

Santa Barbara DUI News

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What everyone arrested for Drunk Driving in S.B. needs to know!

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You have 10 days (or less) to save your license!

By state law, everyone who is arrested for driving a motor vehicle in the state of California with .08 % of alcohol by weight in their blood, or greater, will have their privilege to drive in the state suspended for at least six months. This law is known as the Administrative Per Se suspension, or the "stop and snatch" law. The length of any such suspension will vary depending on your age, whether you have

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A DUI arrest does not mean you are guilty.

Contrary to popular opinion, police officers make mistakes; and lots of them. Moreover, the hyper-technical laws surrounding the regulation of driving under the influence of alcohol (DUI) are rife with ambiguities, if not contradictions. These laws are anything but straightforward. Consequently, unless you are an attorney who specializes in defending those accused of DUI, you are probably not qualified to judge whether you have one or more defenses to the charges.

You owe it to yourself to become educated about what to expect and, just as importantly, what to do about it. Much depends on whether you are actually convicted of drunk driving, as opposed to just arrested. In other words, *it ain't over 'til it's over*. Not only could you suffer a criminal conviction, a jail sentence, a hefty fine, a lengthy DUI education course and up to five years of probation, but the associated insurance premium hikes alone amount to a serious long-term financial set-back.

A typical DUI arrest results in two legal proceedings: One against the person (aka "the criminal case") and one against the person's privilege to drive in the state of California. There are many defenses to both of these legal proceedings, and surprisingly few of those address the basic question of "how drunk were you?"

Many traffic stops are illegal

The Fourth Amendment to the United States Constitution was intended by our Founding Fathers, and those who enacted the Bill of Rights, to prevent the United States of America from becoming a police state. Many people think that police states are something that happen only in the movies, futuristic novels, or in other countries. Unfortunately, this is not the case. Most any society can become a police

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previously been convicted of DUI, whether you refused to take a chemical test (or failed to complete one) and the quality of your legal counsel. With the right legal counsel, you can greatly diminish the probability that your privilege to drive will be suspended for any length of time. This is particularly the case if you are at least 21 years of age, you did not refuse to take a chemical test after the arrest, and you have not been convicted of DUI within the last seven years. Otherwise, the period of suspension may last for a year or more, and it may be more difficult to successfully defend (though not impossible).

A DUI arrestee has 10 days from the date of the arrest to notify the Department of Motor Vehicles of their desire to contest the Administrative Per Se driving privilege suspension. If the DUI arrestee fails to notify the DMV of their desire to contest the suspension, then they will have to stop driving as of the 31st day after arrest, period. The suspension, in such cases, will remain in effect indefinitely or until the arrestee has gone without driving for at least 30 days, and jumps through a number of hoops (i.e., enrolling in a DUI class, getting a special insurance policy called an "SR-22" and paying a re-issue fee).

Contesting the suspension involves an administrative hearing (either in-person or telephonic), which lasts about an hour and is held before an employee of the DMV who acts as both the prosecutor and judge. It is a good idea to be represented at any such hearing by a qualified lawyer as the defenses to the suspension action are technical and complex evidentiary issues are involved. Simply pleading to the

hearing officer that you need a driving privilege to get to work will not work.

The DMV is so back-logged that the average wait time for a hearing and a decision is three to four months. So, another reason why a DUI arrestee may choose to contest their driving privilege suspension is to delay the effective date of the suspension for several months. While the goal for many is to beat the suspension, some simply need more time to prepare to go without driving for at least 30 days.■

TIP: While you may certainly notify the DMV of your desire for a hearing and a delay of the imposition of the suspension without the assistance of a lawyer, many DUI defense attorneys will offer to make the request on your behalf, and without charging you a dime. The Law Offices of William C. Makler offers to notify the DMV for you free of charge and without obligating you retain his services. For assistance, call 1-866-HELP-DUI.

Frequently Asked Questions Regarding DUI in Santa Barbara

Q. Why should I see an attorney about my DUI?

A. A DUI is a felony or misdemeanor, not just a traffic ticket.

If you are convicted of DUI, there are mandatory legal penalties. Your driver's license is automatically suspended unless you fight. Your insurance rates will skyrocket and the conviction may be added to your credit report. If you hold a

What To Do If You Can't Afford An Attorney

If you have no money to hire an attorney, you may qualify for a court-appointed attorney (public defender). You are eligible for a public defender only if you are considered indigent. Indigent means you and your spouse's combined income and assets are below a certain level. In Santa Barbara, the public defender charges \$95 to defend a misdemeanor case, and \$120 to defend a felony case. Nevertheless, the court retains some discretion to charge additional fees depending on how much work the court-appointed attorney did on your case, and whether they think you can actually afford to reimburse the County.

One thing to keep in mind is that the court-appointed attorneys will not be able to assist you with what many consider the most daunting aspect of a DUI arrest--the driving privilege suspension. Since the action against your driving privilege is not criminal, they are not paid to assist you with it.■

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professional license, the conviction must usually be reported to the licensing agency.

In short, you have a lot to lose. So it makes good sense to see if you can defend yourself against these charges.

