

LANCE KENNEDY LAW

# Surviving Your DWI in Hays County

What every Texas DWI defendant needs to know, and exactly what to do next

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**The two cases against you, the deadlines that decide them, and how to fight back.**

*By Lance Kennedy Law*

## Read This First

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Before you read anything else in this book, find one piece of paper: the notice the officer handed you about your driver's license. It is usually a form called a DIC-25. It probably got stuffed into a pocket or a glove box on the worst night you have had in a long time. That paper started a clock.

**The 15-Day Rule.** You generally have 15 days from the date you were served notice of suspension to request an Administrative License Revocation (ALR) hearing. Miss the deadline and your license is suspended automatically on the 40th day after notice. No hearing. No judge. No second chance at that hearing. The 15 days include weekends and holidays, and the request must actually reach the Texas Department of Public Safety in time. One more wrinkle: when the notice comes by mail, as it usually does when a blood sample went to a lab, the law presumes you received it on the fifth day after DPS mailed it, and your 15 days count from that presumed date whether or not the envelope has actually reached you. Do not wait until day 14.

Here is why this matters so much: requesting the hearing does more than fight the suspension. It keeps you driving legally while the case is pending, and it gives your lawyer the first real chance to question the officer under oath, months before the criminal case gets anywhere near a courtroom. Skipping it throws away your license and your best early evidence at the same time.

Now the reassurance, because you need to hear it: an arrest is not a conviction. People are arrested for DWI in Hays County every week, and many of those cases end far better than the person sitting in the back of the patrol car ever imagined. Breath machines have assumptions built into them. Blood samples pass through many hands. Field sobriety tests fail sober people. Stops get made without a lawful reason. Every one of those is a door, and none of them opens by itself.

This book will walk you through both of the cases you are now facing, in plain English, so you can make decisions instead of just absorbing consequences. But the license deadline will not wait for you to finish reading. If your 15 days are still running, call a DWI lawyer today. Ours is (737) 324-7540, and the case review is free.

# The First 15 Days: Two Cases, One Clock

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The single most important thing to understand about a Texas DWI arrest is that it creates two separate legal cases against you, and they run on different tracks.

## **Case one: the criminal charge**

This is the case everyone thinks of. The State of Texas accuses you of driving while intoxicated, a crime under Section 49.04 of the Texas Penal Code. It is prosecuted in criminal court, the State must prove guilt beyond a reasonable doubt, and the possible outcomes range from dismissal to conviction and sentencing. This case moves slowly. Your first court date may be weeks away, and the case itself can take months.

## **Case two: your driver's license**

The Administrative License Revocation, or ALR, is a civil case about one thing only: whether the Department of Public Safety gets to suspend your license because you failed a breath or blood test or refused one. It is decided by an administrative law judge, not a criminal court, and the State's burden is much lower. This case moves fast. The 15-day request deadline is the first deadline in your entire case, and it is the one people miss.

The two cases do not decide each other. You can win the ALR and still face the criminal charge. You can lose the ALR and later win the criminal case. But they feed each other, and a lawyer who handles both from day one can use the fast civil case to gather evidence for the slow criminal one. More on that strategy later in this book.

## **What happened the night of the arrest**

Most DWI arrests follow the same script. An officer stopped you for something: speeding, a lane drift, a traffic violation, sometimes a crash or a welfare check. The officer says he noticed signs of intoxication, asked you to step out, and ran you through field sobriety tests. You were arrested, read a statutory warning called the DIC-24, and asked for a breath or blood specimen. You either provided one or refused. If you refused, the officer may have obtained a warrant and taken blood anyway. You were booked, you posted bond or were released, and you went home with paperwork you barely remember receiving.

Every step of that script is potential evidence, for the State and for you. The reason for the stop, the way the tests were administered, the exact words of the warnings, the timing of the test: all of it matters, and almost all of it was recorded on video.

## Exactly what to do now

- **Calendar day 15.** Count 15 calendar days from the day you were served the notice of suspension, weekends included, or, for a notice DPS sent by mail, from the fifth day after it was mailed. That is your ALR request deadline. If the 15th day falls on a weekend or legal holiday, the deadline generally rolls to the next business day, but never plan on the cushion.
- **Request the ALR hearing, or hire a lawyer who will.** A timely request stays the suspension until the judge rules, which is often weeks or months away. You keep driving legally in the meantime.
- **Write down everything you remember.** What you ate, what you drank and when, the route you drove, what the officer said, what you said, how the tests were run, the ground, your shoes, the weather. Memory fades fast, and the timing details can matter more than you would guess.
- **Preserve your evidence.** Bar and restaurant receipts, credit card records, texts that show your timeline, the names of anyone who was with you. If a medical condition, injury, or medication could have affected the tests, gather documentation now.
- **Stay quiet.** Do not post about the arrest, do not discuss the facts with anyone but your lawyer, and do not call the officer or the prosecutor to explain yourself. Explanations become exhibits.
- **Handle the practical fallout.** Get your car out of impound before fees pile up. Read your bond paperwork and follow every condition, because a bond violation creates a brand-new problem.
- **Talk to a lawyer early, even if you are not ready to hire one.** Video from patrol cars and body cameras is not kept forever. An early preservation letter can save the footage that later wins the case.

None of this requires you to have decided anything about how you will fight the case. It just keeps your options alive. The rest of this book explains what those options are.

## The questions everyone asks in the first week

**Will I go to jail?** For most first offenses, the realistic answer is that jail beyond the night of arrest is unlikely if the case is handled well, but the range exists and no one can promise. What happens depends on the facts, your record, and the county, which is exactly why the early steps above matter.

**Should I just plead guilty and get it over with?** Not before anyone has watched the video or checked the records. A fast plea can lock in a conviction that a few weeks of scrutiny might have

turned into a reduction, a deferred, or a dismissal, and some pleas permanently close the door on ever sealing your record. Speed is a strategy only after the evidence has been read.

**Do I really need a lawyer for a first offense?** A first DWI carries jail exposure, a license suspension with its own separate deadline, thousands of dollars in fines and state fees, and record consequences that run for years. It is the cheapest case to defend properly and the most expensive one to handle badly.

**Will my employer find out?** An arrest becomes a public record almost immediately. Whether and when to tell an employer depends on your job, your contract, and any licensing rules, and it is worth discussing with your lawyer before anyone else. What you can control is the ending: the record-clearing chapter near the end of this book explains what can be sealed or destroyed, and when.

# **Your License: ALR Hearings, Suspensions, and How to Keep Driving**

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Losing your license is, for most people, the consequence that hits first and hurts daily. This chapter covers the ALR case, what suspension you are actually facing, and the two tools that keep you on the road: the ALR hearing itself and the occupational license.

## **The ALR hearing: what it is and why you want one**

The ALR process runs under two chapters of the Texas Transportation Code. If you gave a specimen and the result was 0.08 or more, your case falls under Chapter 524. If you refused, it falls under Chapter 724. Either way, the same basic machinery applies: you have 15 days from notice to request a hearing, and if you do not, the suspension starts automatically on the 40th day after notice. Watch the mail in a blood case. The officer cannot serve a failed-test suspension notice at the roadside when the sample still has to go to a lab, so DPS mails the notice after the result comes back, sometimes weeks or months later. The law presumes a mailed notice was received on the fifth day after mailing, and both clocks, the 15-day request window and the 40-day suspension date, run from that presumed date. If blood was drawn, treat every envelope from DPS as urgent.

