MORNING • 9:50 TO 10:45

Sentencing Alternatives & Problem Drivers

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SENTENCING SCENARIO

IT'S YOUR TURN TO BE THE JUDGE

TEST YOUR KNOWLEDGE

REASONABLE MINDS MAY DISAGREE

LIVE POLL

Defendant gets a PBJ for speeding while on provisional license; subsequently receives a DUI while still on his provisional license. He seeks a PBJ for his first DUI. Can the Court a PBJ?

A Yes
B No
C It depends

LIVE RESULTS

Defendant gets a PBJ for speeding while on provisional license; subsequently receives a DUI while still on his provisional license. He seeks a PBJ for his first DUI. Can the Court [redacted] a PBJ?

LIVE POLL

Driver pleads guilty to failing to control speed to avoid a collision, and negligent driving. Based on their clean driving record you PBJ on the negligent driving charge and want to merge the second citation. How does MVA record “guilty-merged” when recorded on the docket sheet?

A as a PBJ
B as a conviction without points
C as a conviction with points
D since it is merged, MVA does not record the disposition for the merged charge

LIVE RESULTS

Based on their clean driving record you PBJ on the negligent driving charge and want to merge the second citation. How does MVA record “guilty-merged” on the docket sheet?

SECOND DUI

1st DUI arrest – [redacted]

1st DUI PBJ – [redacted]

2nd DUI arrest – [redacted]

2nd DUI Plea – [redacted]

2nd DUI Sentencing – [redacted]

Is the defendant legally entitled to a PBJ on his second DUI?

Must a citation for failing to drive “at reasonable and prudent speed” [21-801] include the driver’s alleged speed and the applicable speed limit?

A yes, in all cases

B only the alleged speed

C only the applicable speed limit

D no

LIVE RESULTS

Must a citation for failing to drive “at reasonable and prudent speed” [21-801] include the driver’s alleged speed and the applicable speed limit?

SPEED GREATER THAN REASONABLE

Proof of exceeding the posted speed limit is sufficient to convict a defendant of driving in excess of a reasonable and prudent speed (Transportation Art. 21- 801(a).

TRUE

FALSE

LIGHTNING ROUND



GUILTY OR NOT GUILTY?

A driver charged with unsafe lane change (TA 21-309) after colliding with a vehicle in the adjacent lane of travel. Defendant testifies that he/she thought it was safe to change lanes.

GUILTY

NOT GUILTY

A person convicted of participating in a race or speed contest (8 pts.) and reckless driving (6 pts.) arising from the same incident will be assessed:

A 6 points

B 8 points

C 14 points

D 0 points, since you give everyone PBJ

ACCUMULATION OF POINTS

Defendant pleads guilty to a reckless driving citation he failed to appear for 7 years earlier. You find them guilty. He currently has 5 points on his record from earlier this year. Is he/she subject to a license suspension for an accumulation of points?

YES

NO

TRUE OR FALSE

The charge of failure to control speed to avoid a collision (TA 21-801(b)) applies where a defendant is speeding, loses control of his vehicle and crashes into a tree.

TRUE

FALSE

DISCOVERY

Traffic violations generally are criminal misdemeanors. Is discovery available in traffic court?

YES

NO

At trial for failing to stop at a stop sign, defendant pleads not guilty and during trial says “I want to see the dashcam or bodycam video.” What do you do?

A sigh

B direct the officer to produce and show the video

C take a break to allow the officer and defendant to view the video

D postpone the case

LIVE RESULTS

At trial for failing to stop at a stop sign, defendant pleads not guilty and during trial says “I want to see the dashcam or bodycam video.” What do you do?

DISCUSSION QUESTION

Defendant pleads guilty to speeding 78 mph in a 45-mph zone. Although he has one recent moving violation, you decide to give them a break by reducing the speed to 54 mph in a 45-mph making it a 1-point violation instead of 5 points. Any problem?

What if driver holds a commercial driver's license?

