

# ADULT DUI CASE GUIDELINES

**FOREWORD:** These guidelines for charging and resolving Adult (22 years old and older) DUI cases utilize objective metrics to promote similar outcomes for similarly situated defendants, while granting the prosecutor discretion to account for litigation risk, docket management, and truly extenuating circumstances.

The guidelines are predicated upon the belief that a system of predictable and proportionate responses to offenses best protect the public and inspire confidence in the fundamental fairness of the criminal justice system.

Although they are essentially objective, these guidelines require a prosecutor to develop significant insight into each defendant's personal experience. Does the defendant have a prior DUI history not immediately apparent from the record check? Despite being charged with DUI #4, has the defendant ever been on probation or risk-reduction furlough? A critical and in-depth personal review of each file by the prosecutor is essential to proper operation of the guidelines and to the exercise of discretion to depart from the default recommendation.

## I. CHARGING

- A. Identify predicate offenses for enhancement:
  - a. If prior DWI / DUI / OUI / DWAI predicate convictions are present (any state), enhance current charge to DUI #2, #3, or #4+.
  - b. If GNO / NO predicate convictions are present (in-state only) consider adding GNO-F
- B. Charge the correct DUI offense level supported by the defendant's record check.
- C. Consider adding charges not referred in affidavit but where supporting facts are present:
  - a. *DLS* if operator is suspended for DUI criminal or civil
  - b. *Negligent Operation* if at-fault for crash (includes most single vehicle crash cases)
  - c. *False Information* if operator denies drinking but evidentiary test result indicates otherwise.

## II. CALCULATE DUI-RELATED HISTORY SCORE

A. For each of the following events arising from a unique arrest, add one point:

- a. *Vermont DUI conviction*, see:
  - i. VCIC record, or
  - ii. Vermont DMV record (DA1, DW1, DA2, DW2, CRI, DA3, DW3)
- b. *Vermont civil suspension for .08 BAC or Refusal*, see:
  - i. Vermont DMV record (CA1, CT1, CA2, CT2, etc.)
- c. *Out-of-state DUI/DWI/OUI/DWAI conviction*, see:
  - i. III criminal history
  - ii. Vermont DMV record (Code A05-A25)
  - iii. Home state DMV record
- d. *Out-of-state civil suspension for .08 BAC or Refusal*, see:
  - i. Home state DMV record
  - ii. Vermont DMV record (Code A05-A25)
- e. *Out-of-state DUI arrest with disposition listed as "CWOFF," "ACD," "ACOD," or "Deferred,"* see:
  - i. MA, CT, ME, NY criminal and motor vehicle checks
- f. *A DUI/DWI/OUI charge amended to another offense*; see:
  - i. III record check
  - ii. VCIC record check
  - iii. Out-of-state DMV check
  - iv. Vermont DMV check (codes: NEG, GN, CN)

### III. DETERMINE APPROPRIATE OFFER

#### A. DUI HISTORY SCORE = 0

- a. *Related-back BAC < .12*: Plead to amended charge of Negligent Operation. \$1000 fine plus surcharges. [The fine amount is **firm.**] Judgment for the operator in the civil suspension.
- b. *Related-back BAC .12-.20, Refusal, Poly-Substance Impairment, DUI-Drugs*: Plead guilty to DUI and pay a fine (\$200-\$700) plus surcharges.
- c. *Related-back BAC > .20 or Extreme DUI-Drug*: offer options for DUI History score 1 (see below at (B)(a) and (B)(b)) OR

provide proof you have completed a substance abuse screening with a LiDAC; then, pay a fine (\$400-\$700) plus surcharges.

d. *Discretionary departures:*

- i. *Why discretionary departure?* There is a substantial risk the State would lose a dispositive pretrial motion hearing or lose a criminal trial. Extreme aggravating factors may also be considered for departure (for instance, driving the wrong way on the interstate).
- ii. *Discretionary amendment options:* Grossly Negligent Operation conviction. Fine of at least \$1500 OR 14-15 days work crew. [The floor for the fine amount and work crew offer are **firm**.]
- iii. *Discretionary departure for DUI Drugs:* Amendment to Negligent Operation or Gross Negligent Operation with 1-12 months, all suspended except 60 consecutive hours (or 3 consecutive days). 2 year term of probation with standard conditions (ABCDEF), and special conditions 4, 5, 7 - drugs, 10 - drugs, 13 (b), 14, 18. Judgment for the State in the civil suspension.
- iv. *Aggravating departure:* In cases with extreme aggravating factors, seriously consider probation sentence akin to having one additional DUI on record, with a split sentence of work crew or to serve term.

**B. DUI HISTORY SCORE = 1** [Avoid amendments to GNO/NO]

- a. *For all BAC values, all provable DUI-Drug, or refusal:* 1-12 months, all suspended except mandatory minimum 60 consecutive hours (or 3 consecutive days). 2 year term of probation with standard conditions (ABCDEF), and special conditions 3 (or 1), 6, 7 - alcohol, 10 - alcohol, 11, 13 (a), 14, 18. Judgment for the State in the civil suspension.
- b. *DUI-Drug:* 1-12 months, all suspended except 60 consecutive hours (or 3 consecutive days). 2 year term of probation with standard conditions (ABCDEF), and special conditions 4, 5, 7 - drugs, 10 - drugs, 13 (b), 14, 18. Judgment for the State in the civil suspension.

c. *Discretionary departures:*

- i. 15 days work crew instead of mandatory minimum prison time. Note: "work crew" is legally "community work service furlough." *Do not agree to "200 hours of community service" because enforcement of this condition is lax.*
- ii. May reduce charge severity (DUI #2 → DUI #1) where appropriate reflection of conduct and circumstances.
- iii. May seek additional probation conditions including curfew if D has a significant criminal history. May convert #3 condition to #1 condition.

