

# DUI

## DEFENSE CHECKLIST



**Make Sure You Know What To Do...**

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Make Sure You Know What To Do

*By Manuel J. Barba,  
DUI Defense Attorney*

## DISCLAIMER

This publication is informational only. No legal advice is being given, and reading this material creates no attorney-client relationship. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to have your questions answered.

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## Forward

Over the past 20 years of my practice, I have represented people in literally thousands of DUI cases. Moreover, I have had brief consultations with many many people who had been arrested and accused of DUI, but were being represented by another attorney. In short, these people were not confident in what their current attorney was doing for them and wanted me to give them my opinion on how their case was being defended.

Essentially I told all of those people the same thing I tell people today - there is no way I can evaluate their case and give them an opinion on the defense of it, unless I see all of the evidence related to their case.

The problem: these people didn't have the evidence, and they didn't even know if their current attorney had the evidence. The bottom line is this: unless they were willing to hire me to replace their current attorney, I would not be able to access all of the evidence that was needed.

So I decided to write *DUI Defense Checklist* so that the person arrested for DUI has a basic understanding of how a DUI arrest occurs, and what evidence is needed to properly defend their case. *DUI Defense Checklist* is a road map giving the reader a basic understanding of what should be happening regarding the defense of their case.

*DUI Defense Checklist* is not intended to be an exhaustive treatise on defending a DUI case. *DUI Defense Checklist* is written for the non-attorney individual that got arrested for a DUI, or someone interested in the basics of how DUI cases are defended. Although *DUI Defense Checklist* is not written for lawyers, a lawyer can use it as a road map in defending a DUI case.

My goal of writing this book is to help the person that got arrested for a DUI find his/her way through the defense process, and to be able to have a conversation with their lawyer about what is being done to defend their DUI case.

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# DUI Defense Checklist

## A DUI can happen to anyone.

A DUI arrest can happen to anyone. Thousands of people are arrested for DUI each month throughout the State of California. Although each DUI arrest is unique in its specific details and circumstances, the following is a typical DUI arrest scenario. Note that men and women are equally arrested for DUI every day. The use of the pronouns 'he/him/his' below are used for writing clarity, however they refer to all genders.

## Drinking, Smoking, Eating, etc.

A driver is out with friends for dinner and drinks, or perhaps at a party, or a family celebration. While out he drinks some alcoholic beverages; or perhaps he smokes some marijuana; or takes some other medication/drugs, and then he decides to drive his car home.

## Vehicle in Motion

In most cases, a law enforcement officer is on patrol and he observes something unusual about another car as it is being driven on the roadway.

As a result of that initial observation, the officer now maintains his focus on the suspected car, watching it more closely. The officer is now looking for signs that the driver of the car may be under the influence of alcohol and/or drugs. Note that term 'drugs' includes marijuana, prescribed medication, or narcotics.

The officer is looking to see if the car is weaving, straddling the lane lines, or simply failing to drive straight within its lane. These are just some clues that the driver may be under the influence. The officer has to make a decision- to stop the car for further investigation, or let the car continue on its way.

Based on the clues that the officer observes while the suspect car is driving on the roadway, the officer may develop a suspicion that the driver may be "under the influence" and decides to stop the car for further investigation. The officer then turns on his red lights, thus commanding the driver of the suspect car to stop.

## Stopping Sequence

Once the red lights on the patrol car come on, the officer continues to observe the suspect car to see how the driver reacts to the officer's red lights. By doing so, the officer may gather additional clues that the driver may be under the influence of alcohol and/or drugs. The officer continues to observe the suspect car until it comes to a complete stop.

## Personal Contact

After the suspect car has come to a complete stop, the officer usually parks the patrol car directly behind the suspect car. The officer then gets out of his patrol car and walks up to the driver window of the suspect car to make contact with the driver. The officer talks with the driver and checks his driver license, car registration, and proof of insurance.

However, at the same time, the officer is observing the driver closely to see if the driver exhibits any signs of impairment during this contact, such as fumbling for the requested documents, slurring of the speech, or an odor of alcohol, etc. Based on what he observes, the officer must now decide whether to allow the driver to continue on his way or instruct the driver to get out of his car for further investigation.

## Exit Sequence

Based on his observations, the officer may ask the driver to get out of his car and walk to the shoulder of the roadway or sidewalk. As the driver gets out of the car, the officer observes how the driver exits the car and how he walks to the side of the road. Again, the officer is looking for additional signs that the driver is under the influence of alcohol and/or drugs.

