# CHAPTER 1. THE OFFENSE

§ 1:1	Alabama DUI law
§ 1:2	Actual physical control
§ 1:3	Vehicle defined
§ 1:4	Per se violation; .08% BAC or greater
§ 1:5	Under the influence of alcohol
§ 1:6	Under the influence of a controlled substance
§ 1:7	Driving under the influence of marijuana
§ 1:8	Under the combined influence of alcohol and a controlled substance
§ 1:9	Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving
§ 1:10	Underage DUI
§ 1:11	Underage over .02% BAC charge
§ 1:12	Underage first offense BAC between .02 and .08%
§ 1:13	Underage BAC over .08%
§ 1:14	Underage multiple offender
§ 1:15	Underage no BAC/refusal
§ 1:16	Youthful Offender Act
§ 1:17	Illegal consumption
§ 1:18	School bus or day care driver
§ 1:19	Commercial vehicle
§ 1:20	Statutory sentencing guidelines
§ 1:21	Ignition interlock devices
§ 1:22	Murder, manslaughter and homicide
§ 1:23	Boating under the influence § 32-5A-191.3
§ 1:24	Public intoxication

Appendix 1A. A Historical Perspective of Alabama's D.U.I. Laws

Appendix 1B. Marijuana / THC and DUI: what does the research show?

# CHAPTER 2. COURT JURISDICTION AND VENUE

A T71 1 4	VERTOE		
§ 2:1	Generally		
§ 2:2	State of Alabama court system—The Judicial Article		
§ 2:3	DUI jurisdiction—Misdemeanor DUI		
$\S~2:4$	Police jurisdiction arrests		
$\S 2:5$	Special constitutional provisions		
§ 2:6	Section 89, Ala Const 1901		
§ 2:7	Municipal ordinances—Inclusion of a felony		
§ 2:8	Felony DUI		

	ALADE
§ 2:9	Federal DUI
§ 2:10	Native American reservations
§ 2:11	Venue—Proof of venue is jurisdictional
§ 2:12	Jurisdiction over criminal proceedings
§ 2:13	More than one county
$\S 2:14$	Transmission of records from district to circuit court
§ 2:15	The 2016 Woods case
§ 2:16	Waiver of right to counsel
СНА	PTER 3. DRIVER'S LICENSE SUS
§ 3:1	Generally

# **SPENSIONS**

§ 3:1	Generally
§ 3:2	ALEA and DPS
§ 3:3	Implied consent
§ 3:4	Per se suspension (over .08)
§ 3:5	Refusals
§ 3:6	The administrative suspension process
§ 3:7	Period of suspension
§ 3:8	Administrative review
§ 3:9	Administrative hearing
§ 3:10	Judicial review
§ 3:11	Stay orders
§ 3:12	Subsection "Q" appeals § 32-5A-195(q)
§ 3:13	DUI controlled substances
§ 3:14	Suspension for points accumulation
§ 3:15	Other driver's license suspensions—Fleeing and eluding
§ 3:16	—Leaving the scene of an accident
§ 3:17	—Commission of a felony
§ 3:18	Cancellation, suspension, or revocation under § 32-5A-195
§ 3:19	Commercial driver's license issues
§ 3:20	The AST-60
§ 3:21	Letter requesting administrative review of suspension order
§ 3:22	Petition requesting a stay of suspension order
§ 3:23	Petition for Judicial Review of Suspension of Operator's Privilege
§ 3:24	Request for an administrative hearing
§ 3:25	Subpoena

