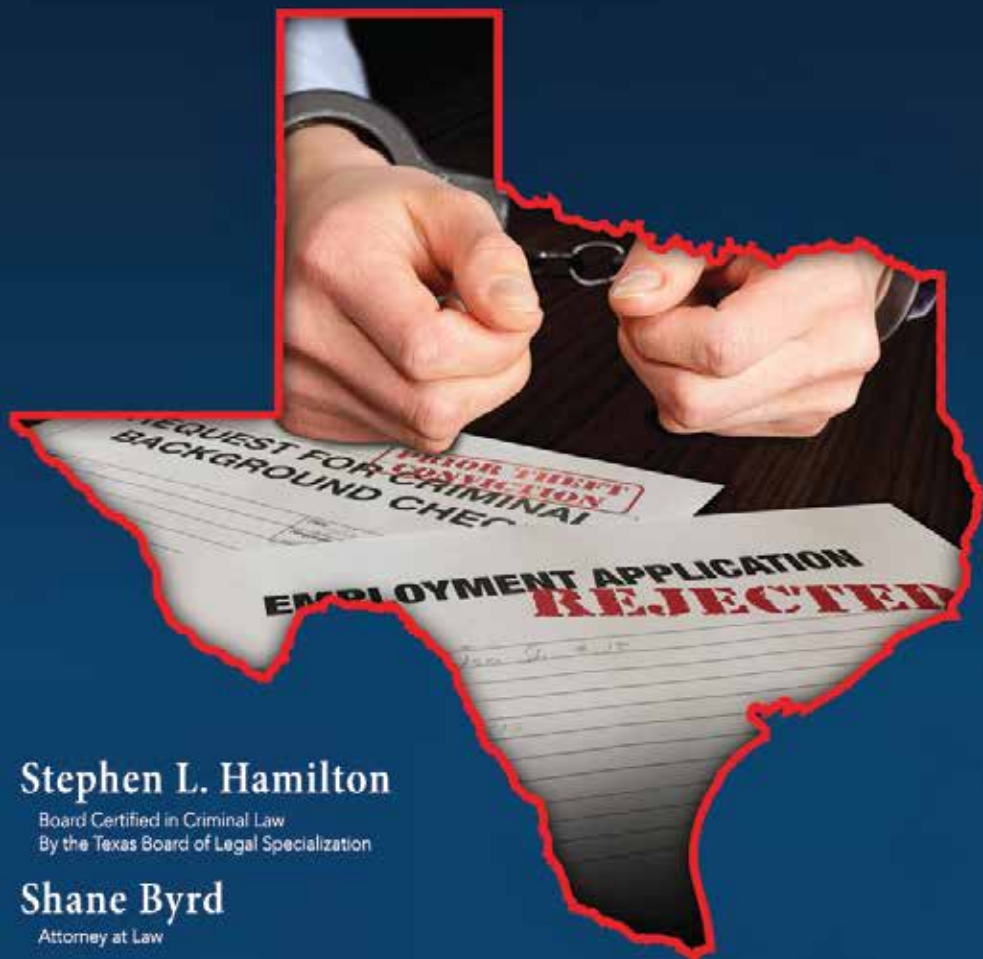


**PROTECT YOUR FUTURE  
KNOW YOUR RIGHTS**

# **A Citizen's Guide** *to a* **Theft Arrest** *in Texas*



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Board Certified in Criminal Law  
By the Texas Board of Legal Specialization

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Attorney at Law

**PROTECT YOUR FUTURE ★ KNOW YOUR RIGHTS™**

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# **A Citizen's Guide to a Theft Arrest in Texas**

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833-Texas-Justice (833-839-2758)*

**Stephen L. Hamilton, JD**

Board Certified in Criminal Law  
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# Meet the Team at Texas Criminal Defense Group

Attorney Stephen L. Hamilton, a partner at Texas Criminal Defense Group, has been awarded the highest possible AVVO rating (10) and his counsel is highly esteemed by his peers. Stephen ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He is a lifetime legal member of the National Organization for the Reform of Marijuana Laws (NORML), the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.



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Stephen L. Hamilton

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Scientific certifications include completing Blood Testing Gas Chromatograph training (used to test blood for alcohol and/or drug levels) and solid-state forensic drug testing (the legal requirement for Texas lab technicians to establish and identify substances by their precise drug composition).

Stephen has tried over 100 cases to a jury and has obtained not guilty verdicts in cases ranging from traffic tickets to those carrying a punishment range of 25 years to life in prison. He wins cases through all available means: motions, negotiations, trials, and appeals.



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Shane Byrd

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Before becoming a partner at Texas Criminal Defense Group Shane had a solid history as a successful local businessman and owner of three bond companies, National Bonding of Lubbock, Lone Star Bail Bond, and American Bail Bond. Shane worked for more than three decades to assist clients and their families navigate their way through the criminal justice system, liaising with attorneys, judges, clerks, and the courts throughout Lubbock and most of Texas before deciding he wanted to help his clients beyond getting them bonded out of jail. With his undergraduate degree in criminal justice, he pursued his dream of becoming a criminal defense attorney and graduated with his J.D. from Charlotte School of Law, Charlotte, North Carolina. Returning home to Lubbock, he worked with the firm as of counsel and is now a partner at Texas Criminal Defense Group. He focuses his practice in the area of criminal defense. Shane's strong ties to the Lubbock community extend to ownership of a number of local businesses and the many events he has produced for Texas Tech students. As an active member of the community, he understands that good people make mistakes and is driven by his passion to protect the future of such persons and resolving their cases quickly and positively.

# Introduction

Theft ranges from shoplifting nail polish or a candy bar to embezzling millions. Regardless of the specific type of theft committed, in Texas, as in most states, penalties for theft vary, based on the value of what was taken.

If it wasn't much, you may be looking at a fine. And you might mistakenly think that's not something you need to lose sleep over.

Many people caught in the act of stealing something "small" think they can just shrug, apologize, hand the item back, and leave, and all will be forgiven. Even if they are detained and told they face a fine, they may think that all they have to do is pay it and that'll be the end of it.

Some may be looking at jail time; others, community service. Still not sound like such a big deal? Well, believe us, it is. The shadow of a theft conviction, no matter how minor, can loom over you the rest of your life in nightmarish proportions. The fact that so many folks fail to take this seriously, until it is too late, is why we at Texas Criminal Defense Group have written this book.

It doesn't occur to most people, when faced with a shoplifting citation, to retain a lawyer the way it might if they were pulled over on suspicion of drunk driving or leaving the scene of an accident, for example. People typically don't hire lawyers to fight fines for theft charges. And that's the

problem. Because hiring a lawyer to protect them **should** be their first instinct. If you don't retain a lawyer, you're essentially shooting yourself in the foot.

