

TEXAS YOUNG LAWYERS ASSOCIATION
AND STATE BAR OF TEXAS

GUIDE TO TRAFFIC COURT



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INTRODUCTION

This pamphlet is designed to address your concerns about the traffic ticket that you just received. This pamphlet is not intended to be legal advice and should never be used in the place of a good criminal lawyer. However, the Texas Young Lawyers Association would like for you to be educated about your rights, your options, and where to find help if you need it.

WHERE AM I, AND WHY DID I END UP HERE?

As discussed above, the focus in this pamphlet is on traffic tickets. Most traffic tickets are classified as class C misdemeanors. As with many other areas of the law, there are some exceptions to this rule, so it is important that you are aware of what type of offense you received the ticket for. This pamphlet will only address class C misdemeanors.

In the State of Texas, municipal courts and Justice of the Peace Courts have jurisdiction over class C misdemeanors punishable by fine only. To find information about your particular municipal court you can visit the Texas Office of Court Administration Directory Search online at <http://card.txcourts.gov/DirectorySearch.aspx>. Here you can enter the municipal court type, your county and city, and you will be provided information on your local applicable court. Most municipal courts also have their own websites which you can access through this webpage. These sites have a wealth of information about court rules and procedures.

Your local municipal court or JP court is where you will have to take care of your ticket regardless of how you choose to do so.

WHAT ARE MY OPTIONS IF I ADMIT THAT I AM WRONG?

First of all, you should always remember that a traffic ticket is an allegation that a traffic offense occurred. Signing the ticket does not mean that you are admitting guilt. Therefore, if you believe that you are not guilty of the alleged offense you always have the right to retain an attorney to defend you in the matter. You also have the right to proceed in court pro se because the only punishment that can be administered is a fine. This means that you have the right to represent yourself. You should also be aware that some traffic offenses could result in additional consequences that can be very costly. Therefore, before you decide to enter a guilty plea, you should review the "Are there any other consequences to receiving a ticket that I should be aware of?" section of this pamphlet.

The first thing that has to happen is that you must make an appearance regardless of whether you plan to admit guilt or not. When you received the traffic ticket the police officer more than likely pointed out to you the date to appear. You must plead guilty, not guilty or no contest on or before your appearance date. You can either appear in person (with or without an attorney) by taking the citation with you to court, or mailing it to the court by the appearance date. It must be postmarked by the appearance date if you decide to mail it.

You can choose to contact the court prior to your appearance date to find out the total amount of the fine. By doing this you can pay the fine when you make the appearance. If you do not pay the fine with your appearance the court will send you a notice and you will have 30 days to pay the fine in full. At this time you can also choose to plead guilty, not guilty or no contest. If you refuse to enter a plea the court will enter a not guilty plea for you.

Pleading no contest, in essence has the same outcome of a guilty plea. You are going to have to pay the fine. However, if there is ever a civil suit filed against you related to this particular traffic offense, your plea of no contest cannot be used against you in the civil suit, while your guilty plea can. If you plead guilty or no contest and you do not pay the fine with your appearance you will be given the opportunity to speak with a Judge and tell her why you should not have to pay the whole fine. However, the Judge is under no obligation to reduce your fine and doing so is at the Judge's sole discretion. If you choose to plead guilty and are not eligible for a driver's safety course (see below), you are going to have to pay the fine.

ARE THERE ANY OTHER OPTIONS BESIDES PAYMENT OF THE FINE IN FULL?

When you received your ticket there is a great deal of information on the reverse side. When making your plea of guilty, not guilty or no contest you often have the opportunity to make two additional decisions.

1. The Driving Safety Course:

To be eligible for a driving safety course you must meet the following requirements:

- You must not have completed a driving safety course in the previous 12 months or be in the process of taking one;
- If you got a speeding ticket you cannot have been going more than 24 miles over the posted speed limit;
- You must be at least 17 years of age;
- Your driver's license cannot have been a commercial drivers license (CDL), or you cannot have been the holder of a CDL at the time of the offense;
- You must present proof of insurance.

There are some specific offenses for which a driving safety course cannot be completed. Please contact your court for specific information as to those offenses.