The hearing is held before an administrative law judge at the State Office of Administrative Hearings, often by telephone or video. DPS carries the burden of proof by a preponderance of the evidence. In a failed-test case, DPS must prove the stop or arrest was lawful and that your alcohol concentration was 0.08 or more. In a refusal case, DPS must prove the stop was justified, that there was probable cause to believe you were driving while intoxicated, that you were arrested and asked for a specimen, and that you refused. If DPS fails to prove every required element, the suspension is not sustained and your license stays intact.

Two more reasons to request the hearing even if the facts look bad. First, the request itself stays the suspension: you keep a valid license until the judge rules. Second, your lawyer can subpoena the arresting officer and question him under oath, on the record, months before trial. That sworn testimony is locked in. If the officer's story changes later, your lawyer can prove it.

## **How long the suspensions last**

|                                                                       | Failed test (Chapter 524)              | Refusal (Chapter 724)          |
|-----------------------------------------------------------------------|----------------------------------------|--------------------------------|
| What triggers it                                                      | Breath or blood result of 0.08 or more | Refusing to provide a specimen |
| Deadline to request a hearing                                         | 15 days from notice                    | 15 days from notice            |
| If you do nothing                                                     | Suspension begins on day 40            | Suspension begins on day 40    |
| First suspension                                                      | 90 days                                | 180 days                       |
| With a prior alcohol or drug enforcement contact in the last 10 years | 1 year                                 | 2 years                        |

Notice what the table implies: refusing the test did not protect your license. A first refusal draws twice the suspension of a first failure. Refusal changes the shape of the case, but it is not a free pass, and as you will read in the blood test chapter, it often does not even prevent a test result.

One more thing to know: if the criminal case later ends in a DWI conviction, that conviction can carry its own suspension, separate from the ALR. The two suspensions have to be managed together so you are actually legal to drive, not just holding paperwork.

## **The occupational license: driving during a suspension**

If a suspension does take effect, Texas law gives you a bridge: the occupational driver's license, or ODL, granted by a court under Chapter 521 of the Transportation Code. The traditional version requires you to show an essential need to drive for work, school, or household duties, and it comes with limits: by default four hours of driving per day, expandable to 12 with proof of need, within the counties and hours the order names.

There is a second route that most people have never heard of, and it is usually better. If you agree to an ignition interlock device on your vehicle following a DWI suspension, the law changes in your favor twice. The court can grant the ODL without the usual essential-need showing, and the order may not impose the usual time, reason, or location limits. The interlock itself becomes the main restriction. Just as important, installing an interlock on every vehicle you own or operate wipes out the waiting periods that would otherwise delay your ODL: waits that can run 91 days, 181 days, or a full year for drivers with prior alcohol-related history.

Practical points: the signed court order itself acts as your license for 45 days while DPS mails the card. You must carry a certified copy while driving. The DPS fee is modest, \$10 for one year or \$20 for two. And an ODL never covers a commercial vehicle: if your job requires a CDL, an occupational license will not put you back in a commercial truck.

## **SR-22: the insurance certificate**

An SR-22 is not a type of insurance. It is a certificate your insurance company files with DPS proving you carry at least the state minimum liability coverage: \$30,000 per injured person, \$60,000 per crash, and \$25,000 for property damage. You will need one to get an occupational license, and you will generally need one to reinstate your license after a qualifying DWI conviction, typically for two years of continuous coverage.

Two traps. First, a lapse is expensive: if the policy cancels, the insurer notifies DPS, your license can be re-suspended, and the two-year clock can restart. Second, not owning a car does not excuse you: a non-owner SR-22 policy, which is usually cheaper, satisfies the requirement. Expect a reinstatement fee, commonly \$100 for the financial responsibility portion, on top of any other fees your suspension type carries.

**The cleanest license strategy is not needing one of these at all.** Winning the ALR hearing means no administrative suspension, no occupational license, and no SR-22 requirement from that suspension. That is one more reason the 15-day deadline is the most important date in your case.

# The Criminal Charge: The Texas DWI Ladder

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Texas DWI law lives in Chapter 49 of the Penal Code, and it is built like a ladder. Where your case sits on that ladder controls everything: the punishment range, which court hears the case, whether you are facing county jail or state prison, and what can be done about your record afterward.

## Two ways to be intoxicated

Under Section 49.01, you are legally intoxicated if either of two things is true: you did not have the normal use of your mental or physical faculties because of alcohol, a drug, or any other substance, *or* your alcohol concentration was 0.08 or more. That little word *or* is the most important word in the statute. The State does not need a test result to prosecute you. It can rely entirely on the officer's observations: your driving, your speech, your balance, the field sobriety tests. A refused test, or a suppressed one, does not end the case. It changes what the State has to prove.

## The ladder, rung by rung

**First offense.** A first DWI is a Class B misdemeanor: up to 180 days in county jail and a fine of up to \$2,000, with a minimum term of 72 hours. If you had an open container of alcohol in your immediate possession, the minimum jail term rises to six days.

**The 0.15 line.** If a blood, breath, or urine analysis shows an alcohol concentration of 0.15 or more, even a first offense becomes a Class A misdemeanor: up to a year in jail and a fine of up to \$4,000. Note the statute's exact wording: 0.15 or more *at the time the analysis was performed*, which may be an hour or more after you drove. That wording matters, and the science chapters explain why. The 0.15 allegation also has consequences that outlast the case: it blocks deferred adjudication and it can permanently block sealing your record.

**Second offense.** A second DWI is a Class A misdemeanor with a minimum term of 30 days. And understand this about Texas: prior DWI convictions never wash out. There is no lookback limit. A conviction from decades ago still counts.

**Child passenger.** Driving while intoxicated with a passenger younger than 15 is a state jail felony, even on a first offense: 180 days to two years in a state jail facility and a fine of up to \$10,000.

**The school crossing zone felony.** Effective September 1, 2025, Senate Bill 826 added a new rung. A DWI committed in a school crossing zone while the reduced speed limit applies is a state jail felony under Section 49.04(e), even for a first offense, with no crash, no child passenger, and

no prior conviction required. Geography alone can now turn a first-time misdemeanor into a felony.

**The school-zone enhancement is narrower than the headlines.** It turns on whether you were inside a marked school crossing zone while its reduced speed limit was actually in effect, not on whether school was in session or children were present. A stop on the same street at 11 p.m., with the flashing lights off, should not qualify. The exact location and the exact time become facts the State must prove, which makes early investigation of the zone boundary and the posted hours critical. It applies only to offenses committed on or after September 1, 2025.

**Third offense and beyond.** A third or subsequent DWI is a third-degree felony: two to ten years in prison and a fine of up to \$10,000, heard in district court, with everything that a felony record means for employment, licensing, and firearm rights.

**Injury and death.** Intoxication assault, causing serious bodily injury, is a third-degree felony. Intoxication manslaughter, causing a death, is a second-degree felony carrying two to twenty years. Intoxication manslaughter is punished as a first-degree felony, five to 99 years or life, when the person killed is a peace officer, firefighter, EMS worker, or judge acting in the line of duty. The 89th Legislature added two more first-degree paths in 2025: when more than one person is killed in the same criminal transaction, and when a driver with a prior intoxication conviction commits the offense while in the state in violation of Texas's illegal-entry law. In that last, narrow situation, the law also requires at least ten calendar years actually served, without good-time credit, before parole eligibility.

