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1. I just got arrested for an OUI. What do I do?

If you haven't been to court yet, you will need to be arraigned, which is usually the next business day. Call me on my cell at 508.527.5161 anytime, 24/7.

If there isn't time to have an attorney in court that day, don't worry. Follow the instructions and you should be fine. Very little actually happens at an arraignment if you don't have an attorney with you. Just don't talk about your case with anyone until you speak with a lawyer. Your name will be called, you'll plead "not guilty" to Operating Under the Influence of an intoxicating liquor, and you'll get another court date for a pre-trial conference.

2. Should I fight the case or work out a deal?

This is a decision that only you can make, but for most people we recommend that they fight the case if at all possible. For second or third offenses, fighting the case is virtually always the way to go, since you don't have much to lose - the penalties for being found guilty at trial on a 2nd or 3rd offense are usually not any worse than the plea deal you would get.

Winning means no conviction on your record, and none of the consequences of that conviction – career restrictions, travel restrictions, and more. Winning means no fines, no alcohol education classes, or probation. And winning means you don't risk future consequences or restrictions the state may decide to add on for anyone with an OUI.

The reason most people plead guilty is to be able to drive again immediately with a hardship license. But for the above reasons, everyone should at least consider fighting. If you can somehow manage alternate transportation for a few months, it would be strongly in your best interests to do so.

3. What happens if I fight the case, and how long will it take?

We will take the case to trial in front of either a judge or a jury. It will take a number of months. There may be 2 or 3 court dates before a trial, which will probably be in 6 months. For a jury trial, it could take a total of 6 months to a year for the case to be resolved.

In some circumstances, it is possible to skip preliminary motions and schedule a bench trial immediately. This usually limits our defense options, so it does have disadvantages, but it may give you a chance to resolve the case in 2 months or less.

4. How long will I lose my license for?

For a first offense OUI charge, if you refuse the breath test you will lose your license for 180 days (6 months). If you fail it, you will lose your license for 30 days.

5. What will happen if I work out a deal rather than going to trial?

In a first offense case, it is very likely that we can work out a deal for the minimum penalty available under the law. The case will be continued without a finding for one year. The judge will suspend your license for 45 days (consecutive with the 180 day breath test refusal or 30 day failure suspension), and you will pay a number of fees and fines. The conditions of your probation will be that you attend and complete the alcohol education program.

If you hire me to appear at your arraignment, I can often get the deal worked out that day, so you don't have to come back a month or more later. That way, you can get back on the road with a hardship license as quickly as possible. There are other good reasons why most people choose to work out a deal when charged with an OUI.

6. How long will this stay on my record?

It will never go off of your record. And if you get arrested again it will be used against you as a prior offense.

7. What is the difference between a Continuance without a Finding and a Guilty?

They are very similar for most purposes but a continuation/continuance without a finding (CWOFF) is not considered a conviction, and therefore you can honestly answer if anyone asks you if you "Have ever been convicted of a crime?" no. A CWOFF does mean that you agree that there are "sufficient facts to establish your guilt. It also will absolutely count as a prior offense or probation violation if you get in trouble with the law again.

8. How would an OUI conviction affect me other than the criminal penalties and the license loss?

It could potentially affect employment, if someone decides to run a background check on you, it will appear on your record. Also, Canada is very strict about letting people into their country; even one continuation without a finding, Canada will ban you from entering.

9. Am I going to jail?

People virtually never get jail time for a first offense OUI, but it is theoretically possible for a very tough Massachusetts judge to sentence you to jail on a 1st offense.

Jail time is rare, but possible on a second (2nd) offense charge.

There is a mandatory minimum 5 months in jail for a 3rd offense OUI conviction in Massachusetts, and 1 year for a 4th offense.

10. How and when will I be able to get my full license back?

On a 1st offense, if you have a Massachusetts License, you are able to get your full license back after your license suspension ends. It will vary depending on the charges. It would typically be a total of 225 days (180 + 45) from the date of the incident if you refused the breath test. If you failed the breath test, it is still 45 days from the date of the conviction, plus the 30 days from the date of the incident. So if your plea date is within the 30 days, the 45 is tacked on after that for a minimum of 75 days total.

However, if you have an out of state license, or if the Registry thinks you have a prior OUI conviction that the court doesn't know about or can't prove, it is much more complicated.

11. Is my name going to be in the paper and what can I do about it?

For most people the answer is no. There are a few newspapers in Massachusetts that will publish that somebody has been arrested. However, sometimes at the arraignment you can find a sympathetic clerk and you can ask them to not give your name to a newspaper.

