



Everything you wanted to know about DUIs  
but were afraid to ask:

## A Brief Summary of DUI Law in Arizona

By Stephen D. Benedetto, Esq., Managing Member of Benedetto Law, PLC

### ABOUT THE AUTHOR:

**Stephen D. Benedetto** is an attorney with extensive experience in complex litigation matters ranging from white collar crime and DUI to detailed commercial disputes. He is the founding member of Benedetto Law, PLC, a Phoenix-based law firm licensed to practice in Arizona and California, and dedicated to the protection of the constitutional rights of both criminal and civil clients. Mr. Benedetto can be reached by new or existing clients 24 hours a day, 7 days a week, at 602.421.5172 or [sdb@benedettolawfirm.com](mailto:sdb@benedettolawfirm.com).

### BENEDETTO LAW, PLC

The Phoenix Plaza  
2901 North Central Avenue,  
Suite 200  
Phoenix, Arizona 85012  
TELEPHONE: 602.285.5093  
FACSIMILE: 602.708.5606  
[www.benedettolawfirm.com](http://www.benedettolawfirm.com)

### Overview

DUI is a crime that cuts across all gender, racial, and economic borders. It is an offense that a substantial percentage of otherwise law-abiding citizens commit on a regular basis, and that many people routinely get away with.

Not everyone gets away with it, however. Last year, there were 39,991 people arrested for DUI in Arizona. Between Thanksgiving and New Year's Day alone, more than 70,000 people were stopped at DUI checkpoints and over 2,300 people were arrested for DUI as a result of these stops. With the implementation of standardized blood-testing, the overwhelming majority of these arrests turn into convictions. And, with the strengthening of the penalties for DUI in Arizona, the cost of getting a DUI is higher than it's ever been – including attorneys' fees, the cost of the average DUI exceeds \$10,000.

Following is a brief summary of DUI law in Arizona. Its purpose is to help

explain the penalties and costs associated with getting arrested for DUI, and to help people understand how easy it is to violate the DUI laws in this state so that you can make more informed decisions this holiday season.<sup>1</sup>

### What Is The DUI Law?

To understand what DUI is, it is helpful to point out what it is not. DUI is not “drunk driving.” You do not have to be “drunk” to get a DUI in Arizona. Nor is DUI driving with a blood alcohol content (BAC) over a .08: While it is true that driving a vehicle while your BAC is over a .08 violates one DUI law in Arizona, there are numerous DUI laws in this state...and you can be convicted of violating a separate DUI statute with a BAC well under .08.

So, what is DUI? To be convicted of DUI in Arizona, you simply must be in “actual physical control” of a vehicle while you are “impaired to the



<sup>1</sup> Please note that nothing in this article is to be construed as legal advice. This guide is offered for informational purposes only, with the goal of educating Arizona residents about a law that is commonly misunderstood. This article hits only the major points of DUI law in Arizona, and is not a replacement for consultation with a competent attorney.

slightest degree” by alcohol or drugs. If you think this sounds like a pretty low standard, you’re right. Being in “actual physical control” of a vehicle simply means that you have the ability to put your car into the flow of traffic. It does not require that the car be in motion, that the engine is on, or that the keys even be in the ignition.<sup>2</sup> And, depending on your size, activity level, gender, and drinking habits, you can be “impaired to the slightest degree” after just a single drink. Long story short: If you get behind the wheel when you have alcohol in your system that is impairing you in any way, you can be arrested for DUI in Arizona.

### What Are The Penalties For DUI?

The maximum punishment for a first-offense DUI in Arizona is 6 months in jail and more than \$15,000 in fines and jail costs. Contrary to the “Expect the Max” commercials that pervade late night television, though, first-time DUI offenders are rarely sentenced to the maximum penalties in this state.<sup>3</sup> Still, under Arizona’s new DUI sentencing laws, the mandatory minimum penalties that must be assessed to anyone convicted of a DUI are extremely harsh. Currently, every DUI carries with it mandatory jail time, substantial fines, and installation of an Ignition Interlock device on your car for at least a year.

