

# ODL Update: Application & Orders

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## Resources

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- Texas Justice Court Training Center: [www.tjctc.org](http://www.tjctc.org)
  - Administrative Proceedings Deskbook Ch. 9
  - Charts, self-paced modules, webinars, legal board, etc.
- Texas Constitution and Statutes: <https://statutes.capitol.texas.gov/>

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## Agenda

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- 2023 Legislative Changes Related to ODL Procedures
- Scenarios and Discussion

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## Flowchart Activity

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In groups, look at the newly updated ODL flowcharts and list as many changes as you can find from the 2023 legislative session.

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## Legislative Changes

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- 2023 legislative changes to **Transportation Code Ch. 521, Subchapter L**
  - Multiple changes to the ODL procedures – discussed on the following slides.
  - “Occupational license” changed to “occupational driver’s license”

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## Eligibility

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- Can now get an ODL if license is revoked or canceled, not just suspended.
- Not eligible if revoked/canceled/suspended due to physical or mental disability/impairment or if DPS determines under Transportation Code § 521.294 that the person is incapable of safely operating a motor vehicle.
- Now explicitly eligible if the person does not hold a DL and is unable to get one due to a suspension order.
- Now explicitly eligible if can't obtain a DL because out of state DL was suspended, revoked, or canceled for a cause other than physical/mental disability/impairment.

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## CDL Holders/CMVs

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- Was already the case that a court cannot grant an ODL for the operation of a CMV.
  - Additional provision added stating that an ODL does not authorize a person to operate a commercial motor vehicle.
  - Clarification added that this does not prevent a person who has been issued a CDL from obtaining an ODL for the operation of a non-CMV.

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## Where to File

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- Location of general filing: used to say “precinct or county,” now just “county” in which they reside or in which the incident leading to the suspension/revocation/cancellation occurred.
- Have always had to file in convicting court if automatic suspension. Now clarifies that this refers to automatic suspension, revocation, or cancellation due to a conviction as provided by Transportation Code Ch. 521, Subchapters O or P.
- If suspension/revocation/cancellation is due to a court order, may apply either to any court in the county where they reside/the incident occurred for which the license was suspended, or to the court that issued the order.

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## New Petition Requirements

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- Set forth in detail the petitioner's essential need, including a description of the hours and location of essential travel.
  - Essential need now explicitly includes need to drive “in the pursuit of an occupation or trade.”
- Describe the reason for the petitioner's license suspension, revocation, or cancellation.
- Provide evidence of the petitioner's financial responsibility in accordance with Chapter 601.
- Include a certified abstract of the petitioner's complete driving record.

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## Jurisdiction

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- If a court lacks jurisdiction over a petition filed under this section, the court shall dismiss the application.
- The court may hold a hearing to determine if the court has jurisdiction over the petition.
- If the petition is dismissed, the petitioner may submit a written request for reinstatement within 14 days of the dismissal, stating the reason the court has jurisdiction over the petition.

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## Costs and Forms

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- Clarifies that regular civil filing fee or Statement of Inability is required.
- If petition is dismissed for lack of jurisdiction, court shall refund the filing fee.
- The court may hold a hearing on a Statement of Inability, either at the time the Statement is filed or at the time of the hearing to determine the petitioner's essential need.
- If the court determines the petitioner is able to afford the filing fee, the court may not grant an occupational driver's license until the petitioner pays the fee.
- A court shall make the forms required for petitioning for an ODL and for the Statement of Inability available at no cost.

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## Hearing

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- A JP court may hold a hearing on the petition or may make a determination of essential need based on the petition. A hearing is never required in JP courts.
- If a hearing is held, a JP court can choose to give a hearing notice to a prosecutor, but this is never required in JP courts (hearing may be ex parte).
  - A prosecutor who gets a notice can offer evidence for or against granting the application.
- Hearing may be held using electronic or telephonic means.

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## Granting or Denying Order

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- If the judge determines the applicant is eligible and has an essential need, the judge shall grant the ODL.
- If the judge determines not eligible or no essential need, they shall deny the ODL.
- Judge may deny ODL:
  - Based on evidence presented at a hearing by the attorney representing the state.
  - If no evidence of financial responsibility.
  - If the petitioner has been convicted more than once in the 10 years prior of a DWI offense.
  - If the petitioner's previous ODL has been revoked under § 521.252 or § 521.253.
- An order granting or denying may not be appealed.

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## New Order Requirements

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- Specify that the person may not operate a commercial motor vehicle.
- Specify that the person is required to attend alcohol dependence counseling, if applicable.
- Specify that the person is required to submit to supervision to ensure compliance with conditions of the order, if applicable.
  - People restricted to an IID may now be ordered to submit to supervision.
- A travel log may be required to be kept and shown to demonstrate compliance with restrictions.
- All delayed effective date provisions have been repealed.

