ARRESTED FOR DUI: WHAT HAPPENS NOW?

Plan for Today

Basic Definitions

Process/Procedure After a DUI Charge is Filed

Defining DUI

In *every* Arizona DUI case, there must be proof of…

Defining DUI

"drive *or* be in actual physical control of a vehicle"

Defining DUI: Example

Can you get a DUI while parked legally in a parking lot?

Defining DUI

So, what is "actual physical control" (APC) of a vehicle?

Defining DUI

The easiest answer…

it’s up to the jury

(with legal guidance).

Defining DUI

Beyond driving or APC…

Types of DUI Offenses

1. “impaired to the slightest degree” by drugs, alcohol, vapor

Types of DUI Offenses

"impaired to the slightest degree"

Scientific evidence?

Types of DUI Offenses

2. "0.08 or more" within two (2) hours of driving or APC

Types of DUI Offenses

3. "0.15 or more" within two (2) hours of driving or APC

Types of DUI Offenses

4. "0.20 or more" within two (2) hours of driving or APC

Types of DUI Offenses

5. “drug . . . or its metabolite” in the person’s body

Types of DUI Offenses

"drug . . . or its metabolite"

Quantity does not legally matter!

Types of DUI Offenses

"drug . . . or its metabolite"

But it must be psychoactive (new).

Types of DUI Offenses

Second offense DUI

Within 84 months

(dates of commission)

Types of DUI Offenses

So far, these have all been misdemeanors.

Side Topic...

What is the difference between misdemeanor and felony?

Side Topic…

If they are all misdemeanors so far, why are they defined differently?

Types of DUI Offenses

Felony DUI's are called "Aggravated DUI"

Aggravated DUI

License suspended, revoked, canceled, refused, or restricted

Aggravated DUI

While you're supposed to have an Ignition Interlock Device

Aggravated DUI

Passenger under 15 years of age

Aggravated DUI

Third or subsequent DUI within 84 months

Back to the Plan

We have now generally defined all of the DUI's under Arizona law.

Taking a Step Back

Arrested for DUI: What Happens Next?

The DUI Arrest

We are not covering SFST's or roadside investigation.

The DUI Arrest

Police must have probable cause to arrest.

After DUI Arrest

Sample of your breath, blood, or urine?

What if you refuse?

After DUI Arrest

Book into jail, or release?

Two Cases Filed:

1. Criminal Case
2. MVD/ADOT Case

Two Cases Filed:

We already defined the different DUI charges under Arizona law.

Two Cases Filed:

So let’s talk about MVD now.

The MVD Case

Document: Admin Per Se / Implied Consent Affidavit

ADOT
Motor Vehicle Division
40-5807 R05/16 azdot.gov

Mail Drop 533M
Motor Vehicle Division
PO Box 2100
Phoenix AZ 85001-2100

ADMIN PER SE/IMPLIED CONSENT AFFIDAVIT

LE or DR Case Number _____

Complaint Numbers Issued _____

Charges: ❒ ARS 28-1381 ❒ 28-1382 ❒ 28-1383 ❒ 4-244.34 ❒ 13-1201 ❒ Yes ❒ No While transporting hazardous material? (ARS 28-101)

❒ 13-1204 ❒ Other Title 13, Chapter 11 charge:_____ ❒ Yes ❒ No While operating a commercial motor vehicle?

Driver Name (first, middle, last, suffix)	Date of Birth	Driver License Number	Class	State

Address	City	State	Zip

On (date)_____, at (time)_____, at (location)_____

❒ I had probable cause to believe that the person named caused or was cited for an accident resulting in death or serious physical injury while driving a motor vehicle. (State the probable cause on the lines below.)

❒ I had reasonable grounds to believe the person named was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor and/or drugs, and I placed the named person under arrest therefor.

Among the facts leading to that belief were: _____

_____

❒ The admonitions on the back of the original copy were read to the person. Officer Initials: _____

❒ The admonitions were not read because the person was either unconscious or incapable of refusal.

❒ The person submitted to ❒ breath ❒ blood tests

Test results: ❒ Indicated alcohol concentration of: _____ ❒ Indicated positive for _____ (drug) ❒ Results not available

❒ The person refused to take or did not complete the tests in the following manner: _____

_____

❒ Yes ❒ No Did the person cause serious physical injury or death as defined in ARS 13-105 during this incident?

OFFICER CERTIFICATION I certify that the above is true and correct. I request that any hearing be held in _____County.

Law Enforcement Officer Name	Badge Number	Law Enforcement Officer Signature		
Law Enforcement Officer Agency	ORI Number	Law Enforcement Officer Station		
Agency Address		City	State	Zip
Test Operator Name	Badge Number	Test Operator Signature		

SURRENDER OF ARIZONA DRIVER LICENSE

Pursuant to ARS 28-1321 and 28-1385, the law enforcement officer must require the surrender of all Arizona driver licenses or permits in the person's possession. If no license or permit is attached, state reason: ❒ Lost ❒ Destroyed ❒ Nonresident ❒ Other:_____

ORDER OF SUSPENSION
One box must be checked.

Date Served	Time Served

Please see reverse side to request a Summary Review or Hearing.