2. Deferred Adjudication (also known as Deferred Disposition):

The deferred adjudication process can vary by court. In essence, if you are eligible for deferred adjudication the court will accept your guilty or no contest plea and in exchange for your plea they will place you on probation. As long as you complete your probation terms the court will discharge you from probation and dismiss the offense against you without finding you guilty. Deferred adjudication is at the sole discretion of the court, unless under Art. 45.051(g) of the Code of Criminal Procedure, you commit an offense in a work zone or if you hold a commercial driver's license or held a commercial driver's license at the time the offense was committed and the offense was anything related to motor vehicle control other than a parking ticket. In these instances a deferral is not an option.

You should contact your court to find out if you might be eligible for this relief. If you are eligible and you have the offense dismissed you can then seek an expunction of the offense from your criminal record.

WHAT CAN I DO IF I DON'T THINK I AM GUILTY?

You must plead not guilty, either in person or by mail as outlined above. After pleading not guilty the court will set your matter for a trial. All trials are set initially as jury trials. You may waive your right to a jury trial but it must be done in writing. If you do this, only the judge will hear your matter. This is called a bench trial.

If you choose to proceed to trial your fine will be set by the judge or jury and will include court costs. The amount that you are ordered to pay as your fine will be within the range of punishment for the offense that you were found to have committed.

WHAT SHOULD I EXPECT IN COURT?

A traffic ticket is brought against you by the State of Texas. Therefore, a prosecutor will represent the State in the trial. You have the right to have an attorney represent you. However, you will have to hire one on your own because attorneys are not appointed for Class C offenses. You may also represent yourself if you choose.

A trial for a traffic ticket is tried just like a trial in any other court. If you choose a jury trial you will have the opportunity to question the jurors about their ability to serve on the jury. This is called voir dire. The State of Texas has the burden of proving your guilt beyond a reasonable doubt. Therefore, they will present their case first. This means that after you both give your opening statement they will call their witnesses first. This usually will include the officer that gave you the ticket. You will have an opportunity to cross-examine their witnesses. After they rest their case, you will have the opportunity to put on your case by offering your own testimony and calling your own witnesses. The State will have the ability to cross examine your

witnesses, just like you cross examined theirs. After you have presented your case, you will rest. Both the State and you will be afforded the opportunity to make a closing argument. Because the State has the burden, they always have the last word.

The jury or the judge will then determine your guilt and your punishment. The range of punishment can include the full fine plus court costs, a reduced fine and court costs after the judge and the jury consider your particular financial circumstances, or at the judges sole discretion he may defer your guilt through the deferred disposition process (see above).

If you are found guilty you do have the ability to request a new trial and the right to appeal. You have 5 days by law to file a motion for new trial. The judge is not required to grant you a new trial and if you receive no ruling on or before 10 days from the date you filed your motion for new trial then your motion is overruled by operation of law. You must file your appeal bond within 10 days from the date your judgment was entered. The court will set your appeal bond.

ARE THERE ANY OTHER CONSEQUENCES TO RECEIVING A TICKET THAT I SHOULD BE AWARE OF?

The Texas Drivers Responsibility Program (DRP) created two sets of surcharges under Texas law. These surcharges are applicable to driver's license points and surcharges for certain convictions and license suspensions.

Under the points system, an individual's driver's license is assessed points for certain convictions for violations of the traffic code. Two points are assessed per moving violation of the traffic law of Texas or another state. Three points are assessed per moving violation that resulted in an accident. Points may not be assessed on a person's driver's license if they were convicted of speeding but were not going more than 10 percent over the posted speed limit. However, regardless of the speed, if the person received a speeding ticket in a school crossing zone points are assessed.

The Texas Department of Public Safety (DPS) will assess a surcharge to the license of a driver who accumulates six or more points in the preceding three year period. The surcharge under the points system is \$100.00 for the first six points and \$25.00 per additional point. DPS will deduct one point for each year that a driver goes without having accumulated an additional point.

Under the surcharge for certain criminal convictions there are four specific traffic offenses that result in the assessment of a surcharge upon conviction:

1. Offenses related to the driving of a motor vehicle while intoxicated (DWI for example);
2. Driving while license invalid;

3. Driving without proof of financial responsibility (insurance); and
4. Driving without a valid license.

Upon conviction for any of the above four classifications of offenses, DPS will assess a surcharge on the license of a person for each of the three years after the conviction. The amount of the surcharge ranges from \$1,000.00 per year for the first intoxicated driver offense up to \$2,000.00 per year for a first conviction if it is shown that the driver's blood, breath or urine showed an alcohol concentration of .16 or higher. The surcharge for driving while license invalid or without proof of financial responsibility is \$250.00 per year. The surcharge for driving without a valid license is \$100.00 per year. Remember, these fines are assessed for three years from the date of conviction; therefore, the surcharge must be paid three times.

