WHAT HAPPENS AFTER YOUR DUI ARREST?

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IMPORTANT DISCLAIMER: Terry L. Gilbeau is an attorney, licensed to practice law in the State of California. The information provided in this booklet is based on California law, which may differ significantly from the laws of other states or jurisdictions. Accordingly, if you have been arrested for a DUI offense in a jurisdiction other than California, you should not rely upon the information contained herein, and instead, you should consult a licensed attorney in the jurisdiction in which you were arrested for legal advice concerning your case.

I'VE JUST BEEN ARRESTED FOR DUI. AM I IN BIG TROUBLE?

Being arrested for any crime is a serious matter which you should not take lightly. A DUI arrest can be charged as either a misdemeanor or a felony, depending on the circumstances of your case. If this is your first DUI arrest, and no one was injured or killed as a result of your driving while impaired, the case will almost always be charged as a misdemeanor. In that case, the problem is serious, but resolvable without tremendous difficulty. If you have had other DUI arrests in the past ten (10) years, or if a person was injured or killed as a result of your driving, the situation could be much worse. In some cases, you will be charged with a felony DUI, and depending on the severity of the harm done to others, you could even be facing vehicular manslaughter or homicide charges, which could result in a lengthy prison sentence.

AM I GOING TO NEED A LAWYER?

If you have been charged with a felony of any kind, you will definitely need an attorney to represent you in this case. You are facing some potentially significant jail or prison time, and trying to "go it alone" is a formula for disaster. If the charges against you are less serious, such as a first-time DUI which is charged as a misdemeanor, you could attempt to represent yourself. But as Abraham Lincoln said years ago, and it still applies today, *"He who represents himself has a fool for a client*". A skilled attorney, who is knowledgeable about DUI laws and the criminal law procedures relating to these crimes, is in a much better position to review and assess your case, to determine if there are plausible defenses to the charges against you, to utilize their knowledge to suppress evidence and to bring other important motions before the court, and to use their experience to present your case in the best possible light in court and at trial.

HOW MUCH WILL AN ATTORNEY COST?

Attorneys typically set their fees for legal representation based on a number of factors, including the complexity of the case, their experience in handling such matters, any circumstances of the case that will require the expenditure of more time and resources by the attorney, and even their current volume of cases. As such, fees can vary significantly. When contacting an attorney, determine how their fees are set or calculated. Look for an attorney whose office is located in the jurisdiction in which you are charged – a local attorney will usually be less expensive than an attorney who must travel a considerable distance to the

courthouse, and an attorney who practices regularly in that particular court is more likely to be familiar with the rules and procedures of the court personnel, prosecutors and judges. Get a written fee agreement which spells out in detail the fees that you will be charged, and any costs or out-of-pocket expenses for which you will be charged. You should expect to pay more for your attorney if you have prior DUI convictions within the last ten years, if you have been charged with a felony, or if your driving resulted in injuries or death to others. Do not select your attorney based on price only – some attorneys may offer to charge a seemingly smaller fee for their services, when compared to other attorneys in the area, but there is usually a reason for the discrepancy in price. Perhaps they simply accept the first offer made by the prosecution and plead out your case with a minimal investment of time, or perhaps they are new to this area of the law and their fee is indicative of their lack of experience. You have a lot at stake when facing a DUI charge – while a good attorney might appear expensive, in the long run, you may find that it is even more expensive to hire an attorney who lacks "real world" experience in DUI defense.

WHAT IF I CANNOT AFFORD AN ATTORNEY?

If your financial situation is poor, you may qualify for representation by a Public Defender. The Office of the Public Defender provides legal representation for those unable to afford a lawyer in criminal matters. However, although Public Defenders generally possess the requisite experience to assist you in the defense of a DUI charge, they are often burdened with many case files that require their attention. As such, they may be able to devote only a limited amount of time to your case, especially if it is a misdemeanor charge. Further, depending on your financial circumstances, you may be required to reimburse the county for the cost of the services of the Public Defender at some later date. **Thus, the services of the Public Defender might not be "free".** Carefully consider your options. An attorney retained by you will likely have a smaller case load, and they may be able to devote more time to your case. They are generally not "in a rush" to accept the first plea arrangement offered by the prosecution, and it is not unusual for private counsel to move more slowly in order to fully explore the facts of the case, to review possible defenses, and to have time to negotiate with the prosecutor for the best outcome to your case. Attorneys who regularly handle DUI cases are sensitive to the financial problems faced by their clients, and they may have financing options available that will enable you to engage their services while keeping within your budget. When contacting attorneys about your case, ask if they offer financing or other payment plans – you deserve the best in legal representation, and being proactive can help ensure that your short-term money problems will not deny you an aggressive defense to the charges against you.