❒ Pursuant to ARS 28-1321, your Arizona driving privilege is suspended effective 15 days from Date Served. The suspension is for 12 months, or 2 years if there is a prior implied consent refusal, within the last 84 months, on your record. This order is final unless a hearing is requested online or in writing and received within 15 days from Date Served. This action is a result of your failure to successfully complete or refusal to submit to tests to determine alcohol concentration or drug content. This suspension will not end until all reinstatement requirements are met including completion of alcohol or drug screening.

❒ Pursuant to ARS 28-1385, your Arizona driving privilege is suspended for not less than 90 consecutive days effective 15 days from Date Served. If a review of your driver record indicates that you have completed alcohol or drug screening and are eligible for a 60-day restricted driving permit, one will automatically be mailed to your address of record within 45 days from Date Served. This order is final unless a summary review or hearing is requested online or in writing and received within 15 days from Date Served. This suspension is a result of tests to which you submitted. This suspension will not end until all reinstatement requirements are met including completion of alcohol or drug screening.

TEMPORARY DRIVER PERMIT — This entire form will serve as a temporary driver permit that will expire 15 days from the Date Served. However, if you request a summary review or hearing, then this permit will remain valid until the summary review or hearing decision has been made. If your Arizona driver license/permit is currently suspended or revoked, this permit does not authorize you to operate a motor vehicle.

Sex	Weight	Height	Eyes	Hair	Class	Restrictions

Permit Not Issued Because	Licensee Signature

Original – Motor Vehicle Division Pink and Yellow – Licensee Blue – Law Enforcement Agency

The MVD Case

Refusal case?

0.08 or drug case?

The Refusal Case

At risk:

12 month suspension

(SIIRDL after 90 days)

The 0.08/Drug Case

At risk:

90 day suspension (restricted license after 30 days)

The MVD Case

Separate from the criminal case.

Executive Hearing Office is in Phoenix.

15 Day Deadline

Properly and timely file a request for hearing or summary review.

15 Day Deadline

Hard deadline.

No exceptions.

The MVD Case

Hearing?

Summary review?

Meanwhile…

You can fight the MVD case, but the criminal case will not be delayed.

The DUI Case

Jurisdiction:

Misdemeanor or felony?

The DUI Case

Arizona Rules of Criminal Procedure

The DUI Case

Do you have a right to have an attorney?

The DUI Case

Do you have a right to have a *court appointed* attorney?

Brief Detour…

Mandatory minimum sentencing:

Every DUI has jail!

The DUI Case

Always consult with your attorney about the next steps.

The DUI Case

1. Initial Appearance (and Arraignment)

Initial Appearance

Judge advises of the charges

Release conditions?

Arraignment

Enter a “Not Guilty” plea, almost always.

The DUI Case

2. Pre-Trial Conference (PTC) or Case Management Conference (CMC)

Viewing the Evidence

"Disclosure"

When can you have your disclosure?

The DUI Case

2. Pre-Trial Conference (PTC) or Case Management Conference (CMC)

What is a PTC?

Meeting between your attorney and the prosecutor.

PTC vs. CMC

Each court is a bit different.

The Local Courts:

Coconino County Superior Court

The Local Courts:

Flagstaff Justice Court

Williams Justice Court

Page Justice Court

The Local Courts:

Flagstaff Municipal Court

The Local Courts:

U.S. Magistrate Court for the District of Arizona

Appear for Hearings?

Ask your lawyer. Sometimes you must, sometimes you may not have to.

After the PTC/CMC

Will your case resolve with or without a trial?

<u>Without a Trial</u>

Dismissal *or*

Change of Plea

Dismissal

The *rare* exception, not the rule. Why?

A.R.S. § 28-1387(I)

The State "shall not dismiss" a DUI charge…

A.R.S. § 28-1387(I)

… "unless there is an insufficient legal or factual basis" to prosecute

A.R.S. § 28-1387(I)

The legislature can force the prosecutor's hand?

A.R.S. § 28-1387(I)

Separation of powers violation?

A.R.S. § 28-1387(I)

Either way:

it's the current law and it's bad news.

Change of Plea

For entering a negotiated resolution (plea agreement)

Trial

Bench trial?

Jury trial?

Jury Trial

How many jurors?

What evidence is permitted?

Jury Trial

Only two possible outcomes...

Guilty or Not Guilty.

Not Guilty

The Court will dismiss the acquitted charges.

Guilty

Now what?

Sentencing

Sentencing

Misdemeanor or felony?

Mandatory minimums?

Mandatory Penalties

Jail:

Mandatory minimum?

Maximum?

Mandatory Penalties

Monetary Fine:

Mandatory minimum?

Maximum?

Mandatory Penalties

Rehabilitation:

Substance abuse screening + counseling

Mandatory Penalties

Rehabilitation:

Hint – always use an MVD certified agency!

Mandatory Penalties

Community Service: Sometimes required.

Mandatory Penalties

MVD:

Suspension?

Ignition Interlock?

Other Penalties

Probation:

Discretionary

Post-Conviction

Definitely consider applying to set aside the conviction!

Thank you.

Ryan J. Stevens

Griffen & Stevens Law Firm, PLLC