Let's take a look at why.

## **A theft conviction never leaves you**

A conviction of theft becomes part of your permanent record—that's right: *your permanent record*. Most theft charges—even small citations with no jail time or community service—are what the law calls crimes of “moral turpitude,” conduct that is considered to be morally unacceptable.

If you've ever filled out a job application, you may recall having to answer a question regarding having been convicted of any moral turpitude offenses. It appears right next to where they ask if you have ever been convicted of a felony.

Maybe you didn't know what “moral turpitude” meant. You might have written “None” because you didn't realize that you had actually committed this kind of offense. Or perhaps you thought no one would find out.

Entering a plea of “guilty” or “no contest” to even the most minor of theft charges will land a charge of moral turpitude on your permanent record with a resounding thud.

Employers make a point of screening applicants for anyone who has committed a crime of moral turpitude. Why? Because even such a minor conviction as this can mean that

the applicant in front of them may be dishonest, someone who cannot be trusted. So you can kiss that job opportunity goodbye—as well as all the decent ones after that.



### Example

Several years ago, a woman came to us to see about getting such a minor charge removed from her permanent record. About 20 years earlier, she had been charged with shoplifting, for taking a few items that, in total, came to less than \$50. She was arrested. She was young and wanted nothing more than to get it over with, to put it behind her. So, she agreed to pay a fine and was credited for the day or so she spent in jail.

End of story? Not even close. Fast-forward 20 years. When she walked into our offices, she had been a successful assistant manager of a good company who had been rewarded with the promise of a promotion to manager. Part of the promotion process was the standard procedure of running a basic background check.

What happened? The company discovered the very “minor” theft conviction from two decades before, an incident that she hadn’t given a thought to since, because she’d never stolen anything after that embarrassing incident and it had never come up again. At least, not until now.

This woman was universally considered to be a great employee by everybody’s standards

but the company had a firm policy that did not tolerate convictions of theft or crimes of moral turpitude. No exceptions. Not only was she denied the promotion—she was terminated!

In this case, instead of being rewarded for all of her hard work, she lost her beloved job over something that had happened half a lifetime ago, long before she'd ever started with the company. She was understandably devastated and came to us desperate to find a way to get this stain removed from her record in any way possible, before it could harm her any further.

This poor woman was appalled when we told her that, regrettably, once a conviction like this appears on her record and has been finalized (meaning that there was no further opportunity to appeal it, because she had agreed to pay the fine and plead guilty in order to swiftly— she'd hoped—put the entire situation behind her), the only way for someone in Texas to get this removed from their criminal record is to obtain a governor's pardon.

## **A governor's pardon is as likely as your winning millions in the lottery**

That's right. You have far better odds of winning the Lotto jackpot or the World Series of Poker than securing a governor's pardon. Not only that but it costs thousands of dollars simply to apply and go through the process

Unfortunately, we often find ourselves having to tell hardworking folks that, because they hastily pleaded guilty

and agreed to pay a fine, thinking they were putting the entire unpleasant situation behind them, they were doing anything but—instead, they were ensuring it would haunt them forever.

We at Texas Criminal Defense Group cannot emphasize strongly enough: Please, please, *please* do **NOT** agree to pay a fine and accept a conviction in the naïve hope that this will go away.

## **What does a theft conviction mean for you?**

A theft conviction can prevent you from obtaining professional licensing of any kind. It can deny you citizenship, college admission, and any form of financial assistance.

It may not only cost you your dream job in the future but put your current job at risk too.

It could easily mean the difference between buying your dream home and worrying whether you will even be permitted to rent a decent apartment.

Theft is not a crime to be taken lightly.

## **Double whammy**

Theft can also land you in not just one but two courts—for the same crime. You could be charged in both criminal and

civil court for the same theft, and held accountable to both sets of charges if convicted.

Say you write a bad check for goods or services. Even if you knew the funds were due to arrive, if they didn't manage to arrive in time, you could be charged with two crimes: Issuance of a Bad Check and Theft by Check—*for writing a single bad check!* No, this is not double jeopardy. You could end up with two sets of penalties, and possibly even two sets of court proceedings and two sets of court fees, if they are not tried in the same court.



### Example

Recently, we learned of a case involving a lawyer in his seventies. He had gone into a convenience store to purchase a few items and stuffed a packet of gum in his pocket when he had trouble juggling all of his soon-to-be purchases without a basket. By the time he reached the register, he'd forgotten about the gum.

He had no intention of stealing it. He simply forgot to pull it out of his pocket to add to his other stuff when he pulled out his wallet. As he exited the store, he was stopped, and was mortified when he realized what he had done.

When he appeared in court later, he was so embarrassed that—again—he wasn't thinking. He agreed to pay the fine, figuring that, after all, it was just a class C ticket, one that didn't carry jail time.

The result? This man who had proudly practiced law his entire professional career abruptly lost his law license. By simply agreeing to pay the fine, in the haste of putting such an embarrassing situation behind him, he was convicted of a crime of moral turpitude. That alone was grounds for immediate disbarment.

Here was an attorney, a legal professional well educated in the law, who, in the humiliation of the moment, made the same mistake. He just wanted to get it over with and put this embarrassing lapse behind him. Instead of consulting an attorney, he permanently destroyed his ability to do what he loved—something he had done for decades—to practice law.

## **The early bird gets the worm**

In many cases of misdemeanor theft, you may have several options available to you that can keep such a charge off your record. However, you may not learn about them until it is too late. Why? Because the only people allowed to provide you with such legal advice are attorneys. Judges and prosecuting attorneys are not obligated to share with you the options available to enable you to protect yourself.

Only when you obtain legal representation at the very start, when you request or secure an attorney, can you be sure of being fully informed of your rights—*before* you unwittingly give them away.

We at Texas Criminal Defense Group want you to understand all the ins and outs of what it means to commit the crime of theft in the state of Texas.

We want you to have a working knowledge of all the different kinds of theft and the penalties they carry, the long-term consequences of theft convictions, and, as importantly, what the prosecution needs to prove in order to actually convict you of theft—before you hand yourself over to them on a silver platter.

We also want to provide you with the necessary information and resources that you can use, moving forward. Once you read this book, you will have a solid grasp of what you might find yourself up against, what options you have in your favor, and what to do—and when.

# What Is Theft?

Theft is defined specifically in the Texas Penal Code, § Ann. 31.03: “a person commits an offense if he unlawfully appropriates property *with intent* to deprive the owner of property,” [italics are ours.]

Sound complicated? Let’s put it in layman’s terms. It means that a person is guilty of theft if they take something that belongs to someone else without any legal justification for doing so, or without the rightful owner’s consent. As you can see, this covers a fair bit of ground. All kinds of things can be “taken” in all kinds of ways and the crime of theft covers all of it. So, let’s take a closer look.

