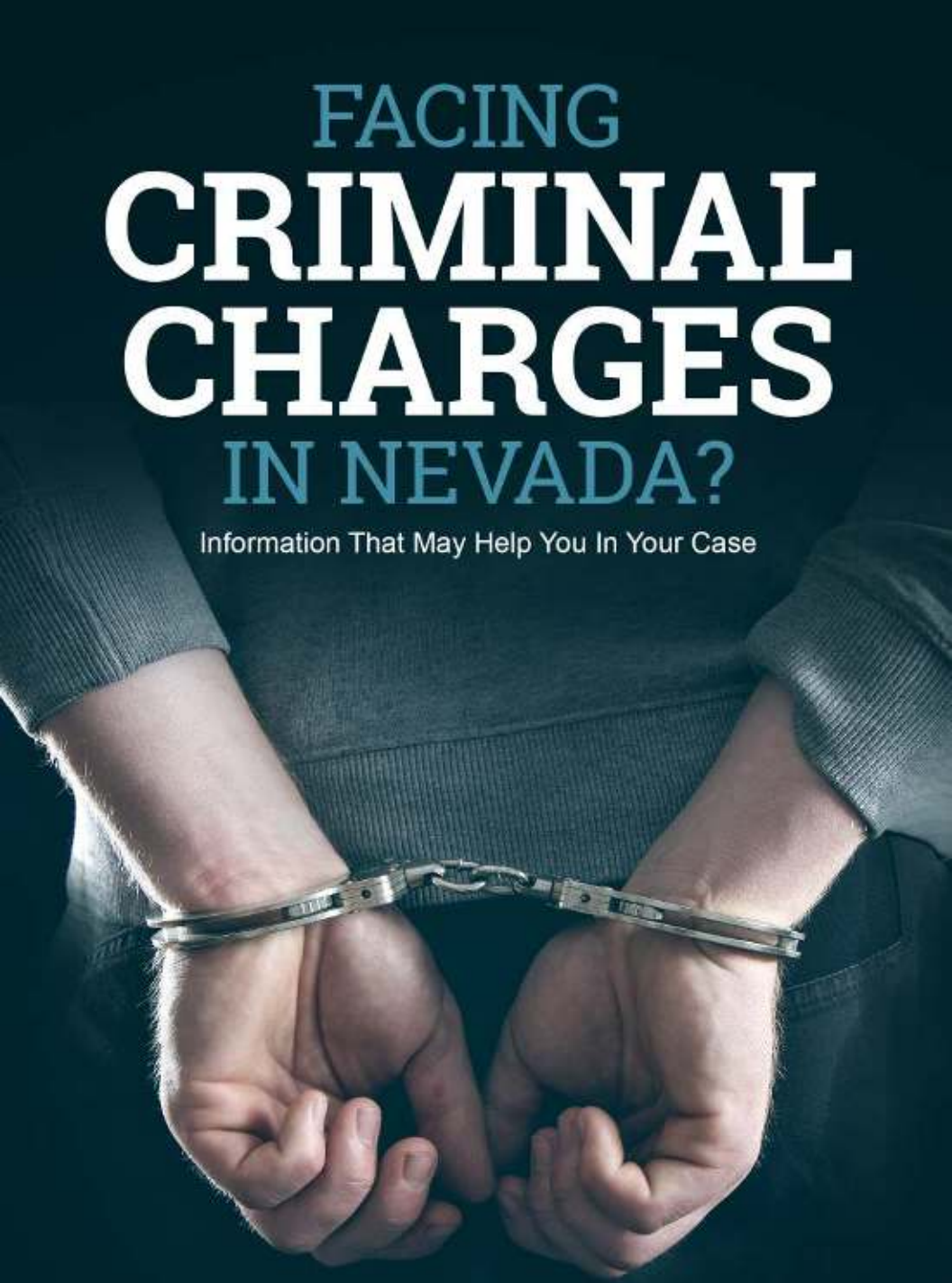
FACING CRIMINAL CHARGES IN NEVADA?

Information That May Help You In Your Case



Mace J. Yampolsky, Esq.

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CLIENT TESTIMONIALS

"I highly recommend Mace and his team of consummate legal professionals. After finding myself in a questionable legal situation, I turned to Mace for his years of practical criminal defense experience and his knowledge of the Clark County Criminal Justice system. After explaining my situation Mace explained to me my options and what he believed would lead to a favorable outcome. I have to agree that I am extremely satisfied with his services and would send my closest family members to him if they faced similar circumstances."

- David

"My son has special needs. He had never been in trouble prior, so I waited until the very last day believing there was absolutely no way the state would prosecute, but they absolutely were going to. So, I came down to the firm and it was less than 24hrs before court time. Not only did my child get off with no jail time, they were sensitive to my feelings, needs and the situation, and they handled everything. We didn't even have to attend court. Although I paid the fees in full, I discovered at our meeting they had a payment plan. I personally recommend their service. Thanks!"

- L. Walker

"We were referred to Mace from a friend. We had never been in this situation before and he really explained everything thoroughly. He didn't give us false hope or exaggerate on what he could and could not do. Really enjoyed the no nonsense when addressing my daughter about the trouble she caused. Mace did very well at taking care of the situation and following up with us through the whole process. We will definitely recommend him to our friends! Thank you Mace!"

- A Satisfied Client

"Mace was amazing and helped me tremendously! I would refer Mace to anyone. He is a dedicated professional and helped me tremendously in my case and I thank him for that. Five stars all around! Mace Yampolsky gets the job done...Thank You!!!"

- A Satisfied Client

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AUTHOR INTRODUCTION

Mace Yampolsky is AV rated by Martindale-Hubbell, the highest rating available to any attorney. This rating is obtained by an independent rating of lawyers and judges who are familiar with his representation of clients. Less than 7% of all law firms in the United States are accorded this honor.

Mace is past president of the Nevada Attorneys for Criminal Justice. He graduated from Boston University in 1976 and the University of San Diego School of Law in 1980. He was admitted to California State Bar in 1981, admitted to Massachusetts State Bar in 1982 (currently inactive), admitted to Nevada State Bar in 1984, admitted to Colorado State Bar in 1994, and admitted to Washington D.C. State Bar in 1999.

WHAT IS THE SEQUENCE OF EVENTS IN A CRIMINAL CASE?

If the police confront you, you need to identify yourself. If you do not identify yourself, most likely you're going to get arrested. Lots of times, especially in sex cases, police will say, "Hey, so and so has accused you of doing this. Would you like to come in and tell us your side of the story?" Many people go down to the police station and willingly incriminate themselves. It is always advised not to talk to the police.