# CHAPTER 4. THE "STOP", REASONABLE SUSPICION, AND THE FOURTH AMENDMENT

A petition for points-based review of license suspension order

Delay by court to send record of conviction for DL suspension

§ 4:1 Reasonable suspicion and the Fourth Amendment

Results of administrative review letter

Petition for judicial review of suspension order

§ 4:2 —Routine traffic stop

Pilot Licenses

Welch hearings

§ 3:26

§ 3:27

§ 3:28

§ 3:29

§ 3:30

§ 3:31

§ 4:3 National Highway Traffic Safety Administration (NHTSA) guidelines on detection of DUI offenders at night § 4:4 Speeding § 4:5 —Determination of speed by pace § 4:6 —Determination of speed by radar § 4:7 Weaving/improper lane usage § 4:8 Running a red light § 4:9 High-crime area § 4:10 Pretextual stop § 4:11 Investigatory stop § 4:12 Mistake of law/fact § 4:13 Community caretaking function § 4:14 Sleeping in car § 4:15 Urinating beside the vehicle Stopped vehicle § 4:16 § 4:17 Improperly parked car on highway § 4:18 Approaching a stopped vehicle § 4:19 Ordering persons out of the car § 4:20 Ordinance parking in violation § 4:21 Disabled vehicles § 4:22 Prohibited stopping § 4:23 Failure to use turn signal § 4:24 Driving too slow Failure to wear a seatbelt § 4:25 § 4:26 Accidents § 4:27 Actual physical control § 4:28 At the scene exception to § 32-5-171 Accident report privilege § 4:29 § 4:30 Corpus delicti § 4:31 Traffic control devices § 4:32 Stop bar Uniform traffic control device manuals § 4:33 Tipster cases—Anonymous tipsters § 4:34 § 4:35 —Citizen tipsters § 4:36 Police tipsters/fellow officer rule § 4:37 Roadblocks—Constitutionality, generally —U.S. Supreme Court cases § 4:38 § 4:39 —Alabama cases Avoiding roadblocks and reasonable suspicion § 4:40 § 4:41 Headlights and tail lights § 4:42 Windshield obstruction § 4:43 Prolonging the stop § 4:44 Probable cause to stop a vehicle Flashing lights or sirens § 4:45 § 4:46 Warrantless blood test § 4:47 Cell phone search—Riley v. California § 4:48 Leaving a "drug house" § 4:49 Alabama's "meth lab" warrant exception

§ 4:50 Flashing lights
§ 4:51 Tailgating by police
§ 4:52 Post-stop discovery of arrest warrant
§ 4:53 Pulling into a closed business parking lot
§ 4:54 Texting while driving

Crossing a solid white line

# CHAPTER 5. ARREST AND PROBABLE CAUSE

§ 5:1	Arrests generally
§ 5:2	Reasonable suspicion and probable cause

- § 5:3 Constitutional provisions
- $\S~5:4$  Arrest outside jurisdiction
- § 5:5 Warrantless arrests

§ 4:55

- § 5:6 Arrests with a warrant
- § 5:7 Municipal Court Arrest §§ 12-14-4, 12-14-32
- § 5:8 Traffic code arrest
- § 5:9 Officers authorized
- § 5:10 University police officers
- § 5:11 Arrests by private citizens
- § 5:12 Fresh pursuit rule
- § 5:13 Fellow officer rule
- § 5:14 Arrest and the Fifth Amendment—Miranda
- § 5:15 Consequences of illegal arrest
- § 5:16 Arrest outside jurisdiction
- § 5:17 Excessive force
- § 5:18 Search incident to roadside encounter—Gant rule
- § 5:19 Commingled Miranda Doctrine
- § 5:20 Odor of alcohol
- § 5:21 The "green tongue" and marijuana
- § 5:22 What constitutes an arrest?

# CHAPTER 6. FIELD SOBRIETY TESTING

- § 6:1 Field sobriety testing—Generally
- § 6:2 The standardized field sobriety tests
- § 6:3 The 1977 NHTSA study
- § 6:4 The 1981 study
- § 6:5 1983 NHTSA study
- § 6:6 NHTSA "validation" studies
- § 6:7 —The Colorado validation study: "A Colorado Validation Study of the Standardized Field Sobriety Test (SFST) Battery"
- § 6:8 —San Diego, California, validation study: "Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent"
- § 6:9 —The Florida validation study: "A Florida Validation Study of the Standardized Field Sobriety (S.F.S.T.) Battery"
- § 6:10 —Discussion of validation studies
- § 6:11 The NHTSA manuals
- § 6:12 NHTSA Student Manual/Participant Guide/Participant Manual on SFST

