a mistrial and the prosecution must decide whether to retry the case.

**Sentencing**

If our justice system works, you as a defendant are given a fair trial with a just verdict and, if you are found guilty, a fair punishment. The Judge decides the sentence, usually based upon a pre-sentence investigation prepared by the Montgomery County Probation Department.

**Sentencing Guidelines**

The Court uses sentencing guidelines to make sure that the punishment is fair and in line with sentences throughout the Commonwealth of Pennsylvania. Guidelines are based on two factors:

1. An offense gravity score from 1 to 13 is assigned to each and every offense; the more serious the crime, the higher the number;
2. The prior record score running from 0 to 5 is assigned to each conviction you have in your past; the more convictions and the more serious the crimes, the higher the number.

There are two additional categories of prior-record score for anyone with a serious record: Repeat Felony Offender (RFEL) and Repeat Violent Offender (REVOC) which carry higher guidelines.

A sentence with a maximum period under two years is called a county sentence and is generally served in the Montgomery County Correctional Facility in Eagleville. If the sentence is two years or greater it is considered a state sentence and is usually served in a state correctional institution such as the one in Graterford.

If you are serving a county sentence you are generally eligible for time off for good behavior, known as “good time credit”; defendants are routinely released upon serving the minimum sentence unless there has been some infraction of the rules during the time of incarceration. However, a
state prisoner does not enjoy that benefit. In fact, the Pennsylvania State Parole Board can decide that you should serve additional time beyond your minimum sentence.

**Mitigating Circumstances**

In Pennsylvania, you have the opportunity to present your perspectives of the case which might reduce your sentence. These mitigating factors could begin with your feelings of remorse and an apology to your victims, your plan to make restitution, your feelings of responsibility to participate in a program providing alcohol or drug rehabilitation, or even psychiatric counseling as specific as training to prevent physical violence. The Judge usually decides how you make your presentation and also provides a format for victims of your crime to make their own recommendations about the sentence you will receive.

**Pre-Sentence Investigation**

Before sentencing, the staff of the Pre-Sentence Investigation Unit of the Montgomery County Adult Probation and Parole Department prepares a report for the Court. This covers such areas as prior criminal record, family history, educational and employment history, as well as prior treatment history for any type of addiction or illness.

**Decision by the Judge**

Following the pre-sentence investigation and argument by counsel, the Judge will impose a sentence, taking into account all applicable factors including prior record as well as positive factors like service to the community and employment. The Judge will utilize the state’s sentencing guidelines, which include the Offense Gravity score (seriousness of the offense) and prior record score based upon prior convictions. You may be placed on probation; sent to prison; placed on house arrest with an electronic monitoring device with the possibility of work release. In addition, you may be required to pay a fine, court costs, and restitution in addition to performing community service. The Judge may also require a Stay-Away Order that prohibits you from having contact with the victim or to complete a program for alcohol abuse or anger management. Most Judges will tailor the terms of community service to the specific defendant.

**Probation**

Following the sentence, most defendants are directed to report to the Montgomery County Adult Probation and Parole Department located on Ross Road in King of Prussia. All probationers will promptly receive a probation officer to whom they will report on a regular basis. The conditions of probation generally include the following:

- Performing community service with a municipal organization;
- Paying fine and costs as well as restitution, if any;
- Participating in a specialized program such as drug rehabilitation; mental health, or alcohol rehabilitation;
- House arrest including wearing an electronic monitoring ankle bracelet;
- Consenting to random urine tests (generally in drug cases);
- Refrain from the use of drugs or alcohol;

If you violate probation by committing another crime or a technical violation such as failure to report or failure to pay fines and costs, your probation officer may place you in jail with a detainer until you have a hearing before your Judge.

**Parole**

Defendants serving a state sentence (with back time over 12 months) will be supervised by the Pennsylvania Board of Probation and Parole. Re-parole can only be granted by the Board
following a probation violation (Gagnon Hearing). The Board believes parole is a privilege rather than a right and you may serve more than your minimum sentence before parole is granted.

After you petition the Parole Board for release, the Board will collect information decision prior to your minimum sentence. Some of the factors include your residence, place of employment, treatment needs, psychological and the adjustment in prison. They consider comments from the District Attorney, the Sentencing Judge as well as the victim prior to making a decision.

The decision is generally made by a Board member or hearing examiner rather than the entire Board. Information collected about you including notes from the interviews and the victim’s comments are reviewed by all Board members in order to make a final decision.

If the Board grants you reinstatement on parole, you will continue to be supervised by a parole officer. If that parole is violated you could be subject to serving the balance of your back time.

### Restitution

If you are sentenced to pay restitution to any victims who have suffered financial loss because of your criminal conduct, the Victim’s Assistance Unit in the Office of the District Attorney will send a form to the victim to complete and attach copies of bills, receipts as well as claims for medical expenses and property losses. Note that lost wages, legal fees or time incurred are not reimbursed by Defendant. Restitution is generally a part of the sentence and if not paid constitutes a violation.

### Appeals

If you choose to challenge the sentence you receive, you may appeal to the Superior or Supreme Court. The time frame for appeal is thirty (30) days or you forfeit your right to appeal. You may petition the trial judge to set bail pending your appeal. If the Court denies your request for bail, you should request a hearing before the appellate court, which will make the determination.

The appellate court will review the record of your trial together with a brief and oral argument by your attorney. The appellate court will strictly adhere to the rules of appellate procedure and will not review a brief that does not adhere to the rules.

### Driving Under the Influence of Alcohol and Controlled Substances (DUI)

It is illegal to operate or be in physical control of a vehicle while any of the following apply:

1. You are under the influence of alcohol or certain drugs to such a degree that you are incapable of safe driving.
2. Your blood-alcohol content (BAC) is .08% or higher within two hours of driving.
3. You have any level of certain enumerated drugs, solvents, noxious substances or metabolites (by-products) thereof, in your system.
4. You are under the influence of a combination of alcohol and drugs which impairs your ability to safely operate a vehicle.
5. You are a minor with a BAC of .02% or higher within two hours of driving.
6. You are operating a commercial vehicle with a BAC above .04% within two hours of driving.

There are numerous exceptions and unique circumstances covered by the DUI Statute so anyone looking for guidance regarding what conduct is legal should consult an attorney and/or review the legislation personally in case any of the exceptions or unique details apply to his or her personal situation.
Penalties

The penalties for the DUI offenses described above range from six months probation for a first offense with a BAC between .08% and .10% to a mandatory minimum of one year in jail for repeat offenders with higher BAC's. The maximum jail sentence for a first offense DUI under the new law is six months, while multiple offenders will face maximum sentences as high as five years of prison. In addition to these penalties, fines, court costs and costs of administering the Court’s rehabilitative programs are normally imposed. These generally include the cost of attending an alcohol highway safety school and of preparing a rehabilitative report by the court-reporting network, plus various other court costs and the restoration of any victims to pre-offense status. Defendants must also pay fines and the Court may add additional requirements based on individual treatment needs. See Chart on page #38.

Driving Under the Influence and the Accelerated Disposition Rehabilitation (ARD) Program (See also page 19)

You may be eligible for the ARD program but your eligibility is solely at the discretion of the District Attorney for the County in which your offense occurred. There are numerous circumstances for which a District Attorney may not grant admission to the ARD program, such as the occurrence of an accident, the presence of young passengers, or having a suspended license at the time of the DUI arrest. Conditions for participating in the ARD program include successful completion of an alcohol highway safety school, evaluation by the court-reporting network to determine your involvement with drugs and alcohol, completion of a licensed alcohol and drug treatment program if ordered by the Court, successful completion of a probationary period, restitution to any party injured as a result of the DUI, and the payment of court and administrative costs associated with your participation in the ARD program and completion of community service hours. Failure to complete the requirements of the ARD program, including attending the alcohol highway safety school, paying all fines, court costs and restitution, will allow the District Attorney to revoke your participation in the ARD program and prosecute the case to the fullest extent of the penalties that can be imposed.

