

DILLON LAW

Criminal Defense

Introduction to Criminal Defense

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Facing a criminal accusation can be a daunting experience. If you have a loved one in this position, you likely have a million questions running through your head at this time. Why were they charged? Will they have to go to jail? How can I help them defend against the charges?

At our law firm, we work with clients and their families every day who have these questions and do not know where to turn. That is why we've created this ebook. We want to walk the loved ones of those facing criminal charges through the criminal justice system so that they have a better understanding of what is to come, what they face, and how they can help their loved ones through it.

At our firm, we believe that everyone has the right to a fair trial and the right to understand the legal process that they face. We created this ebook to empower our clients and their families. Becoming informed about the criminal justice process can answer many of your questions and ease your mind as you face this difficult experience.

Of course, there is no substitute for an excellent criminal defense lawyer. We recommend that you use this ebook as an introduction to criminal defense in the state, but we would also advise that you reach out to an attorney for help. Your family does not need to go through this experience alone. For more information, contact our office. We are happy to answer any additional questions that you have and help you through this experience.





Bail and Arraignments

One of the first things that will happen after your loved one gets arrested is that they will have to appear at an arraignment. One of the main purposes of the arraignment is to determine if bail is appropriate for the case and to establish the bail amount that the defendant will be asked to pay. When a person is arrested by the police, bail will be set for the case. Bail is a financial incentive to return to court. It is an amount of money set by the judge or the police. The point of bail is both to protect the community and make sure that a person comes to their scheduled court dates to answer the charges, until the case is resolved.

In the case of an on-site arrest, the police will set bail when a person is arrested for a crime. If a warrant is submitted to the court, a judge will set the bond in the arrest warrant, once it is signed. If your loved one is able to post the full bail amount in cash, then they will be released from jail and given a court date to appear in the future. When the case ends, they can get a full refund of the cash that you posted to the court.

If your loved one isn't able to post bail by themselves, many states will allow them to contact a bail bondsman, who will post bail on their behalf. The bail bond is like an insurance policy. The defendant pays a non-refundable premium, and the bail bondsman agrees, in writing, to cover the bail amount if they fail to appear for one of the court dates. Bondsmen typically charge between 7% and 10% of the bail amount as the premium for the bail bond. The bail bondsman will give a written bail bond to the police and then the police will release the accused.

For example, if the police set a \$5,000 bail for a case, the defendant will have to pay the bail bondsman \$500. They do not get that money back at the end of the case. It becomes the bondsman's fee. If the defendant had paid the entire \$5,000 in cash by themselves, then they could get a full refund at the end of the case. But most people don't have that amount of cash on hand, so many of our clients use a bail bondsman. Make sure to consult with a lawyer and see if a bail bondsman is a viable option in your area.

Your loved one's first court date after your arrest will be the arraignment. This is a very significant court date where several critical things will happen. If your loved one is still being held in police custody at this time, the judge will review the amount of bail set by the police. The judge can set a new amount of bail bond so that they can be released. If they were unable to post bond, and are still in jail, they could be interviewed by special court staff called Bail Commissioners. These individuals then make recommendations to the judge about the amount of bail, based on their interview. Also, the judge will review the arrest reports to ensure that the police had probable cause for the arrest.





The judge has the right to raise or lower the amount of bail at a court date. This is why, depending on the circumstances of the bond that is set, it may be wise to bond out from the police station, or it may be wise to wait and see if the court lowers the bond amount. Only a lawyer who has worked with criminal cases can give you good advice to assist with your situation. Also, the judge has the right to add non-financial conditions as further conditions of release. These non-financial release conditions can include protective orders in domestic cases, restrictions on possession of firearms, counseling and treatment, substance abuse testing and treatment, GPS monitoring, travel restrictions, and more. If your loved one fails to obey any of these release conditions, they will be re-arrested and they will be charged with the additional crime of violation of conditions of release.

