

A close-up photograph of a person's hands opening a green glass beer bottle. The person is using a silver metal bottle opener. The bottle is held in the left hand, and the opener is in the right hand. The background is a blurred view of a car's interior, showing the steering wheel and dashboard. The text "PROTECTING YOURSELF FROM A TEXAS DWI" is overlaid on the top half of the image.

PROTECTING YOURSELF FROM  
A TEXAS DWI

Matthew E. Aulsbrook

# **DISCLAIMER**

This guide has been prepared as an aid to those who have an interest in the DWI process in Texas. Furnishing this guide does not create an attorney-client relationship. The information herein should not be considered as advice for your case. The law is always changing, and you should not rely on anything in this guide without determining whether it applies to your case. This guide is not meant to take the place of advice from a competent lawyer, who can review the specific facts of your case.

# TABLE OF CONTENTS

<b>Introduction .....</b>	<b>3</b>
<b>Laws You Should Know .....</b>	<b>4</b>
5 Things You Should Know About DWI Laws in Texas .....	4
Severe Penalties For Multiple DWIs .....	5
<b>What to Do During a DWI .....</b>	<b>8</b>
5 Things To Know If You Get A DWI.....	8
How to conduct yourself when stopped for DWI .....	9
Can You Pay Your Way Out of a DWI?.....	11
<b>Consequences of a DWI .....</b>	<b>13</b>
What Could I Lose?.....	13
Could I Lose My Job Over A DWI? .....	13
Could I Lose My Children Because of a DWI?.....	14
Can I Lose my Car for a DWI?.....	14
Can A DWI Be Erased from My Record?.....	15
Five Questions for Your DWI Attorney .....	15
<b>Conclusion .....</b>	<b>18</b>

# Introduction

Thank you for downloading our E-Book!

We know you will find it informative and helpful as we cover the basics of DWI in Texas.

In making this book, we decided what we felt were the most crucial things for someone to know when it comes to understanding [DWI and DUI law](#), and we broke them down into three categories.

- ✓ We will first cover some of the basic laws that govern Texas DWI regulations, showing you how they may be different from other states.
- ✓ Next, we dive into the steps you should take if you are convicted of DWI.
- ✓ Finally, we will discuss what the consequences of a DWI might be.

With this guide, you will be equipped in your understanding of DWI and what that entails in Texas.

# Laws You Should Know

Let's first dive into the laws you should know concerning DWI in Texas.

## Five Things You Should Know About DWI Laws in Texas

One of the most widely known and charged offense across the United States, including Texas, is driving while intoxicated ("DWI"). Under Texas Law, an individual is charged with a DWI when he or she, while intoxicated by drugs or alcohol, operates a motor vehicle. Even if you are sleeping in a parked motor vehicle, you could still be charged with a DWI. DWI charges carry hefty penalties, fines, and even significant jail time. It is important that you understand the consequences of drinking and driving, as well as relevant DWI laws in Texas.

Texas law indicates that a person commits a DWI when he or she is intoxicated while operating a motor vehicle in a public place. The law defines "intoxicated" in two separate ways: 1) having a blood alcohol content of .08 percent or more, or 2) not having the normal use of your mental and physical faculties due to the consumption of drugs or alcohol. For drivers under 21, any detectable amount of alcohol in their blood subjects them to a DWI.

It isn't okay to drink and drive, but anyone in Texas who does drink should remember these five laws that govern DWI in the state in case they find themselves in a tight spot:

1. Under Texas law, a police officer must have a reasonable suspicion that you were violating the law to stop you and requires probable cause that you are intoxicated prior to an arrest.
2. The arresting officer must provide you with a notice of suspension of your license. Texas law requires it. You have 15 days from the date the notice was served to request a hearing to contest the suspension or your license will be automatically be suspended for 90 or 180 days, depending on the circumstances of your case.

3. At the administrative hearing with the Texas Department of Public Safety, the Department must prove, by a preponderance of the evidence, that:
  - There was reasonable suspicion to stop your vehicle or probable cause to arrest you;
  - You were operating a motor vehicle in a public place while intoxicated;
  - You were placed under arrest and offered an opportunity to perform the breathalyzer or to give blood;
  - You refused to take the breathalyzer or refused to give blood to the officer; or
  - You failed a breath or blood test by registering an alcohol concentration of .08 or greater.
4. Texas law has stiff penalties for first, second and third time offenders. You could face up to \$10,000 in fines, 10 years in prison, and your license could be suspended for up to two years.
5. The prosecution has to prove that you operated a motor vehicle, were under the influence of drugs or alcohol, were in a public place, and were in the state of Texas on the date of your arrest.

