

DUI Legal Talk

Ryan Stevens

Good afternoon-my name's Ryan Stevens with the Griffen and Stevens law firm in Flagstaff over on Humphreys Street, just a few blocks from the Court house and today we're presenting on this topic of 'Arrested for DUI: What Happens Now?'

So, we will just jump right in. The plan will be to go over some basic definitions first-the definitions are really necessary contextually to understand the process and what we're kind of talking about is the process of how a DUI case kind of starts, when the arrest occurs and what happens from there.

But, the definitions of DUI and some of the topics associated with DUI will be very important to understanding why the process is what it is and just understanding in general what to expect.

So, after the definitions, we'll talk about the process of a procedure of a case and how it works in the court.

So, in terms of definitions-there are many, many different types of DUI under Arizona law. There's a separate type under federal law, that we'll just kind of touch on today but, most of what we'll talk about is Arizona law. But, there is something that is consistent in every single DUI statute every single definition of DUI under Arizona Law and that is the government state would have to prove that a person was driving or in actual physical control of the vehicle. And then, we'll talk about the distinctions in DUI law from that point forward but, first every single DUI must either have proof of driving or actual physical control.

Driving: fairly simple definition-operating a motor vehicle and moving it. Actual physical control is a little bit different. So, we'll touch on that briefly. For example, a question that comes up in some cases is: "I got charged with DUI but, how can that be? I was parking in a legally, in a legal parking space so, how do I have a DUI charge? Can I get a DUI?". The answer is Yes-it is possible, even if the vehicle's not moving, even if its parked. There are several factors we're not going to go through in extreme detail as to what those are-but, for actual physical control-it is possible to be in actual physical control with the vehicle in park.

So, Actual Physical Control: what is it? We often refer to it as APC-so, if you see APC in this presentation, it's a reference to that topic of Actual Physical Control of the vehicle.

So, what is it? There is one easy answer and that is-its basically up to the jury. So, if you're not driving but you're accused of actual physical control. DUI you can go to trial and a jury will have to decide-is the evidence sufficient to prove that you were in actual physical control or not? There are a number of factors under a case called Zaragosa that the judge would educate the jury. So, the judge would give this legal guidance to the jury about what are the factors that they should at least consider in determining whether somebody's in actual physical control of the vehicle. At the end, essentially-it just says-whatever else the jurors think is important they may consider so, it's really up to the jury, ultimately.

Beyond the topics of just driving or Actual Physical Control, there are several types of DUI offenses under Arizona Law. So, let's go through those. First the most basic, lowest level,

simplest, DUI under Arizona Law most people would suggest is the .08 law most people know that to be the legal limit so to speak .08. DUI or a blood alcohol concentration of .08. But, there's actually one that's even more simplistic than that. And that is if you're impaired to the slightest degree by alcohol, drugs or vapor releasing substances-which we won't talk a whole lot about.

But, basically if you're impaired to the slightest degree by any of those things or the law says-a combination of those things so, if someone smokes marijuana and has TCH in their system, that could be a DUI alone-just with that or if there's alcohol and THC combined and there's proof of impairment to the slightest degree, that would work as well.

Impairment to the slightest degree is what it sounds like, it means that the jury would be convinced if you went to trial that the person was impaired a little bit -at least to the slightest degree and was driving or in actual physical control of a at least a vehicle-that's the most simplistic one.

One thing about the you might notice-it doesn't have a BAC Blood Alcohol Concentration-so, there is no .08, there is no scientific evidence associated necessarily with impairment to the slightest degree cases.

So, what that means is-if a person is charged with DUI and for whatever reason....the policy did not obtain or the judge will not allow the government to use the results of the scientific sample such as a blood sample or a breath sample, the prosecution can still proceed, just on this charge alone and that is, to try to convince the jury, based on other factors like maybe how the person performed on field sobriety tests, maybe they smelled like alcohol, maybe they were slurring their speech.

Things of that nature to try to prove to the jury that even without scientific evidence, you can still be convicted of a DUI.

So, that's slightest degree-the next step would be as we referenced the .08 or more statute and that's the legal limit, so to speak and that one would require proof with a scientific sample utilizing limited scientific testing procedures that are certified under the administrative code. The Arizona Administrative Code by Arizona DPS and they basically come down to, essentially two things:

One is: 1. What's called the Intoxilyzer 8000-that's a machine that you provide two breath samples and it provides the print out and that machine is considered reliable enough under Arizona law to use it in court, as a forensic evidence, sufficient to convict somebody.

2. the other one is to use the gas chromatograph and that's just basically a blood testing procedure that's widely considered to be very accurate for testing for blood alcohol concentration.