C. **DUI HISTORY SCORE = 2** [Avoid amendments to GNO/NO]

a. *Vermont residents:*

- i. 1-2 years, all suspended except 96 consecutive hours to serve. Probation until further order of the court with DUI Treatment Docket Conditions. (These conditions are take-it-or-leave-it. No modifications permitted.) This offer is very time sensitive and should have a clear expiration date for Defense within approximately 45 - 75 days of arraignment.
- ii. 1-3 years PAF, except 96 consecutive hours to be served in prison.
- iii. 5 days – 2 years to serve

b. *Out-of-staters (not eligible for Treatment Docket or PAF).*

- i. 1-2 years, of which the first 15 days shall be served in prison and the balance on probation. 3 year term of probation standard conditions (ABCDEF), and special conditions 3, 6, 7 - alcohol, 10 – alcohol, 11, 13 (a), 14, 18. Judgment for the State in the civil suspension. **(Reminder, to serve portion must be immediately served after COP, before Defendant goes out of state).**

c. *For all:* judgment for the State in the civil suspension.

d. *Discretionary Departures:*

- i. If D has never been on probation before, consider offering a split with probation. They still serve at least 96 hours.

- ii. If D's prior offenses are all old (>10 years), consider a split with probation and less prison time.
- iii. Consider upward departure based upon other criminal history factors
- iv. Consider reducing charge severity from DUI #3 → DUI #2 when mitigating factors are present, or in connection with early resolution involving treatment docket.

**D. DUI HISTORY SCORE = 3 [Avoid amendments to GNO/NO]**

a. *Vermont residents:*

- i. 1-4 years, of which the first 196 hours shall be served in prison, and the balance suspended until further order of the court with the DUI Treatment Docket conditions (these conditions are non-negotiable). This offer expires in 45-75 days.
- ii. 1-4 years to serve, of which the first 196 hours shall be served in prison and the balance on PAF.
- iii. 3 months-4 years to serve.

b. *Out-of-staters:*

- i. 119-120 days to serve.

c. *Discretionary Departures:*

- i. Consider downward departure if D's priors are all old (>10 years).
- ii. Consider upward departure based upon other criminal history factors

**E. DUI HISTORY SCORE= 4 OR HIGHER [Avoid amendments]**

a. *All Defendants:* An appropriate prison sentence.

- b. *Discretionary Departure:* A split sentence with prison (more than mandatory minimum), followed by probation until further order of the Court with all DUI Docket Conditions (these conditions are take-it-or-leave-it). This offer expires in 45 days.

## II. COMMON PITFALLS TO AVOID

- A. Avoid “admit civil, dismiss criminal” resolutions.
- B. Circumnavigating the legislatures intent of a mandatory minimum by agreeing to make the 60/96/126 hours to serve all PAF.
- C. Don’t agree to fines on Negligent Operation or Gross Negligent Operation lower than the floors outlined above. Alternative offer of pleading to the DUI as charged and paying much lower fine is always available.
  - a. Discretionary departure: In cases of Negligent Operation and \$1,000 fine resolutions, you may offer to suspend half of the fine amount if Defendant provides proof to the Court within 180 days that they have completed the Safe Driving Program. That offer as written is:

“Plead guilty amended charge of Negligent Operation and pay a \$1,000 fine, all suspended except \$500 if you provide proof to the Court within 180 days of sentencing that you have completed the Safe Driving Program.”
- D. Again, do not agree to 200 hours of community service. This is the equivalent of 25 days work crew, and is almost never completed, thus thwarting legislative intent. 15 days of PAF work crew is the closest thing to consider.
- E. Be cognizant that adding “SCS” to a sentence will likely reduce supervision to only one year.
- F. Loss of license is a significant penalty for almost every Vermonter and is not to be under appreciated. Unfortunately, it is also a predictable consequence of the decision to drive while impaired by alcohol or drugs. To address this, Vermont now has a Restricted Driver’s License (“RDL”) program that *eliminates* (for most) or significantly reduces the effective suspension term. See 23 V.S.A. §§ 1206, 1208 & 1213. The RDL statutory scheme permits every DUI offender – except those who cause SBI/death or who refuse the evidentiary test – to drive with an ignition interlock without any “hard” suspension period.

### FINAL NOTES:

- These guidelines do not limit your ability to charge additional crimes and seek sentences commensurate for those crimes. For instance: DUI wrong-way driver on the Interstate should also get charged with GNO and receive a commensurate sentence. Come discuss with the SA if you have any questions.
- The world of DUI-Drug and DUI-Poly-Substance is evolving quickly. These guidelines were developed primarily with alcohol in mind. Determining the

strength of a DUI-Drug case will entail watching the video (for gross impairment), speaking with your *expert* witness (usually DRE), and identifying whether quantitative scientific evidence is available, helpful, and affordable for the State.