If your loved one misses their court date, the judge can “call the bond” and order a re-arrest by placing an additional bond on them. If they posted cash bail, it will be forfeited to the court. Worse, if a bail bondsman posted the bond, they will hire a bounty hunter to find your loved one and bring them back to court. Your loved one will also be charged with Failure to Appear, which may be a misdemeanor or a felony depending on the underlying charges. Your family should avoid this situation and always make sure to appear at scheduled court dates.

Motions in Criminal Cases

Whenever you see lawyers in the media, they are often filing paperwork on behalf of their clients. This is usually done in the form of a motion. A motion is a request for the court to take action in a case. For the most part, in criminal cases we see two types of motions: the Motion to Dismiss, and the Motion to Suppress. We'll talk more about these types of motions here.

A Motion to Dismiss is exactly what it sounds like. It is a request that the judge dismiss the charges against someone because of a legal defect in the case. Bases for Motions to Dismiss may include a jurisdiction issue, which is a claim that the case should be dismissed because it is brought in the wrong court. Or, they may claim that the state can't show probable cause for a case to a neutral judge. In other situations, for example after the completion of a diversionary program, a Motion to Dismiss will be made by the defense because the client is entitled to a dismissal of the charges by operation of law.

A Motion to Suppress usually is filed when the police or prosecution may have done something illegal to obtain evidence. When they undertake an illegal act, they should not get the benefit of using the evidence against you. So this is when a lawyer would file a Motion to Suppress citing your Fourth and Fifth Amendment rights. It is important to note that winning Motions to Suppress do not guarantee that a case will be dismissed. It simply means that the state cannot use that piece of evidence against your loved one at their trial. If there is other evidence from which a jury may infer guilt beyond a reasonable doubt, a case may still proceed.



Now let's talk about searches. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. The touchstone of Fourth Amendment analysis is whether a person has a, "constitutionally protected reasonable expectation of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967). Where a defendant can show an actual objective expectation of privacy in the place searched (or object seized) and that this objective expectation of privacy is one that society is prepared to recognize as reasonable, the government must have a warrant supported by probable cause before effecting the search, unless it fits some other recognized exception to the warrant requirement. Conversely, without a reasonable expectation of privacy, a search performed by government officials or a public employer will not violate the Fourth Amendment, regardless of the search's nature and scope.

This provision is significant to a criminal defendant because evidence that is "unreasonably" seized may be inadmissible in the case against them. As nearly every prosecution involving drugs involves the admission of those drugs into evidence, this constitutional protection and related "exclusionary rule" is of paramount importance to the defendant facing drug charges because, as a practical matter, if the introduction of narcotics can be prevented by establishing the illegality of the seizure or search which turned up evidence, the prosecution will be defeated.

The initial burden of going forward on a pretrial Motion to Suppress is on the defendant, but the burden of proof is on the state for most of the issues governing whether evidence obtained by the state should be suppressed.





Pleas, Trials, and Sentencing

When facing a criminal charge, it is common to only think about how it will end and it can be overwhelming to think about the steps in between. For many, the use of a diversionary program may get the case settled. For others, a trial may be the best course of action, but for some a plea may be in order.

Pleas of guilty can take a couple of forms. The first type of guilty plea is a straight guilty plea. These pleas are exactly what they say they are. A person admits to the charges as agreed upon with the state and confess guilt for them.

The other type of plea is a no contest. The official term for this is *nolo contendere*, which is Latin for “no contest.” This means that while a person has heard the state’s allegations, they are choosing not to fight them at all. This means your loved one does not say the word guilty, but the judge will find them guilty.

The nolo contendere plea is a written plea that must follow a specific format. It is often used in cases where there is a potential civil lawsuit from the damages of the act, because while a guilty plea can be used against you in a civil lawsuit, a nolo plea cannot, so it makes the job of the civil lawyer trying to sue your loved one a little harder.

Now, this nolo plea should not be confused with another Latin phrase which is used a lot, which is “nolle prosequi,” colloquially known as a “nolle” or “nol pros” or “deferred prosecution.” In a nolle, the state is choosing not to prosecute the case against your loved one, and in 13 months, the court will automatically order it dismissed. A nolle may be reopened any time within that 13 month period to resume prosecution. When the state chooses to nolle a case, the defense does have the ability to object to a nolle to insist on a trial or move for a dismissal, but sometimes that is not wise if it is a negotiated nolle, so a criminal defense lawyer is your loved one’s best advisor in this situation.

