

**20 QUESTIONS:  
ARRESTED FOR DWI IN  
TEXAS**



**DWI**

**YOU-  
CAN'T AFFORD  
IT**

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## DISCLAIMER:

This publication is intended for informational purposes only. Nothing in this book is intended to constitute legal advice, and no attorney-client relationship is created by downloading or reading this book. The outcome of each case depends on the facts and circumstances of each case. If you have been arrested for DWI in Texas, or any other offense in any state, seek competent legal counsel who can assist you with your case and answer your specific legal questions.

The information provided in this publication is based on the law in existence at the time of publication. Consult a qualified attorney for legal advice.

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## INTRODUCTION

In fifteen years as a criminal defense attorney, I have handled countless DWI cases. In addition to the clients I have represented, I have talked to hundreds more who were arrested for driving while intoxicated. The questions I get asked during the initial interview with prospective clients, whether in person or on the telephone, are almost always the same. There is also very little practical difference from one series of answers to the next. That is why I chose to write this book.

As you are well aware, the law changes from time to time, so over time the specific answers may change. Therefore, it is important that you have an experienced, knowledgeable criminal defense attorney working with you on your DWI case. I get telephone calls all the time about landlord-tenant disputes, oil and gas issues, or insurance claims, and I refer those cases to attorneys I believe are knowledgeable in those areas. If I, or a loved one, sustained a severe personal injury, I would not call a family law specialist—as great as that lawyer may be in divorce cases.

That is no less true for criminal cases, especially cases like DWIs that can be so complicated and where the usual rules do not apply. I tell every one of my DWI clients, “With every DWI, there are potentially three cases. There is the actual DWI case. There is the administrative license revocation case (in a different court with a different judge). And there is the occupational license case

(frequently in a different court with a different judge).” To add to that, each one of those cases has its own set of rules of procedure, different lawyers representing the different State entities or agencies involved, and very specific, unforgiving deadlines. That’s not true with any other type of case.

One scenario I encounter far too often is a prospective client who comes to see me after going to court unrepresented and pleading “guilty” to a DWI. The conversation usually involves the client explaining all the dreadful consequence he or she is now facing, including fines, mandatory classes, license suspension, an interlock installation on their vehicle, surcharges after the license is reinstated, and worse if a commercial driver license (CDL) is involved. I also hear all the excuses for why he or she did not hire an attorney before going to court alone. The excuses are also always the same: I didn’t think I could afford a lawyer; I’ve never been in trouble before, and I didn’t think I needed a lawyer; it was my first DWI, so I didn’t think it was that big of a deal; I thought I would just get probation. The desperate client then wants to know what can be done about the situation, and the answer, at that point, is usually, “nothing.”

The cost of a DWI conviction is far greater than the attorney’s fee, and the consequences of a DWI conviction are far reaching. Various studies and estimates place the national average cost estimate for a DUI/DWI conviction between \$6,000-24,000. The more realistic estimates are that a first offense, non-injury, low blood alcohol level DUI/DWI costs between \$9,000-12,000. One Texas Department of

Transportation ad warns of a DWI in Texas costing over \$17,000. All of the estimates attempt to calculate the out-of-pocket costs of a DUI/DWI conviction, which include court costs, probation fees, fines, driver license suspension and reinstatement fees, annual surcharges to keep a license, vehicle towing and impounding, bail, and other costs associated with a DUI/DWI conviction. What most of the estimates do not calculate is lost income from missing work to attend court, decreased earning capacity because of driver license suspension or loss, increase in auto insurance premiums, and it gets worse if you have a CDL, for which there is no occupational license.

I'm not going to sugar coat it. If you get arrested for DWI in Texas, hiring a lawyer to fight the charge is going to be costly. However, the consequences of not hiring an experienced criminal defense lawyer to help you are far more expensive and will linger for years.

I hope this book helps answer a few of your questions if you or someone you love is ever arrested for DWI in Texas.

# 1. What will happen if I am convicted of driving while intoxicated (DWI) in Texas?

In short, it depends. It depends on several factors, such as whether you have had prior DWIs, whether there was an open container, your age, and other factors. Regardless of the circumstances, the consequences of a DWI conviction go well beyond the punishment assessed by the court..