§ 6:13	Sessio	n VIII/8 of the NHTSA student manual
§ 6:14	Horizo	ontal Gaze Nystagmus Test
§ 6:15	Walk a	and turn
§ 6:16	One le	eg stand
§ 6:17	NHTS	A student manual changes to session VIII/8
§ 6:18		O13 NHTSA Participant Guide: lowering the standard in lardized testing
§ 6:19	_	nd SFSTs
§ 6:20		015 and 2018 NHTSA Participant Manual
§ 6:21		ma case law on field sobriety tests
§ 6:22		roadside tests
§ 6:23	ABCs	
§ 6:24		backwards
§ 6:25	_	count
§ 6:26	_	to nose
§ 6:27		g of FSTs
§ 6:28		eld sobriety tests a search?
§ 6:29		ents and field sobriety tests
§ 6:30		al of field sobriety tests
§ 6:31		rugs and testing
§ 6:32		nana and field sobriety testing
§ 6:33	Fear a	and field sobriety
Appendi	ix 6A.	Session VIII of the 1992 Student Manual
Appendi	ix 6B.	DWI Detection and Standardized Field Sobriety Testing (SFST) Participant Manual Table of Contents
Appendi	ix 6C.	DWI Detection and Standardized Field Sobriety Testing (SFST) Participant Manual
Appendi	ix 6D.	Burns Field Sobriety Test Testimony
Appendi	ix 6E.	Participating States in DRE Program
Appendi	ix 6F.	Brightful, et. al. (DRE Opinion)
Appendi	ix 6G.	A.R.I.D.E. Drug Class Matrix
Appendi	ix 6H.	2018 Walk and Turn and One Leg Stand Instructions and Clues
Appendi	ix 6I.	2015 NHTSA DUI/SFST Training Curriculum Changes—Impaired Driving Specialists, LLC
Appendi	ix 6J.	Just How Robust is the Horizontal Gaze Nystagmus Test?
Annendi	x 6K	THC Michigan Pilot Study on THC Roadside Analysis

# CHAPTER 7. IMPLIED CONSENT AND PREALCOHOL-TEST ISSUES

- $\S 7:1$  Generally  $\S 32-5-192$
- § 7:2 Serious physical injury or death
- § 7:3 Public road
- § 7:4 Driving vs. actual physical control
- § 7:5 Lawful arrest required

§ 7:6	Implied consent and administrative driver's license
	suspensions
§ 7:7	Right to independent blood alcohol test
§ 7:8	Deprivation/observation period
§ 7:9	Police officer giving legal advice
§ 7:10	Implied consent being read too fast
§ 7:11	Defendant given wrong information
§ 7:12	Impact of <i>McNeely</i> on constitutionality of implied consent
§ 7:13	Exigency
§ 7:14	Blood test refusal

# CHAPTER 8. BREATH ALCOHOL TESTING

CIII	TER 6. DIEZITITZECONOE TESTIN
§ 8:1	Generally
§ 8:2	Absorption, distribution, and elimination
§ 8:3	Breath alcohol-testing principles
§ 8:4	—Henry's law of gases
§ 8:5	—Law of absorption—Beer-Lambert law
§ 8:6	—Electrochemical fuel cell
§ 8:7	—Nonspecificity
§ 8:8	The history and legislative purpose of the Department of Forensic Sciences
§ 8:9	Ex parte Marvin Mayo and the statutory predicate
§ 8:10	The search for a new device following Ex Parte Mayo
§ 8:11	DFS vs. John Randall Isbell
§ 8:12	Public Records Act Ala. Code 1975 § 36-12-40
§ 8:13	The Draeger 7110 MKIII-C
§ 8:14	Intoximeter DMT-Duel Sensor
§ 8:15	Defense issues—Specificity
§ 8:16	Mouth alcohol
§ 8:17	Rising blood alcohol
§ 8:18	Contaminated sample
§ 8:19	Gastric esophageal reflux disease (G.E.R.D.)
§ 8:20	Tyndall effect
§ 8:21	Linearity
§ 8:22	Radio frequency interference (RFI)
§ 8:23	Source code
§ 8:24	—What is source code?
§ 8:25	—Source code sources
§ 8:26	—Two types of source code providers
§ 8:27	—States of source code litigation
§ 8:28	—Government issues about production
§ 8:29	—Types of source code defects
§ 8:30	Something wrong here
§ 8:31	DFS "Rules" for breath testing
§ 8:32	Asthma inhalers
§ 8:33	Alco-Sensor preliminary breath test inadmissible to show intoxication
§ 8:34	Right to independent test