## What legally establishes theft:

- 🕒 You took something that doesn’t belong to you;
- 🕒 You possessed it long enough to deprive its rightful owner of its value;
- 🕒 You knew it belonged rightfully to someone else; and
- 🕒 You knew you did not have the owner’s consent to take it.

In the way that Texas law defines theft, the word *intent* is specifically included. To commit a theft means that you have acted with criminal intent— you must have deliberately intended to do it, knowing it was wrong. However, just because you’ve taken something that you know doesn’t belong to you doesn’t necessarily mean that you’ve committed a crime. Let’s look at some examples.



### **Example**

Say you write a check for goods or services, thinking your account has the funds to cover it. Perhaps without you realizing, a deposit you expected has been delayed for reasons outside of your control and, as a result, the funds aren't there when you reasonably expect them to be. So, when the person or business to whom you gave your check goes to deposit it, it bounces.

In terms of your actions, you've essentially taken some else's property. How? By having written a check that has no cash value. Yet, in terms of intent, you never meant for this unlawful "taking" to happen.



### **Example**

Say you're grocery shopping and pick up a bulk pack of toilet paper. You put it on the bottom rack of your shopping cart, and when you reach the cashier, you forget about it when you pay for your other items. The cashier fails to notice it down near the floor when you're checking out and doesn't scan it. Then, when you push your cart out the door, the security sensors go off, flagging you as someone who has effectively attempted to shoplift the toilet paper. Your action constitutes taking something that doesn't belong to you, but you lacked intent—it was completely unintentional.

As we indicated on page one, there are four basic elements required in order to establish that a theft has indeed taken place:

1. You took something that doesn't belong to you.
2. You are currently keeping what you took long enough for its rightful owner to be deprived of its value. Even if you take something intentionally and voluntarily return it later, it may constitute theft and you could still be arrested. If you take something and return it later for a reward, that is also theft.
3. You knew the property belonged rightfully to someone else. (However, if you took something you believed had been abandoned or discarded but it turns out that this was not the case, that's not considered theft. And, if you took something you believed belonged

#### **TRUE STORY**

A client was shopping in a large department store, and was loading items into her cart. Her young child was overtired, shrieking and throwing a fit. In her hurry, one of the items she hastily tossed into the cart tumbled into her purse instead, without her noticing.

She hurried to the checkout and paid for her items while her child was having a meltdown—except she neglected to pay for the one item that had accidentally fallen into her purse. As she headed for the exit, the store security stopped her and arrested her.

Fortunately, she had the presence of mind not to panic and plead guilty when she hadn't intended to steal anything; instead, she hired Texas Criminal Defense Group. We obtained the security tapes and explained the situation to the DA, who agreed to dismiss the case. She now has no conviction on her record and is eligible to get the arrest expunged.

to someone who gave you permission to take it, and it turns out that it wasn't theirs to begin with, that is also not theft.)

4. You took something knowingly without the owner's permission. (If you were unaware that you did not have permission to take what you took, that is not theft.)

For something to be theft, there must be criminal intent. You must have deliberately taken something without permission, knowing it belonged to someone else, a person or a business.

Otherwise, it's just a misunderstanding. Misunderstandings happen. For example, if you see something tossed by the curb and take it because you assume it's being tossed out with the trash and you are mistaken, that is not theft.

It is not theft because you had no intention of deliberately depriving someone else of what they rightfully owned. Instead, you took it because you thought it had been abandoned or discarded and was therefore free for the taking, a form of recycling, if you will.

Loss of income and property due to what initially *appears* to be theft can turn into a big deal, even if it doesn't seem like a big deal to you because you know you never meant to deliberately steal it.

You should never, *ever* confess to theft (which implies an intent to steal) if your intention was not to steal.

### Points to Remember:

- If you take something that doesn't belong to you, with the intent to deprive its rightful owner of its value, that is theft.
- Without criminal intent, taking something that doesn't belong to you is not theft. A guilty mind must accompany a guilty action for an actual crime to be committed.

# The Five Most Common Thefts

## 5 Most Common Types of Theft:

- 🕒 Shoplifting
- 🕒 Writing Bad Checks
- 🕒 Accepting/Buying Stolen Goods
- 🕒 Theft of Services
- 🕒 General Theft

There are lots of different ways that one can commit theft in Texas, but five in particular rise to the top of the list based on how frequently they occur.

## Shoplifting

Generally speaking, everyone knows what shoplifting is. It's when you take items from a store without paying for them. However, shoplifting also includes doing something deceptive that results in the store unwittingly charging you less than the full price, such as if you switch price tags.

As in all forms of theft, there has to exist intent: you must have *intended* not to pay, or avoid paying full value, for the items taken for you to be judged guilty of the crime of shoplifting.

This applies to any type of value stolen from the store. That means that if you switch price tags and trick them into charging you the cost of a cheaper item instead of the higher price of the more expensive item you're taking, you've effectively stolen value from the store. That's shoplifting.

Any action where you intentionally take something from a store without permission, or without paying the right price, is shoplifting, even if what you “take” is simply the price difference between a more cheaply priced item and the more expensive one you walk out with. And “by permission” does not include collusion (working in secret partnership) with a member of a store’s sales staff.

Shoplifting charges can also escalate if you willfully disable theft detection devices or intentionally bypass detectors, or if you collude with others, either as a group or with the help of a store employee.

Civil suits, versus criminal charges, are common for shoplifting. In these suits, the shop can demand compensation for the value of what was taken, along with recovery costs. What we see most often is a demand letter sent to the client from a civil law firm because, in Texas, there’s a statute that permits a company to solicit a civil penalty (fine) from the individual(s) arrested for theft.

### TRUE STORY

A young store employee at a major discount retailer was trying to help out a friend who was struggling, so she deliberately rang up cheaper prices at the cash register to lower the cost of the friend’s purchases.

This store employee was a college student, pursuing a degree in education. She got caught and was promptly fired. But the real threat was the looming theft conviction. Her dream was to be a teacher, and with a conviction like this, it could have proved all but impossible to achieve that career dream.

She called Texas Criminal Defense Group and we worked out a deal with the DA to dismiss the case, ridding her permanent record of any trace of a theft conviction. Because the case was dismissed, it became possible to have it expunged from her record to avoid even the arrest from showing on any future employer’s background check.

# PAYING A CIVIL PENALTY FOR THEFT IS AN ADMISSION OF GUILT!

**NEVER** agree to pay a civil penalty fee without first talking to a lawyer. Such an admission of guilt can be used to convict you later in a criminal case.

