Austin Texas DWI Lawyer

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For years, Cofer & Connelly, PLLC has effectively defended people charged with DWI in Texas. If you've been charged with DWI, you'll want to discuss your situation with us immediately. Our law firm is focused on defending you and protecting your rights. We'll fight hard on your behalf to get you through this. Reach out to Cofer & Connelly, PLLC by calling (512) 991-0576 or contacting us online to learn more.

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What Is A DWI?

Texas has strict laws about operating a vehicle while intoxicated. You may have heard it called drunk driving, driving under the influence, or impaired driving, but the law is called Driving While Intoxicated in Texas. This law defines what a district attorney must prove to convict someone of DWI.

Texas law says that:

"A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."

These simple 15 words of the DWI law might seem incredibly clear and indisputable, but each part of the sentence has a particular meaning in the law. A district attorney must prove each element of the statute beyond a reasonable doubt to get a conviction in a Texas court.

Texas courts have considered each part of the law in great detail. It is important to understand every part of the law to know what goes into a Texas DWI case and how best to avoid any problems with the law. The law says that a person commits an offense if they meet all of the following definitions:

- Intoxicated
- Operating
- A motor vehicle
- In a public place

Intoxication Under Texas Law

A different Texas law section explains what the law means by the word *intoxication*. There are two ways to be considered intoxicated, as explained by part A and part B of the law:

A. Not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or
B. Having an alcohol concentration of 0.08 or more.

The legal definition of intoxication includes two different ways for a law enforcement officer to determine that you are intoxicated. The first way is by visible effects of intoxication in how you talk, walk, focus attention, or complete other tasks. This standard is subjective, meaning it depends on the police officer's observations and interpretation of what they see. The other definition of intoxication in the law is an objective one, proved by conducting a physical measurement of the percentage of alcohol in your body by a chemical test of your breath or blood. Each of these definitions has important considerations for being charged with a driving while intoxicated offense.

What Is Normal Use Of Mental Or Physical Faculties?

What does the law mean when it talks about someone who does "not have the normal use of mental or physical faculties…"? In Texas, the courts have interpreted this wording to mean that "normal use" is how a healthy, non-intoxicated reasonable person would be able to use their body and mind. In other words, the comparison is to an objective standard of what a 'normal use' of the body, like physical coordination and the ability to perceive and react to things rationally.

The standard does not mean that a district attorney must prove what a particular defendant would consider normal use of their body or mind. There is an exception to what would be considered "normal use" in cases where an individual does not have 'normal use' of bodily faculties due to some physical condition, such as epilepsy, for example.

In a case where you do not have "the normal use of mental or physical faculties" because of alcohol or any drug or substance, the focus is on you and your behavior. The officer must see and document actions that fit the definition of not having the normal use of your mind or body.

Because the courts in Texas have considered this issue, the prosecutor does not need to rely on the expert testimony of what is "normal use" of the body or mind in a typical case or your case specifically. Court opinions have ruled that evidence of intoxication can include things like slurred speech, unsteady balance on your feet, or a staggering walk when you move.

Similarly, an officer can present evidence, either personally observed or reported by other witnesses, of how you handled your car. Signs of intoxication in erratic driving can include a failure to remain in your lane of travel consistently or driving excessively slowly with no apparent reason for your slow travel speed.

What Are The Substances That Can Cause Intoxication Under The Law?

Texas DWI laws apply to more than just alcohol intoxication while driving. The law specifically mentions a list of intoxicants that can impair physical or mental faculties in such a way as to result in a DWI charge. The intoxication can include the effects of any one of the drugs on the list, any combination, or any of them combined with alcohol.

A district attorney does not need to specifically list the substance that allegedly caused the intoxication or include any of the substances on the list to support the charges. Still, it must be something that is on the list. Also, the law does not say that the state must prove you used particular amounts of drugs, or the levels of the substance in your body, to support the charges. It is enough if the effect on your body or mind creates the level of intoxication apparent to the officer who made the stop.

The prosecution doesn't have to prove the facts about a substance that led to intoxication in a particular case. It is not an element of the charges that the state must prove but rather a piece of evidence that it must establish in court to sustain the charges. A district attorney must prove that there was a connection between a drug or substance that can cause intoxication and the defendant's state in the case. The trial must include evidence that a certain substance can cause intoxicating effects and that the individual on trial showed the effects of that intoxicant.

This means that police may arrest you and charge you with DWI with or without a test. Even if the police perform a test, you could still be considered intoxicated if the BAC is below 0.08. If the officer notices visible signs of intoxication, such as slurring words or seeing that you are unsteady on your feet or swaying, the police might still charge you with a DWI. Importantly, if you are less than 21 years old, you could face charges under the separate DUI law if there is any measurable amount of alcohol in your system.

Blood Alcohol Concentration

The second definition of intoxication is objective. It doesn't depend on the officer's observation of how you acted. A measurement of 0.08 alcohol concentration at the event defines it. There are many ways that police can measure your blood alcohol concentration–BAC–including breath or blood samples. Urine samples are rarely used in Texas driving while intoxicated cases, but can be used if it is suspected the driver is driving under the influence of controlled substances.

What Does It Mean To Be Operating A Motor Vehicle?

Under Texas DWI law, you might be arrested and charged with a crime even if you aren't driving a car during your interaction with the police. Courts interpret the law to include situations where you have physical control of the vehicle while intoxicated. This is true even if the vehicle is not moving. So, having physical control over the vehicle and being capable of operating it has been included in the law – meaning that if you have the keys and are in or very near the car, the law considers you to be in physical control of the vehicle. If you had been driving it before the police arrived or could drive it right then, the law considers you to be operating a motor vehicle

Even if the car is legally parked and the engine is off, the law could consider you as operating a motor vehicle if you have the keys and the ability to drive it. If the keys are in the ignition, that is sufficient to have control. Even if the keys are in your pocket or somewhere else within easy reach, you will likely be considered to be in control of the vehicle for purposes of the DWI law. Cases have held that a car with flat tires can still be considered a motor vehicle that you can operate.

What Is A Motor Vehicle Under Texas Law?

Any motorized conveyance can be considered a motor vehicle under Texas law. You could be in a golf cart, a moped, a ride-on lawnmower, or perhaps even a motorized bicycle, and police could still regard it as operating a motor vehicle under the law.

Animals Don't Count As Vehicles Under DWI Laws

The Texas DWI law prohibits operating a motor vehicle while intoxicated. There have been a few cases, though, where police have tried to bring charges against someone riding a horse or other animal while intoxicated. In at least one case, the county attorney decided, after some research of laws in neighboring states and other legal guidelines, that the Texas law, as written, does not support DWI charges while riding an animal. You might be violating other laws if you ride your horse down the main road in town while intoxicated, such as public intoxication, but you can be confident that you will not face a DWI charge because of the event.

What Is A Public Place?

The concern of the law is primarily to protect other people from the dangers of being struck or injured by an intoxicated driver, so the law has a limitation that the offense of operating a motor vehicle while intoxicated must happen in "... a public place ..." Does that include your driveway or garage? Or a private road leading to your home? If the road you are on is open to the public for transportation purposes, it is very likely the court system will consider it to be a public place.

While your garage is not a public place, the law might consider the driveway or road leading to your house a public place if it is open to others to drive on to access your home. Therefore, the law might not consider a gated road that must be unlocked or opened by you (or someone with authority over your property) a public place because it isn't open to other people to travel on at will.

Reasonable Suspicion For The Stop

Law enforcement officers in Texas can stop you when they have a reasonable suspicion that you may be involved in a criminal offense. The phrase *reasonable suspicion* is a legal term that means an officer must have more than a guess or idea that you are violating some law. Reasonable suspicion must be based on facts that can indicate a problem, such as when the officer observes you breaking simple traffic rules like changing lanes without signaling, swerving, failing to stop at a stop sign fully, or speeding.

