



CALIFORNIA DUI SURVIVAL GUIDE :

What to Do and How to Get Help



California DUI Survival Guide: What to Do and How to Get Help by Robert Miller, Esq.

Introduction. Thank you for requesting and reading this material about your DUI case. The fact that you are taking the time to look at this information shows that, even though you might be a bit scared, and perhaps mad about your situation, you know you are responsible for gathering the information you need to make decisions about your DUI case. I am more than happy to guide you through the complex and complicated DUI laws involving your license, punishments, and show you the way out of all of this.

The good news is that thanks to the internet, a person facing a DUI has more access to information nowadays than ever before. However, you are also exposed to scare tactics, hype, and even bad information. Unfortunately, some of those scare tactics come from my fellow lawyers.

Whether you decide to get further information, or even have me represent you, I pledge to be honest with you, and help you with the decisions you need to make in your case. My job here is not to tell you what you really want to hear, but to tell you, openly, how things really are in the system with DUIs and how they are handled.

How did I get in this situation?

You had a drink, or a few, with dinner. You felt okay to drive. And then, maybe a police officer singled you out, or followed you. Maybe there was an accident. Maybe you didn't turn on your headlights, or were weaving. No one reading this book intended to go out, and get arrested for drunk driving. But here you are, facing DUI charges.

First of all, you are probably feeling ashamed, maybe also mad at this whole situation, or at yourself. Maybe you think it's hopeless. That's understandable. But don't beat yourself up about this too much. You are doing the right thing, by gathering as much information as possible and being willing to take the necessary steps after learning about the charges you are now facing.

How can I get out?

Now that you are in this situation, you need to know how to protect yourself. Maybe you just can't afford a criminal record, (for career reasons or for job prospects), or maybe you feel the injustice about what happened. Maybe you fear jail time, loss of your license, or other long term effects that can reverberate for years in the future. Getting out of this depends largely on how much information you





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can gather about this situation, what can be done, and of course on coming up with a plan to get out of this. Since it depends on knowing all of the defenses that apply to the particular facts of your arrest, including the factual and legal defenses that apply to your situation, that plan usually is best formulated with an attorney-- an attorney that knows DUI defenses and specializes in handling DUI cases.

What do I need to do now?

Here's the short story: Even though, your court date might have been scheduled for a month (or so) after your arrest, you must know that ***the DMV requires you request a hearing within 10 days of your arrest to prevent your license from an automatic suspension.*** This doesn't mean that the hearing will take place within 10 days; in fact your hearing will probably take place 4-6 weeks after you request it. However, it must be requested ***within*** 10 days, and the DMV is very strict about this. (Note that when counting days, weekends count, except that if the 10th day falls on a weekend, or holiday, you have until the following business day to request your hearing).

There are several advantages to requesting a DMV hearing, including the fact that you will receive a copy of your police report and getting a chance to cross-examine your police officer and conduct investigations before the court case is even filed. As soon as you contact me, I will request the DMV hearing on your behalf, for free, to make sure you don't miss this important deadline.

Will I lose my license?

Right now, while your physical photo license might have been taken away, you do have a full license. Though it will expire 30 days after your arrest unless you request the DMV hearing, there is a loophole in the law that allows you to obtain a duplicate license, by filling out the DMV's DL-44 duplicate license form.

If you win the hearing, and are successful in court (meaning that the case is reduced from a DUI charge or is dismissed), then your license is fully reinstated, and no suspension takes place. If you do not request the hearing, or lose the hearing, or are convicted, then for a first time DUI, there is a 4 month suspension, and three out of the four months can be converted to a suspended license, leaving one month as a hard suspension. That can only be avoided by requesting a hearing, preparing for and winning the hearing.



Will I go to jail?

Some attorneys may try to scare you with the potential for jail. Every law has a minimum and a maximum, and for first time DUI charges, the minimum is probation plus a fine of \$390 and other assessments and fees, and a maximum of over \$3,000 total in fines and fees and six months in jail. If you are a first time offender, you are usually not looking at jail time, at all.