LIVE POLL

The higher the level of alcohol in the body, the greater the level of impairment.

A True
B False

LIVE POLL

The higher the level of THC in the body, the greater the level of impairment.

A True
B False

What's the Point(s)?

- 5 points → Driver Improvement Program
- 8 Points → Suspended
- 12 points → Revoked
- PBJ = 0; MVA will not put any points on driving record

*Points come off after 2Y from the date of the violation.

Penalties & Points

- Points: MVA Function, not the Courts
- Minor Traffic expungements — MVA Only
- MVA automatically expunges after 3 years, as long as: (1) no subsequent traffic violations; (2) no suspensions or revocations; AND (3) no PBJs or convictions for a Must Appear offense.
- Enhanced Penalties for Serious Traffic must be properly filed by SAO

Expungement for DUI/DWI

- Expungement is now allowed for PBJ on DUI & DWI, but must be:
  - 15 Y after discharged from Probation
  - as long as no subsequent convictions for crimes or PBJs for DUI/DWI

What Can I Do at Sentencing in Minor Traffic Cases?

- PBJ (if allowable)
- Reduce Speed
- Reduce Fine
- Merger
- Contributing to accident
- Amend to lesser charge
- Special Attention Code: Medical Advisory Letter
- Dismiss? Not Guilty?
- Expungement? NO (MVA only)

Sentencing Issues in Serious/ Jailable Traffic Cases

- PBJ? Must be 10 years between DUIs
- Priors — same or different offenses?
- Enhance Penalties only if properly filed
- Treatment as part of probation or in lieu of actual jail
- Jail: weekend sentences, deferred sentences & flat sentences
- Fines/ fees
- Probation – length and conditions; supervised vs. unsupervised

How Much Should the Fine Be?

- Build in Court costs? Best [redacted] $90 = $64.50 + $25.50 (costs); $160 = $134.50 + $25.50 (costs); $290 = $264.50 + $25.50 (costs)
- Do NOT suspend portions of a fine! If you want to fine $100, just do that, NOT $300 SAB $100
- MDEC: Be mindful of extra burden on your courtroom clerks!
- If trial, can be up to $500
- Bad Behavior penalty? Trial Penalty?

*** Always be mindful of need for fairness & public perception ***

How Much Time to Pay?

- Your discretion, but consider time vs. ability to pay
- Automatic 10 days to pay: TR §27-103
- If citation < $30 → 60 days to pay; cannot refer to CCU
- If citation $30+ → deferred payments will be entered, can refer to CCU
- Payment Plans: $150.00 in fines to enter Payment Plans, 10 installments; Def must plead Guilty and dispo entered as guilty
- If fail to make payments – outstanding $ referred to CCU

16-404.1 (Expanded Noah's Law) — Ignition Interlock

If convicted OR PBJ for 21-902 (a) or (b) or if license is suspended due to the accumulation of points from alcohol-related DUI offenses must also install the device

- MVA requires SHALL be a participant; so best practice is for judges to order it as condition of probation
- Closes the loophole so now anyone convicted of or receiving PBJ for a DUI involving alcohol will be required to install an Ignition Interlock
- 1st offense: min 6M in the IISP; 2nd offense: at least 1Y; 3rd or subsequent: 3Y

Drunk/Impaired Driving — TR §21-902

§21-902(a)(1)(i): Driving Under the Influence: substantial impairment
§21-902(a)(1)(ii): Driving Under the Influence per se: test result of .08 or higher BAC
§21-902(b)(1): Driving While Impaired: some impairment of normal coordination
§21-902(c): Driving While Impaired by drugs or by drugs and alcohol that cannot drive safely
§21-902(d): Driving While Impaired by CDS (marijuana still CDS)

Is it a §21-902(a) or (b)? Balancing BAC and Impairment

v. State, 171 Md. App. 489, 910 A.2d 571 (2006): .08 or higher test result creates a rebuttable presumption that the defendant was .08 or higher at the time of the offense