So, those are the main two. In fact, they may be the only two and if the result is .08 or more and the sample was taken within two hours of driving, you can get a DUI, just on this basis alone. So, driving-or actual physical control with BAC within 2 hours of driving at that level is enough to be convicted even with no evidence of impairment. The next one is essentially a step up in the BAC so, the law starts with slightest, it goes to .08-then it jumps to a DUI called extreme DUI.

Extreme DUI starts at a Blood Alcohol Level of .15 or more and again, its always within 2 hours of driving or actual physical control. .15 to .199 is what we call regular extreme DUI. Then it jumps and it says basically at .20 or more, there's another one called Super Extreme DUI and that one just-its .20 or more. So, you can be a .201 or you can be a .35-the same statute is going to apply to you.

Once you are past a .20, essentially the law says way, way too impaired to be driving. We are going to call it super extreme DUI and at that level, we're not going to distinguish any further beyond .20.

There's another one in the same set of statutes and that is any drug or it's metabolite. So, what that means to us is-if you don't have alcohol or you have some alcohol but say the sample came back at a .045 -so, you are a .045.

If they also test for say THC, the psycho active component of marijuana then you can be convicted of what's called a DUI Drug offense, based solely of the drug or its metabolite in your body.

The drugs are defined in the criminal drug statutes. So, basically if its an illegal drug that you are not allowed to use without a prescription or possess. Some drugs you can't possess at all (there is no prescription for them) other ones are illegal to possess unless you have a prescription.

They use the same definitions of what those drugs are from the biological component and what that does is that puts a very strict law in place and its very strict for one particular reason and that is, the quantity of the drug does not matter.

So, with alcohol-you can have-technically, some alcohol and not commit a DUI. So, a person who has one beer over the course of an hour with dinner and was to drive, they're BAC is probably going to be well below .04 unless they are impaired by that. They are not committing a DUI. However, if a person had just a tiny bit of any illegal drug-tiny bit of THC in their system without a prescription and they were driving-then the DUI -Drug Statute applies. So, it doesn't have those levels of .08, extreme.

The drug, if it is simply there-that's enough to convict you of a DUI. What we talked about so far are drugs that are actually psychoactive so its very important to also know the metabolite of some drugs / are non- psycho active. So, the reason its new is there's a new case that came down from the AZ Supreme Court that essentially states-if the component-the metabolite from the drug does not actually affect or impair the mind-it's not psychoactive then-its not a DUI.

So, a person who consumes (again, we will go back to the marijuana) who consumes THC, your body is going to break that down into the main metabolite-that's going to stick around for some period of time is called carboxy THC and for a while, prosecutors got away with-prosecuting for DUI. People who only had carboxy THC.

The problem was carboxy THC does not cause any psychoactive result in your brain-it doesn't impair you. So, a person could consume THC and then they can have carboxy THC still in their blood-say two days later...

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They are not impaired and at that point they can still technically be convicted of a DUI. However, in recent months it might have been more than a year ago now-the law has been clarified by our courts-Court of Appeals and Supreme Court to say-no more.

Carboxy TCH or any metabolite that's not psychoactive is not by itself sufficient to convict somebody of a DUI drug. You've got to have some kind of impairment. You have to have some kind of drug that would cause impairment in order to convict.

Alright. The other topic through all of the ones we just talked about-slightest degree-.08, .15, .20 and DUI /Drugs...is the possibility that it would be a second offense as well-so that if you see 2nd offense-that means the government is alleging that you had a DUI within 84 months before this one. So, 84 months translates to 7 years. So, basically for a period of 7 years if there are two DUIs in that period of 7 years-the second one is going to be called the second offense DUI and its based on the dates of commission.

So, not the date of conviction, not the date of a jury trial, not even the date when they charged it or not-date of commission of the offense.

Alright, so that applies across the board to all the ones we talked about. Something else that applies across the board the everything we've just talked about is that all of these so far by themselves as I have described them today have been misdemeanor charges.

Alright so those have not been felony charges as a quick side topic there is, there's a significant difference as most people know-between a misdemeanor and a felony which are the only two types of criminal offenses, under Arizona law.

Generally speaking, a felony is any offense for which a person can be incarcerated for one or more years. So, basically if you can get a year in jail or a year in prison or more-then it is by definition a felony.

The maximum penalty for a misdemeanor including a class 1, most serious misdemeanor is six months in jail. So, that's technically the difference but, there are so many other ramifications associated with felonies versus misdemeanors. But, that's the basic definition.

So, all basic DUIs, first offenses and second offenses-the ones I've described to far-those are all listed as misdemeanors. A DUI can become a felony DUI which we should look at as well, in just a moment-but, first, if they are all misdemeanors-why are they defined differently? Its kind of important to think about that-you have impairment to the slightest degree and a .08 versus somebody who maybe has what's called a super extreme DUI.