## Roadside Screening

Once on the sidewalk the officer will ask the driver a series of questions. These questions are designed to gather information about the driver and to possibly build a DUI case; the questioning is also used to make further observations of the driver. The officer is looking to see if the driver understands the questions, and does he answer them appropriately.

The officer is also looking to see if the driver is swaying as he is standing, or slurring his words, or having difficulty focusing on the questions. The officer will ask questions like where the driver coming from, where is he going, what alcohol he has consumed, what drugs has he consumed, when did he last eat, when did he last sleep, etc., etc., etc.

The officer will then likely ask the driver to perform field sobriety tests. These tests are tools to help the officer determine if the driver is under the influence of alcohol and/or drugs. These roadside physical tests are voluntary, but most drivers usually agree to do them thinking that he should cooperate with the officer's investigation.

While administering the field sobriety tests, the officer is looking for specific clues that may help determine if the driver has alcohol in his system or is under the influence of alcohol and/or a drug. The officer never tells the driver what clues he is looking for, so the driver has no idea what the officer is looking for.

## **Preliminary Breath Test**

The officer may request that the driver blow into a handheld preliminary alcohol breath test machine (PAS), to help the officer determine the driver's alcohol level. If the driver does blow and the result is .08% or higher, then the officer will arrest the person for driving with an illegal level of alcohol.

Even if the breath test result is less than .08%, the officer can still arrest the driver if the officer believes that the driver is under the influence of alcohol or drugs. In other words, a person can blow a .06% and still be arrested, so the PAS level is only one factor that the officer considers.

If the driver declines to blow into the PAS breath test machine, the officer may still arrest the person for driving while under the influence of alcohol and/or drugs based on all of the things the officer has previously observed, starting back when the officer first saw the car driving on the roadway, up to the present.



## Evidential Chemical Test

After the officer arrests the driver, the officer will advise the driver that he must now submit to a chemical test of the driver's choice - either a breath test or a blood test. If the driver chooses a breath test, the officer will then administer an evidential breath test at the scene or at the jail. If the driver chooses a blood test, the officer will call for a phlebotomist to meet the officer, usually at the jail, and then a blood sample will be drawn from the driver's arm. In some jurisdictions, the officer will take the driver to a hospital and have a nurse draw the blood sample.

If the driver refuses to complete a chemical test, the officer will then apply for a search warrant by completing a declaration and submitting it to an on-duty judge electronically. The judge will review the warrant application and will likely issue the warrant.

Armed with a search warrant, the officer will now get the blood sample from the driver, even if that means that the driver must be held down by several officer's during the blood draw.

After a blood sample is drawn, the phlebotomist or nurse will initial the vial, place it in an envelope, seal the envelope, and give the envelope to the officer. The officer will likely deposit the envelope into an evidence locker. Eventually the envelope containing the blood sample will be delivered to a crime laboratory for processing to determine the driver's alcohol concentration or drug levels.

## Required Notices

After the arrest, the officer will confiscate the driver's license to drive and issue the driver a DMV Order of Suspension/ Temporary Driver License (pink document) advising the driver that his license will be suspended in 30 days and that he has 10 days to request a hearing with the DMV to contest the suspension.

The officer will also issue the driver a notice to appear in court on a specific date.

## Prosecution

The officer will then prepare an arrest report summarizing the basis for the arrest and send it to the district attorney's office, and a copy to the DMV. The district attorney will review the report and determine whether enough evidence exists to prosecute the driver for violating the law. The DMV will review the report and determine if suspension of the driver license is justified.

And now, the driver is put in a position where he must defend himself against the charges that will be filed in court by the district attorney, as well as contest the driver license suspension action at the DMV.

## *The Defense Checklist:*

Each one of the above segments of the DUI investigation and arrest must be examined carefully to determine the facts, determine a timeline, and evaluate the strength of the evidence supporting the elements of the government's charges.

Also, potential defenses must also be determined and developed. Keep in mind that not all of the questions below are relevant in every case, but it is a starting point to discovering issues that may lead to problems with the government's evidence, as well as viable defenses to the charges.

## *Drinking, Smoking, Eating, Drug Checklist:*

Developing the driver's drinking pattern is essential; it must include a timeline of when the alcohol was consumed, what alcohol was consumed, and when the last meal occurred. The same is true for drug DUI cases - it must be determined what drug was ingested, how was it ingested, when was the drug ingested, and in what dose.

