



FOUNDATIONS AND UPDATES SEMINAR

TN MUNICIPAL JUDGES CONFERENCE

Spring 2022

Howdy!

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Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

Modules

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Municipal
Court
Reform Act

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Fees, Court
Costs,
Taxes, and
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Jurisdiction for Municipal Courts



Charter

Code of Ordinances

Municipal Court Reform Act

Other state statutes



Charters compared to Codes

Charter

- Basically, a city's birth certificate issued by the TN General Assembly
- Says what a city can do and cannot do
- Rarely changes, and difficult to do so
- Three types of charters
 - Private Acts – specific to a city (these must have been in existence prior to 1953)
 - General Laws – apply to all cities within a certain class, city may adopt “form charter” that are written into the state code
 - Home Rule – writes charter and adopts it in referendum.

Code of Ordinances

- Compilation of city's laws and some of its regulations
- Passed by the city's governing body, like city council or board of aldermen
- Regulations, laws, budget items, who makes decisions
- Should be updated frequently with new ordinances
- Much easier to revise than a city's charter
- Can adopt certain state misdemeanors into code and enforce in city courts



Charter and Jurisdiction



Charters establish the municipal court

Determines power of the city court

Determines if judges are elected or appointed

Determines if court clerks are elected or appointment

Municipal Court Reform Act – passed in 2004

Municipal Court Reform Act – TCA 16-18-301 et. seq. covers:

- Jurisdiction of Municipal Courts
- Types of offenses heard
- Clerk Duties
- Appeals
- Legal authority for fines, fees, court costs, taxes
- Judge and court clerk training
- Best introductory guide to how municipal courts function
- But, not an all-encompassing statute for city courts



Definitions - TCA 16-18-301

There are two definitions in the Municipal Court Reform Act. These two definitions play a role in how one may interpret some of the actions or roles of a city court.

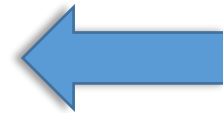
- TCA 16-18-301(b)(1) - “Any law to the contrary” includes, but is not limited to, any conflicting provision of any general statute, local law, private act, charter provision, municipal law, or municipal ordinance;
- TCA 16-18-301(b)(2) – “Municipal court” includes the city, town, mayor’s, recorder’s or municipal court, or other similarly functioning court, however designated, for any city, town, municipality or metropolitan government, whether the court exists pursuant to general statute, local law, private act, charter provision, municipal law, municipal ordinance or other legal authorization.

Municipal Court Jurisdiction – TCA 16-18-302

Pursuant to **T.C.A. § 16-18-302(a)(1) and (a)(2)** a municipal court can hear the following:

Part (1)

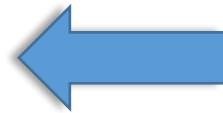
- Cases for violation of the laws and ordinances of the municipality; or
- Cases arising under the laws and ordinances of the municipality; **and**



So what is the difference?

Part (2)

- City Ordinances that mirror/duplicate/ incorporate by reference State criminal laws that are Class C misdemeanors where the maximum penalty is a civil fine that does not exceed \$50



Ex: Rules of the Road Ordinance

Two types of jurisdiction

Traditional jurisdiction vs. General Sessions jurisdiction

Tennessee Constitution – Article VI, Sec.1

ARTICLE VI.

Judicial Department.

Section 1. The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery and other Inferior Courts as the Legislature shall from time to time, ordain and establish; in the judges thereof, and in justices of the peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by justices of the peace may also be established.

Two types of jurisdiction

Traditional Jurisdiction

- **Corporation Court**
- “Civil in Character”
- Hears municipal code ordinance violations
- Hears Class C misdemeanors adopted into the city code
- No risk of going to jail
- Most common

Concurrent General Sessions Jurisdiction

- **Inferior Court**
- Civil and criminal cases
- Hears municipal code violations
- Hears Class A, B, and C misdemeanors
- There is a risk of going to jail

“Inferior” vs. “Corporate” courts detailed in [Town of South Carthage v. Barrett, 840 S.W.2d 895 \(1992\)](#).



Inferior Court vs. Corporation Court

Inferior Courts

General Sessions jurisdiction

- Judges are elected
- Judge must live in the judicial district, but does not necessarily have to live in the city limits per state law. AG Opinion 20-16
 - If city charter requires residency, then charter prevails.
- Court clerks are typically elected

Corporation Courts

Traditional jurisdiction

- Judges not required to be popularly elected. City charter governs judicial selection
 - Appointed by city council; or
 - Popularly elected
- Judge age and residency requirements determined by city charter
- Court clerks are not required to be elected

City of LaVergne v. LeQuire

Key case about civil versus criminal court jurisdiction –

City of LaVergne v. LeQuire, 2016 WL 6124117

This case involves:

1. Municipal court jurisdiction.
2. What constitutes a city ordinance charge (civil, municipal court).
3. What constitutes a state criminal charge (state criminal court).
4. Are those two charges interchangeable?
5. What does your citation need to look like?
6. What happens if you cite the wrong thing?



City of LaVergne v. LeQuire – quick facts

City police officer wrote a ticket for speeding to be heard in city court.

LaVernge adopted the “Rules of the Road” as a city ordinance, but....

But the citation only listed “Speeding - TCA 55-8-152.”

No reference to any city ordinance was on the ticket.



City of LaVergne v. LeQuire – quick facts

The defendant argued to the city judge that since the ticket only referenced a state criminal TCA charge, the municipal court did not have proper jurisdiction to hear it.

City judge ruled against him, saying the penalty is \$50 in either city court or state court, and he was convicted of speeding.

He appealed to circuit court and lost. He then appealed to the TN Court of Appeals, and they reversed the lower courts in favor of the defendant.

Ruling – Because the TCA is a criminal charge with a possibility of jail time, and since municipal courts are civil with no possibility of jail time, the two charges are not interchangeable, and you must give proper notice on the ticket of **exactly** what charge you are citing someone.



City of LaVergne v. LeQuire

City courts can hear Class C Misdemeanors that are adopted into the city code, but...

The citation issued must do two things:

1. Cite the city ordinance on the ticket to give the defendant notice that the violation is a civil violation, not a criminal violation, and
2. The citation must give sufficient notice of what Class C Misdemeanor was violated. Meaning the ticket needs to have the city ordinance and a reference to what specific violation occurred (detailing speeding, or the TCA code that was adopted into the Rules of the Road).

Jurisdiction

We will come back to City of LaVergne v. LeQuire later in this class.



Traditional Municipal Courts

“Civil in Character”

Municipal ordinance violations are civil in nature – Mullins v. State, 380 S.W2d 201(Tenn 1964)

“Over the years this Court has held that violations of a city ordinance is proceeded with as a civil matter rather than a criminal court.

Reaffirmed in Chattanooga v. Davis, 54 S.W.3d 248 (Tenn. 2001) – “Since our decision in City of Chattanooga v. Myers, ... the law now appears settled that proceedings for a municipal ordinance violation are civil in nature, at least in terms of technical application of procedure and pursuing avenues of appeal...Indeed, depending up on the precise issue before the particular court, proceedings for a municipal ordinance violation have been described as “civil in character,…”



Traditional Municipal Courts

Even if you are a traditional city court, TCA 16-18-302(b)(1)-(8) allows cities with populations over 150,000 to expand their jurisdiction to enforce municipal laws that mirror/duplicate/incorporate by reference a few more severe violations:

- Driving without a license – TCA 55-50-301
- Reckless Driving (Class B Misdemeanor) – TCA 55-10-205
- Alcohol violations (Class A Misdemeanors)
 - Underage consumption
 - Underage purchase
 - Illegal possession and transportation, and
 - Illegal sales
- Wearing white after Labor Day
- Forcing your husband to go “antiquing” with you during football season.



MUNICIPAL COURT JURISDICTION – TCA 16-18-302 (B)

Cities with populations over 150,000:

- Nashville – (General Sessions)
- Memphis – (Expanded jurisdiction)
- Knoxville – (Expanded jurisdiction)
- Chattanooga – (Expanded jurisdiction)
- Clarksville – Traditional only
- Murfreesboro – Traditional only



Municipal Court Oath Administration – TCA 16-18-303



TCA 16-18-303 allows every popularly elected or appointed judge of a municipal court to administer oaths.

This allows judges to swear in defendants, witnesses, and police officers during hearings.

This also allows judges to swear in city positions like city attorney, finance director, court clerks, etc. if your city code requires oaths.

Becoming a new court clerk TCA 16-18-310(a)

TCA 16-18-310(a) – A person can become a new municipal court clerk in three ways:

1. Election
2. Appointment
3. Designated

Once a person is the new court clerk, someone needs to notify the Administrative Office of the Courts and tell them who the new clerk is.



Court Clerk Duties – TCA 16-10-310(b)

Under **T.C.A. § 16-18-310(b)**, Municipal Clerks shall maintain accurate and detailed records and summary reports of all financial transactions and affairs of the court, reflecting:

- All disposed cases (judgments/guilty/dismissed, etc.)
- Assessments
- Collections (including keeping track of payment plans)
- Suspensions
- Waivers and transmittals of litigation taxes
- Court costs
- Forfeitures
- Fines
- Fees
- Any other receipts and disbursements



Contempt of Court – TCA 16-18-306

Can you have contempt of court in a traditional city court?



Contempt of Court shall be punishable by a fine in the amount of \$50

A municipal judge cannot send anyone to jail for contempt in a traditional municipal court.

Offenses may include:

1. Mouthing off in court
2. Deliberately missing your court date without a proper reason (and you can prove it)
3. Wearing a Bama jersey (like anywhere)

Appeals – TCA 16-18-307

Pursuant to **T.C.A. § 16-18-307**, a party unhappy with the ruling from the municipal court judge may appeal directly to the circuit court of that judicial district.

Requirements:

- Must file notice of appeal within 10 days (not counting Sundays) with the circuit court of the county;
- Give a \$250 bond for the person's appearance and faithful prosecution of the appeal (or file a pauper's oath)
- "A party" can be either a person, a company, or even the city.

De Novo Review - All appeals will be heard "de novo" meaning that the circuit court will hear the appeal as if it was brand new, never been heard before in any other court, and will not presume the municipal court's previous ruling as either correct or incorrect.



Appeals and Money



Question: Who should take the \$250 appeal bond? City Court or Circuit ?



Answer: TCA 16-18-307 doesn't say, but we recommend the city court clerk take the appeal bond.

Appeals and Money



Tubwell v. City of Memphis, says “appeals from city court are governed by the same procedures applicable to appeals from general sessions court to circuit court,” and “the required bond or pauper’s oath is to be filed in the court from which an appeal is taken to the circuit court, i.e., here, the city court.”

Tubwell v. City of Memphis, 416 S.W.3d 77, 79 (Tenn. Ct. App. 2013).

Appeals – TCA 16-18-307



The bond is essentially a pile of money that the circuit court will use to pay off any unpaid circuit court fees if the defendant owes any additional money.



If the defendant pays everything in the circuit court, then defendant should receive a return of the \$250 in full.



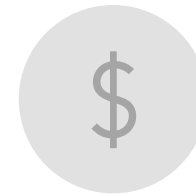
MTAS recommends that the city court clerk collect the \$250 bond from the defendant.



The city court clerk will then record the bond payment in the file and deliver the money to the circuit court clerk.



The defendant will file the appeal.



The defendant most likely will also have to pay the filing fees associated with that circuit court. Those fees may differ from county to county.