We talked about a .20-so, why does if they are all just misdemeanors- who cares? Right? The reason its's so important is because the legislature has decided that for each one of those as they become more serious-as a person faces a higher level of impairment.

So, extreme DUI, super extreme DUI-the mandatory, minimum penalties go up and up and up and then, the highest one -with the most mandatory penalties, is what's called aggravated DUI. So, felony DUIs under Arizona law are called aggravated DUI.

Really quickly, aggravated DUI comes into effect-by definition if you basically commit a misdemeanor DUI but, at the time you do it, you weren't even supposed to be driving anyway. Your suspended from driving, your license is revoked or cancelled, or you are on a restricted license, that you are in violation of some fashion.

So, we'll talk about ignition interlock, for example-later on-but, a person who has, what's called a Special Ignition Interlock Restricted Driver's License or SIIRDRL for short-a person who commits a DUI and had someone else blow into the device in order to start their car-they would be in violation of their restriction and that DUI just jumped up to a felony or aggravated DUI.

Couple other ways that can happen-is anybody who is supposed to have ignition interlock-if they get caught driving any other vehicle that doesn't have it installed=and they commit a DUI while doing so=felony DUI jumps in. Another one is-

If you have a passenger/child under the age of 15-Notice that the legislature didn't just say a minor-under 18-they specified, under 15. So, technically if you had a 16-year-old passenger and you commit a DUI-it's still a misdemeanor.

But, if you had somebody who say is 13 in your vehicle while you commit a DUI, your going to jump up to aggravated DUI or felony DUI, just on that fact alone. One other way is, this is probably the most significant one-a person who gets a third or subsequent DUI in that 7-year period that we talked about-so, first offense is a misdemeanor, 2nd offense is a misdemeanor but, with higher penalties, higher minimums.

Third offense in seven years automatic felony-very, very difficult to defend-so, very, very serious and its punished very, very seriously as well. So, back to the plan for today-that's a general overview-we just defined essentially every single DUI statute that identifies or defines a DUI offense under Arizona Law.

So, taking a step back-we talked about the offenses-but, if you are actually arrested-what happens next?

That's what we are here to talk about. The arrest itself-we are not covering because it just takes too much time and that's really important to think about-it takes too much time and maybe in the future we can talk about it because it is just complicated.

But, standardized field sobriety tests-the walk and turn, the roadside tests that a officer may have a person perform if they are under suspicion of DUI. The one called Horizontal Gaze Nystagmus-HGN for short-sometimes called an eye test-where they are moving, a stimulus across your field of vision and seeing if your eye has any Nystagmus associated with it, which is a sign of possible alcohol impairment.

Those are things that officer may do on the side of the road, as well as noting the odor of alcohol, if you are stumbling, if you are having difficulty with what they call divided attention tasks.

You know, your trying to talk to the officer, your trying to get your insurance card and your not able to do both and your not able to do both of those things-that's common for people who are under the influence and it's a possible sign of impairment.

So, all of those things are happening on the side of the road. Ultimately what's really important is the officer must have probable cause-so, they must have more than just a reasonable suspicion of DUI. They must have that added element-just a touch more evidence to hold up in court before they arrest you.

So, if they arrest somebody, they've now determined that they have probable cause to arrest and you can challenge that in court if you don't think they have enough evidence at the time they committed the arrest and that's true even if later on you tested positive for alcohol, even above a .08 but at the time the officer arrested you-they didn't know or have sufficient evidence to support a finding of probable cause-you can challenge that in court down the road.

So, probable cause is the phrase for the level of proof required to actually arrest somebody on suspicion of DUI.

Once a person is arrested, one of the biggest things-among others that will happen-but, one of the biggest things will be whether you end up providing a sample of your breath, blood or urine, as discussed in the DUI statutes. The officer has the legal right to request you to provide any combination of those, just one of those or all three of those.

Generally speaking, urine is not used often because its not scientifically sound-often the testing for it is not forensic enough to make it into a courtroom or be convincing enough that they can prove when a person consumed, that they were impaired. So, the two typical one's for DUI cases would be breath and blood.

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A big question will be "what if you refuse?" they can't get a sample of your breath because it requires you to actually willfully provide that sample. So, if a person is seeming to be impaired and they've been arrested on finding a probable cause and they're transported over to the jail or police department, where they have these testing procedures available and the officer says: I want you to do a breath test. Technically, people do have the right to refuse but, you should know as well that that refusal could be used against you, both in the criminal case and then we'll talk about the MVD case—the license suspension case against you as well.

So, the other option is to not refuse-if you refuse breath-the other option, as well for a police officer is to then go and get or apply for a search warrant.

