

I Got A DUI

What Do I Do Now?



Here's what you need to know...

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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 consulted with even more potential clients that had been arrested for a DUI.

The most common theme of all the people I have talked with is "I don't know what to do." It is understandable that a large majority of the people who are arrested for DUI, have no idea of what is about to happen to them. They don't understand the laws. They don't understand the Court system. They don't understand the overall process of what to do next. And that is why I wrote this book - to give people some guidance of what to do next, what to expect, and to give them some piece of mind.

If you have been arrested for a DUI, it is my goal that this book helps you find your way through this process.

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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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I Got A DUI - What Do I Do Now?

First, get emotionally prepared.

Getting arrested for a DUI can be a traumatic experience for most people. Getting arrested for a DUI can leave the arrested person with deep and conflicting feelings that can range from humiliation, fear, shame, regret, and even anger; the arrested person can experience depression and even self-loathing. Feelings of desperation and simply not knowing what to do next are common.

Being ordered out of your car by police, then forced to perform roadside tests in public, then being handcuffed, taken to jail, and then being stuck in the arm with a needle to get a blood sample or blowing into a breath machine, can have a negative effect on a person.

The prospect of being punished with jail time, huge fines, loss of driving privileges, and perhaps the loss of a job can be terrifying. In addition, the thought of letting down family members only adds to the pain.

The point is this: you can't change what has happened so beating yourself up over it is not going to make the situation better. You must get your emotions under control and focus on what actions you are going to take to move forward. You must decide where you want to go from here and have the state of mind prepared to handle the situation. Remember, you can't unscramble an egg, but you can try to make an omelet.

You are not alone.

DUI arrests are common. In any given week, many people have been arrested for a DUI in your city. Courts throughout the state of California are filled with DUI cases. Your initial fears may be justified, but they will fade as soon as you act to make sure that your situation does not get any worse.

Take action.

Don't fall into the trap that many people do after getting arrested for a DUI: they do nothing.

If you do nothing, you will fail to protect your rights; you will likely suffer greater anxiety by doing nothing. Be proactive and take control of your situation by making good decisions.

Remember that the DUI arrest itself often triggers an action by the DMV against your driver's license AND a criminal case against you in the court. Once you have taken the steps to hire an expert DUI defense attorney to defend you, you will feel your anxiety reduced as now you have an expert on your side, fighting to protect your rights.

Selecting an attorney.

Do your research. Most criminal defense attorneys will take a DUI case, but that doesn't mean that they have the knowledge and skill to defend a DUI case. There is a wide range in the skill level among attorneys.

Remember, there is a difference between defending a DUI case and helping an accused person fill out plea forms.

To defend a DUI, you want an attorney with specialized training and substantial experience defending DUI cases. You want an expert. Ask the prospective attorney if they have taken any DUI cases to trial. How many Trials? No attorney can honestly provide a percentage of wins vs. losses, because a percentage assumes that all cases are the same, and DUI cases are anything but the same.

Look up the attorney's record at the California State Bar website to see how long the attorney has been practicing law. Also, review the attorney's website. What specialized training does the attorney have? What awards if any? Is the attorney an expert in DUI defense, or does the attorney handle all types of cases, such as bankruptcy, family law, personal injury cases, etc.?

Keep in mind that even if an attorney works in criminal defense, he or she is not necessarily qualified to handle defending a DUI case. DUI cases are complex to defend and require specialized knowledge in DUI investigation, field sobriety testing, how the human body processes alcohol and/or drugs, as well as breath, blood and urine test analysis. Without an expert DUI defense attorney defending you, you will likely not be able to get the best possible result in your DUI case.

Don't be fooled by paid internet advertising or lead generation websites such as Avvo.com, Lawyers.com, etc. These websites generally place attorneys' profiles at the top of the search list because the attorneys are paying them to do so. On Avvo.com there are many attorneys that are listed as having a #10 rating, but have never taken a DUI case to trial. Don't be fooled by "pay to play" internet marketing or other search engine paid advertising.