### § 8:35 Retrograde extrapolation

### CHAPTER 9. CHARGING INSTRUMENTS

- § 9:1 Uniform traffic ticket and complaint
- § 9:2 Improperly verified UTTC
- § 9:3 Alternative methods of charging the same offense
- § 9:4 Failure to state a cause of action
- § 9:5 Proceedings
- § 9:6 Indictments and information
- § 9:7 Warrants
- § 9:8 Interpreting a municipal ordinance
- § 9:9 Defective charging instrument—Procedure
- § 9:10 Charging instrument—De novo appeal to circuit court

# CHAPTER 10. LAW OFFICE MANAGEMENT AND TECHNOLOGY

- § 10:1 Introduction
- § 10:2 Hiring employees
- § 10:3 Effective use of resumes for screening candidates
- § 10:4 Office interviews: "The Family Approach"
- § 10:5 New employees: Qualifying tests
- § 10:6 What to pay new employees
- § 10:7 Creating job descriptions
- § 10:8 Employee training
- § 10:9 The "Employee Handbook" for small firms
- § 10:10 Law office finances: Attorney and client
- § 10:11 The client file
- § 10:12 Client communications: Time line letters
- § 10:13 Advising the client about discovery procedures
- § 10:14 Advising the client about the need for a private investigator
- § 10:15 Suspension letters received by the client from the licensing authority
- § 10:16 Administrative suspension hearing
- § 10:17 Explain operation of court system to client
- § 10:18 Client intake questionnaires
- § 10:19 A "Good Points/Bad Points" form
- § 10:20 Pretrial letters
- § 10:21 Case management
- § 10:22 Plea advice and consent form
- § 10:23 Case disposition form
- § 10:24 Video analysis form
- § 10:25 Expert witnesses
- § 10:26 Witness questionnaires
- § 10:27 Ideas for the small law office
- § 10:28 Telephone system
- § 10:29 Attorney documents
- § 10:30 Office calendars
- § 10:31 End of the year project time

§ 10:32	Court locations
§ 10:33	Attorney's documents as regular business records
§ 10:34	Client notice letters
§ 10:35	Conclusion: The attorney's transition plan
§ 10:36	Employee handbook
§ 10:37	Contract
§ 10:38	Promissory note
§ 10:39	Credit card authorization
§ 10:40	Time sequence letter
§ 10:41	Investigations
$\S 10:42$	Client intake questionnaire
§ 10:43	Good points/bad points
§ 10:44	Pretrial letter
§ 10:45	Case management
§ 10:46	Plea advice and consent form
§ 10:47	Case disposition
§ 10:48	Video analysis
§ 10:49	Expert witness questionnaire
§ 10:50	Continuous references
CHAP	TER 11. DISCOVERY
	T

_	
§ 11:1	Discovery, generally
§ 11:2	Constitutional right to discovery—The Brady rule: relief of
	favorable evidence suppressed
§ 11:3	—The <i>Kyles</i> rule: imputed knowledge
§ 11:4	Alabama public records
§ 11:5	Breath testing records
§ 11:6	DUI statutory request, § 32-5A-194(a)(4)
§ 11:7	Production of substance for independent testing
§ 11:8	Local rule(s)
§ 11:9	Protective orders and conditions of discovery
§ 11:10	Relief for noncompliance Rule 16.5 ARCrP
§ 11:11	Depositions
§ 11:12	Subpoenas—Rule 17 ARCrP
§ 11:13	Access to witnesses
§ 11:14	Discovery by the prosecution
§ 11:15	Sample motion for discovery—Field sobriety tests
§ 11:16	—Breath test
§ 11:17	Sample request for discovery
§ 11:18	Another sample request for discovery
§ 11:19	Sample request for recording
§ 11:20	Sample motion to dismiss uniform traffic complaint
§ 11:21	Sample Draeger request
§ 11:22	Sample motion for Draeger logbook
§ 11:23	Sample motion for production of source code
§ 11:24	Sample motion for discovery–Mug shot

