

**A SUMMARY OF TEXAS LAW AND HARRIS COUNTY  
PROCEDURES FOR DRIVING WHILE INTOXICATED (DWI) AND  
DRIVING UNDER THE INFLUENCE (DUI) CASES**

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**1. IF THE DRIVER IS 21 OR OLDER:**

**A. PENALTIES:**

1<sup>st</sup> Offense Conviction: A fine not to exceed \$2,000.00 or jail time, or both, not less than 72 hours and not to exceed 180 days. Driver's license suspension for 90-365 days. If it is proven there was an open container of alcohol in the vehicle, the jail time is not less than 6 days.

Classification: Class B Misdemeanor

2<sup>nd</sup> Offense Conviction: A fine not to exceed \$4,000.00 or jail time, or both, not less than 30 days and not to exceed 1 year. Driver's license suspension for 180 days to 2 years.

Classification: Class A Misdemeanor

3<sup>rd</sup> Offense Conviction: A fine not to exceed \$10,000.00, and imprisonment for 2-10 years. Driver's license suspension for 180 days to 2 years.

Classification: 3<sup>rd</sup> Degree Felony

Intoxicated Assault: DWI where an accident causing serious bodily injury has occurred. A fine not to exceed \$10,000.00 and imprisonment for 2-10 years.

Classification: 3<sup>rd</sup> Degree Felony

Intoxicated Manslaughter: DWI where a death has occurred. A fine not to exceed \$10,000.00 and imprisonment for 2-20 years. There is a mandatory 120 days of incarceration, which must be served even when a defendant is placed on community supervision.

Classification: 2<sup>nd</sup> Degree Felony

Some of the above punishments may be "probated". Although the public and many court personnel use the word "probation," the correct expression is "community supervision." What this means is that in exchange for not doing some or all of the jail time and/or not paying part or the entire fine, you agree to obey rules and requirements set by the court. The following are "standard" conditions of community supervision, but the conditions will be a little different from case to case:

- submit to random urine tests for drugs and alcohol
- abstain from consuming alcohol and controlled substances for the term of your community supervision
- report once a month to a community supervision office
- not commit any further crimes during the term of community supervision
- pay a monthly supervisory fee to the community supervision office (approximately \$40.00)
- perform specified number of community service hours during the term of community supervision (24-80 hours)
- attend DWI awareness classes dealing with the effects of alcohol or listening to victims of DWI related tragedies
- pay fines and court costs
- submit to a breath test by law enforcement or court personnel upon request
- install an alcohol ignition interlock device and maintenance on your car, at your expense
- make a \$50.00 donation to M.A.D.D. or Crime Stoppers
- remain within the county of your residence, unless given travel permission by a supervision office
- (any other requirements ordered by the court)

## **2. DRIVER'S LICENSE SUSPENSION**

If you have been arrested for suspicion of DWI, there are two (2) different ways your driver's license can be suspended. First, through the Texas Department of Public Safety, and second, by the court, based on a DWI conviction.

You have fifteen (15) days from the day you are arrested for DWI to request an ALR (Administrative License Revocation) hearing. If you have already retained Mr. Mallett or Mr. Saper before the 15 day period, our office will ordinarily make this request for you.

Our office will obtain and serve subpoenas on the officer(s) to the ALR hearing. The cost for doing this is about \$10.00 per officer, depending on the

distance traveled, and \$70.00 per subpoena. You are responsible for these expenses.

**A. Suspension Provisions – 21 or older:**

- Refusal of breath test – 180 day suspension
- Prior alcohol or drug conviction within 10 years – 2 year suspension
- Failure of breath test – 90 day suspension
- Prior alcohol or drug conviction within 10 years – 1 year suspension

Upon receiving a suspension from the Texas DPS, you will be required to pay a \$125.00 reinstatement fee before your license will be reinstated.

If you do not have a license, or your license is already suspended, the period of suspension begins when you next apply for or become eligible for a license.

**3. SURCHARGES FOR KEEPING A VALID DRIVER'S LICENSE**

**A. Drivers who receive a conviction for DWI or a DWI related offense will pay an annual surcharge for a period of three years. The fine is automatic on the first offense.**

**B. AMOUNT OF SURCHARGE:**

- \$1,000 per year for 3 years; if you have no prior convictions for DWI
- \$1,500 per year for 3 years; if you have previously been convicted of a DWI within 36 months preceding the new conviction date
- \$2,000 per year for 3 years; if you give a blood, breath, or urine specimen which shows an alcohol concentration of 0.16 or higher, regardless of any prior conviction

A conviction for driving while license is invalid or failure to maintain financial responsibility results in a surcharge of \$250 per year for 3 years.