## **TRUE STORY**

We had a client who, in the process of obtaining a divorce, had separated from his wife. The wife closed their joint checking account, but subsequently wrote checks on the closed account and signed her husband's name to them.

Under Texas law, writing a check on a closed account creates a presumption of Theft by Check. The husband, who did not write any checks on the closed account, was later charged. We provided the D.A.'s office with a handwriting sample that revealed it was not the husband who had written and signed the checks. The D.A. agreed with us and dismissed the case against our client.

As your lawyers, when you receive a demand letter like this, we immediately respond by sending a letter to the law firm representing the company to inform them that the fine or civil penalty will not be paid, and to direct all further communication regarding the matter to us instead of you. Generally, once we do that, you never hear from them again.

## **Writing bad checks**

Essentially, when you write a check without sufficient money to cover it, it bounces. The check is returned to the depositor (the payee, whom you gave it to, and not you, the

person who wrote it) stamped “NSF,” “Not Sufficient Funds.” Is doing this theft? It depends.

If you write a check to purchase items or services, a check that is drawn from an account that has either been closed or doesn’t exist, or from an account you know does not have sufficient funds to cover it, that is theft, according to the law. In that instance, you are viewed as having deliberately deceived the recipient, and so you have committed *Theft by Check*. The check itself is referred to as a *Hot Check*.

However, this is where the issue of intent again comes in to play. Just because you wrote a check that bounced doesn’t automatically mean that you intended to steal something or deceive someone by writing the check. Inadvertently bouncing a check is termed *Issuance of a Bad Check*, (IBC) which is a Class C misdemeanor, the lowest level of offense that can be committed in Texas.

When you write a check that bounces, you typically receive notification from your financial institution that the check has failed to clear due to insufficient funds. If this happens, you need to swiftly contact the recipient of the check, explain the situation, and compensate them. (Some institutions permit the payee to attempt to deposit the check a second time and will honor it if the shortfall has been resolved.) Doing this should halt it from going forward to the District or County Attorney’s office. If, however, you fail to make good on the check, and the complaint is forwarded to the D.A.’s office, they can prosecute you under the additional charge of *Hot Check* as a crime.

## TRUE STORY

We had a client who was a high school student. He spent a lot of time after school with his best friend at the friend's grandfather's house. The friend's grandfather has a large and interesting gun collection, including a very rare World War II German pistol, which our client admired greatly.

The best friend had a very bad drug habit and one day took his grandfather's treasured German pistol without permission. He offered to sell it to our client for \$100. Our client knew that the pistol was not his friend's to sell, and that he intended to use the money to buy drugs.

Although our client did not know in advance that his friend would take the pistol without permission, and he had absolutely no part in the removal of the pistol from the home, he was still guilty of theft in the eyes of the law and could be charged.

The danger of writing a bad check is you can be charged with two crimes at once: *Theft by Check*, a Class B misdemeanor, and *Issuance of a Bad Check*, a Class C misdemeanor.

*Theft by Check* is a great deal more difficult to expunge from your record than a simple IBC charge. Plus, it means two sets of court dates, two sets of court fees, and two penalties if you are convicted.

## Buying or accepting stolen property

If your friend shoplifts something from Walmart, gives it to you, and you accept it, knowing it was shoplifted, you are as guilty of theft as your friend is. If you buy a bike you know was stolen, you have committed theft.

If you have knowingly downloaded or purchased music or movies, or any other commercial digital product (often referred to as IP, or intellectual property) that has been stolen and illegally mass-produced, for example, you are guilty of theft.

## Theft of services

Theft of services is when you hire someone or use something that requires compensation and skip out without paying. For example, if you book a hotel room or campground camping space, use it, and leave without paying, you have committed *Theft of Services*. If you hire someone to perform a job for you, such as a gardener or painter, and don't pay them as agreed, you have committed *Theft of Services*.

## General theft

General theft, the last of the five most common types of theft, is the taking of anything without the owner's consent, from picking someone's pocket, or sneaking money out of a cash register at work, to pilfering items from someone's home.

Embezzlement, fraud, unauthorized use of a vehicle, and a whole host of other specific instances where something is taken without the owner's consent, long enough to deprive

One of the biggest abusers of the law governing Theft of Services in Texas, in our experience, is rent-to-own business management companies. We have represented many clients who rent such businesses and subsequently have fallen on hard times, leaving them unable to make payments.

The rent-to-own management company is entitled to repossess the business and any related property if they default, according to the standard contract, but what we often see is them attempting to (oftentimes successfully) additionally penalize the customer by requesting that the D.A.'s office file criminal Theft of Services charges.

It is our opinion that this kind of dispute belongs in civil, not criminal, court, and we have lost count of how many times we have argued successfully to have such charges dismissed.

the owner of the value of what was taken, are grouped within the category of theft.

## **What this means for you**

For the most part, penalties for theft are based on the value of what was stolen. In most cases, the *how* doesn't determine the charges brought against you; it's the *what*—charges are based on the value of what was taken.

Similarly, employers, landlords, organizations, and academic institutions, to name a few, view theft as an act of deception, plain and simple, regardless of *how* you took what you took. Whether you stole something from someone's home, knowingly accepted stolen goods from someone else, or simply bounced a check, it will appear on your permanent record as a breach of trust.

This is why knowledgeable people hire lawyers for even the pettiest of theft charges. Once a theft charge appears on your permanent record, the ripple effect over the course of your life can be devastating.

Why, then, is it important to distinguish between the different kinds of theft? Because the best way to formulate an effective defense strategy is to understand precisely what it is that you are being prosecuted for.

### Points to Remember:

- While there are lots of different types of theft, the penalties are primarily based on the value of what was taken, not on the circumstances.
- You can be charged with theft for knowingly buying or accepting stolen property.
- Theft is viewed as a breach of trust by employers, landlords, etc., regardless of how the crime was committed and the value of what was taken. All they see is someone who has admitted to being dishonest, someone they think is untrustworthy.

# Paying Fines and Doing Time

Legally speaking, theft is theft. Regardless of what type of theft it is, as far as the law is concerned, it's theft. Period. There is no specific crime cited, for example, as *shoplifting*. It is simply one of many ways to commit theft. What does matter, as we briefly touched upon in the previous chapter, is the value of what was taken. That determines the degree of severity of the charge.

A Class C misdemeanor, the lowest offense you can be charged with in Texas, is what you'll be charged with if the value of the item stolen is less than \$100. That carries a fine of \$500 and doesn't require any jail time.

Theft of items valued from \$100 to less than \$750 is classified as a Class B misdemeanor, which carries a penalty of up to \$2,000 and up to 180 days (six months) in jail.

Items valued between \$750 to less than \$2,500 will earn you a Class A misdemeanor, punishable by up to a year in jail and a fine of up to \$4,000.

