

DUI Defense Pros



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Materials written by a licensed California Attorney, but are based upon opinion only, and not scientific study. It is general information, not intended to give instructions on what to do. Persons charged with a crime should seek specific advice from legal counsel familiar with the facts of their case.

PLEASE ENCOURAGE OTHERS TO NOT DRINK AND DRIVE!

Information you need to know:

TOP TEN MISTAKES

Errors Made by DUI Attorneys That Can Cost You Money

Don't let a legal mistake make another mistake worse.

Mistake #1

Taking Too Many Cases.

The #1 mistake made by DUI Attorneys is that they take on too many cases, and cannot pay specific attention to any one client. When it happens, it prevents the client from getting the advice and investigation which could lead to an acquittal in a close or weak DUI case. How many is too many? Well an attorney can effectively represent many clients at once and still provide quality legal counsel. However, there is a point at which an attorney takes on too many cases, and is unable to investigate, evaluate, and defend a case the way it should be done. Attorneys with too many cases can be seen in just about any misdemeanor courthouse at 8:30 a.m. They are the ones with a stack of files, but no memory of what's happening on any of them.

Mistake #2

Failing to Challenge the Stop, Detention, and Arrest.

Many criminal cases that are won are won because it was determined that the officer(s) involved failed to respect the limitations of the U.S. Constitution, and specifically the Fourth Amendment which prohibits government agents from detaining a person without satisfying certain legal requirements. Many of these issues can be challenged in a pre trial hearing called a "Suppression Hearing", under the authority of California Penal Code section 1538.5 There are different legal requirements for an officer stopping you, detaining you, and then arresting you.

Mistake #3

Failing to have a Forensic Toxicologist Review the Evidence.

A forensic toxicologist is most often used in DUI cases to provide expert testimony in court relating to the measurement and study of the effects of alcohol on the human body. A quality toxicologist can review the evidence, including test results and point out holes and errors that a non scientist would miss. Many attorneys will not have a toxicologist review the evidence in a case, because they assume that their clients will plead guilty. However, a toxicologist's review is necessary to properly evaluate a case for the possibility of success at trial.

MONEY MATTERS:

THE COST OF A DUI CONVICTION

Even the most routine conviction of the charge of driving while under the influence has serious financial repercussions. When all the costs are totaled, bail bondsman fees, fines, insurance, classes, programs, attorney fees, loss of income, increased transportation costs and other incidentals, the final bill can exceed \$25,000. If you lose a job or career opportunity because of the problem, the costs are astronomical.

Under these circumstances, there is no easy way out. And quality legal representation to help minimize the costs and stress of the experience is more than valuable, it's necessary. Cutting corners can be expensive.



Mistake #4

Not Using An Expert Witness at DMV Hearings.

Many lawyers who represent their clients in DMV license suspension hearings will do it by telephone, alone. No client, no expert witness. However, a much more effective technique when trying to protect a client's license is to appear personally, with both the client, and a forensic toxicologist who can present scientific evidence to the DMV regarding the test results and field sobriety tests. With an expert at the hearing to testify for you, you give yourself the best chance of winning.

Mistake #5

Advising the Client to Plead Guilty Too Early.

There are certain defense attorneys who are known as "dump trucks". This nickname refers to an attorney who just wants all of his or her clients to plead guilty fast, to increase the attorney's income. There is no penalty for pleading not guilty and then working on the case until the trial date. A defendant can change a plea from not guilty to guilty at any time before the jury's verdict.

Mistake #6

Not Investigating Prior Testimony of the Government's Experts.

In most counties, the prosecuting agency for DUI offenses uses the same expert witnesses for testimony on DUI trials - over and over again. Typically, these "experts" are really just government lab or forensic employees who are assigned to show up and testify in court on DUI cases. Because they often will testify in

numerous similar cases, a review of their testimony transcripts is extremely valuable to a defense attorney who wants to know what the government's witnesses will say in court. An attorney who misses this step will miss information that will help evaluate the case.

Mistake #7

Poor Cross Examination of Investigating Officer(s) at Hearings.

When preparing a case for trial, it is very important to know what every witness is going to say in advance. During cross examination, an effective attorney can use the information he/she knows the witness will say in a way that paints the picture in a light most favorable to the client. However, many lawyers skip, or miss early opportunities to cross examine an arresting officer thoroughly to determine how he or she will react to questioning. Such opportunities appear at the DMV hearing, suppression motions, and certain other types of pre trial procedures.