Sometimes police have what is called a police log. Some police departments will also publish their arrest logs online. There is nothing that can be done (that we know of) to stop this from happening.

If you are found guilty or plead out, criminal convictions are considered public records. It is very possible that your conviction could show up online at some point in the future. The state of Connecticut is already publishing all convictions since 2000 on a state web site.

Currently in Massachusetts, someone would have to do an online background check to find out about your record. But it is certainly possible that in the future, if someone does a Google search on your name, a drunk driving conviction could show up.

12. How does having an OUI on my record affect owning or my right to carry a firearm?

If you are found guilty of an OUI you will forever lose your license to carry concealed weapons and you will lose your FID card for 5 years. If your case is continued without a finding it does not affect your ability to own a firearm.

13. If I take the case to trial, is it the cops word against mine?

No, I look for evidence to prove that the police officer was mistaken, didn't follow proper procedures, or I provide reasonable explanations to cast doubt on the officers claims.

I will fully investigate your case, go to the scene of the crime with you and walk through the officer's behavior to find mistakes in administering the Field Sobriety tests, or other parts of the stop. I will take pictures at the scene to show evidence of unfair road conditions. I also look into any client's medical records that might show a condition making you unable to perform any of these tests.

14. Will I have to testify at trial?

It is very unlikely; I rarely have my clients testify at trial. But once in a while, if there is a strange fact in the case that I feel could hurt us, I might put a client on the stand to explain it.

But rest assured, on the rare occasions when I have a client testify, my team and I will fully prepare you with practice questions, so you know exactly what to expect.

15. Why should I hire Attorney Hentz?

Attorney James P. Hentz has the experience, training, single minded focus, and record of results in beating OUI charges that you need if you are serious about keeping your record clean.

OUI is a complicated and technical area of the law. If your lawyer doesn't represent people in OUI cases every day, he may not understand the legal complexities, and defense strategies that the top DWI attorneys are using, nationwide and here in Massachusetts, to great success.

16. Should I Hire a Local Attorney for that District Court, or an Experienced OUI Lawyer?

In most cases, having an attorney with OUI experience is far more important than having a local courthouse regular. There is no "home court advantage" in OUI cases.

17. If I am convicted, what is the worst thing that can happen to me?

The Maximum Penalty for a first offense OUI conviction is 2 ½ years in jail, fines up to \$5000, and a 1-year license suspension.

Again, I've never had a first offense client get jail time. Presumably, it would take an extreme set of circumstances for that to ever happen.

18. If I fight the case and lose, do I get any money refunded on legal fees?

No. Unlike personal injury cases in which an attorney can agree to accept a percentage of any financial recovery in a civil case, the Massachusetts Bar prohibits "contingency" fees in criminal cases. Doing so would be unethical.

With a surgeon, not every operation is a success. Yet, would you go back and ask for a refund of fees paid? No. An attorney (like a surgeon) is compensated for his/her time, knowledge, expertise and legal acumen. That is our "product." In addition, we set a "fixed" fee -- not hourly -- so you will know how much you will pay for legal services.

19. What do police officers look for when searching for drunk drivers on the highways?

The following is a list of symptoms in descending order of probability that the person observed is driving while intoxicated. The list is based upon research conducted by the National Highway Traffic Safety Administration (NHTSA):

- (1) Turning with a wide radius
- (2) Straddling center of lane marker
- (3) Appearing to be drunk
- (4) Almost striking object or vehicle
- (5) Weaving
- (6) Driving on other than designated highway
- (7) Swerving
- (8) Speed more than 10 mph below limit
- (9) Stopping without cause in traffic lane
- (10) Following too closely
- (11) Drifting
- (12) Tires on center or lane marker
- (13) Braking erratically
- (14) Driving into opposing or crossing traffic
- (15) Signaling inconsistent with driving actions

Speeding, incidentally, is not a symptom of OUI; because of quicker judgment and reflexes, it may indicate sobriety. Some of these accusations may also result in other Massachusetts criminal traffic charges, such as Operating to Endanger, or Reckless Driving. I frequently defend against these charges also, when in conjunction with OUI /drunk driving.

20. If I'm stopped by a police officer and he asks me if I've been drinking, what should I say?

Tell the officer you don't want to answer any questions until you speak to an attorney. This does mean that if the officer suspects your driving is impaired by your drinking, you will be arrested. But the less you say, the less evidence they have against you.

It is important to be polite and respectful to the police officer if this happens, since if you are rude to an officer, you can be sure he will testify to that in front of a jury.