Always talk to the attorney, not a salesperson. Yes, initially support staff will often take the call and gather the basic information for the attorney, but the attorney will return your call as soon as possible. Remember, good attorneys are in demand and are often in Court; they are not sitting at their desk waiting for your call.

Don't listen to friends or family who say that you don't need an attorney - that's just silly talk. The courtroom is filled with people whose goal it is to convict you; they are not your friend. The law, the science, and the procedures are complex and confusing to an untrained person. The fact is that DUI cases are very complex, so they require an attorney with specialized expertise to defend the case.

Expertise in the science matters.

DUI cases are complex, but they are defensible, so the knowledge of the attorney defending you is crucial.

Remember, the tests for alcohol, drugs, or medication are very complex and errors can occur. In addition, the procedures used by the crime lab when analyzing your blood sample may be faulty, or the individual analyst may be ignoring best scientific practices and is simply cutting corners.

Chemical tests are not as simple as just blowing into a machine or having a blood or urine sample taken from a driver's body. The sciences behind breath testing, and blood or urine sample analysis are very complex; there are many factors that affect the accuracy and reliability of the alleged results.

When defending a DUI case, the question must be more than simply "what are the results of the chemical test?" The questions must include: "how did the crime lab arrive at those results, and are those results reliable and accurate?"

Unfortunately, many lawyers that pretend to defend people accused of DUI do not have the scientific knowledge and expertise necessary to successfully challenge the chemical test results, so they take the results at face value, and simply plead their clients guilty in court. You could have done that yourself.

Cheap lawyers are not good, and good lawyers are not cheap.

Don't hire the least expensive lawyer you can find, because you probably won't like the outcome.

Most DUI attorney fees are "flat-fee" based. The cheapest attorney will more than likely not be the best one to defend your DUI case. Inexpensive lawyers will usually show up in court at the arraignment, get an offer from the prosecutor or the judge, and will then continue the hearing out to another date. Then, before the next hearing the lawyer will help you fill out plea documents, have you sign them, and then submit them to the court at the next hearing. The result is, you are now convicted of a DUI. That is not defending a DUI case; that is helping a client fill out plea documents and facilitating a conviction.

You want an attorney who cares about your case and that you feel comfortable with. You want an attorney that specializes in DUI defense. Talk to the attorney directly; talk about the attorney's training, knowledge, and trial experience.

Don't assume that just because an attorney has a valid license to practice law, that the attorney is qualified to defend a DUI case. Likewise, don't assume that just because an attorney showed up at the top of a Google search that the attorney is the best choice to defend your case.

DUI cases are very complex, but they are defensible. Therefore, the knowledge and expertise the attorney has in defending your case is extremely important. The analysis of the evidence in a DUI case is essential in getting the best outcome both at the DMV and in Court.

Local attorney vs. out-of-town attorney

People often ask - isn't it better to hire a local attorney that is local to the Court where my case will be in?

The answer is not necessarily, and here's why: The laws of the state of California are the same throughout the state. A DUI in Ventura County is the same as a DUI in Imperial County. The penalties are the same. And the defenses are the same as well.

Some people may think that there is some sort of "home court advantage" that a local lawyer may have. This may have been true 20 years ago back when Courts operated independently and had their own individual rules, etc. Today that is not the case as all Courts in the state of California operate under the state Judicial Council.

The Judicial Council is the policymaking body of the California courts, which is the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, impartial, and accessible administration of justice.

Simply put, all Judges must abide by the policies set forth by the California Judicial Council and must administer justice consistently and impartially.

If some lawyer is telling you that he knows the Judge and because of that relationship the lawyer can do something out of the ordinary on your case, that lawyer is simply lying to you to get you to hire him. No judge is going to jeopardize his career over some friendship with a particular attorney. Decades ago, there may have been special deals negotiated over lunch, on the golf course, or in a back room, but that is simply not true today.