Anything stolen with a value of \$2,500 or higher puts you firmly in felony territory. That's where you start to see mandatory minimum sentences.

First-degree felony theft charges for stealing property or services valued at \$200,000 or higher carry five-year minimum sentences with possible prison time topping out at 99 years. Yes, you read that right—essentially a life sentence for theft.

Criminal Charge	Value of Stolen Goods	Sentence
Class C Misdemeanor	<\$100	Fine up to \$500; no jail
Class B Misdemeanor	\$100–749.99	Fine up to \$2,000; up to 180 days in jail
Class A Misdemeanor	\$750–2,499.99	Fine up to \$4,000; up to one year in jail
Felony	\$2,500 and over	Minimum sentences up to 99 years in jail

So, if you were convicted of theft for shoplifting an item priced at \$99.99, you would be fined up to \$500, but you would not see any jail time. Get caught and convicted of shoplifting something worth \$100 and you could find yourself paying up to \$2,000 in fines and serving up to six months in jail. That’s a huge difference for just a penny.

## Double trouble

Theft is both a criminal and a civil matter. Along with criminal court, you will likely find yourself in civil court under the Texas Theft Liability Act. Under this act, victims of theft are entitled to monetary awards that cover the value of the property taken as well as anything that got damaged in the process. The award also covers recovery costs.

In addition, victims of theft can also demand a civil penalty of up to \$1,000 out of your pocket in addition to the monetary award that covers damages—which also comes out of your pocket. Again, this is in addition to criminal court penalties. That means two sets of court dates, two sets of court fees, and, yes, two or more fines.

Many retail stores will threaten to sue you for the amount of the merchandise that was taken, even if the store gets all of the merchandise back.

Always, ALWAYS talk to your attorney BEFORE you make any penalty payment to a store, as the store may not have legal grounds to file such a lawsuit. Never let a retailer take unfair advantage of a distressing situation—or your pocketbook.

The Texas Theft Liability Act holds the parents and guardians of minors who commit theft accountable to pay damages up to \$5,000 for what was taken, plus the damage caused by the theft. Five thousand dollars (or more) is a lot of money to pay for a crime you didn't commit.

If a minor is charged with theft, this becomes a problematic issue. Why? Because the only

one who can stand up on behalf of a minor in this case is an attorney. No one else, including you, can give your child legal counsel or intercede on their behalf. You cannot represent your child or access information on their behalf. Prosecuting attorneys and judges cannot advise your child.

This means that, unless you retain an attorney to represent your child, your child will be forced to go it alone.

Diversion programs and pre-trial intervention options are often available to minors, options that can potentially protect them and keep these charges off their records. However,

judges, police officers, and prosecuting attorneys are not required to make your child aware of these options. Only the child's lawyer can do this.

Don't let yourself get railroaded if your child, a minor, is arrested for theft. Find a competent lawyer ... and quickly.

## **Enhancements**

There are several situations where a theft charge becomes more serious. Prior theft convictions will enhance (increase the degree of severity of) your charge.

For example, if you've been convicted of theft *at any level* in the past, no matter how minor, and you are caught stealing something worth less than \$100, that Class C misdemeanor automatically rises to a Class B misdemeanor, meaning you will face higher fines and/or jail time, if convicted.

And a Class B misdemeanor increases to a Class A misdemeanor with one prior theft conviction, regardless of how minor, and if you're caught stealing something that's normally classed as a Class A misdemeanor, you're going to be charged with a state-jail felony instead.

With two or more theft convictions in your past, any theft under \$2,500 becomes a state-jail felony. So, if you've got two theft convictions under your belt already, you could face felony-level consequences for shoplifting a magazine or a candy bar.

We represented a young mother who found herself unexpectedly facing felony charges for stealing items totaling about \$50 from Walmart. She was a single mother who had to make some tough, rather desperate decisions in order to provide for her children. Because she already had two convictions for theft by check (each of those for checks written for less than \$50), this third charge was automatically jacked up to a felony.

Theft of firearms or certain kinds of metal, like copper, are felonies—there's no negotiation on that. It doesn't matter how low a price the gun could fetch or how little copper you stole. **It's a felony.**

Thefts of certain types of livestock are also automatically enhanced to felonies, regardless of the monetary value of what you steal.

**Charges brought against you get even uglier if you collaborate with others to pull off a theft or tamper with, disable, or use tools to shield items from theft detection devices.**

### Points to Remember:

- The severity of a charge is based on the value of what was taken and any history of prior theft convictions.
- Theft is both a criminal and a civil matter. You can be charged in both courts for the same crime.
- Parents and guardians of minors who commit theft face up to \$5,000 in fines for damages.
- Minors who commit theft can only be protected by hiring an attorney. Parents are not permitted to get involved, and neither the police, prosecutor, nor judge are required to inform you of anything or any program that might protect your child.
- Prior theft convictions, thefts of certain kinds of metal and livestock, working together with others to commit theft, or using technology to disable or shield goods from theft detection devices enhance the severity of charges brought against you.

# It's Your Life

At face value, most theft convictions don't seem like a big deal. Maybe you think it's nothing to lawyer up about—just paying a fine, hopefully no jail time, and it's over.

Wrong!

You do not want a theft conviction on your record. It's a glaring red flag flying over your head. And any previous theft conviction will enhance future charges, with your second theft conviction escalating any theft charge to a felony. But that's just the tip of the iceberg.

## The big red flag

*A crime of moral turpitude*, such as theft, is a crime that is considered contrary to fair, moral, and honest behavior. That conviction on your record is a huge red flag that announces: "This person is not trustworthy!"

Not only can a conviction like this prevent you from getting a job in the future—your current employer can legally fire you for it. And if you're caught stealing on the job, that is especially damaging to future employment.

You can be barred from ever receiving a professional license or certification and even have any current license or certification revoked.

If you ever find yourself in a situation where you have to either sue someone or file criminal charges against them, or even simply testify in a court proceeding, the opposing attorney will use it to discredit you and your testimony.

A conviction of this sort also bars you from naturalization in the United States if you're trying to obtain a green card.

Background checks are done these days for all sorts of reasons. This could turn up years later, when you volunteer to coach your child's Little League team or volunteer for PTA, for example. Then, all of your child's teachers and the parents of the school students will likely find out. Think about how that could affect your child, who's innocent. Your child could be ostracized, even psychologically affected long term, by your foolish mistake.

Theft, no matter how petty it might seem, is not something you want on your record. Ever. This is about preserving your integrity. This is about preserving your freedom to be seen as the person you are, and not tarnished irrevocably by one bad, possibly split-second decision you made in a moment of weakness.

Never just plead guilty to a theft charge, hoping it will go away. You have rights. You have options.

