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Traffic Offenses

The information contained in this packet is not offered as legal advice. The information is not exhaustive. There may be other remedies and procedures not contained in these packets. You should seek professional, licensed, legal counsel for advice.

The Court and its staff cannot tell you what you should do about your problem. The *Code of Judicial Conduct* prohibits a Judge or court employee from “practicing law” (giving legal advice). The *Code* further prohibits the Justice of the Peace from engaging in communications concerning the merits of a pending judicial proceeding, or the merits of an impending claim or dispute. The Court and staff can, however, communicate concerning

1. *Uncontested* administrative matters
2. *Uncontested* procedural matters
3. Magistrate duties and functions

FREQUENTLY ASKED QUESTIONS

1. WHERE CAN I LOOK UP THE LAWS OF TEXAS?

The Texas Statutes are available on-line at <http://www.capitol.state.tx.us/statutes/statutes.html>. Most traffic offenses are contained in the Texas Transportation Code.

2. DO I HAVE TO COME TO COURT?

Defendants must either (1) appear in person; (2) by mail or (3) through a lawyer hired to represent them in court. *Minors (under age 17) must appear before the court in person with a parent or guardian. They cannot plead by mail, nor can they pay the fine at the court clerk's window.*

3. HOW LONG DO I HAVE TO APPEAR?

Your ticket (also called a citation) has a date that was written in by the officer, deputy or trooper at the time of the traffic stop. It is called your appearance day. You can usually take care of your business with the court on or before your appearance day.

NOTE: Certain offenses contain administrative dismissal provisions that require action or appearance within a specified period of time, which time may be sooner than the date set for appearance on your ticket!

For example:

- **Expired Driver's License:** License must be renewed within 10 working days of receipt of the citation

- **Expired Registration:** Registration must be renewed not later than 10 working days after the date of the offense, and the Tax Assessor's receipt must show the payment of the late fee
- **Inspection Certificate:** Inspection must be less than 60 days out of date, and new inspection must be made within 10 working days from the date of the offense
- **Driving Safety Course ("DSC"):** Must be requested before the appearance date on the citation
- **Deferred Disposition ("Deferred"):** May be requested at any time prior to final disposition
- **Failure to Maintain Financial Responsibility ("No Insurance"):** Proof of valid insurance covering the defendant driving the vehicle at the time of the offense may be produced at any time prior to final disposition

4. WHAT IF THE COURT IS CLOSED ON MY APPEARANCE DAY?

Occasionally, the appearance day on the face of the ticket will be a weekend or holiday, or the court is closed for some unforeseen reason, such as weather. The best course is to take care of your business on a day the court is open **before** the appearance date. If you have waited, however, and this is your last day to appear, be certain to contact the court clerk early on the next business day the court is open. Point out that you attempted to appear on the designated day, but the court was closed. Not all courts follow the same policy, but it is reasonable to request that you be permitted to take care of your ticket as though you had appeared on time.

5. WHAT HAPPENS IF I DON'T GET TO COURT BY MY APPEARANCE DAY?

This varies according to each court's policy. Some courts will send a "courtesy letter" informing the defendant that the time to take care of the citation has expired and warning the defendant to immediately contact the court. **Other courts will immediately issue a warrant for the defendant's arrest** for "Failure to Appear" or "Violate Promise to Appear."

Instead of a warrant, **minors under the age of 17 will have the failure to appear reported to the Department of Public Safety, resulting in a suspension of driving privileges.**

6. WILL I GET ARRESTED?

If you have (1) failed to appear by your appearance date in response to a summons to plead, or at your scheduled trial, or (2) if you have been previously found guilty, assessed a penalty, and then have not paid your fine or appealed your conviction, a warrant can issue for your arrest.

(Minors: See previous question and answer regarding persons under age 17).

7. CAN I GET AN EXTENSION ON MY TIME TO APPEAR?

This varies according to each court's policy. Some courts may require you to post an appearance bond to guarantee you will appear in court on a later date; sometimes a court will request that you plead in writing by mail; sometimes you can simply mail in your fine and court cost money. *(See also the previous question and answer on # 3 "How long do I have to appear?")*

8. DO I NEED A LAWYER?

It is not required that a defendant be represented by legal counsel, although a licensed attorney can give advice about options and procedures you may not be aware of. If a defendant pleads "not guilty" and goes to trial, however, the **State of Texas will be represented by a lawyer** employed by the **District Attorney**. Defendants are certainly free to hire lawyers to represent them in court, but if a defendant cannot afford an attorney **no lawyer will be appointed at the State's expense**. This is because offenses within the Justice Court's jurisdiction are punishable by fine only, and not by imprisonment. Attorneys are only appointed at the State's expense when a defendant's liberty is at risk.

