



# TEXAS RIOGRANDE LEGAL AID



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## DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

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A GUIDE FOR YOUTH & PARENTS



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A GUIDE FOR YOUTH & PARENTS

Texas RioGrande Legal Aid, Inc. (TRLA) provides free legal assistance to youth from low-income households. To apply for our services, call 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org). TRLA cannot accept all cases. However, even if we cannot represent you, we may be able to provide you with advice.

In Texas, class C (the lowest-level) Assault cases are heard in Justice of the Peace (JP) or municipal courts. These courts will not automatically provide you with a free lawyer, but you can ask the court to appoint one to you. You can use the Child Defendant's Pro Se Motion for Appointment of Counsel and Order on Child Defendant's Pro Se Motion for Appointment of Counsel in this guide to ask the court to appoint you a lawyer. The judge may appoint you an attorney if you ask them to.

Assault laws are complicated, and convictions have serious consequences. Never ignore a summons to appear in court! A "no show" can lead to a second criminal charge for "Failure to Appear" in court. This guide provides basic information to help you to understand the laws, your options, and defenses.

In this guide, you will find answers to the following questions:

- 1) What is "Assault?"
- 2) What are some of my rights as a defendant (the person charged with a crime)?
- 3) What should I do to defend myself in court?
- 4) What are some of my options to fight the charge against me?
- 5) What strategies can I use for talking with a prosecutor?
- 6) How should I talk to a judge?
- 7) What can I bring to court to help my case?
- 8) What if my Assault charge is related to a major issue in my life?
- 9) What if the "victim" agrees that my case should be dropped?
- 10) What if a prosecutor does not dismiss my case or makes me a bad offer?
- 11) What happens if I plead guilty or no contest?
- 12) What is Deferred Disposition?
- 13) How do I avoid a fine or court cost that I cannot afford to pay?
- 14) How do I avoid being ordered to do community service that I cannot complete?

### **1) What is "Assault?"**

Many think of the word "assault" and imagine one person hitting another. However, even if you never touch the other person, you can be charged with Assault. There are several kinds of Assault charges in Texas. Assault by Threat and Assault by Physical

Contact are the two types of assault charges filed in JP and municipal court. You can find the Assault laws in the Texas Penal Code under section 22.01.

It is important to pay attention to how you were charged, because the State has to prove different things for each charge. Also, keep in mind that the same activity can be charged in different ways. For example, fighting can be charged as Assault or Disorderly Conduct.

### Assault by Threat

Assault by Threat is when you intentionally or knowingly threaten another person with imminent bodily injury. For the State to prove that you committed Assault by Threat, it must prove beyond a reasonable doubt each part of that definition. Let's break that down:

a. "Intentionally or knowingly..."

- You must either want something to happen or know that it is very likely to happen by your actions.
- If your behavior was an accident, then you can argue that you did not behave intentionally or knowingly.
- It doesn't matter whether the other person gets hurt – it is enough if you threaten to hurt someone.

Example: You told the new girl on campus that you were going to "school" her after class. What you meant by that is that you were going to show her around the school, tell her who the good teachers are, and tell her who to avoid. In the neighborhood she is from, saying you want to "school" someone means you want to beat them up. You had no idea, so you did not "intentionally or knowingly" threaten her.

b. "...threatened another person..."

- Remember: a threat is enough. You can be charged with Assault even if you never touch the other person.

Example: The guy sitting next to you keeps talking and you cannot concentrate on your work. You want to give him a little scare, so you yell out, "If you don't shut up, I'm going to kick you where it hurts!" Even if you never meant to actually kick him, if you meant to scare him into thinking you were about to kick him, you "intentionally or knowingly" threatened him.

c. "...with imminent bodily injury."

- You communicated that you are ready or about to hurt someone physically.

## Assault by Physical Contact

Assault by Physical Contact is when you intentionally or knowingly cause physical contact with another person that you knew or should have reasonably believed the other person would find offensive or provocative. For the State to prove that you committed Assault by Physical Contact, it must prove beyond a reasonable doubt each part of that definition. Let's break that down:

a. "Intentionally or knowingly..."

- What matters here is whether you had the intent to make contact with someone and not whether you intended to physically hurt someone. If your behavior was an accident, then you can argue that you did not behave intentionally or knowingly.

b. "...caused physical contact with another person..."

- You may have a defense if the other person touched you first or caused the contact.

Example: Tom got angry in class and tried to walk out of the room. His teacher, Mr. Jones, put his hand against Tom's chest to prevent him from leaving. Tom did not cause the physical contact, Mr. Jones did.

c. "...that you knew or should have reasonably believed that the other person would find offensive or provocative."

- What matters is whether the other person was likely to find the contact offensive.