### Points to Remember:

- Theft is a crime of moral turpitude, making you appear as a person who can never be trusted by anyone for the rest of your life.
- Theft convictions can get professional licenses revoked, cause you to lose your job and be unable to get another one, and bar you from ever getting licensed in the future.
- Theft convictions can discredit you and any testimony you give in court in the future.
- Theft convictions can permanently prevent you, if an immigrant, from obtaining citizenship in the U.S.

# Know Your Rights!

Whether you are stopped outside a store on suspicion of shoplifting or the police come to your home, it is imperative that you assert your legal, constitutional rights without hesitation.

It's intimidating to interface with law enforcement. It's even more intimidating when they suspect you of a crime. But no matter what, your rights are inviolate—they are not discretionary and they do not vary depending on your circumstances.

Every single U.S. resident, citizen or not, is entitled to the same protections, the same civil rights, at all times.

You have the right to:

1. refuse to consent to searches
2. remain silent
3. be represented by competent legal counsel

You may fear that, by invoking your rights, you will look guilty. This is not the time to worry about appearances. If law enforcement is talking to you about your possibly having committed a crime, they already think you're guilty. They're not looking for ways to prove you're innocent or reduce the potential charges.

If you consent to a search when you don't have to, whether it's your home, your car, your business, or your person, anything they find can and will potentially be used against you.

If you refuse and they insist on searching you anyway, without a warrant, and the search was therefore performed illegally, anything found as the result of this illegal search cannot be used as evidence against you—a competent lawyer will get the evidence excluded.

If you volunteer to speak, which means you're giving up your right to remain silent, anything you say can and will be used against you. And it's not just what you volunteer—it's also what you omit that can be used against you.

If, on the other hand, you say that you are invoking your right to remain silent, you give them nothing that might incriminate you, and you cannot be punished for this.

But even if you invoke your rights to remain silent and refuse a search, if you don't elect to retain an attorney to defend you from the start, they will take advantage of the very big mistake you're making.

Assert your rights. All three of them. You are entitled to do so without it coming back to bite you. Your rights are there to help you. Accept the help you are entitled to, by law.

## **The right to refuse consent to searches**

Unless the police have a warrant, right there, in their hands, you have the right to refuse to consent to searches of your person, your home or business, and your vehicle.

With the frequency of Miranda warnings cited on television dramas, reminding us of our right to remain silent and be represented by counsel, people often forget about our right as citizens to refuse consent to a search.

Just because police ask, or even demand, to search you or your property, it doesn't mean you are required to consent. They're asking your permission to potentially incriminate yourself. Don't give it to them!

And if you're innocent? Just because you have nothing to hide doesn't mean you should consent. You shouldn't. Ever. Searches are time consuming, they can and often do result in your property being damaged, possibly beyond repair, and can turn up items that can compromise you, items you may not even realize were there.

To legally search your home, police officers must have a search warrant right there in their hands, one they can present to you and that you can demand to read. Without it, they cannot legally search your home without your consent. If they do have a warrant, it is your right to read it to ensure they aren't going beyond its limitations.

If, for example, the warrant is to search the garage, even if that garage is attached to your house, unless the warrant explicitly states that the police can search the interior of the home as well, the police must restrict themselves to searching the garage, and the garage only. The warrant may also be limited to searching only the exterior grounds of the property, not inside any buildings.

It is important that you read the wording yourself. If they cannot present you with a warrant and instead claim that “it’s on the way” or “they will get one later,” they cannot legally search your home, not without your consent. **Don’t give it to them.**

Laws surrounding searches of your person and your vehicle are much less stringent than those governing searches of your home. However, to legally perform a search of your person or vehicle when you refuse to consent, an officer must be able to prove “exigent circumstances.” That means there must be probable cause to suspect you to be doing something illegal, catching you in the act. However, even where probable cause exists, you should always clearly state you object to a search.

While it cannot prevent them from searching, it will give your attorney the opportunity to challenge its legality and disqualify any evidence obtained as a result.

If you don’t clearly state that you refuse to consent, as far as the Court is concerned, you have consented. You must say, “I refuse to consent to a search.” Invoke your right to refuse to consent to searches, even if your refusal to consent is ignored.

You cannot, however, refuse a pat-down. Police officers are within their legal right to pat you down to check for concealed weapons. Know that if stolen property is found on you during a pat-down, it will be seized as evidence.

But, no matter how incriminating it looks, the best thing you can do for yourself at that moment is to remain silent. Don't defend yourself, don't say, "I didn't take that," or "That's not mine," or "I didn't know that was in my pocket."

### **Remain silent.**

Few things are harder to resist than insisting on your innocence in the hope that an officer will change their mind. It's even harder to keep silent if the discovery leads to your arrest. But remain silent. You'll be glad you did.

## **The right to remain silent**

By all means, politely give the officer your name and identification—you should. They will invariably find out who you are, so there is no reason to refuse to identify yourself. But that is all you should do—confirm your name and politely inform them that you wish to invoke your right to remain silent.

Why? The Miranda Warning states anything you say **can and will be used against you**. This is absolutely true, but that is by no means the full extent of the risk you take when you volunteer information or protest your innocence. It is not just what you say but what you don't say that can be used against you. (And they don't tell you that part!)

If you omit something that seems inconsequential to you when talking to police and it turns out to be important, they will see you as having deliberately—willfully— withheld information.

We cannot stress this enough. Protesting your innocence, or trying to convince them you're not as guilty as they think, is a complete waste of time. They already suspect you're guilty. And the police are in no way obligated to presume you innocent until proven guilty, so don't kid yourself on that count. It's not their intent, or their job, to help you. In fact, although it's illegal for you to lie to them, they're permitted, even encouraged, to use deception as an interrogation tactic in order to get you to say something to incriminate yourself.

If they offer you a deal, don't buy it. The police have zero authority to negotiate deals. Only the prosecuting attorney can make deals that are binding. Just invoke your right to remain silent and tell them you want to speak to your lawyer, and leave it at that.

## **YOU CANNOT TALK YOUR WAY OUT OF AN ARREST BUT YOU CAN TALK YOUR WAY INTO A CONVICTION**

Invoke your rights as soon as police begin to question you, and then keep silent.

### **The right to competent legal representation**

When you tell police that you are invoking your right to remain silent, don't forget to add that you are also invoking your right to an attorney. You must clearly state that you

will not answer any questions without the presence of your attorney. That is the only way they will stop badgering you to answer their questions or try to convince you that remaining silent will somehow hurt you. It won't. We guarantee it.

Now, saying you want a lawyer might feel like you're admitting guilt. **YOU ARE NOT.** You are merely asking for the legal guidance that the law says you are not only entitled to but believes you need in this very situation, in order to protect you from lying, overly zealous law enforcement officers.