Why To Get In Touch With An Attorney?

Sometimes, people are uncomfortable. They'll say, "Well, the police said I had to meet with them," but the reality is you don't. If you hire an attorney, he can write a letter to the policeman saying, "Hi, I represent Mr. Smith. It's my understanding that you wanted to talk to him regarding an incident that allegedly took place. I have advised him not to speak to law enforcement, so he will not. Please do not contact my client directly. If you'd like to discuss this situation, please

contact me. If you decide to charge my client with a crime, please send the summons to me".

This lets the police know who is representing you. It also tells them that they can't talk to you. In that case, the police can send the summons to the attorney who will appear at the client's initial arraignment, which is the first court appearance.

The police can either send the summons to a person saying, "You've been charged with the crime, you need to come to court on a specific date," or they can swear out an arrest warrant, which means they will go out and arrest the person and then there will be a first appearance, usually while the client is in custody. An attorney wants to make sure this doesn't happen.

When the attorney contacts the police and writes the above mentioned letter, if a summons is sent out, it will be sent to the attorney, who will appear at the first court date, plead not guilty on his client's behalf, set a preliminary hearing date or a trial date and get a copy of the discovery; police report's witness statements, blood analysis, etc. The attorney will then go over this information with the client and figure out which way to proceed from there.

What Happens If There Is An Arrest Warrant?

If there is an arrest warrant and the attorney discovers it, he files a motion to quash the warrant and brings his client into court. The attorney may present the letter and say, "My client knows he might be charged with the crime and he is not going to go anywhere. He is not a flight risk and is not a danger to the community. I have been retained for all stages in the proceeding." More often than not, the judge will quash the warrant and grant what's called an O.R. release, (release on your own recognizance), which means you don't need to post bail.

However, because there was a warrant, the client has to do what's called a "Walk Through". They will need to appear at the Clark County Detention Center to present themselves in order to be processed and then they will be released. It sounds like a pretty simple process. However, as the jail can be backed up, the process could take up to 12 hours.

In the event there is an arrest warrant and the client is out of state, depending on the circumstances, the attorney may

be able to get the warrant quashed without the client's presence. The client doesn't need to return unless they proceed to trial. Often a written entry of plea will be accepted by the court in misdemeanor cases so that the client does not need to return at all.

How To Enter A Plea?

In the waiver of appearance and entry of plea document, there must be a waiver of rights that says, "I recognize I have the right to remain silent and the right to proceed to trial, the right to call witnesses on my own behalf, the right to confront the State's witnesses and the right to make the State prove their case beyond a reasonable doubt. I am waiving these rights." The attorney can appear for the client and conclude the case.

In some cases, depending on the situation, a suspended sentence may be imposed. (If the client does everything he is supposed to do, there will be no jail time.) For instance, if someone pleads guilty to a crime such as misdemeanor or possession of controlled substance, he will usually attend and complete drug counseling, pay a fine, and agree

to stay out of trouble. If he doesn't successfully complete all requirements, he will be convicted of the crime and the suspended sentence will be imposed (there will be a jail sentence that he must serve).

In this type of situation for an out of town client, the attorney must do a written entry of plea, but if the case is resolved and there is no suspended sentence, the attorney is able to enter the plea on behalf of the client without a written agreement. For example, the attorney may say, "Your Honor, I have authority to enter this plea. My client will plead no contest to possession of controlled substance, will pay a $500 fine and will complete lower court counseling."

In other cases, in which the attorney is able to make a deal ahead of time, the matter can be closed during the first court appearance. The attorney would say, "Your Honor, here is the completion certificate for the lower court counseling. I have my trust account check for the $500 fine. At this time, I move to have the case dismissed." The attorney will then present the judge with an order dismissing the case and at that time the client would be able to seal the record.

WHAT ARE SOME THINGS TO KNOW WHEN FACING A CRIMINAL CHARGE?

The first and most important thing to know here is that whatever you did or did not do, you need to discuss it with an attorney. Anything you tell him will be protected by the attorney client privilege. You're not guilty until you're found guilty or until you plead guilty. The attorney may or may not ask whether you committed the charge. The answer could be yes, and your attorney could never disclose that fact unless you gave him permission. It doesn't really matter what you did or didn't do. What matters is what the state can prove beyond a reasonable doubt. An attorney should be contacted immediately.

It is never advisable to take the roadside tests if you are stopped for a DUI in Nevada. You cannot be forced to do them and you have a right to refuse. Most of the time, police will try and bully you into taking the tests. They'll also have a portable breath tester at the scene and they will ask you to blow into that. You are not required to do this either.

The Nevada case called Byars vs. State codified a Federal law, which said that if one doesn't consent to a blood draw, then the state must get a warrant before they obtain one. In Nevada, you have a constitutional right not to submit to a blood test without a warrant. That's the good news. If you don't submit, by the time they get a search warrant and they do take your blood, if it is over two hours, then that helps your criminal case. If they are not able to get the chemical tests within that time frame, they cannot use it to prove that your blood alcohol level was over 0.08.

Unfortunately, in 2015 the Nevada legislature passed the law that said if you do not consent to a chemical test, such as a breath or blood, and are suspected of driving under the influence, in addition to any other penalties, your license will be revoked for an additional year.

In a DUI case, if you don't take the test, that increases your chances of winning the criminal case. However, if you don't take the test, then you will lose your license for an additional year after the 90-day revocation that will be imposed if you are convicted of a DUI or lose the DMV hearing.

If you are going to take the test, the blood test is more accurate than the breath test. So if you know you do not have a lot of alcohol in your system, take the blood test. If

it's close to the 0.08 limit, the blood can be retested, and often, it will come back a little less. If it comes out less, it can't be proven beyond a reasonable doubt that your blood alcohol level was over a 0.08 at that time.

An attorney would generally resolve such cases as a non-DUI disposition. A common disposition in a case in which there is a witness problem or the blood alcohol level is close to the limit would be a "stayed adjudication." This is how a stayed adjudication works. You would plead guilty to your first time DUI; the court would not enter the conviction. You would need to do the minimum DUI requirements including attending DUI School and a victim impact panel (VIP). Both are required by statute in all DUI cases. The VIP is a two-hour seminar put on by people whose lives have been adversely affected by a drunk driver.

The DUI school can be done in-person or online, which I recommend because it takes less time. Also, you will need to pay a fine. If you can't afford it, you may do community service and you'll be credited $10 an hour towards the fine. So instead of paying $500, you could do 50 hours of

community service, but it is recommended that people pay the fine because it takes much less time.

