

Indigence & Financial Literacy

Texas Justice Courts Training Center 2023-2024

Tuesday, March 19, 2024 - Denton, TX



1

Welcome!

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2

2

Training Outline

- 1 The Landscape & The Opportunity**
- 2 Financial Justice Program**
- 3 Docket Clearing Solutions**



3

3

Training Outline

- 4 The Catch-22 of Driver's License Suspensions**
- 5 Best Practices**
- 6 Legislative Updates**

4



Part 1:
**The Landscape &
The Opportunity**

5

***The Landscape in Texas:
Poverty and Economic Inequality***

Residents with income below the poverty level in 2022:

Denton: 13.9%

Whole state: 14.0%

Residents with income below 50% of the poverty level in 2022:

Denton: 6.6%

Whole state: 6.6%

6

The Landscape in Texas: Poverty and Economic Inequality

In 2023, JPs used:

- Jail Credit: **6.35% of cases**
- Community service (full + partial): **0.92% of cases,**
- Waiver in **only 1.27% of cases**

People who are able to pay a traffic ticket would take care of it likely before any enforcement action is taken. The pending cases are likely from indigent people who are unable to pay.

7

4/20/23 Dear Colleague Letter: Constitutional Limitations on Fees & Fines



Associate Attorney General

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

April 20, 2023

Dear Colleague:

The U.S. Department of Justice (Department) is committed to working with state and local courts and juvenile justice agencies to ensure that their assessment of fines and fees is constitutional and nondiscriminatory. To advance that goal, the Department has revised and updated a letter it previously issued in 2016 that focused on the assessment of fines and fees against adults, as well as a 2017 advisory addressing the assessment of fines and fees against juveniles. The letter, issued today by the Civil Rights Division, Office of Justice Programs, and Office for Access to Justice, addresses in detail the assessment of fines and fees against both adults and juveniles. The letter includes an updated discussion of the relevant case law on the assessments of fines and fees, cautions against discriminatory enforcement of fines and fees, and details the obligations of federal funding recipients to comply with federal statutory prohibitions against discrimination in the imposition and collection of fines and fees.

8

DOJ Dear Colleague Letter On Ability to Pay Assessments

“Courts have an **affirmative duty** to determine an individual’s ability to pay... State and local courts should conduct this analysis **even if a defendant does not specifically raise the issue.**”

9

The Opportunity: Inquiring into Ability to Pay

- **Upon judgment in open court**
TCCrP 45.051(a-1)
- **At show cause hearing**
TCCrP 45.045(a-3)
- **When requested**
TCCrP 45.0445

10

How Do I Know Someone Is Low-Income? Federal Poverty Guidelines

48 Contiguous States

# of Persons in Household	2023 Federal Poverty Level for the 48 Contiguous States (Annual Income)					
	100%	133%	138%	150%	200%	300%
1	\$14,580	\$19,391	\$20,120	\$21,870	\$29,160	\$43,740
2	\$19,720	\$26,228	\$27,214	\$29,580	\$39,440	\$59,160
3	\$24,860	\$33,064	\$34,307	\$37,290	\$49,720	\$74,580
4	\$30,000	\$39,900	\$41,400	\$45,000	\$60,000	\$90,000
5	\$35,140	\$46,736	\$48,493	\$52,710	\$70,280	\$105,420
6	\$40,280	\$53,572	\$55,586	\$60,420	\$80,560	\$120,840
7	\$45,420	\$60,409	\$62,680	\$68,130	\$90,840	\$136,260
8	\$50,560	\$67,245	\$69,773	\$75,840	\$101,120	\$151,680

11

How Do I Know Someone Is Low-Income? HUD

DFW FY 2023

Dallas, TX HUD Metro FMR Area									
30% LIMITS	21700	24800	27900	30950	33450	35950	38400	40900	
VERY LOW INCOME	36100	41250	46400	51550	55700	59800	63950	68050	
60% LIMITS	43320	49500	55680	61860	66840	71760	76740	81660	
LOW INCOME	57750	66000	74250	82500	89100	95700	102300	108900	
Fort Worth-Arlington, TX HUD Metro FMR Area									
30% LIMITS	20100	23000	25850	28700	31000	33300	35600	37900	
VERY LOW INCOME	33500	38300	43100	47850	51700	55550	59350	63200	
60% LIMITS	40200	45960	51720	57420	62040	66660	71220	75840	
LOW INCOME	53600	61250	68900	76550	82700	88800	94950	101050	