Whenever a person resolves a case with a plea there will be something called a “canvas.” This is a question and answer session with a judge in the courtroom, on the record, when the judge will ask the defendant a series of questions to make sure they are entering the plea knowing all of the rights they are giving up in exchange for the plea and are making the decision with the effective advice of counsel. The canvas has certain questions that have to be asked and answered, so a lawyer will prepare your loved one for this. In felony cases, a canvas must be done, but in misdemeanor cases it can be waived. For the most part, judges want to canvas even on misdemeanor cases.

There are a few different things that can occur once the case has resolved. The most serious consequence is straight jail time. Straight jail time sounds exactly like what it is. Your loved one is sentenced to a period of jail time and they have to serve it. It is “flat” time and when they are done with their jail time, they are out and free again with no post-release supervision. This is a rare sentence and usually only done in the most serious of cases when the sentence is for the rest of the person’s life or for habitual offenders, who know the system well and know that they are unlikely to be successful on probation.



The next option is a split sentence. This is a situation where a person is sentenced to a period of jail time and a period of probation. Now, a split sentence has to have a period of jail time “suspended” which means it hangs over their head while they are on probation. If your loved one violates probation, they can be rearrested and are then exposed to the suspended jail time.

Let’s explain it in context. If a person gets a split sentence of 10/5, it means that the person has ten years in jail as a sentence, but the execution of that sentence is suspended and they then serve on probation for five years. If they violate the probation at any time in the five year period, they could be made to serve up to ten years in prison.

The time hanging over their head exists to give them incentive to successfully complete probation.

For the most part, probations for misdemeanors cannot exceed two years, and for felonies cannot exceed ten years.

Finally, there are dispositions that include only a fine, which are rare, and even more rare is the guilty plea with no fine, sentence, or probation. Even though this result is rare, it does happen.

The concepts of sentencing are very complicated, and anyone contemplating jail time should really speak with an attorney about the collateral consequences and all of the parts of the plea canvas. Approximately 95% of all state criminal cases resolve prior to a trial, and there’s a reason for that - the risk of going to trial is often severe. If your loved one loses at trial, they are then exposed to the maximum periods of incarceration for each offense, which can run consecutively (or one after the other). To avoid that risk, defendants negotiate with the prosecutor to enter guilty pleas.



DWI IN TEXAS

Driving While Intoxicated (DWI) in Texas carries serious legal, financial, and personal consequences. These consequences increase in severity with subsequent offenses or if there are aggravating circumstances, such as having a minor in the car or causing an accident. Here are some key consequences of a DWI in Texas:

1. Legal Consequences:

First Offense:

Fines: Up to \$2,000.

Jail Time: 3 to 180 days.

Driver's License Suspension: 90 days to 1 year.

Annual Surcharge: \$1,000 to \$2,000 for three years to retain a driver's license.

Mandatory DWI Education: Completion of a 12-hour DWI education program.

Second Offense:

Fines: Up to \$4,000.

Jail Time: 30 days to 1 year.

Driver's License Suspension: 180 days to 2 years.

Annual Surcharge: \$1,500 to \$2,000 for three years.

Mandatory Ignition Interlock Device (IID): Required on your vehicle.

Third Offense:

Fines: Up to \$10,000.

Prison Time: 2 to 10 years.

Driver's License Suspension: 1 to 2 years.

Annual Surcharge: \$1,500 to \$2,000 for three years.

Mandatory IID Installation: Required.

2. Aggravating Factors:

DWI with a Child Passenger:

Driving intoxicated with a passenger under 15 years old is a felony.

Fines: Up to \$10,000.

Jail Time: 180 days to 2 years.

License Suspension: 180 days.

Injury or Death (Intoxication Assault or Manslaughter):

Intoxication Assault: If you cause serious bodily injury while driving intoxicated, it is a third-degree felony.

