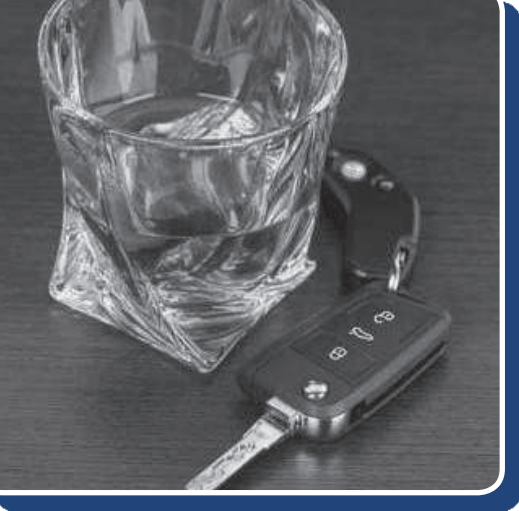


# PHOENIX DUI GUIDE

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Getting charged with DWI/DUI might be the scariest thing that happens to you. You may be scared about what penalties you might be facing. If you've been charged with driving under the influence, you need an experienced Phoenix DWI/DUI lawyer. The State of Arizona imposes serious penalties on individuals convicted of a DWI/DUI. Being convicted can alter the course of your entire life.

## DWI/DUI IN ARIZONA

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If you're charged with a DWI/DUI in Arizona, you're being accused of operating a vehicle of some sort (including a boat) while you're under the influence of alcohol or drugs. This includes being under the influence of medications prescribed by a doctor or using medical marijuana.

DWI/DUI charges in Arizona are categorized as follows:

- » **Driving while impaired to the slightest degree.** Arizona state law says that it is against the law for someone to drive or be in actual physical control of a vehicle if they are under the influence of an intoxicating liquor, drugs or vapor-releasing substance if that person is even just a little impaired. That means it is against the law for someone to drive if they even feel just a slight "buzz" from any sort of intoxicant.
- » **Driving with a BAC greater than .08%.** The legal BAC limit in Arizona is .08%. If you're pulled over and have a BAC of .08 or higher and you're driving or have actual physical control of the vehicle, you can be charged with DWI/DUI. In Arizona, you cannot have a reading of .08% or higher if you're going to be behind the wheel or have control of a vehicle within two hours.
- » **Extreme DUI.** An extreme DUI means that your BAC was over .15%, which is roughly twice the legal limit. Again, this relies on the two hour time limit. If you're charged with extreme DUI, the penalties are much more severe.

- » **Aggravated/Felony DUI.** Aggravated/felony DUI includes driving under the influence and you have committed a violation of section 28-1381 or 28-1382, your driver’s license is suspended or revoked, you’re driving on a restricted license, this is a third or subsequent DWI/DUI, you’ve already been convicted of a DWI/DUI during the last 60 months (5 years), or you have a minor under the age of 15 in the vehicle.
- » **Drug DUI.** It is illegal for someone to drive or be in actual physical control of the vehicle if they are under the influence of any drug or its associated metabolite defined in section 13-3401.
- » **Commercial DUI.** Commercial DUIs aren’t held to the same BAC standard as passenger vehicle drivers. A commercial vehicle driver’s BAC may be no higher than .04%.
- » **Boating DUI.** This charge is also referred to as OUI standing for Operating Under the Influence. It is illegal in Arizona for someone to operate or be in actual physical control of a motorized watercraft if they are impaired to the slightest or fall under one of the other DUI limits previously discussed. For commercial vessels, the BAC is the same as for a commercial DUI: .04%.

## WHAT MUST BE PROVEN IN A DWI/DUI

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First time (and subsequent) DWI/DUI charges are harsh. The State of Arizona takes public safety quite seriously. For the State to convict you, they must prove:

- » **You were driving or had actual physical control of the vehicle.** The State does not have to prove that you had an intention to drive while under the influence. They just have to show that you were driving or that you had physical control of the vehicle.
- » **That you were impaired according to Arizona law.** Remember, in Arizona you can be impaired to the “slightest”

and still be charged. The legal limit for BAC is .08% (.04% for commercial drivers). It includes drugs, vapor products, medical marijuana, and alcohol. You can see a full list of intoxicants, as defined by law, by [clicking here](#). You can also learn more by scheduling a consultation with a Phoenix DWI/DUI lawyer. Only a doctor, nurse, or other qualified individuals may draw your blood to determine your BAC or if there are drugs in your system.