So, they can apply-including in the middle of the night-they have these forms called telefax search warrant affidavits and they will fax it to an on-call judge who's basically agreed that, you know-for a particular weekend, they'll be on call-maybe the middle of the night, they'll get woken up and the officer says, "there's a fax-I am sending you a fax-it's an affidavit for a search warrant for someone's blood-I asked for breath-they are refusing. Here are the reasons that I think they are impaired-here's the evidence I have for probable cause", and if the judge agrees there's probable cause-then they can issue a search warrant-that gets a little dicey.

Because if the person is really refusing-they won't stick out their arm for a needle because, really-what that is- a search warrant is a court order that the government can bring a needle, stick it in your arm and literally extract your blood against your will and for some people, they see the search warrant of course and they say "fine"-it looks like a valid court order, I'm going to comply.

The other option that's not advisable of course-but, some people will refuse. They literally, at that point-can strap you down-hold you on the ground-stick a needle in your arm against your will.

Those are horrible videos-I've had plenty of clients over the years, where I've seen it-they can strap you into a phlebotomy chair -its called. I had one where they held somebody with multiple officers, just held the person-who's screaming on the ground and stuck a needle in. But, you need to be aware-if there's a valid search warrant-you need to comply.

So, they'll get the breath or blood one way or another-typically. Then, the officer has a decision-if it's a breath sample-you're going to have the result immediately. So, you can ask them-what does it say? I want to see it and usually, they'll have no problem with showing you cause it's right there-they have it and frankly, it's something that you're going to see later anyway but, even if they won't show you.

They still have to make a decision-do I release this person, or do I book them into the jail? If they had probable cause to arrest you for DUI and if you give a breath sample and they have above a .08-they have every legal right to book you into jail. In some cases, and when you are thinking about why would an officer book somebody or release somebody-there's really no clear answer.

Every time I've asked an officer that, during interviews, some of them say-I just have my own policy on this -if they are above a .15, I'm booking them. If they're not, I'm probably not-other officers say-well, if they are really cooperative and polite with me-I'll probably release them to a sober third party if they have a significant other, a roommate, anybody that I can meet/trust that they're sober and say will you take custody of this person? Make sure they don't drive, make sure they go to bed. Then, I'll release them. And other officers say-you know what-if it's above an .08 or if I don't even have the result-I am booking them because they are just going to jail because I think I have enough evidence of a DUI.

I'm taking them off the streets and you'll see a judge within 24 hours and typically you will be released afterwards. So, that's kind of a decision that is really left up to the officer right then and there. It affects you only insofar as if you get booked into jail-even if you don't spend 24 hours-the good news is-you're going to get credit if you are ever sentenced to jail on a DUI; even if it's only one day. You're going to get credit for the fact that you were booked into jail. So, actually, if you were booked at 3 a.m. and you see a judge and you get released at 10 a.m.-you only did 7 hours-but, you are going to get credit for a full day of jail. So, if you're later sentenced to 1 day of jail, you don't have to go back-you already did it.

So, that kind of benefits-at least you get the back-end benefit of that. If you are released, even if you were arrested-it does not count. Even if you were held against your will-it does not count. Unless you were actually booked into jail.

So, there are two cases ultimately that get filed if you have a DUI arrest-One will be the criminal case-that's the DUI .08, .15, extreme, aggravated DUI. Those are all the criminal charges possible but then there's an entirely separate case and most people don't know that until they go through some-thing like this and that is-an Administrative case through MVD or ADOT-Arizona Department of Transportation and its subdivision, the Motor Vehicle department. And that one, has no criminal penalties associated with it-it's purely administrative so, it's part of the executive branch of government.

The criminal case is part of the judicial branch -so, they are really, really separate. They have the same set of facts because it arose from the same arrest but, they're very, very separate-the criminal judge and the judge in the administrative case-they will not communicate-they will not know what each other are doing-they don't work together. So, it's just in their/ your? Mind, it's more helpful to keep them separate, even though they came from the same type of things.

So, we've defined the criminal DUI charges, under AZ Law-so, let's just take a minute now and talk about that MVD aspect-so, you are arrested for DUI-you know you have a criminal case they'll give you information about that-you might be summoned to court but, will then address the other thing that needs to be on your mind and that is-I got an MVD Case=I've got the possibility that the MVD is going to suspend my driving privileges.

The MVD case begins with a document-it's kind of like the criminal cases where the criminal cases have a complaint or an indictment. The MVD case begins with a document called an admin per se, implied consent affidavit and essentially what that is is just the officer saying-I arrested this person and they identify the reasonable grounds that they had to believe that this person was possibly a DUI driver and then, if they took a breath sample-they put the result, if it's a blood sample they're not going to have the result for probably-right now, it's somewhere in the vicinity of 2 months, 60 days, just whenever the lab can get that done.