Example: After school, Laura and her friends were playing a game where you trip someone and casually keep walking. Laura tripped Diana, who was not part of her group of friends. Laura finds it funny when other people play the same game and trip her but Diana did not think it was funny. Although Diana was not hurt, Laura should have reasonably believed that Diana would find her actions offensive.

## **2) What are some of my rights as a defendant?**

- Right to be informed of the charges against you – It is a good idea to ask the clerk at the court for a copy of your case file before your court date so that you can be prepared.
- Right to be considered innocent until proven guilty beyond a reasonable doubt.
  - o To prove guilt, the State must present evidence to the court. You can ask the prosecutor to see that evidence before your hearing.

o Examples of “evidence” could include:

- ♦ A statement from you admitting your guilt.
- ♦ A witness statement saying you threatened the other person, or a police report.
- ♦ Video footage of the incident.

• Right to have an attorney represent you.

• Right to a trial by a jury or judge.

• Right to choose a plea – 1) not guilty; 2) guilty; or 3) no contest

o Not guilty – Pleading not guilty means you deny guilt, and that you want to exercise your right to a trial.

o Guilty or No Contest – By pleading guilty, you give up your right to a trial and accept the conviction. A NO CONTEST PLEA IS VERY SIMILAR TO A GUILTY PLEA, because both result in a conviction.

### **3) What should I do to defend myself in court?**

Get organized! Follow the example in this chart and fill in the facts of your case.

Ask yourself: 1) Can the State make its case against me by proving each part of the definition of Assault? and 2) If so, do I have a defense?

EXAMPLE: ASSAULT BY THREAT.

| <b>The State must prove:</b>                                                  | <b><i>Facts of example case</i></b>                                                                                     | <b><i>Facts of <u>your</u> Case</i></b> | <b><i>Possible defenses in example case</i></b>                                                                | <b><i><u>Your</u> possible defenses</i></b> |
|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| <b>1) You acted intentionally or knowingly.</b>                               | I told James I would beat him up. I meant to threaten him. I was mad that he flirted with my girlfriend in front of me. |                                         |                                                                                                                |                                             |
| <b>2) You threatened someone.</b>                                             | Saying I was going to beat James up was a threat to harm him.                                                           |                                         |                                                                                                                |                                             |
| <b>3) You threatened someone with imminent bodily injury (physical harm).</b> | I shouted my threat from the school bus window as it was pulling away from the sidewalk where James was standing.       |                                         | I do not think James thought he was in any immediate danger because I was in a bus going <i>away</i> from him. |                                             |

#### **4) What are some of my options to fight the charge against me?**

If you believe you are innocent or have a good defense, plead not guilty at your court date and let the clerk at the court know you wish to speak with a prosecutor. Pleading not guilty means the court will set a date for trial in your case, but that does not necessarily mean you will go to trial.

Before your trial court date, you should talk with a prosecutor to ask if he or she will dismiss your case. Find out from the court clerk when prosecutors are available to meet with you. If you plan to talk to a prosecutor, then it is best to plead not guilty. You can always change your plea later if you want to make an agreement with the prosecutor.

#### **5) What strategies can I use when meeting with a prosecutor?**

- Arrive early – Plan on having time to park and find the courtroom.
- Dress appropriately – Dress like you work in an office (Males: slacks and tucked-in shirts – no hats! Females: blouse and slacks or a dress or skirt to the knees).
- Prepare, in advance, what you are going to say. Keep your presentation short, and focus on the important facts. Be honest, but keep in mind that you do not have to answer every question that the prosecutor asks. In some cases, it may be best not to admit to wrongdoing since your statement could be used against you in court. Practice and get feedback.
- Be polite, even if you disagree with the prosecutor. You will not help yourself if you argue or are rude.
- Remember to let the prosecutor know if you have any defenses.
- Present evidence to the prosecutor if you want to show that you were the victim, not the aggressor. (For example, if someone witnessed the other person threaten you first, you can ask that witness to write a letter saying so.)

#### **6) How should I talk to a judge?**

- Speak Confidently – Speak loudly enough to be heard. Look people in the eye.
- Do Not Lie – If you do not know the answer to a question, say “I don’t know.”
- Be Respectful – Address the judge as “Your Honor.” Use “sir” and “ma’am.”

#### **7) What can I bring to court to help my case?**

Prosecutors will be more open to negotiate and judges will be more open to dismiss your case if it is the first time you have been charged with a crime or if you present evidence of your good character. For example, bring letters of support from a teacher, community leader or employer and copies of good grades and any awards. Also, tell the prosecutor or judge if the situation at school has changed in a way that will positively impact your behavior in the future. For example, if you are getting counseling at school to help you with anger problems, bring a note from your school saying so.

