

**TRIA**

**TEXAS RIOGRANDE LEGAL AID**  
YOUTH GUIDE SERIES

**Defending**  
**AGAINST AN**  
**ASSAULT**  
**Charge**

IN JUSTICE OF THE PEACE (JP)  
OR MUNICIPAL COURT

**A GUIDE FOR YOUTH & PARENTS**

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

In Texas, low-level Assault cases are heard in Justice of the Peace (JP) or municipal courts. These courts will *not* provide you with a free lawyer, but it is a good idea to bring your own lawyer to court. Assault laws are complicated, and convictions have serious consequences. A conviction may become part of your *adult criminal record* and could be seen by potential employers and others.

**Texas RioGrande Legal Aid, Inc. (TRLA) provides free legal assistance to students from low-income households. To apply for our services, call 1-888-988-9996. TRLA cannot accept all cases. Even if we cannot represent you, we may be able to provide you with advice that will help you to defend yourself in court.**

When you are ticketed, *you and a parent* must appear in court. Never ignore an order to appear in court! A “no-show” can lead to an *automatic conviction* for Assault **and** a second conviction for Failure to Appear. You can be fined for failing to appear, and, once you turn 17, a judge may issue a warrant for your arrest. Take your Assault charge seriously. 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:**

- What is “Assault?”
- What are some of my rights as a defendant (*the person charged with a crime*)?
- What are some of my options to fight the charge against me?
- How should I talk to a prosecutor (*the lawyer for the State*) or judge?
- What can happen if I plead guilty or no contest?
- How do I avoid a fine or court cost that I cannot afford to pay?

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# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## 1) What is “Assault?”

An Assault charge in a JP or municipal court is a Class C misdemeanor, the lowest level of crime in Texas. Even these low-level crimes can have serious consequences. The judge can order you to pay a *fine of up to \$500*. The judge can also ask you to pay court costs and complete a number of tasks.

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 types of assault charges that JP and municipal courts oversee.

If you commit a more serious type of assault where you actually cause someone physical injury (for example, if you break someone’s nose by punching that person), you may receive a charge more serious than a Class C misdemeanor. If you are younger than 17 and are charged with a more serious type of assault, you will go to juvenile court; if you are 17 or older and are charged with a more serious type of assault, you will go to an adult county or district 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 different charges. The same activity can be charged in different ways. For example, fighting can be charged as Assault or as 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 and consider everything that the State must prove beyond a reasonable doubt:

### **A. “You intentionally or knowingly...”**

- You must either want something to happen or know that it is very likely to happen by your actions.
- If your conduct was an accident, then you can argue that you did not behave intentionally or knowingly.

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

- You do not have to want to actually *cause* imminent physical harm to someone. What matters is whether you *threaten to cause* imminent physical harm.

**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.

**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.

## 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 that 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 and consider everything that the State must prove beyond a reasonable doubt:

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## A. “You intentionally or knowingly...”

- What matters here is whether you had the intent to *make contact* with someone. However, you do not have to have the intent to *physically hurt* someone. If your conduct 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.

## C. “...that you knew or should have reasonably believed that the other person would find offensive or provocative.”

- What matters is what the *other person* finds, not what you find, 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. Although Diana was not hurt, Laura should have reasonably believed that Diana would find her actions offensive.

**Example:** In the cafeteria, Andy and his friend Luis were having a spitting contest across from each other. Luis accidentally spit on Andy, so on Andy’s turn he purposefully spit on Luis. To Andy’s surprise, Luis was furious. Andy might be charged with Assault by Contact, because it could be argued that he should have known that spitting would be offensive to Luis. Andy could try to argue he did not think Luis would be offended since they were both just playing around.

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **2) What are some of my rights as a defendant (the person charged with a crime)?**

- 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.
  - + To prove you are guilty, the State must present evidence to the court. You can ask the prosecutor to see that evidence *before* your hearing.
  - + Examples of “evidence” could include:
    - A statement from you admitting your guilt.
    - A witness statement saying you threatened the other person.
    - 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
  - + Not guilty – Pleading not guilty means you deny guilt, and that you want to exercise your right to a trial.
  - + 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 on your adult criminal record.**

## **3) What are some ways I can win?**

- You did not do what the State says you did.
- You accidentally touched the other person because you were pushed or fell.
- You *did* mean to touch the other person but you were acting in self-defense since you reasonably believed that it was *immediately* necessary to protect yourself against the other person.
- You did not mean to threaten someone, because you could not have known that your words would be taken as a threat.