Currently (2015) the fines and costs for the ARD Program in Montgomery County average $1,800.00 to $2,000.00. Montgomery County prefers all fines and costs to be paid prior to the ARD Hearing. If you pay all fines and costs by the day of your ARD Hearing you may get a six-month ARD probation. If you cannot pay them in full, you will most likely get a one-year ARD probation.

Suspension of Driving Privileges

Under the current law, the length of a driver’s license suspension will vary depending on the blood alcohol content (BAC) as follows:

1. First conviction - .08 to .099 or incapable of safe driving: no driver’s license suspension;
2. All other ungraded misdemeanor offenses under the Act: 1 year license suspension;
3. All first degree misdemeanor offenses: 18 months license suspension. See Chart.

Note that occupational limited licenses will be permitted for all first offenders provided they serve a 60 day suspension of all driving privileges. Occupational limited licenses will be permitted for an 18 month license suspension provided that offenders first serve 12 months of a full suspension and then consent to have an ignition interlock installed on the vehicle which they will operate for the remaining six months of suspension. ARD suspensions are usually 30 to 60 days depending on your blood level of alcohol/drugs.

Implied Consent to Take Tests

Under the law in Pennsylvania if you are driving a motor vehicle on the highway you have consented to take a chemical test if requested by the police. A refusal to submit to chemical testing will result in a license suspension as follows:
1. 12 months license suspension for refusing to submit to chemical testing;
2. 18 months license suspension for refusing to submit to chemical testing if you have already been suspended for a prior refusal or if you have been convicted of a DUI.

Police officers are required to inform arrested persons of both civil and criminal penalties for refusing chemical testing. You cannot choose the type of chemical test you wish to take and you do not have the right to talk to a lawyer or anyone else before you take a test.

Needless to say, because of all of the various legal issues that can arise if you are pulled over for an alleged DUI, you should immediately hire a lawyer to help you understand what your rights are and how you can effectively defend yourself.

**Expungement**

The Pennsylvania Department of Transportation (PENNDOT) will maintain a record of your ARD participation for ten years; they are now required to expunge the record of ARD upon the expiration of the ten-year period without requiring an order from the Court to do so. This rule does not apply to commercial drivers. Some counties like Bucks County currently automatically expunge your record upon successful completion of the ARD program. However, in most counties you have to either hire a lawyer to do your expungement or you can attempt to obtain the expungement yourself.

**Restricted Licenses and Ignition Interlock Devices**

Pennsylvania’s law as it applies to ignition interlock states that all second and subsequent offenders are required to install an ignition interlock device on all vehicles owned or registered to the offender. It will be required that repeat offenders get an ignition interlock restricted license upon completion of their regular license suspension. The administration and supervision of the ignition interlock system will be done by PENNDOT.

Economic hardship and employment exemptions are provided in the new law. For example, an economic hardship exemption would permit you to petition PENNDOT to install an ignition interlock system on only one of your vehicles to avoid undue financial hardship. The applicant would only be permitted to operate that particular vehicle. An employment exemption would permit individuals to operate employer owned vehicles without an ignition interlock only in the course and scope of the individual’s employment. The penalty for operating a vehicle without an ignition interlock system (when required) is up to 90 days imprisonment and up to $1,000 fine.

A new offense for operating a motor vehicle without an ignition interlock system has been established where the BAC is greater than .025% or a controlled substance is found in the driver’s system. The penalties for this offense would be a third degree misdemeanor carrying a maximum fine of $1,000 and a jail term of not less than 90 days. The penalty for tampering with an ignition interlock system would carry a fine up to $1,000 and up to 90 days in prison.

**Driving Under Suspension**

The offense of driving while operating privilege is suspended or revoked carries penalties including minimum fine of $200.00 as well as the possibility of mandatory imprisonment. Subsequent convictions of Driving while Operating Privilege is Suspended or Revoked – Non-DUI-related shall result in a sentence of a fine ranging from $200.00 to $1,000.00 and imprisonment for not more than six months.

If one is convicted of Driving while Operating Privilege is Suspended – DUI-related (DUS-DUI), whether or not the person tests positive for alcohol or controlled substance, or has refused testing of blood or breath, the consequences are much more severe with penalties ranging from mandatory imprisonment of 60 days to two years and fines ranging from $500.00 to $5,000.00.
The Vehicle Code imposes a minimum one-year suspension in the event of a conviction for Driving while Operating Privilege is Suspended and where the record of the Department of Transportation shows that the individual is under a revocation at the time of the violation, it can result in a two-year revocation.

Drug Cases

Drug cases have become a unique sub-category of the criminal justice system. Laws of the Commonwealth of Pennsylvania now designate certain substances as “controlled substances” and there are stiff and severe mandatory state prison sentences for various drug offenses. Sentencing is typically related to the type and weight of the drug, prior record, and proximity to a school zone.

The severity of mandatory sentencing frequently compels anyone charged with drug offenses to “cooperate” with authorities. If you become involved in this process, you should be aware that this cooperation is generally governed by a complex, highly detailed “proffer” letter that is signed by the defendant and an Assistant District Attorney. Cooperation with the Commonwealth should not begin if there is no formal proffer letter because you could be left without evidence of your agreement in the event that discord arises at the time of sentencing. You should seriously consider seeking counsel to explain your options and assist you in this complex process.

Most drug offenses involve possession or possession with intent to deliver the specific controlled substance. A vast body of case law addresses the doctrine of constructive possession, whereby a person who did not have actual, physical possession of a controlled substance may be deemed to have possessed it anyhow. Similarly, there is also extensive case law regarding the concept of “possession with intent to deliver.” It is important to note that the law does not require a sale or exchange of money as it may be inferred that drugs are possessed with intent to deliver based on packaging, drug weight, absence of paraphernalia for ingestion, and other circumstances. You should be fully aware that possession with intent to deliver a controlled substance is a felony charge usually involving jail time upon conviction.

Property Forfeitures

Any property, whether real or personal, that is used in connection with facilitating a crime, can be forfeited, or seized. Forfeited property is when the Commonwealth takes over title to one’s property. Seized property is under the control of the Commonwealth, but title is not taken. Whether forfeited or seized, the civil rules apply. Property taken is considered the contraband per se, or derivative contraband, basically meaning that there is a nexus, connection between the property and crime.

One’s property is forfeited on the theory that the property [real or personal] is guilty of a crime. Forfeitures are quasi criminal, however, the hearing and procedures follow the Pennsylvania Civil Rules of Procedure, thus, all civil discovery tools, motions, can be used, and although one has a right to a jury trial, one must make a demand for a jury trial in a civil case or that right is waived. Further, if there are no genuine material issues of fact are in dispute, nothing the trier of fact, whether by a Judge or Jury, would have to determine, then the Commonwealth through the prosecuting agency [District Attorney or PA Attorney General] can move for Summary Judgment and one’s case and right to a jury trial is over, so get a Montgomery County Attorney as soon as one’s property is forfeited or seized.