But, they're going to file this document-this documents leads to that MVD case-what it looks like, what the document looks like-and really out of all that-it's all the information the officers fills out-but, these last two paragraphs at the bottom are really important. The top one-I know it's not legible on here and actually, I pulled this from the ADOT website and it was already blurry but the top one is in reference to what's called a refusal suspension-which we'll talk about and the bottom one is in reference to a suspension associated with being above a .08 or having a positive sample for a drug that's illegal to drive with-so, those are two different suspensions.

On the left side, the officers going to check one of them and that's it and that's the one you are facing that's the allegation you are facing. So, it's just 1 of 2. In the MVD case, the refusal case-in the .08 or drug case-have different consequences but, you treat them very similarly in terms of if you want to defend against them. In the refusal situation-so, if you refused to provide that breath sample or if the officer asked for urine or blood and you refused to provide it-then, at risk to you is a 12 month suspension of your driving privileges and that's for a first refusal.

I'm not going to go into the details of what it means if you've had a previous refusal and you do it again-your going to have a more significant suspension. But, this is all going to be in refence to first time offenses. But, you are at risk of having a 12-month suspension and remember that word? SIIRDL?

It means Special Ignition Interlock Restricted Drivers License and that's a restricted device license where you have to have a device to blow into to make your car start. After 90 days, the MVD can-but, they don't have to give you a SIIRDL or restricted license. So, you're either getting 12 months for refusing to provide a sample either 12 months or 90 days plus you'll have to do the remaining essentially 9 months of that on a SIIRDL, on a SIIRDL device. So, remember 12 months and then if you compare that to somebody who does not refuse at risk for them if they blow above .08 is really a lot less. Instead of a 12-month suspension, it's a 90 day suspension.

The good news is that this is not discretionary-the MVD absolutely will give a you a restricted license after 30 days-so, essentially, you can be-stopped from driving for a refusal for up to a year and if you don't refuse-but, you blow above a 0.8 for example, you are really looking at 30 days without any driving.

I get a lot of questions about what if I work and I drive for work, what if I drive at work, what if I live rurally and I have to drive to get to work- there are no exceptions-they took them all of out of the statutes a long time ago. There used to be some but, there are none. Everybody would have to do 30 days. I call it a hard suspension because there are just no exceptions-alright?

Where does that leave us? So, separate, remember from the criminal case and it will be held not in a courtroom in...say, your case happens in Flagstaff, Arizona the actual MVD case is be out of Phoenix -its going to be a place called the executive hearing office in Phoenix-the good news is MVD will allow people to appear by phone or in some jurisdictions, like Flagstaff, at the MVD, they have a video conferencing on a closed circuit television situation, that goes straight down to Phoenix. So, the judge will be in their office, at the executive hearing office with the camera and we would be in the MVD office and the case would proceed by video conference to avoid unnecessary travel for everybody involved.

The 15-day deadline-what that is-and it's all in that per se document that I showed earlier. But, it's very, very important if you want to challenge that suspension-you have 15 days-from the date that the officer hands you that document. So, if you are arrested, they will typically hand it to you, right then and there. Whenever they hand it to you-that's the date you are served with it & you start calculating from the date served, fifteen days, where you can file a request for a hearing or a request for what's called summary review.

The request for hearing will generate, guaranteed, you'll get a right to a hearing. If you request summary review-it means a judge is going to look at it by itself and see if the document is sufficient or not. You will not have a hearing if you request summary review.

A refusal suspension, there is no summary review. You have to have a hearing, if you want to challenge it. It's your only way to challenge it. If you don't do this-if you don't properly and timely file either a request for a hearing or the summary review request after 15 days, your license becomes suspended as indicated on the document. 16th day-there is just no exceptions. MVD is very strict.

Between hearing and summary review, tough decision to make-definitely talk to a lawyer before you make that decision because there are advantages and disadvantages to both and if the license suspension is a really big deal to you-you might want to do one or the other-but,

definitely talk to a lawyer, who handles this type of law because sometimes summary review is a great decision and I've had it work, very, very effectively. But, it's not the most common decision and it can be a big mistake to file it if you have a weak argument. Because a judge may review it and not ask any questions because you are not there, and they may just deny it.

The hearing is way more open, you've got lots more interaction with the judge. The police officer does have to show up in person, or however the judge allows but, they have to show up and testify-so, the hearing is a lot more dynamic. While that's happening, the criminal case is going to proceed -so, you may want to challenge your license suspension you may not, you may want to challenge the criminal case but, those two things are operating absolutely separately. So, it's really important that you understand both have to be addressed at all times. Neither is going to delay the other.