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And even if it's not your first time, or if your case presents special circumstances such as (1) a child or minor under the age of 18 in the car; (2) An accident (especially with injury); (3) An allegation that you were speeding while DUI; (4) An allegation that you refused any tests; or (5) if your blood alcohol was double the legal limit (.16% or above) there are ways around jail time, including alternative sentencing.

What should I have done?

It's useful to go over what you might have done differently, not because you can change what happened in the past, but because you can learn for the future. Obviously, having someone else drive, including a limo or a taxi, would have avoided the arrest that night. But for cases involving alcohol (and not prescription or other drugs), it's helpful to know a little bit about how alcohol works in the body. Alcohol is hydrophilic, meaning that the molecule attaches itself to water, and evenly distributes itself throughout the body. Alcohol affects women more than men, mainly because men have more water content than women do (due to higher muscle mass), and affects the brain, because the brain has high water content.

So here's tip number one - make sure you drink water until you're fully hydrated before you drink, and drink water between any alcoholic drinks you have.

Tip number two is to eat. Eating something before you drink is extremely important. When you consume food, the pylorus, or pyloric valve in the bottom of the stomach, closes. If you have alcohol after eating, the alcohol is introduced into your system at the same rate as whatever the food is in your stomach. If you eat simple carbohydrates, like sugars, bread and pasta, those are processed fastest. Complex carbohydrates are processed next fastest, followed by protein, and then fats. **So eat protein and fats before drinking.**

There is a myth that eating after having consummated alcohol can "sop up" the alcohol. Beware; once alcohol is in your system, only time will allow it to dissipate. What you eat after the fact doesn't make a difference.



Once you are driving, you must be careful to obey all traffic and other laws. This includes having your lighting equipment, tags/stickers, and equipment working correctly. The police will not be legally justified in stopping you if you don't violate the law. Putting aside your cell phone and concentrating on driving can keep you from being pulled over.

If you are stopped, you may be asked for your license and registration. Put this in a place where you can get it easily ahead of time. The police will be watching carefully to see if you fumble as this information is being handed over.

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If you are asked if you were drinking, know that you are not required to answer that question, as it could be self incriminating. I get asked almost daily what the best response to this question is, and the truth is, it doesn't matter.

The police officer will smell the breath inside the car and from the headliner, to see if there is an odor of alcohol. The police officer will look at your eyes carefully to see if they are bloodshot and watery. The police will notice if your speech is slurred or slow. And the police officer will observe, if you get out of the vehicle, whether or not you are unsteady, lean against the vehicle, or have trouble walking or standing up. Those observations will be the primary determination of your potential for intoxication, not your admissions or confessions to drinking. You can answer that however you like, but I prefer that drivers answer "my attorney has told me never to answer that question", and leave it at that.



If you are asked to submit to field sobriety tests, you should politely refuse them. These tests are voluntary under the law, and usually don't result in you being let go. They are used to support the officer's conclusion that you were under the influence. Typically, the officer will just "start" performing field sobriety tests, so you will be placed in the uncomfortable position of asking the officer to stop, or refusing further tests.

If you are asked to take a field breathalyzer to screen for alcohol, politely refuse, as this is a field sobriety test, and is not necessarily used as definitive evidence of your alcohol level. The law requires, as a condition of your license, that you submit to an evidentiary test (meaning a breath test under controlled circumstances, or blood test), or face a one year suspension of your driving privileges. So you should agree to take a breath or a blood test.

In my opinion, and other attorneys might have a different view on this, you should take a breath test instead of a blood test. I say this, despite the various defenses available for blood tests, for specific reasons.

First of all, the law is written to measure "blood alcohol content". Taking a measure of alcohol from your breath means that it needs to be converted to a range of what your blood alcohol level should be.

That conversion allows for argument, since the breath machine doesn't know (but assumes) your lung capacity, or how much your body weight, water content, etc., deviates from the standard used.

