

TRIA

TEXAS RIOGRANDE LEGAL AID
YOUTH GUIDE SERIES

Defending
AGAINST A
DISORDERLY
CONDUCT
Charge

IN JUSTICE OF THE PEACE (JP)
OR MUNICIPAL COURT

A GUIDE FOR YOUTH & PARENTS

DEFENDING AGAINST A DISORDERLY CONDUCT CHARGE

IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

In Texas, Disorderly Conduct 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. Disorderly Conduct 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 Disorderly Conduct **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 Disorderly Conduct charge seriously. This guide provides basic information to help you understand the law, your options, and defenses.

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

- What is “Disorderly Conduct?”
- 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 or judge?
- What can happen if I plead guilty or no contest?
- How do I avoid a fine or court cost I cannot afford to pay?

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IN JUSTICE OF THE PEACE (JP) OR MUNICIPAL COURT

1) What is “Disorderly Conduct?”

A Disorderly Conduct charge 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.

Common types of Disorderly Conduct are: “Using abusive language;” “Abusing or threatening a person in an obviously offensive manner;” “Making an offensive gesture;” and “Fighting.” To see other types of Disorderly Conduct, look in the Texas Penal Code under section 42.01.

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.

For the State to prove most types of Disorderly Conduct charges against you, it must prove *beyond a reasonable doubt* all of the following:

A. You were not in the sixth grade or younger when you engaged in the “disorderly conduct.”

B. You intentionally or knowingly did the act you are accused of committing.

If your conduct was an accident, then you can argue that you did not behave intentionally or knowingly.

C. The act happened in a public place (sidewalks, schools, etc., but not in a home).

D. Other facts depending on the type of Disorderly Conduct:

- Using Abusive Language –

Here, the State must prove that:

- You used “fighting words.” These are words that would cause a reasonable person to fight or have a violent reaction. It is not enough that the words are harsh, insulting, or annoying – the words must actually move the average person to react violently
AND
- Your words are the kind that would “incite an immediate breach of peace,” that is, they could result in an actual fight. That usually means you have to be face-to-face or close to someone.

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Example: You call Sara on her home phone and cuss her out. Then you hang up. That is probably not Disorderly Conduct. Even if you used “fighting words,” that would not be considered “inciting an immediate breach of the peace,” since you and Sara are not face-to-face or anywhere close to each other. But, be careful! Just because your actions might not fall under the definition of Disorderly Conduct does not mean that you will not be guilty of a different crime!

- Making an Offensive Gesture or Display –

Here, the State must prove that:

- The offensive gesture or display amounts to “fighting words.” That is, it would cause the average person to react violently.
 - AND
 - The gesture or display is the kind that would “incite an immediate breach of peace,” that is, it could result in an actual fight. That usually requires you to be face-to-face or close to someone.
- + See the example in the chart later in this guide.

- Abusing or Threatening a Person in an Obviously Offensive Manner –

The State must again prove that:

- Your conduct amounts to “fighting words,” that is, that your actions would cause the average person to react violently.
- AND
- Your conduct is the kind that would “incite an immediate breach of peace,” that is, it could result in an actual fight. That usually requires you to be face-to-face or close to someone.

- Fighting – Use a common-sense meaning of “fighting” as your guide. Just because two people throwing punches have bad aim and miss does not mean they were not involved in a fight.

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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 started the fight, used abusive language, etc.
 - + 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?

- The Disorderly Conduct law does *not* apply to you if you were in the sixth grade or younger when you engaged in certain types of Disorderly Conduct, including “Using abusive language;” “Making an offensive gesture;” and “Fighting.”
- You did not do what the State says you did.
- What happened was an accident or beyond your control.
- Even though you used bad words, you did not use words that would make the average person react violently (“fighting words”).
- You were provoked.
- You acted in self-defense or to protect another person.

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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 Disorderly Conduct? and 2) If so, do I have a defense?

Example A: Fighting.

The State must prove:	<i>Facts of example case</i>	<i>Facts of <u>your</u> case</i>	<i>Possible defenses in example case</i>	<i><u>Your</u> possible defenses</i>
1) You committed the act intentionally or knowingly.	Mariana and Kristina jumped me in the hallway for refusing to be in their gang. They punched me in the stomach and face and I hit back. The principal charged all of us with disorderly conduct for fighting.			
2) The act happened in public.	That happened at school.			
3) You were fighting.	I swung to defend myself.		I acted in self defense.	

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Example B: Making an offensive gesture.

The State must prove:	Facts of example case	Facts of <u>your</u> case	Possible defenses in example case	Your possible defenses
1) You committed the act intentionally or knowingly.	I flicked off my principal behind her back.			
2) The act happened in public.	That happened at school.			
3) The gesture amounted to fighting words.	Flicking someone off is like saying "F--- you."			
4) The gesture was of a kind that would incite the immediate breach of peace.	The principal and I were not face-to-face, and she did not see me flick her off. Someone later told her that I did.		The principal did not see me when I flicked her off, so she would not have had a reason to react at the time that it happened.	

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

If you are charged with Disorderly Conduct 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 (the lawyer for the State) 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 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 fight and saw the other person hit you first, ask that witness to write a letter saying so.)

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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 got into a fight, the CW is probably the person whom you fought.) If the CW agrees that you should not face charges for Disorderly Conduct, 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 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 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 Disorderly Conduct, you both agree that neither of you should be charged, and it is the first time either of you has been charged with Disorderly Conduct.

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.

8) How should I talk to a prosecutor 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.

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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 Disorderly Conduct 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.

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

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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.*

14) How do I avoid a fine or court cost 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.

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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.)

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.**

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SAMPLE FORMS

DEFENDING AGAINST A DISORDERLY CONDUCT CHARGE

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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 Disorderly Conduct under Texas Penal Code Section 42.01.

"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

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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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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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