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## 4) 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>Facts of example case</b>	<b>Facts of <u>your</u> case</b>	<b>Possible defenses in example case</b>	<b>Your possible defenses</b>
1) You acted intentionally or knowingly.	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.			
2) You threatened someone.	Saying I was going to beat James up was a threat to harm him.			
3) You threatened someone with imminent bodily injury (physical harm).	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 danger because I was in a bus going away from him.	

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

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

If you are charged with Assault because of something that happened at school, you can ask for a meeting with your principal to explain your side of the story and ask if he or she is willing to write a letter to the court or prosecutor to drop the charges against you. Take your parent with you. Make sure you let your school know if you have any defenses. ***If you speak with a school official about your case, BE POLITE. Always keep in mind that the school official could become a witness against you, so think carefully about what you want to say before your meeting.***

**For advice about what statements may be self-incriminating (statements that you make to a witness that could later be used against you), contact TRLA.**

If your school does not agree to drop the charges and 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.

## 6) What strategies can I use when talking with a prosecutor?

- 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.
- Prepare, in advance, what you are going to say. Keep your presentation short, and focus on the important facts. Be honest. Practice and get feedback.
- 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, ask that witness to write a letter saying so.)

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **7) 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, get the Statement signed by a notary public, who you can usually find at a bank, lawyer’s office, or shipping center. **TRLA may be able to help you with that process if you are eligible for 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 the police report 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 neither 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 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.

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **8) How should I talk to a prosecutor (the lawyer for the State) or 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.”
- Dress Appropriately – Dress like you work in an office (Males: slacks and tucked-in shirts; Females: blouse and slacks or a dress or skirt to the knees).
- Arrive Early – Plan on having to find parking and the specific courtroom.

## **9) 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.

## **10) What if my 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 a victim of bullying at school.
- You are a survivor of domestic violence.
- You are homeless or have unstable housing.
- 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.

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **11) 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. If you plan to ask TRLA for help, do so sooner rather than later. TRLA usually cannot help at the last minute.**

## **12) What can happen if I plead guilty or no contest?**

- 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

## **13) 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.*** (However, just because you do not have a conviction on your record does not mean the fact that you were charged with the crime will be off of your record. To erase all of the records relating to your charge, you have to apply to the court to get your records erased.)

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. You may be asked to pay a fee for the extra time. If that happens, you can ask the court to waive the fee.

If you fail to complete the conditions, a judge must 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). You will then have a *final conviction on your adult criminal record.*

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **14) 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. *If you still owe a fine when you turn 17, the court may issue an arrest warrant. **If that happens, you have options. Call TRLA at 1-888-988-9996.***

## **15) How do I avoid being ordered to do community service 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 so, bring in letters of support from an adult supervisor.)

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

## **16) If I am found guilty, can I get the conviction off of my record?**

In many cases, you can clear your record. ***For help, call TRLA at 1-888-988-9996.***

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

STATE OF TEXAS

§

COUNTY OF \_\_\_\_\_

§

## STATEMENT OF NON-PROSECUTION

### **KNOW ALL BY THESE PRESENTS**

That the undersigned person does hereby make the following Statement of Non-Prosecution in State of Texas vs. \_\_\_\_\_,  
Cause No. \_\_\_\_\_ in \_\_\_\_\_ Court of \_\_\_\_\_ County, Texas,  
wherein Defendant is charged with Assault under Texas Penal Code Section 22.01.

"My name is \_\_\_\_\_, 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 Affidavit 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."

WITNESS MY HAND this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

STATE OF TEXAS

§

COUNTY OF \_\_\_\_\_

§

## 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

# DEFENDING AGAINST AN ASSAULT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

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

STATE OF TEXAS § IN \_\_\_\_\_ COURT  
§ [court name and number]  
v. §  
§ OF  
\_\_\_\_\_  
[your name] §  
§ COUNTY, TEXAS  
§

## REQUEST FOR A WAIVER OF FINES AND COSTS

TO THE HONORABLE JUDGE OF SAID COURT:

My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_,  
my address is \_\_\_\_\_,  
and 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 \_\_\_\_\_,  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully,

\_\_\_\_\_  
[Your signature]

Declarant



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YOUTH GUIDE SERIES

**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 its School-to-Prison Pipeline Project (SPPP). The SPPP is supported by Equal Justice Works and the Texas Access to Justice 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.

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