In addition, there may be other requirements, such as attending AA once a week for a period of time in addition to community service. If you successfully complete all requirements and stay out of trouble then you will be able to withdraw your plea and enter a plea to reckless driving, which is not a DUI. If so, an additional DUI would not subject you to the possibility of a second time DUI conviction, which carries a minimum of 10 days in jail and mandatory installation of a breath interlock device, which will not let you start your car if there is alcohol in your system at your own expense.

In California, the laws are different than Nevada. They have something called a Wet Reckless, which means if your DUI is reduced to reckless driving, it may be considered a wet reckless. If you are convicted of another DUI, that wet reckless becomes a DUI for enhancement purposes. In Nevada, if you are convicted of a DUI three times within seven years, the third time becomes a felony, which carries a non-probationable penalty of 1 to 6 years in Nevada State prison and a $2,000 to $5,000 fine.

WHAT ARE THE THINGS YOU SHOULD KNOW IF YOU ARE ARRESTED FOR A CRIME?

The first thing is that you have the right to remain silent. When individuals talk to the police, they have an obligation to tell the truth, however police do not have the same obligation. One of the things someone being questioned may think is, "Well, you know, if I just talk to the police, they'll believe me and I won't be accused of a crime. If I cooperate when they ask me questions, it will be better for me." That's not true at all.

When police question a suspect, they are trying to develop information during their investigation that will help convict that person. In cases in which there are co-defendants, the police will often say, "Well, Mr. Smith said that you were the one that stole this television and he is willing to testify. If that happens, you are going to go to prison. It will be easier on you if you just tell us what happened."

Oftentimes, the other person isn't going to say anything and the police haven't developed enough evidence to convict the client, but if the client cooperates by being nice, it gives the police incriminating information.

This can very well be explained by the following analogy: “What's one of the similarities between a fish and a criminal defendant? If they kept their mouth shut, they wouldn't have been hooked.”

People like to talk, and in situations like these, they are usually nervous and feel they must talk. Everyone knows about Miranda Rights, “You have the right to remain silent. You have the right to an attorney. If you can't afford one, a lawyer will be appointed to you at no cost to you. If you say anything that's incriminating, it can be used against you in a court of law.” The best thing in these cases is not to say anything at all.

Sometimes, it's difficult to remain silent, and police may try and bully you. For example, many times, in DUI cases, the police will ask questions. But the less you say the better. You must provide your license registration and proof of insurance because you need to identify yourself. However, you don't need to answer any other questions.

Do Not Lie To The Police

The worst thing you can do is lie. Police will ask if you have had anything to drink and may say you smell of alcohol. The client may answer no. In such a case, the police officer could charge you with giving false information to police, which is a felony, in addition to charging for the DUI. You are advised not to say anything at all in such situations.

Case law says that unless you specifically invoke your right to remain silent, the police can keep asking you questions. In such a case, you can say, "I'd like to invoke my right to remain silent," or, "I would like to exercise my right to self-incrimination", or simply, “I’ll take the Fifth.”

Although that's the best thing to do or say, if you've been drinking, it's going to be difficult for you to articulate that without slurring your words, which itself is an indication of driving under the influence. So say as little as possible or “I’ll take the Fifth!”

Do Not Answer Police Officer’s Questions

Oftentimes, the police will say, "Well, if you have nothing to hide, why won't you say anything?" In this case, the

person should say, "My lawyer advised me not to talk to law enforcement without him being present." If the officer persists again, the person can say, "I do not want to say anything."

Mace usually gives his business card to clients, which has certain things written on the back that the client should know. When asked questions, rather than saying anything, the client can present the officer with that business card.

On the back of the card it reads, "I want to exercise my right to remain silent and consult with my lawyer without exception. I do not want to talk about giving up my rights until I have consulted my lawyer. I want to call my lawyer. I do not consent to a search of any kind, any test, any lineups or any other identification procedures. I do not agree to any of these things without my lawyer present. I do not want to waive any of my constitutional rights." That's pretty definitive.

If the officer continues to ask questions after the client has unequivocally asked to invoke his right against self-incrimination, and the person answers them, that would be a violation of that person's rights. Based on that violation, their attorney would be able to get the evidence (The

Defendant's Statements) thrown out. The lawyer would file a Motion to Suppress evidence.

This motion can be filed because the evidence was gained unlawfully as the client invoked his right to remain silent and the officer continued to question him. Or the officer may have conducted an illegal search. Once the evidence is suppressed, at that time the prosecution must go forward without it. If there is not enough evidence to prove their case, the case will be dismissed

WHAT ARE THE WAYS PEOPLE INCRIMINATE THEMSELVES DURING OR AFTER THE ARREST?

There are many ways by which people unintentionally incriminate themselves or hurt their case.

In a DUI case, if the suspect is out of the car, when police arrive, the state must prove driving or actual physical control within two hours of the chemical test. A lot of times, the person is standing by his car and they ask, "Is that your car? Were you driving?" If someone answers yes, because of that, the driver has essentially convicted himself of DUI if his blood alcohol level is over 0.08.

There are other defenses. The police didn't see you drive, or they can't put you behind the wheel, or they can't prove driving within 2 hours of the chemical test. If they first made contact with the driver while parked, or the police don't know how long ago this person parked the car, they can't prove beyond a reasonable doubt that his blood alcohol level was over 0.08 within two hours of driving. If you drink after you have stopped driving, that is not illegal.

If you are over the limit but you did not drink until after you stopped driving, that's a defense to DUI. But this affirmative defense must be pleaded specifically. If you are going to testify that you did not start drinking until after you stop driving, you need to inform the prosecutor of this fact, or you will be precluded from using it.

Talking To The Police

Many times, the police may ask something like, "Didn't you and Mary stab this person?" If someone were to answer, "No. Mary and I were there but I didn't stab this person. Mary did," under the theory of aiding and abetting or under conspiracy theory, you could be convicted. If you didn't say anything at all, the police would have to develop this information in another way. People tend to talk too much. They think, "If I just say this, they will let me go," but it usually doesn't happen that way.

Police are trained to obtain incriminating statements and to intimidate people. Their job is to get a conviction. Once they have a suspect, for the most part, if they determine that this is the person that committed the crime, they will

focus their investigation on that one person, and not look for other suspects.

Sometimes, it may have been someone else but the police were so focused on you as a suspect that they do not consider any other suspects. The police will question someone, but if that person didn't invoke their right to remain silent or ask for a lawyer, they will keep asking questions and do whatever they can to get a conviction.