Can asking for an attorney get you into more trouble? Absolutely not.

Can asserting your rights lead to your arrest? Sometimes, but if it does, it means that they intended to hold you anyway, even before you asserted your rights, and not because you asserted them. Don't let it rattle you.

The police have the right to hold someone in custody without charging them with a crime for up to 72 hours. Remain calm, remain silent, and invoke your right to an attorney. What you want—what you NEED at that moment—is sound legal advice in order to secure the best possible outcome in your situation. The police have no interest in doing that for you. Only your lawyer does.

If you have used a criminal lawyer in the past, call them. If you don't know one, call your family or someone you trust, and ask them to get you one. But don't discuss the particulars of your situation because all calls from jail are recorded and what you say can be used against you! At this stage, you just

need an attorney to do everything they can to get you out of jail—that’s all. If you don’t want to use their services on your case, you’re not obligated to them.

The sooner you get out, the sooner you can find yourself a lawyer who you think WILL do the best job on your case. And you want them to get started as quickly as possible. Lawyers know the legal system inside out, and the best ones know the prosecutors and local law enforcement, how they think and how they operate, so the sooner they get to work on your case, the more defense options you will have.

#### Points to Remember:

- You have 3 rights, all of which you should invoke immediately when approached for questioning or arrest by police:
  - ⌚ to refuse consent to searches;
  - ⌚ to remain silent; and
  - ⌚ to be represented by an attorney.

# Do You Really Need a Lawyer?

In a word, yes. More often than not, people who commit theft with little or no forethought, whether driven by desperation or just foolish impulse, feel humiliated when they are caught. They know they have been caught doing something dishonest and it's mortifying.

Anxious to put the entire incident behind them, they convince themselves (or the police convince them) that pleading guilty and paying a one-time fine of a few hundred dollars is the way to handle it, so they can move on. Nothing could be more wrong.

Even if there is some jail time involved, defendants are in a hurry to just get it over with. Big mistake. Why? Because they have just admitted to committing a crime, one that will brand them as untrustworthy for the remainder of their life.

There is no such thing as putting this behind you. It's never *just* petty theft or *just* a bad check. Once you plead guilty, it is highly unlikely that you can ever get your record expunged later. A moral turpitude conviction will haunt you throughout your life, preventing you from moving forward.

With theft on your permanent record, you won't get hired, no matter how qualified you are, how much experience and

expertise you have, what you've accomplished, or how good a reference you provide.

All they will see is that you have publicly admitted that you cannot be trusted. And if you try to hide it, by lying about your theft conviction on applications, it will look even worse when it invariably shows up on the background check every company performs these days.

A young woman in Texas, rather than hiring an attorney, chose to plead guilty to theft and felt fortunate to be sentenced to only two years of probation. She adhered scrupulously to the terms of her probation and, at the end of it, to her relief, the charge was dismissed. From there, she went on to graduate school to earn her degree in psychology, with the goal of becoming a university professor.

A happy ending? Hardly. Even though the charge against her was dismissed, any time she applies for a teaching position, the school will run a standard background check, as is customary with all applicants, and see on her criminal history that she voluntarily pled guilty to theft. It's unlikely she'll ever manage to get a position in teaching, her dream in life.

If your work requires a commercial or professional license, whether you're a truck driver, a casino employee, or even a lawyer, you could lose your license and your ability to do the job you trained so hard to be able to do. Or, if it's your goal to get a job like that, it's not going to happen now.

You could also be barred from becoming licensed or certified in the future because right there on your record, for the world to see, it states that you choose not to live by the established social standards of ethical behavior.

If you're from another country and are anxious to get your green card and eventually become naturalized, you can

wave goodbye to any chance of that, too. Committing a crime of moral turpitude often immediately bars you from immigrating to the United States, and that's not negotiable, now or ever.

No matter how good a person you are, with a theft conviction you lose the ability to be seen as anyone except a dishonest person. You will be branded for life.

The best way to keep a theft charge off your record here, in Texas, is to start by finding an experienced, competent attorney, licensed to practice criminal law here, one who understands the intricacies of Texas law and its legal system. They will explain to you the strengths and weaknesses of your case and help you decide the best course of action in your situation.

One thing you may not realize is that it is not uncommon for the Court to offer pretrial intervention options to keep the charges off your record, particularly in cases where the defendant is a minor. But, if you decide to plead guilty without competent legal advice, it's unlikely that you would ever find out about these intervention options.

If it's your child who has been detained on suspicion of theft, you need to get them an attorney without delay. No one is permitted to give a minor legal counsel except their attorney, not even the Court. That means that if they waive their right to an attorney, they will face the court system alone, without any assistance whatsoever. Your child needs a lawyer. Now.

A theft conviction is not something you want on your, or your child's, record. Hiring a competent attorney is your best

chance of keeping it off. Retaining a lawyer is an investment in the future.

#### Points to Remember:

- Never plead guilty without consulting an attorney. A voluntary plea admitting guilt will stay on your record for life.
- The best way to fight a theft conviction is to consult with an experienced attorney.
- The only person who can legally advise a child suspected of theft is their attorney. Not even their parents or the Court are permitted to advise them.

# Building a Strong Case

The sooner you retain a lawyer to protect you, the better. If you have already exercised your rights to refuse consent to searches and remain silent, that's good news—you have given your lawyer a head start. You can examine the details of your case together and establish whether or not you have actually committed theft.

- Is there strong evidence that you acted with criminal intent, or is it weak?
- Did you *intend* to take something that didn't belong to you?
- Did you *know* that what you took belonged to someone else?
- Did you *know* that you didn't have permission to take it?
- Were you even aware that you were taking something?
- Does it really constitute theft?

Remember, theft is only theft if you act with criminal intent. It is the prosecution's burden to prove what your intent was, which can be hard to do if you've exercised your right to remain silent. If you were searched illegally, your lawyer can move to have any and all of the evidence found as the result of this illegal search suppressed.

Joe makes extra money by selling scrap metal. He drives by Sally's house and notices a pile of old bikes on her front lawn near the street. He assumes these have been put out as heavy trash and stops and puts them in the back of his pickup. Sally looks out her front window, sees Joe taking the bikes, and calls the police. Joe is arrested for theft. Yet, it was not his intent to take Sally's property if she still wants it. He only took the bikes because he thought they had been discarded.