Currently, for a first DWI, [Texas Penal Code § 49.04](#) provides that operating a motor vehicle while intoxicated is a Class B misdemeanor punishable by up to 180 days in jail and a fine of up to \$2,000. There is also a minimum term in jail of 72 hours. If it is also shown that the person operating the motor vehicle had an open container, the minimum jail term is six days. If it shown that the blood alcohol concentration was 0.15 or more, the offense is a Class A misdemeanor punishable by up to one year in jail and a fine of up to \$4,000. See [Texas Penal Code § 49.09](#) for these and other enhancement provisions.

It is worth mentioning that the same offense classification and range of punishment applies to boating while intoxicated and flying while intoxicated.

If a defendant is convicted of DWI and placed on probation, there are still mandatory jail terms depending on the classification of the offense. Not less than 72 hours for a Class B misdemeanor. The

minimum jail terms for DWI offenses are typically not reduced for “good time” or by early release.

Other probable consequences of a DWI include:

- Up to one year on probation for a Class B misdemeanor
- Up to two years on probation for a Class A misdemeanor
- Driver license suspension or revocation
- DWI education classes (“DWI school”)
- Driver license reinstatement fees
- Annual driver license surcharges
- Possible installation of interlock device (“blow & go”) on vehicle and notice to employer of the requirement
- Probation fees
- Community service hours
- Victim Impact Panel
- Evaluation and treatment for alcohol/drug abuse
- Required compliance with treatment requirements
- Attendance at AA/NA meetings
- All other rules of probation

And this list is not exhaustive. It does not include the probability that your auto insurance carrier will drop your coverage or dramatically increase your insurance premiums, the suspension of a commercial driver license (CDL) with no possibility of an occupational license, and other possible consequences. The legal ramifications of a DWI

conviction are harsh, but the collateral damage is just as bad or worse.

## 2. What does “intoxicated” mean in Texas?

[Texas Penal Code § 49.01](#) defines “intoxicated” as not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body, or having an alcohol concentration of 0.08 or more. Alcohol concentration means grams (.08) per 210 liters of breath, 100 milliliters of blood, or 67 milliliters of urine.

## 3. What if this is not my first DWI?

If you have one previous conviction for DWI, the offense is a Class A misdemeanor with a minimum jail term of 30 days up to one year and a fine of up to \$4,000. If the offense charged is your third or more DWI, the offense is a third degree felony punishable by two to ten years in the Texas Department of Criminal Justice—Institutional Division and a fine of up to \$10,000. If the DWI is a felony, the charge may be enhanced by other prior felonies.

If probation is granted, the minimum jail term is not less than five days for a Class A, and not less than ten days for a felony. The minimum jail terms are mandatory.

Other probable consequences of a second or more DWI:

- All of the probable consequences listed in 1. above
- Up to 2 years on probation for a Class A misdemeanor
- A probation term of two to ten years for a felony.
- Installation of a breath analysis machine on vehicle
- DWI education classes for repeat offenders
- Lengthy waiting periods before eligible for occupational license, depending on various factors
- Subsequent DWI is a felony

#### 4. Can the police officer take my license?

Yes. If you are arrested for a DWI, and you have a Texas driver license, the arresting officer will probably confiscate your license. If so, you should be given a yellow sheet of paper called a [Notice of Suspension, Temporary Driving Permit \(DIC-25\)](#), explaining that your license will be suspended effective 40 days from the date of the notice. The DIC-25 is your temporary driving permit until the expiration of 40 days, or, if you request a hearing to contest the license suspension, until an Administrative Law Judge decides whether your license should be suspended.

#### 5. Will my driver license be suspended?

Not necessarily. You have fifteen days from the date you receive notice, or are presumed to have received notice, of the suspension to request a hearing to contest the suspension. The fifteen-day deadline is absolute. It is one of those unforgiving deadlines mentioned earlier. If you do not request the hearing to contest the suspension

within the fifteen-day timeframe, you waive, or give up, any right to challenge the suspension, and you will not get your license back until after the suspension period ends and you have paid the reinstatement fee.

