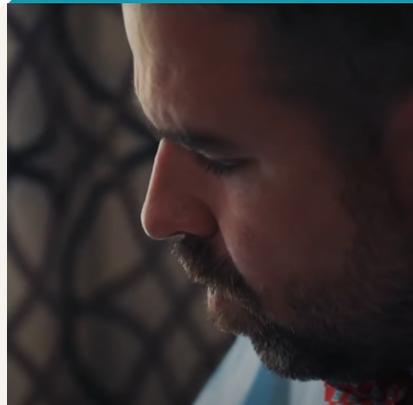


# TEXAS DWI GUIDE

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Learn the intricacies of a DWI charge and how they apply to you.

**Jeff Brown Law**



# OVERVIEW

Driving While Intoxicated (DWI) is a serious crime in Texas.

Every year, thousands of people are charged with a DWI. If you're reading this guide, chances are that either you or a loved one have been charged with a DWI and you don't know what to do or what to expect next. Or maybe this is the second, third, or more DWI charge and you want to know how much worse it's going to get. You've come to the right place.

With this guide, my first hope is that you will understand how serious a DWI charge is. There is probably no criminal charge that is more regulated by statute than a DWI charge. I'll walk you through the law and explain some of the legalese that confuses a lot of people.

My second hope is that through this guide, you start to see that all hope is not lost. We'll talk about some of the common pitfalls of a DWI investigation and highlight some possible defenses. You'll see that there are a lot of common mistakes made that undermine the effectiveness and legitimacy of DWI investigations, some of which might work in your favor. Which leads me to my third hope for you through this guide: that you will understand how unique you are and how unique your case is. Probably more so with a DWI than anywhere else, every case is unique! The circumstances that led to your DWI charge are different from your friend's DWI charge, or your cousin's DWI charge, or your dentist's neighbor's DWI charge. No two charges are exactly the same.

I hope that you will understand that by talking with me about your charge and allowing me to represent you in court, that you are giving yourself a fighting chance to successfully deal with your DWI charge in a way that will not destroy your future. I hope that by working with me, you will feel less stressed, less overwhelmed, and more confident.

So, without further ado, let's dive into this guide and first understand what a DWI charge is.

# WHAT IS A DWI?

Under statute, a person commits a DWI if “the person is intoxicated while operating a motor vehicle in a public place.”

Texas Penal Code, Chapter 49, Section 49.04

While that sentence may seem simple enough, one word carries a lot of meaning while also holding a lot of potential defensive applications (which we'll talk about later in the guide).

The statute says that a person is “intoxicated” either by not having the normal use of mental or physical faculties because alcohol, a controlled substance, drugs, or other substances are in the body or if by having an alcohol concentration of 0.08 or more.

At this point, it's important to know that to secure a conviction, a prosecutor must satisfy each and every element of the charge. Here, that means that the prosecutor must prove that the accused was intoxicated at the time he or she was operating a motor vehicle and that vehicle was in a public place at the time. Do you smell potential defenses yet?

# ARE THERE DIFFERENT TYPES OF DWI?

Under Texas law, there are a seemingly endless number of ways to get a DWI or alcohol-related charge. There is:

- Flying While Intoxicated
- Boating While Intoxicated
- Assembling or Operating an Amusement Ride While Intoxicated
- Possession of an Alcoholic Beverage in Motor Vehicle
- Public Intoxication

There are also more serious types of DWI charges, like:

- Driving While Intoxicated with Child Passenger,
- Intoxication Assault
- Intoxication Manslaughter



# CAN I GET A DWI IF MY BAC IS LESS THAN .08?

The answer here is yes, you can be charged with a DWI, even if your BAC is less than 0.08.

According to the State, if you do not have the normal use of your mental and physical faculties because of any substance the police find in your body, you can be sure that a DWI charge is coming.

You might then be asking yourself, what's the deal with 0.08. Why does that number seem so important in a DWI? It's because 0.08 is the level set by the National Highway Traffic Safety Administration ("NHTSA") at which you are presumed to be intoxicated. If your BAC is less than 0.08, then you are not presumed to be intoxicated. However, the police will rely on other evidence they observe to say that you have lost the normal use of your mental and physical faculties, and the State can still file a DWI charge against you.

We will get into this more later in the guide, but this is why it is so important to NOT "cooperate" with the police on their investigation. When you answer all of their questions openly, what are you really giving them? When you do their Field Sobriety Exercises, what are the police really looking for?