21. What is the officer looking for during the initial detention at the scene?

The traditional symptoms of intoxication taught at the MA police academies are:

1. Flushed face
2. Red, watery, glassy and/or bloodshot eyes
3. Odor of alcohol on breath
4. Slurred speech
5. Fumbling with wallet trying to get license
6. Failure to comprehend the officer's questions
7. Staggering when exiting your vehicle
8. Swaying/instability on feet
9. Leaning on car for support
10. Combative, argumentative, jovial or other "inappropriate" attitude
11. Soiled, rumped, disorderly clothing
12. Stumbling while walking
13. Disorientation as to time and place
14. Inability to follow directions

22. Do I have a right to an attorney when I'm stopped by an officer and asked to take a field sobriety test?

Under Massachusetts OUI law, you have no right to an attorney after being asked to take a field sobriety test. You do have a right to refuse to perform the tests (see below).

23. If an officer asks me to perform field sobriety tests what should I do?

Under current drunk driving laws in MA, if you refuse to perform any field sobriety tests the prosecution is not allowed to introduce evidence of that refusal to a jury. The reason the officer asks you to perform the field sobriety tests is so he can use the evidence against you in court.

Officers are also often not well trained in performing these tests and frequently make mistakes which seriously call into question any scientific validity that they may have. Most of the time, telling the officer that you do not want to perform any tests on the advice of your attorney is your best bet.

24. What should I do if I am asked to take a breath test?

Ideally, most people would like to take the test if they know they will blow under the legal limit for blood alcohol in Massachusetts, which is .08, and refuse the test if they know they will blow over the legal limit. If you are under 21, the Massachusetts legal limit is .02.

This decision is made difficult because most people are not going to judge very accurately what their blood alcohol level is, and breath machines are subject to a number of problems that can make them unreliable, and will sometimes result in a person who is not legally intoxicated having blood alcohol reading over the legal limit.

If you refuse to take a breath test in Massachusetts that fact can not be introduced against you to a jury in a Massachusetts OUI trial. Because of these factors, most experienced Mass OUI lawyers will advise you to refuse the breath test. It leaves you the most & best possible options to fight the case.

25. What happens if I refuse the breath test?

If you refuse the breath test, Massachusetts will suspend your driver's license for a minimum of 180 days for a first offense OUI charge. If you fail the breath test then your license is suspended for 30 days. If you choose to plead out, you can get a hardship license in most cases, and minimize the period during which you cannot drive.

26. Can they charge me with a breathalyzer refusal, even though I tried to blow into it?

Yes, even if you try but it doesn't register on the machine, they will still call it a refusal. This can happen if you have asthma, reduced lung capacity, other problems blowing into the breath test machine, or if the machine itself is broken. We can argue this in the case.

27. The officer never gave me a "Miranda" warning: Can I get my case dismissed?

No. The officer is supposed to give a 5th Amendment warning after he arrests you. Often, however, they do not. The only consequence is that the prosecution cannot use any of your answers to questions asked by the police after the arrest. Your best bet is to politely tell the officer you don't want to speak to him until you have spoken to your lawyer.

28. The police officer missed court: Can I get my case dismissed?

Usually not, at least not on the first try, although I will definitely argue for a dismissal.

29. The Police videotaped me! Is that bad for my case?

No, often it is actually a good thing! Video evidence is an objective source that will often make you look better than the police witnesses describe.

30. Can I represent myself? What can a lawyer do for me?

You can represent yourself, but it is not a very good idea. Massachusetts OUI laws are complicated, and you need someone to help you who understands the intricacies of MA OUI laws, and has experience in trials as well as constitutional rights and sentencing issues.

What can a lawyer do? A qualified attorney can review the case for defects, suppress evidence, subpoena field sobriety training manuals and cross-examine the officer on his failure to follow his training, compel discovery of such things as calibration and maintenance records for the breath machine, have blood samples independently analyzed, negotiate for a lesser charge or reduced sentence, obtain expert witnesses, and may be able to win your case at trial.

A Mass lawyer who primarily does OUI cases will know the best strategies to employ to give you the best possible defense.

31. If I lose, can I appeal?

You can appeal, but OUI appeals are tough to win, and usually not worth the effort.

32. What will it cost to hire a Mass OUI lawyer?

Attorney fees vary widely, depending on the experience of the lawyer. You may find a general practitioner in Massachusetts that will charge you as little as \$1,500, a well known expert in Massachusetts OUI law may charge you \$10,000 or more.

My fees depend on the complexity and seriousness of the case. After I speak with you, I'll tell you exactly what I would charge you to represent you in court.