There are civil procedures that the Commonwealth must perform properly under the Forfeiture rules and civil procedure rules, and if not done correctly, one who could win on a technicality. Further, a skilled Montgomery County Attorney can file a Motion to Return Property right away. Once the Motion to Return Property is filed a hearing will be scheduled very quickly. And, after filing the Motion to Return Property, the negotiations [offers to settle, return property] will begin with the District Attorney. Especially in situations where a parent, or one lets a friend [or other situation] use their car, without knowledge that the car was being used to further a crime, so that one can get their car back, without having to have a hearing.
Do not mess around when one’s property has been forfeited. When one’s property is forfeited because of an alleged connection with a crime, one has a right to due process, an opportunity for fair trial. However, because forfeitures are primarily civil in nature, the Pennsylvania Rules of Civil Procedure apply, along with the civil burdens of proof, which is not beyond a reasonable doubt, it is the preponderance of evidence, meaning more likely than not the property is connected to a crime, and one must make a demand for a Jury Trial. Also, one must hire an attorney since one does not have an inherent right to an attorney, like in criminal cases for those who do not have the necessary funds to hire a private attorney, will have a Public Defender, or court appointed attorney.

In order for the Commonwealth to succeed at trial there must be a factual nexus between the property taken and criminal activity. For example, when U.S. Currency [“money”] is taken it is not enough that drug-sniffing canine alerted on the currency because the majority of money is already infected with trace amounts of contraband, not enough for one who is innocent to know, but enough to alert a drug-sniffing canine, thus, a factual nexus must be proved by the preponderance of evidence showing the money was used to facilitate selling drugs.

Remember, forfeited property [real or personal] is not primarily governed by criminal law. It is the criminal act and nexus to the property that triggers forfeiture. Forfeited property is primarily governed by civil law. Under civil law one can waive their rights regardless of not knowing it, and there are timed deadlines, so do not go it alone, get a Montgomery County Attorney.

**JUVENILE DEFENDANTS**

Our Constitution does not delineate special rights or responsibilities for children but legal foundations have been set over the years by rulings from federal, state and local Courts as well as through legislation at state and national levels. Basic rights for juveniles now include the right to notice of charges, to have counsel, and to have a parent or other person present during interrogation where possible.

In Pennsylvania, the juvenile justice system traditionally had rehabilitation rather than punishment as its goal. Although rehabilitation is still a primary goal of the juvenile system, over time, rougher, stricter and more punitive rules have been put into place. The juvenile rules may have life-long consequences for youthful offenders. For that reason it is important that any juvenile charged with a crime should have representation. There are many qualified attorneys in Montgomery County that handle juvenile cases and the Public Defender’s Office has a juvenile division.

**Initial Encounter**

The call comes from your local police department, telling you that your child is in police custody for any one of a number of alleged crimes, from shoplifting to underage drinking to possession or sale of drugs or even a crime of violence. If you have never been in this situation before, you will be scared, bewildered and confused. What is the first thing you should do?

First, tell the officer that you will come immediately. Second, do not give permission for anyone to speak with your child without an attorney. Third, call an attorney with experience in criminal defense. A criminal defense attorney can help make sense of a very confusing situation and try to prevent any further or future harm to your child. A list of qualified attorneys is available through Lawyer Referral Service of the Montgomery Bar Association at 610-279-9660, Ext. 201 or 1-800-560-5291.

If the alleged crime is not serious, your child may be released to your custody with a juvenile citation filed against him/her or the citation may be filed at a later date and mailed to you. You will also be issued a subpoena and commanded to appear with your child at a certain time, place and date. After this initial contact with law enforcement, your child’s case can take one of many directions.
Youth Aid Panel

Many communities in Montgomery County have developed special groups as a way of diverting juvenile cases away from the formal court system. The panels are under the direction of the District Attorney’s office and local police departments. Members are chosen from community volunteers who are specially screened and they must complete a fifteen hour training program before they can serve.

The panel will act as a sort of judge and jury, hearing the specifics of your child’s case. If they find your child responsible, they may impose a judgment of sorts by requiring your child to perform community service. When he/she has successfully completed the assignments, charges can be dropped. This process is the most desirable and least serious method of resolving a juvenile charge. Early assistance by a qualified attorney may help divert the less serious case to the youth aid panel program.

Preparation for Juvenile Court

Intake Interview

An intake interview may be scheduled to determine what track your child’s case will take. Often both parent and child are interviewed; this will most likely take place at the Montgomery County Youth Center (540 Port Indian Road, Norristown 19403; telephone 610-631-1893; fax 610-631-5394) or at Juvenile Probation (530 Port Indian Road, Norristown, 19403; telephone 610-630-2252; fax 610-630-1749).

Consent Decree

If your child’s offense is of a less serious nature, your attorney may be able to get a consent decree where your child admits to the offense and is placed on probation without an adjudication of delinquency. This means your child will not have to go to Court. If then your child successfully completes the period of probation, he/she may have the charges dismissed.

Court Hearings

Detention Hearing

If our child’s crime is of a serious nature or if the authorities feel that he/she is a threat to the community, your child may be detained at the Montgomery County Youth Center. The Court must schedule a hearing on the detention to allow you and your child an opportunity to be heard by the Court regarding the Commonwealth’s detention of your child, pending trial. Representation by an attorney is essential at this stage as your child’s freedom is at stake.

Adjudication Date

On the date set by the Court for adjudication, your child will either "admit" to the crime alleged or request a trial which will be held at a later date. If your child "admits", he/she will be adjudicated delinquent by the court and a disposition date will be set requiring another appearance. If your child is in detention, he/she will continue to be held, pending the trial or disposition hearing.

Trial

If your child has requested a trial it will take place in the court room at the Montgomery County Youth Center. The trial will be in front of the presiding Juvenile Judge for the county. The process will be essentially the same as if it were in adult court with the exception that the juvenile is not entitled to a jury and the public is not permitted in the court room. Your child may be
either acquitted or found delinquent — there is no finding of guilt in Juvenile Court. If the Judge decides that your child is delinquent — an adjudication of delinquency — he/she becomes a ward of the Court. This means that the Court has continuing interest and authority over your child and a disposition hearing will be scheduled.

Planning for Disposition

In between an adjudication of delinquency by admission or by trial and the disposition hearing, you and your child will be visited by a juvenile probation officer who will review your child’s schooling, the family, home and living situation and several other factors that will be analyzed in order to recommend a placement for your child. In this phase, an attorney’s guidance can be very helpful. A juvenile probation officer’s recommendation carries a tremendous amount of weight in the Judge’s determination of what to do with your child at the disposition hearing.

Disposition Hearing

The disposition hearing is similar to a sentencing hearing for an adult; the prosecution presents evidence to persuade the Court to follow their recommendation regarding what to do with your child. Through your child’s attorney, you will be able to present evidence to convince the Judge to impose a more suitable, perhaps less restrictive method of rehabilitation. Often an attorney can work with the juvenile probation office by providing them with favorable information regarding your child so you can agree on a disposition prior to the disposition hearing.

Placement

The juvenile system handles offenses committed by people under eighteen years of age. However, once in the system, a person can be under the authority of the Court up to age twenty-one. The Court can impose any one of a number of dispositions from probation to a secure placement which is essentially a prison for juvenile offenders. The Court may also impose intermediate punishments including but not limited to house arrest, intensive probation, “boot camp” and placement at a special school or wilderness program — whatever the Court decides will best match the rehabilitative needs of your child.

Probation Conditions

If probation is assigned, your child will be required to comply with all conditions which might include some or all of these:

- attending school regularly;
- obeying all school rules;
- getting permission from parent or guardian for all activities, before and after school and during weekends;
- abiding by curfew rules;
- providing restitution to any victims and/or repairing damaged property;
- forfeiting driver’s license;
- restricting contacts with certain others;
- participating in a counseling program;
- performing work projects as supervised community service.
Caution

The Pennsylvania juvenile justice system is primarily geared to rehabilitation. However, in certain instances, juvenile adjudications be used for sentencing purposes in adult court. Even more serious is the fact that, depending on the crime committed, your child — even though under age eighteen — could be charged as an adult, tried in adult court and sentenced to an adult prison. An attorney who is versed in criminal and juvenile law can guide you and your child through potential dangers in the juvenile justice system.