# WHAT DOES "BAC" MEAN ANYWAY?

BAC stands for blood or breath alcohol concentration. Which "B" depends on which sample is supplied.

When you are arrested for a DWI, a police officer will read to you, and provide you a copy of, a consent form and ask you to voluntarily provide a breath or blood sample to test alcohol concentration levels. Nowadays most police officers/departments ask for a blood draw because the breath analysis machines were terribly unreliable and have constant malfunctions. However, breath tests are still asked for and administered.

Before we move on from this point, please be aware that this is one of the big ways where you refuse to provide a sample. Be polite about it, but just say no -- no matter what they say. However, at this point a police officer who is covering all the bases will simply go to a judge with an application for a warrant for an involuntary blood draw, which the judge will almost always routinely sign. Don't be alarmed if you refuse to voluntarily consent and they still take your blood for analysis. That's part of how the system is rigged against you. The important point here is that you didn't provide the sample voluntarily. More on that later.

# WHAT IS THE PUNISHMENT FOR A FIRST DWI?

This is the question that my clients ask most often. There are many different consequences to a DWI, even if it's your first time or you think it's a simple open-and-shut case. Some of the consequences can be long-lasting if you don't know any better.

For purposes of this guide, we will keep things pretty simple. However, you should always have a qualified and experienced DWI attorney look at your case because no two cases are the same. Every case has different factors that, when combined, make your case unique. I have been helping clients defend DWI charges for many years and I've yet to see two cases that were exactly identical.

In Texas, a Class B DWI is punishable by jail term between 72 hours and up to 180 days, a fine of up to \$3,000, and a suspension of your driver's license from 90 days up to 365 days. An experienced DWI attorney can usually help you negotiate a better plea deal, if not get your case dismissed entirely.

Even though it's your first DWI, you could also be charged with a class A DWI if your BAC is at or above a .15 level. That means you could be sentenced to the more severe penalties that are outlined below.

# WHAT IS THE PUNISHMENT FOR A SECOND DWI?

In Texas, a second DWI is classified as a Class A misdemeanor. It is punishable by a jail term starting at 30 days and ranging up to 365 days, by a fine ranging anywhere up to \$6,000, and a license suspension ranging anywhere from 180 days to 2 years.

# WHAT IS THE PUNISHMENT FOR A THIRD DWI?

In Texas, a third (or more) DWI is a 3rd degree felony charge. For a third degree felony charge, the range of punishment is from 2 years to 10 years in the Texas Department of Criminal Justice (aka prison -- not jail), a fine of up to \$10,000, and a suspension of your driving privileges ranging from 180 days to 2 years.

# BUT I PASSED THE FIELD SOBRIETY EXERCISES

## HINT: THAT IS IMPOSSIBLE TO DO

So you think you “passed” the field sobriety tests? Did the police maybe tell you that? Whether they did or they did not, and whether you think you did well or poorly, it makes no difference. If you do the field sobriety exercises at all, there is no way you could possibly have passed the tests. And that isn't your fault. You just need to have a better understanding of why you or your loved one did the exercises in the first place!

Police will maintain that the goal of the field sobriety exercises is to determine whether you've lost the use of your “normal faculties.” While this sounds good on paper or in statements to the public, the real purpose behind the field sobriety exercises is to gather more evidence against you. It sounds better on a police report to say, “the Defendant smelled of alcohol, he had bloodshot eyes, and he stumbled and swayed during the field sobriety exercises” than it does to say, “the Defendant smelled of alcohol and had bloodshot eyes, so I arrested him.” The field sobriety exercises are simply you handing the officer more ammunition with which you will be attacked in the courtroom.

So what do you do when the police ask you to do the exercises? You politely, but firmly, tell them no. If you have a medical condition that you believe prohibits you from doing the exercises perfectly, like a bum knee or a twisted ankle, then tell the officer that. And don't do any of the exercises at all. If you don't have a medical condition, then simply refuse to do the exercises and leave it at that.