Sometimes, people also will make false confessions, "Yes, I did it. Just let me out of here." This is a huge problem. Or they may think, "I'll just tell the police what happened but I am not going to tell them that I did anything wrong." Sometimes just putting yourself at the scene is enough. These are some of the ways you can incriminate yourself.

How Do Miranda Rights Come Into Play In An Arrest?

Everyone knows what Miranda Rights are. They've seen them on T.V., and could probably recite them by heart. One common misconception is that if you are not given your Miranda Rights, your case must be dismissed, but that is not accurate. Usually in a DUI case, the officers will not inform you of your Miranda Rights. Many clients will say, "They didn't inform me of my Miranda Rights, so the case has to be dismissed".

Well, that's not the case. Miranda Rights protect you against self-incrimination, i.e. statements that you made that would be incriminating in which you were not given your Miranda Rights. For example, if you're in police custody and they ask, "Did you steal this television?" and you say, "Yes," without being Mirandized, they would not be able to use that statement against you as evidence in court.

What Happens During A DUI Stop?

In a DUI case, after they pull you over, the police will often have you do roadside tests, which are referred to as field sobriety tests (FSTs). One is the Horizontal Gaze Nystagmus (HGN) test. In this test the police officer will stand in front of you and move his finger or a pen back and forth in front of your face and tell you to follow it with your eyes without moving your head. If you do this test and your eyes show Nystagmus, which is involuntary jerking of the eye, this is an indication of being under the influence of alcohol.

Another test they will often have you do is the Walk and Turn test. This is a test in which you walk a straight line, heel to toe, nine steps forward, turn around and walk nine steps back. They will often demonstrate this but they won't say anything else. If you use your arms to balance, (which is completely natural) or if your heel is not close enough to your toe or if you step off the (real or imaginary) line, these are clues that you have failed the test.

The police will say that this indicates that you are under the influence of alcohol. Therefore, you will fail. It's very difficult to pass this test. The scoring is subjective; you are

not informed of some things that you are not supposed to do, i.e. use your arms for balance. Or maybe your heel is not close enough to your toe, but you were never given an exact distance between your heel and toe that would be considered too far apart.

A third test that is often given is called the One Leg Stand. You must hold one leg up off the ground for 30 seconds. Many times the officer will have you count one one thousand, two one thousand, three one thousand etc. until you reach 30. Some people can't pass this test stone-cold sober and others have medical conditions that might make this very difficult, i.e. inner ear problems or prior surgeries to the legs. Most people don't normally hold 1 foot up for 30 seconds. It is unnatural. The interesting thing is whether the police officer reads you your Miranda Rights or not, it doesn't matter because the field sobriety tests are not testimonial. You didn't SAY anything that incriminated yourself; it was your actions.

What Are Some Misconceptions About Miranda Rights?

One common misconception is if they don't read you your rights, then the case will be dismissed. This is not the law. Any statements that you made were incriminating, while in police custody (you were not free to leave). If you were not

read your Miranda Rights, those statements must be suppressed by law. But it doesn't mean that your case is automatically dismissed.

For example, if you shot someone and you're charged with battery with a deadly weapon, with substantial bodily harm and police take you into custody, if they don't read you your Miranda Rights, they ask you what happened, and you say, "I shot Johnny," that would be incriminating. Based on that statement, you could NOT be convicted, assuming your lawyer had filed a motion to suppress the statement

In addition to your statement, if there is someone there who says, "Yes, I saw Mr. X shoot Johnny." Even if they suppress your statements, you could be convicted. If there is additional evidence such as an eyewitness you can still be convicted, and your case won't be thrown out.

However, if the only evidence they have is your statement and your statement is illegally obtained, because you weren't giving your Miranda Rights, then the prosecutor would not be able to proceed.

How Are Criminal Cases Handled In Courts?

For both gross misdemeanors and felonies, if you're charged by a complaint, it means that a district attorney has reviewed the police reports and decided there is enough evidence to move forward.

First, you go through a preliminary hearing, which is called a 'Probable Cause Hearing'. This means that the state needs to prove there is probable cause to move forward and which is to say, the state should be able to bring this person to trial.

An important fact to consider in these cases is that there is a different standard of proof. During the preliminary hearing the standard of proof is slight or marginal evidence. Once you go to trial, the standard of proof is beyond a reasonable doubt, which is much higher.

The reality is that the truth never changes. If something really happened then what you say to police, during any interviews (A defendant should NEVER testify at the preliminary hearing), and at trial should all be the same.

There may be minute variations but if somebody says one thing in the police report and another at trial, obviously they both can't be true. The prosecutor will most likely assume a person is lying and judges, obviously do not appreciate that. Things like this happen too often. Most of the time when a client changes their story, that hurts their case.

What Happens In A Federal Court?

In federal court, the first hearing is in the initial appearance. There will be a complaint filed, based on an affidavit of an agent from the FBI, DEA or maybe even a customs agency. The agent may say, in the complaint, "Mr. Smith and I worked for the DEA for 16 years. I've handled hundreds of investigations involving controlled substance. I saw John Smith meet with other people. He had a scale, he weighed a green leafy substance and put it in several small baggies and give them to other people with him. In my training and experience, I believe he was committing the crime of distribution of controlled substance and/or conspiracy to distribute controlled substance."

Before the preliminary hearing, the prosecutor will present the case to the grand jury and if they believe there is enough evidence to charge someone with a crime, the grand jury

will hand down what's called a "True Bill," which would be an indictment. There is an old saying, “A good prosecutor can indict a ham sandwich!”

In federal court I have NEVER seen any case proceed to a preliminary hearing. The Federal Government will always indict, unless a deal is worked out prior to the filing of the indictment, and the client may “proceed by information” (an information is another word for complaint), which means the client waives the right to be indicted and the information sets forth the crimes to which he is pleading.

What Does Charged By Indictment Mean?

In addition to being charged by complaint, you can be charged by an indictment. That means that your case was presented to the grand jury consisting of 18 to 23 people. The prosecutor would present any evidence they want and the defense lawyer is not allowed to say anything, though the client can testify. However, that is not usually a good idea. I always advise my clients not to attend.

What Happens When You Go To Trial And You Lose?

If you go to trial in state court and you lose, you may file an appeal which either goes to the Nevada Appellate Court, or

the Nevada Supreme Court. If it goes to the appellate court, that will be the last hearing on direct appeal, if you lose, that is the end of it. You can request a Nevada Supreme Court review but it's not often given. If your case does go to the Nevada Supreme Court, it would be one involving life imprisonment such as murder, first degree kidnapping, or a death sentence. There are seven justices on the Nevada Supreme Court and they have what's called a Northern Panel and a Southern Panel with three justices who rotate sitting on each

Normally, those panels will make the final decision. However, if the conviction is affirmed, the defendant can request an "En Banc" hearing. This means all seven of the justices will hear the case and rule. In most cases, once the three-judge panel makes the determination, the Supreme Court will not rehear the case.

