

What you don't know can hurt you.

Why you need a defense lawyer if you are charged with a misdemeanor.

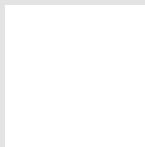


TEXAS CRIMINAL
JUSTICE COALITION

Texas Fair Defense Project

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A misdemeanor conviction is **SERIOUS**.

A misdemeanor is not a “minor” crime. If you are convicted of a Class A or Class B misdemeanor you will be exposed to a number of penalties that will remain with you and your family long after you have completed your sentence.

Many of the penalties that you will face if you are convicted of a Class A or Class B misdemeanor are “hidden” because the judge and the prosecutor don’t have to tell you about them. If you do not have a defense lawyer to explain all of these penalties to you, you may only find out about them after it’s too late.

A misdemeanor conviction has SEVERE long-term consequences.

If you are convicted of a Class A or Class B misdemeanor in Texas, the consequences may include:

- Increased penalties if you are ever arrested for another crime (see box)
- Loss of custody of your children
- Ineligibility for foster care and adoption
- Possible loss of your immigration status and/or deportation
- Registration as a sex offender
- Limited employment opportunities
- Ineligibility for professional licenses (health care, security guard, insurance agent, peace officer, etc.)
- Ineligibility for federal and state assistance (TANF cash assistance, food stamps, public housing, and education grants and loans)
- Eviction by your landlord
- Suspension of your driver's license
- Greatly increased fees for renewal of your driver's license
- Disqualification from possessing or receiving a handgun or ammunition

It doesn't matter if you are sentenced to jail time or probation – you may face any of these consequences even if you just receive probation.

Enhancements

If convicted of certain misdemeanors, you will face increased penalties if you are arrested in the future for the same type of offense. You may even face felony charges for what would otherwise be a misdemeanor offense if the charges against you are "enhanced" based on a prior misdemeanor conviction. For example, a third charge of driving while intoxicated will automatically be treated as a felony.

Probation is NOT EASY.

If you plead guilty or no contest (nolo contendere) or are found guilty of a Class A or Class B misdemeanor, you may have to pay a fine and/or receive probation or jail time.

If you receive probation, you can be required to remain under the court's supervision for up to three years. The judge will set conditions for your probation, requiring you to do (or not do) certain things during the entire time that you are on probation.

While on probation, you may be required to:

- Report on a regular basis to a supervisor for up to three years
- Submit to searches of your person, home, or car
- Submit to unannounced drug and alcohol tests
- Participate in drug or alcohol treatment programs and counseling
- Receive counseling for violent behavior
- Maintain steady employment
- Remain in custody at a community correctional facility for up to 24 months or in a county jail for up to 30 days
- Submit to electronic monitoring
- Pay fines, court costs, treatment and counseling fees, victim restitution, etc.
- Complete up to 600+ hours of community service without pay
- Install a breath-testing device in your vehicle
- Obtain the judge's permission before you will be allowed to relocate or travel outside a specific region

Many of the conditions of probation, such as mandatory supervision and/or counseling services, require you to make payments that can total thousands of dollars. If you fail to make these payments, or if you violate any of the other conditions of probation, the judge can revoke your probation and send you to jail for up to one year.

Half of the defendants sentenced to probation in Texas fail to comply with all of the conditions of probation and are sent to jail.

Deferred adjudication probation

If you receive probation, you can be placed on regular probation or deferred adjudication probation. Even though a prosecutor may tell you that your case will be dismissed if you successfully complete deferred adjudication probation, you should talk to a defense lawyer before accepting a plea that includes deferred adjudication. A charge dismissed after you successfully complete deferred adjudication probation will still appear on your record and often cannot be expunged. It is treated as a final conviction for immigration purposes and you may receive increased penalties if you are arrested for the same type of offense in the future.

A lawyer is your first line of DEFENSE against a misdemeanor conviction.

When you are charged with a Class A or Class B misdemeanor, your lawyer is the only person who will fight to protect your rights. Having an attorney ensures that you are aware of your rights, reduces your chances of being convicted of a crime that you did not commit, and helps to prevent you from receiving unfair and unequal punishments. A criminal defense lawyer's job is to represent you in all criminal proceedings. Your lawyer should:

- Explain the offense you are charged with, the possible punishments, and probation options
- Advise you of your rights and explain what to expect during the different stages of the criminal process
- Investigate the facts of your case
- Ensure that your constitutional rights are not violated by law enforcement conduct or in court proceedings
- Provide a knowledgeable, objective view of your situation and give you advice
- Explain what is likely to happen if your case goes to trial
- Understand local court customs and procedures that aren't written down anywhere
- Negotiate a plea bargain with the prosecutor on your behalf — possibly arranging for reduced charges, a shorter sentence, and/or probation—if you decide to plead guilty
- Cross-examine government witnesses, object to improper questions and evidence, and present applicable legal defenses if you decide to go to trial

What you tell your lawyer about your legal problem is confidential. You can talk honestly and openly with your lawyer without being afraid that what you say will be repeated or will be held against you.