## **8) What if the Assault charge is related to a major issue in my life?**

Explain that to a prosecutor or judge and bring proof, if possible. Examples include:

- You are being bullied at school.
- You are a survivor of domestic violence.
- You are experiencing homelessness.
- You have a disability or are receiving special education services. (See the TRLA guide called “Defending Children with Disabilities”.)

Just because one of these issues is relevant to your case does not mean a prosecutor or judge will choose to automatically dismiss your charge.

## **9) What if the “victim” agrees that my case should be dropped?**

A prosecutor may be willing to dismiss charges against you if the “victim,” often called the “complaining witness” (CW), agrees that the case against you should be dropped. (If you threatened/touched someone, the CW is probably the person you threatened/touched.) If the CW agrees that you should not face charges for Assault, politely ask him or her to sign a document called a Statement of Non-Prosecution saying so. If possible, have the CW’s signature notarized. You can usually find a notary public at a bank, lawyer’s office, or shipping center. TRLA may be able to help you with that process if you are eligible for our services. Even if you are not eligible, you may use the form in this guide.

You can often find the name and contact information for the CW in your court file. There are many situations where the CW may agree to help you:

- The CW was not offended by your actions; it was just horseplay between friends.
- The CW was offended by your actions but does not want to testify in court or thinks that you should not have been criminally charged.
- Both you and the CW are being charged with Assault, you both agree that both of you should be charged, and it is the first time either of you has been charged with Assault.

Be smart. If you ask the CW to sign the statement and he or she says “no,” calmly walk away and do not argue. Never pressure or threaten a CW. Doing so may lead to a new charge against you!

A Statement of Non-Prosecution will likely help you, but a prosecutor does not have to dismiss your case. The prosecutor may double check that the CW agreed that the charges against you should be dropped, and then decide whether to dismiss.



### **10) What if a prosecutor does not dismiss my case or makes me a bad offer?**

You can go to trial. For help, call TRLA at 1-888-988-9996 or apply online at [www.trla.org](http://www.trla.org). If you plan to ask TRLA for help, do so sooner rather than later. TRLA usually cannot help at the last minute.

### **11) What happens if I plead guilty or no contest?**

There can be many consequences if you plead guilty or no contest. Some possible consequences are:

- Fines up to \$500 – you have a right to ask the court to waive the fine and other costs if they would cause hardship to you.
- Court costs – these are separate from the fine.
- Requirement to perform community service.
- Requirement to attend an anger management or other counseling program.
- Deferred Disposition, which cannot extend beyond 180 days.

### **12) What is Deferred Disposition?**

If your case is not dismissed right away, the prosecutor might offer you “Deferred Disposition.” Deferred Disposition allows you to resolve your case without a final conviction on your record. It is a form of dismissal that first requires you to meet certain conditions like community service or payment of a fine. You will have a deadline to complete these conditions. If you complete the conditions, the judge dismisses your case. You may then say you were not convicted of the charge.

Sometimes the court will give you extra time to complete the conditions of your Deferred Disposition. If you need extra time, you should ask the court for an extension before your deadline has passed.

If you fail to complete the conditions, a judge may hold a hearing where you will have an opportunity to show good cause why you could not complete the conditions. The judge may decide to give you more time. If not, he or she may order a punishment (for example, a fine, community service, or both).

### **13) How do I avoid a fine or court cost that I cannot afford to pay?**

You may request a waiver of the fine, court cost, or both, by talking with a prosecutor or judge. To show that you cannot afford to pay, you can fill out and bring to court a Request for Waiver of Fines and Costs to show the prosecutor or judge. You may use the form included in this guide. You can also offer to perform community service instead of paying fines.

You should tell the prosecutor or judge if there are good reasons why you cannot pay a fine or court costs. Some good reasons might be that you or your family members:

- are unemployed or make minimum wage.
- have a health problem and need expensive medical care.
- have a lot of debt.

The court may allow you to pay at a later date or waive the fine or court costs if your family is unable to pay. If the court orders you to pay a fine or court cost and you do not pay, the court can treat your failure to pay as a violation of a court order. You have options if this happens. Call Texas RioGrande Legal Aid at 1-888-988-9996 or apply online at <http://www.trla.org>.

#### **14) How do I avoid being ordered to do community service that I cannot complete?**

You should tell the prosecutor or judge if there are good reasons why you cannot complete community service. Some good reasons might be that:

- You do not have time because you care for your siblings or others.
- You do not have reliable transportation to get you to a community service site.
- You are currently involved in several extracurricular or volunteer activities, and community service would take away from the work you already do. (If this applies to you, bring in letters of support from an adult supervisor.)

Now, take a deep breath. You can do this. Good luck with your case!

