

Occupational Driver's License (ODL)

Wednesday, January 30, 2019
8:30–9:15 a.m.

*Mr. Scott Brumley,
Potter County Attorney*

This session will provide instruction on clerks' responsibilities for processing of forms and fees, as well as provide an overview of the process and discussion of jurisdictional issues in occupational driver's license cases.

2019 County
and District Clerks'
Association of Texas
Winter Education
Conference

January 28-31, 2019

Embassy Suites by
Hilton Hotel
Conference Center & Spa,
San Marcos

**Piece of the
Puzzle, Part of
the Whole**



Scott Brumley is county attorney of Potter County. Re-elected in 2016, he is serving his fourth term. Before taking office in 2005, he was chief of the Civil Division in the County Attorney's Office for about 10 years. In addition to responsibility for misdemeanor criminal prosecutions, during his time in the County Attorney's Office, Brumley has litigated an array of lawsuits on behalf of Potter County, its officers and employees, and the State of Texas in state and federal trial and appellate courts. Occupational Driver License proceedings are among the matters his office routinely handles. He has been married to a chemistry teacher for more than 25 years and has a daughter and a son.

Don't Drink and Drive ... Without a Court Order

Occupational Driver's Licenses

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Recipe of the Alphabet Soup

Glossary of Terms

- WI = While Intoxicated
- ALR = Administrative License Revocation (it's really suspension)
- ABC = Alcoholic Beverage Code
- H&S = Health & Safety Code
- PC = Penal Code
- TC = Transportation Code
- I/O = Intoxication Offense
 - PC §§ 49.04-.08: DWI; DWI with child passenger; FWI; BWI; Assembling or Operating Amusement Ride WI, Intox. Assault, Intox. Manslaughter
- D/O = Drug Offense
 - Class B or higher under H&S ch. 481; dangerous drug offenses under H&S ch. 483; abusable volatile chem. offenses under H&S ch. 485
- EFR = Evidence of Financial Responsibility
- CDL = Commercial Driver's License
- ODL = Occupational Driver's License

Mom, Can I Have the Keys?

The Petition

- **Must:**
 - Be verified (sworn & notarized) [TC § 521.242(a), (b)]
 - If for suspension not related to conviction of I/O:
 - Be filed with clerk of court with jurisdiction where
 - Person resides
 - Offense occurred for which license was suspended
 - If for suspension on conviction, be filed with clerk of convicting court (if no ODL after conviction in preceding 10 years [TC § 521.242(b)])
 - Set forth essential need in detail
 - “Essential need” = need to drive (a) in performance of occupation or trade, or to and from workplace; (b) to and from school; (c) to perform household duties [TC § 251.241(i)(A)-(C)]
 - State convicting court (if suspension results from conviction) [TC § 521.242(a)-(d)]

More Fine-Print Gobbledygook

The Petition (cont'd)

- **Should include (must be considered for order to issue):**
 - Certified driving record from DPS [see TC § 521.244(b)(1)]
 - Evidence of financial responsibility [see TC § 521.244(c)(2)]
- No grant of ODL for suspension related to mental or physical impairment or disability [TC § 521.242(a)]
- No grant of ODL for CDL [TC §§ 521.242(f), 522.086]

How Much Can I Charge?

Nature of Case and Fees

- Petition shall be filed “as in any other matter” [TC § 521.242(e)]
- ODL is “different and separate proceeding” from appeal of DL suspension [State ex rel. Curry v. Gilfeather, 937 S.W.2d 46, 50 (Tex. App.—Fort Worth 1996, orig. proceeding)]
- ODL proceeding is civil [Tex. Att’y Gen. Op. No. GA-1044 (2014), at 2; see also Gilfeather, 937 S.W.2d at 50]
 - General civil filing fee applies to ODL petition [Tex. Att’y Gen. Op. No. GA-1044, at 2]
 - District Court: Gov’t Code §§ 51.317, .319
 - County Court: Loc. Gov’t Code §§ 118.011(f), .052
 - Justice Court: Loc. Gov’t Code §§ 118.121, .122
 - As ODL proceedings are civil, Tex. R. Civ. P. 145 applies, as well [see Tex. R. Civ. P. 2 (“These rules govern the procedures in the justice, county, and district courts of the State of Texas in all actions of a civil nature”)]
 - Successful petitioner must carry certified copy of order; certified copy fees apply [TC § 521.250; Gov’t Code § 51.318(b)(7); Loc. Gov’t Code §§ 118.052(3)(B), .060; Loc. Gov’t Code § 118.121(2)(C)]

Who Gets to Know?