The minimum penalties in a particular DUI case depend on the defendant’s blood alcohol content (BAC). The following chart summarizes some of the mandatory minimum penalties for first-time DUI offenders under Arizona law.<sup>4</sup>

BAC %	JAIL TIME	FINES	INTERLOCK
<.15 (“Regular” DUI)	1 day (+9 more if fail to complete alcohol classes)	\$1,460 (fines) \$70 (jail) <sup>5</sup>	12 months (approx. \$100 a month)
.15 - .199 (“Extreme” DUI)	30 days	\$2,710 (fines) \$2,100 (jail)	12 months (approx. \$100 a month)
>.20 (“Super Extreme” DUI)	45 days	\$3,170 (fines) \$3,150 (jail)	18 months (approx. \$100 a month)

In addition to these criminal penalties, there are numerous other consequences of a DUI. First, your car will likely be impounded and will not be released to you for 30 days – and it will be released only upon payment of numerous fees and impound charges. In addition, the Motor Vehicle Department will suspend your driver’s license, usually for 90 days, and will charge you a fee to reinstate your license after 90 days. Finally, upon discovery of a DUI conviction or guilty plea, many insurance companies will increase premiums drastically or, in some cases, simply cancel coverage.

*Every DUI carries with it mandatory jail time, substantial fines, and installation of an Ignition Interlock device on your car for at least a year.*

### How Do I Calculate My BAC?

Unfortunately, there is no method of analyzing BAC that is 100% accurate. Even blood-testing for alcohol content has its critics, and there are experts who will testify in court about margins of error associated with this type of testing. The U.S. Department of Transportation has created a basic formula for analyzing BAC, though, and the following charts (and their commentary) are used by law enforcement as a guide to estimate impairment:<sup>6</sup>

<sup>2</sup> Many police officers have been trained that an individual can be in “actual physical control” of a vehicle while sleeping in the driver’s seat with his keys in his pocket. Although no cases exactly like this have been reported, it is not beyond the realm of possibility that one could be arrested for such a situation.

<sup>3</sup> Also contrary to the “Expect the Max” commercials, the vehicles of DUI suspects are very rarely filled to the tops of the windows with booze. In the event you have a watertight vehicle capable of retaining that kind of quantity of liquid while you drive, you choose to get drunk and fill your vehicle with an alcoholic beverage before driving somewhere, and you are then pulled over by a police officer while you are driving, it is probably fair to expect more than the statutory minimums.

<sup>4</sup> A more detailed chart of the penalties associated with DUI is available at [www.azduichart.com](http://www.azduichart.com).

<sup>5</sup> The Maricopa County Sheriff’s Office charges a “jail assessment” for each day an individual spends in jail. The most recent information suggests that this amount is currently slightly more than \$70 a day.

<sup>6</sup> These charts provide rough estimates of BAC and are provided for illustrative purposes only. They cannot be relied on as a clear indicator of BAC because they do not consider many factors that affect alcohol absorption and burn-off rates (metabolic rates, health issues, medications taken, drinking habits, amount of food eaten and how recently, etc.). They are simply offered to provide some idea of how quickly your BAC increases when you are drinking.

## MALES

APPROXIMATE BLOOD ALCOHOL PERCENTAGE									
# of Drinks	BODY WEIGHT IN POUNDS								EFFECT ON PERSON
	100	120	140	160	180	200	220	240	
0	.00	.00	.00	.00	.00	.00	.00	.00	ONLY SAFE DRIVING LIMIT
1	.04	.03	.03	.02	.02	.02	.02	.02	IMPAIRMENT BEGINS.
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	DRIVING SKILLS SIGNIFICANTLY AFFECTED.
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	LEGALLY IMPAIRED UNDER ARIZONA LAW.
6	.23	.19	.16	.14	.13	.11	.10	.09	
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