The understanding of these laws will be crucial for anyone incriminated on the basis of DWI as to protect yourself. Knowing your rights and understanding what qualifies as a DWI in Texas will help you make the right decisions, even if you are caught on criminal charges.

### **How Many Is Too Many? Severe Penalties For Too Many DWIs**

As we said in the last chapter, it is important to understand DWI laws to protect yourself, but it is also important to think of the consequences of DWI and the impact they could have on your life in the short-term and in the long-term.

A 54-year-old man in Round Rock, Texas was sentenced to life in prison after his ninth DWI conviction. As truly astounding as this is in and of itself, the same man also had a long record of other convictions such as burglary, credit card abuse, providing alcohol to minors, and more.

The ninth DWI charge was the proverbial breaking point for the Texas judge who sentenced the Round Rock resident. This individual had a blood alcohol concentration of .32, four times the legal limit in Texas.

A life sentence is not uncommon in Texas for people with a disturbingly high number of DWI convictions. A 64-year-old man living in Montgomery County was sentenced to life in prison after being convicted of his 10th DWI, according to the Houston Chronicle.

These are some extreme examples of just how severe the punishment can be for multiple DWI convictions. Clearly, there were some extenuating circumstances surrounding these individuals to give the judges a basis for sentencing them to life in prison. The shockingly high number of DWI convictions is bad, but the extensive rap sheet of both individuals probably played a role in the sentence. As mentioned, the Round Rock resident was convicted of numerous other crimes and the Montgomery County resident also threatened to kill a police officer.

If you are convicted of a second DWI, you are likely looking at a punishment including one or more of the following.

1. Serving a jail sentence of up to one year;
2. A monetary fine of up to \$4,000;
3. Having your driver's license suspended for up to two years; and
4. Having to pay an annual fine of up to \$1,500 for three years just to maintain your driving privileges.

Along with the above-referenced punishments, you will likely see a dramatic spike in your auto insurance premiums, or you may even be denied auto insurance and forced to pay into a "high risk" insurance pool along with other convicted drivers (this type of insurance is not cheap). You will also have to list your convictions on any employment application, college application, rental application, etc.

If you are convicted of a third DWI, you enter a new realm of punishment. In Texas, a third DWI conviction is a felony. This means you are probably

looking at a punishment including:

1. Serving at least 2 years in prison, but the sentence could be as long as 10 years;
2. Paying a monetary fine of up to \$10,000;
3. Suspension of your driver's license for up to two years;
4. Having to pay an annual fine of up to \$2,000 for three years to keep your driving privileges; and
5. Having an ignition interlock system installed in your vehicle.

If you have more than three DWI convictions on your record, the punishments only get worse and will likely include a multi-year prison sentence, loss of driving privileges, and huge monetary fines. Before deciding to drink and drive, remember that the consequences could end up costing you big. Repeated citations, no less, will also do very little to build a defense against this criminal charge.

Now that we understand some of the basic laws that govern Texas DWI, let's look at the next chapter to see what you should do in case you are cited for one.



# What To Do During a DWI

Now that we understand the laws, let's see what to do if you are convicted of a DWI.

## 5 Things To Know If You Get A DWI

In this day and age, some people tend to regard driving while intoxicated as 'not a big deal,' especially if it happens in a rural area. This type of thinking is not only incorrect, it can be dangerous and can prove incredibly costly for you and your loved ones. Part of this thinking, however, may be because specific information about Texas DWI laws is often difficult to come by unless you know exactly what to look for. Here are some tips that can help you avoid a DWI or get through one more easily.

1. Some DWIs will be misdemeanors, but many will qualify as felonies. Many people labor under the misapprehension that a DWI is always a misdemeanor unless someone is injured or killed. This is not the case – while injuring someone or killing them will almost certainly qualify as a felony, there are other reasons why a DWI would merit the harsher charge. For example, Texas law holds that a DWI will classify as a third degree felony if someone has previously been convicted of a similar offense in another state. If you are charged with DWI while you have a child passenger in your car, it constitutes a state jail felony. These will happen regardless of other factors like how fast you might have been going.
2. You will almost certainly have your license suspended. Texas law mandates the suspension of your license after a DWI conviction, though judges and juries are permitted to recommend that your license not be suspended. Generally, if your blood alcohol content (BAC) registers as over .08, or if you refuse to take the test, a suspension will result. You can appeal, but you may not win. If you are convicted in court, a suspension is automatic under Texas law.