If you request a hearing, either by phone, fax, or mail, your case will be set for an administrative license revocation (ALR) hearing in front of an administrative law judge (ALJ). At the hearing, the attorney for the Texas Department of Public Safety (DPS) will present evidence in favor of suspension, which is usually the offense report and required notices. The defense will then present evidence or argue against suspension. Most of the time, the only issues are whether there is probable cause to believe the defendant was operating the motor vehicle while intoxicated, and whether there was reasonable suspicion for the stop or probable cause for the arrest. The burden of proof to suspend a license is much lighter than what would be required in a criminal trial, which is beyond a reasonable doubt.

If a breath or blood test was refused, the issues are whether there was reasonable suspicion for the stop or probable cause for the arrest, and whether a breath or blood test was offered and refused after being notified of the consequences of a refusal.

If the ALJ decides in favor of the defendant, there is no suspension, and the driver license will be returned. If the ALJ decides in favor of DPS, the applicable suspension period will be imposed. The decisions

of the ALJ are appealable, but specific rules and timeframes apply to appealing administrative decisions.

## 6. Can I get my driver license back?

Yes. The tricky part is determining when and how. If you dispute the license suspension and win, DPS will return your license promptly. If your license was suspended either by a judge or because you did not contest the suspension within the time frame, you will get your license back after the expiration of the suspension period if you have paid the reinstatement fee.

If you want your license returned as soon as possible, pay your reinstatement fee as early as possible. It could take up to 30 days for your reinstatement fee to be processed, and you will not get your license back until after the fee is processed. You should also know that DPS will mail everything to the address on your driver license, and, if DPS mails anything to the address on your license, you are presumed to have received it. If you move, you need to have your mail forwarded.

## 7. How long will my license be suspended?

It depends. The applicable suspension periods are listed below, but if you are convicted of DWI, you could end up with two suspensions (one from the original stop, and a second from the conviction). If the DWI is your first, under certain circumstances, the court will give

you credit for the time your license was suspended as a result of the initial stop.

Generally, the suspension periods are:

**Suspensions Resulting from Stop:**

Adults who provided breath or blood sample:

- 90 days
- 1 year if prior suspension within 10 years

Adults who refused to provide a breath or blood sample:

- 180 days
- 2 years if prior suspension within 10 years

Minors (under 21) who provided breath or blood sample

- 60 days
- 120 days if previously convicted of DWI offense
- 180 days if previously convicted of DWI offense twice

Minors who refused to provide breath or blood sample

- 180 days
- 2 years if prior suspension within 10 years

**Suspensions Resulting from Conviction:**

- 90 days to 1 year
- 180 days to 2 years if enhanced because of prior DWI
- 2 years if prior DWI within 5 years

**8. How can my license be suspended for refusal when I asked for a blood test?**

Unfortunately, the sample requested is not optional for the driver. A “refusal” is refusing the sample requested by the officer. If a breath

sample is requested by the officer, and the defendant offers a blood sample, it is considered a refusal, and your driver license could be suspended.

## 9. How do I get an occupational license?

If you have never had your license suspended before, you are eligible for an occupational license, unless you have a commercial driver license. You cannot get an occupational license for a CDL under any circumstances. If you have been issued more than one occupational license in the preceding ten years, you are not eligible for another.

If you are eligible, you will need to file a petition requesting the occupational license and all the accompanying documents. An experienced DWI attorney can help you with filing the appropriate paperwork. You will need to provide proof of insurance (in most cases an SR-22), evidence of your “essential need,” the days and times you need to drive (up to four or twelve hours in a given day, depending on certain eligibility requirements), the counties in which you need to drive, and possibly a copy of your driving record. Obtaining all of the documentation will take some time, so you should get started on the process of obtaining them right away.

Once a hearing has been set and a judge signs the order granting the occupational license, certified copies of the documents and fees will need to be mailed to DPS for issuance of the occupational license. If you have any outstanding fees, those must be paid before DPS will issue the occupational license. The order signed by the judge will be

your driving permit until you receive the occupational license from DPS. You must keep a certified copy of the order with you at all times while driving, even when you have your occupational license. If not, your occupational license could be revoked.