# **CHAPTER 12. PRETRIAL MOTIONS**

Motion practice—General requirements Rule 34.1 to 34.5 ARCrP  $\,$ § 12:1

§ 12:2	Motions to suppress (Rule 3.13 ARCrP, Rule 15.6 (a), ARCrP)
§ 12:3	Motions to suppress—Burden of proof
§ 12:4	—Effect of granting (Rule 15.6 (d), ARCrP)
§ 12:5	Objections and defenses required by pretrial motion (Rule 15.2, ARCrP)
§ 12:6	Time of making motions under rule 15.2, ARCrP
§ 12:7	Applicability of the Alabama Rules of Evidence to motion hearings (Rules 1101 and 104 A.R.E.)
§ 12:8	DUI issues to address by pretrial motions
§ 12:9	Statements
§ 12:10	Recordings
§ 12:11	Chemical tests
§ 12:12	Sample motion to suppress
§ 12:13	—First sample
§ 12:14	—Second sample
§ 12:15	Motion to suppress/limine
§ 12:16	—Field sobriety testing
§ 12:17	—AlcoSensor and HGN
§ 12:18	—Third sample
§ 12:19	Sample motion index

# CHAPTER 13. THE TRIAL

§ 13:1 The trial de novo system § 13:2 Jury trial § 13:3 Selection of the jury in a DUI case § 13:4 —Initial considerations § 13:5 —Number of jurors § 13:6 -Know the process § 13:7 —General considerations and purposes for voir dire Getting to know the jury § 13:8 § 13:9 Relaxing the jury § 13:10 Overcoming "lawyer credibility" Education § 13:11 Introducing the "theme" § 13:12 § 13:13 Preparation for voir dire § 13:14 Juror dress and appearance § 13:15 Juror profile Jury selection § 13:16 § 13:17 Challenge for cause Peremptory challenge § 13:18 § 13:19 Batson challenge § 13:20 Juror questionnaire § 13:21 Procedure for selection § 13:22 Opening statement (Rule 19.1, ARCrP) § 13:23 Cross-examination in general § 13:24 Motion for judgment of acquittal (Rule 20, ARCrP) § 13:25 Questions from judge (Rule 19.2, ARCrP) § 13:26 Questions by the jury

§ 13:27 The defense presentation § 13:28 Taking the "Fifth" § 13:29 Demonstrative evidence § 13:30 Closing argument § 13:31 —Objections for improper argument § 13:32 Pattern jury instructions Mandatory rebuttable presumption § 13:33 § 13:34 Adverse inference rule Requested jury instructions § 13:35 § 13:36 Jury questionnaires § 13:37 Preservation of error Prosecutorial misconduct § 13:38 § 13:39 Recusal

Appendix 13A. Anatomy of a Not Guilty Verdict

# **CHAPTER 14. EVIDENTIARY ISSUES**

§ 14:1	Generally: Alabama Rules of Evidence—Applicability
3 14:2	Character evidence
§ 14:3	Prior bad acts (Rule 404 (b))
§ 14:4	—Prosecution required to give notice
3 14:5	—Defense objection to adverse ruling based on 404(b)
3 14:6	Habit
3 14:7	Hearsay
3 14:8	Recordings—Predicate
3 14:9	Opinion evidence
3 14:10	Proof of municipal ordinances
3 14:11	Municipal ordinances: rules on proper passage
3 14:12	Right to record proceedings
3 14:13	Sturgeon rule of exclusion
3 14:14	Field-sobriety tests—General
3 14:15	—Predicate
3 14:16	—Pass/fail
3 14:17	—Horizontal gaze nystagmus (HGN)
3 14:18	—Alco-Sensor
3 14:19	Completeness doctrine
3 14:20	Preservation of evidence doctrine
3 14:21	Confrontation clause
14:22	Controlled substance
14:23	Breath test certificate of analysis
14:24	Expert and opinion testimony
14:25	Video admissibility
14:26	Destruction of video
314:27	Destruction of video and burden shifting
3 14:28	Lost video
3 14:29	Admitting driving record to prove driver's license status
14:30	Admissibility of computer printout
14:31	Refreshing memory
3 14:32	Polygraph