- » **The State doesn't have to prove your mental state.** This is important because with most crimes, the State must prove that the defendant was in a culpable mental state. This means that the defendant understood or had the ability to understand that they were committing a crime. That's not required if you're charged with DWI / DUI.

Contact a Phoenix DWI/DUI lawyer to help you develop and implement the best possible defense. Even one conviction can change your entire life.

## PENALTIES FOR DWI/DUI

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Even first time DWI/DUIs can be serious. Here's what you could face:

- » **First-time with BAC of at least .08% and less than .15%.** This is considered a Class 1 misdemeanor. You could be sentenced up to six months in jail. You are required to serve one day in jail. You're also required to complete a drug and alcohol screening as well as get involved in specialized counseling. The outcome of your screening will affect how long you must remain in counseling. You'll be fined at least \$250 and be charged an additional \$500 penalty. You could also be placed on



probation for up to five years. Your license will be suspended for 90 days, but you can get a work permit after 30 days. You'll also be required to have an interlock device installed in your vehicle.

- » **Second-time DUI within five years and you have a valid driver's license.** This is considered a Class 1 misdemeanor. You could spend up to six months in jail, but you'll face a minimum jail time of 30 days. You'll undergo another drug and alcohol screening and must return to counseling. You'll be fined a minimum of \$500 and pay another financial penalty of \$1,250. You'll also be placed on up to five years of probation. Your driver's license will be revoked for one year. You will be required to have an interlock device installed in your vehicle.
- » **First-time extreme DUI.** This is also considered a Class 1 misdemeanor. You'll go to jail for a minimum of 30 days. You could spend as much as six months behind bars. You'll be required to undergo a drug and alcohol screening and must attend counseling. How long you'll have to undergo counseling will depend largely on your screening results. You'll pay a minimum of \$250 as a fine, \$250 for an assessment, and an additional \$1,000. You could be placed on probation for up to five years. Your license will be suspended for 90 days. You can get a work permit after 30 days. You will be required to use an interlock device.
- » **Second-time extreme DUI.** A second extreme DUI is treated as a Class 1 misdemeanor by the state. You'll serve a minimum of 120 days in jail, but could be sentenced up to six months. You'll be required to undergo another drug and alcohol screening and return to counseling. You'll pay a minimum of a \$500 fine, \$250 for an assessment, and an extra \$1,000. You could go back on probation for up to five years. Your driver's license will be revoked for a year, and you'll be required to have an interlock device placed in your vehicle.

- » **Aggravated DUI.** Aggravated DUI is treated as a Class 4 felony. You'll be sentenced to a minimum of four months but could be sentenced to spend 2.5 years in jail. You'll still be required to receive a drug and alcohol screening and attend counseling. How long you must attend counseling will be decided by the results of your screening. You'll pay a minimum of \$750 in fines, \$250 for an assessment, and an additional \$1,500. You could be sentenced to up to 10 years of probation. Your driver's license will be revoked for three years and you'll be required to have an interlock device in your vehicle.

## CHARGED? CALL A PHOENIX DWI/DUI LAWYER NOW

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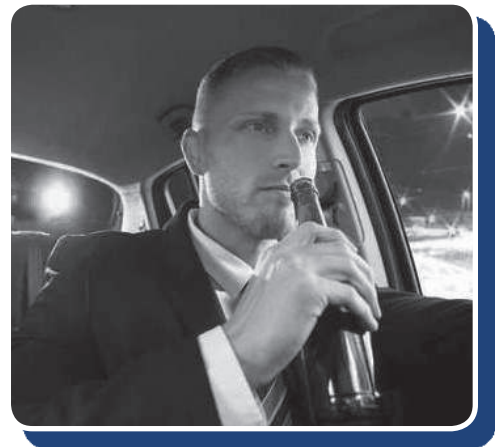
If you've been charged, don't wait to call a Phoenix DWI/DUI lawyer. You could lose your ability to drive, lose your job, face jail time, and pay hundreds or thousands of dollars in fees by the time it's all said and done. You'll also be forced to pay the expense of having an interlock in your vehicle as well as probation fees. Give yourself the best possible chance by hiring a Phoenix DWI/DUI lawyer.