## **The state fine on top of everything else**

Separate from the criminal fine, Texas Transportation Code Section 709.001 imposes an additional state fine on final DWI convictions: \$3,000 for a first conviction within a 36-month period, \$4,500 for a second or subsequent conviction within that period, and \$6,000 if the alcohol concentration was 0.15 or more. A court can waive the fine on a finding that you are unable to pay, but it must be addressed. When you are weighing a plea offer, this fine belongs in the math.

## **The ladder at a glance**

| Offense                                              | Level                                                       | Range                                                      |
|------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------|
| DWI, first offense                                   | Class B misdemeanor                                         | 72 hours to 180 days county jail; fine up to \$2,000       |
| DWI with open container                              | Class B misdemeanor                                         | 6 days to 180 days; fine up to \$2,000                     |
| DWI with test result of 0.15 or more                 | Class A misdemeanor                                         | Up to 1 year county jail; fine up to \$4,000               |
| DWI, second offense                                  | Class A misdemeanor                                         | 30 days to 1 year; fine up to \$4,000                      |
| DWI in a school crossing zone (on or after 9/1/2025) | State jail felony                                           | 180 days to 2 years state jail; fine up to \$10,000        |
| DWI with a child passenger under 15                  | State jail felony                                           | 180 days to 2 years state jail; fine up to \$10,000        |
| DWI, third or subsequent                             | Third-degree felony                                         | 2 to 10 years prison; fine up to \$10,000                  |
| Intoxication assault                                 | Third-degree felony (higher for protected victims)          | 2 to 10 years prison; fine up to \$10,000                  |
| Intoxication manslaughter                            | Second-degree felony (first-degree in the situations above) | 2 to 20 years prison, or 5 to 99 years or life if enhanced |

Every conviction also carries the Section 709.001 state fine described above, and can carry license suspension, an ignition interlock requirement, DPS reinstatement fees, and probation conditions.

## What about drugs and prescription medication?

Intoxication in Texas is not limited to alcohol. The definition covers losing the normal use of your faculties because of alcohol, a controlled substance, a drug, a dangerous drug, or any combination of substances. That includes marijuana, and it includes medications you take exactly as prescribed: opioid painkillers, anti-anxiety medications, sleep aids, even some over-the-counter antihistamines. A valid prescription is not a defense to driving while impaired by the medication.

Drug cases differ from alcohol cases in one crucial way: there is no per se number. Nothing in Texas law says a particular blood level of any drug equals intoxication the way 0.08 does for alcohol. The State must prove your faculties were actually impaired at the time of driving, usually through the officer's observations, a drug recognition evaluation, and a blood result showing the

substance was present. Presence is not impairment, especially for substances that linger in the body long after any effect has passed, and that gap is where drug-based DWI cases are fought.

### **One common confusion: DWI versus DUI**

In Texas these are different offenses. DWI under Penal Code Section 49.04 applies to intoxicated drivers of any age. DUI is a separate offense for drivers under 21 who have any detectable amount of alcohol, a Class C misdemeanor on a first offense. An adult is charged with DWI, not DUI, no matter what the arrest is called on the street.

# The Science of BAC: Absorption, Elimination, and the Rising Curve

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Almost everything in a test-based DWI case hangs on a single number. This chapter explains where that number comes from, what it actually measures, and why the number at the testing station is not necessarily the number that existed while you were driving. That gap is one of the most important ideas in DWI defense.

## What the number actually is

Texas defines alcohol concentration as grams of alcohol per 210 liters of breath, per 100 milliliters of blood, or per 67 milliliters of urine. It is a concentration, not a total amount, and it is a moving target: your concentration changes continuously from your first drink until the alcohol is gone.

## Absorption, peak, elimination

Alcohol does not enter your bloodstream the moment you swallow it. It has to move from the stomach into the small intestine, where most absorption happens, and then into your blood. On an empty stomach, that goes faster. With food, the process slows and spreads out. Peak concentration commonly arrives somewhere between 30 and 90 minutes after the last drink, and a full meal can push the peak later still.

Once past the peak, your body eliminates alcohol at a fairly steady pace. The figure most often cited is an average of about 0.015 per hour, but honest science says the real rate varies widely from person to person, roughly 0.010 to 0.025 in drinking drivers, and even within the same person on different days. Body weight, body composition, and biological sex all shift the curve, because alcohol distributes into body water.

## Rising BAC: the timing gap

Now put a clock on it. You are stopped at 11:00 p.m. You are arrested, transported, warned, and finally tested at 12:30 a.m. The test reports your concentration at 12:30, not at 11:00. If you drank shortly before driving and your body was still absorbing when you were stopped, your concentration at the wheel may have been lower than the number on the report. It may even have been below 0.08 while driving and above it by testing time. A single after-the-fact number cannot, by itself, tell those two moments apart.

This matters because the offense is being intoxicated *while driving*. The State must connect the test number back to the moment you were behind the wheel. To do that, prosecutors sometimes

use a technique called retrograde extrapolation: projecting the test result backward in time using assumed absorption and elimination rates. The Texas Court of Criminal Appeals has held that the reliability of that testimony depends on what the expert actually knew: how long between driving and testing, how many tests were run, and how many of your personal characteristics, your last drink, your food, your drinking pattern, were actually known rather than assumed. A single delayed test plus a stack of assumptions is a shaky foundation, and courts have excluded extrapolation testimony built on guesswork.

### **What this means for your case**

The science cuts in both directions, and no honest lawyer will tell you that rising BAC wins every case. It is not a magic phrase. It is a factual argument built from a timeline: when you drank, how much, when you drove, when you were tested, and what the number was. When the timeline supports it, it can put reasonable doubt on the very element the State must prove. When it does not, a good lawyer will tell you so and fight the case on other ground. Either way, the timeline you wrote down in the first days after arrest, the receipts, the texts, the witnesses, is the raw material. That is why this book told you to preserve it first.

# Field Sobriety Tests: Why Sober People Fail

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If you performed roadside tests and were told you failed, you are probably replaying them in your head, wondering how badly you stumbled. Here is the truth most people never hear at the roadside: sober people fail these tests every day, the tests are far weaker evidence than they look, and you were never required to take them in the first place.

## The three standardized tests

The National Highway Traffic Safety Administration recognizes exactly three standardized field sobriety tests. Everything else an officer had you do is freelancing, and we will get to that.

- **Horizontal Gaze Nystagmus (HGN).** The officer moves a pen or light across your field of vision and watches your eyes for involuntary jerking. There are six possible clues, three per eye. Four or more is treated as a sign of intoxication.
- **Walk-and-Turn.** Nine heel-to-toe steps down a line, a prescribed turn, nine steps back. Eight possible clues, including starting too soon, missing heel-to-toe, stepping off the line, or raising your arms. Two clues is a fail.
- **One-Leg Stand.** Stand on one foot, the other about six inches off the ground, and count. Four possible clues: swaying, using your arms, hopping, putting the foot down. Again, two clues is a fail.

Read those thresholds again. On the balance tests, a couple of ordinary human wobbles, counted by an officer at night on the side of a road, is scored as impairment.

## What the accuracy numbers really say

Officers and prosecutors cite validation studies for these tests, most often a 1998 field study reporting roughly 88 percent accuracy for HGN, 79 percent for the Walk-and-Turn, 83 percent for the One-Leg Stand, and about 91 percent for the full battery. Three things about those numbers. First, they measure only how often trained officers correctly guessed whether a driver was above or below the legal limit, not whether any individual was actually impaired. Second, the errors in the research ran overwhelmingly in one direction: false positives, meaning sober drivers scored as intoxicated. Third, the studies were run under controlled conditions, not on a sloped gravel shoulder at midnight with traffic blowing past and overhead lights strobing.