VICTIMS

Pennsylvania’s Basic Bill of Rights for Victims,

You have a right ...

1. To receive basic information on the services available.
2. To be notified of significant actions and proceedings within the criminal and juvenile justice systems.
3. To be accompanied to all criminal and all juvenile proceedings.
4. To submit prior comment on the potential reduction/dropping of a charge or change in a plea in a criminal or delinquency proceeding or diversion of any case, including an informal adjustment or consent decree.
5. To submit prior comment on sentencing decisions or the disposition of a delinquent child to include the submission of a written and oral victim impact statement.
6. To be restored to the pre-crime economic status through restitution, compensation through the Crime Victims Compensation Program, and the expeditious return of property.
7. To be given the opportunity to provide prior comment on and notice of post-sentencing release decisions involving an offender who is sentenced to a state correctional institution when a personal injury crime is involved.
8. To receive notice of the release of an offender from a local correctional facility and immediate notice of the escape and subsequent apprehension of such offender in cases involving personal injury crimes.
9. To receive notice of the release of a juvenile and immediate notice of the escape and subsequent apprehension of such juvenile, including failure to return from temporary leave or home pass.
10. To receive notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.
11. To receive immediate notice of the release of an offender on bail from a local correctional facility when the offender either violates a Protection From Abuse Order or commits a personal injury crime against a victim protected by the order.
12. To receive notice when an offender is transferred from a state correctional institution to a mental health facility and of the discharge, transfer or escape of the offender from the mental health facility.
13. To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the Crime Victims Compensation Program.
14. To be notified of the details of the final disposition of the case of a juvenile offender.
15. To be notified of the termination of the Courts’ jurisdiction.
16. To be present at trials, including murder trials, and the right not to be excluded from the trial if the victim will be providing input at sentencing.
17. To be present at executions providing the victim has registered with and been selected by the Victim Advocate (PA Act 80 of 1998).
Victim’s Responsibilities

In order to receive the services outlined above, a victim must provide a valid address and telephone number to the requesting agency. You are also responsible for providing timely notices of any changes in that information.

Information you provide is confidential and may not be disclosed to any person other than a representative of a law enforcement agency, prosecutor’s office or corrections agency without prior written consent. The victim’s responsibility falls to the parent or legal guardian for child victims, or to a surviving family member in the case of a homicide.

Agencies Assisting Victims in Montgomery County

The agencies listed on the following pages are available to assist you and to provide information. Telephone numbers marked HOTLINE are staffed twenty-four hours a day. All other numbers are available during regular business hours. If you have any questions regarding these agencies, you should contact the Victims Assistance Unit in the Office of the District Attorney at 610-278-3144.

Court Issues

Information on victims’ rights and services in the justice system and community:

Victim Assistance Unit in the District Attorney’s office
Business: 610-278-3144

Juvenile justice system services and information on crime victims’ rights:

Victim Assistance Unit - Juvenile Division of D.A.’s office
Business: 610-278-6292

Compensation for out-of-pocket medical bills, lost wages/support, counseling, funeral expenses or cash loss benefits as a result of a crime, if eligible:

Victims Compensation Division, Bureau of Victims’ Services of the Pennsylvania Commission on Crime and Delinquency
Business: In PA 1-800-233-2339 - Out of state 1-717-783-5153

Assistance for victims’ oral or written testimony for input into the parole process; also victim-offender mediation which may give a victim of a violent crime the opportunity to communicate with the offender in a safe and secure setting:

Office of the Victim Advocate
Business: 1-800-322-4472

Additional Agencies for Victim Assistance

Shelter from Domestic Violence

Shelter with counseling and other services for victims of domestic violence:

Laurel House
HOTLINE: 1-800-642-3150
610-277-1860 info@laurel-house.org

Domestic Violence - Legal advocacy, counseling and other services for victims of domestic violence:
Women’s Center of Montgomery County

**HOTLINE:** 1-800-773-2424 email: mcwebmail@dca.net

Business: Norristown - 610-279-1548
Pottstown - 610-970-7363
Jenkintown - 215-885-5020
Korean Language - 215-886-8725

**Personal Injury Crimes (Non-Domestic Violence):**

Counseling, advocacy, assistance with crime victims’ compensation applications, assistance with victim impact statements and other services to victims of burglary, robbery, personal injury crimes and surviving family members of homicide victims.

Victim Services Center of Montgomery County

**HOTLINE:** 610-277-5200 for Sexual Assault and Child Abuse
**HOTLINE:** 610-ASSIST-1 for all other crimes
**TOLL FREE:** 1-888-521-0983 and 610-277-0932
**PA SAVIN** – Pennsylvania Statewide Automated Victim Information & Notification
**TOLL FREE:** 1-886-972-7284 - [http://www.pacrimevictims.state.pa.us](http://www.pacrimevictims.state.pa.us)

**Services for Special Groups**

*Support and counseling for crime victims over 60 and their caregivers:*

**Lincoln Center for Family and Youth - ElderWise Program**

**Business:** 610-275-3715

*Counseling, advocacy and other services for elder victims of crime:*

**Montgomery County Office of Aging and Adult Services**

**HOTLINE:** 1-800-734-2020

*Placement, counseling and other protective services for children:*

**Montgomery County Office of Children and Youth**

**HOTLINE:** 1-800-278-5800

*Counseling, advocacy and other services for victims of drivers under the influence of alcohol and/or illegal drugs:*

**MADD (Mothers Against Drunk Driving)**

**Business:** 610-825-4902 – email: pa.state@madd.org

**Victims and Witnesses at a Criminal Trial**

**On-Call Procedures**

If you are involved as a victim or witness in a criminal case that is scheduled for trial, you may receive a *subpoena* which is a legal order for you to appear at a specific time and place. Your cooperation is essential to the justice system so the District Attorney has established convenient on-call procedures. This system allows you to remain at home, school or work until you are actually needed to testify at the criminal trial, provided you leave a telephone number where you can be reached by the Victim/Witness Clerk in the Office of the District Attorney at 610-278-3428. To avoid unnecessary inconvenience and frustration, do not appear unless contacted by the District Attorney’s Office.

You need to know that the defendant may decide to plead guilty on the day of the trial without advance notice to the District Attorney’s Office. Victims and witnesses who wish to observe such
proceedings should plan to be at the Courthouse by 9:00 AM on that designated day. If the defendant pleads guilty on the day of the trial, on-call victims and witnesses will not normally receive a call to come to the Courthouse. However, when the defendant requests a trial and you have been sent a subpoena but are not yet present, you will be telephoned to come to the Courthouse.

Criminal trials are public hearings and each courtroom provides seating for a limited number of spectators.

Planning Ahead for the Trial

As outlined above, it is essential in our system of justice for you to make yourself available to testify. When you receive a subpoena you should call the Victim/Witness Clerk at the Office of the District Attorney, telephone 610-278-3428, as soon as possible to give them your telephone number. Also you may be sent information about and the forms which are required for determining your eligibility for restitution for certain monetary losses. You should return these forms promptly, well ahead of the trial date, so they can become part of the case records, if appropriate. The Court can not order restitution if you do not submit complete restitution information prior to the trial.

You should also plan to arrive promptly and fully-prepared at the Courthouse in Norristown.

