

1) Common DUI crimes – (make sure it is not a felony! Look at priors closely!)

- a. CVC 23152(a) – driving under the influence of alcohol – misdemeanor if two or less dui priors in time (CALCRIM 2110)
 - i. Exception: if within 10 years there is: there is:
 - 1. a prior felony dui , or
 - 2. a prior felony dui with injury, or
 - 3. a prior felony conviction for PC 192(c) (Vehicular Manslaughter) or PC 191.5 (Gross Vehicular Manslaughter while Intoxicated)
= THEN the present violation is a felony (CVC 23550.5)
- b. CVC 23152(b) – driving with .08 or higher percent blood alcohol – misdemeanor if two or less dui priors in time (CALCRIM 2110))
- c. CVC 23153(a) – driving under influence of alcohol proximately causing injury to another person – **wobbler** if no priors or one prior (CVC 23560) (CALCRIM 2100)
 - i. if present crime is dui with any injury, and defendant has two or more priorable dui offenses within 10 years, case is a STRAIGHT FELONY (2-3-4 years state prison – see CVC 23566(b)).
- d. CVC 23153(b) – driving with .08 or higher percent blood alcohol causing injury to another person – **wobbler** (CALCRIM 2101)
 - i. NOTE: if present crime is dui with any injury, and defendant has two or more priorable dui offenses, case is a STRAIGHT FELONY (2-3-4 years state prison – see CVC 23566(b)).
- e. CVC 23152(e) – driving under influence of drugs – misdemeanor of two or less dui priors in time
- f. CVC 23152(f) – driving under the combined influence of alcohol and a drug- misdemeanor if two or less dui priors in time
- g. CVC 23140(a) – driving with .05 percent blood alcohol- infraction- (CALCRIM 2113)
- h. H&N 655(b) – operating a vessel under the influence of alcohol or drugs –misdemeanor
- i. H&N 655(c) – navigating a vessel with .08 or higher percent blood alcohol – misdemeanor

2) Common Enhancements –

- a. Refusal (CVC 23577)
- b. Over .15 BA (CVC 23578)
- c. Over .20 BA
 - i. First conviction – CVC 23538(b)(4)
 - ii. First conviction, BA over .20 and refusal – CVC 23538(b)(2)
- d. Kids (under age 14) in the car during dui driving – CVC 23572(a)(1)
 - i. Also consider PC 273a(b) – Child endangerment
- e. Reckless driving while dui- CVC 23582(a)
 - i. If driving 30 mph over speed limit on freeway

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- ii. If driving 20 mph over speed limit on street/highway
- f. Probation violations
 - i. PC 1203.3
- 3) Other crimes often seen with DUIs –
 - a. CVC 14601.1 etc – driving with suspended license -misdemeanor
 - i. Remember to look for priors and need proof of service
 - ii. See also 14601.2, 14501.5
 - b. CVC 20002(a) – hit and run driving -misdemeanor
 - c. CVC 2800.1 – evading arrest (misdemeanor but can be elevated to a felony if particularly dangerous (CVC 2800.2) or on wrong side of road (CVC 2800.4)
 - d. CVC 23223 -driver possessing open alcoholic beverage container – misdemeanor
- 4) Elements – generally
 - a. Driving –
 - i. Requires proof of volitional movement of a vehicle. Mercer v. Dept of Motor Vehicles (1991) 53 Cal. 3d 753, 768.
 - ii. The movement may be slight. Padilla v. Meese (1986) 184 Cal. App. 3d 1022, 1029.
 - iii. Driving may be established through circumstantial evidence. People v. Wilson (1985) 176 Cal. App. 3d Supp. 1, 9
 - iv. Attempted driving under the Influence is a lesser included offense (PC 664 – P v. Garcia (1989) 214 Cal. App. 3d Supp 1, 3-4) (not priorable).
 - b. Under the Influence – 23152(a)
 - i. “A person is under the influence of intoxicating liquor when as a result of drinking such liquor his physical or mental abilities are impaired so that he no longer has the ability to drive a vehicle with the caution characteristic of a sober person of ordinary prudence, under the same or similar circumstances.” See People v. Schoonover (1970)) 5 Cal. App. 3d 101, 105-107; People v. Enriquez (1996) 42 Cal. App. 4th 661, 665-666 for discussion of under the influence
 - ii. Look at manner of driving – see P v. Weathington (1991) 231 Cal. App. 3d 69, 90
 - c. With .08 or higher percent blood alcohol – 23152(b)
 - i. “In any prosecution under this subdivision, it is a rebuttable presumption that the person had .08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had .08 percent, by weight, of alcohol in his or her blood at the time of the performance of a chemical test **within three hours after driving.**” (CVC 23152(b))

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- ii. People v. Williams 2002) 28 Cal. 4th 408, 417 Results of PAS are admissible upon a showing of either compliance with title 17 or the foundational elements of:
 - 1. Properly functioning equipment, and
 - 2. Properly administered test, and
 - 3. A qualified operator
- iii. Need consent to obtain blood sample – REQUIRED READING:
 - 1. Missouri v. McNeely (2013) 133 S.Ct. 1552
 - 2. But SEE: P v. Harris (2015) WL 708606; 2015 Cal. App. Lexis 154
 - a. After being arrested for driving under the influence, defendant was advised pursuant to the implied consent law that he was required to submit to a chemical blood test or his license would be suspended and his refusal would be used against him. Defendant replied “okay” and did not verbally object to the blood draw that followed. Defendant subsequently sought suppression of the evidence, arguing that the blood draw was unreasonable under *McNeely*. Court found free and voluntary submission to the blood test after receiving an advisement under the implied consent law constitutes actual consent to a blood draw under the 4th amendment.
 - 3. A person who is on probation for a violation of section 23152 or 23153 who drives a motor vehicle is deemed to have given his or her consent to a preliminary alcohol screening test or other chemical test for the purpose of determining the presence of alcohol in the person, if lawfully detained for an alleged violation of 23154(a) (CVC 23154(a)(c)(1)).