## Why sober people generate clues

- Inner-ear conditions, neurological conditions, natural nystagmus, diabetes, and eye disorders
- Back, knee, hip, and leg injuries, old or new
- Age and weight: the government's own training materials caution that people over 65, or roughly 50 pounds or more overweight, may struggle with the balance tests sober
- Footwear: heels, sandals, flip-flops, work boots
- The surface: sloped, uneven, or graveled pavement
- Weather, wind, and cold
- Passing headlights and the patrol car's own flashing lights, which can induce eye jerking on the HGN
- Fatigue and plain nerves, which afflict nearly everyone standing on a roadside facing arrest

## **The non-standardized tests**

Reciting the alphabet, counting backward, touching finger to nose, tilting your head back with your eyes closed: none of these are validated, none have a scientific scoring system, and there is no objective pass or fail. The measurement is the officer's opinion, start to finish. A failure on these carries little independent weight, and a good lawyer makes sure a jury understands that.

## **You could have said no, and you still can say so in court**

Texas's implied consent law reaches breath and blood specimens only. No statute requires you to perform roadside coordination tests, and declining them carries no automatic license suspension the way a breath or blood refusal does. Officers are not required to tell you the tests are optional, and most do not. If you took the tests, that was almost certainly because you believed you had to. You are in enormous company.

## **How the tests get challenged**

The tests are only considered validated when administered exactly by the book. So the defense checks the book against the video: was the officer trained and certified, were the instructions and demonstrations correct, was HGN run at the right speed and angle, was the surface reasonably level, were you asked about injuries and footwear. Then the written report gets compared with the footage, because reports often describe dramatic failures the camera simply does not show. A jury watching someone walk a fairly straight line in dress shoes on a crowned road sees something very different from six checked boxes on a form.

| Test                      | Clues | Marked as failing at | Common sober causes of clues                                        |
|---------------------------|-------|----------------------|---------------------------------------------------------------------|
| Horizontal Gaze Nystagmus | 6     | 4 clues              | Natural nystagmus, medical conditions, flashing lights, medications |
| Walk-and-Turn             | 8     | 2 clues              | Uneven ground, footwear, injuries, age, weight, nerves              |
| One-Leg Stand             | 4     | 2 clues              | Balance issues, surface, fatigue, footwear, injuries                |

# The Breath Test and the Intoxilyzer 9000

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If you blew into a machine at the station, it was almost certainly an Intoxilyzer 9000, the evidentiary breath instrument used across Texas. The number it printed feels final. It is not. It is the output of a machine built on assumptions, wrapped in procedures, and dependent on records, and every one of those layers can be examined.

## How the machine works

The Intoxilyzer 9000 uses infrared light. Alcohol molecules absorb infrared at known wavelengths, so the instrument shines light through a captured breath sample and calculates concentration from how much light is absorbed. Notice what it does not do: it does not test your blood. It measures alcohol in deep-lung air and relies on a conversion assumption, the 2,100-to-1 ratio, which supposes that 210 liters of breath carries the same alcohol as 100 milliliters of blood. That ratio is a population average. Real people vary above and below it, with body temperature, breathing pattern, and timing all pushing the result around. Because Texas writes the offense in breath units, courts have limited attacks on the ratio itself, but the assumptions inside the machine still go to how much weight a jury should give the number.

## The procedure that must surround the number

A valid Texas breath test is a sequence, not a puff. The instrument runs an air blank, then analyzes a reference sample of known strength to prove it is reading accurately that day: the reference must come within 0.01 of its predicted value. Then you give two separate breath samples, minutes apart, with air blanks between, and the two results must agree within 0.02 of each other. The test must be run by an operator holding a current DPS certificate, and each instrument is overseen by a technical supervisor, a forensic scientist responsible for calibration, inspection, reference solutions, and maintenance records.

Before any of that, the operator must keep you in continuous presence for at least 15 minutes, taking care that nothing enters your mouth. That observation period exists because of mouth alcohol: alcohol lingering in the mouth or throat from a burp, acid reflux, regurgitation, dental work, or a recent drink is far more concentrated than deep-lung air and can spike a reading well above your true level. A documented reflux condition, a burp the officer missed, or an observation period that was really an officer doing paperwork across the room can all become the center of a breath test challenge.

## Admissible is not the same as true

Texas law makes a properly run breath result admissible in court. Admissible means the jury may hear it, nothing more. The maintenance logs, calibration records, reference sample data, the operator's certification, and the technical supervisor's file are all discoverable, and gaps in them are where breath cases are contested. A breath number is the beginning of the scrutiny, not the end of the conversation.

**Remember the second track.** A breath result of 0.08 or more is also what triggers the ALR license suspension, on the 15-day clock from the first chapter. The same number gets fought twice, in two different forums, and the fight in one can help the other.

# The Blood Test, the Warrant, and the Lab

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Blood feels like the gold standard, and prosecutors present it that way. But a blood case has more human steps than a breath case, not fewer: a warrant, a needle, a tube, a refrigerator, a courier, a lab, an analyst, a report. Every step is a place where a case can be won or lost.

## When police can take blood, and when they need a warrant

If you refused testing, the general rule is that no specimen may be taken, with narrow exceptions. The United States Supreme Court has held that alcohol dissipating from the bloodstream does not automatically create an emergency that excuses the warrant requirement, and that a warrantless blood draw cannot be justified as a routine search incident to arrest. The Texas Court of Criminal Appeals has likewise held that our implied consent statutes do not substitute for a warrant. The practical result: after a refusal, officers get a blood search warrant from a judge, often within the hour, especially on so-called no-refusal weekends when a magistrate is on standby. A 2025 law even allows a DWI blood warrant to be executed in a county adjacent to the one that issued it.

Texas law does list situations where officers must obtain a specimen, such as crashes involving death or serious injury and arrests involving a child passenger, but even then a warrant or a recognized exception is generally still required for the draw itself. Whether the warrant affidavit actually established probable cause, and whether the warrant was valid and properly executed, are among the first questions your lawyer will ask.

## The draw and the tube

Texas law restricts who may draw blood: a physician, qualified technician, registered or licensed vocational nurse, or certain certified paramedics, and the draw must happen in a sanitary place. The skin must be cleaned with a non-alcohol swab. The blood goes into a gray-top tube containing two additives: an anticoagulant to keep it from clotting and a preservative to stop microbes from creating or destroying alcohol inside the tube. An expired tube, an under-filled tube, a tube never inverted to mix the additives: each is a real problem a defense expert looks for.

## Storage, fermentation, and the lab

Sealed tubes often wait weeks for analysis. If the preservative is inadequate or the sample sits warm, yeast can ferment blood sugar into alcohol, literally manufacturing alcohol that was never in your body. The lab then measures the sample using headspace gas chromatography, a genuinely powerful technique that is only as good as its calibration, its controls, and its analyst.

Texas law requires the lab to be accredited for the result to be admissible, and it requires the State to be able to authenticate the sample as yours through an unbroken, documented chain of custody: the nurse, the officer, the evidence room, the courier, the analyst. Broken links, mislabeled tubes, and unexplained gaps give the defense room to argue the result is unreliable or inadmissible.

## **Getting behind the number**

Under the Michael Morton Act, your lawyer can demand the full laboratory file, not just the one-page result: the chromatograms, the calibration and maintenance records, the analyst's notes, the chain of custody documents, and the lab's accreditation and proficiency records. Texas law also sets standards for how long toxicological evidence in intoxication cases must be kept before it can be destroyed, rules the Legislature tightened in 2025, which gives the defense one more set of records to check. An independent expert reviewing that file, rather than trusting the report, is how a blood number gets tested instead of accepted.