3. For a first offense, community service is an option, but it can come with many different caveats. Normally, a DWI carries a penalty of fines and at least three days in jail (or more, if you had an open container in your vehicle). However, judges and juries are able to sentence you to community service instead. Community service will keep you out of jail, but it will require you to jump through several hoops in order to remain there. For example, you may be made to be evaluated by an addiction counselor, to see if you require more help, or you may be required to allow an ignition interlock device to be put on your car for a certain period of time.
4. Your car insurance rates will almost certainly rise, or you may even be dropped from your policy. Insurance companies are in the business of making money, and it can be cost prohibitive to insure someone who drives while intoxicated. If you are convicted of DWI, especially if it happens more than once, you stand a good chance of being dropped by your insurance company.
5. A DWI stays on your record for as long as seven years, and may stay longer. In Texas, employers are allowed to conduct background checks dating back up to seven years, and if you are applying for a job making more than \$75,000, they may look even further back. A DWI can be the difference between hiring and being passed over.

Your situation is no doubt bleak when it comes to DWI, but it isn't hopeless. Criminal attorneys may not always be able to overturn a DWI citation, but considering all of these factors they can generally help to lessen the potential consequences. With that being said, let's now look at how your conduct can affect your situation if you are cited for a DWI.

### **How to conduct yourself when stopped for DWI. The new paradigm.**

When stopped for DWI, it used to be that you should simply refuse everything. Refuse the field sobriety tests, refuse the [breath test](#), refuse the blood test, say as little as possible and ask for a lawyer. Assuming you had

more than a few, this used to be a good plan (if you really only had two beers, you should probably be giving a blood test).

With the advent of [search warrants for blood](#) in DWI cases, this old paradigm can now end up making you much worse off. No refusal weekends started designating certain holidays or events (July 4 Weekend, Memorial Day Weekend, etc.) as “no refusal” weekends. On “no refusal” weekends, if DWI arrestees did not give breath tests, the arresting officer would apply for a search warrant to take their blood. Over time, guidelines for when to get a search warrant for blood have gradually broadened outside of only “no refusal” weekends and holidays.

Currently, if you are stopped for DWI and refuse any of their [field sobriety tests](#)—including the portable breath test (if one is available)—they will typically apply for a search warrant for blood. This is only absolute if there is a DWI enforcement officer involved. If there is not a DWI enforcement officer involved, depending upon the circumstances, you may still avoid a search warrant (for example: If you are stopped by an officer with less than 2-years experience, he or she will handle the arrest instead of calling for a DWI enforcement backup. Typically, they will not get a search warrant even if you refuse some or all of the tests). If you have prior conviction for DWI, or if there is a collision, they will usually apply for a warrant even if you cooperate.

So, the game now is to avoid a search warrant for blood. Your best shot at this is to cooperate and perform all of the field sobriety tests (eye test, walk and turn, one leg stand and sometimes the modified Rhomberg test), and also to give a portable breath test if requested. Portable breath test results are not admissible in court, but they don’t always inform you about this (it is admissible for them to say it showed you had alcohol in your system, but they can’t say the number). If you are lucky, this will give you the best chance to avoid a search warrant for blood.

The rationale for this change in conduct is simple: Doing the field sobriety tests does give them ammunition to use against you, but poor balance is much easier to explain to a jury than a blood test where you are 2x the

legal limit. If it's a "no refusal" day, you can't get out of a search warrant for blood unless you give a breath test, so you may as well give a breath test. Breath tests are more susceptible to error than blood tests and, accordingly, easier to get jurors to bring into question. Behaving appropriately, therefore, when getting cited for a DWI, can make all the difference.

## Can You Pay Your Way Out of DWI?

Drunk driving has serious consequences for the driver and, in many cases, innocent victims. Under Texas law, if a person operates a motor vehicle under the influence of alcohol or drugs and "causes the death of another by accident," that is considered intoxication manslaughter. When committed by an adult, this is a second-degree felony punishable by up to 20 years in state prison.

But not every case of intoxication manslaughter is treated the same. Consider one highly publicized Texas case. In 2013, a 16-year-old male killed four people and seriously injured two others in a car accident. The teenager had alcohol and drugs in his system—at three times the legal limit in Texas. Police also said the defendant had stolen two cases of beer from a store just before the fatal accident.