EXTREMELY LOW INCOME (30% of Median)

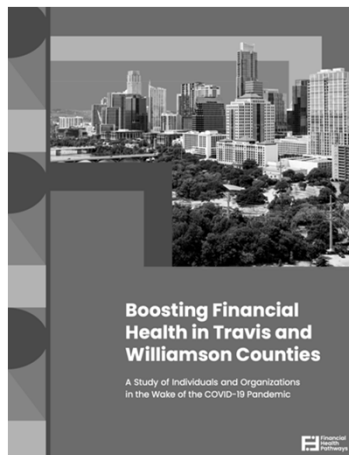
12

How Do I Know Someone Is Low-Income? MIT's Living Wage Calculator: Denton County

	1 ADULT				2 ADULTS (1 WORKING)				2 ADULTS (BOTH WORKING)			
	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children
Living Wage	\$18.24	\$35.87	\$45.42	\$59.21	\$28.20	\$34.54	\$39.31	\$43.65	\$14.10	\$19.85	\$24.82	\$29.58
Poverty Wage	\$6.53	\$8.80	\$11.07	\$13.34	\$8.80	\$11.07	\$13.34	\$15.61	\$4.40	\$5.54	\$6.67	\$7.81
Minimum Wage	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25	\$7.25

13

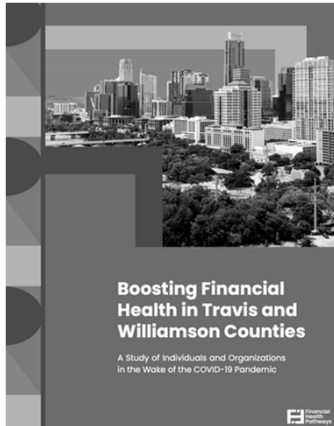
Overview: Financial Health in Central TX



- **Only 16%** of low-income Central Texans **"financially healthy"**
 - Spanish-speaker respondents: 2% financially healthy, **40% financially vulnerable**
 - Low-to-middle income women of color respondents: 2% financially healthy, **47% financially vulnerable**

14

Overview: Financial Health in Texas



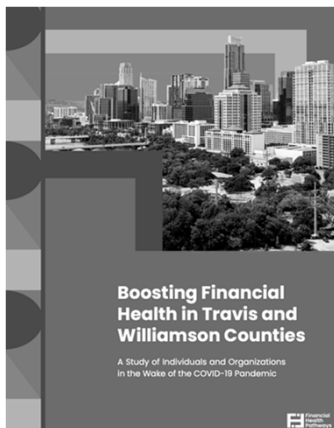
Since March 2020:

- 51% borrowed money or applied for a loan
- 42% liquidated assets or spent savings
- 41% applied for a new job
- 28% applied for government benefits

Most respondents lacked adequate insurance coverage

15

Overview: Financial Health in Texas



Since March 2020:

- 51% borrowed from friends / family
- 48% carried balance on a credit card
- 36% over-drew checking account
- 25% applied for a loan from a bank or credit union
- 10% borrowed payday loan, auto title loan, or pawn shop loan
- 9% applied for a loan from an online lender (World Finance, One Main etc)

16



Part 2: **Financial Justice Program**

17

MISSION

FHP is a community-centered organization focused on improving the financial health of Texans. We advocate on behalf of the under-served and provide them with education and resources to achieve financial freedom.

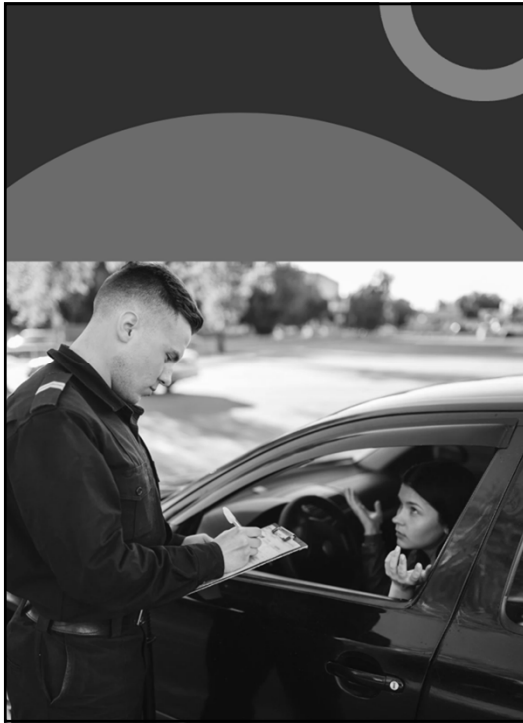


VISION

A Texas community with inclusive financial services where everyone has access to economic opportunity.