**If you refused and they took blood anyway, do not assume the case is hopeless or the draw was legal.** Warrant affidavits are drafted fast, at night, from templates. Whether that affidavit holds up is a legal question your lawyer answers by reading it, not one you can answer from the back of a patrol car.

# How DWI Cases Are Fought

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You now know the pieces: the stop, the tests, the machines, the lab, the two parallel cases. This chapter is about how a defense actually gets built from them. No two cases are identical and no outcome can be promised, but nearly every strong DWI defense works the same four layers in order.

## **Layer one: the stop**

Everything the State has flows from the moment an officer decided to detain you. The law requires reasonable suspicion, specific and articulable facts suggesting a violation, to stop you, and probable cause to arrest you. If the stop fails, everything after it can fall with it: the observations, the tests, the number. Stops get made on hunches, on anonymous tips, on traffic violations the video does not actually show. The dashcam footage of the two minutes before the lights came on is often the most important evidence in the entire case.

## **Layer two: suppression**

Texas has its own exclusionary statute, and it is broader than the federal rule: evidence obtained in violation of the constitution *or the laws* of Texas or the United States cannot be used against you. The tool that enforces it is the motion to suppress, argued to the judge before trial. For a warrantless search or seizure, once the defense establishes there was no warrant, the burden shifts to the State to justify what happened. And where the facts are disputed, Texas law entitles you to have the jury itself instructed to disregard evidence it believes was illegally obtained. A won suppression motion can take the breath number, the blood result, or the whole stop out of the case, and cases without their central evidence have a way of getting dismissed or dramatically reduced.

## **Layer three: the ALR hearing as discovery**

Here is where the fast civil case pays into the slow criminal one. By requesting the ALR hearing inside the 15-day window, your lawyer earns the right to subpoena the arresting officer and cross-examine him under oath, early, before memories harden into trial testimony. The process also surfaces the State's paperwork: the officer's sworn report, the statutory warning, the notice of suspension, and it gives your lawyer reason to demand the video immediately. Inconsistencies locked in at the ALR become impeachment material at trial, and facts developed there feed the suppression motion. This is why a lawyer who treats the ALR as a formality is leaving your best early weapon on the table.

## **Layer four: the science**

Whichever test the State relies on, the defense goes after the foundation, as the last three chapters described: the observation period and the maintenance records in a breath case, the warrant, the tube, and the lab file in a blood case, the timeline and the extrapolation assumptions in both. Where the State's theory is loss of faculties rather than a number, the fight moves to the video, the testing conditions, and the innocent explanations the officer never asked about.

## **Then the decision: resolve or try**

At some point the case reaches a fork: a negotiated resolution or a trial. The honest framing is this. A plea is a permanent surrender of rights: the jury, the State's burden of proof, cross-examination, and usually any appeal. In exchange it buys certainty, and sometimes a genuinely good outcome, a reduced charge, deferred adjudication, terms you can live with. A trial keeps every right and every risk alive at once. It is the stronger path when the State's case has a genuine weakness: a bad stop, a shaky number, a report the video contradicts, or when any conviction would cost you something no plea can protect, like a professional license or immigration status.

Weigh three things with your lawyer: the strength of the evidence after the suppression fight, the real gap between the offer and your realistic exposure at trial, and the collateral consequences that matter in your life. Be aware that defendants who lose at trial often receive heavier sentences than the offer they declined. Lawyers call it the trial tax. It is not a rule and not a guarantee in either direction, but it is a real pattern, and you deserve to hear about it before you decide, not after.

One more honest note: how these cases resolve varies from county to county. Prosecutor policies, judicial attitudes, docket speed, and jury pools differ, and the same facts can produce different offers in different courthouses. That is why the county section later in this book exists, and why local experience in Hays County courtrooms matters when you choose a lawyer.

# Probation, Deferred Adjudication, and the Interlock

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Most resolved DWI cases end in some form of community supervision, what everyone calls probation. But Texas has two very different kinds, and choosing between them, when you have the choice, is one of the most consequential decisions in the case.

## **Straight probation: convicted, but supervised**

With straight probation, you are convicted. The judge assesses a jail sentence, then suspends it and lets you serve a supervision term in the community instead: reporting to an officer, staying out of trouble, working, paying fees that typically run \$25 to \$60 a month, completing DWI education, and whatever special conditions the court adds. Finish successfully and you stay out of jail, but the conviction remains on your record permanently unless you later qualify for the narrow sealing paths in the next chapter. Violate, and the judge can revoke you, but only up to the sentence that was already assessed.

## **Deferred adjudication: the plea without the conviction**

Deferred adjudication works differently. You plead guilty or no contest, but the judge does not enter a finding of guilt. The case is deferred while you complete supervision, and if you finish, the charge is dismissed. No conviction. That is the headline advantage, and for a first DWI it is a relatively new one: before September 1, 2019, no DWI could receive deferred adjudication at all. House Bill 3582 changed that for qualifying first offenses.

The limits matter as much as the opportunity:

- **The 0.15 wall.** If the analysis showed an alcohol concentration of 0.15 or more, deferred adjudication is off the table. This is one of the reasons the accuracy of the reported number is worth fighting about even when a plea is likely.
- **Commercial licenses.** If you held a commercial driver's license or learner's permit at the time, you are ineligible.
- **The interlock.** A judge granting DWI deferred must generally order an ignition interlock device, and can skip it only with a specific finding that it is unnecessary for community safety.
- **Judicial discretion.** Deferred is never automatic. The judge can simply say no.

**The catch that never expires.** A DWI resolved by deferred adjudication still counts as a prior conviction if you are ever charged with DWI again. The Penal Code says so expressly, and there is no time limit and no washout: finish your deferred this year, pick up a new DWI decades from now, and the old case still makes the new one an enhanced Class A misdemeanor with a 30-day minimum. Deferred is a second chance, not a clean slate.

## **The risk trade hiding inside deferred**

Deferred looks lighter at the plea, and usually is. But if you violate it, the State moves to adjudicate, and once guilt is entered you can be sentenced anywhere in the full punishment range for the original offense, not capped at some previously assessed number the way straight probation is. A deferred that falls apart can land harder than the probation you turned down. Before accepting either, be brutally realistic about the conditions: every class, every fee, every test is another way to fail, and DWI cases are excluded from the usual early-termination process, so the term you sign is the term you serve.

## **Living with the interlock**

The ignition interlock is a breath device wired to your ignition; the car will not start until you provide a clean sample, and it asks for rolling retests as you drive. You pay for installation and monthly monitoring. Nobody enjoys it, but reframe it: the interlock is frequently the key that unlocks everything else. It can remove the waiting periods and driving restrictions on an occupational license, it is generally required for DWI deferred adjudication anyway, courts commonly require one as a bond condition on repeat or high-test allegations, and, as the next chapter shows, completing at least six months on an interlock can shorten the wait to seal a conviction from five years to two. Fighting the device is usually the wrong hill. Using it strategically is often the fastest road back to a normal life.

# After the Case: Clearing Your Record

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The case ends. The record does not, unless you make it. Arrest records, court records, and criminal history entries stay publicly visible, to employers, landlords, and background check companies, until something is legally done about them. Texas offers two tools, and which one you can use depends entirely on how your case ended.