Fines: Up to \$10,000.

Prison Time: 2 to 10 years.

Intoxication Manslaughter: If someone dies because of your intoxicated driving, it is a second-degree felony.

Fines: Up to \$10,000.

Prison Time: 2 to 20 years.

3. License and Driving Restrictions:

License suspensions can extend longer with multiple offenses or refusal to take a blood alcohol concentration (BAC) test.

An Ignition Interlock Device (IID) may be required, preventing you from starting your car without passing a breathalyzer test.



4. Long-Term Consequences:

Criminal Record: A DWI conviction will appear on your criminal record, which can affect employment opportunities, housing, and professional licenses.

Increased Insurance Rates: DWI convictions often result in significantly higher car insurance premiums.

Employment Impacts: Some jobs, especially those requiring driving or holding professional licenses, may be lost due to a DWI conviction.

Probation: You may be placed on probation instead of jail time, but this comes with strict conditions such as attending alcohol education programs, community service, and routine check-ins with a probation officer.

5. Driver's License Suspension and Occupational License:

After a DWI arrest or conviction, your driver's license can be suspended. However, you may be eligible for an occupational license, which allows you to drive to work or school during the suspension period under certain conditions.

6. Alcohol Education and Treatment:

Many offenders are required to attend alcohol education or treatment programs. Failure to complete these programs can result in additional penalties or an extended license suspension.

Overall, the consequences of a DWI in Texas are severe, and the penalties increase with the number of offenses and the presence of aggravating factors.

The important thing to keep in mind is that you have rights and a skilled lawyer can help you protect those rights while building a strong DWI defense.

Chris M. "Matt" Dillon is a Bastrop-based attorney who has been representing the people of Texas for 25 years. If you have been charged with drunk driving, it is important to seek qualified legal advice as soon as possible. Call me at [512-303-2889](tel:512-303-2889) to schedule an initial consultation.



Getting Help

If you have a loved one who has a case, we are happy to speak about all the different variations and what could happen. But remember, 100% of the people who plead guilty are found guilty, and sometimes the only way to win a case is to be prepared to go the distance for a trial. It may not be the cheapest option, but long term it may be much cheaper than living with a conviction.

About Chris M. Dillon



Chris M. "Matt" Dillon is a seventh generation Texan who can trace his Texas roots back to his great-great-great-great-great grandfather, Gordon C. Jennings, who perished defending the Alamo. Chris was raised in Bastrop, Texas, and graduated from Bastrop High in 1990. Unable to resist the urge to continue being a Bear, Chris attended Baylor University where he completed his B.B.A in accounting. Chris then accepted into Southwest Texas State University (now Texas State University) where he graduated with an M.B.A in 1996. While working towards his MBA, Chris worked full-time, first as a substitute teacher in Bastrop ISD, then as an analyst with the Texas Workers' Compensation Insurance Fund, and then as a tax examiner with the IRS.

Realizing a dream first echoed at the ripe old age of 12, Chris was accepted into law school and began his course of study in 1997 at St. Mary's University School of Law. Chris earned his Doctor of Jurisprudence (J.D.) a full semester early and graduated in 1999. While at St. Mary's, he received a Certificate of Completion for The Program Studies on Global Legal Issues at The University of Innsbruck, Austria in 1998, under the direction of his St. Mary's professors and the Chief Justice of the United States Supreme Court, Honorable William H. Rehnquist.

Chris was admitted to the State Bar of Texas in May 2000. In his first year as a lawyer, Chris served as an appellate briefing attorney for the Seventh Court of Appeals of Texas located in Amarillo, Texas, under the direction of Honorable Justice Don H. Reavis. Chris had also previously served as a legal intern for the Honorable John T. Boyd, Chief Justice of the Seventh Court of Appeals of Texas in 1998.

Upon completion of his one-year commitment with the court, and in true country lawyer fashion, Chris returned to Bastrop and opened a private law practice where he continues to work to protect the civil liberties of individuals from all around the state of Texas.



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