A stop and detention to investigate a crime are probably considered reasonable under the law if the officer "reasonably suspects a person of engaging in criminal activity." The law officer must show that, based on all the facts available at the time (called the "totality of the circumstances" in the law), the officer had specific, clearly explainable facts combined with reasonable inferences from those facts. Then, the officer must show that these facts could lead the officer to believe that a person is, has been, or possibly will soon be involved in a criminal act. The officer has to have personally seen the individual under suspicious acts so that the officer reasonably believed that criminal activity was likely. But an officer may also have received a report of suspicious behavior from a witness.

Often, the next step is to investigate further while talking to you. Suppose the officer sees signs like reddened or unsteady gaze in your eyes or an odor of alcohol or marijuana smoke on you or in your car. In that case, the officer has more justification for adding to the reasonable suspicion that led to the stop. In most cases, the officer is concerned with finding enough evidence of criminal activity to rise to the level of probable cause to arrest you. So, the investigation is likely to continue with more questions, a review of your identification and a check of your background on official records, and potential field sobriety tests to help the officer confirm or negate the suspicion that you were driving while intoxicated.

Probable Cause For Arrest

The legal standard for an officer to arrest you is higher than the legal standard required to stop you and investigate. This higher standard is known as 'probable cause.' It involves strict legal requirements that the officer must satisfy in explaining the arrest to the judge. Some of the ways that an officer supports the probable cause that is needed to invoke the state's implied consent law, and to have legal grounds to arrest you, include conducting Standardized Field Sobriety Tests.

Standardized Field Sobriety Tests

To go from reasonable suspicion to probable cause needed to make an arrest, the officer will usually do what is called 'field sobriety tests.' These tests can take a few different forms, depending on the situation.

The US National Highway Traffic Safety Administration developed standardized field sobriety tests (SFST) in the 1970s. These tests assessed individuals for signs of impairment in traffic enforcement against intoxicated drivers. By the early 1980s, law enforcement officers across the country started implementing the set of three approved tests for evaluating drivers suspected of impairment.

Each law officer who performs SFST must be trained on the proper test methods. The agency responsible for establishing the tests and setting training protocols, the National Highway Transit Safety Association–NHTSA–has a manual that details how to administer and interpret such tests.

Texas courts will recognize the NHTSA manual as an authority judges could cite and discuss in evidence. Cases in Texas have ruled that judges could suppress SFST results and not use them in evidence if an officer didn't follow the standards in the manual precisely.

A skilled DWI attorney will focus on the inconsistency between the procedures defined in the manual and how the officer did it in a particular case. While slight deviations from the standards may not result in a judge excluding the test from the court, the deviations are worth noting so the fact-finder can be aware of the discrepancies.

One-Leg-Stand Test

In this test, an officer will direct you to stand with one foot raised, about six inches off the ground, and have you count until it is time to put your foot down. While you are holding your foot up and counting, the officer assesses your balance. If you sway or hop to stay on one foot, you've probably 'failed' the one-leg-stand test, and the officer will likely consider this part of probable cause to make a DWI arrest.

Walk-And-Turn Test

The walk-and-turn test involves directions to take nine steps in a straight line, touching heel-to-toe on each step. Then, an officer tells you to turn on one foot and walk back to the starting point in a straight line, heel-to-toe. Officers will be looking for signs of impairment, including unsteady balance or difficulty following their directions.

Horizontal Gaze Nystagmus (HGN)

Law enforcement considers the Horizontal Gaze Nystagmus (HGN) test a good indicator of intoxication. An officer holds an object like a pen or flashlight in your face. The officer tells you to follow the object with your eyes. You fail the test if your eyes jerk or twitch involuntarily near the side extension of their range. If this happens, the officer will consider it as additional support for probable cause to arrest you.

Limitations With Field Sobriety Tests

There are several known flaws with standardized field sobriety tests. For example, on the HGN test, it is only the officer's word that you failed by having your eyes twitch at the end of their range. There is no objective proof of your test results, even if other witnesses are at the scene.

Balance and coordination tests such as the walk-and-turn or the one-leg-stand can seem to show unsteady balance for many reasons, from the shoes you are wearing to your nervousness in a public place being tested for sobriety by police officers. Different people have varying skill levels with balance and coordination, even in the best circumstances. Hence, it is a flawed assumption that there should be a 'perfect' performance that the officer has in mind. Still, you may not live up to their standards of how the test should be done.

The purpose of field sobriety tests is for you not to pass, essentially. By the time you've gotten to the point in a traffic stop where the officer is directing you to do these tests, the officer most likely already knows they will arrest you. They are working on getting more evidence to support that decision.

You are not legally obligated to take a field sobriety test, and you can refuse. However, if you refuse, it may hurt your chances of ending the traffic stop without a DWI charge. The officer can use your refusal to support a finding of probable cause to arrest you.

The trial's fact-finder can learn about your refusal to take an SFST and decide that you refused because you were intoxicated. Just because you take the test and the officer determines that you've failed, though, doesn't mean that you can't fight the DWI charge and question the legitimacy and reliability of the tests.

Breath Tests

Another very common method of gathering evidence of intoxication is with a breath test, often called a breathalyzer test. Timing is very important in getting accurate and untainted test results on a breath test. The requirements of the Intoxilyzer 9000 machine, for example, include that the person being tested is to blow two long, steady breaths outward into the machine. For a valid reading, the two breaths must return results within .02 of one another. If the readings aren't within this .02 variance of each other, the results are invalid.

First, the person administering the breath test must have the person to be tested in view for 15 minutes before performing the test. This time frame accounts for important safeguards, such as the individual hiccupping, burping, or sneezing, any of which could contaminate the breath test, for example.

If the officer does not follow this time, and the officer administering the test did not watch the test subject for 15 minutes before the test, a court may suppress the result. If the officer is distracted by another matter and removes the focus of attention away from the test subject during that 15 minutes, the test result may be questionable. The 15 minutes does not include when the officer enters data to get started. Rather, it must include the entire time focused on the person who is the subject of the test.

It's also possible that radio frequency interference can cause problems with the test. Typically, the interference will be visible in the printout of the test results. By correlating the test result printout with the test log information, it is possible to see just when the interference happened. The typical excuse is that cell phones cause radio frequency interference, but science says that the phone must be within just two inches of the machine to cause such a pattern.

Texas courts do not allow a police officer on the witness stand to connect the results of SFST and the actual blood alcohol level. In most cases, officers aren't scientists. Texas doesn't train them to act as experts in linking tests performed and BAC detected. Courts have also said that a testifying officer must qualify as an expert in both the test administration and the test's technique. This expert status must come from certification provided by the state.

Blood Tests

After administering some field sobriety tests, or if you refuse to take those tests, an officer will probably arrest you on DWI charges. Texas implied consent law says that you must submit to a chemical test, so police can learn whether you are intoxicated by law when they legally arrest you. If you refuse to submit to a blood test, an officer can request a warrant to authorize the test.

Blood Search Warrants

While it delays the process, an officer has the option to request a blood search warrant to take a sample from you if you continue to refuse to consent to the test. The officer must have probable cause to request the warrant. Typically, a judge grants a warrant when law enforcement officers submit a request based on facts that can support it.

Refusal Of Chemical Tests

If you continue to refuse the officer's request to submit a sample of your breath, blood, or urine willingly, your license will be automatically suspended for 180 days. The officer must give you a notice, formally called a DIC-24 Statutory Warning, that tells you that failure to take the chemical test of BAC will result in immediate license suspension, with a fee to reinstate your driving privileges. In cases where you've been involved in a very serious accident that caused death or severe injury, police may have the right to draw your blood without your consent and without a warrant.