## Expunction: destruction of the record

An expunction, under Chapter 55A of the Code of Criminal Procedure, is the strongest remedy Texas has: the records of the arrest are destroyed, and with limited exceptions you may lawfully deny the arrest ever happened. It is available when the case ended without a conviction or supervision: you were acquitted at trial, the charge was dismissed without a plea (sometimes after a waiting period, depending on why it was dismissed), no charge was ever filed and the waiting period ran, or the statute of limitations expired. This is the remedy a fought-and-won case earns, and it is a major reason a dismissal is worth more than almost any plea, even a favorable one.

## Nondisclosure: sealing the record

If your case ended in deferred adjudication or a conviction, expunction is generally unavailable. The remedy is an order of nondisclosure, which seals the record from public view. Private employers and landlords no longer see it, and in most situations you may deny it, but law enforcement, prosecutors, licensing boards, and certain government entities can still access it. Sealing is real relief, but it is not erasure.

Texas built three specific nondisclosure paths for first-offense DWI, each with its own waiting period:

| How your case ended                                  | Statute                  | Waiting period                                                                       |
|------------------------------------------------------|--------------------------|--------------------------------------------------------------------------------------|
| Deferred adjudication completed, case dismissed      | Government Code 411.0726 | 2 years after discharge and dismissal                                                |
| Conviction with community supervision completed      | Government Code 411.0731 | 2 years if you spent at least 6 months restricted to an interlock; otherwise 5 years |
| Conviction with the sentence served (no supervision) | Government Code 411.0736 | 3 years if you spent at least 6 months on an interlock; otherwise 5 years            |

All three paths share the same core conditions: this must be your only offense, meaning no prior convictions or deferred adjudications other than fine-only traffic tickets, you must have fully

completed your supervision or sentence including fines and costs, and you must stay clean during the waiting period. The court must also find that sealing is in the best interest of justice.

## What can never be sealed

- **A 0.15 conviction.** The DWI nondisclosure statutes exclude convictions under the 0.15 enhancement. Plead to the Class A high-test charge and that conviction is permanent. This single fact should be on the table in every plea negotiation involving a 0.15 allegation.
- **Cases involving a collision with another person.** If the State shows your offense resulted in a motor vehicle collision involving another person, including your own passenger, the court cannot grant nondisclosure on any of the three paths.
- **A second DWI.** The only-offense requirement means a person with a prior conviction or deferred cannot seal, and a second DWI conviction itself is not eligible.
- **Felony DWI outcomes.** Third-offense DWI, child passenger cases, the school-zone felony, intoxication assault, and intoxication manslaughter convictions are outside these misdemeanor sealing paths.

## Why this chapter should shape the whole case

Read the table backward and a strategy appears. The disposition you accept today decides what your record can look like in two, three, or five years. A dismissal preserves expunction. A deferred preserves a two-year sealing path. A conviction with an interlock condition preserves a faster path than one without. A 0.15 plea, or a plea in a collision case, closes the door forever. A lawyer thinking about your record from day one negotiates differently than one thinking only about jail time. Make sure yours is thinking about both.

One last horizon worth knowing about: other countries can treat a DWI conviction more harshly than Texas does. Canada, notably, can treat an impaired driving conviction as serious criminality and refuse entry, even for a single misdemeanor, and fixing that later requires Canadian legal process. It is one more collateral consequence that makes keeping a conviction off your record worth real effort now.

Everything you have read so far is Texas law, and it applies statewide. But a DWI case is not defended in the abstract. It is defended in a particular courthouse, in front of particular judges, against a particular prosecutor's office, under local practices that never appear in any statute. The next section of this book is about Hays County specifically: the courts, the process, and what to expect where your case will actually be decided.

# Your Case in Hays County

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If you were arrested in San Marcos, Kyle, Buda, Wimberley, Dripping Springs, or anywhere else in Hays County, your case will run through one campus: the **Hays County Government Center, 712 S. Stagecoach Trail, San Marcos, TX 78666**. This is not a traditional courthouse on a downtown square. It is a modern government complex south of the San Marcos city center that houses the criminal County Courts at Law, the District Courts, the County Clerk, the District Clerk, and the prosecutor's office, all under one roof. Nearly everything that happens in your DWI case after the jail happens here.

## Which court hears a DWI

The level of the charge decides the court, and nothing else does.

| Charge                                                                                  | Level               | Court                                                                                |
|-----------------------------------------------------------------------------------------|---------------------|--------------------------------------------------------------------------------------|
| DWI first offense                                                                       | Class B misdemeanor | County Court at Law No. 1, No. 2, or No. 3                                           |
| DWI second offense                                                                      | Class A misdemeanor | County Court at Law No. 1, No. 2, or No. 3                                           |
| DWI third or subsequent, DWI with child passenger, intoxication assault or manslaughter | Felony              | A District Court sitting in Hays County (22nd, 207th, 274th, 428th, 453rd, or 483rd) |

Hays County has **three criminal County Courts at Law: No. 1, No. 2, and No. 3**, located in the Government Center at 712 S. Stagecoach Trail, Ste. 2292. They share Class A and Class B misdemeanor jurisdiction, and the county does **not** funnel DWI cases to any single court number. A Hays misdemeanor DWI can land in No. 1, No. 2, or No. 3. If someone tells you a particular court is "the DWI court" for misdemeanors, that is not how Hays assigns cases. The court that actually holds your case is printed on your bond paperwork and court notice and is tied to your cause number, so read that paperwork rather than guessing.

Felony DWI matters go to the District Courts. Six judicial district courts serve Hays County: the **22nd, 207th, 274th, 428th, 453rd, and 483rd**. Several of these are multi-county benches that also sit in Caldwell and/or Comal County, and the felony docket is spread across them. Again, the cause number, not the charge, tells you which bench has your case. Judicial assignments change with elections and appointments, and the Legislature redraws district-court lines from

time to time, so confirm the current judge and county lineup for your court rather than relying on an older guide.

### **Who prosecutes: one office, start to finish**

Here is where Hays County genuinely differs from several of its neighbors. Many Texas counties, Travis among them, split criminal prosecution between a County Attorney, who handles misdemeanors, and a District Attorney, who handles felonies. **Hays County does not.** Hays has a single, unified **Criminal District Attorney** whose office represents the State in all felony, misdemeanor, and juvenile prosecutions in the county. There is no separate county attorney prosecuting criminal cases here. The same office that prosecutes a first-offense misdemeanor DWI in a Court at Law prosecutes a felony DWI in a District Court.

That structure matters practically. Intake decisions, diversion screening, plea posture, and trial policy all run through one office rather than two, so the tone set at the top of that office reaches every DWI file in the county. The Criminal District Attorney's Office is in the Government Center at 712 S. Stagecoach Trail; the main line is **(512) 393-7600**.

Records are split by charge level: misdemeanor and DWI records are kept by the Hays County Clerk, **(512) 393-7330**, and felony records by the District Clerk, **(512) 393-7660**. Hays County also runs its dockets and filings through a Tyler online public-access portal, so your case status and settings can be checked online once the case is filed.

**Check your paperwork, not the internet.** Because three County Courts at Law share the misdemeanor DWI docket and six district courts share the felony docket, the only reliable way to know your court is the cause number and court name on your bond and notice paperwork. Showing up at the right building but the wrong courtroom is a common and avoidable mistake at the Government Center.

# Bond, Release, and Conditions in Hays County

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After a Hays County DWI arrest you are booked into the **Hays County Jail at 1307 Uhland Road in San Marcos**, which the Sheriff's Office operates. From there the case follows the sequence every Texas county uses, but with local habits worth knowing.