What the driver ate and when is essential to know as it has an effect on how the driver absorbs the alcohol that he drank. The driver's body composition is also important to know as it affects how he metabolizes the food that he ate.

### *Driver Personal Information Checklist:*

- ☒ What is driver's gender:    ☒ Male    ☒ Female
- ☒ What is driver's height?
- ☒ What is driver's weight?
- ☒ What is driver's body type?    ☒ Long/Lean    ☒ Stocky    ☒ Mid-type

### *Alcohol Checklist:*

- ☒ What time did the driver start to drink?
- ☒ What exactly did the driver drink? Beer? Shots? Mixed drinks?
- ☒ What was the alcohol concentration of each drink consumed?
- ☒ How many drinks were consumed?
- ☒ What time was it when the driver finished drinking?

### *Food Checklist:*

- ☒ What time did the driver last eat?
- ☒ What exactly did the driver eat?    ☒ Heavy Meal    ☒ Light Meal
- ☒ How much time did it take for the driver to eat that meal?

### *Marijuana Checklist:*

- ☒ What time did the driver start to smoke?
- ☒ What time did the driver last smoke? (time stopped)
- ☒ How much did the driver smoke?
- ☒ How often does the driver smoke?    ☒ Chronic user?

### *Medication/ Drug Checklist:*

- ☒ What was the drug that the driver ingested?
- ☒ When was the drug last ingested?
- ☒ What was the dosage?
- ☒ How often is the drug ingested? ☒ Chronic user?
- ☒ Is there a valid prescription?

### *Vehicle in Motion Checklist:*

Seeing the car as it is being driven down the roadway is the first phase of a DUI investigation. An officer observes something unusual about the car as it is being driven. Maybe it is speeding, driving too slow, weaving within its lane, or weaving over the lane line, or some other unusual driving action. It is essential to examine this phase by examining the arrest report, reviewing videos, and even by cross examining the officer at the DMV hearing.

- ☒ What time did the officer first notice the car?
- ☒ What exactly did the officer observe that was unusual?
- ☒ Was the action observed by the officer a violation of the vehicle code?
- ☒ Was there a dash-cam that recorded the unusual action?
- ☒ Do the dispatch logs document the observed action?

### *Stopping Sequence Checklist:*

The stopping sequence is important as it may provide additional evidence that the driver is impaired, or perhaps the driver acted appropriately in responding to the officer's red lights, thus providing evidence that the driver is not impaired.

- ☒ What time did the red lights come on?
- ☒ How did driver react to the red lights?
- ☒ Was the siren turned on?
- ☒ Did the officer observe any additional clues of impairment?
- ☒ Where did the driver's car finally stop?
- ☒ Was there a dash-cam that recorded the stopping sequence?
- ☒ Do the dispatch logs document any observed actions?

### ***Personal Contact Checklist:***

The personal contact phase is also important as it may provide additional evidence that the driver is impaired; or perhaps the driver acted appropriately in dealing with the officer and responded to the officer's commands as a sober person would, such as providing his driver license, insurance, and registration with no problem.

- ☒ What time did the officer make contact with the driver?
- ☒ Where was the officer's car parked in relation to the suspect car?
- ☒ Was the driver's window down when the officer approached?
- ☒ What did the officer say to the driver?
- ☒ What did the driver say in response?
- ☒ Did the driver admit to drinking alcohol?
- ☒ Was the driver specific about when and what he drank?
- ☒ Did the driver admit to smoking or ingesting marijuana?

- ☒ Was the driver specific about when and how much marijuana was ingested?
- ☒ Did the driver admit to taking any medications or other drugs?
- ☒ Was the driver specific about when and how much of the drug was ingested?
- ☒ Did the driver produce the requested documents without issue?
- ☒ Did the officer note any additional observations at this stage of the investigation?
- ☒ Was the officer wearing a body camera that recorded the contact with the driver?
- ☒ Did the officer have some other type of recording device that recorded the conversation?

### ***Exit Sequence Checklist:***

The exit sequence is an important phase in determining if a driver is actually under the influence of alcohol/and or drugs. How the driver gets out of the car can be very telling. Does the driver struggle to exit? Does the driver use the door to steady himself? Does the driver lose his balance as his weight shifts to his feet? On the other hand, the driver might get of the car easily with no issue at all, which would be evidence that he is not impaired.

