

Arizona Drugged Driving

In Arizona, it is unlawful for a person to drive a vehicle (1) while under the influence of any drug, or any combination of liquor and/or drugs if the person is impaired to the slightest degree, OR (2) while there is any drug or its metabolite in the person's body. Ariz. Rev. Stat. Ann. §§ 28-1381(A)(1), (3) (West 2010). However, a registered qualifying medical use patient shall not be considered to be under the influence solely for having marijuana metabolites in his or her system.

(1) Driving under the influence of any drug

Affirmative Defense

The fact that the person is or has been entitled to use a drug in this state is not a defense to this first type of DUI. *Id.* § 28-1381(B).

(2) Driving while there is any drug or metabolite in the person's body (per se law)

NOTE: Actual impairment is not an element of this offense. Cannabis metabolites can be detected in a person's body up to one month after use, thus it is possible to be convicted of this type of DUI weeks after a person last ingested cannabis.

Affirmative Defense

A person using a drug, as prescribed by a medical practitioner is not guilty of this second type of DUI. *Id.* § 28-1381(D).

NOTE: A recommendation to use marijuana from a medical practitioner is not a prescription.

Implied Consent

- By operating a vehicle in Arizona a person gives consent to a test of the persons blood, breath, urine, or other bodily substance for the purpose of determining alcohol or drug content. *Id.* § 28-1321(A).
- If a person under arrest refuses to submit to the test the test shall not be given. *Id.* § 28-1321 (D)(1).
- If the person refuses, their driver's license may be suspended or denied for 12 months. *Id.* § 28-1321(B).
- A person has a right to consult with an attorney before submitting to a chemical test, or as soon as possible after being taken into custody. *State v. Holland*, 711 P.2d 602, 603(1985).
- The state is not required to provide free blood test to accused, but state may not unreasonably interfere with reasonable attempts to for defendant to obtain blood or other scientific test for purpose of attempting to establish evidence of his sobriety w/i the crucial window for testing. Ariz. Rev. Stat. Ann. § 22-424 (West 2010).

- Evidence of refusal is admissible in any legal action or proceeding. *Id.* § 28-1387(D).

Penalties

- **First offense** - jail for 10 to 180 days; alcohol and/or drug treatment; fine of approximately \$1,800 (plus jail costs); license suspension for 90 days; probation for up to five years; community service; offender may be ordered to attend one or more sessions of the Mothers Against Drunk Driving Victims Impact Panel; ignition interlock device required for 12 months. *Id.* §§ 28-1381 (I)-(J).
- **Second offense** - jail for of 90 to 180 days; approximately \$3,500 in fines and costs; license revoked for one year; substance abuse evaluation; probation for up to five years; minimum of 30 hours of community service; offender may be ordered to attend one or more sessions of the Mothers Against Drunk Driving Victims Impact Panel. *Id.* §§ 28-1381(K)-(N).
- **Third offense** (w/i 7 years, or with suspended license) *Class Four Aggravated Felony* - minimum of 4 months in prison; the State may seize vehicle; up to \$150,000 in fines (+80% surcharge); license revocation for three years; probation for up to five years. *Id.* §§ 28-1383 (J)-(K).

Other Penalties & Penalty Enhancers

- DUI w/ a child under 15 years old in vehicle *Class 6 Felony/Aggravated DUI* -- up to \$150,000 in fines (plus surcharge); license revocation for three years; probation for up to five years. *Id.* § 28-1381(A)(3); *Id.* §§ 28-1383 (J)-(K).
- DUI violation while driving privileges suspended *Class 6 Felony/Aggravated DUI* -- up to \$150,000 in fines (plus surcharge); license revocation for three years; probation for up to five years. *Id.* § 28-1381(A)(1); *Id.* §§ 28-1383 (J)-(K).

Sobriety Checkpoints

Arizona's interpretation of the federal Constitution allows law enforcement officials to conduct sobriety checkpoints.

- Roadblocks screening for drunk drivers are condoned in light of immense public concern regarding drunk driving, so long as there is minimal intrusion into drivers' liberty. *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073(1984).

Case Law

Wozniak v. Galati, 30 P.3d 131 (2001) – Found that a metabolite present in defendants system could reasonably allow a jury to conclude that defendant was driving while under the influence of drug or its metabolite.

State v. Gaffney, 8 P.3d 376 (2000) – Implied consent statutory warnings were unnecessary when defendant gave express consent to a test of blood, breath, or urine.

State v. Hammonds, 192 Ariz. 528 (App. Div.1 1998) -- Statute proscribing driving with a drug metabolite in one's body is rationally related to legitimate state purpose and does not violate equal protection clause. Even though scientific evidence showed conclusively that the mere presence of a metabolite does not necessarily represent impairment, contrary expert testimony successfully showed that the presence of inert metabolites does not rule out impairment.

State v. Love, 897 P.2d 626, 629 (1995) -- Factors to be considered when determining whether defendant "operated" motor vehicle: whether the vehicle was running or the ignition was on; where the key was located; where and in what position the driver was found in the vehicle; whether the person was awake or asleep; if the vehicle's headlights were on; where the vehicle was stopped (in the road or legally parked); whether the driver had voluntarily pulled off the road; time of day and weather conditions; if the heater or air conditioner was on; whether the windows were up or down; and any explanation of the circumstances advanced by the defense.

Per Se Drugged Driving Laws

Arizona has a zero tolerance per se drugged driving law enacted for cannabis, cannabis metabolites, and other controlled substances. (Arizona Revised Statutes, Section 28-1381)

Arizona's law calls for mandatory imprisonment of 24 hours and not more than six months upon conviction for a first offense.