Second, the breath machine is subject to manipulation more than blood testing devices are. Breath machines are sensitive to fermentation caught in dental work, or between teeth, or from someone



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belching, burping, vomiting, or suffering from Acid Reflux or GERD. Breath machines are also highly sensitive to temperature and atmospheric pressure.

If at all possible, without creating a safety issue for the officers, or the jail, delay testing as much as possible, if you have been drinking 2-3 hours or more before the test. This allows the time factor to work in your favor, burning off alcohol.

When you are in front of the breath machine, just as holding your breath warms the air, and makes your test result higher, cooling the air makes your breath test lower than it might otherwise be. Remember, breath machines are highly sensitive to temperature. Hyperventilating, or taking deep but fast breaths, cools your breathing passageways, and will result in a (slightly) lower breath result.

So, the short answer is, refuse the field sobriety tests, refuse the field breathalyzer, delay as much as possible, and then choose a breath test and hyperventilate before taking the test.

Should I fight it? That depends. There is a lot of grey area in between "fighting your case" and "accepting whatever punishment you get". A good lawyer that knows DUI well and specializes in handling DUI cases will be able to analyze your case and come up with the best strategy for your defense. It may be, given the facts of your case, that you have a very good motion to dismiss your case, or a very good chance of winning at trial. In that case, it would not make sense to take the first deal offered to you, or any deal at all. It may be that after analyzing all the facts of your case, your lawyer will assess that you have a poor chance of winning at trial. However, even in that situation, you should decide whether or not to take your case to trial based on the deals that have been offered to you to date. If you were offered an alcohol school plus thirty days in jail, and your lawyer tells you that you would likely not get jail if you went to trial (based on experience with the judge, the court, or the facts of your case), you may want to take your case to trial, to get a "better deal".



That is where you will need to be heavily involved in your case. While a DUI lawyer can give you all you need to empower yourself to make the decisions about what is best for you, measure the risk of each decision involved, and agree on a strategy or come up with a long term solution that you can live with, and that meets the goals that you and your attorney originally set up at the beginning of the case.



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Do I need a lawyer? Although this may seem like a biased opinion, you may, or may not. A lawyer, during a free consultation, can review the basic facts of your case and see if a lawyer would make a difference for the long term future of your case. Lawyers have a duty of honesty to you, and if a lawyer can't help, they should truly let you know that and come up with solutions for you so that you can feel comfortable handling your case yourself, or can offer to handle court appearances or negotiating a plea bargain for much lower than the full price of services through trial.

What really matters is that a lawyer who is specifically trained to handle DUI will know of defense strategies that even other attorneys don't know about, and that you would not know about by even after reviewing the police reports yourself. Just as handling your own IRS Tax Audit, or even doing your own medical diagnosis- you can do it yourself, but you usually get much better results when an expert handles the case for you.

How do I find a good lawyer?

Remember, no lawyer looks bad on their own website. However, there are a few questions you can ask to find out if an attorney is worth your time or other resources. You should be prepared to ask, on the phone, via email, or in person, the following questions.

1. How many years have you been in practice? This will tell you much about the attorney's potential experience. But, also ask what they have done all those years. Many attorneys have done every type of law, and have chosen to do DUIs recently, but they either don't have the certification, or don't have the experience, to provide you with the best expertise. Personally, I've been practicing law over 17 years, and have been handling cases through trial and DUI cases specifically, since my first trial.
2. How much experience do you have representing people who are charged with DUI? You should leave an attorney's office completely confident that you have spoken to someone with real experience and expertise in DUI law. DUI law is too complex to be trusted to someone that only dabbles in DUI defense. Since I started practicing, I handle exclusively DUI cases, and take no other type of cases.
3. What qualifications do you have to handle DUI cases? At minimum, most attorneys in this field are members of the National College of DUI Defense, and the California DUI Lawyers Association. Most attorneys in this field have specific training in breath testing, and blood testing, and have complete coursework towards those particular testing methods. Most attorneys in this field have student and instructor certification in Field Sobriety Testing. Not only do I hold all of those certifications, I also have participated in the National College of DUI



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Defense Trial Skills College at Harvard Law School, an intensive program for DUI lawyers all over the country, twice.