Criminal Pattern Jury Instruction:

- .07 “may, but are not required to”
- See also: State v. Werkheiser, 299 Md. 529, 474 A.2d 898 (1984)

Breath test of .05 or less: “you must presume the defendant was not under the influence of alcohol and was not impaired by alcohol…”

§21-902(a) DUI and DUI Per Se — Penalties

- The difference is if there is a test: .08+ → per se
- Penalty: 1 Y/ $1,200/ 12 pts (0 pts if PBJ)
- Enhanced Penalty: 2nd Conviction: 2Y/ $2,400; 3rd: 5Y/ $5,000; 4th or more: 10Y/ $10,000
- §21-902(a)(2) If Minor in car: 2Y/ $2,000/ 12 pts (0 pts if PBJ) — Enhanced: 2nd: 3Y/ $3,000; 3rd: 5Y/ $5,000; 4th: 10Y/ $10,000

* Needs to be conviction, not offense, for enhanced (PBJs don't count)

§21-902(b)(1) Driving While Impaired by Alcohol

- Penalty: First offense: 2M/ $500/ 8 pts (0 pts if PBJ)
- Enhanced Penalty: 2nd Conviction: 1Y/ $500; 3rd: 5Y/ $5,000; 4th or more: 10Y/ $10,000
- §21-902(b)(2) If Minor in car: 1Y/ $1,000/ 8 pts (0 pts if PBJ) — Enhanced: 2nd: 2Y/ $2,000; 3rd: 5Y/ $5,000; 4th or more: 10Y/ $10,000

* Needs to be conviction, not offense, for enhanced (PBJs don’t count)

§21-902(c) Impaired by Drugs or Drugs and Alcohol

- How is it charged? Evidence of recent consumption of drugs or admission
- Prescription drugs usually; Expert opinion as to effect on driving
- Penalty: First offense: 2M/ $500/ 8 pts (0 pts if PBJ) — Enhanced: 2nd: 1Y/ $500; 3rd: 5Y/ $5,000; 4th or more: 10Y/ $10,000
- §21-902(c)(2) If Minor in car: 1Y/ $1,000/ 8 pts — Enhanced: 2nd: 2Y/ $2,000; 3rd: 5Y/ $5,000; 4th: 10Y/ $10,000

* Needs to be conviction, not offense, for enhanced (PBJs don't count)

§21-902(d) Impaired by Controlled Dangerous Substance

- Evidence of recent consumption/use of CDS; Admission of CDS Use
- Drug Recognition Expert (DRE) – Your discretion to recognize
- 1 year/ $1,200/ 12 pts — Enhanced: 2nd Conviction: 2Y/ $2,400; 3rd: 5Y/ $5,000; 4th or more: 10Y/ $10,000
- §21-902(d)(2) If Minor in car: 2Y/ $2,000/ 12 pts — Enhanced: 2nd: 3Y/ $3,000; 3rd: 5Y/ $5,000; 4th: 10Y/ $10,000

* Needs to be conviction, not offense, for enhanced (PBJs don’t count)

Have You Been Drinking? Have You Been Using?

- Odor of alcohol beverage or recent drug use on the Def's breath/ person
- Open/ empty alcoholic beverages
- Presence of drugs/paraphernalia (syringes, baggies, empty capsules, Rx bottles)
- Drug residue/ track marks on person
- Blood or breath test; Eyewitnesses; Def's statement/ admission
- Horizontal/Vertical gaze nystagmus; Narcan administered
- Judge "4 Ps"

Probation

A conditional exemption from imprisonment allowed a Defendant by suspension of a sentence
MD Rule 4-346. Probation:

- (a) Manner of imposing. When placing a defendant on probation, the court shall advise the defendant the conditions and duration of probation and the possible consequences of a violation of any of the conditions.
- (b) Modification of probation order. During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration or impose additional conditions.