## FREQUENTLY ASKED DWI/DUI QUESTIONS

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### *What Should I Do If I Was Pulled Over for DUI?*

Always cooperate with all the lawful orders and requests of police officers. A police officers' number one priority is officer safety. Police officers do have a body of laws that they must follow as it relates to search and seizure, use of force, and questions they can lawfully ask. In the process of being pulled over specifically for



suspicion of driving under the influence. There could be a series of things that the officer asks you to do, such as take a field sobriety test, a breathalyzer test, and you must know your rights under those laws.

If the traffic stop specifically was for suspicion of driving under the influence, the officer would need to detail in his report and explain to you, to some degree, the reason why he pulled you over and how he established reasonable suspicion that you could possibly be driving under the influence. Were you speeding, driving too slowly, or swerving outside of the lines? He would need to explain to you, within reason, why he stopped you, and what you did that caused him to believe that you were driving under the influence.

At that point, you're under no obligation to give any information that would be used against you in an adverse manner or that could be used against you to prove your guilt. You can plead the fifth, as they say, but cooperating with his reasonable commands is something that would be expected of you. Again, if you're in doubt, you can always plead the fifth. Don't resist the officer. Don't go back and forth with them. Contact a lawyer and make sure that you discuss it with someone who is experienced in dealing with DUI cases, because sometimes cases aren't filed immediately. Sometimes they're filed down the road, and so you'd want to talk to a lawyer and make sure that none of your rights have been violated.

## *What is the Legal Blood Alcohol Content Limit?*

Arizona, the 48<sup>th</sup> state of the United States of America, is a very fast-growing state, particularly here in the Phoenix metro area. There's a lot of internal immigration from other states here. People migrate to Arizona because of the cost of living, and they have various concepts as it relates to DUI and what the acceptable blood alcohol limit is.

What people find when they get here is that Arizona, in a lot of ways, is standard with the rest of the country. The BAC level 0.08 is the standard when you're starting to charge folks with DUI. It's the same in California and a lot of our neighboring states. That 0.08 blood alcohol content is the legal limit once you start charging people with DUI under specific statutes. Here, the statute is 28-1381(A). I would caution everyone that some impairment is still impairment,

and just because you don't reach the 0.08 limit does not mean that you're not impaired and that you can't be charged with impaired driving. It may not be under 28-1381(A), but you can be charged with impaired driving, and so the rule of thumb is, don't gamble. Don't negotiate. If you've been drinking, don't drive.



## *What is the Cost to Hire a DWI Lawyer?*

One of the things that the law prohibits us on in criminal matter, DUI and other ones, is we as lawyers in Arizona are restricted by the rules for accepting criminal matters on a contingency basis. We can't take the case now and have you pay us later if we are successful. The law restricts us from that in criminal cases and family law cases. We

can't take them on contingency, so oftentimes what you will see in a DUI matter is an hourly rate based on that attorney or a flat fee upfront. Flat fees can range anywhere from \$3,500 on the very low end for small DUIs that are not heavily based in fact up to \$6,000 for the more complicated DUI that involves a few things, and those are basic, run-of-the-mill DUIs.

Those that are fact-heavy that are going to trial and involve accidents will be more expensive. Again, that's just attorney's fees. That doesn't count the fines that are mandatory in some instances, 2,000 to 4,000 dollars' worth of fines, and you have the interlock device, which are somewhere between 1,000 and 2,000 dollars, depending on where you get it from. The number of fines for DUI and attorney's fees can rack up pretty quickly.

One of the things that we do at Smith & Green is we try to work with our clients, put you on a payment plan, retainer upfront, or a payment plan. Every client is different, so there is no single answer for everybody.

## *Am I at Risk for Losing My License Because of DWI?*

Driving is one of our key assets of life. We're not on buggies and horses anymore. You have to drive getting to and from work. When you've been charged



with DUI, it can often make things quite difficult, because under the Arizona DUI law, there is a mandatory 90-day license suspension. If it is a super extreme DUI, or if it's a second offense, it could go up to an entire year of your license being revoked. That is a separate process that is implemented under the statute. It is a part of the sentence, but it's functioned by the Department of Motor Vehicles, and there are some stringent requirements. An attorney would walk you both of those processes, not only the court proceedings but also the administrative proceedings as it relates to the suspension of the license.