18



THE PROBLEM

Every year thousands of minor traffic violations turn into a huge financial burden for so many low income families. The growing expenses and the inability to drive to work push them further into the cycle of poverty. Misdemeanor cases clog courts and burden poor defendants.



License suspension makes it even harder to find a job, housing, pay child support or fulfill basic needs.

In 2021 alone
5 Million
Minor traffic cases were sitting on Texas dockets as pending

Resources devoted to collecting can be better spent on public safety.

\$0.41

raised from fines & fees

\$1

is spent on court hearings and jail time



19

THE ALTERNATIVE FINANCIAL JUSTICE PROGRAM: A MODEL FOR COLLABORATION AND INNOVATION

In partnership with Experian and Williamson County, FHP launched the Financial Justice program to give minor traffic offenders the opportunity to learn basic financial concepts and the consequences of traffic violations in exchange for their cases to be dismissed and their fines and fees to be waived. The program was adopted by the Juvenile Services in Travis and Williamson county.



THE OPPORTUNITY

With courts experiencing heavy dockets of minor cases that can be addressed by community programs and defendants lacking the understanding of the long term consequences of misdemeanors we see the opportunity to change from a punitive system to one that seeks behavioral change while holding them accountable.

By partnering with FHP to implement this program the court will simply referred qualified participants to the program and FHP will manage the logistics of the class. As a result the court will achieve a more efficient court workload leaving Judges and clerks more time to process more complicated cases.



20



**It started as a
pilot in
2019...**

21

HOW IT WORKS

ONCE RECEIVED A CITACION

01

Met qualifying conditions

- Driving with no license
- Driving with an expired license
- Driving with no insurance

02

Fill out a pre survey

Fill an intake form to assess the financial knowledge of defendants and demographics of who we are serving.

03

Attend a class

Attend a virtual class that will go over basic financial concepts and the long term legal consequences of having a record.

04

Fill out a post survey

Once Pre & Post surveys are completed and class attendance confirmed, they will receive a certificate to show the judge for the case to be dismissed and the fines and fees waived.



22

HOW DOES IT WORK?

23



24

TESTIMONIALS

Had an all positive time with the course, made me realize a lot about my self on how to manage my money

I enjoyed learning how to maintain money and also how to build my credit.

I enjoyed the class and would like to learn more so i can feel more comfortable.

La verdad recibí mucha información que realmente desconocía. Gracias a este curso ahora los entiendo un poquito más.



25

01

COURT

EFFICIENT & INCLUSIVE

- Less docket clogs
- More efficient services
- Time better spent on more complicated cases and less on collections
- More resources going to cases worth pursuing.
- More equitable system

02

COMMUNITY

ENGAGED & ACCOUNTABLE

- Educational approach to change behavior helps address the issue and stop repeting offenses
- Money from fines and fees is better used on families basic needs.
- Better environment for people to learn and be civically engage

BENEFITS



26



Part 3: Docket Clearing Solutions

27

**How many active
misdemeanor
cases were
pending on JP
court dockets
at the end of
2023?**

A) 1.1 Million

B) 2.5 Million

C) 3.3 Million

D) 500,000

28

28

What is Docket Clearing?

Using the **tools** at your disposal, including the **TCCrP**, and your **discretion to close cases**

- **Pretrial Strategies**
- **Post-Conviction Strategies**
- **Getting People into Court!**

29

Why Should I Care About Docket Clearing?

- Allows court to **focus** on **current cases**
- **Alleviates stress** on prosecutors & clerks
- Reduces court's costs, time, & effort attempting to collect on **uncollectible** cases
- Creates a space to **build trust** with low-income communities

30

Case Study: Dallas County

31

Pretrial Strategies

—
Clerks can help you find eligible cases

Prosecutors can dismiss an unadjudicated case for virtually any reason

Set criteria :

- No complaints/past SOL
- Witnesses unavailable
- Older than a certain age
- In the Interest of Justice

32

Post-Conviction Strategies

- Unpaid criminal legal debt can be **declared uncollectible after 15 years**
TCCrP 103.0081
- **Costs can be waived**
TCCrP 45.0491
- **Fines can be waived**
TCCrP 45.0491

33

Fines vs. Costs: COSTS

***Court costs:** the costs of using the court system & other fees such as warrant and Omni fees*

Not meant to be punishment.

