

# How High Is Too High To Drive In Arizona?

Arizona's Strict Drugged Driving Laws Often Lead To DUI Convictions



A WHITE PAPER PRESENTED BY

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## Arizona's Strict Drugged Driving Laws Often Lead To DUI Convictions

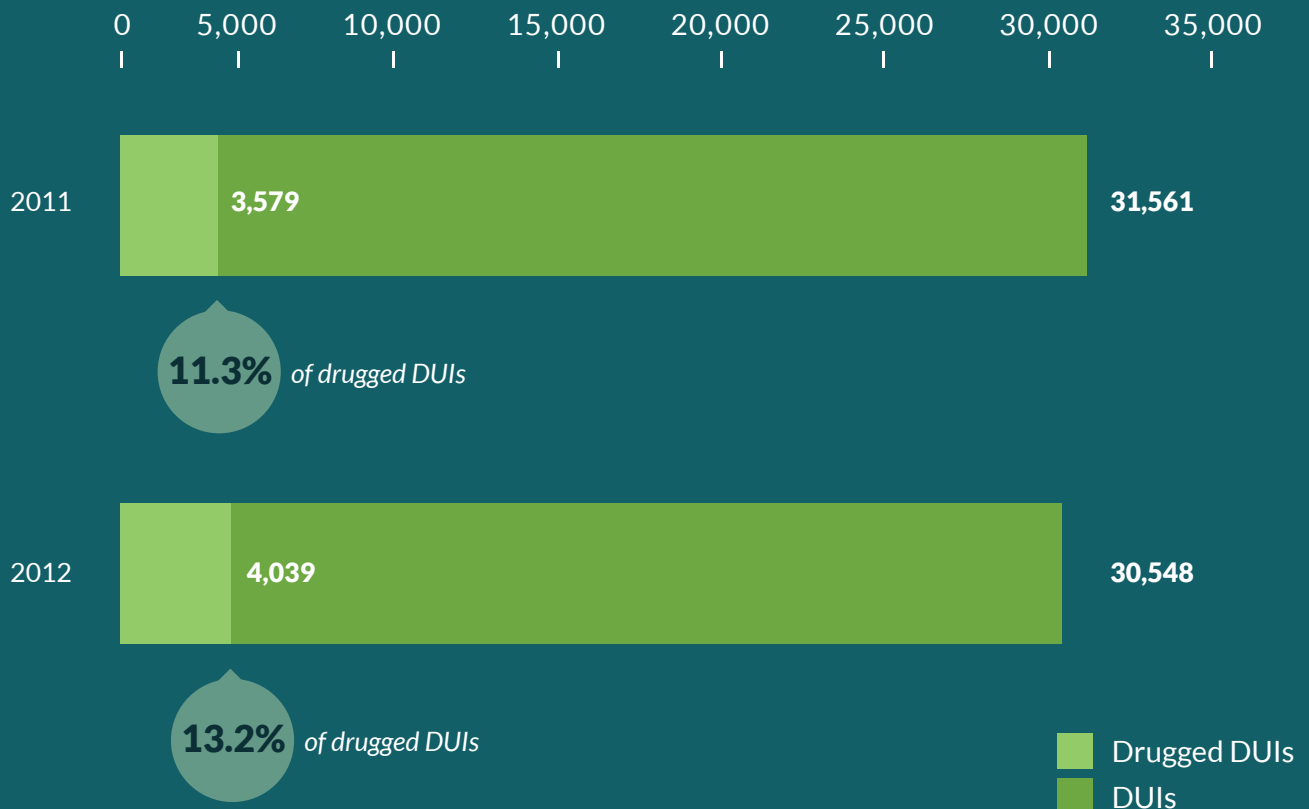


You may think that you have a clear understanding of the rules concerning drunk driving in Arizona. You know that if you have too much to drink before you drive that you could be arrested and lose your driving privileges. But what about drugged driving? Did you know that you could be charged with DUI if you are under the influence of drugs? Did you know that this also applies to prescription medications? Simply following your doctor's orders might result in you being charged with drugged driving.

In Arizona, substantial resources have been devoted toward training law enforcement officers in spotting signs of drugged driving. As a result, there has been a drastic increase in the number of drugged driving arrests. The Arizona Governor’s Office of Highway Safety has compiled a report examining DUI arrests within the state. They use this data to determine where they should distribute law enforcement resources in the upcoming fiscal year. The most recent report available shows that drug DUI arrests have been going up while the total number of DUIs has been decreasing statewide.<sup>1</sup>

Even a simple traffic stop for speeding or other moving violation may lead to a DUI charge if the motorist admits to taking prescription drugs before driving. Those motorists who simply are following their doctors’ orders may not be able to avoid driving under the influence charges due to Arizona’s complex DUI laws.