Appeals and Money

If a defendant appeals a conviction in city court, the person is still required to pay the fine or a comply with a payment plan, even while the case is pending on appeal.

TCA 40-24-101:

(a) When any court of this state, **including municipal courts for violation of municipal ordinances**, imposes a fine upon an individual, the court may direct as follows:

- (1) That the defendant pay the entire amount at the time sentence is pronounced;
- (2) That the defendant pay the entire amount at some later date;
- (3) That the defendant pay the fine in specified portions or installments at designated periodic intervals and that the portions be remitted to a designated official, who shall report to the court in the event of any failure to comply with the order; or
- (4) Where the defendant is sentenced to a period of probation as well as a fine, that payment of the fine be a condition of the sentence.



Municipal Court Judges – TCA 16-18-308

Generally, a municipal court judge may not hold any other office or employment with the city.

Exceptions:

- If prior to March 1, 2005, the person was an employee of the city and held office as a city judge, but if that person discontinues to serve as an employee or judge, the replacement cannot serve as both employee and judge
- If a municipal charter allows the person serving as a judge shall also serve as the recorder, then the person can do both jobs.



Court Clerk and Judicial Training – TCA 16-18-309

Judge Training

- Complete the required CLE hours for lawyers PLUS an additional 3 hours of judge training through the AOC
- Most city judges practice law full time and serve as judge as a part time role.
- Larger cities like Memphis, Nashville, Chattanooga, and Knoxville have full time city judges.

Court Clerk Training

- Court Clerks must complete at least three hours of training each year.
 - Training by MTAS
 - Training approved by the AOC
 - Training by me!
 - Only the chief court clerk is required to get the training.



Concurrent General Sessions Jurisdiction – TCA 16-18-311

TCA § 16-18-311 is a lengthy section that details the required steps a city must undertake to exercise or create a court with general sessions jurisdiction.

Courts with general sessions jurisdiction can hear the same cases as the county's general sessions court.

- All classes of state criminal misdemeanors. Reckless driving, alcohol violations, suspended driver's licenses, some drug offenses.
- Courts that were exercising concurrent general sessions jurisdiction prior to May 12, 2003, could continue to exercise GS jurisdiction upon passage of the MCRA.
- Courts that had GS jurisdictions in their charters but were not exercising GS court cases, however, could not start exercising concurrent GS jurisdictions.



Substitute Judges – TCA 16-18-312

If a municipal judge is unable to preside over municipal court for any reason, then a special substitute municipal judge shall be determined pursuant to an:

1. Ordinance of the governing body of such municipal court
2. In the absence of such ordinance, then a municipal judge may designate in writing, to be filed with the clerk of the municipal court, the name a special substitute judge to hold court in the municipal judge's place and stead.
3. The special substitute judge must meet the judge requirements set forth in the state law and the city's charter and must take the same oath as the municipal judge
4. Such appointment is effective for no more than 30 days, after which a new appointment is required.

Municipal court judges and general sessions court judges are empowered to sit by interchange for other municipal court judges. TCA 16-18-312(b)



Juvenile jurisdiction – TCA 37-1-146

- Juvenile courts have original jurisdiction for traffic violations of minors.
- Juvenile court judges may waive that jurisdiction to city courts for traffic offenses.

Under the TCA 16-18-302(d) (Municipal Court Reform Act), a municipal court may exercise no jurisdiction other than the jurisdiction authorized by the section; provide however that this section shall not be construed to impair or in any way restrict the authority of a juvenile judge to waive jurisdiction over any cases or class of cases of alleged traffic violations, as authorized pursuant to TCA 37-1-146, or the authority of a municipal court to receive and dispose of such cases or classes of cases of alleged traffic violations.

TCA 37-1-146(c) (Juvenile Courts and Proceedings) allows the juvenile court judge to waive jurisdiction of traffic violators who are 16 years of age or older, and such cases shall be heard by the court having jurisdiction of adult traffic violators, or the child's parent or legal guardian may pay the stipulated fine to a traffic bureau.



Juvenile traffic offender - continued

When a municipal court judge is permitted to hear a juvenile traffic offense case, the court may make **one or any combination** of the following decisions:

- (1) Suspend and hold the child's driver license for a specified or indefinite time;
- (2) Limit the child's driving privileges as an order of the court;
- (3) Order the child to attend traffic school, if available, or to receive driving instructions;
- (4) Impose a fine of not more than fifty dollars (\$50.00) against the child's parent or legal guardian; or
- (5) Perform community service work in lieu of a fine (*permitted by law, but generally not advised in city court because it may border on criminal court remedies*)



What does “hold” mean?

Tenn. Code Ann. § 37-1-146

NOTE – Juvenile court law allows a juvenile judge to place the child on probation pursuant to § 37-1-131(a)(2) but municipal courts do not appear to have that type of power since that is a criminal law affiliated program.

Juvenile traffic offender - continued

Pro tips: If your juvenile court judge wishes to waive jurisdiction for juvenile traffic violators, try to get that in writing.

Two ways:

1. Judge writes an individual order for each case waived (very tedious, highly unlikely to do so).
2. Judge issues a standing order waiving jurisdiction for 16- and 17-year-old traffic violators to the appropriate municipal court (much more efficient).

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Fines, Fees, Court Costs, and Taxes



1. Judgment
2. Fines
3. Court Costs
4. Litigation Taxes
5. Bond Forfeiture Fees

Parts of a City Court Judgment

1. Fine
2. Court Costs
3. State Litigation Tax
4. Local Litigation Tax (if city has one)
5. E-citation fee (if city has one of those too)

= Grand total of Judgment



Part 1 - Fine

What's the maximum fine in a municipal court?



But why?

Side note: Please don't print this slide out and try to spend this. It's counterfeiting, which according to Elle Woods from "Legally Blonde" is illegal.

Part 1 – Fines

The Tennessee Constitution, Article VI, § 14 places a \$50 limit on any fine assessed against a party where there is not an opportunity for the fine to be assessed by a jury of a person's peers.

What would \$50 in 1796 be worth today?
\$1,036.



Part 1 - Fines

However, while the fine itself may only be \$50, the additional court cost can exceed \$50 and be constitutional as long as the additional court costs are not punitive in nature.

See Tennessee Attorney General Opinion Number 06-075



Part 1 – Fines (Punitive Fines vs. Remedial Expenses)

Big Case – City of Chattanooga v. Davis, 54 S.W.3d 248 (2001)

- Main takeaways

- The fine is the punitive element, i.e., the part to punish.
- This punitive fine is capped at \$50 because of the State Constitution.
- This \$50 fine limitation applies for municipal ordinance violations, even if those violations were heard in courts with general sessions jurisdictions.
- However, other expenses and fees can be assessed if they are remedial in nature.
- These “remedial expenses” are not capped at \$50.
- You must be very clear and specific with remedial expenses.



Punitive vs. Remedial Fines

Punitive Fines

- Intended to punish
- Do not have to show why the city needs this fine, it just gets it.
- Can do a fine for each violation, but subject to the \$50 cap.

Remedial Costs

- Intended to allow cities to recover identifiable costs associated with the case.
- Must clearly and specifically itemize how these expenses were incurred on an individual case.
- Cannot broadly call expenses “Administrative Expenses” and recover them.
- Examples of Specific Charges
 - Hiring a private process server
 - Landfill fees for a particular case
 - Special clean up costs for environmental cases



Part 1 - Fines



Question: Can a city court judge do “\$50 per day until it’s cleaned up?”



Answer: Not advised, but not entirely no. Be careful.
Super helpful, I know.

Part 1 - Fines

Town of Nolensville v. King, 151 S.W.3d 427 (2004)

- City court issued citations for defendant to clean up property of cars, trailers, and junk, on three separate occasions.
- Defendant never cleaned up despite multiple chances.
- City code allowed fine “up to \$300” so city did \$300 per day x 62 days = \$18,600 judgment in city court
- Defendant appealed to circuit court.
- Circuit court ruled \$300 impermissible, reduced to \$50 per day, but allowed the \$50 per day x 62 days to stand.
- New total = \$3,100
- Caution: This court viewed this fine as “remedial” not punitive, but did not really detail why it was viewed remedial.
- Takeaway: Be prepared to defend how a “per day” fine is remedial and not punitive. Be specific.



Part 1 – Fines - “\$50 per day” recommendation:



MTAS does not recommend the \$50 per day approach because it is too subjective.



Instead, issue a ticket, give a reasonable amount of time to correct the action, and if it's not corrected, issue another citation.



Repeat until case is remedied or escalate the case to a circuit or chancery court like any other plaintiff. This would remove the \$50 cap and avail the city to stronger remedies in a court of record.



Downside: It's a full-blown lawsuit and that takes time and money.

Part 2 – Court Costs

T.C.A. § 16-18-304 discusses court costs, but very generally.

Each city sets its own court costs and they vary from city to city.

Court Costs are intended cover the expenses for

- Clerk staff
- Judges
- Courtrooms
- Court officers
- Paper
- Computer software
- All things needed to run a court

Ideally, most of the funds needed to cover the court come from court costs, and less from tax dollars.



Part 2 – Court Costs

There is no set amount for any city's court costs

No state guidance on court costs

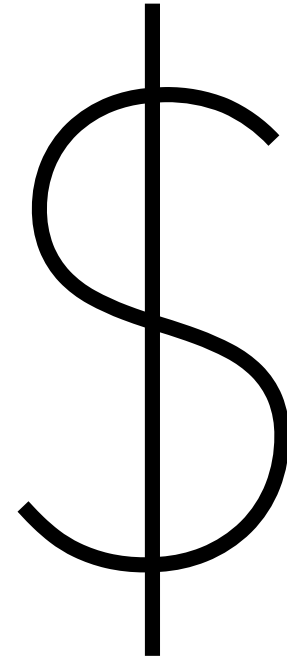
Key phrase is “reasonable court costs”

Court costs are not intended to be punitive

Court costs are to be determined by the expenditures needed to properly operate your court

Court costs are typically established in your city's code of ordinances, or established by a subcommittee of the city council or board of aldermen

Tip: Don't necessarily base your court costs off of similar sized cities or geography. Seemingly similar cities may have completely different court operations based on interstate travel, tourism, or geography.



Part 2 – Court Costs

Municipal Training Education Fee - \$1

Under **T.C.A. § 16-18-304**,

- The only specific dollar amount mentioned in the MCRA regarding court costs is the Municipal Training Education fee.
- \$1.00 of each court costs transactions associated with paying a fine, fee, litigation tax, etc. will go to the Administrative Office of the Courts (AOC) for training municipal clerks statewide.
- MTAS is specifically named to provide the training for this service to the clerks statewide.
- That \$1 fee covers these classes and trainings across the state.
- That includes this class right here.



Part 2 – Court Costs – Alternative Court Costs



Can a city have an alternative court costs for certain offenses that get resolved prior to court like insurance violations, headlights, equipment?

Yes, but it needs to be made clear in a city ordinance and make sure your judge properly delegates that authority to the court clerk's office. Also make sure your judge is on board with it.

Part 2 – Court Costs – Alternative Court Costs

Sample:

3-202. Imposition of Fines, Penalties, and Costs. (1) All fines, penalties and costs shall be imposed and recorded by the city judge on the city court docket in open court.