Besides, the reality is this: how a case resolves has less to do with a judge, and more to do with the prosecutor's office. Prosecutors are the ones in control of a case as they are the ones that filed the charges.

Prosecutors know the defense attorneys. Prosecutors know which defense attorneys never work hard to defend their clients, and never go to trial.

Prosecutors also know which defense attorneys understand the law, and understand the science related to a case; they know which defense attorneys are willing to go to trial if need be, and win. Those are the defense attorneys that prosecutors and judges respect.

Well respected defense attorneys travel to many different courts in multiple counties because they are in demand. They are in demand because they know what they're doing – meaning they know how to defend a DUI case, and they are not afraid to take the case to trial if need be.

However, the most important aspect of the attorney-client relationship is Trust. It is crucial that you truly trust the attorney that is representing and advising you. You must feel comfortable with your attorney. If you have an attorney that is good at what he does and makes you feel comfortable and you are confident that the attorney is going to protect your interests, it does not matter that the attorney is some distance from the Court.

In addition, you must also consider that some local attorneys may have a bad reputation with the Court and prosecutors and that may not be a good thing for your case.

You must weigh your options to see what matters more to you and remember that you need to be able to trust and feel comfortable with your attorney otherwise you will never be satisfied with your outcome.

Getting arrested does not mean that you are Guilty.

The fact that you got arrested for a DUI can't be changed; however, the goal now should be to do whatever you can to not get *convicted* of a DUI.

Remember, being arrested does not necessarily mean you are guilty of a crime. Cops write tickets and arrest reports, then send them to the District Attorney. The District Attorney is the one that files charges in court accusing you of a crime. The District Attorney is the one that must prove the charges against you beyond reasonable doubt, with reliable and accurate evidence. And that is not always easy to do.

You have two options:

Option #1: Do nothing. By doing nothing, you are giving in to the cop that arrested you, you are giving in to the prosecutor who has accused you, and you are giving up your right to defend yourself in court, and at the DMV. By doing nothing you are choosing not to contest the alleged evidence against you – and the result will be that your driver's license will be suspended by the DMV, and you will be convicted in court of a DUI.

Option #2: Do something. Doing something means that you contest the charges against you. In other words, you question all the evidence. You question the alleged observations of the arresting officer and his DUI investigation; you question the legality of why the cop stopped you; you question the legality of the drawing of the blood sample or the breath test; you question the reliability and accuracy of the alleged chemical test results; and you question the equipment that was used to determine the alleged blood alcohol concentration or drug level. It is your constitutional right to contest all the evidence against you.

Your case may take months to resolve.

A DUI arrest can happen very quickly, but the time it takes to properly defend a DUI case can be long. It can take six months to a year, and perhaps even longer to properly defend a DUI case. It takes time to gather all the evidence relating to the DUI investigation and the chemical test results. It takes time to analyze that evidence and then challenge the evidence in court. You should prepare yourself for the time that it is going to take to adequately defend your DUI case. Be patient.

Dealing with the DMV.

If you were arrested for an alcohol DUI, the arresting officer likely gave you a (Pink) document entitled "Administrative Per Se Suspension/Revocation Order and Temporary License." This is a 30-day temporary license that you must carry with you when you drive. This temporary license was given to you because, if you had a California driver license, the arresting officer took your driver's license when you were arrested.

The "pink" is also a notice to you that your driver's license will be suspended in 30 days, and that you have 10 days to preserve your DMV hearing rights with the DMV to contest the suspension. If you fail to request a hearing within the 10-day period, your right to a hearing is waived and the suspension will go into effect automatically after the 30-day "pink" temporary license expires. The length of the suspension will depend on whether you have prior DUI convictions.

