

I have been arrested for a misdemeanor offense... What will happen on the first court date?

Misdemeanor -

is an offense less serious than a felony, punishable up to a fine of \$1,000.00 and/or a maximum of one year in jail.

If you have hired a Criminal Defense Lawyer – IT IS NOT MANDATORY for you to appear in Court
(unless you have been arrested for a domestic violence offense – PLEASE CONFIRM WITH YOUR LAWYER)

If you have not hired a Criminal Defense Lawyer – It is mandatory for you to appear in Court

Stages of a Misdemeanor Offense:

Arraignment – The First Court Appearance

After your arrest, booking, and initial bail phases of the criminal process, the first court appearance is called the arraignment. In a typical arraignment, a person charged with a crime is called before a criminal court Judge or Commissioner:

- The Judge will read the criminal charge(s) against the person (now called the “defendant”);
- The Judge will ask the defendant if he or she has an attorney, needs the time to hire an attorney or if determined to be indigent qualifies for the assistance of a court-appointed attorney;
- The Judge will then ask the defendant how he or she answers, or “pleads to”, the criminal charges -- “guilty,” “not guilty,” or “no contest” or if they want to continue the arraignment to a future date without entering a plea.
- During the Arraignment the Judge may decide whether to change the bail amount or to release the defendant on his or her own recognizance --without having to post bail to be released (Note: This matter may be revisited even if addressed in a prior proceeding); (see page 4) and
- The Judge will then set a date for future proceedings in the case, such as the pretrial date and a date for trial which is generally (45) days from the Arraignment if the defendant is out of custody and (30) days if the defendant is still in custody.

Pre Trial Conference

Covers any motions, discovery of further evidence and potential opportunity of negotiations for a plea bargain.

Plea Bargains

The vast majority of criminal cases are resolved through a “plea bargain”, usually well before the case reaches trial. In a plea bargain, the defendant agrees to plead guilty or no contest, often to a lesser charge than one for which the defendant could stand trial, in exchange for a more lenient sentence, and/or so that certain related charges are dismissed. For both the prosecutor and the defendant, the decision to enter into (or not enter into) a plea bargain may be based on the seriousness of the alleged crime, the strength of the evidence in the case, the defendants criminal history or lack thereof and the prospects of a guilty verdict at trial. Plea bargains are generally encouraged by the court system, and have become something of a necessity due to overburdened criminal court calendars.

For Misdemeanor or Felony Offenses that go to a Trial

Trial

In a criminal trial, a jury listens and examines the evidence to decide whether, “beyond a reasonable doubt,” the defendant committed the crime{s} in question. In a trial the prosecution has the burden of proving to the judge or jury that the defendant committed the offense{s} in the hope of obtaining a “guilty” verdict and a conviction of the defendant. A trial also represents the defense’s chance to refute the prosecution’s evidence, and to offer its own in some cases. After both sides have presented their evidence and made their arguments, the jury considers as a group whether to find the defendant guilty or not guilty of the crime(s) charged. (Note: Although a trial is the most high-profile phase of the criminal justice process, the vast majority of criminal cases are resolved well before trial -- through guilty or no contest pleas, plea bargains, or dismissal of charges.)

Sentencing

After a person is convicted of a crime, whether through a guilty plea, plea bargain, or jury verdict, the appropriate legal punishment is determined at the sentencing phase. A number of different kinds of punishment may be imposed on a convicted criminal defendant, including:

- Fines;
- Incarceration in jail (shorter-term);

I have been arrested for a felony offense... What will happen on the first court date?

- Incarceration in prison (longer-term);
- Probation; (with or without custody time)
- A suspended sentence, which takes effect if conditions such as probation are violated;
- Payment of restitution to the crime victim;
- Community service; or Caltrans or Graffiti Removal
- Drug and alcohol rehabilitation.

For misdemeanors and infractions, sentencing often takes place immediately after conviction or when a defendant has pled guilty. In more complex criminal cases, such as those involving serious felonies, the sentencing judge usually receives input from the prosecutor, the defense and the probation department (which prepare recommendations in a “pre-plea report or post conviction report”).

The sentencing judge will also consider punishments and sentencing ranges identified in applicable criminal statutes, as well as a number of case-specific factors, including:

- The defendant’s criminal history, or lack thereof;
- The nature of the crime, the manner in which it was committed, and the impact on victims, i.e. whether injuries resulted;
- The defendant’s personal, economic, and social circumstances; and
- Regret or remorse expressed by the defendant.

Felony -

is an offense carrying a potential penalty of 16 months or greater in state prison.

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Stages of a Felony Offense:

Arrest – The First Court Appearance (see page 2)

Early Disposition Conference

In some courts, there may be a conference scheduled prior to the preliminary hearing. At the Early Disposition Conference, your criminal defense lawyer will have the opportunity to discuss your case with the prosecutor in an attempt to reach a favorable plea bargain or the best possible deal for you. The judge will be present and participate in this process.

