

COMMON MISDEMEANOR CASES

1. POM II

- a. If client pleads guilty, next arrest for POM II can be a felony
- b. Amend to PDP – no CRO – advise on ephedrine list
- c. Diversion
- d. Modified Diversion – drug awareness class + CC = NP
- e. Don't forget about YO

2. Domestic Violence

- a. Convictions
 - i. 1st Conviction = Class A Misd
 1. if violated a protection order = 30 days
 - ii. 2nd Conviction = Class A Misd = 10 days
 - iii. 3rd Convictions = Class C felony
 - iv. Prior DV 1st, DV 2nd, DV Strangulation/Suffocation – Class C Felony
- b. Conviction equals loss of gun rights
- c. Stigma attached to DV conviction
- d. Strategies:
 - i. See if victim will call prosecutor/sign an affidavit
 - ii. Anger management and/or family counseling
 - iii. Amend charge to non DV assault
 - iv. Diversion

3. Pistol Without A Permit

- a. Conviction
 - i. probably not going to be able to get a permit after
 - ii. Federal Considerations
 1. Prior Felony Convictions
 2. Prior DV Convictions
 3. Violated a Protection Order
- b. Strategies:
 - i. Get ADA to do a conditional NP – get permit in 30 days = full NP
 - ii. Court costs and forfeit the weapon
 - iii. Take a gun safety class (Larry's, Last Resort Gun)

4. TOP 4th

- a. Check to see if it's a business or individual
- b. Did they get the property back?
 - i. Yes – NP on court costs, modified diversion (theft awareness class)
 - ii. NO – NP on restitution and costs, Diversion
- c. If victim is a business
 - i. call to see if loss prevention office is still working there
 - ii. get video
 - iii. is the LP Officer in court, the one that actually saw Def. take item?
 - iv. Did they pass points of sale?

5. DUI

- a. Get the video, car and body cam
 - i. City will give video at CC level, fill out form
 - ii. Look for other Officers of scene, different perspective
- b. Check to see if officer doing SFST's is the Officer that made the stop
 1. they have to establish PC/RS for stop
- c. Check to see if Officer giving breath test is same as arresting Officer
- d. Check Times (incident, stop, arrest, breath test, blood test)
- e. SFST's
 - i. Walk and Turn – 2 clues equals impairment
 - ii. One Leg Stand – 2 clues equals impairment
 - iii. Nystagmus – doesn't come in at court
 - iv. Must be standardized – done the same way each time
 1. did they ask about health issues?
 2. did they give clear and complete instructions?
 3. did they demonstrate the test?
 4. what were weather and ground conditions?
 5. what is age of defendant?
 6. what is the defendant's weight?
 7. .05 BAC or less, presumed not intoxicated
 8. NHTSA – manuals online
- f. Convictions
 - i. 1st = \$600 fine minimum + 90 days license suspension
 - ii. 2nd = \$1,100 fine minimum + 5 days in jail (mandatory) + 1 yr suspension + interlock for 2 years after mandatory 45 day suspension
 - iii. 3rd = \$2,100 fine minimum + 60 days in jail (mandatory) + 3 yr revocation + interlock for 3 years after mandatory 60 day suspension
 - iv. 4th = Class C Felony + \$4,100 minimum fine + mandatory 10 days in jail + 5 yr revocation + interlock for 4 years after mandatory 1 year suspension

- g. Diversion
 - i. City - .15 or below – look at PBT v. Breath Test

- 6. City Appeals
 - i. 14 days to get paperwork stamped in by CC
 - ii. Look at dates on appeal paperwork and CC stamp
 - iii. If after 14 days, CC has no jurisdiction

- 7. Miscellaneous
 - i. Don't accept first offer 180 suspended for 2 years
 - ii. Try to get days and/or probation reduced
 - 1. probably going to save your client in the future
 - iii. Jail in lieu of probation
 - 1. one/two weeks for no probation
 - 2. serve of weekends