YOUR ATTORNEY WILL NEED TO KNOW ALL OF THE FACTS

Once you have retained your attorney, they will likely meet with you and learn all of the facts surrounding your arrest. Before your interview with the attorney, while your memory is fresh, consider writing down the events and circumstances surrounding your being charged with DUI. **Here are some questions** that you might wish to consider and include the responses in your narrative. How much alcohol had you consumed that day? Where were you drinking? Had you taken any drugs or medication prior to your arrest? Do you

suffer from any medical problems or illnesses? When and what did you eat prior to your arrest? How long had you been driving before you were stopped by the police? What was it about your driving that caused the officer to stop your vehicle? What did the officer say to you? Did he give you any explanation as to why he stopped you? What happened next? Did he ask you any questions? What were your responses? Did he ask you to complete some field sobriety tests ("FST")? Do you recall which tests you performed? How do you feel you did on these tests? Did the officer ask you to give a breath test in a small, hand-held unit (usually called a preliminary alcohol screening unit, or "PAS" unit, for short)? If so, did the officer give you any indication of the test reading? Did the officer give you any explanation for placing you under arrest? Where were you taken? Did they perform a breath test or draw blood at the new location (usually a police station or jail)? If a breath test, did they tell you the test results? If blood was drawn, who administered the procedure (nurse, doctor, phlebotomist, etc.)? Were there any other events that seemed unusual to you? Your attorney will likely have other questions for you as well, but if you can arrive well-prepared for the interview, you will make the attorney's task of getting familiar with your case that much easier, and you will document information that might be critical to your case before your memories fade.

ALWAYS BE TRUTHFUL WITH YOUR ATTORNEY

Never, ever, lie to your attorney. Under the law, with very few exceptions, your attorney must keep your confidences strictly confidential. Be truthful – even if you made mistakes and even if you did something wrong, tell your attorney immediately. Armed with the truth, your attorney can develop a plan on how best to deal with this negative or damaging information if it should come up at a later time. The worst thing you can do is keep this information from your attorney, who will probably be unprepared and "blind-sided" by it when it comes out in discussions with the prosecutor or during trial. Remember, your attorney is working for you – but, you must trust them and give them the facts (good or bad) to do the best job on your behalf.

ARE THERE ANY DEFENSES TO THE CHARGES AGAINST ME?

Armed with all of the facts, your attorney can start to analyze the case against you, looking for defenses that might be helpful in mitigating the charges against you. An important consideration is "probable cause". In the United States, probable cause is the standard by which an officer of the law has grounds to make an arrest, or to conduct a personal or property search. Generally, if the police officer did not have the requisite probable cause to stop your vehicle, any arrest or criminal proceedings that follow should be dismissed. As such, your attorney will probably spend time carefully reviewing with you the circumstances that led to your being stopped by the police and what transpired during the initial contact with the police. Other defenses might exist, depending on the circumstances of the case. While breath tests and blood tests are usually reliable, that is not to say that they are accurate 100% of the time. Improper maintenance and use of breath testing machines can produce questionable test readings, and improper procedures and testing with regard to blood draws can produce inaccurate results. If discrepancies are found in the "evidence" against you,

your attorney may file documents with the court (usually called "motions") to try to have certain evidence suppressed (disregarded by the court), or to have the case against you dismissed.

HOW IS THE DEPARTMENT OF MOTOR VEHICLES INVOLVED IN MY CASE?