Consequences For Underage Drivers

For those under 21 years old, any measurable amount of alcohol in your system can get you a charge of driving under the influence of alcohol or a DUI. The charge of DUI is a Class C misdemeanor, punishable by a fine of up to $500 and 40 hours of community service, along with a mandatory alcohol awareness program. With two DUIs on your record, you will have a maximum fine of $2,000 and 180 days in jail, plus 60 hours of community service. Multiple DUI offenders lose any potential eligibility for deferred adjudication programs that can help them avoid jail time.

License Suspension

If you are under 21 and caught driving with a BAC between 0.01 and 0.079, you will lose your driver's license for 60 to 180 days. You will get a one-year suspension for a BAC between 0.08 and 0.149. On a second offense, you will have an 18-month license suspension. Three or more offenses come with a two-year suspension term.

Open Container Of Alcohol Law

Texas law says that:

"If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days."

Even if your BAC is less than the legal limit of 0.08, police will charge an open container of alcohol in the car as a Class C misdemeanor, punishable by a maximum fine of $500. If your BAC is above the legal limit, an open container combined with a DWI charge, police will charge it as a Class B misdemeanor. This charge comes with a minimum six-day jail term.

The prosecutor must establish the evidence to prove an open container enhancement to a DWI charge. If the police found empty containers of alcohol in your car, for example, they can use this to support an open container enhancement at trial.

The events of the alleged driving while intoxicated and having an open container must be simultaneous for the DWI enhancement of an open container charge. For this law to apply, it must be part of the same series of events that led to the charge of driving while intoxicated. It can't be an event that happened earlier that day at another place or later and unrelated to the conduct of the DWI charge.

The law only requires that you break the seal on the container for police to regard it as an open container. Thus, even if the container still has all the alcohol in it, it is an open container for enhancement purposes if you open it.

In Your Immediate Possession

The open container doesn't have to be in your hand to be subject to the law. It can be in the cup holder, behind your seat, or even in a passenger's hand during a traffic stop, but it is still considered to be within your "immediate possession" if it is in a place where you could access it from the driver's seat. Exceptions to this law exist, such as riding in a motorhome, limousine, or as a ride-share passenger.

DWI Includes Prescription Drugs, Marijuana, And More

The Texas DWI law is written to forbid driving while intoxicated. Many drugs can cause intoxication, from legal prescription drugs to over-the-counter medications to cannabis. Regardless of your actual blood alcohol content, other drugs and substances that cause intoxication can support a DWI charge.

Marijuana Standards

State laws regarding marijuana use have been changing rapidly in recent years, with some states allowing medical and recreational use of cannabis, despite its status as illegal under federal law. As a result, the laws from state to state regarding legal limits for driving related to marijuana are also different. Texas has no legal limit for driving while intoxicated related to marijuana use.

Many experts are studying the degree to which marijuana use may impair the ability to drive safely. Other researchers have been working to establish a means to test drivers for cannabis intoxication. To date, there is no evidence to show that law enforcement's Standard Field Sobriety Tests (SFST) are reliable indicators of impairment related to cannabis use. Experts know that alcohol suppresses and inhibits some bodily and mental functions, while the impacts of cannabinoids on the human brain result in a very different effect on the body and physical functioning. Furthermore, cannabis use impacts different areas of the brain than alcohol intake.

Since there are no reliable standards of what constitutes intoxication for marijuana use, it is a challenge to know if someone is actually under the influence of cannabis. The agency that establishes and trains officers on SFSTs is the National Highway Transit Safety Association–NHTSA–which has no test to establish

whether someone is under the influence of marijuana. Driving tests have studied subjects operating a driving simulator, which varies significantly from real-world experience.

Tests For Marijuana Intoxication

Tests can detect marijuana with a blood draw, with some significant limitations. But there is not a breath test that can indicate cannabis ingestion. It is partly due to some of the unique factors of the substance that make tests for cannabis levels difficult to assess. The main psychoactive chemical in cannabis is called Tetrahydrocannabinol, or THC. Individual rates of assimilation and decrease of THC in the bloodstream vary significantly due to how the substance bonds with fat cells in the body.

Studies show that THC slowly releases into the bloodstream in a way that is totally different from the body's uptake of alcohol into the blood. As a result, the presence of THC in a person's bloodstream has no direct correlation to impairment. One type of THC, called Delta 9, has not correlated with impairment. Research shows that in a short time after use, usually about an hour, there is typically an 80 to 90% decline in THC level in the body. It is very difficult to determine if the THC found in the blood got there by the individual's direct intake of marijuana or through second-hand smoke exposure.

Police regularly use some tests in relation to alcohol impairment. The Horizontal Gaze Nystagmus and the Vertical Gaze Nystagmus tests are simply not reliable indicators of cannabis impairment. As a result, there is no reliable roadside testing method to analyze the amount of THC in a driver's system. Some people may have heard of the "green tongue" myth that a substance on the tongue can detect a marijuana user, but this is not based on reality. Some reliable indicators of cannabis influence on the body include reddened eyes and dilated pupils, an elevated pulse, and a lack of convergence. The lack of convergence is the inability to comfortably cross one's eyes at close focus on an object near the nose.

Challenging Marijuana DWI

The state has many challenges to overcome to prove that marijuana intoxicated someone. While there are tests for cannabinoids in the body that can be done through blood samples, orally to test saliva, or utilize a hair or urine sample, these indicators do not show the amount of intoxication that may be affecting the person.

Each body processes and uniquely retains THC differently. Therefore, the question of impairment due to cannabis intake varies significantly from one person to the next. In regular users of marijuana, THC can be detected weeks or months after the last use because of how the body holds onto the substance in the body's fat cells. Someone who is not a regular cannabis user is likely to be significantly more impaired by the same dosage or amount of marijuana intake than a regular smoker.

Many variations and factors determine the length of time and intensity in the system in which police can detect cannabinoids. As a result, law enforcement has no reliable test to indicate how long THC has been present in a person's bloodstream. Even more importantly, though, the presence of THC in the body is not an indicator of impairment, as these factors can vary widely from one individual to another. This does not mean that police won't charge you with a DWI due to cannabis intake. If an officer can find probable cause to support your arrest, the case may have to go to a judge or jury to determine if the DWI charge was valid and will result in a conviction.

Prescription Medications

Even drugs that you are legally authorized to have and take, such as prescription narcotics or opiates, can lead to a DWI charge. Since the legal definition of intoxication includes physical signs and indications of intoxication and not just a set amount of a chemical in your system, you can be charged with DWI if the officer finds you physically affected by the medication while you are in control of a vehicle. You may have taken the drug legitimately as directed by your medical professional, but you can be subject to DWI if it impairs your physical or mental functioning.

It is possible that you don't feel intoxicated, but an officer may see it differently. Following your valid prescription and taking the medication according to your doctor's orders won't change the fact that an officer might find you intoxicated under the law.

Enhanced And Related DWI Charges

The basic driving while intoxicated law is just one of the laws in Texas that you could face. Related laws can enhance the charges and result in more severe penalties.

Driving While Intoxicated – BAC Of 0.15 Or More

Texas law says that:

"If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor."

As a Class A misdemeanor, a conviction on this charge is punishable by fines up to $4000 and jail up to 1 year. The normal charge of driving while intoxicated is a Class B misdemeanor. But if the evidence shows a BAC of .15 or more, the charge can increase to a Class A. The prosecutor can amend the charges and change the bond conditions in the case to fit the Class A standards. You will probably have to have an Ignition Interlock Device installed on any car or truck that you drive while the case is going on in this matter.

Driving While Intoxicated – Second Offense After A Prior Conviction

Texas law says that an offense under the DWI law is a Class A misdemeanor, with a minimum term of confinement of 30 days, if the district attorney shows at trial that a jury previously convicted you one time of an offense relating to the operating of a motor vehicle while intoxicated. So, one prior conviction of any type of DWI will lead to prosecutors charging the second offense as a Class A misdemeanor. However, if there was no conviction on the first charge, the judge will not enhance the second DWI in this way.