## FEMALES

# of Drinks	BODY WEIGHT IN POUNDS									EFFECT ON PERSON
	90	100	120	140	160	180	200	220	240	
0	.00	.00	.00	.00	.00	.00	.00	.00	.00	ONLY SAFE DRIVING LIMIT
1	.05	.05	.04	.03	.03	.03	.02	.02	.02	IMPAIRMENT BEGINS.
2	.10	.09	.08	.07	.06	.05	.05	.04	.04	
3	.15	.14	.11	.11	.09	.08	.07	.06	.06	DRIVING SKILLS SIGNIFICANTLY AFFECTED.
4	.20	.18	.15	.13	.11	.10	.09	.08	.08	
5	.25	.23	.19	.16	.14	.13	.11	.10	.09	LEGALLY IMPAIRED UNDER ARIZONA LAW.
6	.30	.27	.23	.19	.17	.15	.14	.12	.11	
7	.35	.32	.27	.23	.20	.18	.16	.14	.13	
8	.40	.36	.30	.26	.23	.20	.18	.17	.15	
9	.45	.41	.34	.29	.26	.23	.20	.19	.17	
10	.51	.45	.38	.32	.28	.25	.23	.21	.19	

Subtract .01% for each 40 minutes of drinking.

\*One drink is equal to 1¼ oz. of 80-proof liquor, 12 oz. of beer, or 4 oz. of table wine.

### What Happens In A DUI Investigation?

While every DUI investigation is unique, most investigations begin with a police officer observing something about a vehicle that leads him to believe that its owner may be impaired by alcohol. Sometimes this is a traffic violation, but it does not have to be. Very often, the officer will tail the person for some distance and make additional observations about the driving habits before activating his lights (and, if necessary, sirens) to signal for the driver to stop.

Once the vehicles are parked on the side of the road, the officer will usually approach the driver with a flashlight on, shine the flashlight in the driver's face, and ask the driver for his license, registration, and insurance information. While the driver is locating the documents, the officer will frequently ask the driver additional questions and try to "test" the driver for "divided attention" (i.e., the ability to perform multiple tasks at the same time). During this same time, the officer will be looking for additional signs and symptoms of alcohol impairment:

Bloodshot watery eyes, odor of alcohol on the driver's breath, the driver's physical appearance and condition of his clothes, whether the driver has difficulty locating or handling the identifying documents, etc. After asking the driver a series of questions (generally about where he is coming from, where he is going to and whether he has been drinking), the officer will ask the driver to step outside of the vehicle. At this point, the officer is observing how the driver exits the vehicle, whether he needs to touch the car to steady himself, and whether he is swaying at all. The officer will also frequently administer "Field Sobriety Tests," or FSTs.

- **HGN:** The first FST administered is usually an eye test, called the Horizontal Gaze Nystagmus test, in which the officer will shine a light in the driver's eye while moving a pen from side to side and asking the driver to follow the pen. The officer is looking for "nystagmus," which is an involuntary jerking of the eye that prevents an individual from following the pen smoothly with his eye, and that may be caused by alcohol impairment.

- **Walk and Turn:** Another FST commonly administered is the “walk and turn” test. In this test, the officer will ask the driver to take 9 heel-to-toe steps, turn around, and take 9 steps back. The driver is told to keep his hands at his sides and look at his feet at all times. The officer is looking to see if the driver will start the test before the instructions are finished, lift his hands from his side to steady himself, pause while walking to steady himself, fail to touch heel-to-toe, or fail to walk in a straight line.
- **One Leg Stand:** The final FST that officers will commonly administer during a DUI investigation is the One Leg Stand. In this test, the driver will be instructed to raise one foot about six inches off the ground and stand on one leg, with his hands at his sides, while counting to 30. During this test, the officer will be looking to see if the driver hops, raises his arms from his side for balance, puts his foot down, sways, slurs his speech while counting, or skips any numbers.