**Your lawyers should investigate your case aggressively and utilize a private investigator to review the police reports for errors, inconsistencies, and oversights. If new witnesses can be located and questioned, the private investigator will talk to them.**

**If surveillance footage has been overlooked, the private investigator will review it. Your lawyers will assess the strength of your case and help you make an informed decision as to how to proceed.**

**Again, if you've stuck to your guns and invoked your rights, you may have a host of defense options available, which your attorney can lay out for you.**

**For example:**

- **Were you aware that the account you wrote a bad check from didn't have the funds to cover the balance?**
- **Was the check cashed long after you wrote it for goods and services?**
- **Were you given proper notification that you didn't have the funds to cover the check you wrote?**

If you are facing shoplifting theft charges, were you aware that the items you were accused of taking were in your possession? Just because they were concealed in your purse or pocket doesn't mean you knew they were there.

Maybe you and the cashier failed to notice something at the bottom of your shopping cart and security was overzealous in reprimanding you.

If accused of purchasing stolen property, did you know it was stolen when you bought it?

There are plenty of reasons as to why what you have been accused of does not fall within the definition of theft at all.

If your lawyer can build a strong case on the premise that your intent and actions don't meet the parameters of the charge of theft, your attorney is in a good position to fight the charges and get them dismissed.

What if your case is weak? Is it better to simply plead guilty? **No.** Never plead guilty unless your attorney has negotiated a deal and advises you to do so. And, even then, be sure the deal is actually good for you and not just an easy answer for your attorney. There are always other options.

Most theft cases are settled out of court through negotiations between the prosecuting and defense attorneys. In these negotiations, your attorney can push to get your charges reduced or even dropped, and explore pre-trial intervention options that can keep a theft conviction off your record.

At Texas Criminal Defense Group, mitigation is always a part of our defense strategy. Mitigation results in the lessening of charges and penalties against you. We do everything we can to get as many of the charges brought against you dropped, and the rest reduced.

If you are convicted of Theft by Check, it may prove difficult or even impossible to subsequently maintain or open a checking account at a bank. A conviction of Theft by Check is sufficient justification for denying you an account or to unilaterally close your existing account, deemed as evidence that you are someone who is irresponsible or dishonest when handling money.

Take Theft by Check for example. If you are charged with this crime, we will do whatever we can to negotiate getting the charge reduced to the lesser charge of Issuance of a Bad Check. Theft by Check is a crime of moral turpitude, not something you want on your record if you can avoid it, and the severity of the charge is based on the value of what was paid for with the bad check. *Issuance of a Bad Check*, on the other hand, is a Class C Misdemeanor that does not require any jail time, and, most important, is not a crime of moral turpitude.

If we can get the charge reduced to *Issuance of a Bad Check*, you will walk away with a fine, no jail time, and no conviction of a crime of moral turpitude to permanently stain your record.

Another mitigation option is to look into pretrial intervention options. Deferred adjudication is one such option we

sometimes push. Deferred adjudication is like probation, except that if you complete all of the required classes, community service, and meet the codes of conduct, your case will be dismissed with no conviction.

Pretrial intervention options are often available for misdemeanors and to minors who face theft charges, but it takes an attorney to ensure the defendant is made aware of them. Again, no one else but your attorney will ensure you are informed of such options.

Once your lawyer has a chance to investigate your case and assess its strength, you can work together to decide on the strategy that best suits your needs.

#### **Points to Remember:**

- Always invoke your right to refuse consent to searches, to remain silent, and ask to speak to an attorney.
- A good lawyer will investigate your case aggressively and integrate mitigation tactics into the strategy when appropriate.

# Finding the Right Lawyer

Your chest is tight. You've just been arrested and suddenly you must make one of the most important decisions of your life—possibly from inside a jail cell. How are you supposed to find the right lawyer when you're on the spot? How can you be sure they *are* the right lawyer?

NEVER discuss your case details over the phone with anyone!

First off, you need to understand that talking to a lawyer is NOT always protected by confidentiality.

# ALL PHONE CALLS FROM JAIL ARE RECORDED AND WHAT YOU SAY CAN AND WILL ALWAYS BE USED AGAINST YOU

Don't share your version of what happened, apologize or admit wrongdoing, or say **ANYTHING** over the phone, or to anyone else except your attorney, regarding the charges against you. Wait until your attorney tells you it is safe to speak before discussing any details of your case, no matter how minor you think the detail is.

Note: You are not obligated to keep a lawyer you've hired from inside jail. Their job at this stage is to get you out of jail, but you are NOT obligated to keep them.

First off, we recommend you avoid one-man shows—a lawyer who has to juggle your case along with many others, tackle all the investigating, all while acting as secretary and receptionist, is not someone who likely has sufficient time to devote to you and the best outcome of your case.

Choose a firm that specializes in criminal law, one with at least one board-certified member, one former prosecutor, a private investigator on staff, competent paralegals, and guaranteed 24-hour secure access when you need it.

# What's Your Next Step?

By now, you appreciate why even the pettiest of theft charges is no light matter to be dismissed without worrying about the consequences.

You realize now how important it is to insist upon your rights, never to consent to a search, never to answer questions or speak to police, and to always demand to speak to an attorney before saying or agreeing to **ANYTHING**.

At Texas Criminal Defense Group, attorney Stephen Hamilton maintains superb AVVO ratings and has received the highest Martindale-Hubbell AV peer rating possible. Moreover, he is Board Certified in Criminal Law and has defended clients in more than 100 jury trials.

Our peers endorse our work and we do whatever it takes to protect you and your future.

We hire only the most highly skilled and highly regarded attorneys to become members of our team, including a former prosecutor, and we work with a dedicated, skilled private investigator in order to build the strongest case possible for our clients.

With years of experience defending against all kinds of theft charges, we understand the complexities of theft law and know every option available to keep a theft conviction off your record.

If you find yourself facing theft charges in Texas, no matter how severe or seemingly minor, call us! We can help. We are available 24 hours a day, 7 days a week, every day of the year, without exception, to discuss your case with you.

Arrests aren't limited to a 9 to 5, Monday to Friday schedule, and neither are we. It's important to us that you have access to the best representation possible when you need it.

Try us. Call **833-Texas-Justice (833-839-2758)** now. We are always here to answer your call.

For more information about our firm, our team, and our services, please visit our website at [www.texascriminaldefensegroup.com](http://www.texascriminaldefensegroup.com)

# If you or a loved one ever find yourself arrested for theft in Texas, this book is a must-read!

Attorneys Texas Criminal Defense Group believe in empowering people to make the best decisions when confronted with potentially life-altering events caused by a theft arrest. Everyone is entitled to a strong and passionate defense. That is why they have written this book. It will arm you with information about theft arrest in Texas and how to assemble the best defense possible.

## ABOUT THE AUTHORS

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### Stephen L. Hamilton

Attorney Stephen Hamilton is the founding partner and lead trial attorney at Texas Criminal Defense Group ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He has been awarded numerous awards, and his counsel is highly esteemed by his peers. He is a lifetime legal member of the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.

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