9. WHAT DOES A “PLEA” MEAN?

The Constitution requires that the accused be given notice of the charges filed, and given an opportunity to appear and be tried. This is known as “**due process**”. Once the defendant is notified of the charges filed, the defendant enters a plea of “**guilty**” (admitting to the offense), “**no contest**” (not admitting guilt, but not contesting the charges filed), or “**not guilty**” (requiring a trial by judge or jury). **A plea of “guilty” or “no contest” will result in a finding of guilt by the court, along with a penalty. A plea of “not guilty” will result in a trial by judge or jury.**

NOTE: A plea of “guilty” may be used against a defendant for other purposes, such as to prove civil liability in a civil suit for property damage arising from the same incident. A plea of “no contest” cannot be used for that purpose. Further, if a defendant refuses to plead, the court is required to enter a plea of “not guilty” on the defendant’s behalf. Finally, **a minor under age 17 must appear before the court in person with a parent or guardian to enter a plea—it cannot be done by mail and fines cannot simply be paid to the court clerk without seeing the judge.**

10. HOW ARE FINES SET?

Fines are set by the court. The published fine, (sometimes called the “window fine”), is the fine a court sets for the convenience of the public, to allow fines to be conveniently paid without going before the judge. The court sets these fines within a range set by the state legislature for each offense. Most moving violations without a specific fine set by the legislature have a range of \$1-\$200. Fines for speeding offenses are calculated according to the number of miles per hour over the speed limit. Class C misdemeanor penalties without a specific fine range from \$1-\$500.

Examples of offenses having specific fines set by the legislature include:

- Seatbelt violation fines range from \$50-\$200
- Failure to Maintain Financial Responsibility (“No Insurance”) fines range from \$175-\$350 for the first offense, and \$350-\$1,000 for subsequent offenses
- Fines in construction or maintenance work zones (while workers are present) are required to be *doubled*. *In addition to the fine set by the court, court costs are set by the legislatures which vary according to the offense.* For example, an offense having a \$100 fine may have court costs of \$104.00, resulting in a total penalty to the defendant of \$204.00.

11. WHAT IF I JUST PAY THE FINE?

If a defendant pays the fine without explanation, the Court is authorized to accept the fine and enter a conviction as through the defendant had appeared in person and entered a plea of “*nolo contendere*” (“no contest”). **A minor under age 17 cannot pay the fine without appearing in court with a parent or guardian.**

12. WILL A CONVICTION SHOW ON MY DRIVING RECORD?

Convictions for certain offenses are reported to the Department of Public Safety in Austin and remain on your driving record for a period of time, including:

- All moving violations
- Driver’s license violations
- Insurance violations
- Some seatbelt violations

Examples of convictions not reported include: Vehicle inspection violations, vehicle registration violations and most equipment violations.

CAUTION: CONVICTIONS ACCUMULATE!

Under the licensing provisions of the Texas Transportation Code, a person who has:

- Four or more convictions from different transactions in 12 consecutive months;
- Seven or more convictions arising from different transactions in 24 months; or
- Two or more convictions within 12 months while holding a “provisional license” (drivers under age 18) May be found to be a “habitual violator”, resulting in the suspension or permanent revocation of driving privileges.

THE “POINT” SYSTEM

All moving violations convictions occurring after September 1, 2003 will result in the assessment of “points” on your driver’s license. These points accumulate, and accrue fees.

- 2 points accrue for each moving violation conviction
- 3 points for each violation resulting in an accident
- DPS shall assess a \$100 surcharge on the license of any operator who accumulates 6 or more points during a 36-month period, and a \$25 surcharge for each additional point over 6
- Failing to Maintain Financial Responsibility (“No insurance”) - \$250 a year surcharge for a 36- month period
- Driving While License Invalid—\$100 a year surcharge over a 36-month period
- 1st DWI— \$1,000 a year surcharge over 36-month period
- Subsequent DWI—\$1500 a year surcharge over 36-month period
- DWI w/blood alcohol concentration of 0.16 or more: \$2000 a year surcharge over 36-mo. Period

EXAMPLE: CONVICTIONS DURING A 3-YEAR PERIOD POINTS AND URCHARGES POSSIBLE

Failure to pay the surcharge within 30 days of notice from DPS will result in automatic suspension of driver’s license

OFFENSE	POINTS	SURCHARGE	POINT BALANCE	TOTAL ANNUAL SURCHARGE FOR 36 MOS.
Speeding	2		2	
No Insurance	2	\$250.00	4	
Run Red Light (accident)	3	\$100 for 6 pts. + \$25 for extra pt.	7	375.00

The only way to avoid “points” is to avoid conviction.

The best way to avoid conviction is to obey the traffic laws.

The 2nd best way to avoid conviction is to be found “not guilty” after a trial. But if you committed an offense, and know you will have to pay a fine, there are two other ways to avoid conviction: Complete a Driving Safety Course (“DSC”) or be granted “Deferred Disposition” by the judge.