Sometimes we're able to get the 60-day to-and-from work permit so that they can still get to work, because the purpose of the statute is not to restrict your livelihood. It's to restrict your ability to drive a vehicle until the state can reasonably ascertain that you're not driving under the influence and putting other peoples' lives in jeopardy.

With the basic DUI, that's at least 12 months with the interlock device. For super extreme DUI, if it's your second offense, it could go as far as 24 months, and again, this is after being incarcerated and the other fines and things that are associated with that. You will lose your license 99.9 percent of the time, because these are mandatory sentencing guidelines in the state of Arizona.

How long you lose your license depends on which DUI statute you are charged with and the facts surrounding that. There are some exceptions where administrative hearings can be requested with the DMV, and sometimes some of those things can be waived if certain requirements are met, but you would want to sit down and talk with your lawyer and express those concerns to them. They'll be able to sit down and go through those facts with you and determine if there's some type of loophole or opportunity to where the license suspension either can be mitigated, shortened or if you can get a day-to-day work pass to drive back and forth to work so that your livelihood is not hindered.

## *Will I Be Punished Harsher for a DUI with a Commercial Driver's License?*

Recently, I had a client with a commercial driver's license who was convicted of DUI, and their concern was, how is this going to affect my commercial driver's

license? I had a very serious, fact-based conversation with them regarding this, because a DUI doesn't only affect those with commercial driver's license. Most people with commercial driver's license use that driver's license for employment purposes, and the impact of DUI is widespread, because it does bleed over into employment, because in Arizona, the threshold for commercial driver's license is lower than the 0.08.

It affects different areas of your life. If you drive for a living, it's certainly going to affect that. You will have to disclose it on employment applications that involve driving or usage of company vehicles. If it involves taking kids to school, and you have a custody matter before the court that's going to require you to drive the kids back and forth to school, all of these things count.

Being charged with DUI will influence your commercial license. Some of the same mandatory guidelines are imposed on the commercial driver's license as they are with regular driver's licenses, so if you have a commercial driver's license, and you've been charged with DUI, please let your attorney know immediately. There are remedies and safeguards that can be put in place to preserve the license if possible so that you can continue to work.

## *Do I Have to Take the Breathalyzer?*

What you must understand is that the breathalyzer test, whether it's blood, breath, or urine or any other type of evasion into the body, under the law, is considered a search. It is a search of your person. Your breath would be the evidence, blowing into the machine. Your blood would be the evidence, drawing it out with a needle. They would either need a warrant from a judge to get it, or they would need consent from you to get it.

You can always refuse consent when consent is the method to get it. Consent is completely up to you. Does that mean that the police officer or whomever will not go get a warrant? No, it doesn't mean that necessarily at all. Sometimes the police officers will go get a warrant, especially if they have reasonable suspicion that you are driving under the influence. Most jurisdictions have it to where, if you refuse to take the breathalyzer test, your license is automatically suspended. While they may not get the breath or blood in time to establish that you were over the legal limit, you would still waive your rights to a driver's

license. You have a license to drive, not a right to drive in most jurisdictions in the United States.

## *Will I Have to Serve DWI Jail Time?*

The short answer to that is yes, there is a mandatory sentencing statute in the state of Arizona that you must serve some time in jail. Don't let my yes answer scare you, because there's a range of things, and I'll give you an example. 28-1381(A) of the Arizona revised statute says the minimum sentencing guidelines that the judges must comply with a ten-day jail sentence, but nine days can be suspended after completion of the court-ordered screening and alcohol process. That's to the discretion of the judge. After that, then the judge can suspend nine days.



That means that you'd have to serve one day in jail. The number of days in jail only increase with the number times that you've been arrested for DUI, and the level of your blood alcohol content.

## *How Severe are the DWI Conviction Penalties?*

In the state of Arizona, our revised statute has detailed out three main DUI statutes. Of course, there are others, but there are three main DUI statutes that are used to charge persons suspected of driving under the influence. The first one is 28-1381(A) of the Arizona revised statute. That's virtually, in laymen's terms a basic DUI. If your BAC is 0.08 – 0.14, that's a basic DUI. If you are charged with basic DUI, nine times out of ten, if it's your first offense, you're going to get charged with 28-1381(A) for a first offense.