### DUI ARRESTS IN ARIZONA



THE STATUTE CONCERNING DRIVING UNDER THE INFLUENCE IN ARIZONA IS SECTION 28-1381. IN SHORT, THE STATUTE STATES THAT A MOTORIST MAY BE CHARGED WITH A DUI IF:

1 The motorist is under the influence of alcohol, drugs or vapors and impaired to the slightest degree.<sup>2</sup>



2 The motorist has a blood alcohol content of .08 percent or higher less than two hours after being in control of his or her motor vehicle.<sup>3</sup>



3 The motorist has any drug or its metabolite present in his or her system (earlier statutes list the type of drugs covered by the DUI laws, and this includes most street drugs and prescription medications).<sup>4</sup>



4 The motorist is driving a commercial vehicle and has a blood alcohol content of .04 percent or higher.<sup>5</sup>

**There is an important difference between alcohol and drugged driving charges. The state clearly lists the .08 percent blood alcohol content level as the standard for intoxication due to alcohol, but there are no such levels of impairment for drugged driving. This law allows the state to charge motorists with drugged driving if *any* amount of drugs or their metabolites is found in their system.**

Prosecutors often bring two DUI charges against individuals suspected of drugged driving. This creates a very complex situation in which defendants will need to defend themselves against both of the possible charges.

### ONE

The first charge is brought under 28-1381(A)(1), concerning impairment to the slightest degree. This means that the motorist was demonstrating signs of impairment due to the drug use, and this impairment impacted the ability to operate a motor vehicle.

### TWO

The second charge, which is brought under 28-1381(A)(3), concerns the actual presence of drugs in a person's system. This provision of the statute allows a person to be charged with drugged driving if chemical testing determines that drugs are present in the motorist's system. Impairment is not necessary.

## KEY POINTS CONCERNING 28-1381(A)(1) & 28-1381(A)(3) DUI CHARGES

		28-1381(A)(1)		28-1381(A)(3)
Drugs present in system?	NO	Presence of drugs is not enough to bring DUI charges in all cases under 28-1381(A)(1).	YES	If any drugs or metabolites are present, prosecutors can bring DUI charges against motorist.
Is impairment necessary?	YES	Under this provision, impairment is required to support DUI charges. Impairment is often established by the testimony of the officer.	NO	The presence of drugs in the motorist's system is enough to result in DUI charges.
Will a doctor's prescription result in charges dismissed?	NO	If the driver is believed to be impaired, a prescription will not lead to a dismissal of the charges.	YES NO	There is a defense that would allow a dismissal, but there are very strict requirements that must be satisfied before defense is available.

Even if you are successful in demonstrating that you are not impaired by the drugs, the remaining 28-1381(A)(3) charge will still need to be addressed. If your chemical tests show that drugs were present in your system, the 28-1381(A)(3) DUI charge will be allowed to proceed.

This can leave you in a very difficult position if you have been stopped by law enforcement. Police may notice that you are speeding and decide to pull you over. When the officer asks if you have taken any medications that day and you answer yes, the officer will use this information to begin your DUI investigation.

The end result of the DUI investigation is that you will undergo chemical testing, in the form of a blood test, to check for the presence of drugs in your system. If drugs are found, you will be charged with DUI. The nature of these arrests makes it very difficult for you to offer up a defense to the charges because you actually disclosed the use of prescription drugs before you got behind the wheel. While you might feel like this is an impossible situation, there are options available to you.



## Defenses Available To Motorists Charged With Drugged Driving

Under the previously discussed DUI statute, 28-1381, drivers are considered not guilty of the 28-1381(A)(3) DUI charge if they were using the medication as prescribed by a medical practitioner.<sup>6</sup> This seems straightforward, but the state has made it very difficult for individuals to take advantage of this defense, according to recent decision.

In 2012, an Arizona Court of Appeals case, *State v. Bayardi*,<sup>7</sup> examined this defense in detail. The court stated that this is an “affirmative defense,” meaning that the motorist has the burden of demonstrating that he or she has a valid prescription for the drugs by a preponderance of the evidence.

Even if you have a prescription from your doctor, and you manage to introduce this into evidence at trial, prosecutors will often request that your doctor appear in court to testify that you were taking the prescription according to instructions.