To get directions: Check the Montgomery County website: www.montcopa.org or ask the Victim/Witness Assistance Unit at 610-278-3144 or 610-278-5244.

Child care: Montgomery County provides free licensed drop-in child care at One Montgomery Plaza, across Swede Street from the Courthouse, for children from six weeks old through school age. You should check www.montcopa.org/ccis or call the Victim/Witness Assistance Unit at 610-278-3144 for information or for a brochure about this service.

Parking: Free parking is available in the garage under the Courthouse with an entrance on Main Street. You should bring your parking ticket with you for validation by the receptionist on the fourth floor.

Subpoena: You must bring your subpoena so you can turn it in to the Assistant District Attorney after you testify so it can be processed for payment of a nominal witness fee plus mileage, which you will receive a few weeks after your appearance.

On The Day of The Trial

You will find that any of these events may occur on the scheduled trial date:

1. If a defendant does not appear, a bench warrant will be issued for his/her arrest. The case will then be rescheduled for trial on a later date after the defendant has been apprehended.

2. The trial date may be continued (postponed) if either the defense or the prosecution is not ready for trial. In case of a continuance, a new trial date is usually set immediately by the Court.

3. The defendant may plead guilty; it is important to note that sentencing for a guilty plea may take place on the morning of the trial date, or may be deferred for 60 - 90 days.

4. The defendant may request a trial either before a judge or a jury. Most often it is not known until the morning of the designated trial date which of those events will occur.

Testifying at the Trial

The purpose of a trial is to determine the truth and in our system we try to determine the facts through two forms of questioning: direct examination and cross examination. The Assistant District Attorney who calls you to testify will question you about your observations about the crime. This is called direct examination. After this, the defense attorney has the right to ask you questions, in the cross-examination.

To be as effective as possible as a witness, you may wish to consider these suggestions:

• present a neat appearance;

• review the facts of the case in your own mind before you testify;
• do not discuss your testimony with other witnesses or victims;
• try to remain calm and courteous even if the questioning becomes stressful;
• listen carefully to all questions;
• wait until any objections are made and ruled upon by the Judge before responding to questions;
• speak clearly and precisely;
• answer all questions to the best of your knowledge;
• never make up an answer if you are not sure of the facts;
• be responsive to the questions but do not volunteer information;
• freely admit to your conversations with others about the case (i.e., police, Assistant District Attorney) when cross-examined except with your attorney;
• you are under oath so you must always tell the truth; any lie can discredit your entire testimony. In addition, failure to tell the truth can result in perjury charges being brought against you.

**Intimidation of Victims or Witnesses**

If you, either as a victim or witness, are threatened by the defendant or his/her friends or family in any way, you should immediately contact your local police department and the Office of the District Attorney at 610-278-5244. Criminal charges can be brought against the person making the threat, and if the defendant threatens you, his/her bail may be revoked.

**At the Sentencing**

The defendant is found guilty or not guilty and sentencing may occur immediately after a guilty verdict or may be deferred to a future date. In most cases resulting in a guilty verdict, the Judge has the option of imposing several types of sentences including imprisonment, supervised probation, non-reporting probation and/or a fine, court costs, and restitution.

**Special Provisions**

Some sentences require that the defendant has no contact with a victim or witness. The court can also demand that the defendant make restitution for monetary losses suffered by a victim as a result of property damage or physical injury caused by the crime. Before the trial, you are required to fill out a restitution information form and the District Attorney will, if appropriate, request the Court to order that restitution is a condition of the sentence. The final decision lies with the Judge whose ability to order restitution in criminal cases is limited by case law governing the types of expenses that are recoverable.

Victims of a personal injury crime, burglary, robbery or driving-under-the-influence may wish to prepare a written impact statement for use at sentencing. This is an opportunity to describe the emotional, physical and financial losses caused by the crime; the statement is usually one or two pages in length so it can be read in three to five minutes. You should contact the Victim/Witness Assistance Unit in the Office of the District Attorney at 610-278-3144 to obtain forms and additional information.

Victims of personal injury crimes whose offenders are sentenced to incarceration at either county or state prison may also enroll in a Victim Notification Program with the appropriate office. Once enrolled, you will be notified of the inmate’s status, such as: home furloughs, work release, release to treatment facilities, parole, pardon, community corrections placement, escape or final release from total confinement. You must contact the Victim Assistance Unit in the Office of the District Attorney at 610-278-3144 for enrollment forms and information; this does not happen automatically.

Victims are also allowed to make confidential oral or written statements as input into the parole process, near the time when the defendant has served the minimum sentence. Pennsylvania’s
Act 8-1995 established the Office of the Victim Advocate to represent the rights and interests of crime victims before the Department of Corrections and the Board of Probation and Parole. The Victim Advocate is authorized to petition the Board to deny parole, or set conditions of parole, upon the request of the crime victim. For more information about timelines and specific details of this process, call 1-800-563-6399.

**Pennsylvania Program for Victim Compensation**

You may also be eligible for compensation to recover certain losses from the state’s compensation program. The Pennsylvania Crime Victims Compensation Act of 1976 created a fund and established eligibility guidelines for providing certain benefits to crime victims. This fund consists of fines and penalties assessed against persons convicted of crimes. No general tax revenues of the state are used, therefore persons convicted of crimes support a program to benefit their victims.

**Victim Eligibility**

You may be eligible for services of the Victims Compensation Program if:

1. The crime occurred in Pennsylvania or the crime occurred to a Pennsylvania resident who was injured or killed in a terrorist attack in a foreign country.
2. The crime was reported to the appropriate authorities within 72 hours unless good cause is shown or a Protection From Abuse Order is filed within three days.
3. You have cooperated with law enforcement and the courts.
4. Your claim is filed within one year after the crime or two years with good cause.
5. In cases of child abuse, filing may be extended to five years with good cause, provided the victim was under 18 years of age at the time of the occurrence, and the offender is a parent, a paramour of a parent, an individual residing in the household, or a person responsible for the victim’s welfare.
6. You were not engaged in illegal activity.
7. You meet minimum loss requirements:
   - if under age 60 -
     - a minimum of $100 total qualifying out-of-pocket expenses
     - a loss of at least two or more continuous weeks’ earnings.
   - if age 60 or over -
     - no minimum out-of-pocket loss.

**Allowable Expenses**

A maximum award of $35,000 may be paid with limits for death or any one injury including:

1. medical expenses - medical, dental and other expenses related to the injury (includes physical therapy, medications, home health care, medical equipment and transportation costs to medical and counseling appointments);
2. counseling - if a crime results in death, the spouse, children, parents or siblings who, at the time of the crime, lived in the same house as the victim are eligible for compensation for counseling expenses. In other crimes, compensation for counseling covers only the victim;
3. loss of earnings or support - if deprived of earnings as a result of injuries received in a crime incident, you may be paid for such loss provided all requirements are met. If
deprived of support due to the death of a victim as a result of a crime incident, you may be eligible for compensation;

4. stolen cash benefits - if Social Security, veteran’s retirement, railroad retirement, pension/retirement, disability, or court ordered child/spousal support is the main source of income and the loss occurs through robbery, assault, rape, homicide, kidnapping or burglary, you may be compensated within certain limits;

5. if you paid or are liable to pay the funeral bill for a deceased victim, you may be compensated for your loss, within certain limits.

Expenses Not Covered

The fund will not reimburse victims for:

1. pain and suffering; Civil suit
2. stolen or damaged property except those personal care items essential to immediate bodily functions, such as prosthetic devices, wheelchairs, walkers, canes, prescription eyeglasses, hearing aids, dental devices, or prescription medications;
3. auto- or watercraft-related injuries, except if inflicted in either a DUI crash, or the Title 18 Crimes of Reckless Endangerment or the Intentional Use of a Vehicle as a Weapon. (Hit-and-run and homicide-by-vehicle are crimes eligible for compensation.)