Nevada is in the 9th circuit, which is a federal appeals court for several states: Nevada, California, Arizona, Montana, Washington, Hawaii and Oregon. If you have a federal case in any of those states, you would try it in the Federal District Court. If you appeal, then it goes to the 9th circuit court of appeals.

If you lose at the 9th circuit court of appeals, then you can file an appeal to the U.S. Supreme Court on federal

constitutional issues. However, U.S. Supreme Court only handles 1 in 7,000 cases. Another way you can have your case heard by the U.S. Supreme Court is if you are convicted by the highest court of the state, such as by the Nevada Supreme Court, you may file a 'Writ of Certiorari'.

I won a case in front of the U.S. Supreme Court. Riggins vs. Nevada. It was a State murder case, which resulted in a death sentence, but my client was medicated against his will. He was given 800 milligrams of the psychotropic drug, Mellaril. My expert said it was enough Mellaril to tranquilize an elephant. My client was so doped up that he looked like a zombie. I thought that was a violation of his constitutional right to a fair trial. The U.S. Supreme Court agreed, reversing and remanding the case for a new trial. We then resolved the case with a penalty of life imprisonment. I literally saved the life of David Riggins.

How Do State And Federal Courts Deal With Misdemeanors And Felonies?

In state court, depending on the facts, the attorney is usually able to resolve a case so that the charge is eligible for probation and his client isn't going to spend any time in prison. In federal court, the penalties are much more severe. There are mandatory minimum sentences.

The Federal sentencing guidelines (FSG) calculate a range of punishment. (the FSG table is included in the end of this book) Your criminal history and the offense level will determine how long someone will spend behind bars. Obviously the more serious the crime and the more extensive the criminal history, the longer the sentence will be. Judges are not bound by these guidelines. They can sentence you to more time or less or even to probation, but usually they will follow the FSG.

In federal court, if you are convicted of a white-collar crime such as wire fraud, securities fraud, bank fraud, money laundering or any other similar crimes, you will go to prison. So, the way your case is handled makes a huge

difference. Yampolsky & Margolis will fight to keep the case in state court so the possible outcome is not as severe. It is much easier to resolve the case so that your client does not go to prison.

There is also another type of court called Municipal Court, which handles misdemeanors committed within the actual city itself. Those cases are heard in Las Vegas Municipal Court, Henderson Municipal Court and North Las Vegas Municipal Court. The most serious crimes that the municipalities face are misdemeanor DUIs and misdemeanor domestic violence cases. For a felony or a gross misdemeanor charge, even if it takes place within the city limits, municipal courts do not have jurisdiction, so it would be prosecuted by the State or by the Clark County district attorney's office.

Oftentimes, when someone is arrested within city limits for something such as possession of drug paraphernalia (a misdemeanor) and possession of a controlled substance, which is a felony (cocaine, methamphetamine, etc.), the paraphernalia charge will be handled in the municipal court, whereas the felony charge will be prosecuted in justice court even though it's part of the same incident.

When this happens, attorneys like to do what's called a 'Global Resolution' and resolve both cases at the same time.

That's obviously better for the client. Usually, when it's a drug case and is a straight possession charge as opposed to possession with intent to sell, attorneys are able to knock down the charges to a misdemeanor and in a best case scenario, have them dismissed.

Attorneys also do something called a 'Stayed Adjudication', which means that the client who was charged with the felony will usually plead to the misdemeanor charge and then the court will withhold adjudication, which means they won't enter it as a conviction. Generally, the client will need to complete some requirements, such as drug counseling, paying a fine and community service. If everything is successfully completed, then the case will ultimately be dismissed.

Once the case is dismissed, the record can then be sealed. Sealing a record is a separate procedure. It's a civil procedure in which you obtain your criminal record, also called scope, which shows that you were arrested and charged with a crime and if you were convicted. The criminal record will also show the resolution, i.e. if it was dismissed. However, if anyone were to look, they would see that you were charged, arrested or convicted of a crime. This is when the procedure of Sealing The Record is beneficial.

Sealing The Record (See Table in Appendix)

To have a record sealed, you will need to get the scope, or a copy of your criminal record. You will then file a 'Petition to Seal' in the district court. The DA generally doesn't object unless it's a sex crime or something similar. Once the record is sealed, if any employer or someone else were to look at your criminal record, it will not show anything. Under Nevada law, if somebody asks, "Have you ever been arrested or convicted of a crime?" you may truthfully say no, after your record is sealed.

When it comes to a timeline for sealing a record, if a case is dismissed or if you go to trial and you are acquitted, you may seal it immediately. In case of a 'Regular Misdemeanor' conviction, which isn't domestic violence or a DUI, you may seal it two years after the case is closed. If you pled guilty and paid a fine for possession of drug paraphernalia, and as part of your sentence, you had to stay out of trouble for a one-year period, the case would not be completed until you finish that year. Once the case is closed and two years elapse, you may seal your record. For a DUI or domestic violence conviction, you must wait seven years from the date the case was closed.

WHAT ISSUES MAY COME UP WHEN DEFENDING A CRIMINAL CASE?

When someone is arrested, their obvious first reaction is that they want to get out of jail as soon as possible. The best case scenario is that you will be released on your own recognizance, meaning you do not have to post bail. However, if you have a previous conviction, you most likely will have a bail set. Depending on what the offense is, there is usually a standard bail, as set by law.

If you have a prior arrest or conviction, it's more likely that you're going to have a higher bail or in some cases, you may not get bail at all. This may be for charges of some sex crimes or in murder cases as well. The more serious the charge, the higher the bail is. Under the U.S. Constitution, you are entitled to a reasonable bail except in a capital case. In the capital case, they can deny bail altogether.

Bail may be paid in several ways. For example, if the bail is set at $5,000, you can post cash bail, which means you post the entire amount with the court. At the end of the case,

assuming you showed up and did everything you were supposed to do; you will get the $5,000 back.

In the event you don't have the $5,000 and want to be released, you could hire a bail bondsman. A bail bondsman will post the $5,000 and you will pay the bail bondsman 15% of the actual bail amount, plus an additional fee. This 15% is mandated by Nevada law.

If you don't show up for court, the bail bondsman is then on the hook for the full amount of the bail, which would be forfeited by the court. This is the reason why bail bondsmen have the authority to find and arrest people. They can hire bounty hunters.