13. CAN I TAKE A DRIVING SAFETY COURSE (“DSC”) TO HAVE THE TICKET DISMISSED?

Both the driver and the offense must qualify for a driving safety course and certain requirements must be met, according to the Code of Criminal Procedure, Sec. 45.0511:

- The offense must be an offense committed while operating a motor vehicle (usually a “moving violation, such as speeding less than 25 miles per hour over the posted speed limit)
- The driver must hold a valid Class C non-commercial Texas driver’s license
- The driver must have valid auto liability insurance
- The driver must not have taken a driving safety course to dispose of a traffic offense within the previous 12 months
- The driver must not be currently taking a driving safety course to dispose of another offense
- The request for DSC must be made before the appearance date on the ticket
- The driver must plead “guilty” or “nolo contendere” (no contest)
- The driver must pay the court costs (currently \$94.00), plus a \$10 administrative fee at the beginning of the 90-day period of deferment
- Active Military with out of State License/or permit
- The driver must provide satisfactory proof of completion of a certified driving safety course and a copy of the defendant’s driving record obtained from the Department of Public Safety. Failure to pay fees, take the course or provide proof of completion in a timely manner will result in a conviction and payment of a fine.

14. Offenses NOT eligible for discharge through a driving safety course include:

- Speeding 25+ miles per hour over the posted speed limit
- Construction or maintenance work zone violations (when workers are present)
- Failure to stop at the scene of an accident involving damage to a vehicle
- Failure to give information or render aid
- Reckless driving
- Overtaking a school bus
- Fleeing police
- Offenses committed by a driver holding a CDL

15. WHAT IS “DEFERRED DISPOSITION”?

Deferred disposition under Code of Criminal Procedure 45.051 is available for any misdemeanor case punishable by fine only, at any time prior to final disposition of the case. To qualify, the defendant must:

- Plead guilty or “no contest” in person or in writing, or be found guilty by the court
- Agree to the terms and conditions set by the court or offered by the District Attorney’s office
- Pay court costs, plus a “special expense” (that does not exceed the amount of the fine), to be posted as a bond at the beginning of the term of deferment
- Comply with the court’s requirements (if any), which may include a driving safety course or any “reasonable condition”
- Comply with the court’s conditions and commit no moving violations for a period between 30 and 180 days (as set by the court)
- Provide the court with satisfactory proof of completion of the court’s requirements.

Failure to pay fees and costs or to comply with the court’s conditions will result in a conviction and payment of a fine.

16. I HAVE A COMMERCIAL DRIVER'S LICENSE (CDL) - CAN I STILL TAKE DSC OR DEFERRED?

Persons holding a Class A, B or C Commercial Driver's License (CDL) are ineligible to discharge a moving violation through a defensive driving course or deferred disposition, even if the offense occurred while operating a non-commercial vehicle, such as a personal automobile.

17. MY TICKET SAYS IT WAS ISSUED "IN A CONSTRUCTION ZONE WITH WORKERS PRESENT". DOES THAT MATTER?

Moving violations that occur in a location designated a "construction or maintenance work zone" where workers are actually present, are not eligible for discharge through a defensive driving course or deferred disposition, AND the fine range is doubled (for example, an offense with a fine range of \$1-\$200 would be doubled from \$200-\$400).

COLLECTION OF FINES DUE

Fines and court costs are due at the point of conviction, (unless an appeal is timely filed), or before the start of a deferred disposition, some courts allow alternative means of payment for large amounts, such as:

- Payment plans (an additional \$25 is assessed for any amount paid 30 days after judgment);
- Community service (at the rate of \$6.25 per hour);
- Credit for time spent in jail (at a minimum of \$50 - \$100.00 per day);

Defendants with delinquent fines may be arrested and jailed, their case may be referred to a collection agent, and their driver's license may be suspended.

APPEAL

Convictions may be appealed to the County Court at Law by posting the appropriate bond (usually double the amount of fine and costs), with the court clerk and completing an appeal bond within ten days of the date of conviction. Defendants requesting deferred disposition may be required to waive their right to appeal a conviction. Ordinarily, convictions for traffic offenses are not subject to appeal after the fine is paid.

PROPER DRESS IS REQUIRED IN COURT!

All requirements pertain to both adult and juvenile males and females unless otherwise noted. Failure to comply may result in the resetting of the case to a later date, or in the extreme, contempt of court:

- Shoes are required.
- No sleeveless shirts
- No shorts (women are permitted to wear dress shorts with hosiery)
- No exposed midriffs
- No clothing displaying offensive words or pictures (the Court retains the exclusive right to define "offensive" on an individual basis.
- No hats
- Cleanliness. (If necessary, washrooms are available in the building)
- Officers of the court are held to the higher standards generally recognized in Texas Courts.

INFANTS AND SMALL CHILDREN should be left with a sitter or at home in the care of a competent adult. There are no childcare facilities in the courthouse. Loud or crying children should be taken out of the courtroom.