A driver who is convicted of driving without a valid license results in a surcharge of \$100 per year for 3 years.

The surcharge assessed for this program is in addition to other reinstatement fees required for other administrative actions.

**C. POINT SYSTEM FOR TRAFFIC TICKETS:**

The Driver Responsibility Program establishes a system that assigns points to moving violations classified as Class C misdemeanors and applies surcharges to offender, based on the type of offense and the time period in which the citation was received. For each conviction, DPS will assign points to a person's license as follows:

- Two points for a moving violation conviction in Texas or that of another state.
- Points will not be assigned for speeding less than 10% over the posted limit or seat belt violations.
- Three points for a moving violation conviction in Texas or another state that resulted in a vehicle crash.

Points remain on the driver record for a period of three years. Additionally, a conviction for a traffic violation that becomes final before September 1, 2003 will not apply to the assessment of points under the program. This program does not replace other administrative suspension, revocations, or cancellation actions that result from these same convictions.

**D. DRIVER SURCHARGES FOR TRAFFIC TICKETS:**

DPS will assess a surcharge when the driver accumulates a total of six points or more on their record during a three year period. The driver must pay a \$100.00 surcharge for the first six points and \$25.00 for each additional point.

**E. DRIVER NOTIFICATION OF SURCHARGE AND LICENSE REVOCATION:**

DPS will notify the offending driver of the assessment of a surcharge on their license, via first-class mail. The notice will state the surcharge must be paid. Drivers who do not pay their surcharge within 30 days after the notice is sent will have their driving privileges revoked. The license will remain revoked until the person pays all surcharges and related costs, such as service/collection fees.

**F. INSTALLMENT PAYMENT OF SURCHARGE:**

You must contact the DPS if you wish to arrange installment payments. If a person fails to make a required installment payment, the department may declare the amount of the unpaid surcharge immediately due and payable.

**G. CREDIT CARD PAYMENT OF SURCHARGE:**

- The department by rule may authorize the payment of a surcharge by use of a credit card. The rules shall require the person to pay all costs incurred by the department in connection with the acceptance of the credit card.
- If a surcharge or a related cost is paid by credit card and the amount is subsequently reversed by the issuer of the credit card, the license of the person is automatically suspended.
- A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

**4. IF THE DRIVER IS UNDER AGE 21**

Texas Trans. Code §106.041

“a minor commits an offense if the minor operates a motor vehicle in a public place while having any detectable amount of alcohol in the minor’s system.”

**A. PENALTIES:**

1<sup>st</sup> Offense Conviction: A fine not to exceed \$500.00 and completion of 20-40 hours of community supervision; required completion of an Alcohol Awareness Program within 90 days of conviction; and if minor is under 18, parent/guardian may be required to attend all court settings and attend alcohol awareness program with minor.  
Classification: Class C Misdemeanor

2<sup>nd</sup> Offense Conviction: Same as 1<sup>st</sup> offense with the following changes; 40-60 hours community supervision.  
Classification: Class C Misdemeanor

3<sup>rd</sup> Offense Conviction: A fine not to exceed \$2,000.00 and jail time not less than 72 hours and not to exceed 180 days.  
Driver's license suspension for 90-365 days.  
Classification: Class B Misdemeanor

In some underage DUI cases, you may be able to take a Deferred Adjudication. It is preferable to a conviction because after completion the record can be "sealed," and eliminated from public records.

## **5. DRIVER'S LICENSE SUSPENSION – UNDER 21**

If you have been arrested for suspicion of DWI/DUI, there are two (2) different ways your driver's license can be suspended. First, through the Texas Department of Public Safety, and second, by the court.

You have fifteen (15) days from the day you are arrested/cited for DUI to request an ALR (Administrative License Revocation) hearing. If you have already retained Mr. Mallett or Mr. Saper before the 15 day period, our office will ordinarily make this request for you.

### **A. Suspension Provisions – Under 21:**

Upon receiving a suspension from the Texas DPS, you will be required to pay a \$125.00 reinstatement fee before your driving privileges will be reinstated.

If the DPS proves in an ALR hearing that you were a minor, driving after drinking, but NOT intoxicated, then you lose your license for:

- 30 day suspension – 1<sup>st</sup> offense
- 60 day suspension – 2<sup>nd</sup> offense
- 120 day suspension – 3<sup>rd</sup> offense

If you are convicted of a DUI, your license will automatically be suspended for 1 year.

**THE DPS DRIVER RESPONSIBILITY PROGRAM AND "SURCHARGE" ALSO APPLIES TO A MINOR. REFER TO PAGES 4 and 5 FOR THIS INFORMATION.**

## **6. Occupational Driver's License**

If your license is suspended, you may attempt to obtain an Restricted Driver's License (RDL), commonly referred to as an Occupational Driver's License (ODL).