**Texas RioGrande Legal Aid, Inc. (TRLA)** is a non-profit organization that provides free legal services to low-income residents in 68 counties of Southwest Texas. The TRLA Youth Guide Series is an initiative of TRLA's Juvenile Justice Team and supported by a grant from the Texas Bar Foundation. Please note that the TRLA Youth Guide Series is not meant as legal advice and the information it contains is subject to change as new laws are passed.

Texas RioGrande Legal Aid, Inc. 2013

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

\_\_\_\_\_  
*Child Defendant*

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
*[court name and number]*

OF

\_\_\_\_\_ COUNTY, TEXAS

**CHILD DEFENDANT’S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES \_\_\_\_\_, the Child Defendant in the above-styled and numbered criminal cause, and moves this Court to appoint me legal counsel pursuant to Texas Code of Criminal Procedure Article 1.051.

In support of this motion, I would respectfully show the Court as follows:

I.

- A. I am a \_\_\_\_ year old minor child and not able to represent myself in a criminal matter because I am not an attorney.
- B. My parents cannot afford to hire an attorney to represent me. If additional information is needed to verify my inability to retain an attorney, I request that the Court provide me with a hearing to determine whether I am indigent.

II.

In accordance with Texas Code of Criminal Procedure Article 1.051, an indigent criminal defendant is entitled to be appointed legal representation when such an appointment would be in the interests of justice. Due to my inability to represent myself, or to afford an attorney, it is in the interests of justice for me to be appointed legal representation.

Respectfully submitted,

\_\_\_\_\_  
CHILD DEFENDANT, *PRO SE*

Address \_\_\_\_\_

Telephone \_\_\_\_\_

CASE NO. \_\_\_\_\_

STATE OF TEXAS

v.

\_\_\_\_\_  
*Child Defendant*

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
*[court name and number]*

OF

\_\_\_\_\_ COUNTY, TEXAS

**ORDER ON CHILD DEFENDANT’S PRO SE MOTION FOR APPOINTMENT OF COUNSEL**

On this day came to be heard the Child Defendant’s Pro Se Motion for Appointment of Counsel, pursuant to Texas Code of Criminal Procedure Article 1.051.

**IT IS THEREFORE ORDERED, ADJUDGED AN DECREED** that the Child Defendant’s Pro Se Motion for Appointment of Counsel be

\_\_\_\_\_ GRANTED, and that legal counsel be appointed to the Child Defendant in accordance with this county’s procedures for representation of indigent parties and applicable law. This Court finds that the Child Defendant is a minor and Child Defendant’s parents do not have the financial resources to hire an attorney to represent the child in the above-styled and numbered criminal matter.

\_\_\_\_\_ DENIED to which the Child Defendant excepts. The Court finds that it does not have the discretion to appoint Child Defendant legal counsel in this case.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

CASE NO. \_\_\_\_\_

STATE OF TEXAS

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
[court name and number]

v.

OF

\_\_\_\_\_  
*Child Defendant*

\_\_\_\_\_ COUNTY, TEXAS

**STATEMENT OF NON-PROSECUTION**

“I am the complaining witness against the Defendant in this case. It is my wish that all charges in relation to these matters be dismissed and that there be no further action taken. I do not intend to pursue the prosecution of the Defendant. I desire and intend not to appear as a witness against Defendant in court pertaining to this matter. I ask that I not be subpoenaed to do so.

“I am not making this Statement to frustrate the ends of justice, nor have I been offered any benefit to testify falsely, to withhold testimony, or to avoid the legal process or any official legal proceedings.

“I am making this statement voluntarily, of my own free will, free of any duress or coercion. If the charges against Defendant are dismissed, I will in no way disparage or complain of the District/County Attorney's office for failure to prosecute this case.”

“I swear that the above statement is true and correct.”

Date: \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Complaining Witness

**ACKNOWLEDGEMENT**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

(Complaining Witness), known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that he or she executed the same for the purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

CASE NO. \_\_\_\_\_

STATE OF TEXAS

§  
§  
§  
§  
§  
§

IN \_\_\_\_\_ COURT  
[court name and number]

v.

OF

\_\_\_\_\_  
*Child Defendant*

\_\_\_\_\_ COUNTY, TEXAS

**REQUEST FOR A WAIVER OF FINES AND COSTS**

TO THE HONORABLE JUDGE OF SAID COURT:

I \_\_\_\_\_ make this Request for a Waiver of Fines and Costs. This Court may waive fines and costs if it finds that I am indigent and discharging fines and costs would impose financial hardship on me. I am indigent, and I am unable to pay a fine or court costs.

I declare under penalty of perjury that the foregoing is true and correct.

I ask that the Court grant this request and waive all fines and court costs.

Executed in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully,

\_\_\_\_\_  
*Signature of Child Defendant*



