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DUI UPDATES: Hot Topics and Fun Facts

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2019 APAAC LA CONFERENCE DUI UPDATES

Hot Topics and Fun Facts

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SESSION CONTENT

- ◉ Legal Updates & Reminders
- ◉ DUI Hot Topics & Fun Facts
- ◉ FST Demonstration
- ◉ Interspersed with a Game!



Legislative Update



"Texting" While Driving

HB 2318

• Prohibits operating a motor vehicle on a street or highway (unless parked or stopped) if the person:

1. Physically holds or supports with any part of the body
 - a) a portable wireless communication device except when used with an earpiece, headphone device or wrist-worn device to conduct voice-based communication ;
 - b) or a stand-alone electronic device;

**Effective - Now
Amends ARS § 28-672; 28-963, 28-3164 & 28-3312; adds 28-914



"Texting" While Driving

HB 2318

2. Writes, sends or reads any text-based communication (text, instant message, e-mail or internet data) excluding:
 - a) a voice-based communication to direct the writing, sending reading or other communicating of any text-based communication; and
 - b) hands free GPS; navigation or device used for obtaining motor vehicle information or information related to driving a motor vehicle.



"Texting" While Driving

HB 2318

The following are exempt:

- Using a hand-free device embedded in a motor vehicle
- Authorized emergency, law enforcement or probation vehicle operators if using the device while acting in an official capacity
- A licensed FCC operator while operating a radio frequency device other than a portable wireless communication device.



"Texting" While Driving

HB 2318

Exemptions continued:

- Operators using a 2 way radio or private land mobile radio system while in the performance of work-related duties if operating a fleet vehicle or possessing a commercial driver license
- Operators using a portable wireless communication device
 1. To report illegal activity/summon help
 2. That is affixed to the vehicle to relay info during the operator's job duties between the operator and dispatcher or digital network or software application device.

Amends: 28-101; 28-627; & 28-818



"Texting" While Driving

HB 2318

An officer who stops a vehicle for a violation may not:

- Take possession or inspect the portable wireless communication device unless otherwise authorized by law; and
- Issue a citation for a violation before January 1, 2021. May only issue a warning

voids all county, city, or local regulations beginning January 1, 2021.



REMINDER Teenage Drivers/Instruction Permits Cell Phones/Texting

SB 1080

- Prohibits drivers with
 - instruction permits
 - class G licenses for first 6 months or until 18th birthday
 From using wireless communication devices while driving.
- Can use in emergency. Can use GPS if not manually adjusting.
- Is a secondary offense.

****Effective date 7/1/2018**

Amends A.R.S. § 28-3154; 28-3101



"Texting" While Driving

HB 2318

- Adds this section (28-914) to the violations included in 28-672 (causing serious physical injury or death by a moving violation).
- **This section does not have the delayed enforcement/citation date.**



"Texting" While Driving

HB 2318

Prohibits a person while driving from:

- Watching a video or movie except data related to the navigation of the motor vehicle, vehicle info or info related to driving
- Recording or broadcasting a video except for the sole purpose of continuously recording or broadcasting videos within or outside the motor vehicle

No delayed enforcement/citation date. [violation code 28-693]



State Highway Work Zones - Accidents

HB 2492

- Adds volitions committed in a state highway work zone (28-710) to 28-672 (causing serious physical injury or death by a moving violation).

****Effective - general effective date
Amends ARS § 28-672**



Motor Vehicle Accidents - restricted license

HB 2366

• Requires the court to direct ADOT to suspend or restrict driving privileges for first-time motor vehicle offenses resulting in serious injury or death [28-672 causing serious physical injury or death by a moving violation].

• 90 - 180 days for serious physical injury; 180 days - one year for death.

****Effective - general effective date
Amends ARS § 28-672**



Written Vehicle Accident Reports: threshold

SB 1223

• Increases the damage threshold required for the issuance of a written accident report from \$1,000, to \$2,000. Other requirements remain the same.

****Effective - general effective date
Amends ARS § 28-667**



Veteran Special Plates; Women Veteran; branch seal



**SB 1338
HB 2446**

• Directs ADOT to design 12 new veteran special plates:

- Army seal;
- Navy seal;
- U.S. Marine Corps seal;
- Air Force seal;
- Coast Guard seal; and
- Native American Code Talker Seal.



****Effective - October 1, 2019
Amends ARS § 28-2414**

ADDITIONAL NEW SPECIAL PLATES

- Share the Road - HB 2606
- Affordable homeownership - SB 1453
- Collegiate bowl game - HB 2006
- Distinguished flying cross - HB 2589
- Community services - HB 2442
- Alzheimer's disease research - SB 1533



Traffic Survival School; required completion

HB 2005

- Directs ADOT to require traffic survival school (TSS) upon notice of a conviction of an offense in another jurisdiction that would result in license suspension or revocation had the offense been committed in AZ.
- Requires, rather than allows, ADOT to suspend or revoke an individual's license for noncompliance of TSS.
- Requires ADOT to remove suspension from driving record if person completes all imposed requirements (except reinstatement \$) including successful TSS completion.