## Magistration

A magistrate advises you of the charge and your rights, sets bail, and imposes any bond conditions. Texas law requires this without unnecessary delay and no later than 48 hours after arrest, and in practice Hays magistration generally happens shortly after booking, often within the first day. Hays County does not publish a fixed dollar bail schedule for DWI; magistrates set bail case by case, weighing the charge, criminal history, and ties to the community.

## Personal bonds and how release actually works

Hays County runs personal bond requests through its **Judicial Services** department, which interviews arrestees, investigates background and ties, and makes release recommendations to the magistrate. A personal bond is a written promise to appear with no cash deposit required, and the magistrate approves or denies each request individually. In practice, availability depends heavily on the charge and your history: personal bonds are granted more readily on lower-level cases, and local practitioners report that many DWI defendants still post a cash or surety bond, particularly on repeat or aggravated charges. Do not count on a personal bond in a DWI case; treat it as something your lawyer asks for and argues for, not something that happens automatically. The Hays County Bail Bond Board licenses and oversees local bonding companies if a surety bond is the route.

## Typical DWI bond conditions

Expect conditions, not just a dollar figure. In Hays DWI cases the common ones are:

- **No alcohol**, and often no entry into bars, while the case is pending.
- **Ignition interlock device** on any vehicle you drive. Texas law requires magistrates to order an interlock as a bond condition on repeat and aggravated DWI charges in all but exceptional cases, and Hays magistrates can and do order it on first offenses when the facts support it, especially with a high alcohol concentration or an accident.
- **Portable or continuous alcohol monitoring** in some cases, as an alternative or supplement to the interlock.

- **Pretrial supervision** through Judicial Services, with check-ins and fees, when the magistrate orders it.

**Warning: a bond condition is a court order.** A missed interlock installation, a failed or skipped test, or a positive monitor reading can be reported to the court and can lead to bond revocation and re-arrest. If a condition is genuinely unworkable, the fix is a motion to modify it, filed by your lawyer, never quiet noncompliance.

## Programs That Can Change the Outcome

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Hays County has built out its diversion and specialty-court menu quickly in recent years, and for the right case these tracks can matter more than anything argued at a docket call. Eligibility for each is specific, none is automatic, and no program guarantees any outcome, but you should know the menu before your first setting because screening happens early.

| Program                                      | Run by                                 | Typical length                    | Completion result                                                                             |
|----------------------------------------------|----------------------------------------|-----------------------------------|-----------------------------------------------------------------------------------------------|
| General pre-trial diversion                  | Criminal District Attorney             | 6 or 12 month contract            | Designed to avoid conviction; functionally a dismissal, with expunction eligibility afterward |
| DWI & Drug Court                             | County and District Courts, DA screens | New program; terms still settling | Alternative to traditional sentencing; completion outcome not yet publicly specified          |
| Veterans Treatment Court                     | County specialty court                 | 12 to 24 months, phased           | Designed to result in dismissal and erasure of case-related records                           |
| Mental Health Court / Veteran Jail Diversion | Regional, through Hill Country MHDD    | Varies                            | Varies; diagnosis and competency driven                                                       |

### The DA's general pre-trial diversion program

Launched in January 2024, this is a voluntary, three-tiered contract aimed at low-level, often first-time, nonviolent offenders. Contracts run 6 or 12 months, toll the statute of limitations while you are in the program, and require victim approval where there is a victim. For participants who are accepted and complete their contract, the program is designed to let the defendant avoid a conviction and a criminal record, with expunction eligibility afterward. The important caveat for this book: the county's public materials do **not** clearly state whether a standard first-offense DWI is categorically eligible. Treat DWI eligibility as a case-by-case question that your lawyer raises with the DA's intake division early, not as a promise.

### The DWI & Drug Court

In April 2025 the Hays County Commissioners Court approved a combined **DWI & Drug Court Program**, a specialty court operating at both the county-court and district-court level, with a start initially targeted for December 1, 2025. It offers treatment and rehabilitation as an alternative to traditional sentencing for nonviolent offenders with substance-use disorders, and the DA's office screens cases and recommends candidates. Because the program is new, its

detailed eligibility criteria and what completion earns you, whether that is a dismissal, a reduced sentence, or something else, are not yet fully spelled out in public materials. If your case involves a genuine substance-use problem, have your lawyer ask the program coordinator directly; do not assume either that you qualify or that you do not.

### **Veterans Treatment Court**

Hays operates a phased, 12 to 24 month Veterans Treatment Court for honorably discharged veterans and active-duty service members whose offense connects to a service-related injury, primarily at the misdemeanor level. For those who qualify and complete the program, it is designed to result in dismissal and erasure of the participant's case-related criminal records. For a veteran facing a Hays DWI, this track deserves a serious look before any plea discussion.

### **Mental Health Court and a note on deferred adjudication**

A regional Mental Health Court sits in Hays through Hill Country MHDD, with a companion Veteran Jail Diversion track covering Hays and Comal. Eligibility is diagnosis and competency driven, and outcomes vary case to case. Finally, remember the point covered in the statewide chapters: a standard DWI is generally not eligible for deferred adjudication in Texas, apart from the narrow first-offense option the statute allows. The practical Hays translation is that a dismissal on a DWI here usually runs through pre-trial diversion or a specialty court, or through the evidence itself, not through deferred adjudication.

# The Realistic Timeline in Hays County

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No lawyer can promise how long your case will take, but the publicly known rhythm in Hays looks like this.

- **Arrest to magistration:** booking at the Hays County Jail, then magistration generally within 24 to 48 hours, where bail and conditions are set.
- **Day 1 to day 15:** the driver's-license clock. As the statewide chapters explain, you have 15 days from the arrest to request an ALR hearing, and that deadline does not wait for the criminal case.
- **Filing and first setting:** for a misdemeanor, the Criminal District Attorney files the charge and the assigned Court at Law issues a first setting, commonly within a few weeks to a couple of months of arrest. The first setting is largely administrative: appearance, scheduling, and confirming counsel. A felony must first go to a grand jury for indictment, which typically adds months before the District Court docket even begins.
- **Discovery and resets:** the case then moves through announcement and plea dockets in a reset rhythm while discovery arrives. In a blood-draw DWI, the lab result frequently becomes the pacing item, and waits of several months for DPS lab work are common across Texas. Little meaningful negotiation happens before the State has its lab result.
- **Disposition:** a contested misdemeanor DWI in Hays commonly runs several months to a year or more from arrest to disposition, and felony cases longer. Cases resolve by dismissal, diversion, plea, or trial, and which of those happens depends entirely on the facts and the evidence.

## ALR venue for Hays County arrests

The license case runs on a separate civil track before the **State Office of Administrative Hearings (SOAH)**, with DPS as the opposing party, not before the Hays criminal courts. Hays County is geographically assigned to SOAH's Austin-area operation, and under current SOAH practice ALR hearings are set by default as **videoconference hearings**, with an in-person hearing at the assigned SOAH office available on request for good cause. Take the exact venue and format for your case from the DPS notice and the SOAH hearing notice rather than from any general guide, because formats have shifted in recent years.

**Tip: use the quiet months.** The slow middle of a Hays DWI case is not dead time. It is when your lawyer works the video, the stop, and the test, and when diversion or specialty-court screening should already be in motion. If you wait until the case "gets serious" to engage, the useful windows may already be closed.

# Local Practical Notes for Hays County

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These are the things a local defendant knows and an out-of-town playbook misses.