Additional Rules

The Crime Victims Compensation Fund is regarded as “the payer of last resort.” Other sources must be utilized and exhausted before payment from the state’s program can be considered. "Other source” means that payment will be reduced by the amount of any other source. These include but are not limited to disability, health or life insurance, Medical Assistance, Medicare, Workers’ Compensation, Social Security or leave paid by an employer.

There are no costs to file a claim and you do not need an attorney. Also it is not necessary for the offender to be prosecuted, or even arrested, for a claim to be filed. However, you must cooperate with law enforcement authorities in the investigation and prosecution of the offender if one is known.

In special circumstances, an emergency award of up to $1,000 may be considered

Decisions on Compensation

After all information on your application is verified, you will be notified if you are eligible for compensation. The time required for this decision varies considerably, depending on the complexity of the claim. You will be mailed a copy of the decision. If your claim is denied, the reason will be explained to you along with the procedures for an appeal.

The Victim Assistance Unit

For complete information and application forms, a victim should contact the Victim Assistance Unit, Office of the District Attorney, P. O. Box 311, Norristown, PA 19404-0311; telephone 610-278-3144; e-mail via website: www.montcopa.org/da - scrolling down and clicking on Contact an ADA link on the left side of the screen. The website for the Victims Compensation Division, Bureau of Victims’ Services of the Pennsylvania Commission on Crime and Delinquency is www.pccd.state.pa.us; click on Victim Assistance link.
### General Impairment Penalties

<table>
<thead>
<tr>
<th>Offense(s)</th>
<th>1st Offense</th>
<th>2nd Offense</th>
<th>3rd Offense</th>
<th>Subsequent Offense(s)</th>
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<tr>
<td>§3802(a)</td>
<td>Ungraded misdemeanor</td>
<td>Upgrade misdemeanor</td>
<td>2nd degree misdemeanor</td>
<td>2nd degree misdemeanor</td>
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<tr>
<td>BAC of 0.08% to 0.99%</td>
<td>No license suspension</td>
<td>1 yr. license suspension</td>
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<tr>
<td>Individuals Incapable of Safe driving</td>
<td>Mandatory minimum of 6 months of probation</td>
<td>Mandatory minimum of 5 days of incarceration</td>
<td>Mandatory minimum of 10 days of incarceration</td>
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<td>Maximum of 6 months of incarceration</td>
<td>Maximum of 6 months of incarceration</td>
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<td>§300 fine</td>
<td>$300 - $2,500 fine</td>
<td>$500 - $5,000 fine</td>
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<td>CRN evaluation</td>
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### High Rate of Alcohol

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<td>§3802(b)</td>
<td>Ungraded misdemeanor</td>
<td>Ungraded misdemeanor</td>
<td>1st degree misdemeanor</td>
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<td>BAC of 0.10% to 0.159%</td>
<td>1 yr. license suspension</td>
<td>1 yr. license suspension</td>
<td>18 months license suspension</td>
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<tr>
<td>Minors with 0.02% BAC</td>
<td>Mandatory minimum of 48 hrs. of incarceration</td>
<td>Mandatory minimum of 30 days incarceration</td>
<td>Mandatory minimum of 90 days of incarceration</td>
<td>Mandatory minimum of 90 days of incarceration</td>
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<tr>
<td>CDL drivers with .04% BAC</td>
<td>Maximum of 6 months of incarceration</td>
<td>Maximum of 6 months of incarceration</td>
<td>Maximum of 6 months of incarceration</td>
<td>Maximum of 6 months of incarceration</td>
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<tr>
<td>School bus/vehicle drivers with .04% BAC</td>
<td>§500 - $5,000 fine</td>
<td>$750 - $5,000 fine</td>
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<td>$1,500 - $10,000 fine</td>
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<td>1st degree misdemeanor</td>
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### Highest Rate of Alcohol

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</thead>
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<td>§3802(c)</td>
<td>Ungraded misdemeanor</td>
<td>1st degree misdemeanor</td>
<td>1st degree misdemeanor</td>
<td>1st degree misdemeanor</td>
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<td>BAC of .16% and above</td>
<td>1 yr. license suspension</td>
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<td>Minimum levels of controlled substances in blood</td>
<td>Mandatory minimum of 72 hrs. of incarceration</td>
<td>Mandatory minimum of 90 days of incarceration</td>
<td>Mandatory minimum of 90 days of incarceration</td>
<td>Mandatory minimum of 90 days of incarceration</td>
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<tr>
<td>Individuals who refused chemical test</td>
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<td>Maximum of 5 years of incarceration</td>
<td>Maximum of 5 years of incarceration</td>
<td>Maximum of 5 years of incarceration</td>
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- 1st degree misdemeanor
- 2nd degree misdemeanor
- 3rd degree misdemeanor
- 4th degree misdemeanor
Collateral Consequences
Crimmigration:
The Intersection of Criminal and Immigration Law

It is important to note that any criminal conviction, and in some cases, criminal conduct alone, even if it does not lead to a conviction, may have collateral consequences for the immigration status of foreign-born defendants. The reason is that many decisions as to grant a particular immigration benefit (i.e., citizenship) are left to the discretion of federal immigration authorities. And criminal conduct or a criminal conviction of any kind is taken into account by those authorities making discretionary determinations.

The primary statutory authority for immigration law is the Immigration and Nationality Act ("INA"), found at Title 8 of the U.S. Code ("USC"). The INA contains two major sections that impose immigration law sanctions for crimes-- INA Section 212(a) [8 USC § 1182(a)], and INA Section 237(a) [8 USC § 1227(a)]. Both INA sections fall under the larger canopy of removability: foreign-born persons who can be removed from the United States for criminal activity.

INA Section 212(a) lists the grounds of inadmissibility for foreign-born individuals who have committed or been charged with certain crimes. In theory, the term "admissibility" applies to persons seeking to enter the United States. However, the grounds of inadmissibility contained in §212(a) apply in certain circumstances to foreign-born defendants who are already physically present in the United States. These individuals are seeking to "improve" their status; for example, by adjusting from nonimmigrant (i.e., student on a student visa) to immigrant (i.e., legal permanent resident) status.

On the other hand, INA Section 237(a) applies to foreign-born defendants who have been formally admitted into the United States in some status, be it nonimmigrant (i.e., student visa, tourist visa, etc.) or immigrant (legal permanent resident).

It is imperative, therefore, that when a foreign-born individual commits, is charged, or is soon to be convicted of a crime, he/she must get the advice of an immigration law attorney, in conjunction with his/her criminal defense counsel. An immigration attorney will advise the foreign born on any of the following:

- Immigration consequences of criminal convictions;
- Working with criminal counsel and fashioning a plea;
- Avoiding Aggravated Felony convictions;
- Categorical/Modified Categorical Approach to a certain conviction;
- Criminal Detainers - how long can a foreign-born defendant be held?;
- Is a foreign-born defendant subject to mandatory custody, and if so what options are there?
- Bond determinations: What if the Government appeals?;
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Peter Amuso is a graduate of Georgetown University and he received his law degree from Harvard Law School. A veteran of the U.S. Army, Mr. Amuso served an officer in the Judge Advocate General’s Corps, trying criminal cases in Germany and the Balkans. Mr. Amuso is member of the Criminal Defense Committee of the Montgomery Bar Association, and has taught Criminal Law and Criminal Procedure at Chestnut Hill College. Although he concentrates his practice in Montgomery County, Philadelphia, and Bucks County, he has counseled clients, and is familiar with courts, throughout the Commonwealth.