**Many physicians are reluctant to appear in court, making it difficult for you to have the 28-1381(A)(3) dismissed. If you do manage to prevail on this issue, you may still have to deal with the 28-1381(A)(1) DUI charge concerning impairment to the slightest degree.**

## What About Prescriptions For Medical Marijuana?

Things become much more complicated if the motorist has a prescription for medical marijuana. These drivers face extreme challenges in order to demonstrate that they have a prescription for the drug. Courts have stressed in the past that marijuana is a controlled substance and, therefore, doctors cannot prescribe it.<sup>8</sup> A valid medical marijuana card will not allow an individual to raise an affirmative defense against 28-1381(A)(3) charges.

Additionally, there are questions about whether or not the presence of the drug in the driver's system means that he or she is impaired under 28-1381(A)(1). Many medical marijuana users build up a tolerance to the drug and would not be under the influence even if a substantial amount of the active components is detected in their systems. However, these motorists will still face DUI charges in Arizona because the current laws do not allow a prescription as a defense to these allegations.

It is important to note that marijuana laws within Arizona seem to change constantly. The courts have handled several medical marijuana DUI cases in the past five years, and it is important that you reach out to an experienced attorney if you have been charged with DUI and have a medical marijuana card. This will ensure that you know exactly what the current laws are, and inform you of the options that will be available to you when preparing a defense to these accusations.



## Defenses Available For 28-1381(A)(1) Impairment To The Slightest Degree Charges

When addressing 28-1381(A)(1) charges, it is necessary that your attorney have a clear understanding of the science involving drug DUIs. When the substance involved in a DUI case is alcohol, the state uses testing methods to determine exactly how much alcohol is present in a motorist's system.

For drug DUI cases, the testing process becomes much more complicated. The methods used by technicians in drug DUIs really only shows that the drugs or metabolites are present in the motorist's system. From these results, it is often difficult to determine whether or not the individual was using the drugs in compliance with the prescribed dosages.

**This is an important part of the process, because if the motorist was using the drugs according to the prescription, it may be easier to demonstrate that the driver was not impaired when he or she was behind the wheel.**

## PENALTIES THAT APPLY TO DRUGGED DRIVING FIRST-OFFENSE CONVICTIONS

	28-1381(A)(1)	28-13181(A)(3)
Jail time	<i>Up to 10 days in jail</i>	<i>Up to 10 days in jail</i>
Fines and court fees	Yes	Yes
Drug and alcohol education classes	Yes	Yes
Ignition interlock	Yes	<i>Maybe - could be required for some offenders</i>
License suspension	<i>90 days to one year for arrest</i>	<i>90 days to one year for arrest, plus up to an additional year for conviction</i>

## How An Attorney Makes A Difference In Your Case

While it may seem as though you have very few options if charged with drugged driving, you need to know that there are measures you can take to improve your chances of defending yourself against these accusations. If you decide to simply plead guilty, you might be exposed to substantial penalties that will have an impact on your life for many years to come.

For example, if you plead guilty to a 28-1381(A)(3) drug DUI, you will have a one-year license suspension. You will not be eligible to receive an occupational or hardship license – it is a hard suspension. In addition, you could be forced to install an ignition interlock in your vehicle after you get your license back, depending upon your specific situation. It is extremely important that you understand the impact that a conviction on drug DUI charges will have upon your life. Do not make any decisions before speaking to a DUI defense attorney.

An attorney experienced with the unique aspects of drugged driving in Arizona will be able to analyze your situation and help you protect your rights and driving privileges. Do not let aggressive prosecutors push you around. Despite the complicated nature of the drugged DUI laws in Arizona, it is possible to offer a strong defense to these charges.

## SOURCES

<sup>1</sup> State of Arizona Highway Safety Plan FFY 2014, Figure B.4.

<sup>2</sup> Arizona Revised Statutes Section 28-1381(A)(1)

<sup>3</sup> A.R.S. Section 28-1381(A)(2)

<sup>4</sup> A.R.S. Section 28-1381(A)(3)

<sup>5</sup> A.R.S. Section 28-1381(A)(4)

<sup>6</sup> Arizona Revised Statute 28-1381(D)

<sup>7</sup> State v. Bayardi 230 Ariz. 195, 281 P.3d 1063, (Ariz.App. Div. 1,2012)

<sup>8</sup> Dobson v. McClennen, 337 P.3d 568, 573 (Ariz.App. Div. 1,2014)

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