Criminal Procedure 6-225 — Conditions of Probation

(a) “Custodial confinement” defined – (1) means: (i) home detention; (ii) a corrections options program established under law which requires the individual to participate in home detention, inpatient treatment, or otherwise similar program involving terms and conditions that constitute the equivalent of confinement; or (iii) inpatient drug or alcohol treatment.
(c) Participation in treatment and education programs. If the court places on probation a defendant who has been convicted of a violation of any provision of Title 5 of the Criminal Law Article, the court shall require as a condition that the defendant participate in a drug treatment or education program, approved by the Maryland Department of Health, unless the court finds and states on the record that the interests of the defendant and the public do not require the imposition of this condition.

Additional Conditions & Limits on Probation

The court may add conditions of probation during the probationary period. Addition of conditions does not amount to an increased sentence. Agrabright v. State, 76 Md. App. 706 (1988). Crim. Pro. 6-225
6-222 Limits on Probation After Judgment — (a)(3)(i):
1. 5 years if probation is ordered by a circuit Court; or
2. 3 years if probation is ordered by the District Court; or
(ii) if a defendant convicted of sexual abuse of a minor: 1. 10 years if ordered by a circuit court; or 2. 6 years if ordered by the District Court.
(b) Extension for restitution

Conditions: What Are You Trying to Accomplish?

- Ensure no contact with a state's witness; no return to a location.
- Restitution by a date certain
- Enrollment in a program and active participation in treatment: anger management, domestic violence, parenting, gun safety, GED
- Substance abuse education, counseling, therapy, treatment; Substance use: testing
- Mental health education, counseling, therapy and treatment; Medication compliance

Who best to ensure your goals are met? Counsel; Witness to notify state; Parole & Probation — Must be someone/agency within control, subject to the direction of the court. Specify what information you want brought to your attention and how.

Timeframe: Three Flavors of Probation

- Unsupervised
- Supervised: eighteen months
- Supervised: three years
- Discuss the possibility of early termination if what happens…..

Prerequisites of 8-505(a)(1)

8-505(a)(1): “Before or during a criminal trial, before or after sentencing, or before or during a term of probation, the court may order the Department to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:
(i) It appears to the court that the defendant has an alcohol or drug abuse problem; or
(ii) The defendant alleges an alcohol or drug dependency.
(2) A court shall set and may change the conditions under which an examination is to be conducted under this section.
(3) The Department shall ensure that each evaluation under this section is conducted in accordance with regulations adopted by the Department.”

Prerequisites: 8-507(b)

"Before a court commits a defendant to the Department under this section, the court shall:
(1) Offer the defendant the opportunity to receive treatment;
(2) Obtain the written consent of the defendant: (i) To receive treatment; and (ii) To have information reported back to the court;
(3) Order an evaluation under 8-505;
(4) Consider the report of the defendant's evaluation; and
(5) Find that the treatment that the Department recommends to be appropriate and necessary."

8-507: Actually, Four Possible Tracks

Track 1: Pre-sentence and committed to both MDH (8-507) and the Local Detention Center as a pre-sentence detainee.
Track 2: Pretrial Release Supervision.
Track 3: Post suspended sentence & under probation supervision (not confined) & committed under 8-507 (awaiting actual placement in a residential treatment bed).
Track 4: Defendant sentenced to incarceration, motion for modification of sentence filed; defendant to be committed under 8-507 and to be placed on probation supervision through a modified/ suspended sentence when placement occurs. (Often known as a “springing commitment” because the commitment order is signed but springs into effect when the actual placement in the treatment program occurs.)

Sentencing Alternatives and Problem Drivers

[Add key point]

Sentencing Alternatives and Problem Drivers

[Add first point or comparison item]

[Add second point or comparison item]

Sentencing Alternatives and Problem Drivers

[Add image or record detail]

[Add question or explanation]

[Add question]

A [Option A]	B [Option B]
C [Option C]	D [Option D]
E [Option E]	F [Option F]