Jurisdictions for DUI case-it depends on the misdemeanor or felony charge. If it's a misdemeanor charge-its probably going to be in one of the Justice courts, which are county courts or a municipal or city court. They all handle misdemeanors. If it's a felony, and it proceeds as a felony charge-it's probably going to be in the County Superior Court.

So, Coconino Superior Court, for example-would handle all aggravated DUI cases through completion. The Arizona rules of criminal procedure will apply so, that gives you some safety net as to due process in making sure that the cases are consistently processed.

Two quick questions about the right to an attorney-first one, do you have a right to an attorney? The answer is-with a criminal charge-DUI or any criminal charge-you're guaranteed the right to have an attorney. So, you can have an attorney represent you in any criminal case, no matter what the charge. That's a constitutional right that you have. Separate question-so, do you have the right to have an attorney vs. do you have the right to have a court appointed attorney, a public defender, a lawyer appointed by the court-paid for by the court or the county or the city in order to represent you.

Interestingly, with a DUI case the answer is, always-yes-and the reason is this decision made based on whether a person is facing possible jail time. So, if a person is charged with for example-shoplifting and it's a first offense=they don't have the right to have a court appointed-a public defender represent them unless the prosecutor comes to court and says: "Judge the state is asking for jail time -so, you are going to want to appoint this person a lawyer". That's what triggers the right.

In a DUI case, because the minimum penalty even for the slightest degree-lowest level DUI-is one day in jail-that guarantees-no question-you have the right to a court appointed attorney if you cannot afford an attorney. So, a judge would ask you about your finances and decide whether you have the funds to hire a lawyer and if you don't, then they will appoint you a free lawyer, every time.

So, the jest-summary of that or I guess the summary of that is always have a lawyer. There's no reason to not have a lawyer, on a DUI case-you need it -it is a complex area of law. Your going to do better your odds of doing better are way, way better if you have an attorney and if you need a court appointed attorney, just ask for one.

But, you're going to be a lot safer having one. There are just too many legal issues at stake here and your freedom is at stake-so, it's really too significant of the kind of case to represent yourself even though you have the right to do so.

Mandatory minimum sentencing-every DUI has jail time. So, the slightest degree is just that one day-bump that up to a first offense, aggravated DUI-you have to do at least 4 months- and that's not in the local jail -that's four months in the State Dept of Corrections-so, the state prison system.

So, everybody has different ranges-every type of DUI I should say-has different ranges of mandatory minimums but, every single one of them has some jail time. So, always consult with an attorney about that and about the steps I'm about to go through.

Processing: so, you've been arrested for DUI, you've been charged. You're going to have an initial appearance and at some point, possibly the same time, or later-what's called an arraignment. The purpose of the initial appearance is simply for the person to be advised by a judge of their charges. So, if you're arrested-your going to see a judge while you are in custody. You'll probably be in jail and they'll video conference you in to a court room or they may physically bring you over in shackles to a court room.

But, ultimately the judge will advise you of your charges and then decide whether to release you. To release you with conditions or to impose a bond upon you. So, generally, a first offense DUI – you are going to get released one way or another-generally speaking.

Second offense, third offense-felony DUI you have to be concerned because they may impose a bond at that point-it just depends on the conditions that the judge feels are appropriate, and it depends on your unique circumstances as a person.

Arraignment: So, normally-what would occur there (pretty basic), is to review the charging document and to enter a not guilty plea. Almost always, it would be very, very rare that a person in a DUI case (other cases are totally separate) in a DUI case, it would be very, very rare where entering a guilty please would be an appropriate move. So, it's a very unique circumstance when we would do that. We would do that only strategically if it helps the defendant-helps our client for example and there are sometimes that it actually is true-believe it or not-but, that's complicated and its strategical-generally speaking-everybody's going to enter a not guilty plea and frankly even if you try to enter a guilty plea at your arraignment-most judges are going to tell you-if it's a DUI-stop-I'm not going to accept your guilty plea today-you have a right to a lawyer and I really hope you talk to a lawyer because you need-you need to reconsider. Most judges are aware of this as well.

After the not-guilty plea is entered, the case proceeds onto the next step and in some courts-in fact, most courts-they're going to call it a pre-trial conference or PTC for short and that would be on almost all misdemeanor cases and that's because the AZ rules of criminal procedure talks about pre-trail conferences. The other type of conference you may see is what's called a case management conference and those are typically used in felony cases and they tend to involve the judge a little bit more-so, the more serious the case-the more likely that a CMC or case management conference is going to take place because the judge is a little bit more involved.