# ISN'T IT BETTER TO JUST COOPERATE WITH THE POLICE?

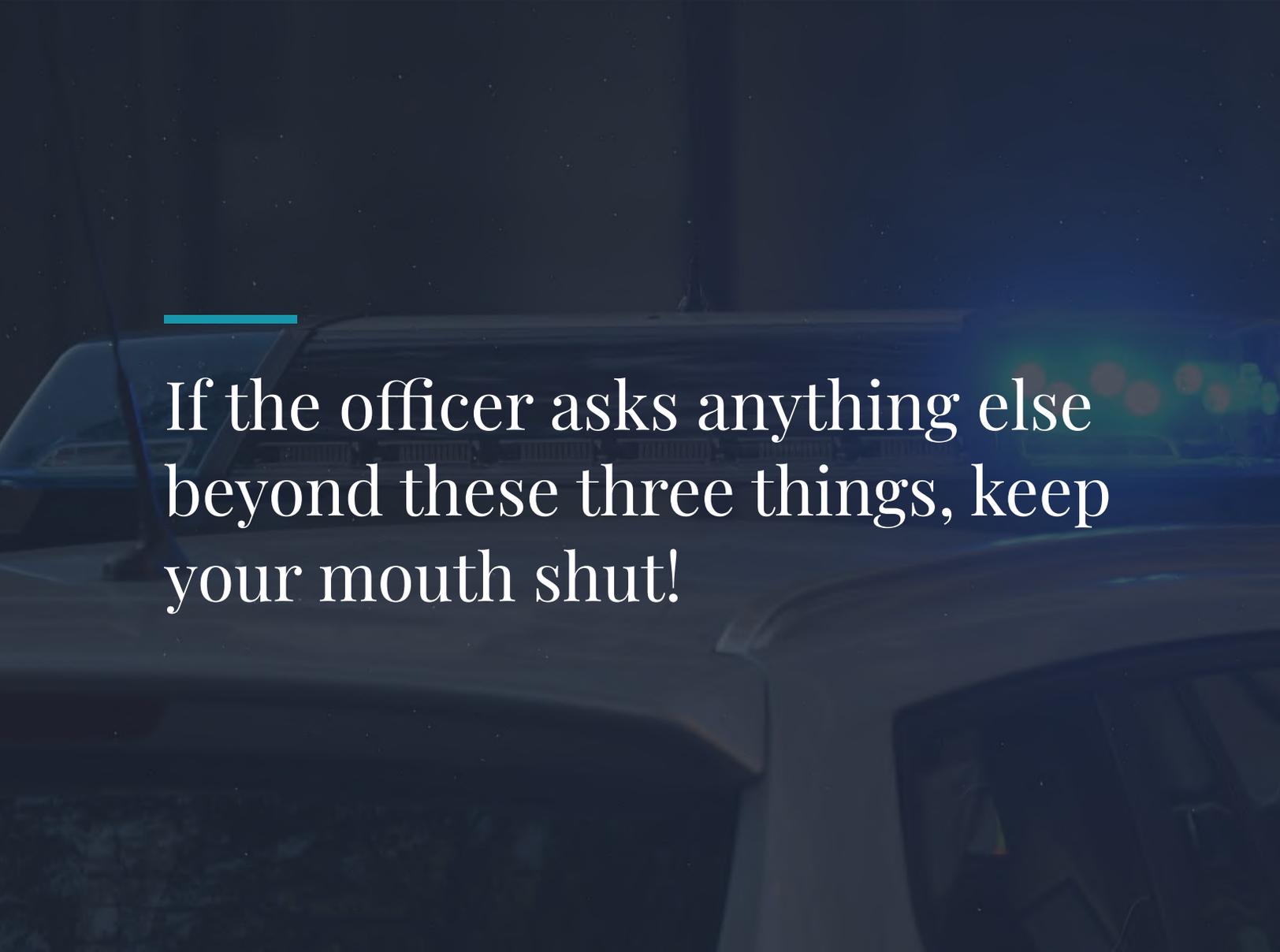
No, it isn't better to just cooperate with the police. Unfortunately, police policies enacted at the State level are working against you.

Going back to the last point, if you cooperate with the police, you are only handing over all the ammunition that the officer needs to convict you. Why do their job for them? If the officer is intent on creating a criminal history for you, then make them at least work for it.

You also have rights under the Constitution and Bill of Rights that the police are trained to trick you into giving up. Under the Fifth Amendment, you have the right to remain silent. When you voluntarily speak with the police, you are waiving that right until such time as you either voluntarily give the police everything they need or you assert your right to speak with legal counsel prior to talking with the police further.