It is better to have your attorney request the DMV hearing for you, because if you call, sometimes you will get an agenda-driven DMV staff member that will try to talk you out of a hearing so that your license gets suspended - "Well Mr. Jones, you are only entitled to a hearing if you are contesting one of the issues... which issue are you contesting? You don't know? Then you don't need a hearing." Yes, they really do that.

The DMV hearing is essential as it is the only way to challenge the license suspension. The goal is to win the hearing so that your license is not suspended. During the hearing process, the evidence relating to the initial stop, the DUI investigation, and the chemical test results, is gathered and analyzed in preparation for the hearing. The arresting officer might even be subpoenaed to the hearing to get his testimony under oath. Other witnesses may also be subpoenaed to testify as well. The evidence gathered through the DMV hearing process can also be used in the Court to defend your criminal case.

DMV - Refusals.

If there is a refusal allegation, meaning that you willfully refused to take a chemical test AFTER you were arrested, the DMV will attempt to suspend your driving privilege for one year on a first offense and two years or more on multiple offenses (or if you have had a prior DUI suspension).

There is no restricted license opportunity on a refusal. The license will be gone for at least a year, so it is in your best interest to fight a refusal allegation hard.

As discussed above, you are entitled to a DMV APS hearing on the refusal allegation to determine if you willfully refused to take a chemical test after you were arrested.

DMV - Under 21.

If you were under 21 at the time of the arrest, the issues at an under-age 21 DMV hearing are: (1) Were you driving? (2) Were you lawfully arrested? And (3) Was your Blood Alcohol Concentration .01% or higher at the time of driving?

These hearings follow the same procedures as discussed above. If the DMV finds against you, there will be a 1-year license suspension. If you had a previous DMV alcohol related suspension, the suspension could be longer.

Dealing with the Court - misdemeanor case.

Typically, after being arrested for a misdemeanor case you were released on your "own recognizance" (O.R.) after spending a few hours in jail. In addition, you were given a Notice to Appear that you signed promising to appear in Court on the date indicated. This is referred to as a "cite and release," which is how most misdemeanor DUI cases are handled. The Court date is your Arraignment hearing which is your first Court Appearance.

In most cases you do not have to appear in Court if the charges against you are filed are misdemeanors. Your attorney can appear for you.

At the Arraignment hearing you are formally informed by the Court of your constitutional rights and the charges filed against you by the District Attorney. The Court will then take your plea by asking "how do you plead to these charges?"

If you plead GUILTY at the Arraignment hearing you will be convicted and sentenced at that time. Pleading GUILTY at the Arraignment is usually not a smart thing to do since you have not had the opportunity to examine any of the evidence against you at this point.

It is better to have a qualified DUI defense attorney appear for you at the Arraignment and enter a NOT GUILTY plea on your behalf.

After the NOT GUILTY plea is entered, the case is set for a pre-trial hearing maybe six to eight weeks out into the future, depending on the Court. During the pre-trial process, all the evidence is gathered, analyzed, and further investigation may be completed, in order to determine the strengths and weaknesses of the government's case against you. There may be several pre-trial hearings in your case.

Once all the evidence is gathered and analyzed, and if applicable, challenges to the evidence may be made by filing suppression motions, etc. In addition, during the pre-trial stage negotiations are ongoing with the prosecutor to try to reach a resolution to the case based on the strength and weaknesses of the evidence.

The pre-trial stage can take four to six months to complete, and sometimes even longer depending on the case. The goal is to resolve the case without having to go to a full jury trial. But if the case cannot be resolved for a reasonable settlement, then a Trial is the only option. Remember, it is always the prosecutor's burden to prove guilt beyond a reasonable doubt on all charges with evidence that is accurate and reliable; doing so is not always easy for the prosecution.

Many people accused of a crime often think that hiring a lawyer will magically make the case disappear. That is not a rational way of thinking. All criminal cases, including a DUI, rise and fall on the strength of the government's evidence. In other words, the charges must be supported by evidence that is accurate and reliable. It is the government's burden to prove guilt beyond a reasonable doubt.