In general, it makes sense to hire the best lawyer you can afford. It may be risky to hire someone just because they are cheaper. OUI laws are very complicated, and an experienced lawyer will identify issues that can help you right away. Some issues to consider are:

- How much experience does the attorney have successfully fighting MA OUI charges?
- Is the offense a misdemeanor or felony? (A 1st or 2nd offense OUI is a misdemeanor)
- If prior convictions are alleged, the procedures for attacking them may add to the cost. A first offense Massachusetts OUI will be less expensive than a second offense OUI.
- The fee may or may not include trial or appeals.
- The lawyer may have a fixed fee or an hourly rate.
- Expert witness fees, independent blood analysis, service of subpoenas, etc., may be extra. Make sure you ask for a written agreement and understand all of the terms.

33. What is the difference between an OUI / DUI / DWI / Drunk driving charge in Massachusetts?

There is no difference. In Massachusetts, the specific criminal legal statute refers to "Operating Under the Influence of Intoxicating Liquor", or OUI for short. Different state laws call the same act "Driving Under the Influence" (DUI) or "Driving while Intoxicated" (DWI), but they all essentially mean the same thing: a drunk driving accusation.

34. Is an OUI / DUI charge considered a felony or a misdemeanor in Massachusetts?

A first (1st) or second (2nd) offense OUI /DUI is considered a misdemeanor. A third (3rd) or subsequent offense is considered a felony, and includes mandatory jail time if found guilty.

35. Are there any special considerations or concerns for an underage (under 21) or teen OUI arrest?

According to Massachusetts OUI Laws, there is a "zero tolerance" policy for minors driving after drinking alcohol. Minor or underage drunk driving charges are taken very seriously. The Massachusetts legal limit for minors is .02 BAC. There may also be other license issues if the driver had a junior operator's license.

Under Melanie's Law, if you refuse the breath test as an under 21 driver, your license is suspended for 3 years. (It is a 5 year suspension for a 2nd offense under 21).

Also, if you are under 21 and fail the breath test with a BAC result of .20 or higher, you will be required to attend a 2 week inpatient alcohol education program if you are found guilty.

Make sure your attorney lays out all the possible consequences for an OUI conviction or CWO, including the effect of a criminal record, and registry & license considerations, if you have a teenage or under 21 Mass OUI case.

36. I actually passed the breath test, but they still arrested me!?! How is that possible?

Yes, the police will still arrest and charge you if you blew a .06 or .07 BAC, under the legal limit. Under Massachusetts OUI law, it is their discretion to do so and they can still argue that you were too impaired to drive.

This is still highly annoying to you, but it is good news for your court case. For one thing, your license isn't suspended, since you neither refused nor failed the breath test.

And many, if not most, judges will dismiss or do a quick bench trial and find you not guilty. However, some judges will be tough and make us jump through hoops to fight the case, and it is still possible to be found guilty, so it depends.

I know it is frustrating and crazy that you have to go through this, and I sincerely sympathize with you. All I can tell you is that a .07 BAC case is much better than a .08 BAC

37. I Was Stopped in an OUI Roadblock. Can I fight it?

Yes, OUI roadblock, or drunk driving sobriety checkpoint cases are often easier to fight and win than other OUI arrests. They stopped you randomly, and not because they had a good reason to believe you were drunk.

38. I'm worried about my police report. The police officer lied! (Or just made it sound awful).

This is a very common question, but it is probably not as big a concern as you think. A police report is from the officer's point of view, and it was his point of view that you should be arrested, so it's not surprising if it sounds bad.

But there are many things we can do to explain, discount, and eliminate many statements in the report, and much of it will never be heard by a jury. See my page on [fighting the police report](#) for details.

39. I wasn't arrested, but I received a criminal summons/citation to appear in court on an OUI. What should I do?

You'll want an experienced Massachusetts OUI lawyer to represent you if you've been summonsed to a clerk's hearing, or "show cause" hearing, but the good news is that you may have an opportunity to beat the case at the hearing if there is insufficient evidence for them to charge you. The police may issue you a criminal citation for OUI instead of arresting you in cases where alleged facts about an OUI come out after the incident, or if there is an injury and you are taken to a hospital for medical treatment.

40. I have an old outstanding OUI Charge that I was never convicted of. How can I fix it and get my license back?

Often we can get these old charges dismissed easily. But they won't go away by themselves. There is no statute of limitation on unresolved outstanding OUI cases if you were charged or arrested, but fail to appear in court.

In many cases, we can clear up this problem, which will allow you to get your driver's license back.

41. Is there a statute of limitations on OUI Charges?

No, there is not. See my answer above. Old OUI charges never go away by themselves, but often we can get them resolved.