(a)

(b) When any person has been charged with violation of a law regarding vehicle equipment (including but not limited to inoperable headlights, tail lights, brake lights or turn signals), financial responsibility, driver licensing, or vehicle licensing and registration, the charge may be dismissed if the person charged with the violation submits evidence of compliance with such law on or before the court date; provided, however, that the city judge may establish a separate court cost not to exceed \$25.00 to be collected from the person charged with the violation. This separate court costs will be assessed in lieu of the court costs detailed in Section 3-202(1)(a) above.

Part 2 –Court Costs for concurrent GS jurisdictions

Municipal Ordinance violations

For municipal ordinance violations (civil violations), use the court costs detailed in the city ordinances.

- Traffic court
- Codes violations
- Class C Misdemeanors adopted into the city ordinances

General Sessions violations

- For Class A and B Misdemeanors heard as state criminal violations, you can use various statutory taxes/fees/costs available to county courts.
- Ex: TCA 8-21-401(g) et. seq.
 - \$62 fee for criminal conviction
 - \$42 fee for traffic conviction
 - \$40 for failure to appear
 - \$100 for expunctions



Part 3 – State Litigation Tax

TCA § 16-18-305(a) – all cases in municipal court

- State of Tennessee privilege tax on litigation - \$13.75
- Different than court costs
- Send to Department of Revenue monthly

TCA § 16-18-305(b) - \$1 litigation tax on all public parking tickets

- Typically not heard in a city court
- Can be parking meters, fire lanes, handicap spaces, city owned parking structures
- Even if your town doesn't have parking meters, you can still issue parking citations (if violation is in city's code)
- Parking violations can be issued by both sworn (police and/or fire) and non-sworn personnel (parking enforcement)



Part 3 – State Litigation Tax

Collect litigation taxes when:

1. Found guilty by a judge after a hearing
2. Pleads guilty
3. Pays the fine before court

Do not collect when:

1. Found not guilty by a judge after a hearing
2. Case dismissed by a judge (but a judge could still collect court costs)
3. Cash bond paid (but you do collect the cash bond forfeiture fee)

Two Notes:

1. Only collect litigation tax if convicted. See TCA 67-4-602(e).
2. If convicted you collect either the state litigation tax or the cash bond forfeiture fee, but not both.



Part 3 – State Litigation Tax

Pay TN Department of Revenue

Due Date – 15th of each month

However, the state law has a “grace period” of sorts. Litigation taxes will be considered delinquent if not paid within 45 days.

T.C.A. § 67-4-206

Be sure to pay these taxes.

Any fees will be considered the debt of the clerk and the clerk and the clerk’s official bondsman will be liable for these amounts – **T.C.A. § 16-18-305(d)**



Litigation Tax vs. Bond Forfeiture Fee

Litigation Tax

T.C.A. § 16-18-305(a)

- \$13.75
- Department of Revenue
- Form 401, line 1
- 2% commission for court clerk

Based on conviction in city court, usually after court hearing or guilty plea

Bond Forfeiture Fee

T.C.A. § 38-6-103(d)(1)(A)(iv)

- \$13.75
- Department of Revenue
- Form 414, Line 14
- 5% commission for court clerk

When defendant pays cash bond prior to court hearing (without pleading guilty on the ticket), but never shows up to contest the charge, forfeiting the bond.



Part 4 – Local Litigation Tax

T.C.A. § 16-18-305(c) – A city can add another local litigation tax on top of the existing State Litigation Tax and keep that money.

Additional local tax on litigation up to \$13.75.

Must be passed by ordinance by your city.

Only collect when a conviction occurs, just like the state litigation tax.

Does your city have a local litigation tax?



Part 4 – Local Litigation Tax – Sample Ordinance for both court costs and local litigation tax

Excerpt from MTAS websites

Section 1.

In all cases heard and determined by him or her, the city judge shall impose court costs in the amount of \$ _____. One dollar (\$1.00) of the court costs shall be forwarded by the court clerk to the state treasurer to be used by the administrative office of the courts for training and continuing education courses for municipal court judges and municipal court clerks. In addition, the court shall levy a local litigation tax in the amount of thirteen dollars and seventy five cents (\$13.75) in all cases in which the state litigation tax is levied.

Section 2. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

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Part 5 – E-citation fee

If a city wishes to implement an electronic citation program, the State permits a separate fee to add on to each traffic citation resulting in a conviction to offset the costs of a new program.

TCA § 55-10-207(e)(1) allows a separate \$5 per traffic ticket to be added to each violation.

- Traffic tickets only
- Must be passed by city ordinance
- Police keeps \$4 and court clerk office keeps \$1
- Ordinance automatically “sunset” (i.e. terminates) after 5 years
- **Cities cannot pass another ordinance for another 5 years. See AG Opinion 21-02**
- Once five years is over, a city can retain the fee by adding that to the court costs, because it would be a “reasonable” expense. Then it can apply to all cases, not just traffic

Important Dates for Reporting Convictions



Commercial Driver's License
(CDL) convictions – 5 days

TCA 55-50-409



For regular driver's licenses
convictions – 30 days

TCA 55-10-306

The Mythical “Six Month Rule”

Myth – All ticket convictions must be submitted to the DOS within six months of the issue date otherwise the DOS won't do anything with it.

Fact – The “Six Month Rule” only applies with Failures to Appear (FTA). The DOS will only suspend a person's license for a FTA if the court submits the FTA within six months of the issuance of the ticket. TCA 55-50-502(a)(1)(I).

Safety will still process convictions submitted after six months like normal and assess points on licenses. The only difference is they won't suspend a license for FTA if the FTA is submitted six months after the ticket was issued.



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DISCUSSION TIME!

In any CLE, when it's time for a group discussion, you usually get one of two reactions.

But...this is how we get our one-hour ethics credit.

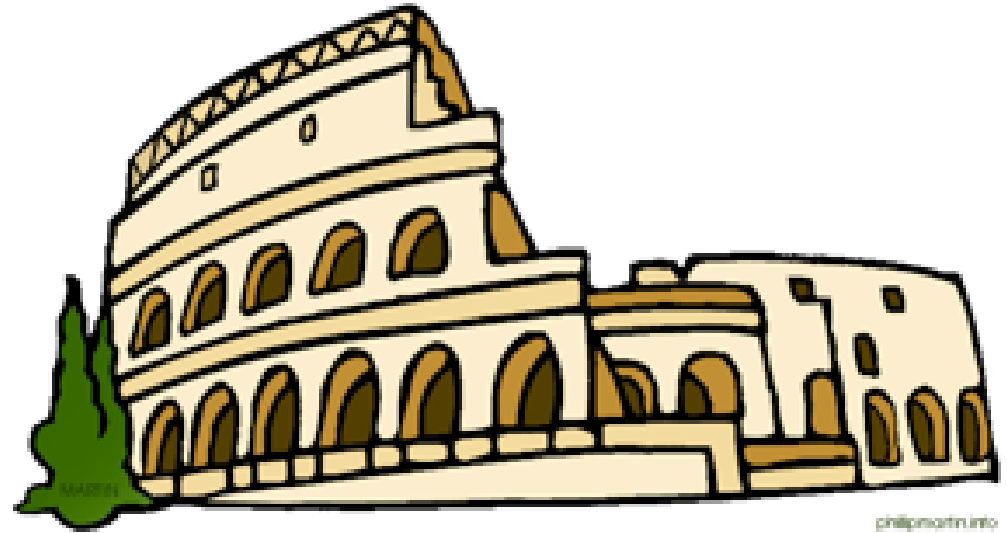


Nolle Prosequi

Nolle Prosequi – Latin for “will no longer prosecute.”

Also known as “Nolle”

Lastly, I put this phrase in the presentation because I took three years of Latin in school, and I wanted to work it into a professional presentation so I wouldn't feel like I wasted my life.



LATIN

Nolle Prosequi – aka, “Nolle”

Tool of the criminal court system.

Case where the **prosecutor** will no longer seek charges in the matter.

“A nolle prosequi is a discharge without acquittal, and can be awarded only by the Attorney General and the court. It being a discharge, it is necessarily a termination of the particular prosecution, although it is not a bar to a subsequent prosecution,…”

Scheibler v. Steinburg, 129 Tenn. 614, 167 S.W. 866, 866 (1914)



But...does a Nolle work in every municipal court?

General Sessions

Same rules apply with county level criminal general sessions court.

Can a municipal judge initiate a nolle decision in general sessions cases without the prosecutor's involvement?

What about for municipal infractions where there is no prosecutor involved?

Traditional

Does a nolle even apply in a traditional city court?

Traditional courts are civil in nature, not criminal courts.

Can the municipal judge nolle a case on his or her own? Even when there is no prosecutor involved?

What does a nolle look like in municipal courts?

Municipal Courts with General Sessions jurisdiction

- Misdemeanor A and B cases: If the prosecution exercises this power, it is just like any other criminal court.
- Misdemeanor C offenses: If prosecution is bringing state level Misdemeanor C cases, then just like any other court.
- However, if the court is treating it solely as a municipal ordinance violation heard in a municipal court (even with GS jurisdiction) technically not applicable since that city ordinance offense is a civil matter, not criminal.

What does a nolle look like in municipal courts?

Municipal Courts with Traditional jurisdiction

- Civil in nature.
- No criminal actions.
- No prosecutors to initiate a nolle.

- So for judges who use this tool, what does it look like?



Nolle- continued (so much fun)



Judges have the authority to suspend or dismiss cases.



A judge may say, “I’ll nolle this as long as you don’t get another speeding ticket in my court for the next six months.”



Essentially that is suspending the case for a specific period of time, then entering a dismissal.

Nolle – continued (last one, maybe)

Pros

- You can exercise the judicial discretion afforded to judges.
- You can show compassion depending on the circumstances.
- Allows an “out” for “testimonially challenging hearings,” i.e., cases you don’t know who to believe.

Cons

- You now put a burden on the court clerk to check every case on the docket for previous offenses in a certain time period.
- City may lose revenue that otherwise would be assessed.
- If nolle too frequently, may lose trust in the citing officers and city officials.

Discretion of a Judge – Participation topics

Does a judge have discretion to dismiss any case?

If not, which instances is a judge not permitted to dismiss a case?

Can a judge convict someone and not assess any fine money?

What does that look like?

How do you report those convictions to the State if no fine money is involved?

What should a judge do if you see a citation written incorrectly?

Should you take initiative and dismiss the case?

Or put the burden on the defendant to move for dismissal?

Discretion of a Judge - example

Financial Responsibility – TCA 55-12-139

T. C. A. § 55-12-139

§ 55-12-139. Evidence of compliance with financial responsibility law; penalty

Effective: May 2, 2019

Currentness

(a) This part shall apply to every vehicle subject to the registration and certificate of title provisions.

(b)(1)(A) At the time a driver of a motor vehicle is charged with any violation under chapters 8 and 10, parts 1-5, and chapter 50 of this title; chapter 9 of this title; any other local ordinance regulating traffic; or at the time of an accident for which notice is required under § 55-10-106, an officer shall request evidence of financial responsibility as required by this section.



Discretion of a Judge - example



What does “is charged” mean?



What if the person was pulled over for speeding, but the ticket only mentions Financial Responsibility? Or only a TCA charge like LeQuire?



Does a warning ticket count as “is charged?”