The other thing you should be aware of here is that police officers are allowed to lie to you in order to get you to say things that will be used against you later in court. There are no repercussions for these lies. The police officer might say things like, "if you tell me the truth now, I'll make sure the judge goes easy on you." Please do not give away the farm by simply "cooperating." The police officer will not go easy on you. Instead, do the three things that you are required to do when interacting with police and let the officer do his own investigation from there. Here are the three things that you have to do when speaking with a police officer:

- **Obey commands.** If they say to stop and stay where you are, do it. If they say to show them your hands, do it. If you run, disobey, or--worse yet--strike an officer, you will face additional criminal charges.
- **Truthfully identify yourself.** Using a fake name or someone else's name will result in additional criminal charges if the police find out.
- **Provide proof of valid auto insurance.** If you are driving and the police ask for your insurance, you are required to provide them with that. It is a crime to drive without valid auto insurance.



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If the officer asks anything else beyond these three things, keep your mouth shut!

# WILL MY BAD PAST HISTORY AFFECT MY DWI CHARGE?

Yes. If you have a criminal history, the prosecutor will always look at it in making their plea recommendation. And this is true of every criminal charge; an accused's criminal past is part of their record and is used to formulate a plea offer.

The real question here is how badly will your criminal history (if you have one) affect your DWI case. It probably goes without saying, but having an experienced and well-versed attorney will significantly improve your chances of not having your criminal history affect the final resolution.

It also is fairly logical that attorneys like speaking with other attorneys. Prosecutors always prefer speaking to and negotiating with other attorneys, instead of with the Defendants themselves, because we attorneys have our own language. We have the experience and understanding of how to make good things happen in otherwise bad situations.

Trust your attorney to help you out here. We want to help you have a bright future!

# WHAT IS THE DIFFERENCE BETWEEN BEING ON BOND AND BEING ON PROBATION?

A lot of my clients first come to me somewhat confused between being on “bond” and being on “probation.” Both have conditions that the Defendant needs to abide by or face consequences. The difference between these two has to do with the status of the case.

**Bond.** A person is on bond if they are not in jail and their criminal case is still pending final resolution. Being on bond requires that the person abide by certain conditions for the “privilege” of being out of jail and going about their lives while awaiting the final resolution of their case. In DWI cases, bond conditions can be very stringent. Conditions of bond in a DWI can include putting an ignition interlock on your car, submitting to (and paying for) random urine tests, and paying a hefty monetary bond to the court that is held in escrow while your case waits for resolution. Depending on the facts of your case (or lack thereof), a judge could decide that you should be released on personal recognizance, which means that the judge trusts you to come back to court when called upon to do so.

**Probation.** Almost its direct opposite, probation is a possible (and likely) result of a plea offer that the Defendant accepts. You are on probation if the prosecutor offers it as a plea offer and you accept that offer instead of taking your case to trial and risking a more serious consequence. On probation, you will have conditions that you need to abide by, such as random urine screens, DWI Education courses, the Mothers Against Drunk Driving (M.A.D.D.) Victim Impact Panel, and a suspension of your Fourth Amendment rights to name a few.

The conditions of probation vary a great deal depending on the facts of your case. As mentioned earlier, every case has a unique blend of facts that makes it different from other cases. You are unique, and your case is too! An experienced defense attorney will be able to analyze your case and help you anticipate what to expect should you decide to take a probation offer, if one is offered by the prosecutor.

# DO I HAVE TO HAVE THE INTOXILYZER ON MY CAR?

Whether or not you need to have the intoxilyzer (aka ignition interlock) on your car either before your case is resolved or during probation depends on the conditions that are imposed by the judge.

Generally speaking, you have to have a court order to install an interlock on your vehicle.

The judge can order that you install an interlock as a condition of your bond or he, through the probation department, can order that you have an interlock as a condition of your probation. If the judge orders you to have an interlock on your vehicle, then you need to have an interlock on your vehicle. Failing to have an interlock on your vehicle when ordered to do so will have negative consequences, including but not limited to going back into jail or having your probation revoked.

If you have your license suspended because of your DWI charge and you want to drive under an Occupational Drivers License ("ODL"), you would likely want to have your interlock on your vehicle. This is because there are two different types of ODLs: an interlock ODL and a driving log ODL. With the interlock ODL, you can drive anywhere an ODL permits you to drive and you simply blow into the interlock to start the vehicle. With the driving log ODL, you'd have to write down where you're going, what your starting mileage is, and what your ending mileage is every time you drive, and then periodically submit that log for review. What a hassle! If they decide to pursue an ODL, all of my clients so far have pursued an interlock ODL.