Once completing these FSTs, most officers will request that the driver take a Portable Breath Test, or “PBT.” This is a small, handheld device with a digital reader that the driver is asked to blow into and which provides a digital reading of breath alcohol content. If the breath alcohol content is anywhere close to .08, the officer will usually place the driver under arrest and transport him to a DUI van, the police station, or a hospital to draw blood.

*Be polite . . . but not necessarily cooperative.*

Frequently, the officer will continue asking questions during this process (most of which are innocent-sounding questions, like what day of the week it is and what time it is), and will be making notes of the answers to determine if anything the driver says supports the conclusion of impairment. Once the blood is drawn, the driver will either be booked into jail or will be released to a friend

or relative, with a carbon-copy of a citation indicating that they have been charged with DUI and are required to appear at an initial court hearing.

### **What Should I Do If I Am Stopped By Police After I Have Been Drinking?**

Hopefully, after reading the foregoing information and learning about how easy it is to violate the DUI laws in Arizona, you will not be driving after you drink this holiday season (or anytime in the near future). In the event you do find yourself being stopped by a police officer after drinking, however, there are a few things you should be aware of:

#### **1. It’s a DUI Investigation, not a “Traffic Stop.”**

First, it is important to understand that, if you are being pulled over after you have been drinking, you are not involved in a “traffic stop.” In a typical “traffic stop,” the officer has already observed you breaking a law (speeding, illegal lane change, etc.) and is going to either give you a warning or write you a citation for it. He is not trying to collect additional information about whether you committed the offense because he witnessed it with his own eyes. Accordingly, in a traffic stop, very little of what you say will matter. This is very different from a DUI investigation – and, if you are being pulled over after 9 p.m. or so, chances are you’re being targeted as a suspect in such an investigation. Unlike a mere traffic stop, in a DUI investigation the officer’s job is to ask you questions and collect evidence to determine whether you have committed a crime he has not yet observed (i.e., DUI). Thus, what you say (or don’t say) is extremely important. Moreover, there is no requirement that the officer read you your rights at the beginning of the investigation. . . . and, if the officer believes you may be impaired, the State will attempt to use everything you say and do as evidence that you violated the DUI laws.

#### **2. Be polite . . . but not necessarily cooperative.**

You should always be polite and respectful to all law enforcement you come into contact with during a DUI Investigation. Remember that police officers are

just doing their jobs, and that they are probably not particularly thrilled about the situation either – after all, they are being pulled away from their families to work at night during the holidays and would probably rather be doing something else than trying to figure out if you're breaking the law. Treat police officers with respect, and you will drastically increase the likelihood of being treated with respect back. Do not confuse being polite and respectful with being cooperative, though. Whether you choose to cooperate with a DUI investigation is completely up to you (see #3, below).

**3. Know your rights.** Under the United States Constitution, you have the right to refuse to incriminate yourself (i.e., the right to remain silent). As a result, there are only three things you must do in a DUI investigation under Arizona law.

- First, you must provide identifying information if requested (driver's license, registration, proof of insurance, etc.). Not providing this information can lead to additional charges.
- Second, you must exit the vehicle if requested to do so by the officer. Again, if you do not do so, you can be charged with resisting arrest, which is a felony and is therefore a more serious crime than DUI.
- Third, you must provide a blood or breath sample after you are arrested if requested by the officer. If you refuse to do so, your driver's license will automatically be suspended for a year and the officers will likely just obtain a search warrant to obtain a blood or breath sample from you anyway.

**These are the only things you are required to do, however.** YOU have control of the entire remainder of the investigation, and you have the right to refuse to do anything else. You do not have to answer any questions, including questions about where you're coming from, where you're going, or whether you've been drinking. You do not have to

take FSTs.<sup>7</sup> And you do not have to take the portable breath test.<sup>8</sup>

**Because there is no “one size fits all” piece of advice about DUI investigations, the most prudent course of action will often be to provide the officer your driver's license, registration, and insurance information, and then politely request that you be permitted to seek legal advice from your attorney before agreeing to answer any questions or take any tests.**

### *Is There Anything Else I Need To Know About DUIs?*

Yes. There are three additional things you should remember, and they may be the three most important points made in this entire article.