Q. What should I look for in a defense attorney?

A. Most attorneys do not practice criminal law, and you need a specialist to defend your rights.

When you are looking for a criminal attorney, you should evaluate the initial interview carefully. You should feel comfortable with the attorney and confident in his or her ability in this type of case. When you have questions, make sure they are answered to your satisfaction. Some firms use paralegals and marketing representatives to interview clients. Be sure you talk directly with a competent criminal defense attorney.

Q. Could I represent myself in court or before the DMV?

A. Do-it-yourself legal work doesn't make much sense. DUI is a criminal matter and there are stiff penalties, particularly if your case is mishandled. Take it seriously.

Q. What if I can't, or don't want to, appear in court?

A. Your attorney can appear for you in court in most cases. You don't have to be present.

Q. Can I discuss my case with family members, friends, or coworkers?

A. No, don't. If you discuss your arrest with others, they can be called as witnesses by the prosecution. Your attorney can't be a witness against you, and everything you tell your attorney, with rare exception, is confidential. Telling people

about your arrest can damage your reputation, upset your loved ones, and may jeopardize your job. You should discuss your case only with your lawyer.

Q. Can you guarantee results?

A. Beware of any attorney who guarantees results, claims to be "the best", or who claims a certain percentage rate of success. Such aggressive advertising is almost always misleading, replete with half-truths, and unbecoming of the legal profession. In the law, as in most areas of life, absolute certainty does not exist. However, the best results in any case always come from a good professional relationship with a competent attorney.

Q. Can I get my driver's license back?

A. Possibly. Each case has its own special facts, and there are valid legal defenses that can be used against your DMV driving privilege suspension. One or more defenses may be present in your case.

Q. What is the DMV hearing about?

A. The DMV has the right to suspend or revoke your driving privilege if you don't challenge the action. To do this, they decide whether the police officer had a legal right to stop you and a legal right to arrest you. Then, depending on the test you took, they also decide whether your blood alcohol content was above the legal limit. Hearings for test refusal cases are handled in much the same way. ■



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state overnight and, arguably, the United States already has. Nevertheless, here there are mechanisms available to anyone accused of a crime to ensure that their fundamental rights to privacy, against warrantless search and seizure, to counsel and against self-incrimination have been honored. However, it is not enough in most cases to simply claim that your rights have been violated or denied. Vindicating these rights requires a skillful attorney and the right facts. If a traffic stop was not based upon a warrant or reasonable suspicion of criminal activity, the entire case must be thrown out.

To find out whether your case involved an illegal traffic stop, you should speak with an attorney who specializes in DUI defense right away. ■

South Santa Barbara County DUI Penalties (IF YOU ARE CONVICTED):

	1 st Offense		2 nd Offense		3 rd Offense		4 th Offense	
	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum	Minimum
Fine	\$1,000*	\$390	\$1,000*	\$390	\$1,000*	\$390	\$1,000*	\$390
Additional Penalties (See chart below)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Jail (if no probation)***	6 months	96 hours	1 year	90 days	1 year	120 days	3 years	1 year
License Suspended**	30 days	6 Months	18 months	18 months	3 years	3 years	Revoke	Revoke
Impound Vehicle	30 days	None	30 days	1-30 days	90 days	1-90 days	Impound/ Forfeit	Impound/ Forfeit
Forfeit Vehicle	No	No	No	No	Yes	Yes	Yes	Yes
Alcohol Class	6 month	3 month	30 month	18 month	30 month	18 month	30 month	18 month
"Habitual Traffic Offender"	No	No	No	No	Yes	Yes	Yes	Yes

* Santa Barbara Superior Court routinely imposes the maximum fine and tacks on a Victim Restitution Fine as well as local special penalty assessments (e.g., the total fine on a first DUI is \$1,600, and there is usually a booking fee of \$130 as well). Monthly installments are allowed.

** If under the age of 21, the license suspension will last at least one year pursuant to "zero tolerance" law.

*** When probation is imposed (aka "sentence suspended") the actual jail time varies from case to case. "No jail" DUIs are not uncommon in Santa Barbara. Also, you should make yourself aware of jail alternatives by speaking with a local attorney who specializes in DUI defense.

Reckless Driving Penalties (IF YOU ARE CONVICTED):

	Probation		No Probation	
	Maximum	Minimum	Maximum	Minimum
Jail	90 days	None	90 days	5 days
Fine	\$1,000	None	\$145	\$1,000
Additional Penalties*	Yes	Yes	Yes	Yes
Prior Conviction	Yes	Yes	Yes	Yes
Driver Under 21	1 year lic. suspension	1 year lic. suspension	1 year lic. suspension	1 year lic. suspension



Additional Penalties if:

Blood Alcohol Content	.20% or above
Refused to Take Test	Yes
Passenger in Vehicle	Under 14
Age of Driver	Under 21
Reckless Driving Related Death or Injury	Additional Jail Time More severe penalties

**NEXT MONTH'S
ARTICLES**

ZERO TOLERANCE LAW: HOW IT WORKS

WHERE INTOXYLIZERS GO WRONG

INSURANCE RATES AND YOUR DUI

CHECKPOINTS: ARE THEY LEGAL?

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