At the time of your arrest for a DUI offense, the police officer likely confiscated your driver's license, and in its place, gave you a "temporary" driver's license (usually a pink-colored piece of paper). This temporary license permits you to drive for thirty (30) days, after which time your license to drive will be suspended. However, what most people do not know is that within ten (10) days of your arrest, you must contact the DMV to set-up an *administrative per-se* hearing to determine whether or not your license should be suspended. If you fail to contact the DMV within this ten day period, your license is automatically suspended after the thirty day period following your arrest. If you retain an attorney for your case, they will usually handle the DMV hearing as part of their representation. Furthermore, in many cases, your attorney will not want you to be present at the DMV hearing – instead, your attorney will handle the hearing on their own. Because the DMV hearing is considered to be an "administrative law" hearing, and not a criminal law proceeding, there are certain important legal differences which may favor letting your attorney appear without you. Always follow your attorney's advice on this matter – they likely have a great deal of experience in dealing with the DMV hearings, and your attorney will request your presence at the hearing if the circumstances of your case so dictate. However, if you are unrepresented by an attorney, remember that you must contact the DMV within ten days of your arrest – otherwise, your license will automatically be suspended once the temporary license expires.

YOUR (FIRST) DAY IN COURT

At the time of your arrest, the police officer (or your bail bondsman) most likely provided you with the date, time and location for your first appearance in court. This is generally called your "arraignment". At the arraignment, you will usually be asked to enter a plea – guilty, not guilty, or "no contest" – to the charges against you. If you are charged with a misdemeanor, in most cases, only your attorney is required to appear – although you are generally welcome to be present, and some attorneys prefer that their clients appear for the arraignment. If you are charged with a felony, in most cases, you must appear at the arraignment. If you are unrepresented by an attorney, and if you plead guilty (or "no contest"), your case will generally be over quickly. The judge will impose the sentence (often the maximum penalty), and you will not be permitted to enter any evidence on your behalf or to question any witnesses. If the sentence calls for some in-custody jail time, the court bailiff will usually take you into custody and you will start the process of serving your sentence immediately. If you are unrepresented by an attorney, and plead not guilty, the hearing will generally be continued to a later date (often 10-30 days in the future), to permit you to confer with the prosecutor about a possible plea bargain, or to prepare for the setting of a trial date.

If you are represented by an attorney, they will usually enter a not guilty plea, and continue the hearing to a later date. This delay provides your attorney with the opportunity to request and receive discovery

(more below) from the prosecutor, and to confer with the prosecutor to determine if there is an offer of a plea bargain to the charges against you. After the arraignment, your attorney may also prepare and file motions with the court to suppress evidence or to put other tactics into play to provide you with the best possible defense.

"WAIVING TIME"

In criminal proceedings, a person charged with a crime has a right to a speedy trial. While it might seem attractive to get the case "over and done with" as quickly as possible, the relatively short periods of time provided for under the law may not provide your attorney with sufficient time to gather evidence, to discuss your case thoroughly with the prosecution, and to be sure that they can provide you with the best possible defense. In some instances, your attorney may recommend that you agree to continue your case to hearings at a future date, and to waive your right to a speedy trial. The decision to "waive time", or not, is often an important strategic move, and generally, it is best to follow your attorney's advice on this matter.

WHAT IS DISCOVERY?

In most legal proceedings, one party is entitled to receive a copy of the evidence that will be offered to the court by the opposing side. This is called "discovery". In the context of a DUI arrest, discovery often includes copies of the arresting officer's report, any drug evaluation reports (which usually describe the results of any field sobriety tests or other observations by the police officer), and any results of chemical testing, such as a breath test or a blood test. This information is critical in determining if the requisite probable cause existed for the actions of the police in stopping and arresting you, and if the proper protocols with regard to chemical testing appear to have been followed. Usually following your arraignment, your attorney will request discovery from the prosecutor which, depending on the jurisdiction and the circumstances of your case, can take anywhere from several days to a couple of months to receive. The careful analysis of the discovery information by your attorney can play a critical role in providing an effective defense in your criminal case.

OTHER COURT PROCEEDINGS

After your arraignment, there may be a number of hearings or court proceedings. Your attorney may continue (defer to a later date) the proceedings one or more times in order to have sufficient time to receive and examine the discovery from the prosecutor, to have the court hear any pre-trial motions, to enter a plea as a result of a plea agreement, to set the matter for trial, or, to actually conduct the trial in your case. Always check with your attorney to determine if your presence is required at these hearings. If you are charged with a misdemeanor, you are usually not required to be present – although you are welcome in most cases to do so, if you wish. If you are

charged with a felony, your presence is usually required – and, if so, your failure to appear could result in any bond being revoked and a warrant being issued for your arrest. As mentioned above, always check with your attorney to determine if your presence will be required at any such court proceedings. If you are not represented by an attorney, you should appear at all of the court proceedings related to your case.