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The David J. Cohen Law Firm, LLC, created by former Philadelphia Police Officer, concentrates in handling: criminal defense, DUI, DUI-ARD, Drug Charges, Expungements, Traffic/Speeding Tickets and Civil Rights cases; Father Rights Custody and Non-Custodial Parental Child Custody Rights; Divorce; Personal Injury, Car Accidents, Slip-and-Falls, and Products Liability.

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I was admitted to practice in 1971. In 1974, I joined the Public Defenders office where I served for 38 years in a part time capacity. During this time, I chaired or co chaired the MBA’s Criminal Defense Committee and the Criminal Rules Committee. I have maintained my office at 28 West Airy street, since 1985, where I represented clients in criminal court and family court.

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Steven Fairlie has Chaired the Criminal Defense Committee since 2001. Prior to that he was a Montgomery County Assistant District Attorney. He has been designated a Pennsylvania “SuperLawyer” by Philadelphia Magazine and placed on their list of the Top 100 Lawyers in Pennsylvania, The National Trial Lawyers Top 100 Trial Lawyers, Top Rated Attorneys in Pennsylvania as published in The Wall Street Journal, Philadelphia Inquirer, and The Legal Intelligencer, The National Association of Distinguished Counsel, The National Advocacy for DUI Defense Top 100 Driving Under the Influence (DUI) Attorneys, and is a holder of Martindale-Hubbell’s prestigious “AV” rating and Client Distinction Award, designating preeminent lawyers based upon legal ability, ethics, and client satisfaction. He has been named a Fellow of the Litigation Counsel of America (awarded to less than one-half percent of judges, lawyers, and scholars in America), received the National Academy of Criminal Defense Attorneys Top 10 Attorney Award, and been named a Top 100 Criminal Defense Lawyer by the American Society of Legal Advocates. He has won many other awards for his trial work that are simply too numerous to list here. Mr. Fairlie teaches numerous seminars for criminal lawyers every year on a local and statewide basis.
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My passion is assisting individuals and small businesses with their varied legal issues. Many moons ago, I earned an Ivy League degree in philosophy from Columbia University, and then my law degree from the University of Miami. While in law school, I was involved in graduate student government and was a contributing author and editor of the University of Miami Business Law Journal. I began my legal career as a judicial law clerk in Towson, Maryland, and first established my own law practice there at the age of 26. I moved to Pennsylvania in 2000, and revived my solo practice after working for a few years with local law firms. These early efforts were rewarded by being named a “Pennsylvania Super Lawyer - Rising Star” in 2005 and 2006 by the publishers of Philadelphia magazine. Based upon my law firm experiences, I have found that I can best serve my clients one-on-one as a solo attorney. My practice focuses on civil, criminal and family law litigation and transactions with close to 20 years of tested experience throughout southeastern Pennsylvania and Maryland. I have successfully tried civil and criminal jury trials, contested family law hearings, administrative proceedings and appeals. I also serve as an arbitrator in civil court cases, and have been court-appointed as defense counsel in state criminal prosecutions. In addition to my solo law practice, I additionally serve as a Special Assistant Public Defender in Magisterial District Courts throughout Montgomery County. I’m a contributing author (and have even been editor-in-chief) to the Montgomery Bar Association’s Civil Practice Manual, the definitive legal manual for practicing law in Montgomery County. Currently, I am privileged to be a trusted advisor and knight-in-shining-armor to satisfied clients throughout the country. I pride myself on providing personalized and affordable legal service to my clients . . . and I even return phone calls.

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Index

A
Accelerated Disposition Rehabilitation (ARD) 25
Accelerated Rehabilitative Disposition (ARD) 19
Adjudicated delinquent 29, 31
Adjudication 29, 30
Affidavits 13, 14
Alcohol 23, 24, 25, 26, 33
Alcohol highway safety school 25
Alcohol rehabilitation 23
Appeal 24, 37
ARD program 18, 25, 26
Arraignment 15, 18, 20
Arrest 16, 18, 19, 23, 25, 30, 34
Arrest warrant 13, 14, 15, 16
Assistant District Attorney 17, 27, 34, 35

B
BAC 24, 25, 26
Bail 9, 15, 16, 17, 24, 31, 35
Bench Trial 21
Bench warrant 34
Bill of Rights 9, 11, 31
Blood alcohol content (BAC) 25
Board of Probation and Parole 23, 36
Booking 13
Boot camp 30
Burden of proof 9

C
Call of the Trial List 20
Character testimony 22
Chemical test 25, 26
Child Abuse 33, 36, 49
Child care 34
Clerk of Courts 18, 48
Commercial drivers 26
Community service 18, 23, 25, 29, 30
Compensation 31, 32, 33, 36, 37
Consent decree 29, 31
Constitution 9
Contingency fees 10
Contributors 4, 40
Controlled substance 9, 24, 26, 27
Correctional Facility 22, 31
Court costs 23, 25, 35
Court of Common Pleas 17
Court reporter 17
Crime Victims Compensation Fund 37

Crime Victims Compensation Program 31
Criminal charges 35
Criminal complaint 14
Criminal defense attorney 10, 13
Criminal defense law 10
Criminal investigations 11
Cross-examination 21, 34

D
Deadly force 13
Defendants 9, 10, 18, 19, 20, 21, 22, 23, 25, 28
Defense attorney 10, 13, 21
Department of Corrections 36, 48
Detention 11, 15, 29
Detention Hearing 29
Direct examination 21, 34
Discovery 18, 27
Disposition 19, 20, 29, 30, 31
Disposition hearing 29, 30
District Attorney 16, 17, 18, 19, 20, 24, 25, 27, 29, 32, 33, 34, 35, 37
District Justice 16, 17, 18
Domestic Violence 32, 33
Driving-under-the-influence (DUI) 18
Drugs 23, 24, 25, 27, 28, 33

E
Economic hardship 26
Eighth Amendment 9
Electronic monitoring device 23
Employment exemption 26
Equal protection 9
Evidence 17, 18, 20, 21, 22, 27, 28, 30
Exclusionary rule 12
Executions 31
Expungement 14, 26

F
Fee agreements 10
Fees 10, 24
Felonies 9
Fifth Amendment 9, 11
Financial hardship 26
Fines 15, 18, 23, 25, 26, 36
First conviction 25
First degree misdemeanor 25
First-Time Non-Violent Offenders 18
Forfeiture of bail 18
Fourteenth Amendment 9
Fourth Amendment 9, 12
G
Good time credit  22
Guilty plea  20, 34
Guilty verdict  21, 35

H
Hearsay evidence  22
House arrest  23, 30

I
Ignition interlock system  26
Impact statement  31, 33, 35
Implied Consent to Take Test  25
Imprisonment  26, 35
Information on victims’ rights and services  32
Intake Interview  29
Intensive probation  30
Intimidation of Victims or Witnesses  35
Investigative stops  11

J
Jail  16, 19, 23, 25, 26, 27
Jury  20, 21, 22, 27, 28, 29, 31, 33, 34, 35
Juvenile justice system  28, 31, 32
Juvenile justice system services  32
Juvenile probation  29, 30

L
Laurel House  32, 48
Lawyer Referral Service  10, 15, 19, 28, 49
License suspension  18, 19, 25, 26
Lincoln Center for Family and Youth  33, 49
Line-up  16, 17