d. Priors

i. VALID DUI PRIORS

- 1. Check CII rap sheet AND DMV Rap AND Law and Justice
 - a. If dui rap shows excessive BA conviction and no resulting conviction (yet) may be a hidden prior – call agency
- 2. If present violation is within 10 years of prior violation which resulted in a conviction (CVC 23540) or two are within 10 years (CVC 23546)
 - a. CVC 23152(a) or CVC 23152(b) convictions count as priors
 - b. A wet reckless counts as a dui prior (23103 with “R”)
 - i. Wet reckless charges are a “plea down” – they are not charged at time of filing
 - ii. See CVC 23103.5(a) – “if the prosecution aggress to a plea of guilty or nolo contender to a charge of a violation of section 23103 in satisfaction of, or as a substitute for, an original charge of CVC 23152, the prosecution shall state for the record a factual basis for

the satisfaction or substitution, including whether or not there had been consumption of an alcoholic beverage or ingestion or administration of a drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show [this.]”

- c. A dui with injury counts as a prior
- ii. **If offense is within 10 years of three or more separate violations, it is a felony (CVC 23550)**
- iii. **The term “prior” can be misleading**
 - 1. **WATCH OUT FOR DEFENDANTS WITH MORE THAN ONE OPEN “THIRD”**

In this situation, if one of them pleads, the remaining open case becomes the fourth dui and CAN BECOME A FELONY if we so file it. See P v. Baez (08) 167 Cal. App. 4th 197
 - 2. Under CVC 23217 and People v. Snook (97) 16 Cal. 4th 1210, a dui driver is subject to enhanced penalties for multiple violations within a 10 year period. In the felony dui context, it is necessary to prove up the three prior convictions at the PX. Thus, in a case in which the defendant has two prior convictions for dui and a third case is pending at the time the fourth dui is filed, the defendant will not be held to answer at PX unless all three priors have achieved conviction status. P v. Casillas (01) 92 Cal. App. 4th 171.
 - a. So, if you are confronted with a Casillas fact pattern in which the pending 3rd and 4th dui’s are misdemeanors, you obviously can amend the fourth case to a felony ONCE THE DEFENDANT PLEADS to the pending third case. If the defendant pleads to the fourth case before dealing with the third case, then amend the still pending third case to a felony, alleging cases one, two and four as the separate violations that resulted in convictions within the 10 years citing Snook.
 - i. Practice note: be careful about waiting to commence prosecution until new case is a conviction. You do not want SOL to run. If open case does not plead within a year of the offense you are sitting on you must file yours as a misdo within a year and then wait it out.
 - b. Regardless of whether the prior convictions occurred before or after the offense date on your current case, all prior convictions must have been obtained within 10 years of each other. People v. Munoz (02) 102 Cal. App. 4th 12.

5) Common Defenses

- a. No driving
- b. Drinking after driving
- c. Rising
- d. Necessity – (imminent peril/ sudden emergency doctrine – P v. Boulware (1940) 41 Cal. App. 2d 268, 269-270)
- e. Attack the machine / blood
- f. Case filed outside SOL
 - i. Misdemeanor SOL – generally 1 year (See PC 802 and exceptions)
 - ii. BUT if case is an 1170(h) wobbler (can be charged as a misdo or felony) then 3 year SOL even if charged as a misdo (PC 801)

6) What you do if you need more information or things are missing:

- a. Complete "RTA" form specifically requesting additional/ missing information
 - i. Form found at: Manuals Drive – Form Manual – 300-399 Filing – 355 Return to Agency
- b. Can file a petition to revoke probation NOT in lieu when doing an RTA

7) What you do if you are not filing:

- a. Complete NCF portion of request for prosecution form
 - i. Not final until SOL runs
 - ii. Not discoverable
- b. Can file a petition to revoke probation IN LIEU of filing

8) What you need if you are filing:

- a. Filing packet
 - i. Must include a DMV rap
 - ii. Must include a CII
- b. Completed "District Attorney's DUI Arraignment Settlement Position" sheet (green)
 - i. Form found at: Manuals Drive – Form Manual – 300-399 Filing- 3.22.1 Arraignment DUI Settlement
- c. Priors alleged
- d. Once set for trial
 - 1. Subpoena roster
 - a. Form found at: Manuals Drive – Form Manual – 300-399 Filing – 350 Witness Roster
 - 2. Order priors
 - 3. Order certified CDL and certified driving record
 - a. Form found at: Manuals Drive – Form Manual – 300-399 Filing – 311 Charging and Document Requisition (yellow)

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- i. Check under "other Documents" 1. Order certified Record/History and put in CDL number.
- ii. If one of the things you want to prove is the vehicle belonged to the defendant (circumstantial evidence he was driver), order certified vehicle registration on the license number and put in "as of" and add the offense date

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 - 4. See also Birchfield v. North Dakota (2016) 136 S.Ct. 2160
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