Driving While Intoxicated – Third Offense Or More

Texas law (§49.09) says that a DWI offense is a felony of the third degree if the prosecutor shows that a jury previously convicted you two times of any other crime relating to operating a motor vehicle while intoxicated. People who have been sentenced on DWI charges at least twice previously and charged with DWI for the third time or more will face third-degree felony charges.

Driving While Intoxicated With A Child Passenger

If you drive your car while intoxicated, you put more than just yourself at risk of harm. Other motorists and even pedestrians or cyclists could be injured or killed if you crash. This concern for harming others rather than yourself is the root of the law that sets a severer punishment for DWI with a child passenger. The risks of physical injury and legal consequences are raised when an intoxicated driver puts a child at risk as a passenger in a vehicle operated by an intoxicated individual, even if there is no crash and no harm.

Texas law says that a person commits this offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and
(2) the vehicle has a passenger who is younger than 15 years of age.

An offense under this section is a state jail felony. The requirements of this law start identical to the state's standard DWI law and add the element of a child passenger. The state jail felony referenced in the law can range from 180 days up to two years in state jail, with the potential for a $10,000 fine.

For purposes of the DWI law, the law defines a child as someone younger than 15. Therefore, the court will not count an older teenager as a violation of this law section. But driving with a young child in the car while intoxicated raises the level of the charge you could face to a state jail felony, with a two-year jail term and up to a $10,000 fine if a jury convicts you of this offense.

Other laws could come into play as well, such as child endangerment. A prosecutor could bring these charges, and get a conviction, even if there was no actual harm to the minor and even if you weren't involved in an accident at all. However, if there was a crash and the child was injured, the charges can be even more serious. The criminal penalties for a conviction on this charge are like the enhanced DWI charge and can also lead to losing custody rights with your children.

Boating While Intoxicated

Texas law says that a person commits an offense by being intoxicated while operating a watercraft. An offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Operating a boat while intoxicated can lead to trouble. Yet, just as with a motor vehicle, some areas around the edges of the law may need some interpretation. The watercraft discussed in the law is most likely limited to the type that has power propulsion, versus a self-propelled watercraft like a kayak, paddleboard, or canoe, for example, which would not come within the limits of the law.

Intoxication Assault

Under Texas law, a serious bodily injury is a great risk of death, or one that causes an injured individual to lose the functioning of a body part or an organ, or that leaves the victim disfigured, with scarring or other permanent consequences from the injury. You can face criminal charges and serious penalties if a jury convicts you of a DWI that didn't involve any damage or injury to anyone, of course. You are very likely to face more severe criminal charges if you are intoxicated and cause a car crash that seriously injures people.

The state may charge you with a more severe crime in the case of an intoxication assault. If the injured party is a first responder, such as an EMT or firefighter, the charge can be a second-degree felony. If the injury victim is a judge or police officer while carrying out their official duties, the charge can be a first-degree felony. No matter who the injured victim is, if the individual suffers a traumatic brain injury that puts them in a persistent vegetative state–a coma–you can face second-degree felony charges.

Intoxication Manslaughter

The worst-case scenario involves an intoxicated driver who causes the death of someone in a car crash. This crime is called intoxication manslaughter. Texas charges it as a second-degree felony, punishable by up to $10,000 fines and a possible 20-year jail term. If the victim is a firefighter, EMT, police officer, or judge, the crime is a first-degree felony.

DWI License Suspension

Under the implied consent law in Texas, if you agree to provide the law enforcement officer with the requested blood test after your arrest on suspicion of DWI, you will usually get to keep your driver's license until the Texas Department of Public Safety–TxDPS–gets the report of the test results. If the test indicates that your BAC was higher than the legal limit, the department will send you a notice of suspension / temporary driving permit. When you get this notice, you have just 20 days to request a hearing to challenge the suspension.

If you refused the chemical test after arrest, however, or if the breathalyzer test results reveal that you had a BAC above the limit at the time of your arrest, the officer may confiscate your driver's license and provide you a notice of suspension / temporary driving permit. You have just 15 days from the time you get this notice to demand a hearing so you can challenge the suspension. The court will suspend your license on the 40th day following the notice if you haven't requested the hearing challenging the suspension. When you have requested the hearing to challenge the suspension, the court allows you to drive until the hearing, at least.

Administrative License Revocations

After you appeal a driver's license suspension, TxDPS will set your case for an Administrative Law Revocation hearing in 30 to 120 days. This ALR program is a civil procedure conducted by the State Office of Administrative Hearings, and it is unrelated to the criminal case of your DWI charge. An administrative law judge presides over the ALR process. The ALR process requires that TxDPS either suspend or disqualify your driving privileges after police arrest you on a charge of driving while intoxicated.

An officer must support your DWI arrest with probable cause. The TxDPS will prove to the judge that you had a BAC more than the legal limit at your arrest or that you refused a breath or blood test. The judge looks at evidence of your blood alcohol content to determine if it was over the limit and scrutinizes the evidence to see if the officer had reasonable suspicion to stop you initially. If the department claims that you refused a test of your blood content, the judge has to rule on whether the evidence proves that you did refuse, as they allege.

Like a court hearing, the ALR process allows the judge to hear arguments and evidence from your attorney and the TxDPS attorney and hear testimony from the arresting officer and other witnesses. They

may have useful information about the facts. The judge will not suspend your license when you win at this hearing. But if you aren't successful in this process, you still have a chance to appeal the decision within 30 days of learning the outcome of the hearing. An appeal will put your license suspension on hold for 90 days as your appeal proceeds.

If your attorney persuades the appeals court that you are correct, the court will order the department to reinstate your license. Yet, if you lose on appeal, the license suspension takes effect. You will probably have to wait until the end of the suspension period to get your license back. When it is time to have your license reinstated, you will pay a surcharge between $1,000 and $2,000.

Occupational Driver's License

You may still be able to drive even after the court suspends your license after a DWI.

Texas law has a way for you to have a limited driver's license in case you need to get to work, school, or attend to critical medical needs. Suppose you meet the requirements of the program. In that case, an occupational license gives you the ability to use your car for limited, fundamental reasons that the court approves while you are serving a DWI license suspension.

An occupational license is not an absolute right after a DWI. You have to follow some essential steps correctly to get through the process and meet the TxDPS requirements. You might have to wait for a time before the court declares you eligible for the program.

The required waiting times for the occupational license are set by law, depending on your status and circumstances. If you already had two administrative license revocations, you will need to wait one full year before you are eligible. If you've had a previous suspension for an alcohol or drug offense, you will need to wait 90 days before you're eligible. If an officer convicts you of an intoxication-related offense, you must wait 180 days.

If you meet the requirements and complete the petition for an occupational driver's license, the judge will let you have one. Next, the petition goes to TxDPS along with the court order, your financial responsibility insurance certificate, proper payment of the occupational license fee, and payment of the fee for reinstatement. You can use the court order as your driver's permit until the department formally approves everything.

You Will Pay Higher Insurance Rates

Figures on insurance premiums are one of the areas a DWI will increase your expenses. After a DWI, you will notice a definite change in your auto insurance bill. Your current insurance company is almost certain to bump up your premiums when they learn that you're facing a DWI charge. Additionally, you will need to have greater liability coverage for your vehicle as a pre-condition for getting your license back.

Other Consequences Of DWI Charges

In many cases, the police will have your car towed from the scene and impounded after your arrest. Towing charges add up to $250 to $500, and the fee to release your car from the impound lot will total about $25 per day that it remains impounded.

Ignition Interlock Device On Your Car

In many cases, especially in cases involving repeat DWI charges, a judge may order an ignition interlock device–IID–in your car. This electronic device connects to your car's starting system and requires you to measure your BAC before being able to drive your car. In many cases, a judge will order an IID as one of the terms of your release on bail, especially if this is a repeat DWI and you are facing felony charges. The cost of an IID installed on your vehicle ranges from $75 to $100 per month, on average.