Service

- General practice (since case is civil): Applicant secures waiver of service from prosecutor or conventional service
- Case may be considered *ex parte* (i.e., prosecutor generally doesn’t have to be served) [TC § 521.244(d)]
UNLESS:
 - Suspension followed from conviction for criminally negligent homicide, I/O
 - Suspension followed from conviction of defendant under 21 for:
 - DWI; DWI with child passenger; intox. assault; class B or higher ABC offense; D/O
- If “UNLESS” applies, clerk must send copy of petition, notice of hearing to prosecutor via certified mail [TC § 521.243(a)]

Is That All? Nope.

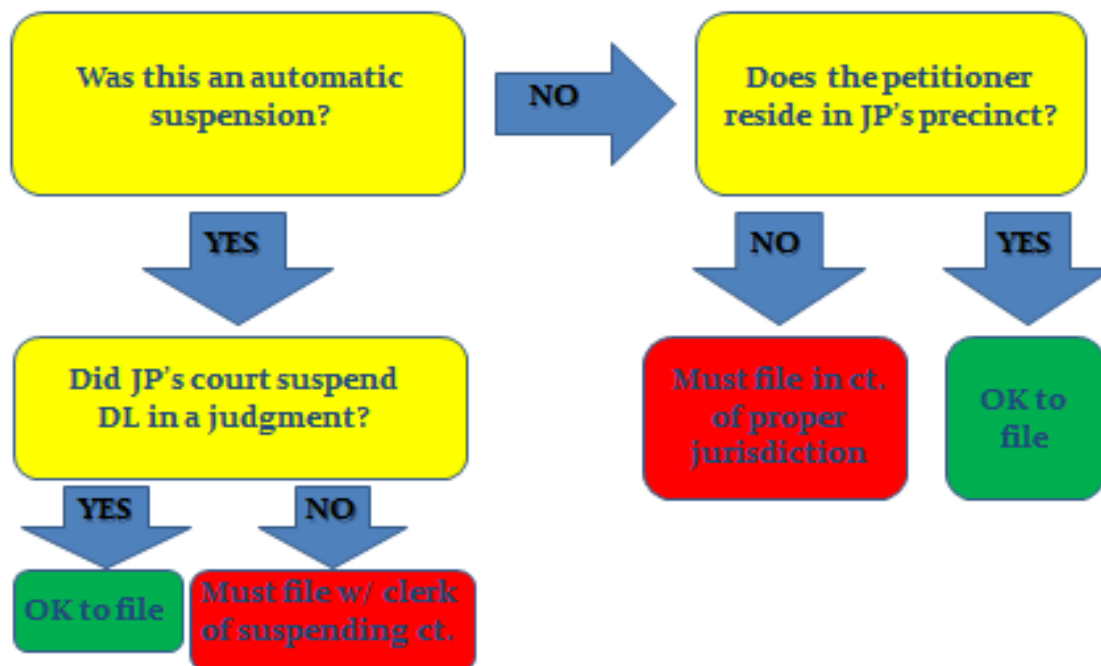
Service (cont'd)

- Court (clerk) must send to DPS:
 - Certified copy of petition and order [TC § 521.249(a)]
 - Certified copy of order revoking ODL for failure to attend required counseling [TC § 521.245(d)]
 - Copy (probably) of order removing interlock restriction [see TC § 251.2465(b)]
 - Certified copy of order revoking ODL for good cause [TC § 251.252(b)]

Can We Punt This to the JPs?

- If a higher court suspended the DL, petitioner must go to the clerk of that court for the ODL
- Question: whether the suspension occurred immediately upon conviction
- Surcharge, ALR, Habitual Violator, etc. (generally non-automatic suspensions) are all OK so long as petitioner resides in JP's precinct

In Graphic Terms, That Means ...



Give the Guilty So-and-So a Fair Trial

The Hearing

- Court must:
 - Sign order finding whether essential need exists, which must consider
 - Petitioner's driving record [TC § 251.244(b)(1)]
 - Evidence presented by prosecutor (if present) [*Id.* at (b)(2)]
 - In order, court must
 - Determine actual need of petitioner to drive [TC § 251.244(c)(1)]
 - e.g., letter from employer, transcripts, maps, pay stubs
 - Require petitioner to provide evidence of financial responsibility (SR-22) [*Id.* at (c)(2)]

Now Do I Get to Drive?