Mistake #8

Missed Opportunities to Settle Cases With a Good Result.

An overworked prosecutor can sometimes be a defense attorney's best friend. This is because they will want to resolve cases efficiently. To a defendant with good legal counsel, this means there is an opportunity to present a more favorable plea bargain to the prosecutor. However, to make the most of these sorts of opportunities, an attorney must take affirmative steps on the case, including telephone conferences with the DA to discuss weaknesses in the case, etc. Many attorneys with over loaded case loads will miss this important aspect of DUI Defense.

Mistake #9**Not Checking the Maintenance and Calibration Records of Testing Machines.**

Just because a breath test comes back with a result in excess of the legal limit it doesn't mean that the result is accurate. Machines fail, and most breath test machines have an inherent error rate. There are also very specific regulations dictating how they must be maintained, and how the records must be kept. If any of it is not in order, the credibility of the results are suspect, and not reliable. Many cases have been won on this point.

Mistake #10**Poor Communication With Clients.**

Overworked attorneys often fail to be responsive to their client requests for status reports or information. Some times this is due to the fact there is simply no news, or there is just not enough time in the day. However, an effective attorney realizes that good communication with the client will not only ensure a smooth relationship, but will also reduce the amount of stress the client experiences, and therefore becomes an element of good service.



Q&A

How Can I Get My DUI Reduced to A “Wet & Reckless” Charge?

A wet & reckless driving charge is often substituted for the more serious DUI charge (CA Vehicle Code section 23152) as a plea agreement when the government has a weak case. The most common example is where a defendant has a blood alcohol content of less than .08, and there is no evidence of driving.

Do I Have to Do More Jail Time If It’s My First DUI Arrest?

The answer to this questions varies a great deal depending on the circumstances of your cases. But in general, first time convictions will get a jail sentence, which will be “suspended” or paused, and a term of probation imposed. If probation is completed without trouble, the suspended sentence is not imposed. Often, the terms of probation will include a requirement that a defendant complete a certain amount of organized community service.

What Should an Attorney Do Besides Try to Get Me Off?

Quality legal representation means much more than just trying to get a client out of a case. An attorney needs educate the client on the prosecutorial process, the evidence and must keep a diligent eye on the prosecution to ensure the government doesn’t side step legal requirements. It is also the attorney’s job to speak for the client, and present the client’s side of the story in a persuasive and effective manner. It is the attorneys job to appear in court for the client, and minimize the disruption for a client’s life that a case has. It is the attorney’s job to minimize a client’s penalties as much as possible and represent the client’s interests to the court at all times.

ANSWERS TO YOUR MOST PRESSING DUI QUESTIONS.

If I Was Drinking, Why Should I Plead “Not Guilty”?

No matter what the circumstances of your case, you need a trained expert to review the evidence. There may be applicable defenses that you do not know about, such as if there was an illegal stop of your vehicle. Also, most cases are settled through a negotiation process where the sentence a defendant is agreed to by the defense and the prosecution. This process works to the clients advantage when it is done correctly by a well prepared attorney, and that takes time, and is work that is often done during “pre-trial conferences”.

Why Do I Need An Attorney’s Help Within 10 Days?

When a person is arrested for a DUI, California law requires that the Officer confiscate your driver’s license. When they take it, they are required to give you a DMV paper which serves as a temporary license. This temporary license is only good for 10 days unless you schedule a DMV License Suspension Hearing within those 10 days. If you do schedule a hearing, the temporary license is generally valid until the results of the hearing are final. Hearings are usually scheduled 90 days or so after an arrest.

What if I Refused To Submit to the Chemical Test?

Depending on the facts, the government may have limited evidence to use against you for a DUI charge, and ironically, it may prevent the government from gaining a conviction. However, the law specifies serious penalties for the refusal of a test, including an increased period of driver’s license suspension.

What Happens At The First Court Date?

Generally, the first court date is called an “arraignment”. During an arraignment, the charges against a defendant are read, and the defendant enters a plea to the charges - usually either “guilty” or “not guilty”. If a Defendant pleads guilty, he or she is then sentenced. If he or she pleads not guilty, the court will set a date for trial on the case, as well as a date for a pre-trial conference to discuss the case.

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