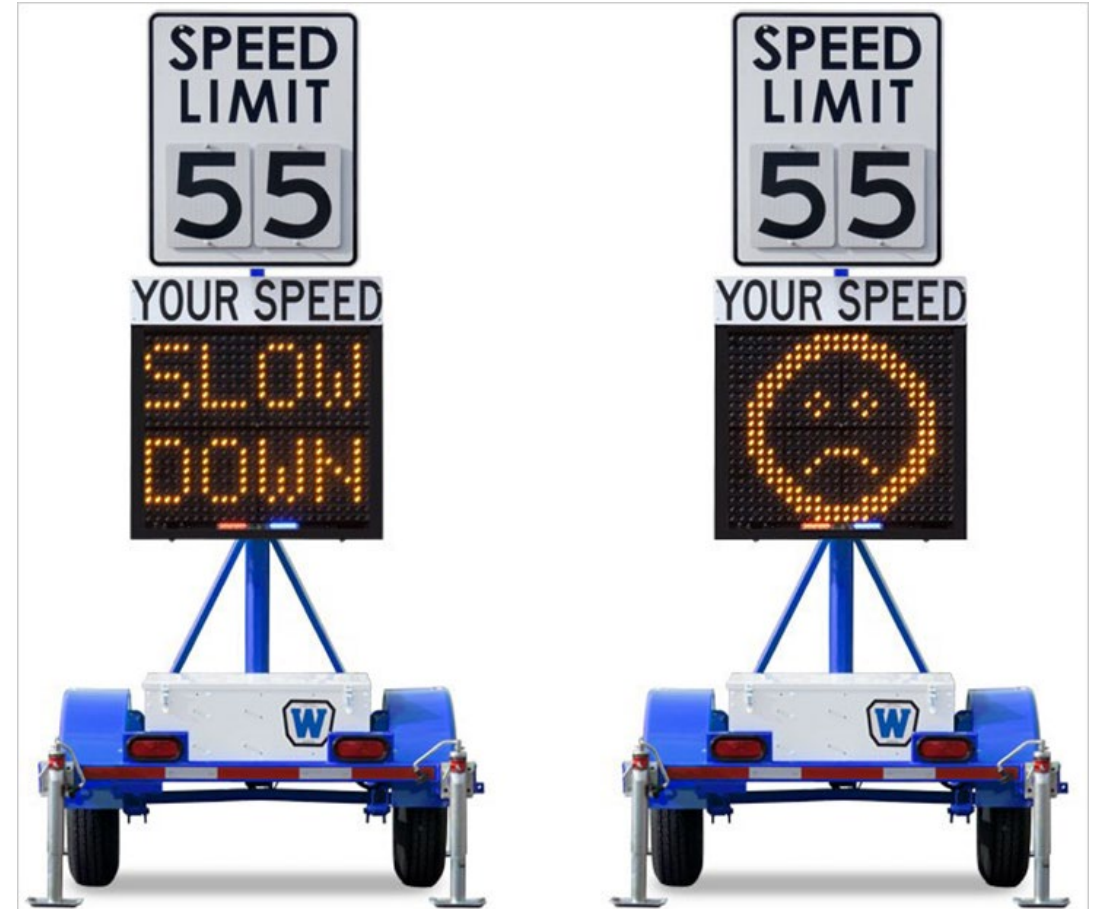


How proactive should a judge be when he or she sees an improperly written ticket?

Interstate traffic enforcement

Question: Can city police enforce city traffic ordinances on the interstates?

Answer: Yes, but there are additional steps to take and State restrictions depending on the city's population and geography.



Interstate Enforcement – TCA 55-10-308

- Interstate Highway Definition– “a portion of any highway designated and known as part of the national system of interstate and defense highways.”
- Must be a “marked law enforcement vehicle.” (Those are the statute’s magic words, although drug interdiction vehicles are exempt from this marking requirements).
- But there are additional restrictions based on the town size and number of interstate exits.



Interstate Enforcement – TCA 55-10-308



TCA 55-10-308(b) – “...the primary responsibility for enforcing sections shall be on the municipality which shall be further authorized to enforce the additional ordinances for the regulation of the operations of vehicles as it deems proper.”

Restrictions

- Cities with populations 2,500 to 10,000 with at least one interstate entrance/exit ramps within the municipality; and
- Cities with populations less than 2,500 with at least two entrance/exit ramps within the municipality, may enforce traffic if:
 1. The city council authorizes such enforcement of the Rules of the Road;
 2. Any ordinance or resolution authorizing the enforcement of the Rules of the Road is submitted to the Commissioner of Safety; and
 3. The city enforces the Rules of the Road in full compliance with the rules promulgated by the Commissioner of Safety...(then it says drug interdiction officers employed by the city serving with any judicial district drug force are exempt.)
- Lastly, the entrance/exit ramps must be entirely within the city limits as a continuous stretch. TCA 55-10-308(f) and AG Opinion 18-09.



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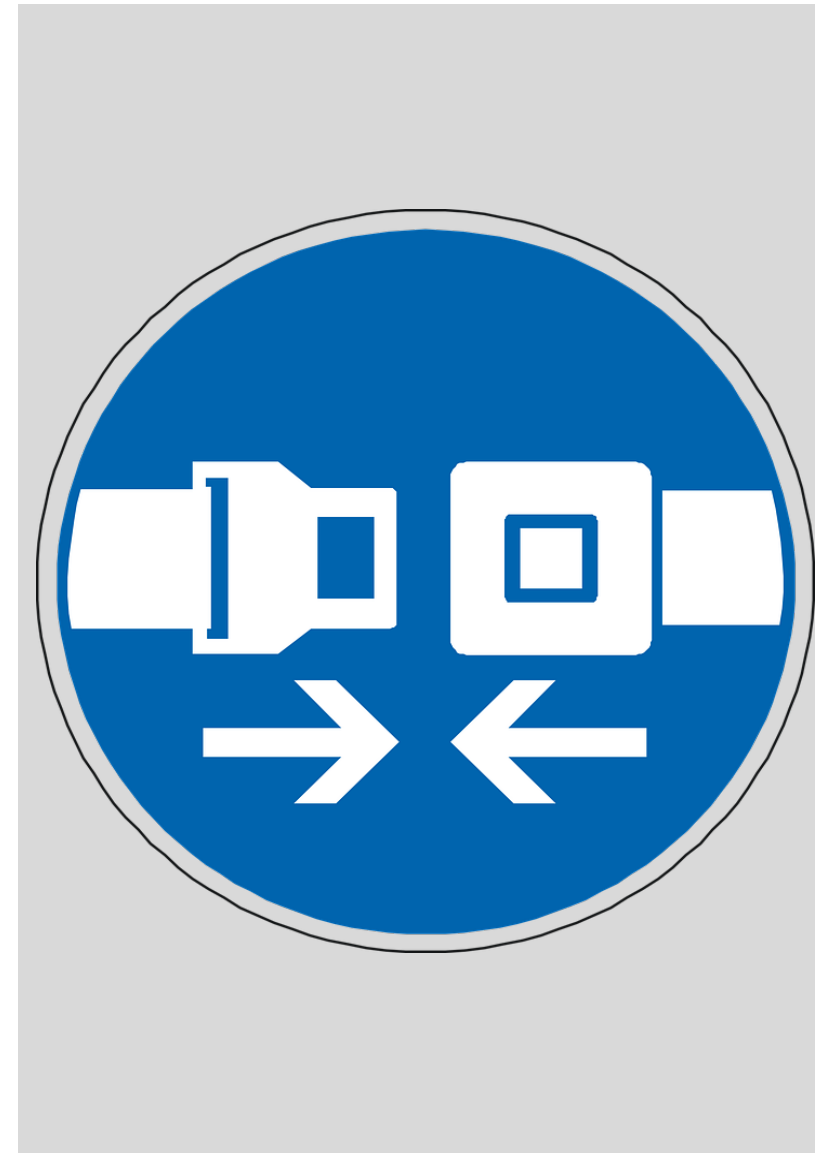
Updates for
2022



QUESTION: SO WHO GETS THE FINE MONEY?



- Child Restraints
- Seatbelts
- Hands Free Law
- Impaired Driver's Trust (GS only)
- Traumatic Brain Injury Trust (GS only)
- Driver's License law
- Financial Responsibility



Typical Lawyer
Answer:

It depends



Remember our City of LaVergne case?

City of La Vergne v. LeQuire, 2016 WL 6124117 (short opinion, only 6 pages, but very critical)

Here's the general gist of the case as it pertains to city courts:

- Cities can adopt Class C Misdemeanors into their city ordinances.
- When adopting these criminal offenses as ordinances these misdemeanors (magically) convert to civil offenses.
- Cities have jurisdiction to hear these offenses in city courts if the ticket cites the city ordinance, not just the TCA criminal statute. If only TCA criminal statute is cited on the ticket, a city court doesn't have jurisdiction.
- TCA = criminal violation (some possibility of jail) vs. City Ordinance = civil violation (zero possibility of jail)



General Framework for motor vehicle laws in cities

Part 1: Applicable State Laws

- **Municipal Court Reform Act - TCA 16-18-302(a)(2)** permits cities to have jurisdiction for Class C Misdemeanors that mirror, substantially duplicate, or incorporate by cross reference language of a state criminal statute.
- **TCA 55-10-307(a) covers motor vehicle laws.** In this section, it reads:
 - (a) Any incorporated municipality may by ordinance adopt, by reference, any of the appropriate provisions of chapter 8 of this title, §§ 55-10-101 -- 55-10-310, 55-12-139, 55-50-301, 55-50-302, 55-50-304, 55-50-305, 55-50-311, and 55-10-312, and may by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the listed sections. All fines, penalties, and forfeitures of bonds imposed or collected under the terms of §§ 55-50-311 and 55-50-312, shall be paid over to the appropriate state agency as provided in § 55-50-604.



Side note – Statutory Citations Format

TCA = Tennessee Code Annotated

TCA 55 – 8 - 152 (Speeding)



Title



Chapter



Section

General Framework for motor vehicle laws in cities

Part 2: Applicable City Ordinances

- Cities must adopt “Class C Misdemeanors that **mirror, substantially duplicate, or incorporate by cross reference** language of a state criminal statute” into its own Code of Ordinances
- Example: Adoption of the Rules of the Road Ordinance



Sample Rules of the Road Ordinance

15-126. Adoption of state traffic statutes. By the authority granted under Tennessee Code Annotated § 16-18-302, the City of _____ adopts by reference as if fully set forth in this section, the “Rules of the Road,” as codified in Tennessee Code Annotated §§ 55-8-101 through 55-8-131 and §§ 55-8-133 through 55-8-180. Additionally, the City of _____ adopts Tennessee Code Annotated §§ 55-4-101 through 55-4-128, §§ 55-4-130 through 55-4-133, § 55-4-135 through 55-4-138, §§ 55-8-181 through 55-8-191, § 55-8-193, § 55-8-199, §§ 55-9-401 through 55-9-408, §§ 55-9-601 through 55-9-606, § 55-12-139, and § 55-50-351, by reference as if fully set forth in this section.

Side note - This is not a Rules of the Road Ordinance

CHAPTER 1

MISDEMEANORS OF THE STATE ADOPTED

SECTION

11-101. Misdemeanors of the state adopted.

11-101. Certain misdemeanors² under state law. All offenses against the State of Tennessee which are defined by state law to be misdemeanors punishable by a fine of fifty dollars (\$50.00) or less and confinement for a period of thirty (30) days or less are hereby designated and declared to be violations of the laws and ordinances of the City of Lebanon and any such violation is also a violation of this section. (1968 code, § 10-101; as replaced by Ord. #05-2725, April 2005)

This does not “mirror, substantially duplicate, or incorporate by cross reference language of a state criminal statute” as required by the MCRA



General Framework for motor vehicle laws in cities

Part 3: Cities can keep it unless the state statute specifies otherwise

- MTAS believes that if a state statute is a Class C Misdemeanor, and
- The applicable State statute does not directly detail that it gets the money,
- Then the cities have the authority to keep it.

