

DEFENDING YOURSELF IN A CRIMINAL CASE

THE DANGERS OF BEING YOUR OWN LAWYER,

EVEN FOR A MISDEMEANOR

The Sixth Amendment of the US Constitution gives criminal defendants the RIGHT to be represented by a lawyer.

If you cannot afford to hire a lawyer, you have the right to a court-appointed lawyer if you are charged with any crime that could result in jail or prison time.

You have the right to be helped by a lawyer during:

- Police questioning after arrest
- Police line-up after you are charged with a crime by a court
- Any time you must be in court after your first time in front of the magistrate in jail
- Entry of a plea (guilty, not guilty, or no contest)
- Trial
- Sentencing/punishment
- Probation revocation hearing

If you do not know how to answer any request made by a police officer or prosecutor, ask to speak to a lawyer before doing anything else. Non-attorneys, such as a bail bondsman, jailer, court staff, family member, or someone else in jail, CANNOT provide legal advice, so do not accept it.

The appointment of a lawyer is not automatic.

If you cannot afford a private lawyer, you should tell the judge *as soon as possible*.

A judge must appoint a lawyer for anyone who cannot afford to hire one.

You must ask for a lawyer and complete a financial worksheet (a listing of your sources of income and all debts you owe) under oath to prove to the court that you cannot afford to hire your own lawyer.

When you ask for an appointed lawyer, the judge is likely to ask you questions such as:

- Do you have a job?
- How much money do you make?
- Are you married?
- How much does your spouse make?
- If you don't have a job, why not?
- Where have you applied for a job?
- Do you have children?
- How many children do you have?
- Do you have a car?
- What kind of car do you have?

You should be ready to answer these questions, and bring any papers (such as pay stubs) to back up your answers. 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.

The court's financial inquiry must focus only on YOU, the defendant.

Besides your spouse (and, if you are a juvenile, your parents), your relatives are not required to pay to hire a lawyer, even though they may have the money to hire a lawyer for you or may have posted bond for you. Generally, the court may not consider whether you have posted bond or are able to post bond.

What if I do not qualify for a court appointed lawyer?

If the judge decides that you have enough money to hire a lawyer, the judge cannot appoint a lawyer for you. If you do not know a lawyer you can call, you may call the State Bar of Texas Lawyer Referral and Information Service toll-free at 1-877-9TEXBAR. Remember, anything you tell your lawyer must remain confidential (just between you and your lawyer).

What is a criminal defense lawyer's job?

A criminal defense lawyer's job is to represent you in all criminal proceedings. Your lawyer should:

- Explain the crime you are charged with, all of the possible punishments and other possible results of being found or entering a plea of guilty, and any chance of probation
- Inform you about your rights and explain what to expect during the different steps of the criminal process
- Tell you of any possible consequences for getting a professional license if you are found or plead guilty
- Look into the facts of your case and give you expert advice.
- Make sure that your constitutional rights are not violated by police conduct or in court
- Ask questions of government witnesses, object to improper questions and evidence, and present your defenses if you decide to go to trial
- Discuss a plea bargain with the prosecutor for you – possibly arranging for reduced charges, a shorter sentence, and/or probation – if you decide to plead guilty
- Understand local court customs, rules and procedures

How might a misdemeanor conviction affect me?

Depending on your circumstances and the crime, a conviction might:

- Limit your job opportunities
- Stop you from getting or keeping a professional license (health care, security guard, insurance agent, peace officer, etc.)
- Cause eviction by your landlord
- Cause suspension of your driver's license
- Cause increased fees for renewal of your driver's license
- Stop you from getting federal and state assistance (TANF cash assistance, food stamps, public housing, and education grants and loans)
- Cause loss of custody of your children
- Cause registration as a sex offender
- Cause increased punishment if you are ever arrested for another crime
- Prevent foster care and adoption
- Cause deportation, loss of immigration status, ineligibility for immigration benefits, such as lawful permanent resident status or U.S. citizenship.
- Keep you from having or receiving a handgun or ammunition

What if I receive probation?

Along with all of the punishment you could suffer if you are convicted (listed in the last section), if you get probation for a misdemeanor you might have to remain under the court's supervision for up to 3 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 an officer for up to three years, with monthly fees
- Allow searches of your person, home, or car
- Submit to unannounced drug and alcohol tests
- Go to drug or alcohol treatment and counseling, and pay for it
- Install a breath-testing device in your car
- 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
- Keep you from seeing your children if you are not married and living with the other parent

If you fail to make payments or violate any of the other conditions of probation, the judge can end your probation and send you to jail for up to one year *without* the state having to prove the facts of the crime for which you are on probation.

What are the consequences of deferred adjudication?

If you receive probation, you can be placed on regular probation or "deferred adjudication" probation. Even though you may hear that your case will be dismissed if you successfully complete deferred adjudication probation, it is very important to 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 cannot be expunged (removed). In addition, you may receive increased penalties if you are arrested for the same type of offense in the future.

The charge is treated as a **final conviction** for immigration purposes and will never be expunged for immigration purposes. You may still be placed into deportation proceedings and removed from the US, or you could become ineligible for immigration benefits, such as lawful permanent resident status or U.S. citizenship, even if your case was dismissed after a completion of deferred adjudication or probation.

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www.texasbar.com/criminalcommittee

This brochure is not a substitute for the advice of a lawyer and is intended for general information concerning a misdemeanor defendant's right to counsel and the possible consequences of a misdemeanor conviction.