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## Alcohol Counseling

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- Alcohol counseling requirement for Ch. 524 and 724 suspensions can now be waived on a showing of good cause.
- If the court finds that a person is not attending alcohol counseling as required, they can:
  - Revoke under Section 521.252; or
  - If they are not currently restricted to an IID, modify the order to include an IID requirement.

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## Ignition Interlock Device

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- Explicit now that an IID shall be required if there is a current order requiring it (but this can be waived if court finds the requirement is not necessary for the safety of the community and the waiver is in the best interest of justice).
- Judge may now also require IID even if no existing order (on a finding of good cause).
- If ordered, the IID must stay on all vehicles driven by the person for the duration of the suspension unless the § 521.246(e) work vehicle exception applies or good cause for removal and not necessary for safety.
- If the person violates their IID requirement, the court that issued the ODL must issue an order revoking it.

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## After Order is Entered

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- Court shall give a copy to the person and inform them that they must comply with any DPS requirements to get their ODL.
- Explicit now that an order may be modified without a hearing or fee at any time while the order is valid.
  - The issuance date of the order is not changed by a modification.
  - If the order is modified, the court shall deliver a certified copy to the person and to the department.

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## Conviction of § 521.253 (Violating Restriction or Not Having Court Order in Possession)

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- Convicting court shall now:
  - Issue an order revoking the occupational driver's license; and
  - Deliver the revocation order to the person, the court that issued the order granting the occupational driver's license, and DPS.

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## Defense to Prosecution for Certain Offenses

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- Affirmative defense to prosecution under Sections 521.025 (license to be carried on demand) and 521.457 (DWLI):
  - The person has applied for and complied with the department's requirements for the issuance of an ODL;
  - They did so on or before the 10th day after the issuance of the court order, and;
  - DPS has not yet issued them the physical license.

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## Related Updates Found in Other Codes

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- **Transportation Code § 601.332** - Suspensions for unpaid civil judgments related to car wrecks are now eligible for ODLs.
- **Transportation Code § 524.022(d) Repealed** - Gets rid of delays/prohibition on ODLs for minors with Ch. 524 suspensions and certain criminal histories. Now minors are treated the same as adults.

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## Scenarios

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Use Your ODL Flowcharts to Help Answer the Questions

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## Scenario #1

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A defendant fails to satisfy a criminal judgment and the court places them in Omni. When their license expires and they are unable to renew it, they file an application for an ODL in your court.

- Assuming the applicant is otherwise eligible and shows an essential need to drive, could the court issue an order granting an ODL?

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## Scenario #2

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A 15-year-old with a learner's permit has had their permit suspended due to a truancy remedial order. They live in the county where your court is located, but in a different precinct. They have shown an essential need to drive and proof of financial responsibility.

- Are they eligible for an ODL? If so, can your court grant it?

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## Scenario #3

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An applicant's license was suspended due to a Driving While License Invalid (DWLI) conviction in the county where your court is located. They have shown an essential need to drive and proof of financial responsibility.

- Are they eligible for an ODL? If so, can your court grant it?

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## Scenario #4

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An applicant files an ODL in your court. Their license was suspended due to a DWI conviction. They have provided a certified abstract of their complete driving record and shown an essential need to drive and proof of financial responsibility.

- What should the court do?

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## Scenario #5

The court holds a hearing on an application for an ODL and sends a notice to the prosecutor. The prosecutor attends and provides evidence that the defendant has had numerous traffic offenses and states that they do not support the granting of the ODL. The applicant is otherwise eligible and has demonstrated an essential need to drive and evidence of financial responsibility.

1. Should the court grant or deny the application?
2. What if no prosecutor attended, but the court had the same information from the applicant's driving record?

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## Scenario #6

Your court has entered an order granting an ODL for a person whose license was suspended due to having over a .08 blood alcohol content during a DWI stop. It is the first time they have been arrested for a DWI and there is no bond condition or other order currently in place restricting them to only drive vehicles equipped with an IID.

- What must and what may be included in the ODL order?

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## Scenario #7

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Your court has entered an order granting an ODL for a person whose license was suspended due to an unpaid civil judgment against them for a car accident that they caused. Alcohol/drugs were not involved. Their work requires travel throughout the state and their work hours change from week to week.

- What must and what may be included in the ODL order? How can the order address the person's work needs?

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## Scenario #8

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The court denies an applicant's request for an ODL. The applicant is unhappy and believes it was denied in error.

1. What if the applicant files a notice of appeal? How does the court handle that?
2. What if the court finds out that the applicant filed a new application in a different precinct? What should the court do?

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Thank You!