## 10. When can I get an occupational license?

The process for obtaining an occupational license will take a few days. Obtaining the occupational license from DPS will take about 30 days after you have the court order authorizing the occupational license. As mentioned above, the order, which you must have with your, will be your driving permit during that time.

However, if you have had any alcohol or drug related contacts with law enforcement in the last five years, you will have to wait until the 91<sup>st</sup> day after the date of suspension for an occupational license to be effective. If your license has been suspended for a DWI in the last five years, you will have to wait until the 181<sup>st</sup> day after the date of suspension. If the suspension is the result of a second conviction within the last five years, you will have to wait one year before an occupational license can be effective.

## 11. Can I get deferred adjudication to keep a DWI off my record?

No. It is extremely important to note that DWI offenses are not eligible for deferred adjudication. In some cases, however, a case that

is filed as a DWI could be reduced or even enhanced to an offense that is eligible for deferred adjudication.

Prosecutors in different jurisdictions approach this differently, so there is never a guarantee that a particular case will result in a plea to an offense that is eligible for deferred adjudication.

## **12. Will my employer find out I got a DWI?**

Possibly. No employee of our firm will disclose any information about your case without your permission. However, there are many other ways your employer could learn of your DWI. The most obvious is the police blotter printed in the newspaper. If the local newspaper prints arrest logs, there is no way to prevent your arrest from being made public.

Additionally, if you are required to operate a motor vehicle for your job, you may be required to notify your employer of an order requiring an interlock device on your personal and possibly your company vehicle. If your employer insures you for the operation of a motor vehicle, there is a good possibility your employer's insurance carrier will also find out.

## **13. Can I get the DWI off my record?**

Probably not. If you are convicted of driving while intoxicated, it is probably on your record for good. In Texas, there are very few circumstances that entitle you to an expunction. If you have entered a plea of guilty, no contest, or were convicted of DWI after a plea of

not guilty, it is extremely unlikely you will be able to have it removed from your record. That is why it is so important to fight DWI charges every step of the way.

If you are arrested but never charged, your case is dismissed with no probation, or if you are acquitted by a jury, you will likely be entitled to an expunction. An experienced criminal defense attorney, hired immediately after an arrest or very early on in the case, can help keep a DWI off your record in the first place and protect your right to have your record wiped clean.

If you are not eligible for an expunction, you still may be eligible for an order of non-disclosure—in essence, a sealing of the records. However, under current Texas law, only cases where deferred adjudication probation is successfully completed are eligible for an order of non-disclosure. As was discussed earlier, DWI offenses are not eligible for deferred adjudication. If you get a DWI reduced to an offense that is eligible for deferred adjudication, and you successfully complete deferred adjudication probation, a non-disclosure order may be sought for that offense only. The DWI arrest, however, will not be included in the order of non-disclosure.

## **14. Will I have to appear in Court?**

Probably. Unless your case is never formally filed or dismissed before your court date, you will probably have to appear at least once. Most courts will accept a representation letter and waiver of arraignment which will serve as your appearance for the arraignment, but you

will likely be required to attend pretrial hearings, docket calls or status hearings, plea hearings, and trials. If you live out of state, you will nevertheless be required to appear as ordered.

Every court operates a little differently and has different local rules, but an experienced criminal defense attorney will know the procedures and preferences of the local criminal courts and will keep you well informed.

## **15. What if I have to work on the day of my court hearing?**

Every judge I have ever met believes it is more important for you to be in court than anywhere else. And since the judge has the power to throw you in jail, the judge's opinion trumps your employer's. An experienced criminal lawyer will let you know about a hearing well in advance of your court date. Make plans to attend your court hearing, or you risk being rearrested, having to post higher bail or bond, and possible new charges.