4. Who in the office will actually be handling the case and what are their qualifications? This is the most important question you must ask. The lawyer that you might be speaking with, or even meet with, might not be the person who is actually handling the case, or will handle a trial if one is necessary. When you demand to speak with the person that will actually be your lawyer, they may respond that their firm uses a "team approach". They may tell you that all the attorneys discuss your case. This is just another way of giving you the runaround. You do better dealing with your own attorney who knows your case, and your individual situation, well. Many large firms hire new lawyers who are unskilled and untrained (but are working at that firm to get their first experience), and hide that by having you speak initially with a more seasoned attorney, who will not be handling your case at all. The reality of those firms is that the "hotshot partner" or owner of the firm will never to go court for you or doesn't simply go to court anymore. You have my full guarantee that I will do all the motions and communication with you, and will be the lawyer in court for you.
5. How many cases have you taken to trial? This is a crucial question and one that separates the "men from the boys" in DUI defense. Your case just might go to trial to get the outcome you deserve, and it is imperative that the attorney you choose has a significant amount of jury trial experience. In California, the prosecutor can demand a jury trial in the case, just as the defense can. But the prosecutors know what attorneys are willing to fight to the end for their clients at trial and who isn't, and they prefer to dismiss, reduce, or settle cases if they think there will be a fight at trial. In my entire career, I'm proud to say that I have had over 100 jury trials, and have even received jury not guilty verdicts in felony DUI cases.
6. Have you ever been disciplined by the State Bar? This is simple - you do not want a lawyer with even one blemish on his bar record, or any record of discipline. Never, have I had any discipline from the State Bar, and you are welcome to verify that by entering my state bar number, 176398, in the state bar's website.
<http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>
7. What are all the potential costs, including experts, investigators, and other costs, start to finish? The lawyer should be completely honest with you about what your case might cost. You want to know what is covered and what is not, and not be lured in with promises of unrealistically low fees and costs. The flat fee I charge for legal representation is quoted up front, and covers the entire case, start to finish. There will not be any point where we "run out of money" or "we have exceeded the hours you paid for" and need more. Your case is completely covered by the fee. Even if the case goes on over a year and has sixty court appearances, you won't pay another dollar.
8. What challenges do you see in my case? The lawyer should be able to explain to you what he or she sees as the challenges you face and what those could mean on the ultimate result.
9. What will be the final outcome of my case? A bad attorney will tell you whatever they think you want to hear up front, but not put it in writing,





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and the n change completely after they have your fee. A good attorney will not promise you a particular result, because it's always impossible with the limited information up front to be certain how a case will turn out. The California Rules of Ethics makes it illegal for an attorney to promise, or guarantee, a particular outcome that is up to a judge or a jury, so any answer that promises one, is dishonest and unethical. A good attorney will not only tell you that they don't win all their cases (because no lawyer does), but will be honest with you, based upon their experience, skills, and expertise, and tell you what is likely in your case. When you talk to a potential defense attorney, tell him everything that you feel is relevant, and then some. Something that may be a minor detail, like what you had to eat, what mental or physical impairments you might have, how much sleep you had, what medications you might be taking, might make all the difference in your case. Most importantly, be honest and open. You are protected by attorney-client privilege, so nothing you say could ever be disclosed outside of your attorney's office, or ever used against you.

Note that the attorneys that send you mail, and promise ridiculously low fees, plan to take your money and plead you guilty at the first court date. The National DUI Lawyer websites - the lawyer directories, take fees from lawyers, and only require that the fees be paid to be listed. Same thing with the SuperLawyers or other magazine articles that are mailed to you - the only qualifications is that the lawyers pay a fee and be nominated by someone.

How can we get started?

I am happy to meet with you in person, or do an in depth telephone or email conversation with you if that's more convenient, anytime, to go over the facts of your case, and come up with a proposed strategy that is individualized for your case. Please email me at info@expertlawfirm.com or call me, toll free, at (877) 568-2977.