This case attracted international media attention when a psychologist, called as an expert witness by the defendant's attorney, testified the teenager suffered from "affluenza," a mental disorder resulting from growing up in a "family that felt that wealth bought privilege and there was no rational link between behavior and consequences." Prosecutors argued that the defendant's wealth should not serve as an excuse and asked for the maximum adult prison sentence of 20 years.

But a juvenile court judge decided that was too harsh and instead sentenced the defendant to 10 years probation. This was not the end of the story, however. Last December, the defendant was found violating the terms of his probation when a video posted on social media showed him drinking at a party. The defendant subsequently missed court-mandated appointments with his probation officer, and it turned out he had fled with his mother to Mexico. He later returned to the United States after dropping

a brief effort to fight extradition.

The “influenza” case has sparked criticism in many corners that a defendant from a wealthy family was able to essentially buy his way out of a lengthy prison sentence for intoxication manslaughter. While the public outrage here may be understandable, it is important not to jump to any broad conclusions based on a single case. One thing to keep in mind here is that the defendant was under the age of 18 at the time of his crimes, and juveniles are usually treated less severely than adults, even in drunk driving cases. Another thing to note is that even with a good defense lawyer and wealthy parents, a probation or parole violation of any kind subjects you to harsher consequences.

In short, while you cannot necessarily buy your way out of a DWI conviction, you can maximize your chances for a favorable outcome by retaining an experienced DWI defense attorney. In that same vein, we can now take a look at certain consequences you can expect if you are cited for DWI.

# Consequences of a DWI

DWI and DUI come with some steep consequences that only a lawyer can help mitigate. Let's see what the consequences are and how legal action could help you.

## What Can I Lose?

### *Can I Lose My Job Over a DWI?*

While Texas is an at-will state, there are some employers who will be more understanding than others, as one might expect. However, certain professions are often held to a higher standard, making it more likely that you will be disciplined or fired. Examples include:

Drivers or other transportation workers. It is not uncommon that those who drive for a living would find themselves looking for work after a DWI; an employer could reasonably conclude that employee was no longer trustworthy.

Teachers and other workers who occupy high-profile positions of responsibility. Law enforcement officials, especially high-ranking officials, would also fit this role.

Those who drive as a part of their job, such as traveling businessmen or postal workers. If a worker can no longer be trusted to do part of their job, it is reasonable to assume they would not be able to perform all the functions of their job.

Obviously, the only real way to know if you will face discipline or termination for a DWI is to know your employer, but if you are indeed let go, there are steps you can take to make getting a new job easier, such as seeking expungement of your record (if the facts permit).

### *Can I Lose My Children Because of a DWI?*

A DWI conviction can impact a court's assessment of your ability to care for your children. A DUI conviction can affect everything from visitation rights to whether one parent is granted sole custody of the children. That is why it is imperative that you contact a Austin DWI Lawyer as quickly as possible.

If you were charged with a DWI/DUI recently, it will be a major red flag for a family court judge in considering who gets custody of your children. In Texas, if you are convicted of a DUI, even for a first offense, you could be looking at a jail sentence between 3 days to 180 days. If you have prior DUI convictions on your record, the jail sentence will likely be even longer. If you are in the midst of a custody battle and you wind up in jail for a DUI, a judge will be forced to take the conviction into consideration in deciding whether to even award visitation rights to you.

A major factor in custody disputes is the prevailing legal standard judges apply in determining custody – the best interests of the child. A judge may determine that a parent with a recent DWI/DUI conviction on their record is an indication that the individual is irresponsible and incapable of properly caring for a minor or an inability to keep their child safe.

If your DUI conviction occurred many years ago with no other charges since then, the impact of the conviction will likely be minor.

### *Can I Lose My Car for a DWI?*

Pursuant to a DWI arrest, law enforcement agents may decide to hold your vehicle for evidence. This is particularly true if you were involved in an accident subsequent to the arrest. Upon examination of the accident scene and the automobile, law enforcement agents may assert that damage to the vehicle or the condition of the car is evidence to be used in any criminal prosecution stemming from the automobile accident. If this determination is made, the state may seize your car for the duration of any criminal proceedings.

Officers may also seize your vehicle in situations where contraband is found



inside of the car. During a DWI arrest, law enforcement may search or inventory the contents of the car. If culpatory evidence is found inside, law enforcement may choose to seize the car in addition to whatever items were located inside of it.