## **16. What if I missed my first court hearing?**

A warrant has probably been issued for your arrest, your bail or bond has been revoked or found insufficient, and new charges for failure to appear may have been filed. You need to make an appearance, preferably through an attorney who will know how to help. If you had a legitimate reason, such as an unexpected hospital stay, an experienced criminal defense lawyer will know who to notify and

how to prevent a warrant for your arrest from being issued if one has not been issued yet. If there was no legitimate excuse, an attorney can help you arrange a self surrender and release to prevent an unexpected, lengthy stay in jail.

## 17. If I wasn't read my rights, will my case get dismissed?

It is a common misconception that failure of an officer to provide the *Miranda* ([See \*Miranda v. Arizona\*](#)) warnings will automatically result in a dismissal. There is always a possibility of a case getting dismissed, but a DWI is probably not getting dismissed because an officer failed to read the *Miranda* warnings. If, however, certain statements were taken or evidence collected without properly advising you of your rights, those items may be excluded from evidence.

In DWI cases, much of the evidence is gathered prior to an arrest being made. The obligation to provide *Miranda* warnings, however, is not triggered until a defendant is in legal custody and a statement or evidence is sought from the defendant. Additionally, any voluntary statements made by a defendant on the roadside, in the police car, at the jail, or in custody are usually admissible. In my experience, defendants who try and talk their way out of a DWI usually do the exact opposite.

## 18. I do not live in Texas, so will my license still be suspended?

Possibly. You need to consult with a qualified criminal defense attorney in your home state, or the state that issued your driver license. If you are convicted of DWI in Texas, and you have a license from another state, your license could still be suspended or be penalized if your state has adopted the [Driver License Compact](#), or some version of it. Texas and most states have adopted the compact.

The five states that have yet to adopt the compact are Michigan, Tennessee, Wisconsin, Georgia, and Massachusetts.

## 19. I got a DWI in another state, so will my Texas license be suspended?

As discussed above, Texas has adopted the Driver License Compact, which requires member states to report various driving convictions to other member states. If you were convicted of a DWI or an offense of a “substantially similar nature” in another member state, and that state reports the suspension or conviction to Texas, then the State of Texas will honor the suspension. If the state does not report the suspension or conviction, then nothing will happen. If a conviction is reported, then the applicable suspension periods under Texas law would apply. If DPS attempts to suspend your license, a notice of suspension will be mailed to the address on your license,

and you have the right to contest the suspension at a hearing as described above.

The truth of the matter, though, is no one knows for sure. I've spoken with several attorneys from different states, and no one really knows for certain. Every state's approach is different, and every state's diligence in enforcement is different. It is possible to resolve a DWI and years later be facing a suspended license because of how long it takes states to communicate with each other. This is another example of why it is so important to have an experienced DWI attorney assisting you with your case.

## **20. What is the difference between DWI and DUI in Texas?**

DWI is driving while intoxicated, and DUI is driving under the influence. In Texas, the DWI offenses cover all alcohol, drugs, and other intoxicating substances, and DUI only applies to minors, who are not permitted to have any detectable amount of alcohol. The term "minor," for DUI purposes, refers to anyone under the legal drinking of 21. If a minor is arrested with any detectable amount of alcohol in his or her blood, the offense charged will likely be DUI. A first DUI for a minor is a Class C misdemeanor, punishable by a fine of up to \$500. Additionally, community service hours (20 to 60 depending on circumstances) relating to education about or prevention of misuse of alcohol will be ordered.

If the minor is seventeen years of age or older and has been convicted twice before, the range of punishment is a fine of \$500 to \$2,000, up to 180 days in jail, or both.

## Conclusion

Answering 20 questions is in no way intended to cover all of the possible ramifications of a DWI arrest in Texas. Volumes could be written and have been written, and those just scratch the surface. There are potentially hundreds, if not thousands, of questions in every DWI case.

For example, 20 questions have been answered, but none relating to what constitutes a valid stop, a legitimate arrest, or breath and blood testing procedures. There are also no questions relating to field sobriety tests, videos, or police reports. The reason is that the countless other questions can only be asked and answered on a case-by-case evaluation. No two DWIs are ever the same, and every DWI arrest requires its own questions and answers. The facts of each stop, arrest, test, and everything else are so important and case specific. This is yet another reason why you want an experienced criminal defense attorney working on your side.