Please consult with your city attorney for a formal attorney-client opinion though. (Obligatory Disclaimer).



General Sessions Jurisdiction

Municipal Courts who exercise general sessions jurisdiction can hear the same offenses as your local county court's general sessions jurisdictions.

- Class A Misdemeanors
- Class B Misdemeanors
- Class C Misdemeanors

Note: While a city can adopt a Class C Misdemeanor as a city ordinance violation, the MCRA does not allow cities to adopt Class A or B Misdemeanors as city ordinance violations, even if you have GS jurisdiction.

Meaning: While a municipal court with GS jurisdiction can hear a Class A or B Misdemeanor, that will still be a state criminal charge with any additional fines going to the state as a county court would. Class C Misdemeanors adopted as city ordinances can stay with the city though.



Department of Safety

March 2021 Memo

Remember this?



Memo

To : Court Clerks
From : Fiscal Services, Tennessee Department of Safety and Homeland
Date : March 25, 2021
Subject : Fines Payable to the Department of Safety and Homeland Security

The Department of Safety should receive the fines for the following violations:

- TCA 55-8-199 Hands Free Law (paid to Safety per TCA 55-10-303)
- TCA 55-9-602 Child Passenger Restraint Law (paid to Safety per TCA 55-10-303)
- TCA 55-9-603 Safety Belt Law (paid to Safety per TCA 55-10-303)
- TCA 55-10-413(b) Impaired Drivers Trust Fund (established in TCA 9-4-206) – in addition to all other costs, taxes, and fees for a violation of TCA 55-10-401, a \$5 fee for DUI*
- TCA 55-12-139 Financial Responsibility Law (paid to Safety per TCA 55-10-303)
- TCA 55-50-301 Uniform Classified and Commercial Driver License Act (paid to Safety per TCA 55-50-604)

Traumatic Brain Injury Trust Fund (TBIF) (established in TCA 68-55-401). The following fines are in addition to any other fines imposed by the noted TCA sections.

- TCA 68-55-301 \$5 for driving a motor vehicle in excess of ten (10) mph over the posted speed limit (TCA Title 55, Chapter 8)
- TCA 68-55-302 \$30 for reckless driving of a motor vehicle (TCA 55-10-205)
- TCA 68-55-303 \$15 for driving a motor vehicle while the driver license is canceled, revoked, or suspended (TCA Title 55, Chapter 50, Parts 5 and 6)
- TCA 68-55-304 \$15 for DUI* (TCA 55-10-403, for violations of TCA 55-10-401)
- TCA 68-55-305 \$15 for accidents involving death or personal injury (TCA 55-10-101)
- TCA 68-55-306 \$25 for drag racing (TCA Title 55, Chapter 10, Part 5)



TCA 55-10-303 – What the memo says is its authority

TCA 55-8-199 Hands Free Law (paid to Safety per TCA 55-10-303)

Here is what TCA 55-10-303(a) says:

(a) All fines, penalties and forfeitures of bonds imposed or collected under any of the provisions of chapters 8 and 9 of this title, parts 1-5 of this chapter and § 55-12-139, except such as may be imposed or collected under § 55-10-401, shall, within fifteen (15) days following the last day of the month in which the fines, penalties and forfeitures of bond were received, be paid to the commissioner of safety, with a statement accompanying the same, setting forth the action or proceeding in which the moneys were collected, the name and residence of the defendant, the nature of the offense and fines, penalties, forfeitures or sentence, if any, imposed.

Last updated on January 1, 2002



But Back to 55-10-307(a)

TCA 55-10-307(a) covers motor vehicle laws. In this section, it reads:

(a) Any incorporated municipality may by ordinance adopt, by reference, any of the appropriate provisions of chapter 8 of this title, §§ 55-10-101 -- 55-10-310, 55-12-139, 55-50-301, 55-50-302, 55-50-304, 55-50-305, 55-50-311, and 55-10-312, and may by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the listed sections. All fines, penalties, and forfeitures of bonds imposed or collected under the terms of §§ 55-50-311 and 55-50-312, shall be paid over to the appropriate state agency as provided in § 55-50-604.

Last updated in May 2010



So with that said.....

When does the Department of Safety get the money?



Safety: Child Restraint and Seatbelt

TCA 55-9-602 – Child Restraint Systems

- If first offense, may attend approved class to educate hazards of not properly transporting children in cars. A fee may be charged.
- \$50 fine issued to driver/guardian
- Collect court costs and lit. taxes (ages birth – 8)
- No litigation tax, no court costs (ages 9-12)
- State gets the fine money
- Citation and penalties differ depending on age of kid

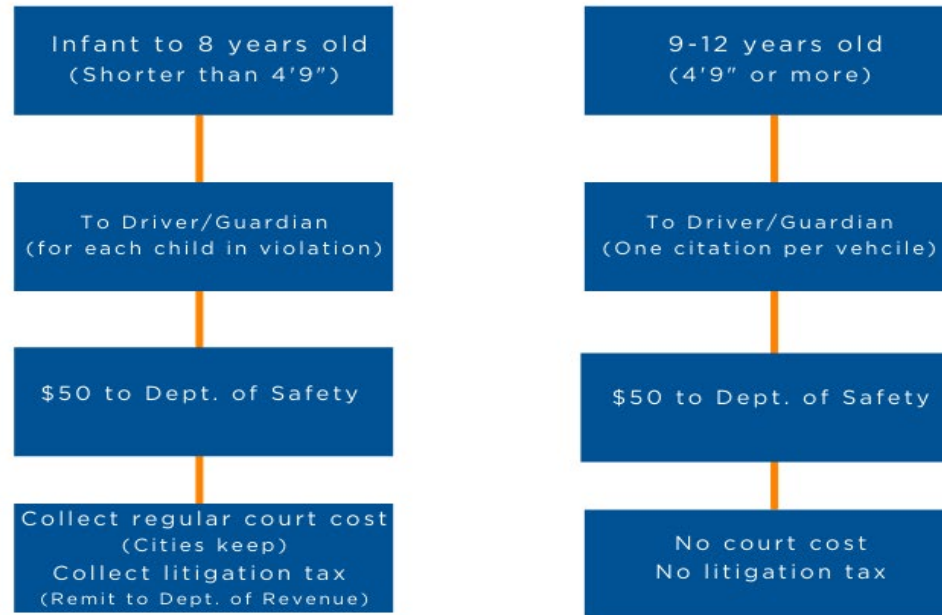
TCA 55-9-603 – Seat Belts

- The fine for the first offense is \$30 for adult seat belt violators and 16-17-year-old offenders; \$50 for second or more offenders
- Municipal court clerk keeps the remaining \$5 of the \$30 fine.
- \$25 is submitted to Safety
- Under the statute, the fine for a second or subsequent offense is increased to \$55 (but \$50 for city courts only because of the \$50 cap)

TCA 55-9-602

Child Restraint Law

SAFETY BELT LAW: CHILD RESTRAINTS

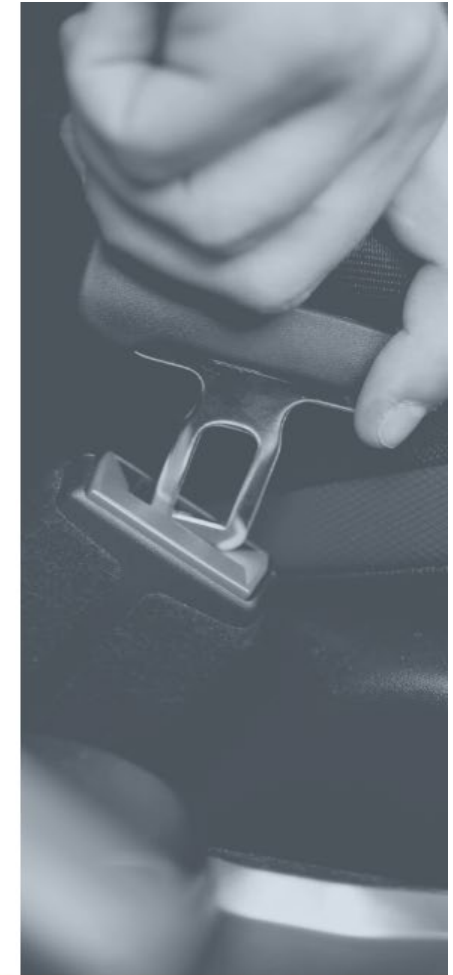
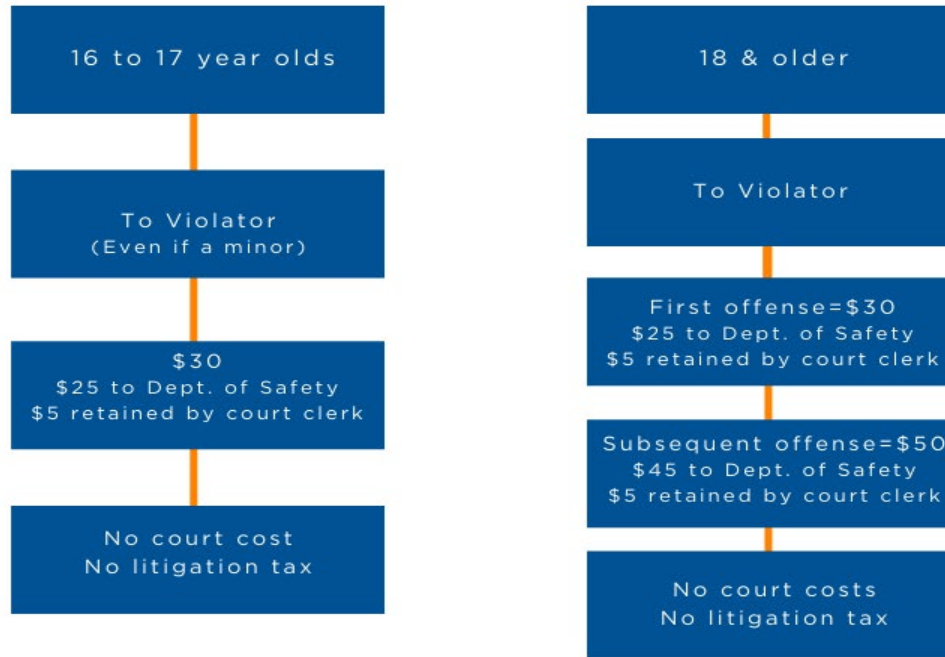


TCA 55-9-603

Seat Belt Law

Drivers ages 16
and up

SAFETY BELT LAW: ADULTS



Hands Free Law– TCA 55-8-199

Class C Misdemeanor

TCA 55-8-199 is included in the list of offenses that can be incorporated into the city code

MTAS believes this fine can stay with the cities.

- First time offenders – max fine of \$50 (depending on your city’s code if adopted)
- Third or subsequent offenders - \$100
- Violation results in an accident - \$100
- TDOT work zone, construction work zone, or school zone - \$200
 - But, these fines are capped at \$50 if ticket is written for the city ordinance

Court Costs limited to \$10

- Still forward the \$1 MTE fee from the court costs

For first time offenders, driver may attend and complete driver education courts (i.e. traffic school).