M
MADD  33, 49
Mandatory minimum  25
Media  14
Miranda Rights  11
Misdemeanors  9, 13, 15
Mistrial  21, 22
Mitigating Circumstances  23
Montgomery County Adult Probation and Parole  23
Montgomery County Clerk of Courts  18
Montgomery County Correctional Facility  22
Montgomery County Jury Commission  21
Montgomery County Law Library  9
Montgomery County Office of Aging and Adult Services  33, 49
Montgomery County Office of Children and Youth  33, 49
Montgomery County Public Defender’s Office  10
Montgomery County Youth Center  29
Motions in limine  20

N
Nolo contendere  20

O
Offense gravity score  22
Office of the Victim Advocate  32, 36, 50
On-Call Procedures  33

P
Parking  9, 34
Parole  23, 24, 32, 35, 36
Penalties  18, 25, 26, 36
PENNDOT  26, 49
Pennsylvania Board of Probation and Parole  23
Pennsylvania Crime Victims Compensation  36
Pennsylvania Department of Transportation  26
Pennsylvania rules and regulations  9
Perjury charges  35
Personal injury crime  35
Plea bargaining  18, 20
Pleading guilty  20
Police  16, 17, 18, 25, 26, 28, 29, 35
Possession with intent to deliver  27
Preliminary arraignment  15
Preliminary Arraignment  14
Preliminary hearing  14, 15, 16, 17, 18, 19
Pre-sentence investigation  22
Pre-Sentence Investigation  23
Presumption of innocence  9
Pre-trial conference  20
Pre-trial motions  20, 21
Prima Facie case  17, 18, 21
Prior criminal record  18, 23
Prison  23, 24, 25, 26, 27, 30, 31, 35
Privileged communication  13, 14
Probable cause  9, 11, 12, 13
Probation  18, 22, 23, 25, 29, 30, 35
Professional Fees  10
Proffer letter  27
Property forfeitures  27
Prosecution  11, 16, 18, 20, 21, 22, 30, 34
Protection From Abuse Order  31, 36
Protective services for children  33
Public Defender’s Office  10, 14, 15, 28

Published by the Montgomery Bar Association
Montgomery County Criminal Law Handbook 2017
R
Reasonable doubt 9, 16, 17, 21, 22, 28
Rebuttal 21
Redirect 21
Rehabilitation 23, 25, 28, 30, 31
Rehabilitative report 25
Release on monetary conditions 15
Release on nominal bail 15
Release on non-monetary conditions 15
Release on recognizance 15
Release on unsecured bail bond 15
Repeat Felony Offender 22
Repeat Violent Offender 22
Resisting Arrest 12
Restitution 23, 24, 25, 30, 31, 34, 35
Restoration 25
Restricted license 26
Right to a speedy public trial 20
Right to counsel 9, 15, 16
Robbery, personal injury crimes 33
Rules of evidence 22
Rules of Professional Conduct 10

S
Search and seizure 9, 12
Search warrant 12
Searches and seizures 12
Secure placement 30
Sentencing 20, 21, 22, 23, 31, 34, 35
Services for elder victims of crime 33
Setting of Bail 15
Sexual abuse 22
Shelter 32
Sixth Amendment 9, 16
Subpoena 21, 28, 33, 34
Summary offenses 9

T
Testimony 17
Third degree misdemeanor 26
Trial 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 30, 31, 33, 34, 35

V
Verdict 21, 22, 35
Victim Advocate 31, 32, 36, 50
Victim Assistance Unit 32, 35, 37, 49
Victim impact statement 31
Victim Notification Program 35
Victim-offender mediation 32
Victims 18, 22, 23, 24, 25, 30, 31, 32, 33, 34, 35
Victims Bill of Rights 31
Victims Compensation Division 32, 37, 49
Victim Services Center of Montgomery County 33
Victim’s responsibility 32
Victims’ statements 18
Violations of local ordinances 9
Voir dire 21

W
Waiver of the arraignment 18
Warrant 11, 12, 13, 14, 15, 16, 18, 34
Warrantless arrest 13
Witnesses 16, 17, 18, 19, 21, 22, 33, 34, 35
Witness fee 34
Witness intimidation 35
Women’s Center of Montgomery County 33, 50
Work release 23, 35
Writ of Habeas Corpus 19
www.legis.state.pa.us/ 9
www.montcopa.org 34, 37
www.montgomerybar.org 3
www.pacode.com 9
www.pacrimedivision.state.pa.us 33
www.pccd.state.pa.us 37

Y
Youth 33
Youth Aid Panel 29
Youth Center 29
DIRECTORY

**Adult Probation**  
Logan Square, 1880 Markley Street  
Norristown, PA 19401-0311  
Business: 610-278-3448; 3449; 3450

**Bail Director**  
26 West Airy Street, P.O. Box 2107  
Norristown, PA 19404  
Business: 610-277-7290

**Clerk of Courts**  
Second Floor, Courthouse  
Norristown, PA 19404-0311  
Business: 610-278-3346

**Correctional Facility**  
60 Eagleville Road,  
Norristown, PA 19403  
Business: 610-630-9393

**Department of Corrections**  
State Correctional Institution at Graterford  
P.O. Box 246, Graterford, PA 19426  
Business: 610-489-4151

**District Attorney’s Office**  
Fourth Floor Courthouse,  
Norristown, PA 19404-0311  
Business: 610-278-3090

**DUI Administration (Driving under the Influence)**  
Logan Square, 1880 Markley Street  
Norristown, PA 19401  
Business: 610-278-3623

**Juvenile Probation**  
530 Port Indian Road  
Norristown, PA 19403  
Business: 610-630-2252

**Laurel House**  
HOTLINE: 1-800-642-3150

**Law Library**  
Lower Plaza Level, Courthouse  
Norristown, PA 19404-0311  
Business: 610-278-3806
Lawyer Referral Service
100 W. Airy Street (Rear) Norristown, PA 19401
Business: 610-279-9660 ext. 201
1-800-560-LAW1 ext. 201
E-mail: LawyerReferral@montgomerybar.org

Legal Aid
Norristown
Business: 610-275-5400
Business: 610-326-8280

Lincoln Center for Family and Youth - ElderWise Program
Business: 610-275-3715

MADD (Mothers Against Drunk Driving) Business: 610-631-6882

Mental Health/Mental Retardation/Drug and Alcohol Program
Human Services Center
1430 DeKalb Street
Norristown, PA 19404-0311
Business: 610-278-3642

Montgomery Bar Association
100 W. Airy Street Norristown, PA 19401
Business: 610-279-9660
E-mail: mail@montgomerybar.org

Montgomery County Office of Aging and Adult Services
Human Services Center
1430 DeKalb Street
Norristown, PA 19404-0311
HOTLINE: 1-800-734-2020

Montgomery County Office of Children and Youth HOTLINE: 1-800-278-5800

PENNDOT (District 6)
7000 Geerdes Blvd.
King of Prussia, PA 19406
Business: 610-205-6700

Public Defenders Office
Second Floor, Courthouse
Norristown, PA 19404
Business: 610-278-3295

Victim Assistance Unit
Business: 610-278-3144

Victims Compensation Division, Bureau of Victim Services Center of Montgomery County
HOTLINE: 610-277-5200 for Sexual Assault and Child Abuse
HOTLINE: 610-ASSIST-1 for all other crimes
TOLL FREE: 1-888-521-0983
Victims’ Services of the Pennsylvania Commission on Crime and Delinquency

Business: In PA 1-800-233-2339
Out of state 1-717-783-5153

Office of the Victim Advocate

Business: 1-800-322-4472

Women’s Center of Montgomery County

HOTLINE: 1-800-773-2424

Business: Norristown - 610-279-1548
Pottstown - 610-970-7363
Jenkintown - 215-885-5020
Korean Language - 215-886-8725

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