Alcohol Monitoring Devices

Other means by which the law may keep an eye on you after a DWI conviction involve other types of monitoring devices. These are acronyms that describe what they do, from PAM, a Portable Alcohol Monitoring device, to SCRAM, a Secure Continuous Remote Alcohol Monitor. These devices are set to monitor you for alcohol intake. They could be set up as conditions of release on bond before trial, or as a condition of your probation, in a case where you avoid jail time on the charges.

Alcohol Assessment And Education

Often, a condition of resolving a DWI charge involves an alcohol assessment and or alcohol awareness education classes. An assessment is a psychological examination of your personality and tendencies toward using and abusing alcohol. A judge may order you to undergo an evaluation as part of a pretrial diversion program or before the judge sentences you to a DWI conviction. Similarly, judges often order alcohol awareness courses as a condition of your sentence so that you are better prepared to make good decisions in the future.

A DWI Conviction Can Cost You Your Job

Obviously, if a judge sentences you to any amount of jail time after a DWI conviction, you will lose income while you are serving your term. There will be no job to come back to in many cases, as many employers see a DWI conviction as a reason for immediate termination, even if you don't spend time in jail. Especially if you work as a driver of any type, from a public bus to a delivery truck, an employer will likely have no tolerance for a DWI conviction on your record. Similarly, working in the public sphere as a teacher, a civil servant employed by your local or state government, or in some other position of trust and responsibility in the community, the potential for negative employment consequences after a DWI is significant.

Texas is an "at-will" state, meaning an employer can fire employees who don't have an employment agreement for any non-discriminatory reason. Texas law forbids discriminatory reasons as justification for firing, and these include reasons involving your gender, age, race, religion, or disability. Basically, an employer has every legal right to end your job immediately if the state convicts or even charges you with a DWI offense.

Finding new work after losing your job due to a DWI will also be a challenge. Most employers conduct a criminal background check that will reveal convictions on a DWI charge. The national Fair Credit Reporting Act–or FCRA–allows DWI arrests to appear on your criminal background report for up to seven years. If a jury convicts you of a DWI, that fact can be part of your record forever.

Indeed, federal laws don't let companies refuse to hire an applicant just because of a DWI conviction. Nevertheless, there are many exceptions to this rule. You can find these exceptions in career fields like

nursing and healthcare, childcare, and transportation. However, even beyond those industries, a potential employer who finds a DWI on your record is usually able to find another, non-protected reason to decide against hiring you, and it would be very tough to show that the 'real' reason for you not getting the job was because of your conviction.

What To Expect With A DWI Arrest

After an officer arrests you on suspicion of DWI in Texas, you will have two legal cases going on separately. The first part of your case is a civil matter outside of the ordinary court system, and it involves your driver's license and the decision of whether it will be suspended or revoked in your case. The other part of your case is the criminal charges that will go to court if it's not resolved before that somehow.

When you are facing charges of driving while intoxicated, a criminal case has a lot of steps along the way. The first stop is usually jail.

Booked Into Jail

After officers arrest you for a DWI, the first step involves processing you into the criminal justice system. At the station, you will give the police your personal information. They will take copies of your fingerprints and snap mugshot photos. They will look through your background for a record of previous arrests. You will usually be held in a jail cell until you can post bail for release or go to court for your initial appearance in the case.

Released On Bail

Typically, a criminal defendant is allowed to post bail. This is a financial commitment that helps convince the court that you will appear for the criminal case to defend the charges against you. Bail is either bond through a bail bond company or a personal bond. You will pay some money either way.

The amount of the bond varies depending on the facts of your case and your criminal record. If you proceed through the case properly and follow the court's orders, you will usually get your bond back minus an administrative fee. It is typical for the penal system to release you on a low bail after booking you into jail unless you were involved in a serious accident that caused severe injury or death.

Usually, you can go before a magistrate judge for a bond hearing within 48 hours of your arrest. You can post bail quicker than that if your lawyer files a writ of habeas corpus or another legal request that will require the court to determine your bond amount before you go in front of the magistrate judge.

Pretrial Conditions

Judges commonly grant release on bail with conditions, including your agreement to get an ignition interlock device–IID–put on your vehicle. An IID is a device attached to your car's starter system that measures your BAC before you try to drive. Suppose you've been convicted of a DWI before, a felony DWI case involving a severe accident, or had a BAC of 0.15 or higher during your arrest. If so, the court system requires an IID system implementation as a term of your release before trial.

Charges Filed

The district attorney will review the records of your DWI arrest and the evidence in your case to decide whether to file charges in the criminal case. The majority of cases prosecutors file in Texas courts are driving while intoxicated cases.

The prosecutor charges felony DWI with an indictment. The district attorney must take your case before a grand jury to get an indictment to proceed with a felony DWI charge. A misdemeanor DWI does not need to be presented to a grand jury and is filed through the prosecutor's office.

The timeline of your case depends on factors, including the county where your charges are filed. The process of getting an indictment from the grand jury can take months before the case is ready to proceed through the justice system. Usually, it takes about 30 to 60 days for the district attorney to bring misdemeanor DWI charges.

Case To Court

The first official court appearance in your case is called a 'first setting,' which usually happens about 30 to 60 days after your arrest. Suppose you have a criminal defense attorney on your side. In that case, notices of hearings and procedures are delivered to your attorney. The district attorney will communicate with you rather than directly to you through your attorney.

Your attorney has the chance to request all relevant evidence in your case, including witness statements, police reports, and records, videos from the scene, or any other key items of evidence that the district attorney has gathered. This part of your case is called 'discovery,' and it gives your attorney a chance to assess the district attorney's case against you.

You will not make a plea of guilty or not guilty at your initial court appearance. This first hearing in court is for the judge to be sure that you understand the process and will agree to comply with the terms and requirements of taking your case to trial if needed.

Potential Plea Deals

Typically, a district attorney has no motivation to offer you a suitable alternative when the state first charges you with driving while intoxicated charges. The district attorney's job is to try to get a conviction, which represents justice to them. The truth, though, is that some DWI cases are harder to prove, and not every case will end in a guilty verdict or plea. The district attorney has to be very confident that they can prove beyond a reasonable doubt that you committed the crime as charged against you. In cases where the evidence may not be strong or defenses may complicate the case, a district attorney might offer you a better alternative.

What Is A Plea Deal?

A plea bargain, which is sometimes called a plea deal or plea agreement, lets you agree to plead guilty to DWI or some related but lesser charge in return for less harsh punishment. Often, the plea arrangement has you plead guilty or no contest (called nolo contendere in the law) to a lower-level offense in exchange for an agreement of less severe punishment, such as probation instead of jail time. A plea deal in Texas resolves most criminal cases.

Plea Bargaining Tactics

Often, a district attorney will have strategies to scare you into accepting a plea deal they prefer. The prosecutor may charge you with a felony. The prosecutor could arguably support the charge with plea deal evidence rather than charging a misdemeanor that might be appropriate on the same evidence. The district attorney will try to make the charges look as intimidating as possible in the hopes that you will agree to accept a guilty plea to a lower charge.

Looking At Your Options With A Plea Bargain

In most cases, a plea deal lets you avoid the worst outcome for your case that would come with the maximum penalty on the charges you face. Jury outcomes can indeed be complicated to predict, and you could risk the potential of a very harsh adverse decision if you decide on taking the case to trial. You can usually save a lot of time, as well, by going through the shortened process of a plea bargain versus facing the unknown for months as your case goes through the criminal justice process.

A trial is a challenging procedure. It is time-consuming and emotionally draining to complete a trial. The costs of defending your case through to trial also add up. If you do end up with a conviction on the more severe charges that the district attorney brought, the long-term consequences can be very harsh.