***Effective - general effective date
Amends ARS § 28-3303 & 28-3306*



State Lottery: prizewinner confidentiality

HB 2552

- Lottery prizewinners of \$100,000 or more may request their name be confidential and not made public record!

***Effective date
Amends ARS § 28-3319*

ASK YOUR GENERAL DUI QUESTIONS

CASE LAW UPDATE

FOURTH AMENDMENT OPINIONS

**STOP OF VEHICLE:
REVOKED LICENSE**

- ⦿ Reasonable suspicion exists to stop a vehicle when an officer discovers the owner of the vehicle has a suspended license.
- ⦿ Does not matter if officer could not see the driver clearly enough to identify him/her as the owner of the vehicle.
- ⦿ Officer need not rule out innocent explanations for the conduct.

State v. Turner, 243 Ariz. 608 (App. 2018).

RELATED CASE TO KEEP AN EYE ON

Kansas v. Glover, No. 18-556
US Supreme Ct.

- ⦿ Glover challenged the stop of his vehicle.
- ⦿ Kansas argued officer had reasonable suspicion because the deputy knew car's owner lacked a valid driver's license and deputy could infer owner was the driver.

RENTAL CAR DRIVER

- ⦿ Driver in lawful possession or control of rental car possess a 4th Amendment protected reasonable expectation of privacy in the car even if not listed in rental agreement as an authorized driver.
 - Generally will need consent or a search warrant
- ⦿ Potential breach of rental agreement only resulted in coverage being void, not the agreement

Byrd v. United States, 138 S.Ct. 1518 (2018).

STOP OF VEHICLE REMINDERS

- o Include Safety Concerns in Reports, Motion Responses & Testimony (*Organ, Becerra, Mendoza-Ruiz*)
 - Most equipment violations pose safety concerns
- o Always Include Suspected Impaired Driving if Applicable (*Blake, Gutierrez*)
 - Most moving violations could be signs & symptoms of impairment
- o Objective basis (*Blake*)
 - *Whren v. United States*, 517 U.S., at 810.

MEDICAL MARIJUANA



SMOKING MM IN PUBLIC

- o In general, a person may be arrested & prosecuted for smoking marijuana while in his/her car, if the car is in public, even if the person has a medical marijuana card.
 - o Even though the AMMA broadly immunizes qualifying patients from arrest or prosecution on marijuana offenses, MM patients may not smoke marijuana “in any public place”.
 - Public place is a place frequented by the general public.
 - The interior of a vehicle is not separate/distinct from the location in which it found.
- State v. Tagge*, CR2015-113021-001 (May 9, 2019)

HASHISH

- ◉ AMMA immunizes medical marijuana card holder from prosecution for use & possession of Hashish & other extracted resins.
- ◉ Qualified patients are allowed 2 ½ ounces of dried flowers, or mixtures or preparations made from 2 ½ ounces of dried flowers, or mixtures or preparations made from 2 ½ ounces of dried flowers.

State v. Jones, CR-18-0370 (filed May 28, 2019).

DUI OPINIONS

ADMONITIONS

- ◉ Winning cases with interim and new admonitions.

Diaz v. Bernini, 246 Ariz. 114 (2019).

State v. De Anda, 246 Ariz. 104 (2019).

State v Weakland, 246 Ariz. 67 (2019).

Alsarraaf v. Bernini (State, RPI) 244 Ariz. 447 (App. 2018)

CASE TO KEEP AN EYE ON

◉ *Mitchell v. Wisconsin* - argued April 23, 2019.

◉ Issue: is the portion of Wisconsin's implied consent law that allows the taking of a person's blood if the person is unconscious and the police have probable cause of DUI unconstitutional?

COMING SOON!

Intoxilyzer 9000

INTOXILYZER 9000

- ◉ DPS looked at a variety of instruments
- ◉ DPS hopes to start using 9000s soon
- ◉ Will phase them in
- ◉ Will still have Intoxilyzer 8000s also for about 5 years
- ◉ 9000s are already in use in some other states

INTOXILYZER 9000 - DIFFERENCES

- ⦿ 90 Day and 31 Day Checks Will Be Combined
 - Conducted every 31 days
 - Will include calibration check
 - Will be a new form - be sure to disclose
- ⦿ Extremely Automated for the Officer
- ⦿ Much easier to blow into
- ⦿ Will force officer to conduct a proper 15-minute deprivation period

DOCUMENTATION FOR INTOX 9000

- ⦿ Breath Test Print Card
- ⦿ Operator checklist
- ⦿ 31- day check (no 90-day check)
- ⦿ May incorporate a yearly maintenance check
- ⦿ Other maintenance records will be available from the lab

- ⦿ Documentation for the 8000s will stay the same

SFST DEMONSTRATION

DUI HOT TOPICS

- Marijuana
- Prescriptions
- Heroin/opioids
- Meth use has increased
- Seeing Cocaine again
- SFST not for drugs argument

Thank You!

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