# HOW DO I GET A DWI DISMISSED IN TEXAS?

It is possible to get a DWI charge dismissed, but everything depends on the facts that are unique to your case. Before we talk about some of the more common ways that a DWI can be dismissed in Texas, it's important to know that there is no magic wand that can be waived that will automatically dismiss a DWI. A truly experienced attorney will tell you that it takes a thorough understanding of the evidence and a great deal of skill and experience to know how to craft a good defense that highlights all the weaknesses of a DWI case. Simply expecting a DWI attorney to get a case dismissed just because you want it dismissed is usually an unreasonable expectation.

An arrest on a DWI charge is a warrantless arrest. That means that the arrest is not based on a warrant, but instead on a combination of the evidence that is discovered at the scene of the stop and without running all that evidence wholly by a judge first. Because a DWI arrest is a warrantless arrest, the evidence is subject to be reviewed at a pretrial hearing called a Motion to Suppress Evidence. In a Motion to Suppress Evidence, the defense is stating that there are problems with the case's unique evidence that, when applied to the law as it currently is, makes it impossible to find the accused guilty.

There could be problems with the reasons given by police for stopping the defendant. There could be problems with the roadside interrogation of the defendant. There could be problems with the way that standard field sobriety tests are administered in a case. There could be problems with the breath test machine that was used to get a breath sample. There could be problems with the way in which the blood taken from the accused was tested.

As you can see, there are many different ways that a DWI stop can be attacked. However, this is not to say that you would use all these attacks. An experienced DWI attorney will review the case with you, highlight all the weaknesses, and craft a defense that will highlight the strongest weaknesses that will give you the best chance of getting your DWI case dismissed.

# WHAT IS THE PROCESS OF A DWI IN TEXAS? HOW DOES A DWI CASE USUALLY MOVE FORWARD?

If you get arrested for a DWI, it's a good bet that you are feeling overwhelmed and stressed out. One of the biggest questions is what comes next. We want to feel prepared and knowing what is coming next is a big part of feeling prepared. So this is how a normal DWI case moves forward in Texas.

1

You are arrested. While you are detained, the police will try to get a sample of your breath or blood to verify your breath/blood alcohol content. Refuse to give them a sample of your breath, no matter what consequences or niceties they throw your way. It is very likely that even if you refuse to voluntarily give them a sample of your blood, they will just get a warrant from a judge that will allow them to take your blood against your will. That is just one way that the system is stacked against you, but still do not voluntarily give them a sample of your blood. There are legal nuances that are worth fighting over in court.

**IMPORTANT POINT TO REMEMBER:** Time is of the essence when you get arrested. While you are worried about your freedom and ability to craft a defense, the Texas Department of Public Safety is actively working to revoke your license to drive. You only have 14 days from the date of arrest to contest the revocation of your driving privilege by requesting an ALR hearing. What does ALR stand for? It stands for Administrative License Revocation. Your attorney will help you request a hearing.

2

You are taken before a judge to get a bond. At this point, the judge presumably has a little bit of information about your history (or lack thereof) and the basic facts of the case. This judge will then assign you a money amount which you need to pay in order to get released from jail.

This is where you might need to have a bondsman help you. The judge could let you bond out on your personal recognizance or a sufficiently low bond amount that you could pay cash. However, it is more likely that the judge will give you a bond that is in the thousands of dollars. A bondsman/bondswoman is a person that has the authority to post a bond on your behalf. They usually cost a fraction of the total bond price. Your loved ones or a friend who is not in jail will want to contact a bondsman and arrange for that bondsman to bail you out as soon as the judge sets the bond.

It's also important to keep in mind that the judge you see will likely not be the judge that your case is assigned to. The judges that give bonds are usually called Magistrate judges and they are more administrative in nature. They will not want to hear from you too much, so keep the facts of the case to yourself. In practice, they've pretty much made up their minds on a bond amount they will set in your case before they ever see you.

**IMPORTANT POINT TO REMEMBER:** Time is of the essence when you get arrested. While you are worried about your freedom and ability to craft a defense, the Texas Department of Public Safety is actively working to revoke your license to drive. You only have 14 days from the date of arrest to contest the revocation of your driving privilege by requesting an ALR hearing. What does ALR stand for? It stands for Administrative License Revocation. Your attorney will help you request a hearing.