Pre-trial conferences: we'll talk about what those are-in just a moment. They are a little less intensive and the judge is a little less involved.

Viewing the evidence : which is called disclosure-the evidence in your case, according to the rules of criminal procedures is called disclosure.

Lot of questions I get-are: "when can I see the police reports? I don't think he got it right. I think something happened that I want to review". So, big question is-when can I have my disclosure? The answer under the AZ Rules of Criminal Procedure is-you can have your disclosure-the deadline for the state or government to give that to you is at your first pre-trial conference.

So, you're going to do your initial appearance, you're going to do your arraignment, and then in a misdemeanor case, you might have to wait until your pre-trial conference in order to get that disclosure. If you have a lawyer, they're probably going to get it sooner-so, will get from our local prosecutors-we'll get our disclosure for our clients for an advance of the pre-trial conference but, that is by way of agreement. That maybe they can email to us-

They now have e-discovery or electronic versions of the discovery. The good news is they have been getting it out faster. So, if you're representing yourself or you have a public defender-maybe you haven't met them yet. The pre-trial conference is when you can expect to see that.

So, that's when you would get that information. PTC or pre-trial conference, assuming you have an attorney, which again-you should. At least, consult with an attorney-but, you should really consider having an attorney. The pre-trial conference is literally a conference-it's a meeting between the prosecutor and your attorney.

In other misdemeanor cases where a person has no right to an appointed attorney and they choose not to hire one-you would meet with the prosecutor yourself. In a DUI case, it's almost exclusively lawyers meeting with the prosecutor on the case and the purpose of it is just to make sure I got my police reports, make sure I can convey to the prosecutor the favorable things about my client, the favorable things about the case from the defense perspective.

Issues maybe that I see in the case-so, its just a meeting-the judge is not heavily involved-they may be around the courthouse, they may have you tell them-what you are doing or what your plan is. But, they are not involved in the discussion itself.

Every court is a little bit different-CMC's in the Flagstaff municipal court for example, will take place after a pre-trial conference and the judge is just a little bit more involved at that point based on case processing requirements, scheduling, and dealing with substantive issues if there is any dispute between the prosecution and the defense.

Here, several courts would process the DUIs-felony DUIs are going to be most likely in the Coconino County Superior Court. They also can start in Justice court. But, typically misdemeanors will be processed in the County system which is Flagstaff Justice Court, Williams Justice Court and Page Justice Court, as far as Coconino County goes-just for Coconino County of course and then in the city court as well-the Flagstaff municipal court processes any almost every DUI charge that happens within the city-except the ones on NAU Campus.

Those will be referred to the county court, Flagstaff Justice Court. There's one other court here that we didn't talk a lot about and that is United States Magistrate Court for the District of Arizona. That's a federal court that can process DUI charges and those do happen at Wahweap, at the Grand Canyon, because of our jurisdiction here in Northern Arizona, we do have a lot of National Parks.

Just one example of where a DUI might happen-someone's driving under the influence around the Grand Canyon area or within the National Park-which is very big, has a lot of roads.

That's going to be processed, actually in the Federal Court and it's processed very similarly but, there are some distinctions.

What about appearing for a hearing? Really important to ask your lawyer-you may not have to go to those pre-trial conferences because you might be sitting in the hallway, thinking-what's going on? While the lawyers are meeting in the back room anyway and the prosecutor doesn't want to meet and talk openly necessarily with the defendant there, in a DUI case.

Because they can't take statements-they are not investigators. If they hear the defendant say something-the prosecutor might be a witness to that statement. The prosecutor may be conflicted off the case.

So, they very much prefer, pursuant to the ethical rules, as well as just processing of cases to just meet with the lawyers and not have the risk that maybe they overhear something that the defendant says-they don't want to be involved-they want you to be able to talk to your lawyer, privately, they don't want to be listening in.

It's just a lot cleaner but, ask your lawyer-sometimes, it's favorable to show up. Other times, you might as well go to school or work or do something productive while your lawyer takes care of what they are supposed to be doing. After the pre-trial conference, or the case management conference, there could be several of those, by the way-but, once the case reaches a boiling point, so to speak-it's either going to resolve with a trial or without a trial and there are a couple of ways that can happen.

Without a trial-dismissal-the best one you want-or a change of plea which would mean you'd negotiated a resolution, that's for some reason more favorable than going to trial based on all the evidence, based on what your lawyers advice is, based on what you feel is appropriate as well and based on what the prosecutors willing to do. So, without a trial's dismissal or change of plea. Dismissal in a DUI case is very, very rare-so, it is the rare exception-not the rule.