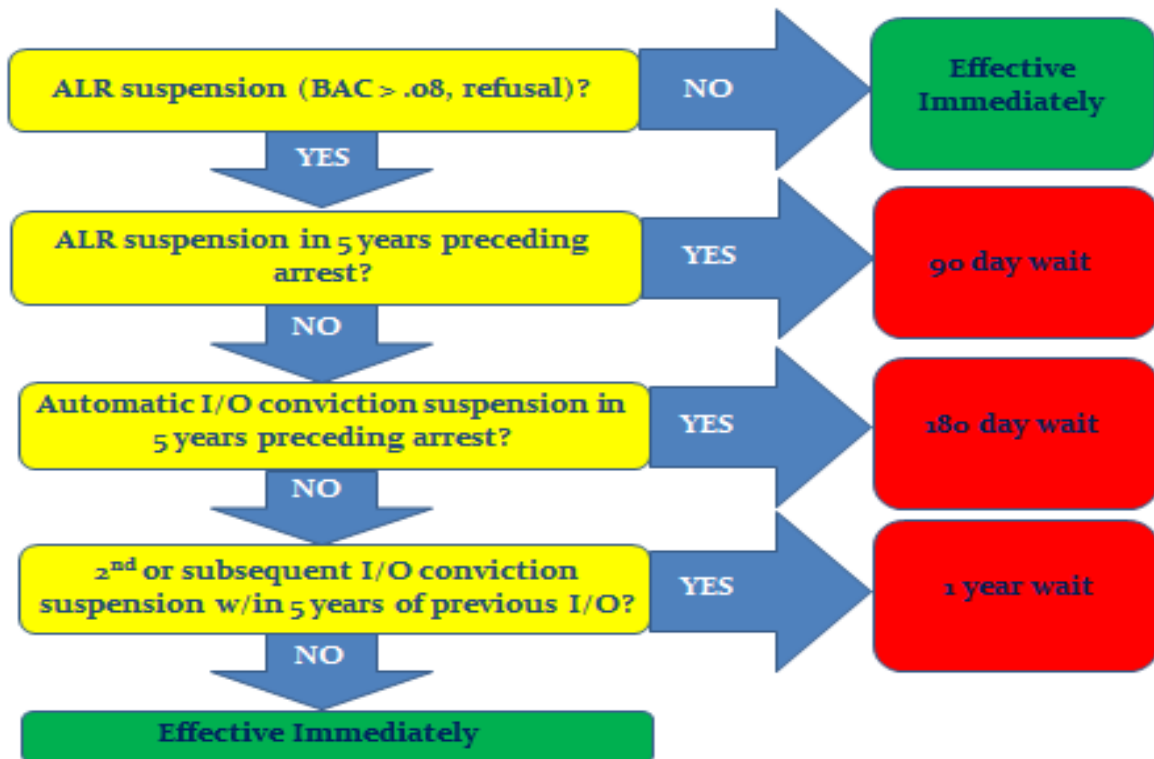
The Order

- Order will generally require greater detail than petition; must include:
 - Hours and days petitioner may drive [TC § 251.248(a)(1)]
 - Default is 4 hours, may be up to 12 hours in 24-hour period on showing of necessity [*Id.* at (b)]
 - Reasons for which petitioner may drive (*see* “essential need”) [*Id.* at (a)(2)]
 - Areas or routes of travel permitted [*Id.* at (a)(3)]
 - That petitioner is restricted to operation of vehicle with interlock (if applicable) [*Id.* at (a)(4)]
 - No time, reason or area restriction if interlock required [*Id.* at (d)]
 - That petitioner must submit to periodic testing for alcohol or drugs (if applicable) [*Id.* at (a)(5)]

Do I Get It Now? Maybe Not.

Effective Date of ODL

- If no prior ALR suspension within 5 years preceding arrest: immediate (counseling required) [TC § 521.251(a)]
- If prior ALR suspension within 5 years preceding arrest: 91st day after effective date of suspension [*Id.* at (b)]
- If prior I/O conviction suspension within 5 years preceding arrest: 181st day after effective date of suspension [*Id.* at (c)]
- If 2nd or subsequent conviction suspension for I/O within 5 years of most recent I/O committed: 1 year after effective date of suspension [*Id.* at (d)]
- May be effective immediately upon proof interlock(s) installed on all vehicles owned or operated by petitioner [*Id.* at (e)]
- May be revoked by granting court at any time for good cause [TC § 521.252(a)]



Gifts That Keep on Giving

Discretionary Directives in Order

- Court may order periodic drug or alcohol testing if ODL is for ALR suspension (refusal or BAC > .08) [TC § 521.2461]
- Court may order ignition interlock as condition if ODL is for I/O conviction suspension [TC § 521.246]
- Court must order counseling for alcohol dependence if ODL is for ALR refusal or BAC > .08 [TC § 521.245]

Is There Anything Else?

Post-Order Obligations

- Send certified copy of petition, order to DPS [TC § 521.249(a)]
- The rest is up to petitioner, who generally sends to DPS
 - SR-22
 - Required fees
- DPS issues ODL card
 - Petitioner may use order for 45 days as license

Questions?

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