3

Once you are out of jail, the police will eventually finish their part of the investigation. Part of that investigation means getting back any samples that they sent off to the lab. Once the police have finished their investigation, the reports are forwarded to the district attorney, who reviews the report and decides whether or not they will file charges.

4

If the DA decides that there is enough evidence to file charges against you for DWI, then your first court appearance is called Initial Appearance. This hearing has three purposes: first, to make sure you know what you are charged with; second, to confirm your current bond conditions are good or to add any additional bond conditions that the judge deems appropriate (for example, many courts require that a person charged with a DWI have an interlock on their vehicle as a condition of bond and I've seen that condition added at the Initial Appearance instead of when a person is released from jail); and third, to make sure that the person charged with a crime is represented by legal counsel, either of their own choice through hiring someone or by a court-appointed attorney if the accused is unable to afford to hire an attorney.

5

Generally after the initial appearance, your attorney will start receiving the evidence provided by the prosecutor. While your attorney reviews the evidence, researches the laws applicable to your case, and prepares possible defenses to be heard at a motion to suppress or other such hearings, the court have a series of court dates that are known by various names, depending on the county: pretrial hearings or announcement hearings. Either way, I refer to these court dates as "status checks." The court is basically interested in how both parties (the prosecution and defense) are doing, whether they are getting along, and how things are progressing towards a resolution in the case, either by trial or by plea. Most courts have 2 or 3 of these types of hearings, then they are looking for a decision to be made.

6

Once you reach this stage, you and your attorney should have discussed your case at length and gone over all the weaknesses and strengths of your case. Remember, your case is UNIQUE!! I don't care how many relatives or friends have had DWIs, or what their experiences have been, and how much they believe they are experts on what should happen in your case – their cases are not your cases!!! As I mentioned above, there are many different ways that you can resolve the case. Your attorney will guide you in making the right choice for your unique case.



# DO YOU GET PROBATION FOR A FIRST-TIME DWI IN TEXAS?

When you ask this question, you are really asking about the range of punishments in a DWI case. We talked about this question already in this guide, but I'll answer this question straight out the best that I can here. You need a good attorney on your side – one who is experienced and knowledgeable and knows how to break a case down, like I do – to have the best shot at getting probation for your first-time DWI in Texas. Don't waste time wondering and stressing. Call an attorney right away and set up a free consultation. Let's answer your questions as they deal specifically with your case.

# CAN A FIRST OFFENSE DWI BE DISMISSED IN TEXAS?

We have also had the opportunity to discuss this question in this guide. This question is the wrong question. The right question underneath this question is, "Is it possible to get my DWI dismissed?" That is the right question because your DWI is unique. Your attorney is your guide and should be your best friend right now. Your attorney will be able to hear your version of the events, will be skilled at reading the police reports, will know how to apply the law to your particular facts, and will help you prepare the best defense possible for the best outcome possible. So yes, it is possible that a first-offense DWI can be dismissed in Texas. But will your first-time DWI offense be dismissed? Come talk to an experienced attorney and see what I can do for you.

# YOU ONLY HAVE 14 DAYS IN TEXAS TO SAVE YOUR LICENSE AFTER AN ARREST FOR DWI

I referred to this already here, but I want to take this final opportunity to tell you that the clock is ticking against you if you have already been arrested for a DWI in Texas. In Texas, you have 14 days from the date you are arrested to request a hearing in front of an Administrative Judge. The Texas Department of Public Safety has the right to suspend the driving privileges of anyone who is accused of DWI or DUI. The suspension goes into effect 14 days from the date of arrest UNLESS you request a hearing on the validity of the suspension. I have seen many people lose their right to operate a motor vehicle because they were still deciding on an attorney or waited too long to engage an attorney to represent them. The State of Texas is not waiting! And anyone who lives here knows how vital the right to drive is. So make sure you're not waiting too long. The clock is ticking against you.

Jeff Brown is a seasoned DWI attorney in Texas. He has personally handled hundreds of DWI cases and ALR hearings. He has the experience, the ability, and the determination to help you and your loved ones successfully navigate a DWI charge and move forward to a big, bright beautiful tomorrow.

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Nothing in this guide, however, should be interpreted as legal advice. It should be interpreted as information used to guide the reader in making an informed decision about hiring representation in a DWI charge. Nothing in this guide creates an attorney-client privilege.

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