The bail bonds company has the authority to apprehend the clients that have absconded and surrender them to the court so that the bail will be returned. Should this occur, the person would not get out of jail until the case is resolved, if at all. If the bail bondsman is unable to return the defendant to the court, he would forfeit the bail that he posted.

Keeping The Person Out Of Jail

An attorney can make a motion for bail reduction or release on your own recognizance. Sometimes, bail conditions might even be suggested by the attorney, such as

proposing, if the client is released, he should be required to wear a GPS monitor, or house arrest. The authorities will know where he is at all times. The court can order house arrest as a condition of his release, which means he would have to remain in his home unless he has permission to go to work, see his attorney, doctor, etc.

The court can subject a person to what's called "Intensive Supervision" so even though he's out on bail, he has to personally check-in at the Probation Department or Pre-trial Services Department every week just to make sure he is not absconding, and complying with his bail conditions.

Costs of Being Charged With A Crime

First, the client has the cost of hiring an experienced attorney. They also have to pay bail, and in order to properly defend the case, sometimes an investigator or an expert may be needed, which is the client's responsibility. That also costs money. In some cases, the attorney may be able to get the court to pay for an investigator or an expert.

Serious cases usually involve many costs and expenses to handle the case properly. If the client cannot pay, an attorney will file a motion with the court saying, "Your Honor, my client is in custody. He can't help me investigate this case. Based on that fact and the fact that he's indigent, I would like the court to appoint an investigator, a ballistics expert, a blood spatter expert, etc. to assist me," and generally the court will do so, depending on the case.

This often happens when the client is in custody. The court will generally appoint an investigator, a ballistics expert, an accident reconstructionist, or a DNA expert if it's appropriate in that particular case.

What Should You Do If You Are Accused Of A Crime?

The number one thing to know if you are accused of a crime or if police want to talk to you is, don't talk. You can always talk later. Do yourself a favor and discuss your matter with an attorney first. When you discuss the matter with your lawyer alone, there is an attorney-client privilege. Even if you tell the attorney that you have committed the crime, your attorney can NOT divulge this information without your permission. The attorney will still be able to defend you and you can plead not guilty.

In a situation in which the client admits to the attorney that he has committed crime, the attorney has an obligation to the court not to put on perjured testimony. The attorney can't and won't put the client on the stand and have him say, "I didn't do it." The attorney will instead make sure the State can't prove its case by using various techniques, including cross-examination and discrediting adverse witnesses.

If there is physical evidence that doesn't fit the prosecution's theory, the attorney can also bring that up. Sometimes, going to trial is not in the best interest of the client. In a plea bargain, it's the attorney's job to get the most favorable result possible.

An attorney's first job is to keep their client out of prison. If they can do that, it's a win. Their second job is to avoid having their client convicted of a felony. When someone is convicted of a felony, they can't own a gun, can't vote, can't serve on a jury and there are other rights that are taken away, depending on your state laws, you can't get a driver's license, you can't get a new passport, etc. The final thing is if the attorney can walk out of court with their client and have the case dismissed that is a grand-slam homerun.

PENALTIES FOR MISDEMEANOR AND FELONY CONVICTIONS

The difference between a misdemeanor and a felony is that a misdemeanor carries the maximum penalty of 6 months in jail. The most you could be sentenced to would be six months in the county jail and the highest fine would be $1,000.

If you're charged with a gross misdemeanor (GM) or a felony, you'd be entitled to a jury trial. The maximum penalty is one year in the county jail and up to a $2,000 fine for a GM. If you are convicted of a felony, you'd be subject to incarceration in Nevada state prison for at least one year. There are lower level felonies that are one to five years or one to six years and those are generally eligible for probation.

Some felonies are not eligible for probation; however, those would include crimes, such as sex crimes, including lewdness with a minor under 14 and sexual assault on a minor, among others. In these types of cases, the attorney will try and resolve it to something that is probationable, such as attempted lewdness or statutory sexual seduction.

In California, the age of consent is 18. Sixteen is the age of consent in Nevada, (which means that a 16-year-old can consent to have sex with another person). You may think that is a bit young, but wait until you see the age of consent in Louisiana.

Their age of consent laws are more complicated than those of most other states. There is no definite age when a minor may consent to sex in Louisiana. Instead, it varies depending on a few factors, such as the age of both parties, and the age difference, if any, between them.

In regard to the age difference, Louisiana is unique because it allows a larger age gap between younger minors than older minors. A person between the ages of 13 and 15 can consent to have sex with someone who is up to 3 years older than them, but a person between the ages of 15 and 17 may consent to sex only if the other person is 2 years older or less. For example, in terms of a 3 years' age difference, a 13-year-old can consent to sex with a person who is 16-years-old, but a 15-year-old may not consent to sex with an 18-year-old.

However, a person 17 or older can consent to have sex with a person of any age.

In Nevada statutory sexual seduction could be treated as a gross misdemeanor or a felony depending on the age of the defendant. If the defendant is between 18 and 21, the crime is a gross misdemeanor. If the defendant is 21 or older, the sentence for statutory sexual seduction is one to five years in Nevada state prison, but the defendant is eligible for probation.

There is an interesting contrast between misdemeanor DUI and felony DUI. In a misdemeanor DUI, if you are driving or are in actual physical control of the vehicle, and your blood alcohol level, often referred to blood alcohol concentration (BAC), is over 0.08, you can be convicted of a misdemeanor DUI. Or if you were under the influence of alcohol to any degree however slight and it makes you incapable of driving safely, you could be convicted of DUI no matter what your BAC is.

The actual language of the statute is "…under the influence of intoxicating liquor to any degree, however slight, which rendered the Defendant incapable of safely driving and/or exercising actual physical control of a motor vehicle…". What this means is if your BAC is less than a .08, you still

could be convicted of a DUI. If you were involved in an accident, even if it is not your fault, you could be convicted of misdemeanor DUI.

In order to be convicted of a felony DUI with death or substantial bodily harm, you need to be the proximate cause of the death, i.e. you need to be responsible for the death. It is your fault. Let's say for example, you are driving down the street and have a 0.08% or more blood alcohol concentration level. An opposing driver crosses the median, then hits you and he dies. Even though your blood alcohol level may be over the legal limit, you would not be convicted of DUI with death or substantial bodily harm because you were not the proximate cause of the accident.

A misdemeanor DUI conviction obviously is a lot less serious than a DUI with death conviction, which has mandatory prison time up to 20 years. In order to defend these types of felony DUI cases, the one question that must be answered is 'Who is responsible for the death?', because that is an essential element of a DUI with death case.