WHY SHOULD I ACCEPT A PLEA BARGAIN?

It may surprise some to learn that most criminal cases do not progress to a trial. In most cases, the charges are either dismissed (usually if there is a lack of sufficient evidence) or the defendant agrees to accept a plea bargain to resolve the charges against him. A plea bargain can be a "win-win" for both sides in the case. Usually, the punishment imposed on a defendant in accepting a plea bargain is less than the punishment they might expect if they were to take the case to trial, and lose. If the case against you is strong, and there are no credible defenses that could help to mitigate the charges against you, a plea bargain might be the best resolution of the case for you. By pleading guilty (or "no contest"), you will likely receive a lesser punishment than you would otherwise by taking the case to trial (and losing the case), and the prosecutor benefits by saving time and the resources of their office by achieving an early resolution to the case. Depending on the circumstances of your case, your attorney may spend a considerable amount of time negotiating with the prosecutor for a plea bargain that provides a fair resolution to the charges against you. If your attorney recommends that you accept a plea bargain, you should carefully consider their advice – your attorney has likely reviewed your case in detail, and the likelihood of prevailing in trial is probably significantly outweighed by the strength of the evidence against you. A plea bargain may provide a means to resolve the criminal charges against you more quickly, and with a lesser punishment, than proceeding to trial and losing your case.

TRIAL

If the strength of the evidence against you is not strong, in the opinion of your attorney, or if attempts to reach an equitable plea agreement have failed, your attorney may recommend that your case be taken to trial. Depending on the charges against you, the case may be tried as a bench trial (where only the judge decides the case) or a jury trial (where your case is decided by a jury). At the trial, the prosecution will present the evidence against you. Your attorney will likely challenge the evidence through other evidence of your own, the testimony of witnesses, and perhaps even expert witnesses. Your attorney may question witnesses put forth by the prosecution and challenge the information they provide to the court. At the end of the trial, the judge or the jury will render a verdict, usually that you are either found "guilty" or "not guilty" of the charges against you. If you are found "not guilty", the case is over and you are free to go. If you are found "guilty", you will be sentenced to the punishment the court deems appropriate under the circumstances of your case.

PUNISHMENT

If you are convicted of a DUI offense, the severity of the punishment you face will likely depend on any prior DUI convictions during the past ten years, your blood alcohol level at the time of your arrest, and if any person was injured or killed as a result of your impaired driving.

For a first-time DUI conviction, with no harm to other parties, the "usual" sentence is three years of informal probation, up to six months in jail, attendance at a three month DUI school, attendance at a one evening Victims' Impact Panel meeting, fines which generally total about $2,000, and a license suspension of generally between four to ten months. As a general rule, first-time DUI offenders serve no actual in-custody jail time, however, you will likely be subject to "alternative sentencing", which means that you may have to work for a non-profit organization, work on a sheriff's work project, or wear an ankle monitor to satisfy this part of your sentence.

If this is your second or third DUI, or more, within the past ten year period, you are much more likely to be facing some actual in-custody jail time. For a second offense, the prescribed jail sentence can be from ten days to one year in jail. In actual practice, the sentence is likely to be considerably shorter than one year in jail, but some time in jail is a distinct possibility. Also, instead of the three month DUI school, repeat DUI offenders must attend the eighteen month DUI school, and they face a much longer period of suspension of their driver's license.

Your attorney may be able to reduce the severity of the punishment imposed upon you by negotiating a plea agreement or the terms of your sentence with the prosecutor. This is a very important role of your attorney, and one which is best handled by an attorney skilled in DUI defense.

IGNITION INTERLOCK DEVICE

In some California counties, such as Sacramento, even first-time DUI convictions will require the installation of an ignition interlock device in your vehicle. This device requires that you provide a breath sample before you can start the vehicle. If the unit detects that you have any alcohol in your system while trying to start the vehicle, or if the unit is tampered with or damaged, a report of the incident is recorded, and reported to the court. The length of time that the unit must remain installed in your vehicle will depend on the number of prior DUI convictions, and other criteria of the court or DMV. Most providers of interlock devices charge an installation fee, and a monthly monitoring charge, in addition to the fact that you are required to bring the vehicle to the installer on a regular basis for inspection and reporting to the court.

FOR MORE INFORMATION, PLEASE CONTACT OUR OFFICE:

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