- ☒ What did the officer observe about the driver when he exited the car?
- ☒ What did the officer observe as the driver walked to the roadway shoulder or sidewalk?
- ☒ Was the officer wearing a body camera that recorded these observations?

### ***Roadside Screening Checklist:***

This roadside interrogation is used to gather information about the driver, including health issues, when he last ate, and whether the driver drank alcohol or ingested any drugs. In addition, the officer is observing speech patterns of the driver, and determining how well the driver answers questions.

- ☒ Did the officer observe additional clues of impairment when asking the driver questions?
- ☒ What clues did the officer observe as the driver performed the field sobriety tests?
- ☒ Was the officer wearing a body camera that recorded these observations?

### ***Preliminary Breath Test Checklist:***

The main question regarding the preliminary breath test is whether the displayed numerical results are accurate and reliable. To make this determination, the device's history must be examined as well as how the officer administered the breath test. When the driver finished his last drink must also be considered.

- ☒ Did the officer follow all the protocols in administering the breath test to the driver?
- ☒ What was the driver's drinking pattern in relation to time the test is administered?
- ☒ Has the breath test device been maintained as required?
- ☒ Have all the protocols required to keep the device in service been followed?
- ☒ This includes reviewing maintenance records, repair records, accuracy check records, calibration records, and usage logs.

## ***Evidential Chemical Test Checklist:***

### ***Breath Test Checklist:***

Again, the main question with any breath test is whether the displayed numerical results are accurate and reliable. To make this determination, the device's history must be examined as well as how the officer administered the breath test. In addition, the driver's drinking pattern must be considered.

☒ Did the officer follow all the protocols in administering the breath test to the driver?

☒ Has the breath test device been maintained as required?

☒ Have all the protocols required to keep the device in service been followed?

☒ This includes reviewing maintenance records, repair records, accuracy check records, calibration records, and usage logs.

### ***Blood Test Checklist:***

The main question with blood test results is whether the reported results are accurate and reliable. To make this determination, how the sample was drawn from the driver's arm must be carefully examined to determine if problems exist. In addition, the documentation of the actual analysis of the blood sample must be carefully examined.

Blood samples are not analyzed one by one; they are usually analyzed in large groups by a process of chromatography. The chromatography process used by different labs can vary depending on the equipment used, how the test was set up, and how the sample was analyzed in relation to all of the other samples in the same run group.

A good understanding of the chromatography process is essential in order to determine if the reported result is accurate and reliable. Here are some key questions:



- ☒ Did the blood vial contain the required ingredients prior to the blood draw?
- ☒ What was the expiration date on the vial?
- ☒ Was the person who drew the blood sample qualified to do so?
- ☒ Was the blood sample drawn using “acceptable medical practices?”
- ☒ What happened to the blood sample vial after the blood was drawn?
- ☒ When was the blood sample vial delivered to the crime lab?
- ☒ How was the blood sample delivered to the crime lab?
- ☒ When was the blood sample vial first refrigerated?
- ☒ When was the blood sample analyzed?
- ☒ How was the blood sample analyzed?
- ☒ Was the chromatography documentation of the blood sample analysis reviewed as part of the defense?

## Closing Thoughts

It is essential to carefully examine each one of the above categorized segments of a typical DUI investigation in order to find flaws with the governments story as well as flaws with their evidence. Also, by careful examination of each category, viable defenses can be discovered and developed.

Remember, there is a big difference between actually defending a DUI case and simply presuming the government's case is valid. Filling out plea documents at the arraignment and pleading a defendant guilty is easy. Gathering the essential evidence, analyzing it, and creating a timeline takes time and effort. It is easy to facilitate a conviction; defending the case to try to avoid a DUI conviction requires knowledge, time and effort.

### **About the Author:**

DUI Defense Attorney Manuel J. Barba has been awarded the prestigious Forensic Lawyer-Scientist designation by the Chemistry and Law division of the American Chemical Society (ACS-CHAL) and is the ONLY exclusive DUI Defense Attorney in the Los Angeles, Orange, San Bernardino, Riverside, and Imperial County areas with this designation, which gives him the necessary knowledge and expertise to defend you or someone you may know. For more information on the Law Offices of Manuel J. Barba, you can visit their website [www.BarbaLawyer.com](http://www.BarbaLawyer.com) or call 866-442-2722 for a free consultation