No later than the fifth day after a surcharge is assessed, DPS must send notice of the surcharge to the most recent address in the DPS records. If the surcharge is not paid on or before the 45th day after the surcharge is assessed, or if the person fails to enter into a payment plan, DPS must send a second notice. If the surcharge is not paid on or before the 60th day after the second notice is sent, or if the person fails to enter into a payment plan, DPS must send a third notice advising the person that their driving privileges are suspended. Once the license is suspended the driver will additionally be responsible for an administrative driver's license reinstatement fee, usually \$100.00. You will be notified by DPS that you also have the ability to request an administrative hearing at this stage. If you fail to request that hearing your license will be automatically suspended as outlined above. If you request a hearing a judge could enter an affirmative finding and then suspend your license for a period not to exceed one year. The judge also has the ability to probate the suspension. Failure to receive notice is not a defense to suspension of your driver's license. Therefore, it is important to ensure that the DPS has your current address.

IS THERE ANYTHING THAT CAN BE DONE TO REDUCE THE SURCHARGES?

Effective September 1, 2011, the Texas Transportation Code was amended to allow DPS to establish three programs to help those who have had their licenses suspended due to nonpayment of the DRP surcharges, but cannot afford to pay those surcharges. These programs are as follows:

1. Periodic Amnesty Program;
2. Incentive Program; and
3. Indigency Program

The Periodic Amnesty Program (Amnesty) is offered at the sole discretion of the DPS. The Incentive Program (Incentive) as well as

the Indigency Program (Indigency) are required. For information on all three of these programs you can go to <http://www.txsurchargeonline.com>.

Both the Incentive and Indigency Programs are based upon the financial status of the applicant. The incentive program is a one-time reduction and is applicable for those that are above the 125th percentile of the federal poverty guidelines up to and including those that are below the 300th percentile. This means a family of four must have an income above \$28,812.50 per year but below \$69,150.00 per year (as of the date of initial publication of this pamphlet). If an individual is income eligible for this incentive they will be required to pay 50% of their assessed surcharges. Additionally, if the individual has made prior payments through a payment plan, those payments will be applied to the reduced surcharge amount. However, if they have made more payments than the reduced amount they are not eligible for a refund, but will not be required to make any additional payments.

Indigency reduction is available at all times to those who are at or below the 125th percentile of the federal poverty level. As outlined above, that means a family of four with an annual household income of \$28,812.50 or less for 2013. To apply for this reduction an individual must follow the instructions and complete an application that is available online here [https://www.txsurchargeonline.com/\(S\(kex41f0urebaqlubyg1rkec\)\)/IndigencyAffidavit-%20English.PDF](https://www.txsurchargeonline.com/(S(kex41f0urebaqlubyg1rkec))/IndigencyAffidavit-%20English.PDF). If an individual is eligible for the indigency reduction their total surcharges will be reduced to 10% of what they owe in outstanding surcharges with a maximum amount of \$250.00. Any surcharge assessed on or after September 30, 2004 is subject to this reduction. If an individual has made payments equal to or more than the amount owed under the reduction they will not be required to make any more payments. However, if they have paid more than owed under the reduction they will not receive a refund. Once enrolled, the individual will be given up to 180 days to make the reduced payment in full. During the 180 day period DPS will rescind the suspension of the individual's driving privileges. If a new offense results in a surcharge and is reported within 90 days of enrollment in the indigency reduction program, it will automatically be reduced based upon the prior affidavit and the individual will receive notice of the new amount due within the 180 timeline. If a new offense results in a surcharge after the initial 90 days the individual will have to complete a new affidavit of indigency to have the subsequent surcharge reduced.

Under the Amnesty, Incentive and Indigency programs there are administrative fees that are due to the Municipal Services Bureau (MSB) as well as DPS that must be paid and cannot be reduced or waived. If your license is suspended due to nonpayment of surcharges, you should contact your local DPS office and ensure that these fees have been paid and that your legal privilege to drive in Texas has been restored before you get back behind the wheel.

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