You have a RIGHT to be represented by a lawyer.

The Sixth Amendment to the U.S. Constitution gives you a right to be represented by a lawyer. If you cannot afford to hire a lawyer, you are entitled to a court-appointed lawyer for any offense that is punishable by confinement in jail or prison — even if the charge is a misdemeanor.

Defendants have the right to be assisted by a lawyer during most stages of the criminal process, including:

- Police interrogations
- Police line-up after charges are filed
- Any court appearance after your initial appearance before the magistrate in jail
- Entry of a plea
- Trial
- Sentencing
- Probation revocation hearing

If you are uncertain about how to respond to any request made by a police officer or prosecutor, you should ask to speak to a lawyer before taking further action.

A judge normally appoints a lawyer for an indigent defendant at the defendant's first court appearance. Your first court appearance likely will be either your bail hearing or your arraignment (the hearing at which you enter your plea of guilty or not guilty). The sooner you obtain a defense lawyer, the more likely it is that your lawyer will be able to fully protect all of your rights.

Asking for a lawyer is your right. You should not be worried that asking for a lawyer will make other people think that you are guilty or inconvenience the judge.

You may QUALIFY for a court-appointed lawyer.

If you are charged with a Class A or Class B misdemeanor, you need a lawyer to help you with your case.

If you cannot afford a private lawyer, you should tell the judge as soon as possible and definitely no later than your first court appearance. A judge must appoint a lawyer for anyone who cannot afford to hire one.

The appointment of a lawyer is not automatic — you must request a lawyer and complete a financial questionnaire under oath to prove to the court that you can't afford to hire your own lawyer. The court will review the questionnaire and consider the following factors to determine if you are too poor to hire a lawyer:

- your income and the source of that income
- your assets (valuables such as cash, bank accounts, any property that you own, etc.)
- your mandatory obligations and necessary expenses
- the number and ages of your dependents
- any available income from your husband/wife

When you ask for an appointed lawyer, the judge is likely to ask you the following questions: Do you have a job? How much money do you make? If you don't have a job, why not? Where have you applied for a job? Do you have a car? What kind of car do you have? You should be prepared to answer these questions, and bring any papers (such as pay stubs, etc.) that support your answers.

Even if you have POSTED BOND, you may qualify for a court-appointed lawyer.

Whatever questions the judge asks you, state law limits the factors on which the judge can base his or her decision about whether you receive an appointed lawyer. The court generally may not consider whether you have posted bond or are capable of posting bond. The court's financial inquiry must focus only on you, the defendant. With the exception of your husband or wife (and, only if you are juvenile, your parents), your relatives are not legally required to pay for the expense of hiring a lawyer, even though they may have the money to hire a lawyer for you or may have posted bond for you.

If you qualify for a court-appointed lawyer, the court must appoint a lawyer within 1 to 3 working days after receiving your request for a lawyer.

If the judge determines that you have enough money to hire a lawyer, the judge cannot appoint a lawyer for you. If the judge finds that you are not financially eligible for a court-appointed lawyer and you do not know a lawyer to contact, you can call the State Bar of Texas Lawyer Referral and Information Service toll-free at 1-877-9TEXBAR.

If you feel that you were wrongly denied an appointed lawyer or did not receive adequate representation from a court-appointed lawyer, visit www.fairdefense.org or call 1-866-207-6532.

The Texas Criminal Justice Coalition develops and advocates for real solutions to the problems facing Texas's criminal justice system. TCJC promotes evidence-based criminal justice solutions that embody the principles of effective management, accountability, public safety, and human and civil rights.

The Texas Fair Defense Project works to improve the fairness and accuracy of the criminal justice system in Texas, with a primary focus on improving access to counsel and the quality of representation provided to poor people accused of crime. The Project defends the rights of indigent criminal defendants through litigation, education, and advocacy.

For more information about the collateral consequences of misdemeanor convictions or if you have a complaint regarding your right to a lawyer, visit

www.fairdefense.org • 1-866-207-6532