There's a reason for that. Why is that? Because the legislature has completely intervened in the prosecutor's decision-making process. They passed a statute, subsection I 228-1387 and it flat out says the state, meaning the prosecution, shall not dismiss a DUI charge unless there is a insufficient legal or factual basis to prosecute. So, what that means primarily is-they shall not dismiss a DUI charge just because a defendant deserves it. Just because it's a first offense-there is no free pass in DUI now. It can't be because maybe because the defendant is somebody, a public servant whose done such good things for the community.

If it's a solid case, if there's not a legal or factual basis-the legislature just says that's it-no more dismissing DUI cases-so, our emphasis if we are looking for dismissal if we really aren't seeing

any other options to resolve a case or we really, really need to not have a DUI=then, as lawyers- we're looking real hard, relying really hard on this language-trying to convince a prosecutor you have insufficient legal reason or factual reason to proceed and that's our job to really find those.

In some cases, it's a pretty solid investigation-there aren't any legal problems -there aren't any factual problems and then you're negotiating what you can do-but, dismissed is pretty much off the table.

Quickly, a change of plea on the other hand, means you've reached a plea agreement, you've negotiated a resolution and your going to set your hearing for what is called a change of plea. That's where the judge will either approve of the plea agreement or reject it if the judge feels that it is legally inappropriate.

That's super rare that that happens. Finally, you can go to trial-a bench trial is a trial to a judge and the opposite of that is a jury trial. Every DUI, by statute has the right to a jury trial-so, every DUI case, you can have a jury decide if the evidence is sufficient to prove you guilty beyond a reasonable doubt and not rely just on the judge. However, if you and the prosecutor both agree to try the case strictly to the judge or to the bench=you can do that-but, you'd have to waive the right to have a jury trial so would the prosecutor.

If you have a jury trial-for misdemeanor DUI, you get 6 jurors. Six Jurors-they must unanimously find you either guilty or not guilty-the evidence that's permitted is based on the AZ Rules of Evidence and the Judge will decide on what's allowed and what's not allowed.

Two possible outcomes for trial: is guilty or not guilty-so, it's a black or white resolution situation-there's no: well, we feel bad for this person-so, maybe we can find him partially guilty or find her guilty of some of them. But, maybe less in the punishment.

That's what negotiations are for-that's what plea agreements are for-but, trial unfortunately, it's either guilty or not guilty. If it's not guilty, the charges for which you were acquitted will be dismissed and if its guilty-you proceed to a sentencing. A sentencing hearing will have major ramifications depending on if it's a misdemeanor or a felony and what mandatory minimums apply.

So, super extreme DUI versus a aggravated DUI versus a impaired to the slightest vs. someone who has a 2nd offense within 7 years -everybody's going to be facing different mandatory minimums-we're not going into all those details today-but, there are several to be aware of-jail has mandatory minimums, ranging from just one day in jail all the way up to 180 days, full 6 months or a felony DUI first offense, 4 months in state prison-so, be aware there are mandatory minimums for jail. Maximums are based on whether it's a felony or a misdemeanor-but, generally because they are so harsh to begin with-you can usually get the minimums unless you have prior convictions, that might concern a judge.

Monetary fines-there are mandatory minimum fines. DUIs are very, very expensive in terms of fines. The legislature did that on purpose-not only are you going to jail but, you're going to pay all this money. They are trying to convince people not to commit the crime. Whether that works or not, I'll leave for further debate one day.

Maximum fines are also based on misdemeanors vs. felonies. Rehabilitation-everyone with a DUI conviction will be required to do a substance abuse screening and counseling if its recommended by the counselor-usually something is recommended -a little hint on that-always go to an MVD certified agency and the reason is-if you don't-the court might give you credit for it-but, MVD is going to make you do the whole process again with one of their certified agencies.

So, they produce a list that your lawyer should be able to provide to you and that list will tell you the list of certified agencies the court will honor it and the MVD will honor it. So, you do it one time and one time only.

Community service is required for more serious DUIs. For a first offense basic .08 DUI, it's not going to be required the judge can impose it but, typically will not. MVD you may be getting suspended if you get convicted of DUI, you also have to do ignition interlock-the new law is out that-if its just a DUI drug and there's no alcohol involved.

So, just marijuana-no alcohol involved-you can get around the ignition interlock requirement.

It is possible. Generally speaking, every alcohol DUI, you're going to have to do ignition interlock for at least 6 months, best case scenario. Probation is discretionary by the judge-you might get probation, you might not.

And my last thought for the day is if you were to be convicted of a DUI-comply, get everything done. Do your counseling, do the ignition interlock, make the court and judge happy and when that's all said and done-definitely, definitely consider setting aside your conviction.

If you did a great job with honoring the terms and conditions of your sentence-the judge will typically grant a set aside and the set-aside may help you in the future.

So, thank you for your time.