- **One prosecutor's office means one posture.** Because the unified Criminal District Attorney handles a DWI from misdemeanor through felony, there is no handoff between offices if a case is enhanced or a companion felony is added. Your lawyer negotiates with one institution the whole way, and its diversion policies, set in a single place, reach every DWI file in the county. Lawyers who work the region have to switch postures between Hays and split-office neighbors like Travis; the office structure here rewards counsel who actually knows it.
- **The felony benches are shared, multi-county courts.** Several of the six district courts serving Hays also sit in Caldwell and/or Comal County. A judge's obligations in another county can shape when your Hays setting happens and how firmly a trial date holds. That is normal here, not a sign your case is being neglected.
- **The diversion menu is new and still forming.** The DA's general diversion program dates to January 2024 and the DWI & Drug Court to 2025. New programs mean criteria that are still settling and coordinators who are still building caseloads. Early, well-prepared applications tend to be taken seriously; assumptions in either direction are a mistake.
- **Plan for the Government Center, not a courthouse square.** The campus at 712 S. Stagecoach Trail has on-site surface parking, but docket mornings are busy and everyone funnels through security screening. Arrive early, bring a government-issued photo ID and your paperwork, silence your phone, and dress as if for a job interview. The courts enforce a written dress code, and hats are not permitted in the courtroom.
- **The county is growing, and the dockets show it.** Hays sits on the I-35 corridor between Austin and San Antonio and has been among the fastest-growing counties in the country, with a large university population in San Marcos. Busy, growing dockets reward preparation and punctuality: know your courtroom, be there before docket call, and let your lawyer handle the talking.
- **Track your own case.** Hays County's online public-access portal shows filings and settings once your case is in the system. Checking it does not replace your lawyer, but it keeps you from being surprised by a reset.

No part of this chapter is a promise about your case. Every outcome in Hays County, from dismissal to diversion to trial, depends on the specific facts, the evidence, and decisions no book can make for you. What this chapter can do is make sure the county itself never surprises you.

**Nearest office:** Lance Kennedy Law, Austin office, 111 Congress Avenue, Suite 500, Austin, TX 78701, phone **(737) 324-7540**. San Marcos is a short drive down I-35 from our Austin office, and clients in southern Hays County may also find our San Antonio office convenient; the same number reaches both.

# Choosing Your Lawyer

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You do not have to hire us. You do have to choose well, because in a DWI case the quality of the defense shapes everything from whether the ALR hearing gets requested in time to what your record looks like five years from now. Here are the questions worth asking any lawyer you interview, including this firm.

## Questions to ask any DWI lawyer

- Who will actually work my case and appear in court: you, or someone I have not met?
- Will you request my ALR hearing, appear at it, and cross-examine the officer? Is that included in the fee?
- How much of your practice is DWI defense, and how recently have you taken one to trial?
- What training do you have in field sobriety testing, breath testing, and blood analysis?
- What is your fee, exactly what does it cover, and what costs extra? What happens to the fee if my case goes to trial?
- How many times will I personally have to appear in court, and can you appear for me when the court allows it?
- If I become eligible to expunge or seal my record afterward, is that filing included or a separate charge?
- What is your honest read of my case after you have seen the video and the records, not before?

Notice what is not on that list: promises. A lawyer who guarantees you a result before seeing the evidence is telling you something important about their honesty, and you should believe it.

## How Lance Kennedy Law handles DWI cases

Stated factually, four commitments define how this firm takes DWI cases:

- **One flat fee, through trial.** The fee we quote covers the case through trial. There is no separate trial surcharge, which means our advice about whether to plead or fight is never shaped by what the next phase would bill. When trial is your best option, the fee does not stand in the way of taking it.
- **Minimized court appearances.** We appear on your behalf wherever the court's rules allow, so routine settings do not cost you shifts, clients, or explanations at work. Your time in a courtroom should be reserved for the moments that actually require you.

- **Built toward dismissal from day one.** Every case is prepared as if it will be tried: the ALR hearing requested and used, the video pulled and watched, the maintenance and lab records demanded, the suppression issues developed. We pursue dismissal or reduction whenever the facts and the law support it, because a dismissed case is the one outcome that leaves your record fully recoverable.
- **Record clearing included.** When your case ends in a result that qualifies for expunction or nondisclosure, we prepare and file that petition for eligible clients as part of the representation, not as an afterthought you have to come back and buy.

**The honest disclaimer, in plain sight.** No lawyer can promise you a dismissal, an acquittal, or any particular result, and you should walk away from anyone who does. Every case turns on its own facts, evidence, judge, and county. What a lawyer can promise is process: the deadlines met, the evidence examined, the issues fought, and straight answers throughout. Those are the promises this book is willing to make.

# Your First 72 Hours: The Checklist

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This chapter condenses the whole book into the actions that matter right now. Tear it out, screenshot it, tape it to the refrigerator.

## Today

- Find the license suspension notice (usually form DIC-25) and count 15 calendar days from the date you were served it. If the notice came by mail, count from the fifth day after the mailing date. If blood was drawn and you have no notice yet, watch the mail: the clock will start when DPS sends it. Write the deadline somewhere you cannot avoid seeing it.
- Write down everything you remember about the stop, the tests, the warnings, and the timeline of your evening: what you drank, when, and with what food. Include the small physical details: shoes, road surface, weather, lights.
- Stop talking about the case. No social media, no explanations to friends, no calls to the police. Talk to a lawyer, and after that, only to your lawyer.

## This week

- Request the ALR hearing before day 15, or hire a lawyer who will do it for you. This one step protects your license and creates your first chance to question the officer under oath.
- Get your car out of impound before storage fees compound the damage.
- Read every line of your bond paperwork and comply with every condition, including any interlock or no-alcohol requirement. A bond violation is a new, self-inflicted case.
- Gather and preserve evidence: receipts, card statements, texts, witness names, and documentation of any injury, illness, or medication that could have affected the tests.
- Ask your doctor for records if you have acid reflux, GERD, diabetes, inner-ear problems, or leg, back, or eye conditions. These can matter to both the roadside tests and the breath test.

## Before your first court date

- Hire the lawyer you actually want, not the first one who called or mailed you. Use the questions in the previous chapter.
- Make sure someone has requested the video preservation: dashcam, body camera, station footage.
- Do not drive if your license is actually suspended. Driving while license invalid stacks a new charge onto the case and poisons every negotiation. If suspension is coming, start the

occupational license process early.

- Show up to every court date, on time, dressed like it matters. Judges remember.

## Free Resources

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This book gives you the map, but some tools work better as tools. All of the following are free.

- **The ALR Deadline Calculator.** Enter the date you were served notice and it shows exactly when your 15-day hearing request is due and when a suspension would take effect if you do nothing. Find it in the resource library below.
- **The Texas DWI charge ladder and penalty charts.** Printable versions of the offense-level and punishment tables from this book, current through the 89th Legislature, including the 2025 school-zone change.
- **The Lance Kennedy Law resource library.** Plain-English guides to the ALR hearing, occupational licenses, SR-22 insurance, breath and blood testing, deferred adjudication, expunction, and nondisclosure, kept current as the law changes:  
[lancekennedy.com/resources/](http://lancekennedy.com/resources/)
- **This book online.** [thedwibook.com](http://thedwibook.com)

If your 15 days are still running, or you simply want an honest read on your case, call. The case review is free, and the earlier we see your stop, your test, and your deadline, the more options you have.

**Lance Kennedy Law | (737) 324-7540 | [lancekennedy.com](http://lancekennedy.com) | [thedwibook.com](http://thedwibook.com)**

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