No hardship requirement:

- **Waiver**
TCCrP 45.0491(d)
- **Omnibase fees**
TTC 706.006(d)
- **Collection fees**
TCCrP 103.0031(d)

34

Fines vs. Costs: FINES

*The fine is the **punishment***

Fines can be **waived** if the individual is **indigent AND** has a **hardship** in completing community service.

35

What Is an “Undue Hardship”?

- ◆ significant physical / mental impairment / disability
- ◆ pregnancy & childbirth
- ◆ substantial family commitments / responsibilities, including child / dependent care
- ◆ work responsibilities & hours
- ◆ transportation limitations
- ◆ homelessness / housing insecurity
- ◆ **any other factors the court determines relevant!**

36

You Have Options!

Payment Plans

Unable to
immediately
pay

TCCrP 45.041

Community Service

At least \$100
per 8 hours

TCCrP 45.049

Full / Partial Waiver

1. Insufficient
resources /
income
2. Undue
Hardship

TCCrP 45.0491

37

37

What Counts as Community Service?

- ◆ work & job skills training program
- ◆ prep class for the high school equivalency exam
- ◆ alcohol / drug abuse program
- ◆ rehabilitation program
- ◆ counseling program (including for self-improvement)
- ◆ a mentoring program
- ◆ ***any similar activity!***

38

“Seemingly Non-Financial Obligations”

*“The imposition of seemingly non-financial obligations may still result in **indirect financial obligations**. For example, while community service could be an alternative to payment of adults or youth, it could nevertheless exact a financial consequence if individuals are required to pay costs for participation, take unpaid leave from their jobs, pay for childcare, or miss educational opportunities to fulfill it. Ditto “education, substance abuse and mental health counseling, and other programs.”*

-DOJ Dear Colleagues Letter 4/20/23

39

Apply to Deferred Dispositions Too!

TCCrP 45.051

- 1. Payment plans**
- 2. Community Service**
- 3. Waiver**

40

40

TCCrP 45.041: Jail Credit

“In imposing a fine and costs in a case involving a misdemeanor punishable by a fine only, **the justice or judge shall credit** the defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense if that confinement occurred after the commission of the misdemeanor....at the rate of not less than \$150 for each day of confinement.”

41



Breakout Groups:
**Brainstorm other best
practices, community service
options**

42



Part 4:
**The Catch-22 of Driver's
License Suspensions**

43

DOJ on Debt-Based License Suspensions:

“It is the position of the United States that **imposing certain serious adverse consequences for failure to pay an unaffordable fine or fee**, where alternative approaches could serve the government’s interests, **violates the Fourteenth Amendment**. See, e.g., U.S. Statement of Interest at 17-18, *Stinnie v. Holcomb*, No. 3:16-CV-00044 (W.D. Va. Nov. 7, 2016), U.S. Statement of Interest (Doc. 27) at 17-18 (**arguing that automatically suspending drivers’ licenses for unpaid fines was unconstitutional because there were alternative means of serving the state’s interests**)...”

44

Drivers License Renewal Holds

- Life with No ID: *Job, School, Housing, Civil Liberties*
- Transportation Troubles
- More Fees, Suspensions
- Warrants, Arrest, Jail

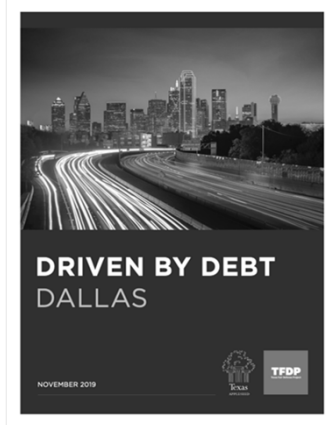
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“The detrimental effects of unjust fines and fees fall disproportionately on low-income communities and people of color, who are overrepresented in the criminal justice system and already may face economic obstacles arising from discrimination, bias, or systemic inequities.”