Plea Bargain Issues To Consider

Taking a plea bargain is a big step, as you are giving up some of your rights, including the right to have your case heard by a jury of your peers, the right to confront witnesses against you and cross-examine their statements, the right to defend yourself against the charges, and the right to appeal. Also, when you agree to a plea deal, you admit guilt or at least don't contest the facts of the case that indicate guilt.

If you know you didn't commit the crime, then it is frustrating to agree to accept blame for it. You need to remember also that a plea can be used against you later in a civil case. And you might have to deal with harsher consequences in the future if you ever face a related charge because you've pled guilty or no contest to this charge.

The choice to accept a plea bargain is a big decision. While a plea may seem to offer a better alternative, such as probation instead of a long jail term, it is not right for all cases and all people. It is critical to consult with your attorney on your rights and the risks you take of rejecting a plea offer and going to trial.

Your case doesn't go to trial if you accept a plea deal. Instead, you go to a plea setting, an appearance where you enter your plea and sign an agreement with the district attorney. Usually, a plea agreement includes the agreement of paying court costs and fines and accept the term of supervision or jail term.

Pre-Trial Diversion Programs May Be A Better Option

Texas law provides other options to resolve some DWI cases outside the standard court procedure of taking a plea arrangement or trial. If you meet specific requirements, the court can direct you into a pretrial diversion program, sometimes called a pretrial intervention program. These programs are not plea bargains. They focus on educating and rehabilitating people rather than punishing them. The intent

is to help you understand your choices to get to this point. It's also so you can understand better options to make good decisions.

One of the critical terms of entering into a pretrial diversion program is to admit that you are guilty of the DWI. However, this is not the same as entering a guilty plea in court. The district attorney presents you with an affidavit to sign, admitting that you committed the offense. As long as you remain in the program to completion, the court will never use the affidavit you signed against you.

The pretrial diversion programs vary slightly from one county to another. DWI lawyers know which pretrial programs will apply to you.

Travis County Pretrial Diversion

Along with the Justice of the Peace, Precinct 5, the Travis County Attorney's Office developed a way for defendants facing first-time DWI charges the state has yet to file to be dismissed through the program. Eligibility requirements for the Travis County Attorney's Office DWI Diversion program include:

1. It is a first-time DWI charge
2. Your BAC must have been below .20, with zero exceptions to this requirement
3. There was no collision involved in the case

It is crucial to remember that the Travis County District Attorney's Office has the last word on whether they will accept an individual as eligible for the program. Once you are into the DWI Diversion Program, there are many essential requirements to complete it successfully.

First, you must finish the Travis County Counseling and Education Services–CES–evaluation, and recommendations. Second, you must complete a class by Mothers Against Drunk Driving–MADD. The course is available online. Third, you must have an alcohol monitoring device in place throughout your participation in the program, with no violations. Fourth, you must be present for 90-day status checks, including a thirty-minute appearance on the Justice of the Peace, Precinct 5, with your attorney. Finally, you must have no new arrests when you are in the program. The standard requirement of community service as part of your responsibilities is waived right now due to COVID-19 concerns.

When you successfully meet all these standards for the duration of the program, which is usually 12 months (but can be a shorter time if you meet all the requirements early), your attorney can have the DWI charge immediately expunged. As a result, the court erases the DWI from your record, and you have a fresh start.

If the state files your DWI case, it sets a similar program in its place. However, the Justice of the Peace doesn't oversee your case. Instead, your case stays in the court where the state filed the charges. In this case, the standards that you must meet are nearly identical, including completion of the Travis County CES evaluation and recommendations, completion of the MADD victim panel class, and installation of a monitoring device with no violations. The main difference is that the law sets your case for a six-month hearing, in which your attorney must demonstrate that you have complied with the program in full. As with the unfiled charges program above, the community service requirement is currently on hold because of the pandemic.

The program's requirements are very reasonable and simple for most people to comply with. You can have an outstanding result when you complete the program. After completing the program's requirements, the court will dismiss your case. It can also be eligible for expungement, which an experienced DWI attorney can help you complete. Either way, if you go through the program, whether before or after police file charges, you will get a much better result than had you gone through the traditional process of dealing with the charges.

Williamson County Pretrial Diversion

Williamson County has a pretrial diversion program called the Pretrial Intervention Program (PTIP). It is designed to rehabilitate, educate, and divert prosecution of some cases in the criminal justice system. The arrangement is based on a contract between a defendant who agrees to participate in the program and the County Attorney's Office. Approved defendants who complete the program have criminal charges against them dismissed. A defendant who fails to complete the program and violates the PTIP Agreement will return to court for a formal guilty plea on the offense and take the agreed sentence for punishment.

Disqualifying factors for the program include:

- Any prior adult felony conviction or deferred adjudication
- Any prior juvenile felony adjudication
- Any prior criminal history for the same or similar offense
- Any case that involved personal injury to other

The terms of the PTIP program in Williamson County are very detailed and include the following requirements for any defendant in the program:

1. Must admit guilt to the offense and accept full responsibility
2. Must not have any adult criminal history involving any offense the same or similar
3. Must not have any felony convictions, felony deferred adjudications, or any adjudicated felony offenses as a juvenile
4. Must not have any misdemeanor convictions or deferred with past ten years or adjudicated misdemeanors as a juvenile in the past three years
5. Must not have more than one criminal episode in charges dismissed in the past ten years and cannot be dismissed for completing any PTIP program
6. Must have access to the internet and an email account
7. Must be willing and able to be monitored with an ignition interlock device with a camera or a Secure Continuous Remote Alcohol Monitor–SCRAM–or an approved form of monitoring
8. Cannot make material misrepresentations in the PTIP application
9. Cannot commit any new offense during the pendency of the app
10. Cannot be charged with any of the following offenses:
    0. Public indecency
    1. Sexual offenses
    2. An offense involving the delivery of illegal drugs or paraphernalia
    3. A DWI involving injury to another
11. Must pay any restitution owed and provide proof prior to signing PTIP
12. Must forfeit weapons seized for any reason as part of the criminal case, at the discretion of the Criminal Division Chief

A DWI in Burnet County eligible for the PTIP will go through the Williamson County procedures.

Going To Trial On A DWI Charge

If you stay with your decision to plead not guilty to the charges against you, then your case proceeds to a trial. A pretrial appearance is usually the next step after the initial hearings, and some discovery has been made.

At a pretrial appearance, your attorney argues to get unfavorable evidence excluded from the trial. Using motions and other legal tools to suppress, your attorney will present legal and factual reasons why certain pieces of evidence should not be allowed into consideration at trial.

Excluding Improper Evidence

A judge should keep out from the trial any evidence that the police got by using improper or coercive techniques. Law enforcement officers have to follow strict legal requirements in gathering evidence. If they violated your constitutional rights or broke the department's rules regarding evidence gathering, they have no place in court using that evidence against you.

Another purpose of pretrial appearance hearings is for the attorneys on both sides to request court rulings on some simple issues to eliminate the need to go over them at trial. This speeds up the trial process and avoids wasting the court's and the attorneys' time. The court usually sets a date to schedule your trial on the court's docket at this hearing.

The Trial

At the trial, you choose to be judged by a jury of citizens or by the judge. A case heard by just the judge is called a trial before the court, or TBC. The judge hears all the evidence and arguments from both sides of the case and decides on the outcome. You have a right to choose a trial by jury if you believe that you may have a better chance of success by presenting your case to six jurors.

The Jury

If you select a jury trial, the first step in the trial is called '*voir dire*,' or jury selection. This is a chance for your attorney (and the district attorney) to ask potential jurors questions to determine who is the best fit for your case. There will be a panel of many citizens who were called for jury duty, and the attorneys in your case will take turns asking them each question to determine if they have any bias that might affect how they would consider the charges in your case.