Preliminary Hearing

A preliminary hearing is best described as the “trial before the trial”. In this court hearing, the Judge decides, not whether the defendant is “guilty” or “not guilty,” but whether there is enough evidence to hold the defendant to stand trial. The judge uses the “probable cause” legal standard which determines whether the prosecution has produced enough evidence to show there is a strong suspicion the defendant committed the crime(s) charged.

What to Expect at the Preliminary Hearing

In reaching this probable cause decision, the judge listens to arguments from the prosecutor and from the defendant (usually through his or her attorney). The prosecutor will call witnesses to testify, and can introduce physical evidence in an effort to convince the judge that the case should go to trial. The defense usually cross-examines the prosecutor’s witnesses and calls into question any other evidence presented against the defendant, seeking to convince the judge that the prosecutor’s case is not strong enough, so that the case against the defendant must be dismissed before trial.

Arrest in Superior Court

At this time, you are again formally advised of the charges against you and your constitutional rights and future court dates are assigned. The prosecutor may file any additional charges they believe were proven at the preliminary hearing and can even file charges that were dismissed at the preliminary hearing.

Pre-Trial Conference

Your Criminal Defense Lawyer will have the opportunity to continue discussions with the prosecutor in attempt to reach a favorable plea bargain sometimes including the Judge in this process.

Pre-Trial Motions

After the preliminary hearing and before a criminal case goes to trial, the prosecutor and the defense attorney usually appear before a criminal court judge and make pre-trial motions -- effort to set the boundaries for trial should one take place, arguments that certain evidence should be kept out of the trial, that certain persons must or cannot testify, or that the case should be dismissed altogether. If the matter is unresolved at this juncture the only remaining stage of the process would be a trial.

I have been arrested for Driving Under the Influence (DUI)... What should I do next?

At the time of your arrest, you received a Temporary License from The Department of Motor Vehicles (a pink sheet of paper). This is a temporary license to drive for another (30) days from the day of your arrest*

Your DUI / Drunk Driving arrest has resulted in two cases against you that are legally distinct and separate from each other:

1. **DMV Hearing** - Takes place at selected California Department of Motor Vehicles. This is a civil proceeding not a criminal. The DMV Hearing is important in order to keep your license from being suspended for either (4) months, 1 year, (18) months, or several years.
2. **Court Case** - Takes place in the Criminal Courts. If you are convicted of a DUI in Court, the Court will decide all the following: *the amount of jail time, the number of years you will serve probation, the number of months or years for mandatory attendance at an alcohol/drug treatment programs, additional restriction to your license suspension and the amount of fines and penalties you will have to pay.*

You or your lawyer only have ten (10) days from the date of your arrest to contact the DMV office to schedule a DMV Hearing date to save your license and your driving privileges.

Why should I or my lawyer schedule a DMV hearing if my test results were over .08% BAC?

To ensure that the law enforcement agency that arrested you had a reasonable cause to believe you were driving drunk.

- Why did they pull you over?
- Was your Alcohol testing readout accurate?
- Were the tests the officers had you performed properly administered?

The DMV hearing is very concerned about all of these proper procedures by law enforcement and many more before suspending a person's driver's license. THIS HEARING IS VERY IMPORTANT.

For additional information regarding Driving Under the Influence (DUI), please go to www.adp.ca.gov.

* Provided your driver license is not expired, or your driving privilege is not suspended or revoked for some other reason.

Being arrested for Driving Under the Influence (DUI) can result in very serious consequences including jail, large fines, probation, mandatory alcohol programs, canceled insurance and loss of employment.

If found Guilty in the DMV Hearing and in Court		First Offense No prior DUI Offense	Second Offense within (10) years	Third Offense within (10) years	Fourth Offense within (10) years can be filed as a felony
<u>License Suspension</u>		Four (4) Months	(1) Year	Three (3) Years	Four (4) Years
<u>Probation</u>		3-5 Years	3-5 Years	3-5 Years	3-5 Years or none
<u>Mandatory Alcohol Classes</u>		Three (3) Months	Eighteen (18) to Thirty (30) Months	Eighteen (18) Months (if offender hasn't completed one)	Eighteen (18) Months (if offender hasn't completed one)
<u>Proposed Fines</u>		\$390.00 to \$1,000.00	\$390.00 to \$1,000.00	\$390.00 to \$1,000.00	\$390.00 to \$1,000.00
<u>Possible Jail</u>		0 to 6 Months	96 hours to 1 Year	4 Months to 1 Year	6 Months to 3 Years
<u>Car Insurance</u>		Possible Drastic Rise or Termination	Possible Drastic Rise or Termination	Possible Drastic Rise or Termination	Possible Drastic Rise or Termination

NOTE: Any and all of the above penalties may be increased for any of the following sentence enhancements:

1. Refusal of Chemical Tests
2. Probation for prior DUI
3. Accident and/or Injury
4. Alcohol level over .20% BAC
5. Speeding - 30 mph over speed limit on freeway - 20 mph over speed limit on other roads.
6. Passenger under the age of 14 years old in the car.
7. A license restriction may be implemented in addition to the suspensions above {Please consult with your Lawyer}.