-DOJ Dear Colleagues Letter, 4/20/23

46

Driven By Debt: Dallas



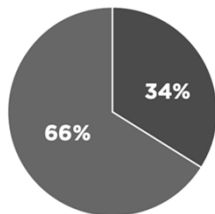
License Suspensions / Holds and Jobs:

- ~ **42%** of drivers with suspended licenses **lost their job** when their license was suspended
- For drivers with household **incomes <\$30,000**, **64% lost their jobs** when their license was suspended; **51% could not find another job**

47

Driven By Debt: Dallas

City of Dallas OmniBase Holds



■ Poverty-Related Offenses
(no/invalid license, no insurance,
unregistered vehicle)

■ Other Offenses
(e.g., moving violations like
speeding and failure to signal,
all non-traffic violations, and
failure to appear)

Poverty and License Suspensions / Holds:

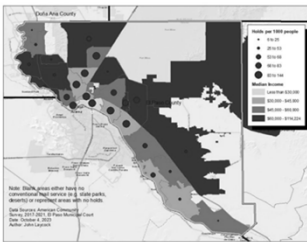
- OmniBase holds are concentrated in areas with high levels of **poverty** and residents of **color**
- In Dallas, we found a **negative relationship** between **median income** and **number of OmniBase holds**

48

Fig. 1: Bexar County Driver's License Holds and Median Household Income by Zip Code and City of San Antonio Council Districts**



Fig. 1: El Paso Driver's License Holds and Median Household Income by Zip Code**



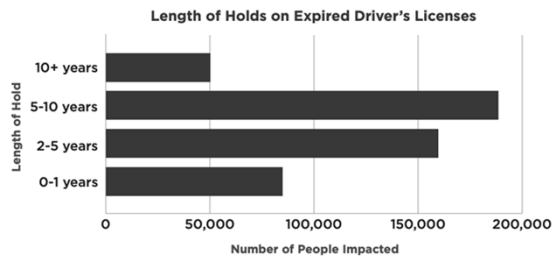
2024 Reports: San Antonio & El Paso

Poverty and License Suspensions / Holds:

- OmniBase holds are concentrated in areas with high levels of **poverty** and residents of **color**
- In San Antonio and El Paso: **negative relationship** between **median income** and **number of OmniBase holds**

49

Driven By Debt (2018)



As of 2023: two thirds of individuals impacted by the OmniBase Program are impacted for over 2 years

50

What is the Omnibase Program?

- Run by private contractor “Omnibase”
- **OPT-IN** program
- Places **HOLD** on drivers license renewal for failure to appear, pay, or satisfy a court order
- Additional fees (\$10 or \$30) **PER OFFENSE**

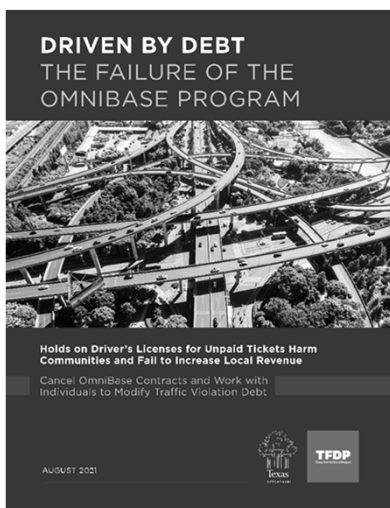


OMNIBASE Services of Texas

Failure to Appear Denial of Renewal of Texas Drivers License Failure to Pay

51

The Effectiveness of Omnibase



Report Findings:

No meaningful relationship exists between use of OmniBase Program and revenue collection

52

Collateral Consequences: Drivers License Suspensions

- DWLI – **Mandatory Suspension***
- Moving violations when license not valid – **Departmental Suspension**
- FMFR – **SR22 Requirement & Suspension**

Non-traffic offenses can affect employment and housing

The Catch-22 of License Suspensions

Pleading guilty/no contest in an attempt to **resolve** an Omnibase hold can trigger a **new suspension**, causing a **cycle** of driver license suspensions

*You have **discretion** to use deferred dispositions, alternatives to **create accountability and break the cycle!***

*In 2023, deferred was used to dispose of **11% of cases**

You Have Options!