When both attorneys have eliminated those who may not be best suited for the case ahead, they will agree on the six people who will decide your case. The judge swears in the jury panels and gives them directions on how the trial will go from there.

The Prosecution's Case

Both attorneys explain the way they see the case and what they expect the evidence will show during opening statements. Then, the district attorney calls witnesses to testify to the facts of the case as they see it. Usually, the arresting officer is one of the first witnesses on the stand to explain the details of the

arrest. Other witnesses may include people around you at the time of your arrest and before, who can testify about what you were doing that day (or night) and perhaps what they saw you drinking. Other essential witnesses in the prosecution's case include experts who can explain the techniques and results of the tests that showed that your BAC was above the legal limit. Your attorney gets a chance to cross-examine all these witnesses to explore inconsistencies or weaknesses in their testimony.

The Defense's Case

Your attorney gets the next opportunity to put on witnesses and show evidence after the district attorney's case-in-chief concludes. You have the right to call witnesses in your defense who can contradict facts that the prosecution has tried to prove. Skilled criminal defense attorneys know that some cases are better without calling many witnesses but instead will use careful cross-examination to raise doubt among the jurors.

You always have the right to testify in your defense, but it is not advisable in many cases. Trial strategy and tactics are discussed between you and your legal team before the trial to understand the reasons for the tactical decisions your attorney makes in the trial.

The Verdict

After both sides have presented their cases through witnesses and evidence, both attorneys have made closing arguments for how they believe jurors should decide the case. The case goes to the fact-finder for a verdict. In a TBC or the jury, the judge will usually take some time to consider the facts and law (which the judge has explained in detail at the end of the trial to the jurors) and arrive at a decision on the outcome.

All the jury members must agree on your guilt as charged to reach a guilty verdict. If they decide on acquittal, you will have the right to get the DWI charge expunged from your record. The 30-day window to file an expunction petition begins to run the day the court announces the verdict. If done correctly at the right time, the judge will sign an expunction order and erase the charges from your record.

If the jury is unanimous in a guilty verdict, you are convicted of the offense and will receive a sentence. If the jury can't reach a unanimous decision, and some continue to vote guilty, then you have what is called a 'hung jury.' Usually, the judge will order them to continue to debate and try to reach a verdict. Yet, if they can't all agree, the court may declare a mistrial. If so, the judge will dismiss your case. The district attorney can refile the charges in that case and start the process from the beginning. Thus, another trial may be looming if the jury can't reach a verdict.

Punishment Phase Of The Trial

If the judge or jury issues a guilty verdict on the charges, they usually don't determine the punishment immediately. Your case goes to the punishment phase, where either the judge or a jury decides what the appropriate punishment will be. In this part of the case, the fact-finder can consider evidence that wasn't admissible at the trial, including details about your criminal record and character.

Again, you have a choice between letting a jury or a judge decide your fate. Many DWI defendants choose a judge to determine the punishment because judges tend to be more predictable. The punishment assigned by a judge could be harsher than what a jury would give, though. This is another crucial point in the process where advice from your attorney is essential in making the best decision for your case.

Potential Punishments On A DWI Charge

The factors leading to the charges will contribute to the level of punishment you may receive if you plead guilty or a jury convicts you of the DWI charge. These factors include your degree of intoxication, and the specific facts of your case, such as whether there was a crash with injuries involved in the charges. It can also include whether you had a minor child with you as a passenger, any open alcohol containers at the scene and whether you've dealt with DWI charges before.

First DWI

A first conviction on a DWI charge is a Class B misdemeanor. A sentence on this charge can bring jail time from three to 180 days and fines up to $2,000. Court costs are likely to total an additional $1,500. The Texas Driver Responsibility Program is also a charge for license reinstatement that will add $1,000 to $2,000 to the total financial costs you will pay to the state. You will face a license suspension of up to one year.

Second DWI

The second conviction you get for DWI is a Class A misdemeanor. Jail time will increase, from 30 days to one year, with fines of up to $4,000. You can have your license suspended for up to two years. You will also incur court costs of approximately $1,500. The TDRP surcharge for getting your license reinstated adds up to $1,500-2,000.

Third DWI

A third conviction on DWI charges is a third-degree felony, with jail time ranging from two to 10 years and a fine up to $10,000. You will face a driver's license suspension of two years and have to pay court costs of around $1,500, and the TDRP surcharge for license reinstatement adds $2,000 to the total bill that you owe the state.

Fourth DWI

A fourth DWI conviction is a second-degree felony, and you'll face jail time from two to 20 years and fines up to $10,000, on top of court costs of approximately $1,500. The court suspends your license for up to two years, and the TDRP surcharge to reinstate your license will cost more than $2,000.

In Texas courts, judges have a great deal of latitude in determining your criminal consequences, including jail time, fines, and other terms of punishment after conviction. Based on the facts of your case, you might get a more lenient sentence.

In some cases, the law orders defendants to serve probation instead of a long jail sentence. The term of probation can be from six months up to two years. A judge might order community service and attendance at and completion of an educational DWI awareness course. However, these alternative punishments continue to add up, with probation costing $50 to $100 a month and the educational class costing $100 to $200. Taken all together, you could pay a thousand dollars or more through your probation and rehabilitation time. Talk with an Austin DWI lawyer to learn more about the possible consequences.

Some DWI Defenses That A Criminal Defense Attorney Could Unleash

It's essential to keep in mind that just because police charged you with driving while intoxicated doesn't mean you are guilty of the crime as charged. The district attorney must be very confident in their ability to prove beyond a reasonable doubt that you were intoxicated and in control of your vehicle when police arrested you. Some key defenses can come into play in your case that can make it difficult or impossible for the district attorney to convince the judge or jury of your guilt beyond a reasonable doubt.

You Weren't Operating The Vehicle

Some DWI cases come down to whether you had been driving while intoxicated. If the police officer didn't see you with the vehicle in motion on a public road, it is much harder to use evidence to link together facts showing that you violated the law. For example, you may have been sitting inside the car but perhaps did not have the keys to drive it in your pocket and readily accessible to you. If there are facts in your case that complicate the case so that the prosecution can't prove that you were operating the vehicle, you may be able to hold off a conviction.

No Reasonable Suspicion To Stop Or Probable Cause To Arrest

The police need to have a clearly explainable set of facts that can justify why they stopped you for investigation of driving while intoxicated. If there isn't good evidence to support a reasonable suspicion that you were violating a law, the police shouldn't stop you at all.

The facts of your case, the criminal law, and the interpretations of the police officer's evidence in support of reasonable suspicion and probable cause, are key elements to supporting a DWI charge. If the facts aren't strong enough, your attorney can help you avoid a conviction. Likewise, if the stop and questioning didn't show solid grounds to establish probable cause for the arrest, then the arrest was probably faulty.

You Didn't Receive Proper Warnings

During the arrest process, the police must inform you of certain rights. Police must give the well-known 'Miranda Warning' when taking you into police custody and before interrogating you if they fail to inform you that you have the right to remain silent and that anything you say can be used as evidence against you in court, and that you have a right to have an attorney when the police question you, the judge may exclude your statements.

In Texas, law enforcement officers have to warn you of the consequences of the test and that your refusal to take it has legal consequences. This warning, known as a DIC-24 Statutory Warning, is a statement as follows:

"If you refuse or fail to take this chemical test, then your driving privileges will be immediately suspended, and you will have to pay a fee to have those privileges reinstated."

When you agree to take the chemical test, officers usually ask you to confirm your agreement to the test by signing a legal document. If the officers failed to give any of these warnings or obtain your consent properly, the legality of the test results in evidence is in doubt.

