

## Mexico Auto Accident General Information

### General

As in the U.S., automobile accidents in Mexico may be viewed as either civil or criminal matters, but if there is a death, injuries, or significant property damage, they are generally viewed as criminal matters. In many cases, it is advantageous for the injured party to seek restitution as part of a criminal action, rather than a civil lawsuit.

Automobile accidents are governed by the law in the state where they occur. For example an accident occurring in Tijuana would be determined under the laws of Baja California. If the case is tried as criminal, location is somewhat irrelevant, because criminal law does not differ a great deal from state to state.

The Mexican police may detain you until they determine who is at fault. You will have to show that you either have insurance recognized by the Mexican government or the financial ability to pay any judgment against you.

### You Are More "Innocent Until Proven Guilty" Than "Guilty Until Proven Innocent"

Perhaps no area of Mexican law has undergone more change in the last decade than Mexican criminal procedure. Contrary to the generally held belief, one is not considered guilty until proven innocent. In 1983, Article 9 of the Mexican Constitution was amended to delete a former provision that seemed to contradict the presumption of innocence. Today the presumption of innocence is found in various Articles of the constitution which taken together, constitute a presumption of innocence.

### What Happens After an Accident

If the accident involves a death, injury or property damage authorities will commence a criminal investigation. The crimes you could be charged with include imprudence, a type of criminal negligence, as well as more obvious crimes such as driving under the influence

A representative from the Public Prosecutor's office, the Ministerio Publico, may come to the scene and ask you to make a statement. You have the right to not make a statement, but it is often better to do so. You have the right to have someone you trust, such as a friend, relative, or lawyer present with you while you are questioned- this is also an important right to use, as it may effect your case later on. If you are not traveling with anyone, name the American Consul and ask the officer to contact the American Consulate.

### If the Accident Results in Property Damage Alone

If the accident results in property damage alone, when the police arrive at the scene, they may ask the parties to attempt to arrive at a settlement of the damages. If this is possible, both parties sign an agreement and your vehicle will be released at the scene. Be sure to inform your insurance agent before you sign this agreement. Even if you are unable to come to an agreement, if the accident resulted in property damage alone, it is unlikely you will be arrested, unless it appears that you were driving under the influence of alcohol, drugs or in an extremely reckless fashion.

### Your Right to Release on Bail Following an Accident

If you are arrested as a result of an accident, you have the right to release on bail. The amount of the bail will be fixed as the amount necessary to pay for any fines, and damage done to the other party. Article 31 of the Penal Code provides that in cases dealing with negligence or imprudence, a valid Mexican insurance policy will provide a basis for guaranteeing the bail so that the driver may be released. Even if

there is insurance, the driver may not be released if he/she was driving under the influence of drugs or alcohol or in an extremely reckless fashion. If bail is paid, it is paid to a court official. In no cases are police officers in Mexico allowed to accept cash, for whatever reason.

### Detention of the Vehicle

If no agreement is reached, or there are injuries, your vehicle may be detained as long as needed to investigate the accident and to guarantee the amount of damage done to the other vehicle even if you feel that the accident is not your fault. If your vehicle is detained, you may be required to post a bond in order to obtain its release. Your Mexican insurance will serve as the guarantee needed.

Reporting the Accident to the Insurance Adjuster/Claims Service Center

All Mexican insurance policies require that you report the accident to the insurance adjuster/claims service center before you leave Mexico. Be sure to follow this requirement or you may lose important coverage.

### Disclaimer

The above article is intended to provide useful information of a general nature. It is a summary which may not accurately describe a particular situation. It is not intended to constitute legal advice. For advice on a specific matter, you are always strongly advised to consult competent legal counsel.