- **Opt Out of Omnibase!**
- **Lift Omnibase holds**
- **Waive Omnibase fees**
- *TTC 706.005(5): other suitable arrangement to pay*
within court's discretion
- *TTC 706.006(d): presumption of indigence for* means-
tested **government benefits**

55



Part 5: **Best Practices**

56

Other Ways to Get People into Court and Resolve Cases

Be Transparent

Tell people that there are alternatives to payment

Make sure your clerks tell people about alternatives

Be Accessible

Eliminate or reduce the use of bonds

Be Cognizant of Collateral Consequences

Utilize deferreds to avoid additional license suspensions

57

Be Transparent: Flag Alternatives

- **On the Ticket** TCCrP 14.06 (b)
- **Before Issuing a FTA Warrant** TCCrP 45.014(e)
- **After Guilty / Nolo Plea** TCCrP 27.14(b)
- **In Collection Letters:** TCCrP 103.0031(j)
- ¶ **On Your Website:**
 - McLennan County
 - WilCo JP3

58

Be Accessible: There is no requirement that you use bonds at all!

How is requiring a bond serving your court?

Getting more people to court?

-OR-

Creating an additional barrier for those without attorneys and those who cannot afford to pay?

59

FFJC Memo for Nevada's Policy Regarding Bonds for Class C Tickets

The 14th Amendment prohibits conditioning access to the courts on the payment of money an individual cannot afford to pay.

60

Personal Bonds

TCCrP 45.016 (a)

Default

Have a procedure for how someone posts a PR bond

61

61

Cash Bonds

TCCrP 45.016 (b)

Only if:

- D fails to appear;
- D has sufficient income to give a bail bond; **AND**
- bail bond is necessary to secure appearance

Court clerks should explain to callers that if they cannot afford to post a bond, there are other options

62

62

Attorney/ Surety Bonds

Have a process for attorneys who cannot post a surety bond for their client

63

63

Other Ways to Get People to Court

- **Walk-In Dockets**
An advertised set time weekly/monthly
- **Phone/Virtual Court** TCCrP 45.0201
- Have **Community Court / Safe Harbor Court**
- **Partner** with service providers
- **Go where the need and people are** in your community!

64

Safe Harbor

You will not be arrested for coming to court!

- Builds trust
- Gets people in the door
- Resolves tickets!

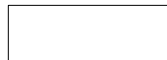
Ideas from DOJ

- **Adopting penalty-free payment plans,**
- **Offering amnesty periods** during which individuals can have warrants canceled and fees waived,
- **Connecting individuals who cannot afford to pay fines and fees with workforce development and financial counseling programs,**
- **Waiving or reducing the debt of a person unable to pay the debt .. [or not] imposing punitive financial obligations in the first place**

Ideas from Your Peers

- **Dismiss** cases where officer has not filed citation within **48 hours**
- Community Service Ideas:
 - Option to write a **letter** to the court
 - Option to take a **financial education class**
 - **Canned goods**
 - **Credit for Good Grades, GPA**
 - **Community garden**

67



Part 6: **Legislative Updates**

68

88R HB 842:

DWLI Suspensions from DRP Era

- **HB 842:** In 2019, the Texas Legislature repealed the Driver Responsibility Program which suspended the licenses of people unable to pay their surcharges. HB 842 amends the Transportation Code to prevent new license suspensions if someone is cleaning up tickets from the DRP era:
 - 521.457(h) limits the ability to suspend a person's license under Section 521.292(a)(1) & Section 521.343(c). This applies to offenses that took place **before 9/1/19 and after 8/31/23**.

Effective 9/1/23

69

88R SB 347:

Limits on Periods of License Suspension

- **SB 347:** This bill is a clean-up bill that reduces the number of driver's license suspensions. In 2019, the legislature passed HB 162 which meant to lower mandatory and departmental suspension periods to 90 days. This bill unintentionally missed a section of code in Texas Transportation Code 521.343. As such, SB 347 changes subsection (c) to limit the suspension to 90 days, as opposed to matching the original suspension. This will bring all suspensions in line with the 90-day suspension limit.

Effective 9/1/23

70

88R HB 291: ODL Expansion

HB 291: This bill creates a process to obtain and expand access to occupational driver's licenses. Expansions / improvements include:

- ODL eligibility now extends to **the *pursuit* of an occupation or trade**, not just getting to a job someone already has;
- Allows for **electronic or telephonic hearing**; and
- Change from "other suitable arrangement to pay" to "other suitable arrangement to **satisfy**," nodding to alternatives to payment

Effective 9/1/23 - See [Texas Law Help](#) for Updated Petition and Order

71

**Questions?
Other Ideas?**

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72

72