The Breathalyzer Test Was Defective Or Improperly Given

To use breathalyzer evidence in court against you, the district attorney must establish that:

- The breathalyzer has been found to be an acceptable device by the State of Texas
- The machine has been properly maintained and calibrated for accuracy
- The officer who administered the test was certified in using that device
- The officer followed correct procedures as directed in administering the test
- The person tested had not eaten, burped, vomited, or smoked right before the test
- At least two tests were done, with readings within at least the 0.02 range of each other

There are many avenues to challenge the accuracy of a breathalyzer test based on these strict requirements. Furthermore, a handful of health conditions might interfere with a proper reading on the breathalyzer, including diabetes. The presence of mouthwash or some other chemicals in your mouth shortly before the test could also compromise the results.

Challenges To Your Blood Test

To use the results of a blood test for proof of your BAC in court, there are important considerations that your attorney can bring up. Issues, such as the chain of custody and how police handled the blood sample throughout the process, need to be thoroughly analyzed for flaws in the procedure. Otherwise, a flawed result could occur.

A skilled criminal defense lawyer has many tools available to challenge a blood draw procedure and results. First, Texas law allows a defendant access to the litigation packet. The state's attorney must disclose each document from the lab tests to the defendant. Open records requests directed to the Department of Public Safety are also a tool to discover or subpoena lab records from a private laboratory.

Upon receiving the litigation packet, the team of criminal defense lawyers scrutinizes every aspect of the documents to spot potential inconsistent facts or results. To begin, a careful defense attorney will consider the professionals who performed the analysis in the lab. What are that individual's training and certifications? Does their education relate to their work in the lab to analyze the sample? Is the individual an expert in the field with any peer-reviewed articles to consider?

It's important to analyze the work of that lab professional from start to finish. For example, if those professionals missed a handful of questions on a certifying exam but still passed, is it reasonable to believe they may miss a handful of details on the lab analysis but still submit it as a final work product? Consider potential bias – if this is a scientist who always testifies for the state in support of lab results, that may suggest a preference for finding the results that the state wants them to see.

It's typically the case that the lab analyst has no information on the person who is the subject of the lab tests. If so, they are likely to be unaware of physical facts about that person, from size and weight to tolerance levels with the substance in question, that could affect intoxication.

In many cases, when attorneys ask directly on the witness stand if the lab scientist has seen the individual who supplied the sample being tested, the lab officials will respond that they only analyzed the samples provided by the state. They did not see pictures or video recordings of the individual who supplied the

samples. Your attorney can use this lack of knowledge to call into question the conclusions the scientist reached in the case.

Evidence And Chain Of Custody

An experienced defense attorney will carefully analyze the chain of custody documentation in the litigation packet. Every stop along the way is critical, and the timing of the process can make a major difference in the results. The acceptable range for storage of blood samples is within two to ten degrees. If the sample traveled or was stored for some time in conditions outside that range, there is reason to believe the results may be compromised or contaminated. The method of transportation can be critical to the chain of custody. Was a sample transmitted by a private carrier like FedEx? If so, the carrier may have failed to maintain the sample at ideal temperature conditions?

The machine that performed the testing is also a key part of the process and must be analyzed carefully to discover potential flaws. Do maintenance and service records show that the machine has been appropriately kept to scientific standards as required? Consider when staff most recently moved, replaced, or repaired the lab equipment. Each time the machine is serviced, there should be a paper trail of the relevant details about that device. Confirm whether authorized service people performed work on the device, whether for routine upkeep and calibration or more invasive repair or replacement work.

Your BAC Wasn't Above The Limit At The Time

One problem with blood tests for alcohol levels is that they often happen sometime after a traffic stop. The penal system knows that alcohol takes time to absorb into your system fully. It is possible that your BAC was below the legal limit at the traffic stop. Still, in the time it took to go through the process of identification and investigation for the officer to have probable cause to arrest you and request a blood test, your BAC increased to the point where it was above the limit.

Unknown Complications Of Prescription Drugs

Some courts in Texas have ruled that a legitimate defense can include involuntary intoxication caused by prescription drugs. If you raise this defense, it will be important to prove that you did not know the medication would affect you in that way and cause an impaired condition that would meet the legal definition of intoxication under Texas law.

Witness Credibility Issues

The district attorney in your DWI case will use the arresting officer's testimony and other key witnesses to convince the judge or jury of your guilt on the charges. A capable defense attorney knows the questions to ask and the issues to explore with these witnesses to raise a reasonable doubt about what they are telling the court.

Physical observations that the officer may report as reasons justifying the stop, such as swerving or some erratic driving that the officer saw, may have a reasonable explanation, like a momentary distraction as you were driving. Things, such as the officer's perception of slurred speech, may be rationally explained by a speech impediment or disability or dental work you had that day, for instance, that the officer wasn't aware of at the time. Reddened eyes can come from allergies or a head cold rather than intoxication.

Even expert witnesses that the district attorney will rely on to interpret the blood test results are subject to questions about their qualifications, observations, and actions concerning your case. The chain of custody must be clear and well-documented, or the technicians involved will have to explain any deficiencies in the process, leading to reasonable doubt about the charges.

You Were Driving For An Emergency

It might help you to defend against a DWI charge if you were dealing with an emergency that compelled you to drive at the time. A family member or friend having a severe medical emergency might have meant you had little choice but to transport them to a hospital for immediate care. Or you may have learned that someone was in immediate danger where they were and needed you to come to get them to protect their life.

You Were Driving Under Duress

You might defend a driving while intoxicated case by explaining that someone forced you to operate the vehicle at that time. Suppose you legitimately believed that a failure to drive as commanded would put you or someone else at immediate risk of serious injury or death. In that case, you can argue that you only drove under duress.

You Need A Tough Defense From Austin DWI Attorneys

Facing Texas DWI charges is a serious matter. The costs and consequences add up in multiple ways to complicate your life if you don't tackle the charges head-on with the help of an Austin criminal defense attorney.

Don't Risk Your Freedom

When you face a harsh prison term of many months or years if a jury convicts you of a DWI, the impacts on your life are severe. Family members and loved ones will lose your presence and support in their lives. You will lose the opportunity to support yourself with your employment while serving your sentence. The best response to a DWI charge is an aggressive and skillful defense to protect your rights and liberty.

Don't Risk Your Driving Privileges

A DWI arrest or refusal to take a test demanded of you during a DWI stop can lead to your driver's license suspension. You will need to fight to retain your driver's license in the civil and administrative process and fight the criminal charges in court against an experienced and capable district attorney who has handled many such cases. Both parts of the process are critical to your efforts to keep your driving privileges and get through the case without losing your license for a long time.

Don't Risk Your Career And Income

Just the presence of a DWI conviction on your record is likely to harm your career chances. If you go to jail, you are likely to lose your job entirely, but even if you just have probation or other terms, the impact of an alcohol-related charge will put your employment status and future career potential at risk. Not only

might your job and income suffer from a bad result on DWI charges, but you may have trouble finding a home when future landlords conduct a background check and see the charges on your record.

Don't Risk The Outcome Of Your Case With A Bad DWI Attorney

The right criminal and DWI defense attorney makes all the difference in how your case may come out. An inexperienced or less skillful attorney might make errors in gathering and interpreting the evidence. This kind of error can cost you the chance at a solid defense at trial. Texas criminal defense lawyers who aren't good at negotiating and understanding how district attorneys work might push you into an unfavorable plea deal that can stick with you for years. Worse, an attorney who lacks the trial experience to present your case in the best way possible might get you an outcome at trial that puts you in jail with a serious conviction on your record.

Choose The Best Texas Criminal Defense Attorneys

Cofer & Connelly, PLLC Criminal Defense Lawyers

Considering all that is at risk in facing a DWI charge, you must work with a highly skilled and experienced defense attorney. The details of Texas driving while intoxicated laws and the laws related to these charges are complicated, and the options you have to respond to the charges can be very complex. You need the best advice you can find. Get a free consultation with the experienced Austin TX DWI attorneys at Cofer & Connelly, PLLC by calling (512) 991-0576 or contacting us online.