§ 14:33	Prosecutor vouching for credibility of witness prohibited
§ 14:34	Corpus delicti
§ 14:35	Motion to preserve blood sample
§ 14:36	Motion for protective order
§ 14:37	Witness sequestration
§ 14:38	Guilty plea in lower court admissible in de novo trial before circuit court
§ 14:39	Opinion of the ultimate issue in the case
§ 14:40	Refusal of the breath test charge to the jury limited

# CHAPTER 15. SPECIAL DEFENSES

- § 15:1 Generally
- § 15:2 Necessity
- § 15:3 Entrapment
- § 15:4 Involuntary intoxication
- § 15:5 Automatism
- § 15:6 Double jeopardy

# CHAPTER 16. SENTENCING

- § 16:1 DUI Sentencing per § 32-5A-191
- § 16:2 Sentence enhancement vs. element of the crime
- § 16:3 Sentence enhancement using prior DUI convictions
- § 16:4 Out-of-state convictions
- § 16:5 Municipal DUI convictions
- § 16:6 Five, ten years' look-back or lifetime
- § 16:7 Rule of lenity
- § 16:8 Guilty pleas
- § 16:9 Plea agreements—Enforceability
- § 16:10 Probation
- § 16:11 —Modifying or clarifying conditions
- § 16:12 —Continuing, extending or terminating
- § 16:13 Probation revocation proceedings
- § 16:14 —Due process and right to counsel
- § 16:15 —Admission by the probationer
- § 16:16 —Hearsay evidence
- § 16:17 —Mere arrest for new offense insufficient
- § 16:18 —Prior acts
- § 16:19 —Written order required
- § 16:20 —Preservation principles in revocation appeals
- § 16:21 —Probationer's acceptance or rejection
- § 16:22 —Appeals from adverse rulings

### CHAPTER 17. POSTTRIAL MOTIONS

- § 17:1 In general
- § 17:2 Motions for new trial (Rule 24, ARCrP)
- § 17:3 Motion in arrest of judgment (Rule 24.2, ARCrP)
- § 17:4 Effect on time for appeal in district and municipal courts (Rule 24.5, ARCrP)

- § 17:5 Motions to set aside guilty pleas
- § 17:6 Rule 32 motions (Rule 32, ARCrP)
- § 17:7 Pardons

# CHAPTER 18. CIVIL LIABILITY FOR FURNISHING ALCOHOL

- § 18:1 Civil liability under the common law
- § 18:2 The Dram Shop Act
- § 18:3 Furnishing Alcohol to Minors
- § 18:4 Social host liability

# CHAPTER 19. EXPUNGEMENT

- § 19:1 Generally: Alabama's expungement law
- § 19:2 Dispositions eligible for expungement
- § 19:3 Charges eligible for expungement
- § 19:4 Jurisdiction and filing the petition
- § 19:5 Service of petition and time for objection thereto
- § 19:6 Ruling on petition without hearing
- § 19:7 Hearing and evidence considered
- § 19:8 Discretion of the judge
- § 19:9 Order of expungement
- § 19:10 Scope of expungement
- § 19:11 Liability and immunity for disclosure of expunged record
- § 19:12 What happens to expunged records?
- § 19:13 Filing under false pretenses
- § 19:14 Appellate review

Appendix 19A. Ala. Act 2017-277 Expungement Statute Amended

# CHAPTER 20. JUVENILE DUI

- § 20:1 Juvenile delinquency cases, generally
- § 20:2 Delinquent Act
- § 20:3 Initiation of juvenile proceedings
- § 20:4 The UTTC in Juvenile Court
- § 20:5 Informal adjustment
- § 20:6 Judicial conference committees
- § 20:7 Consent decrees
- § 20:8 Adjudicatory hearings
- § 20:9 Dispositional hearings
- § 20:10 Rights of the juvenile
- § 20:11 Benefits of the Juvenile Court system
- § 20:12 Appealing Juvenile Court decisions

### Table of Laws and Rules

#### **Table of Cases**