- Permissible by the judge’s decision



Impaired drivers trust fund – Traumatic Brain Injury Trust Fund (GS Only)

Impaired Drivers Trust Fund

General Sessions Court Only

- TCA 55-10-413(b)
- \$5 fee for all DUI convictions
- Forwarded to Department of Safety
- Deposited into the “Impaired Drivers Trust Fund”

Traumatic Brain Injury Fund

General Sessions Court Only - Safety gets these fines

- TCA 68-55-401
- Speeding in excess of 10 mph - \$5 (only if speeding is cited under the TCA. If cited under city ordinances do not collect this \$5 fine because its not a state violation)
- Reckless Driving - \$30
- Driving when license is cancelled, revoked, suspended - \$15
- DUI - \$15 (Courts collect total of \$20 for DUI. \$15 for TBIF and \$5 for Impaired Drivers)
- Accidents involving death or personal injury - \$15
- Drag racing - \$25



Drivers License Issues



Drivers License issues

Driving without license in possession

- If a person has a valid license, but does not have it in his or her possession,
- City court has jurisdiction
- Class C Misdemeanor –fine goes to Safety
- TCA 55-50-351
- Court Costs stay with the city since heard in city court

Driving on no license, suspended, cancelled or revoked license

- If license suspended, revoked, cancelled, or never obtained a license
- Cannot hear in traditional city court
- Class A and B Misdemeanors
- GS jurisdiction courts can hear this
- Fine goes to the State



Financial Responsibility – TCA 55-12-139

Insurance Law

- Class C Misdemeanor
- Can be adopted as city offense into city code
- Can be heard in city courts
- MTAS believes city has the authority to keep the fine money if adopted into city code and cite city ordinance
- Statute says max fine \$300, but if it's a city violation, max fine of \$50
- Cannot charge this offense by itself. Must charge with other moving vehicle violation and then add this on.
 - “At the time a driver of a motor vehicle is charged with any violation under.....” TCA 55-12-139(b)(1)(A)



Financial Responsibility – TCA 55-12-139

Had valid insurance when cited

- Had valid insurance, but could not produce a proof of insurance card or mobile device display
- Returns to court with proof of insurance showing coverage on the cited date
- First citation: Court must dismiss the citation
- Second or subsequent citation: Court may dismiss
 - TCA 55-12-139(e)(1)
- If dismissed the first time, no fine, no court costs, no taxes, no fees

Did not have valid insurance when cited

- If you did not have valid insurance at the time when cited
- No dismissal is allowed – TCA 55-12-139(e)(2)
- Will be found guilty and reported to Department of Safety
- Fine determined by city's code (if adopted as city violation), max fine \$50



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Two Important Definitions

Failure to Appear (FTA)

- Never appearing on a required court date.
- Results in a Default Judgment and subsequent conviction.
- DOS can suspend your license.
- TCA 55-50-502(a)(1)(I)

Failure to Pay (FTP)

- Did show up to court.
- Convicted of an offense and must pay a fine/costs/taxes.
- Enter into a payment plan
- Does not pay.
- DOS can suspend your license.
- TCA 55-50-502(j)

In both instances, the Defendant is convicted and now owes money. If he can't pay in full, he is eligible for a payment plan and must comply with the payment plan, otherwise he could lose his license.



General Rules – Courts & Payment Plans

Traditional Court – Civil Only

If a person has a moving vehicle violation in a traditional city court, he must pay the fine, or get on a payment plan.

These offenses are the Class C misdemeanors adopted into your city's code of ordinances

If you default on the payment plan, the Department of Safety can suspend the driver's license.

- TCA 55-50-502(j)

General Sessions Court – Civil and Criminal

If convicted of a Class A or B misdemeanor criminal charge (not just moving vehicle charges, so it could include drugs, DUI, assault) you need to pay the fines/ fees/ costs within one year. If not, you must enter into a payment plan. If you later default, you may lose your license.

- See TCA 40-24-105(b)(1) – criminal courts

Can also hear Class C moving vehicle violations (Rules of the Road) just like a traditional courts as city ordinance (civil) violations. If defendant doesn't pay these fines, license can also get suspended.

- See TCA 55-50-502(j) – civil offenses like traffic



Payment Plans – TCA 55-50-502(j)

Payment Plans in General

1. *Required* – Payment plans will be required for every licensee convicted of a driving offense and fails to pay the fines and costs on the disposition date, i.e. court date.
 - Person will discuss payment plan options with the judge if in a hearing. Make payments in accordance with the plan.
 - Subject to Payment Plan until fully paid or if outstanding costs are waived by the court.
2. *Maintain Driving Privileges* – While on a payment plan, a person will maintain driving privileges only if he or she is otherwise eligible for a driver's license.

Starting the Payment Plan

Payment plans must be reasonable and based on the person's ability to pay.

- This hearing can occur at the same time as the original appearance, immediately following the conviction.
- Judge discusses finances with defendant, may require defendant to complete affidavit of indigency.
- Judge orders the plan. Hopefully, the judge, the defendant, and the court clerk all sign the plan.

Court Clerk is required to inform the person that:

1. Failure to timely make payments as ordered by the court results in suspension of the person's license and a restricted license will be issued.
2. Any default on the payment plan, while on a restricted license, would result in revoking the restricted license and driving privileges.



Modifications to a Payment Plan

Modifications should be granted when:

- Person's financial circumstances change *or*
- Upon good cause shown.

Court clerks have the authority to grant modifications.

If modification request was denied by the deputy clerk, the person may appeal to the chief clerk.

If the chief clerk denies the request, the person may petition the court for a hearing.

New information time!

MEMO



To: Michelle Consiglio-Young
From: Elizabeth Stroecker
Date: August 2, 2021
Subject: Implementation of Public Chapter 438 for Payment Plans for Traffic Fines and Costs

In October of 2018, there was a federal court order that suspended the authority of the Department to process suspensions of driver licenses for failure to pay traffic citation court fines and costs. On July 1, 2019, Public Chapter [438](#) went into effect that set-up a process for individuals to be put on a payment plan for traffic citation courts fines and costs prior to the request for suspension of a driver license for failure to pay.

Due to ongoing litigation, the Department was not able to implement Public Chapter 438 at the time of passage. As a result, courts were sending in suspensions for failure to pay traffic citation court fines and costs in compliance with the federal court order issued in October of 2018. Due to pending litigation, the Department has not been able to process these suspensions that have come in from October 2018 until July 1, 2021.

As of July 1, 2021, the Department began processing requests for suspension of a driver license as a result of default on a court payment plan for a traffic citation. The request for suspension must be compliant with the requirements set out in Public Chapter [438](#) from 2019. **If a court is currently submitting paper requests for suspensions in compliance with the 2018 federal court order, please cease doing so now and use the provided instructions and documents.** The requirements set out in Public Chapter 438 and T.C.A. §55-50-502(j), must be followed if a court wants to submit a suspension for a driver license for an individual who has defaulted on a payment plan for traffic citation court fines and costs.

If a suspension request for default on a traffic citation payment plan was submitted prior to July 1, 2021, it will need to be resubmitted in order to be processed in accordance with the new payment plans laws set out in T.C.A. §55-50-502(j). Additionally, the Department implemented the sections of Public Chapter [438](#) relative to default on payment plans for criminal court fines and costs in September of 2020. All requirements set out in that Public Chapter and in T.C.A. §40-24-105(b) shall be required for request for suspension of a driver license for default on a payment plan for criminal court fines and costs.

We've all seen this from the Department of Safety right?

August 2021



Municipal Technical Advisory Service
INSTITUTE for PUBLIC SERVICE

New Information Time!

And this memorandum on changes and methods to report?

August 2021

Public Chapter 438

T.C.A. 55-50-502(j)

Effective 07/01/2019, Implemented 07/01/2021

What's changed

- Failure to Pay
 - Pursuant to T.C.A. 55-50-502(j), the court shall require every licensee who is convicted of a driving offense and who does not pay the assessed fines and costs in full on the date of disposition to make payments pursuant to an installment payment plan.
 - Notices of Failure to Pay must specify that the driver defaulted on a payment plan compliant with T.C.A. 55-50-502(j). Notices that do not specify default on a payment plan will not be processed.
 - Courts may report default on a payment plan electronically with their regular files. Previously, all notices of default on a payment plan were required to be submitted on paper.
 - TDOSHS will notify drivers of proposed suspension allowing 30 days to re-establish the payment plan or satisfy the court in full.
- Payment Plan Compliance
 - Compliance must specify whether the citation has been satisfied in full or is on a payment plan
 - Courts may report compliance on a payment plan electronically with their regular files. Previously, all notices that a citation is on a payment plan were required to be submitted on paper.
- Restricted License
 - Drivers who comply with department notice of proposed suspension within 30 days by either re-establishing the payment plan or satisfying the court in full and submit compliance to the department will not be suspended.
 - Drivers who do not comply with the department notice of proposed suspension within 30 days will be suspended.
 - Drivers who have satisfied the court in full after suspension may reinstate from the suspension by paying any applicable reinstatement and issuance fees if otherwise eligible.
 - Drivers who have re-established a court payment plan after suspension are also required to obtain a court order for a restricted license and must apply for a restricted license at a driver service center. The restricted license will be required until the court is satisfied in full.



Why do cities do different things when reporting an FTA or FTP?



The Department of Safety does not have a list of required steps a city must take before submitting an FTA or an FTP for a license suspension.



Failure to Appear – some cities reset the court date for the next month and send out a courtesy letter. Others just report it the next day.



Failure to Pay – Some cities give a courtesy letter informing them of a default with a new deadline date. Others just submitted the FTP to the Department of Safety.



So it's up to each city to decide the steps it wants to take, and that's ok.

Types of Payment Plans

TCA 40-24-105 (criminal courts) and TCA 55-50-502 (civil courts) do not specify what a payment plan must look like.

Two general types:

1. Set dollar amount per month.
2. Extension of time, i.e., pay the entire amount in 90 days.

Also, the State does not have a standard form for a payment plan, so you can create whatever form you like.



Does a city need to inform DOS of every payment plan?



The Department of Safety does not need to know that a person has entered into a payment plan.



They only need to know when the person has defaulted on the payment plan to suspend the driver's license.



Exception: If a person has a suspended license prior to 2018, and they now enter into a payment plan to get their license reinstated, the DOS does want to know that person has entered a payment plan, even if they are compliant.

Methods to Report a FTA or FTP for suspension



TN Court Information System (TnCIS) – Local Government Corp. product – This method is fully integrated and ready to use.



3rd Party Software vendors – But you must check with your vendor to make sure they are integrated with the DOS's systems. Don't know if yours is? Call your vendor and then email Tiffanie Morgan at tiffanie.morgan@tn.gov to find out.



Fax the Department of Safety – 615-401-6786



Mail paper Court Action Reports to “Dispositions, PO Box 945, Nashville, TN 37202-0945”



Methods to Report a FTA or FTP for suspension

Major Note!

- You cannot use the DOS's online portal to report FTA or FTPs anymore.
- Also, you cannot use it to report compliance when people come back in and make a payment to get their license reinstated.
- But you can still use it to report everything else like normal (speeding, insurance, seatbelts, etc.).
- If this is your sole method of reporting, you will have to do fax or paper mailing for now.



Court Disposition Reporting

Email:

Password:

[Frequently Asked Questions!](#)

[Print Access Forms!](#)



Municipal Technical Advisory Service
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Reminder - If you manually report by fax or mail, use the Court Action Report form.