**First and foremost, if you're planning on drinking, plan on not driving.** We all know that you should never drive when you are “drunk,” but this article highlights that you can be in violation of Arizona's DUI laws long before you feel “drunk.” By the time all is said and done, being arrested for DUI will likely cost you between \$10,000 and \$15,000. Comparatively speaking, the cost of a cab ride is nothing. This is the only true piece of “advice” we can offer in this article: If you have any doubt about whether you may be impaired, do not drive.

**Second, remember that you can not talk your way out of a DUI.** If you choose to drive despite the above advice, do so with the knowledge that, (a) if you get

<sup>7</sup> Although it is impossible to offer advice that is applicable to every case, in most cases it is appropriate to politely refuse to take FSTs. In order to determine whether refusing is appropriate in your case, it is important to understand that these tests are very difficult to pass, regardless of the circumstances. A significant percentage of the population cannot pass these tests under ideal circumstances and without consuming any alcohol – and taking these tests on the side of the road, late at night, with the stress and anxiety of having multiple uniformed police officers shine their lights at you while you are taking the test is a far cry from ideal circumstances.

<sup>8</sup> It is important not to confuse the kind of “breath sample” you could be required to give under Arizona law (generally, after you are placed under arrest) with the “portable breath test” (PBT) that an officer will usually ask you to take along with field sobriety tests (before you are arrested). PBTs are taken on a small hand-held device and are generally not reliable. The law does not require you to take a PBT...and, unless you have had nothing to drink, agreeing to voluntarily take a PBT is rarely a good idea.

pulled over, you will be arrested, and (b) trying to talk your way out of being arrested is far more likely to hurt you than help you. Police officers are trained to look for signs of impairment that you've never thought of, and the vast majority of officers will have made up their mind about whether you are impaired within seconds of coming to your window and asking you for your license and registration. By the time you are handing the officer your license and registration, he has already made observations about your driving ability, your attention span, whether your eyes are bloodshot and watery, whether your breath smells like alcohol, whether you had trouble locating your indentifying documents, and whether you fumbled with those documents. This all happens before you open your mouth, and based on these observations alone, most officers will have already arrived at a conclusion about whether or not you are impaired and will have decided whether he will arrest you. Your answers to questions and performance on FSTs will not change this conclusion; they will just be included in the police report for the purpose of trying to prove that you were impaired.

**Finally, when in doubt, call an attorney.** If you have any doubt at all about whether you are impaired, whether you should answer questions, whether you should submit

to field sobriety tests, or whether you should consider refusing a chemical test despite the mandatory license suspension, it is always safer to call an attorney and seek legal advice before proceeding. The best time to request to speak an attorney is the instant you stop being 100% confident that what you are doing is the right thing to do under the circumstances.

### **Conclusion**

Drinking and driving ruins thousands of lives every year. If statistical trends hold up, approximately 500 Arizonans will lose their lives in alcohol-related accidents in 2010, and 40,000 more who are lucky enough to avoid accidents will find themselves charged with offenses that will cost them thousands of dollars to defend, result in the loss of their privilege to drive for months, and require them to install a device on their car that requires them to blow into it every 20 minutes simply to keep the engine running. Hopefully this article has helped educate you about the nuts and bolts of DUI law in Arizona such that you now feel more comfortable making informed decisions about driving this holiday season. If you have any additional questions about DUI, please do not hesitate to contact the author at [sdb@benedettolawfirm.com](mailto:sdb@benedettolawfirm.com).



### **BENEDETTO LAW, PLC**

The Phoenix Plaza  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012  
TELEPHONE: 602.285.5093  
FACSIMILE: 602.708.5606  
[www.benedettolawfirm.com](http://www.benedettolawfirm.com)