### **A. Requirements / Restrictions**

Depending on what court number you are in will depend on what requirements / restrictions will be placed on you while operating a vehicle with an ODL. Some examples of the restrictions are as follows:

- SR-22 insurance (required)
- Proof of Texas Liability Insurance (Some Judges require 6 month pre-paid insurance)
- Random Alcohol/Drug testing (you will have to pay a laboratory fee for each test)
- Not allowed to drive more than 12 hours in one day (some judges only allow 10 hours in one day)
- You may have to pay a monthly supervision fee (usually \$40)
- Ignition Interlock may be ordered to be installed on your vehicle. (You will be responsible for any and all fees associated with the ignition interlock)
- Only allowed to drive in Harris County (depending on the circumstance, you may be allowed to drive in Harris and surrounding counties)
- Pay a fee to obtain a Driving Record from the Texas DPS

If you have been convicted of DWI within 5 years prior to a second conviction for DWI, then the Texas DPS will require a 1 year waiting period before you can obtain an ODL. This is called a "hard suspension."

### **B. How the ODL Process Works:**

Our office prepares and files a Petition for Occupational Driver's License with the Harris County District Clerk. Sometimes we file in another county; see below. The filing fee in Harris County is \$197.00 (you are required to pay this fee). You will have a hearing date seven (7) days later. Your attendance at the hearing is required. If the Judge signs an Order allowing you to drive, then you will leave the hearing with a temporary ODL. The Judge's signed Order must be

carried with you in the vehicle at all times. This Order is only good for 30 days. During the 30 day period, we will mail all the ODL fees (financially, you are responsible for any state and county fees) and necessary paperwork to the Texas DPS. The following are required by the Texas DPS:

- The original pink slip for your SR-22 Insurance (Once you obtain SR-22, the insurance company will forward the pink slip to DPS)
- \$125.00 reinstatement fee (reinstatement of driver's license)
- \$10.00 fee (for the occupational driver's license)
- Proof of Ignition Interlock (if required)
- Certified Copy of the ODL Order from the Court

The DPS receives and processes the paperwork. This takes up to 30 days. If everything is accepted by DPS, they will then mail you an ODL (a small brown card). This will be your driver's license during the suspension period.

When your suspension period is up, DPS will mail your driver's license back to you. Anything DPS mails to you will be mailed to the address on your driver's license. If your address is incorrect, please let us know, we can give you a Change of Address Form, for the Texas DPS. There is a \$10.00 fee to change your address. Texas law requires drivers to notify the DPS within 30 days of an address change.

**C. Obtaining an ODL in Another County:**

If you have been arrested for DWI in one county, but live in another county, it may be possible to get an occupational license through a court in the county in which you live. Some counties are more lenient than Harris County on the restrictions placed upon a defendant seeking an ODL.

In order to petition the court for an occupational driver's license in another county, the following must be met:

1. you must reside in the county in which you will be seeking an ODL
2. it must be in connection with the ALR an ALR suspension

**Example;** Client is arrested for DWI in Harris County (Houston). Client resides

in Pearland (Brazoria County). Client's license is suspended for 180 days due to the Administrative License Revocation hearing. Hypothetically, Harris County Criminal Courts have a practice of placing many restrictions placed on an ODL (interlock, alcohol/drug test every two weeks, pay a supervisory fee,), however, since Client resides in Brazoria county, he/she can petition Brazoria county court to obtain an ODL. Brazoria County Court will only require the Client to attend 2 AA meetings in connection with carrying an ODL. Therefore, Client may decide to petition to get the ODL out of Brazoria County.

**Each county has their own requirements. Some are more lenient than others.**

## **7. Ignition Interlock Device**

The ignition interlock device is a "deep lung" air testing mechanism that is installed on your vehicle. You are required to blow in the device before starting your vehicle, and at random times while driving the vehicle. If at any time you blow and the device detects alcohol, your car will not start and it will be reported to the agency in which you obtained the interlock. This information is forwarded to the court in which your case is being heard.

There are different circumstances when you might be required to place an Ignition Interlock device on your vehicle. Some circumstances are mandatory, such as a second DWI within 5 years or a conviction based on a breath test of 0.16 or above. Also, some Judges will require the interlock as a condition of an ODL, or when the DWI case involved an accident, or other special circumstances.

If the DPS records show that you driving is restricted to vehicles with an ignition interlock, and you are being investigated for a traffic offense, your vehicle must have the interlock or you will probably be arrested, jailed, and then prosecuted for a class B misdemeanor.

There is a \$60.00 installation fee, and it is approximately \$30-40 a month to maintain the interlock on your vehicle.