DEPARTMENT OF SAFETY USE ONLY

STATE OF TENNESSEE
DEPARTMENT OF SAFETY
COURT ACTION REPORT

TYPE OR PRINT LEGIBLY IN BLACK INK. DO NOT WRITE IN SHADED AREAS.

D E F E N D A N T	NAME: FIRST MIDDLE LAST			RACE	SEX	DATE OF BIRTH	SOCIAL SECURITY NUMBER			
	ADDRESS (NO., STREET, APT., OR RT. AND BOX NO.)					CITY		STATE	ZIP CODE	
	DRIVER LICENSE NUMBER	CLASS	STATE	LIC. PLATE NO.	STATE	YR	VEH YR	VEH MAKE	VEH MODEL	
	ASSIGNED NO. HISTORY ONLY			COMMERCIAL MOTOR VEH. <input type="checkbox"/> YES <input type="checkbox"/> NO		HAZARDOUS MATERIALS <input type="checkbox"/> YES <input type="checkbox"/> NO		ACCIDENT <input type="checkbox"/> YES <input type="checkbox"/> NO		CDL <input type="checkbox"/> YES <input type="checkbox"/> NO
VIO. DATE	COUNTY		CODE	STREET/HIGHWAY			AGENCY			
V I O L A T I O N	1	CITATION NO.	DESCRIPTION OF VIOLATION				SPEED MPH	ZONE	DUI OFFENSE 1ST 2ND 3RD	
	WAS IGNITION INTERLOCK DEVICE ORDERED BY COURT? <input type="checkbox"/> YES <input type="checkbox"/> NO			RESTRICTION PERIOD OF DEVICE FROM: TO:		BAC SETTING OF DEVICE		OTHER COURT ORDERED RESTRICTIONS		
	HEARING DATE	COURT DOCKET NO.		CASE DISPOSITION: (CHECK ONLY THE ONE APPROPRIATE BOX)						
	TRAFFIC SCHOOL <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE COMPLETED	<input type="checkbox"/> GUILTY AS CHARGED		<input type="checkbox"/> REDUCED - GUILTY OF _____ (LIST CONVICTION)				
				<input type="checkbox"/> DISMISSED		<input type="checkbox"/> FAILED TO APPEAR - INITIATE SUSPENSION				
				<input type="checkbox"/> FAILED TO PAY FINES/COSTS AFTER CONVICTION - INITIATE SUSPENSION						
REMARKS										
FINE	COSTS	OTHER	TOTAL ASSESSED		PAID IN FULL <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> WAIVED/INDIGENT			TN LICENSE SEIZED <input type="checkbox"/> YES <input type="checkbox"/> NO		
VIO. CODE	BAT CODE	FTA CODE	FINE CODE	LIC. SURR CODE	REVOKE/SUSPEND	→		BEGIN	ELIGIBLE	



Specify Default of Payment Plan when Reporting

On the current Court Action Report form, it only says this:

CASE DISPOSITION: (CHECK ONLY THE ONE APPROPRIATE BOX)	
<input type="checkbox"/> GUILTY AS CHARGED	<input type="checkbox"/> REDUCED - GUILTY OF _____
<input type="checkbox"/> DISMISSED	<input type="checkbox"/> FAILED TO APPEAR - INITIATE SUSPENSION
<input type="checkbox"/> FAILED TO PAY FINES/COSTS AFTER CONVICTION - INITIATE SUSPENSION	

If you only check that box and nothing else, the DOS will not process your request.

You will now need to specify in the narrative box (bottom right of the form) that the request to suspend is from a Failure to Pay - default of a payment plan. Add a sentence saying “Payment plan entered on Day X, and default occurred on Day Y.”

The most painful slide of the day (please don't hate me)

In the Department of Safety letter dated August 2, 2021, it says this about reporting defaults on payment plans:

If a suspension request for default on a traffic citation payment plan was submitted prior to July 1, 2021, it will need to be resubmitted in order to be processed in accordance with the new payment plans laws set out in T.C.A. §55-50-502(j). Additionally, the Department implemented

Sooooo, does that mean if I submitted a Failure to Pay request prior to July 1, 2021, and I did everything the statute told me to do, I have to do it again?

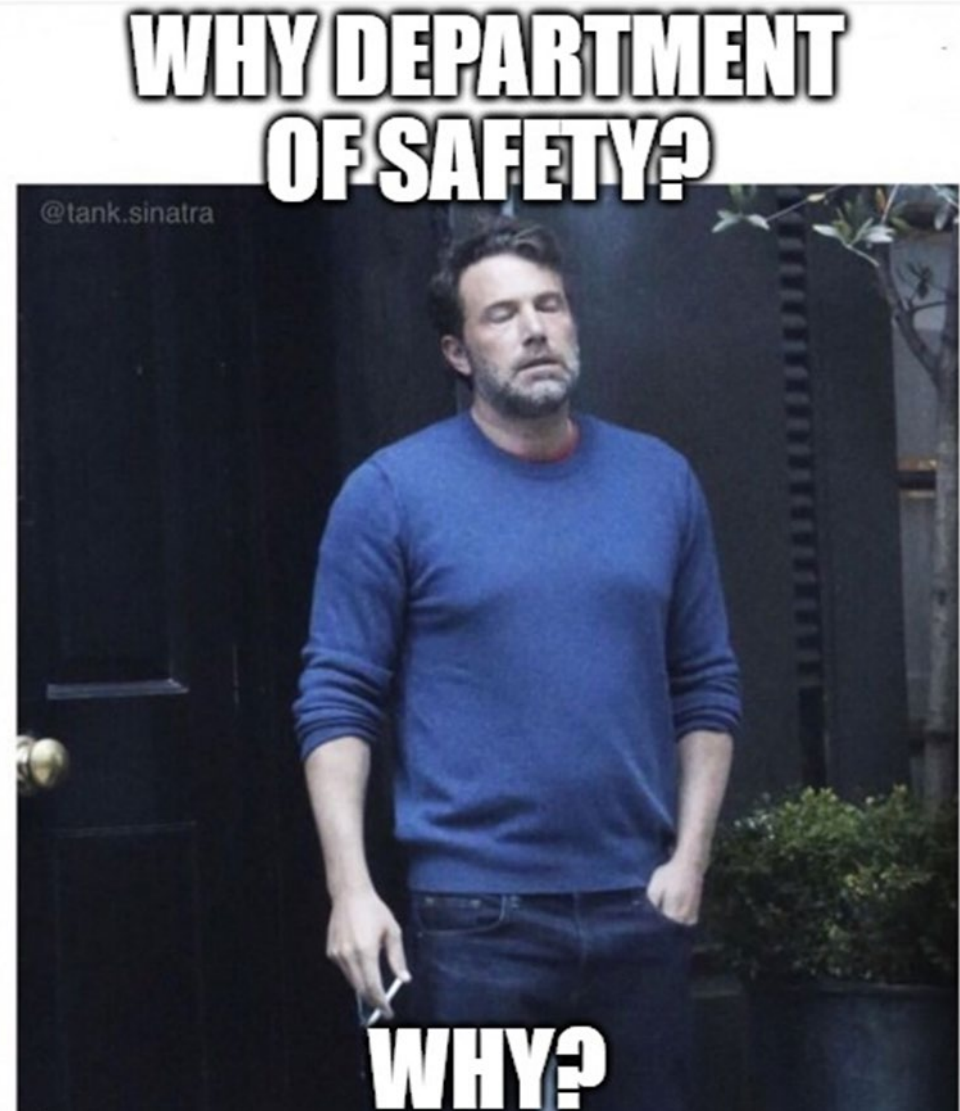


Yes. Yes, it does.

The Department of Safety will not process any previously submitted FTP requests from 2018-July 2021, regardless if you strictly complied with the payment plan statute.

They said that there are too many possibilities of a court submitting a FTP request in the past few years, then the defendant later paying the citation at the local court level, but that court inadvertently not reporting that to the Department of Safety.

There would be too great of a risk where Safety would suspend someone's license who did in fact pay all the fines, resulting in Safety being sued again.



Should I resubmit every FTP again?



Cities can choose if it is worth their time and resources to resubmit these defaults on payment plans.



A city does not have to report these defaults on payment plans to the Department of Safety unless they are seeking suspensions of drivers' licenses as motivating tools to make them pay.



The defendant still owes the money regardless.



You can choose to use a collections agency if that is easier or more effective and not use the Department of Safety at all.

Does the DOS need to know when a payment is made?

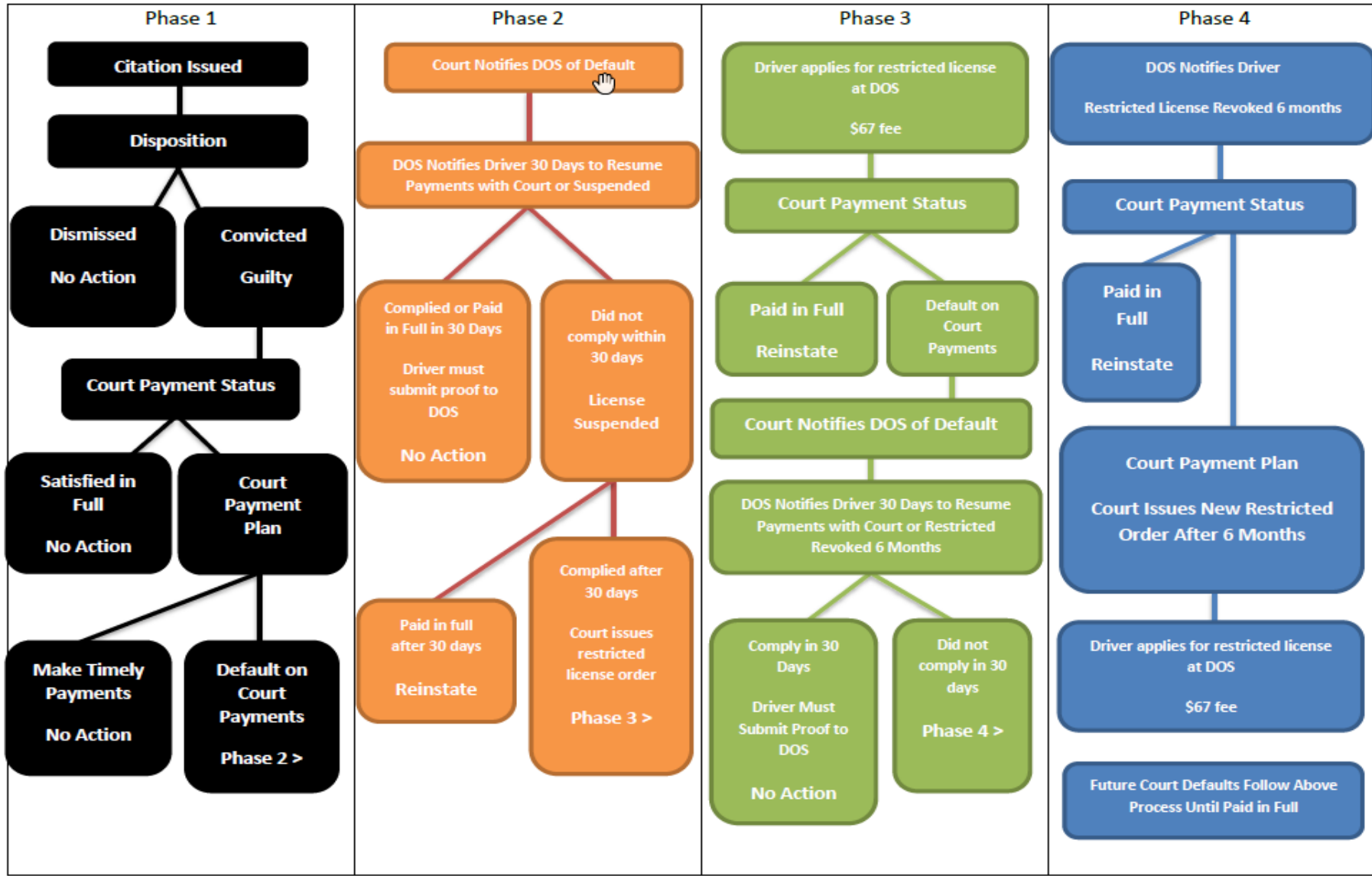
When not to notify Department of Safety when a payment is made.