What I have tried to do is answer the basic questions I get asked over and over. I have tried to do so as simply and honestly as I can, and I hope these answers help.

## FOR MORE INFORMATION

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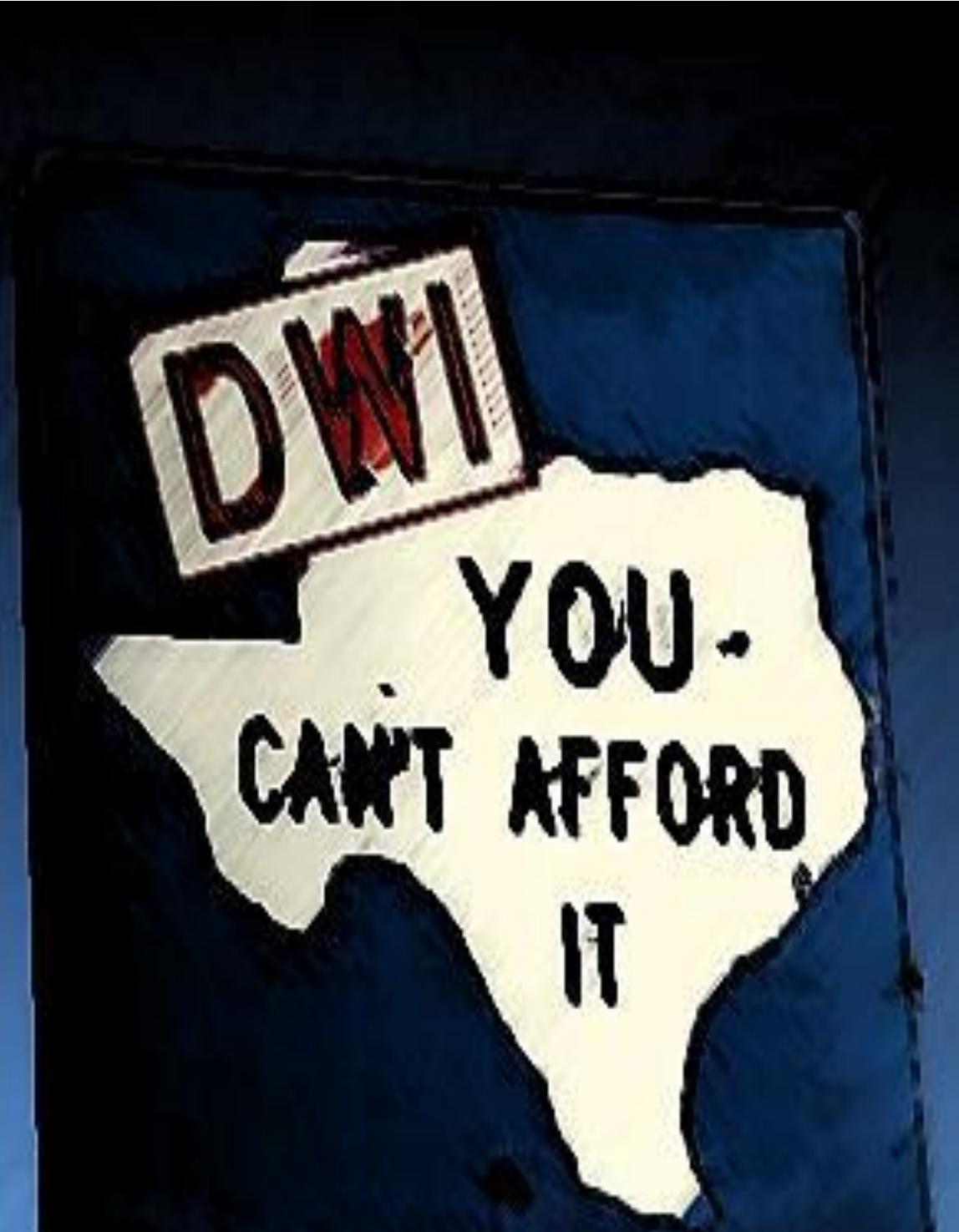
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