## Can a DWI Be Erased from my Record?

Let's say you had a DWI conviction years ago. Your driving record has been exemplary since the conviction. Can you get that conviction removed from your record? The answer is...maybe. Having a DWI conviction erased (which, in legal terms, is an expungement) depends on a variety of factors.

In Texas, you must have either had your case dismissed without probation and not pled to any offense that arose out of the DWI arrest or you were found not guilty by a judge or jury, according to Tex. Code Crim. Proc. § 55.01. To make matters worse, if your DWI case was dismissed without probation, you still cannot get a driver's license suspension removed from your record.

If you were found not guilty, you have the ability to get your driver's license suspension removed from your record. This is a big reason why it makes sense to hire an experienced Austin DWI defense lawyer to advocate for your rights and fight the DWI charge if you are not guilty. In Texas, even a probation deal will result in the DWI staying on your record.

## Five Questions for Your DWI Attorney

DWI charges are serious and can result in serious consequences if a conviction is secured. Once you hire a [DWI attorney](#), it is important that you maintain an open line of communication, so that you will feel part of the defense process and your attorney will have all necessary information. Help to foster this professional relationship by asking your attorney these five questions.

### 1. Should I Fight the Case?

Every case is different and there are rare instances when fighting a DWI charge is not in your best interest. Depending on the complexities of



the case, the entire legal process can take months, and result in substantial legal fees. Your attorney may advise you to plead guilty and accept a fine. In this instance, your attorney can still assist you with negotiating a plea bargain with the state or advocating for lenient punishments.

At the other end of the spectrum are cases that are filled with procedural mistakes and hefty conviction consequences. In these situations, your attorney may advise that you aggressively fight the DWI charge. The cost of fighting the case can prove easier to handle than possible imprisonment, loss of driving privileges, and possible loss of employment that sometimes accompany a DWI conviction.

## **2. Can I Fight the License Suspension?**

Under Texas law, your license can be suspended for up to two years following a DWI conviction. In cases of repeat convictions of failure to complete court ordered conditions, the state may even revoke your license. Your license suspension may also stem from a refusal to take an alcohol breath test at the time of arrest. When you obtained a Texas driver's license, you agreed to take an alcohol breath or blood test upon any arrest for DWI. A refusal results in an Administrative License Suspension for a period up to 180 days.

Suspension of driving privileges can cause a major headache in your day-to-day routine, leaving you unable to get to work, go to the grocery store or even pick your kids up from school. Ask your attorney about ways to fight the suspension, or at least gain restricted privileges to drive under specific circumstances.

## **3. Are there Grounds for a Motion to Suppress?**

Successful prosecution of a DWI charge requires that the state present an adequate amount of evidence to the court. Sometimes, the evidence in question was obtained illegally or in violation of your Constitutional rights. Upon reviewing the state's evidence, your attorney can determine if there are grounds to keep one or multiple pieces of evidence out of the court record. If the motion is successful, it can ultimately lead to a not-guilty verdict or even dismissal of the charges prior to court.

#### **4. Were the State's Breath Rules Followed by Law Enforcement?**

If you consented to a breath or blood test and the results are being used against you by the prosecution, speak with your attorney in depth about the events of the arrest and what was told to you during the process. Ask your attorney to review your version of events and the results of the breath or blood test to determine if all required rules and guidelines were followed by law enforcement agents. For example, your attorney may question whether the testing machine was properly calibrated or whether your consumption of food prior to the test may have influenced the results. If they were not, you may have grounds to suppress the test results.

#### **5. Could my Health Issues Have Contributed to the Signs of Intoxication?**

If you are a person with significant medical problems, be sure to tell your attorney about them. Allergies, physical conditions, and lack of sleep can all mistakenly present as indicators of intoxication. In addition, certain medications may lead to an inaccurate breath test result. Keep your attorney well informed, so he or she can properly advocate for you.

Again, it is important to stress that understanding the consequences of a DWI may save you and others from the dangers of driving under the influence. It is crucial that you make good decisions regarding drinking and consuming intoxicating substances from the outset, but it will also be important to get an experienced and educated DWI attorney on your side if you find yourself with a citation.

# Conclusion

We hope this book has been both informative and helpful in educating you about Texas law and what to do in the event of a DWI citation. Remember to contact Aulsbrook Law Firm to help you with any charges that are brought against you. Otherwise, remember to always drive safely.