- If a defendant is making timely payments and things are going well, the DOS does not need to know that.
- Keep on going and hope they make all their payments.

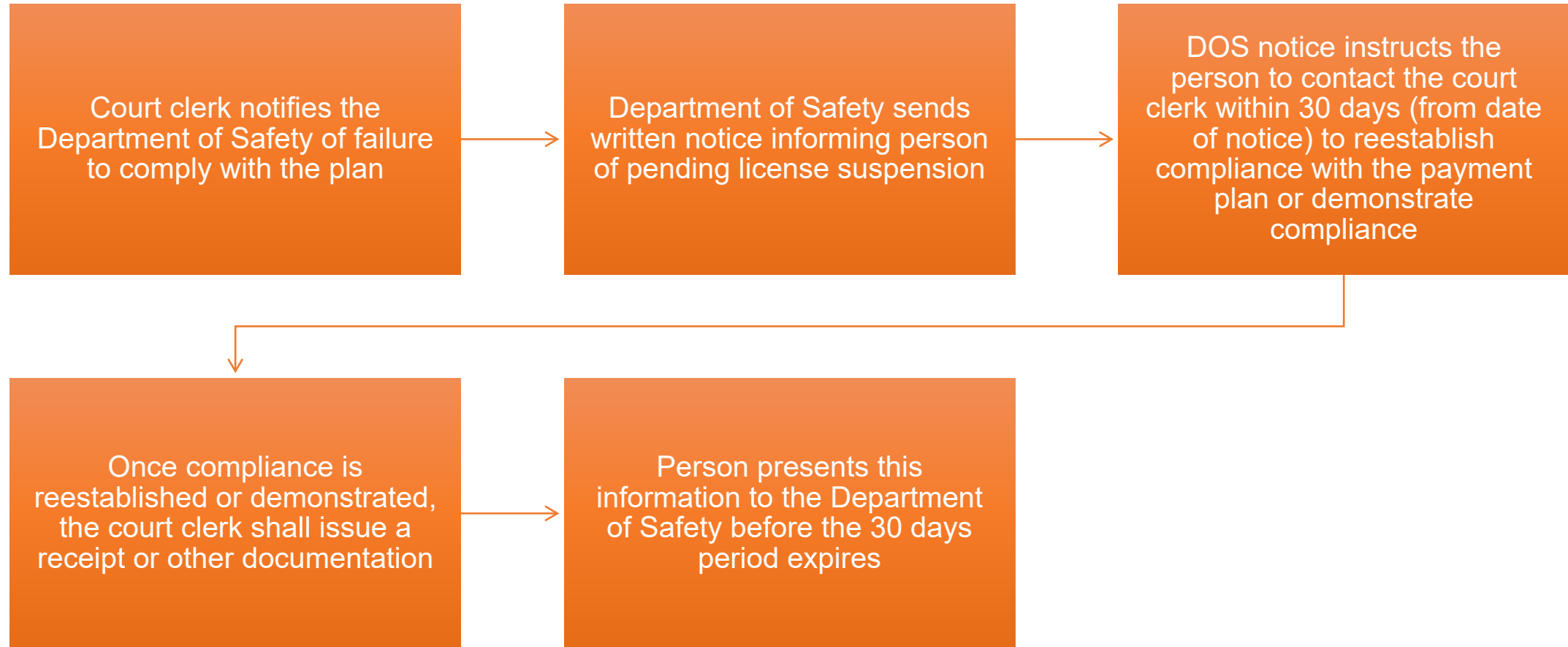


When you do notify Department of Safety of a payment made.

- If a person defaults and then makes a payment to come back into compliance to avoid being suspended or to get the license reinstated, you report that he paid.
- This allows the DOS's software system to be updated showing compliance when the person goes to a reinstatement center to avoid suspension or apply for a restricted license.
- Give Defendant a written certification that compliance reestablished for them to take to reinstatement center.
- Notify DOS when they pay off the entire amount and payment plan is over.



Failing to comply – first time



What compliance documentation do you provide the defendant?

TCA 55-50-502(j)(4)(C)(iii) says:

(iii) If the person reestablishes compliance with the payment plan or demonstrates to the court clerk or court that the person complied with the court clerk's payment plan, **then the court clerk shall issue a receipt or other documentation to the person.** If the person presents the receipt or other documentation to the department prior to the expiration of the thirty-day period described in subdivision (j)(4)(C)(ii), then the department shall not suspend the person's license.

There is no standard form the State wants us to use.

This can be a two-sentence form letter on city letterhead that simply says,

“Person X is on a payment plan and made the appropriate payment of \$_____ on Day Y and is now compliant with the court ordered payment plan.”

Give that to the Defendant and report the compliance to the Department of Safety using the same methods you used to report the default on the payment plan (electronic, fax, or mail).



License suspension and restricted license

License Suspension

1. Person fails to reestablish or demonstrate compliance with payment plan.
2. Person fails to present the receipt or other documentation to the Department of Safety by the expiration of the 30 day rule.
3. Once license is suspended, the person cannot legally drive until he obtains a restricted license.

Restricted License

After license suspended, the person may apply for a restricted license. RL valid only for traveling for the following:

1. Employment
2. School
3. Religious worship
4. Participation in a recovery court
5. Serious illness of person or immediate family member

Court order must state the necessary times and places of permissible operation of vehicle. Must still comply with payment plan.



New Form from DOS – Order for Restricted License.



STATE OF TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY

ORDER FOR RESTRICTED DRIVER LICENSE FOR FAILURE TO COMPLY WITH COURT PAYMENT PLAN
(MUST BE COMPLETED BY COURT OF JURISDICTION ENTERING APPLICANT IN PAYMENT PLAN)
MUST APPLY FOR LICENSE WITHIN TEN (10) DAYS FROM THE DATE OF THIS ORDER AS SET FORTH UNDER T.C.A. 55-50-502(j)

STATE OF TENNESSEE

VS

(FULL NAME)

DATE OF BIRTH _____ DRIVER LICENSE NUMBER _____

COURT ID NO _____ COURT _____

DATE LAST PAYMENT DUE _____
(must be furnished to determine expiration of restricted driver license)

CITATION NUMBERS ON PAYMENT PLAN _____

ORDER

Upon application of the defendant for a restricted driver license, it appears to the Court that defendant's driver license has been suspended for default on payment of a cost or fine imposed for traffic citations pursuant to T.C.A. 55-50-502(j) and has entered into a new payment plan with the court. The violation resulting in the defendant's present conviction was not for driving under the influence of an intoxicant, or for refusal to submit to a blood or breath test, and the defendant does not have a prior conviction of vehicular homicide as the proximate result of intoxication, aggravated vehicular homicide, vehicular assault, or aggravated vehicular assault; The defendant has been informed that failure to satisfy any requirements as ordered by this Court shall result in the revocation of the restricted license for a period of six (6) months pursuant to T.C.A. 55-50-502(j). The restricted license you received at the time of the Court hearing is temporary and subject to revocation if the department determines you are not eligible pursuant to the above statutory law. This is only valid until the department has had an opportunity to make a final determination of eligibility for the restricted license. Should the restricted license be approved by the department, it will only be valid for the length of the payment plan or 8 years, whichever is shorter.

Home Address: _____

Employer (Name & Address): _____

School (Name & Address): _____

Religious Worship (Name & Address): _____

Recovery Court (Name & Address): _____

Doctor (Name & Address): _____

Permissive Driving Times: DAYS _____ HOURS _____

It is, therefore, ORDERED that the defendant be issued a restricted driver license for the purpose set forth above, subject to the rules and regulations of the Department of Safety and Homeland Security of the State of Tennessee.

DATE	JUDGE'S SIGNATURE	COURT NAME & SEAL/STAMP
------	-------------------	-------------------------

Department of Safety provided all courts with a standard form to use for Orders for Restricted Licenses when defaulting on a payment plan.

The judge will complete these forms when a defendant makes a payment and applies for a restricted license. The defendant will then take this form to the Reinstatement Center.

They gave us two forms:

Civil cases (TCA 55-50-502)

Criminal Cases (TCA 40-24-105)



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Failing to Comply – Second Time



Same process for notifying the Department of Safety and reestablishing or demonstrating compliance.



Person will be notified that the restricted license will be revoked.



The license will be revoked for at least 6 months. Revocation occurs when a person fails to comply with the payment plan or present a receipt or other documentation to the Department of Safety before the 30 day period expires.



Even if license is revoked, the person should still be actively participating in the installment plan.



After 6 months, may apply for reissued restricted license.



Clerk Questions to Ask

A person, with revoked license, may apply to the court clerk for certification to be eligible to receive a reissued restricted license.

Two questions to ask before granting certification:

1. Did the person wait 6 months before applying for the reissued license?
2. Is the person actively participating in a payment plan?

State requirements to obtain reissued restricted license



Same geographical and time restrictions apply for a reissued restricted license.



The person should submit the court clerk's certification and pay the \$65 application fee to the Department of Safety.



The certification and fee should be presented together, within 10 days after the certification is issued.



A copy of the certification may serve in lieu of a driver's license until the reissued restricted license is issued.

For license suspensions before July 1, 2019

A licensee may apply for an order reinstating his or her driver's license upon entering a payment plan with the court clerk (.i.e. the court with jurisdiction over the offense).

A certified copy of the court's order may be presented to the Department of Safety. A driver's license will be reissued, if the person is otherwise eligible for a driver's license. There is no fee for the license.

Only applies for licenses suspended under TCA 55-50-502(a)(1)(H). Does not include licenses suspended from criminal court proceedings or fines.



Payment Plans for Criminal Convictions

- Applicable for concurrent general sessions jurisdiction courts only.
- TCA 40-24-105 – A payment plan is required for any person who holds a TN driver’s license and fails to pay all outstanding litigation taxes, court costs, and fines within one year of completing the sentence.
- The payment plan applies until the person fully pays the court judgment or the court waives any outstanding taxes, costs or fines.
- Process for installment plan is the same as TCA 55-50-502.
- Courts have resumed suspending licenses for nonpayment for these criminal matters starting September 1, 2020.



Indigency Determinations

The court shall offer the person an opportunity to submit proof of inability to pay taxes, fines, or court costs.

An indigent person is defined as “any person who does not possess sufficient means to pay reasonable compensation for the services of a competent attorney.”

TCA 40-14-201(1)

Uniform Civil Affidavit of Indigency Form available on the TN Supreme Court website

<http://www.tncourts.gov/sites/default/files/docs/uniformaffidavitofindigency.pdf>



Questions?

Great...but it wouldn't
be a Foundations Class
without this...





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