If you have a blood alcohol content that's 0.15 to 0.199, you'd be charged with 28-1382(A)(1) of the Arizona revised statute. We refer to that as extreme DUI. In each one of these cases, the penalties increase. In Arizona, there are mandatory sentencing requirements for each of the levels of DUI, and then, if you happen to blow a 0.20 or higher within two hours of operating a motor vehicle, you'd be charged with 28-1382(A)(2), which is what we call super extreme DUI. It has

some harsh penalties; 45 days mandatory jail sentence, and 18 months interlock ignition. It doesn't matter how much family support you have, how many college degrees you have, how long you've been on your job. None of that stuff matters once you start getting up to that area.

There are some waivers that could take place under extreme DUI where if you take the interlock device early on, you may be able to suspend maybe 21 days of the sentence. But again, in all of those three statutes as given, there's certain mandatory sentencing requirements. Your license is suspended for at least 90 days. You may get a 60-day work-to-work permit. In some cases of the extreme DUI, if it's your second offense of it, your license could be revoked for one year. If you're ever arrested for DUI or charged with DUI, you would want to sit down and talk with a lawyer that understands these laws. You want someone that knows how to look into the facts and make sure that the stop was a good stop and that you can actually be charged with it. The attorney will walk you through the process, try to mitigate down some of these mandatory sentencing that can be moved. There are also fines that are associated with it, but those are the three big statutes that we normally see in the normal course of people being charged with DUI in Arizona.

## *Can I Plea Bargain?*

One of the hallmarks of the criminal justice system is the ability for a public defender or a privately retained defense attorney to work and negotiate out a deal with the prosecutor. That is no difference when it comes down to DUI. Although there are mandatory sentencing guidelines as it relates to DUI in Arizona, whether it's basic DUI or the super extreme DUI, there is some wiggle room in all of those statutes based on the specific facts of an individual case. Was the DUI alcohol? Was the DUI marijuana? Did you blow a 0.08, or did you blow a 0.289? Were you driving, or had you fell asleep behind the wheel of a car? Is this your first DUI, or is this your 15<sup>th</sup> DUI? Did you get in a car accident, or was there no other injured party? All of these will be factors that lean into how much wiggle room there is and whether there is a plea deal that relates to the DUI or not.

For example, in some courts, depending on where the DUI charge is processed through, they may offer a task program where if you complete so many hours of

community service and alcohol-based training, some of the fines could possibly be reduced. Community service could be waived. That's at the discretion of the judge. Maybe the nine days of the sentence is suspended. This is where all of the wiggle room plays into it, and again, you'll be dealing with the judge and the prosecutor. Some prosecutors in the county have a mandatory rule that, if it's your first DUI, they automatically offer you a task program, the deferred prosecution program.

Sometimes it could be reduced down to what we lawyers refer to as reckless driving, but again, these are all fact-intensive. I don't recommend anybody stick with an attorney that just blindly hands you the first plea deal that's in front of you. You need to look at what the officer said. You need to review his report. You need to go out to the scene and take pictures of the incident and then make a sound decision as to what could be negotiated out. Write a deviation letter requesting the prosecutor to deviate away from the charges.

There are always opportunities within the framework. Some of it is mandatory, but there is some wiggle room, whether it's a super extreme DUI or basic DUI. There are some opportunities there to work out some of the things to where the punishment doesn't seem as harsh as it's supposed to be, but again, it's case-by-case based on the facts, and you would want to discuss that with your attorney, who would go in there and make sure that you're not being over-sentenced or disciplined unnecessarily for being arrested for DUI.



## ABOUT THE AUTHOR

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### *Quacy L. Smith*

Dr. Quacy Smith is a founding partner of Smith & Green who serves as the Office Managing Shareholder of our Arizona operations. He also serves as the CEO/Chairman of the Board of Directors. His legal prowess and corporate experience has proven to be invaluable to Smith & Green, as well as our diverse clientele.

Graduating from Phoenix School of Law with a juris doctorate in 2013, Quacy is admitted to practice in the state of Arizona and the United States District Court for the District of Arizona.

Dr. Quacy L. Smith is actively involved in the leadership of his church and community. He is a highly sought-after public speaker. He resides in Litchfield Park, Arizona with his wife and their children.



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