It is the defense attorney's job to gather the evidence and review all of it with a critical eye. It is the defense attorney's job to look for problems with the government's evidence. In general, the more problems that are discovered, then the weaker the government's case becomes. On the other hand, the less problems found with the government's evidence, then the case is stronger. The strength of any given case turns on how strong the evidence is that supports the charges.

Dealing with the Court - felony case.

Felony cases are serious cases that are punishable by large fines and state prison. If your DUI case is a felony, then more than likely you had to post a bail bond to get out of jail after the arrest. The amount of bail will vary depending on the alleged charges and allegations. If the accused person can't afford to post the bail bond, then the person will remain in jail.

Generally DUI charges are typically filed as a felony if the case falls into one of the following categories: (1) you were involved in an auto accident and you caused an injury, (2) you have three prior DUI convictions in the last 10 years making the new DUI a fourth, or (3) you had a prior DUI felony conviction in the past ten-year period, making the new DUI a felony as well.

If your case is a felony, you will be required to personally appear at all court hearings, even if you have an attorney.

If the case is a felony, after the NOT GUILTY plea is entered at the Arraignment, the case will be set for a Felony Settlement Conference to give the defense the opportunity to gather evidence, investigate the case, and try to resolve the case; there may be several Felony Settlement Conferences depending on the case. If the case does not resolve, the case will eventually be set for a Preliminary Hearing.

At the Preliminary Hearing, the prosecution will present evidence to convince the Court that the felony charges are proper. At the conclusion of the Preliminary Hearing, based on the evidence presented, the judge can hold the accused person to answer to all, some, or none of the felony charges. If the accused person is held to answer on the felony charges, the case will then move to Trial. Usually, it is in the best interest of the accused person to settle the case before the Preliminary Hearing.

If the case cannot be resolved for something acceptable, then going to Trial is the option. Remember, it is always the prosecutor's burden to prove guilt beyond a reasonable doubt on all charges with evidence that is accurate and reliable; doing so is not always easy for the prosecution.

Having an expert DUI defense attorney represent you will benefit you in reaching the best resolution to your case and assist you in determining whether or not you should go to Trial.

Ignition Interlock Device (IID)/SR-22 insurance.

Beware, as there are a few shady private companies out there that will call you days after your DUI arrest and try to sell you S-22 insurance, even though you may not need it.

Other questionable companies will mail you notices that look like official documents from the DMV with the goal of getting you to install an Ignition Interlock Device (IID) on your car.

The truth is that these people are trying to sell you something that you don't need at this time. Yes, you might need an SR-22 or an IID down the road, but you don't need it now.

Consult with an expert DUI defense attorney for guidance on whether you need SR22 insurance and/or and Ignition Interlock device.

Let's review.

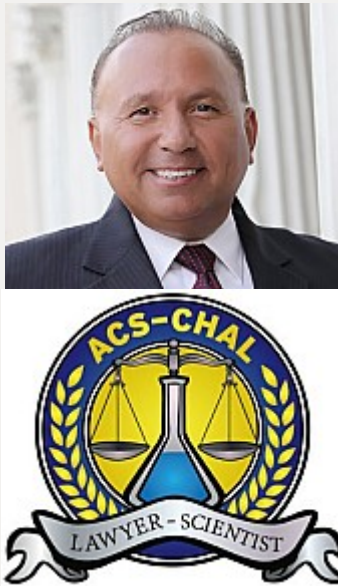
To sum it all up, being arrested for a DUI can be a very traumatic experience. But you must get your emotions under control and take action to protect your rights.

Hire an attorney that is an expert in DUI defense so that you can achieve the best outcome for your case, both at the DMV and in Court.

Remember, DUI cases are not open and shut cases and require a defense attorney with specialized knowledge to properly defend the case. Be prepared to take the defense of your case one step at a time. You will get through this.

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** 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 or call **866-442-2722** for a free consultation.



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