SENTENCING ENHANCEMENTS AND HABITUAL CRIMINALS

In Nevada, in addition to specified statutory penalties, there are penalties over and above which may be imposed on a defendant if certain circumstances are present. The two primary ways in which a specified statutory penalty becomes greater than that contemplated by the Nevada Revised Statute for the underlying offense is through either an enhancement, which applies to the crime itself, or through prosecution of a defendant as a habitual criminal, which applies to the defendant specifically. A couple of examples will likely be illustrative.

First, let us deal with sentencing enhancements. Enhancements are applied based on the specific criteria of the victim of the crime, or based upon some specific aspect of the defendant's commission of that crime. For instance, defendants will face enhanced penalties for crimes against children, the elderly, or other persons whom society has determined warrant extra protection under the law. In essence, if a defendant were going to rob someone it would behoove that defendant to rob only those persons between 18 and 59 years and 364 days old, because he would be more likely to avoid the enhanced

penalties applicable to robbing a child or a senior citizen in that case.

Along those same lines, some crimes carry enhanced penalties in the event a defendant uses a deadly weapon in the commission of them. For instance, robbery, burglary, sexual assault, and a host of other serious felonies carry an enhancement for the use of a deadly weapon that must run consecutive to the sentence for the underlying offense and can as much as double the term of years a defendant will spend in custody. Using a gun to commit a crime ratchets up the seriousness and potential exposure in an exponential way that defendants oftentimes fail to comprehend.

Finally, a third enhancement, which is less commonly applied, applies to repeated instances of the same criminal conduct. The misdemeanor crimes of Driving Under the Influence and Domestic Violence are two prime examples of crimes, which are considered relatively minor in nature, but which take on added weight with subsequent convictions.

For instance, the penalty for a second time DUI within seven (7) years nearly doubles the fine amount of a first time DUI, the potential jail time is at least 10 days. You

must get a Chemical Dependency Assessment (CDA) and install a breath interlock device in your car.

A third time DUI within 7 years is a non-probationable felony. Once a defendant has a felony DUI conviction, all subsequent DUI charges are felonies, even if they take place 20 years later. It is crucial to understand sentencing enhancements so you will be able to avoid them.

Habitual criminal treatment (which must be avoided at all costs) exposes defendants to significant additional terms of imprisonment, which could result in life imprisonment, which must be served consecutive to the sentence for the underlying crime.

Defendants with multiple felonies for the same offenses or types of offenses are likely eventually to be tried as habitual criminals. The import is that the sentence faced may well be significantly more severe than the defendant would serve if only sentenced for commission of the underlying crime or crimes.

WHAT EXPERIENCE DOES ATTORNEY MACE YAMPOLSKY HAVE IN CRIMINAL DEFENSE?

For over 30 years, I have achieved successful outcomes during pre-trial negotiations as well as in trial, defending clients on all types of criminal defense cases, both in State and Federal court.

Other Cases Handled By Mace

Apart from DUI cases, I've handled almost every type of criminal defense cases at both the state and federal level. I have handled hundreds of Domestic Violence cases, both misdemeanor and felonies.

I am death qualified, which means I am qualified to handle capital murder cases. These cases are very serious and carry a potential death penalty.

I am also on the Murder Panel and have handled street crimes, white-collar crimes, welfare fraud and "grant scams". A grant is money from the government or private institutions that you may use. It is not a loan; you do not need to pay it back. I was a recipient of a California

Graduate Fellowship grant, which paid for my last 2 years of law school.

These types of cases are essentially a scam in which a company takes your money in return for allegedly assisting you in obtaining grants for your business. The grant is supposed to be much more than you have paid. Unfortunately, these grants never materialize. The Federal government will prosecute everyone involved: The owners of the company, the people that help set up the business, and the people that convince unsuspecting victims to fork over their hard earned cash.

In these cases, the owners and the sales people invariably maintain that they did nothing wrong, even if hundreds of victims paid them and not even one grant materialized The Government will prosecute them for wire fraud, mail fraud, securities fraud and conspiracy.

What Sets Yampolsky & Margolis Apart In Handling Criminal Cases?

I have more experience than most lawyers and a proven track record of getting great results for my clients. I have many repeat clients and many client referrals. I have been practicing criminal law for over three decades. The National Board of Trial Advocacy has designated me as a

certified criminal trial advocate. I am also certified as a criminal law specialist by the Nevada State Bar. I am AV rated, which is the highest rating from Martindale-Hubbell, an independent review by attorneys and judges regarding my legal ability.

I've obtained several murder acquittals and have had numerous murder cases dismissed. I've also won many drug and white-collar crime cases in state and federal court. I won a case in the U.S. Supreme Court, Riggins vs. The State of Nevada. I tried the case, I appealed the case to the Nevada Supreme Court and I filed the writ of certiorari to the US Supreme Court and argued the case. It is very unusual for the trial lawyer to argue a case in front of the US Supreme court. The court receives approximately 7,000-8,000 petitions for a writ of certiorari each term. The court grants and hears oral argument only in about 80 cases.

I am licensed to practice law in Nevada, California, Washington DC, Colorado, and Massachusetts.

If you, a loved one, family member, friend, co-worker, or acquaintance are facing criminal charges, contact Yampolsky & Margolis Attorneys at Law at 702-385-9777. You'll be glad you did. We are open 24/7 for emergencies.

APPENDIX-I

Crimes & Penalties

Crime	Penalties	Fines
Assault & Battery	2yrs > 10 yrs	> $10,000
Domestic Violence	2days<6mo	200 > $1,000
DUI	2days<6mo	400 > $1,000
Possession of Controlled Substance	1 < 4 yrs	< $20,000
Fraud	1 < 6 yrs	> $10,000
Sexual Assault	25 < Life	N/A
Murder	25 < Life	N/A
Attempted Murder	2 < 20 yrs	N/A
Kidnapping	5 < Life	> $15,000

*Data provided above is for first offense only.

APPENDIX-II

Waiting Period for Sealing of Records

Type of Crime	Waiting Period
Category A Felony	15 Years
Category B Felony	15 Years
Category C Felony	12 Years
Category D Felony	12 Years
Category E Felony	7 Years
Gross Misdemeanor	7 Years
Misdemeanor	2 Years
Misdemeanor DUI	7 Years
Misdemeanor Battery Domestic Violence	7 Years
Possession of Controlled Substance Not For Purpose of Sale	3 Years

Procedurally, once the Scope from Metro and the Criminal History from the Department of Public Safety (DPS) are received, a Petition to Seal Records is prepared. That Petition is sent to the client for review and signature. Once it is finalized, the Petition and Order are sent to the Office of the District Attorney for their approval.

