

**The Car Crash Seminar: From Sign-Up to Settlement**

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**DWI COLLISIONS:  
UNDERSTANDING THE HIDDEN PARTS  
OF THE CRIMINAL PROCESS**

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**PREFACE**

After the Defendant is arrested, the plaintiff's civil suit is often in a holding pattern until the criminal case is resolved. However, this doesn't always have to be the case. The involvement of the plaintiff's attorney in the criminal prosecution can make a significant difference in the outcome of the case.

In cases with identical facts, some defendants are awarded probation, and others are sent to jail. Why? What information is exchanged between the criminal defense counsel and the prosecutor? What is your role? How can your relationship with criminal defense counsel and the prosecutor assist in the successful resolution of your case? This paper addresses the legal and ethical framework of the parties in these overlapping matters.

More importantly, this paper addresses where you can find additional information useful in cross-examination of the Defendant or in making a higher claim for damages to an adjuster. Due to the number of DWI prosecutions, and public safety risk of allowing people arrested for DWI to continue driving, there are a number of collateral consequences of a DWI arrest. Many of these restrictions are specifically addressed to assess how responsible the Defendant is – precisely the information that would be helpful at your civil trial in establishing a pattern of negligence and disregard for public safety.

Finally, because the relevant criminal statutes involving driving while intoxicated are contained throughout the Penal Code, the Code of Criminal Procedure, and the Transportation Code, this paper includes the full text of the important statutes for your convenience.

**I:  
CLASSIFYING  
DRIVING WHILE INTOXICATED  
OFFENSES**

Not every person seriously injured by a drunk driver will be charged with intoxication assault. Smart, creative prosecutors have realized that there are other statutes – like felony murder or aggravated assault with a deadly weapon – that allow conviction for more serious offenses with a less restrictive proof element. Similarly, when the evidence of intoxication has vanished but the prosecution still believes the defendant was intoxicated, the offense of failure to stop and render aid statute may be the only charge the prosecutor can prove at trial. While you or your client may have the initial reaction that the prosecution is going easy on the defendant, a closer inspection of the range of prosecutorial options may help understand their charging decision.

**A. Statutory Classifications**

From a plaintiff lawyer's perspective, the severity of the injuries that your client suffers due to the fault of an intoxicated driver is directly related to the value of the case. Both the Texas Legislature and the prosecutor approach the criminal prosecution with that same outlook. The following chart outlines all possible motor vehicle and intoxication offenses in gradation of seriousness:

<b>OFFENSE</b>	<b>DEGREE</b>	<b>MINIMUM PUNISHMENT</b>	<b>MAXIMUM PUNISHMENT</b>	<b>INJURY TO VICTIM A STATUTORY FACTOR?</b>
<b>Open container of alcohol in motor vehicle</b>	Class C misdemeanor	\$1	\$500.00	No
<b>DUI (Minors only)</b>	Class C misdemeanor	\$1	\$500.00	No
<b>Failure to stop and give information – less than \$200 of damage</b>	Class C misdemeanor	\$1	\$500.00	No
<b>Reckless Driving</b>	Class B misdemeanor hybrid	\$1	30 days in jail and up to a \$200 fine.	No
<b>Failure to stop and give information – more than \$200 of damage</b>	Class B misdemeanor	1 day in jail	180 days in jail; \$2,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years.	No

<b>DUI – 3<sup>rd</sup> conviction</b>	Class B misdemeanor hybrid	\$500	180 days in jail; \$2,000.00 fine.	No
<b>DWI – Loss of normal use of physical or mental faculties</b>	Class B misdemeanor	72 hours in jail; \$3,000 DPS surcharge	180 days in jail; \$2,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years. \$3,000 DPS surcharge.	No
<b>DWI – breath or blood test over .08 but under .15</b>	Class B misdemeanor	72 hours in jail; \$3,000 DPS surcharge	180 days in jail; \$2,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years. \$3,000 DPS surcharge.	No
<b>DWI – with open container of alcohol</b>	Class B misdemeanor	6 days in jail; \$3,000 DPS surcharge	180 days in jail; \$2,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years. \$3,000 DPS surcharge.	No
<b>DWI – breath or blood test over .15 but under .16</b>	Class A misdemeanor	72 hours in jail; \$3,000 DPS surcharge	365 days in jail; \$4,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years with Ignition Interlock device installed for half the term of probation. \$3,000 DPS surcharge.	No
<b>DWI – breath or blood test over .16</b>	Class A misdemeanor	72 hours in jail; \$6,000 DPS surcharge	365 days in jail; \$4,000 fine. If probation, up to 30 days in jail as a condition of probation on a term not to exceed 2 years with Ignition Interlock device installed for half the term of probation. \$6,000 DPS surcharge.	No
<b>DWI – 2<sup>nd</sup> conviction</b>	Class A misdemeanor	30 days in jail; \$4,500 DPS surcharge	365 days in jail; \$4,000 fine. If probation, a term not to exceed 2 years. \$4,500 DPS surcharge.	No
<b>DWI with a child passenger</b>	State Jail Felony	180 days in jail or 2 years felony probation; \$3,000 - \$6,000 DPS surcharge	2 years in the state jail or 5 years felony probation with up to 180 days in jail as a condition of probation; \$10,000 fine. \$3,000-\$6,000 DPS surcharge.	No
<b>Criminally negligent homicide</b>	State Jail Felony	180 days in jail or 2 years felony probation; \$3,000 - \$6,000 DPS surcharge	2 years in the state jail or 5 years felony probation with up to 180 days in jail as a condition of probation; \$10,000 fine. \$3,000-\$6,000	No

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