Once it is signed off on by the District Attorney, all of the documents are forwarded to the Las Vegas Justice Court for signature by the Justice of the Peace. Or to the Las Vegas Municipal Court Judge or to the Clark County District Court Judge, depending on the jurisdiction of the crime(s) Once the Order is signed by the Court and filed, it is sent to all reporting agencies for removal from their respective systems. This process can be lengthy because each independent agency must comply with the order. Once the Order is filed, all agencies should have your arrest removed in approximately six to nine months.

APPENDIX-III

Petition To Seal Records

PRS
MACE J. YAMPOLSKY, LTD.
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
(702) 385-9777
Attorneys for Petitioner

LAS VEGAS MUNICIPAL COURT
CLARK COUNTY, NEVADA

In the Matter of the Application of:

Case No.) Dept. No.

EX- CRIMINAL CLIENT

DOB: XX/XX/XXXX

For an Order to Seal Records.

PETITION TO SEAL RECORDS

COMES NOW Mace J. Yampolsky, Esq., representing EX- CRIMINAL CLIENT Petitioner, pursuant to the provisions of NRS 179.245 and/or 179.255 and respectfully represents the following:

That the Petitioner has been arrested as follows:

Arresting Agency: Las Vegas Metropolitan Police Department

Charge: DUI ABOVE LEGAL LIMIT, (1ST) (M)

Court: Las Vegas Municipal Court

Date of Arrest: 07/11/2010

Court Case No.: C1020230-A

Final Disposition: RECKLESS DRIVING W/DISREGARD SAFETY OF PERSON/PROP (M)

That the statutory time periods have been fulfilled and that, in the period prescribed for any convictions, the Petitioner has not been arrested, except for minor moving or standing traffic violations, and that further action will not be brought concerning any arrests resulting in dismissal or acquittal.

WHEREFORE, Petitioner prays for an Order sealing all records of this matter which are presently in the custody of this Court, of another Court in the State of Nevada or of a public or private agency, company or official of the State of Nevada, including but not limited to, Las Vegas Municipal Court, Clark

County District Court, Las Vegas Metropolitan Police Department, and the City Attorney's Office.

DATED this _____ day of October, 2015.

MACE J. YAMPOLSKY, LTD.

_____

MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Petitioner

VERIFICATION

STATE OF NEVADA

) ss:

COUNTY OF CLARK)

I, EX- CRIMINAL CLIENT being first duly sworn, deposes and states as follows:

That I am the Petitioner in the above entitled action; that I have read the foregoing Petition to Seal Records and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated on information and belief, and as to those matters, I believe them to be true.

_____

EX-CRIMINAL CLIENT

SUBSCRIBED and SWORN to before me
this _____ day of October, 2015.

_____

NOTARY PUBLIC in and for said

COUNTY and STATE

ORDER

MACE J. YAMPOLSKY, LTD.
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
(702) 385-9777

Attorneys for Petitioner

LAS VEGAS MUNICIPAL COURT
CLARK COUNTY, NEVADA

ORDER

Pursuant to the Petition of Mace J. Yampolsky, Esq., representing EX-CRIMINAL CLIENT Petitioner, and Bradford Jerbic, City Attorney for Las Vegas, Nevada, the Court finding that the statutory requirements of NRS 179.245 and/or 179.255 are satisfied, and good cause appearing, therefor;

IT IS HEREBY ORDERED that the following record of arrest be sealed:

Arresting Agency: Las Vegas Metropolitan Police Department

Charge: DUI ABOVE LEGAL LIMIT, (1ST) (M)

Court: Las Vegas Municipal Court Date of Arrest:07/11/2010

Court Case No: C1020230-A

Final Disposition: RECKLESS DRIVING W/DISREGARD SAFETY OF PERSON/PROP (M)

A copy of this Order shall be sent by Petitioner to each public or private company, agency or official of the State of Nevada, including but not limited to, Las Vegas Municipal Court, Clark County District Court, Las Vegas Metropolitan Police Department, and City Attorney's Office, as named in the Petition, and such organization or individual shall seal the records in its custody which relate to the matters contained in this Order, shall advise the Court of its compliance, and shall then seal the Order.

All proceedings recounted in the sealed records are deemed never to have

occurred, and the Petitioner may properly answer accordingly to an inquiry concerning the sealed arrest, conviction, or acquittal.

DATED this _____ day of _____, 2015.

_____

LAS VEGAS MUNICIPAL COURT JUDGE

Respectfully submitted:

MACE J. YAMPOLSKY, LTD.

_____

MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Petitioner

The City Attorney has reviewed the applicable criminal History and agrees that the record is statutorily eligible for sealing. The petition and order have not been reviewed for completeness or accuracy. The decision to order the sealing or a record remains solely within the discretion of the court. See NRS 179.et seq.

OFFICE OF THE CITY ATTORNEY

_____

DEPUTY CITY ATTORNEY

Nevada Bar No. _____

200 Lewis Avenue

Las Vegas, Nevada 89155

Attorney for the City of Las Vegas

Facing Criminal Charges In Nevada?

Information That May Help You In Your Case

"I highly recommend Mace Yampolsky and his team of consummate legal professionals. After finding myself in a questionable legal situation, I turned to Mace for his years of practical criminal defense experience and his knowledge of the Clark County Criminal Justice system. After explaining my situation Mace explained to me my options and what he believed would lead to a favorable outcome. I have to agree that I am extremely satisfied with his services and would send my closest family members to him if they faced similar circumstances."

- David

"My son has special needs. He had never been in trouble prior, so I waited until the very last day believing there was absolutely no way the state would prosecute, but they absolutely were going to. So, I came down to the firm and it was less than 24hrs before court time. Not only did my child get off with no jail time, they were sensitive to my feelings, needs and the situation, and they handled everything. We didn't even have to attend court. Although I paid the fees in full, I discovered at our meeting they had a payment plan. I personally recommend their service. Thanks!"

- L. Walke

"We were referred to Mace from a friend. We had never been in this situation before and he really explained everything thoroughly. He didn't give us false hope or exaggerate on what he could and could not do. Really enjoyed the no nonsense when addressing my daughter about the trouble she caused. Mace did very well at taking care of the situation and following up with us through the whole process. We will definitely recommend him to our friends! Thank you Mace!"

- A Satisfied Client

"Mace was amazing and helped me tremendously! I would refer Mace to anyone. He is a dedicated professional and helped me tremendously in my case and I thank him for that. Five stars all around! Mace Yampolsky gets the job done...Thank You!!!"

- A Satisfied Client

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