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Justice of the Peace  
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## OCCUPATIONAL DRIVER'S LICENSE

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The information in this document is intended to give a brief overview of the procedures in a suit for eviction. It is not, however, exhaustive and many issues and procedures are not covered herein. You may also need to refer to various [Texas Statutes](#) including the Texas Transportation Code [§§521.241-521.253](#).

*Nothing contained in this document is intended or offered as legal advice. Please also note that court clerks are not licensed attorneys and cannot give legal advice. This document should be able to answer your basic procedural questions. For further questions or more information, you should consult a licensed attorney.*

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### Understanding Occupational Driver's License:

An [occupational driver's license](#) is a restricted license that allows an individual whose license is otherwise suspended to drive under certain circumstances when there is an "essential need". Before DPS can issue you such license, you must receive an Order for Occupational License from a court ordering DPS to issue the license.

### Determining Eligibility:

Before requesting an order for occupational driver's license, it is recommended that you first check to ensure it is necessary. You can check the status of your driver's license online at [www.Texas.gov/driver](http://www.Texas.gov/driver) or contact [DPS](#).

You will **NOT** be eligible for an occupational license if:

- You have never held a valid driver's license.
- You have lost your driving privileges because of a mental or physical disability.
- You lost your driving privileges for failure to pay child support.
- You have received an occupational driver's license because of a conviction twice in the last 10 years.
- You have a "hard suspension" waiting period due to refusing or failing a blood or breath test when arrested for an alcohol or drug related charge.

### Before You File:

Before you request an order for occupational driver's license, you must first obtain:

- [SR-22 proof of insurance](#) (or proof of financial responsibility) from an insurance company proving you have the minimum liability insurance required by law. Contact the insurance company regarding costs.
- A certified abstract of your driving record from DPS.

You may obtain a certified abstract of your driving record from DPS either by mail or online. To request by mail, you must use form DR-36. The fee is \$20.00 and generally takes 3-4 weeks to receive. You may request the abstract online at [www.dps.texas.gov/DriverLicense/driverrecords.htm](http://www.dps.texas.gov/DriverLicense/driverrecords.htm) for a fee of \$22.00. You must have the audit number located on your driver's license to submit the online request.

### Filing the Petition:

Before the court can grant you an order for an occupational driver's license, you must file a *petition*. If you are eligible to file in Cooke County, JP Precinct 1, you can find a form for a petition on our website.

This petition must be verified, (signed in front of a notary swearing to the truth of the contents). If you are filing the petition in a court from which you were convicted, you must state that in your petition. The petition must state why you have an essential need to drive. An essential need means you need to drive:

- in the performance of your work or for transportation to and from the place where you work;
- to get to and from a school in which you are enrolled; or
- in the performance of essential household duties.

If your license was suspended automatically because of the conviction of an offense, ***you must file your petition in the court in which you were convicted.*** For other suspensions (surcharges, refusal to provide breath/blood

sample, etc.), you may file your petition in the justice, county, or district court in in the county in which you reside or the county where the offense occurred that resulted in the suspension.

Filing fees for a petition for occupational license in Cooke County are:

- Justice Courts: \$46.00
- County Court at Law: \$242.00
- District Court: \$262.00

If you are unable to afford the filing fees, you may file an Affidavit of Inability to Afford Payment of Costs with your petition. The court may require proof of income and expenses as well.

### **The Court Hearing:**

If your driver's license is suspended due to a conviction for an intoxication offense, the prosecutor is entitled to notice of the hearing and may attend and present evidence if he or she chooses to do so. For any other license suspension, you will be the only one to present evidence at the hearing.

At the hearing, the court will review your petition and driving record along with any other evidence you present. You should provide evidence in the form of your testimony or documentation to prove your essential need to drive. For individuals who have been convicted of an intoxication offense, proof of essential need may not be required if you are restricted to operating a vehicle with an ignition interlock device. Proof of the installation of the device must be provided to the court. If you were not already subject to this restriction from your intoxication conviction, the court will add this restriction in your order for occupational driver's license.

You should also be prepared to provide the court with testimony or evidence of the times and days in which you work, attend school, or carry out other essential household functions.

### **The Court Order:**

The court's order will state the days, and the times on those days, which you are allowed to drive. You will not be permitted to drive more than 4 hours in a 24 hour period unless you show the court a necessity to drive more. If such necessity is proven, the court may grant you up to 12 hours in a 24 hour period.

The order will also state the reasons you are allowed to travel, such as to and from work, school, doctor's appointments, or other essential household functions. In addition, the order will state areas or routes in which you are allowed to drive. If you are restricted to drive using an ignition interlock device, you will not be subject to restrictions on the time, location, or reasons for travel.

The order may also impose other restrictions or requirements as well. The court's order could restrict you to only operating a vehicle with an ignition interlock device installed if your license is suspended for an intoxication offense. The order could order other conditions on receiving the license, such as submitting to drug or alcohol testing, submitting to supervision by a community supervision and corrections department and paying the associated fee, or attending a counseling or rehabilitative program for alcohol dependence.

The order should state an effective day which could be immediately, or after a certain waiting period. The order should also state that the order is valid until the end of the suspension period.

### **After Court:**

Once the court grants the order for occupational driver's license, you will receive a certified copy to keep in your possession. ***You must have the court order in your possession any time you drive a motor vehicle.*** If a peace officer requests to view this order, you are required to allow the officer to examine it. You must also keep a copy of your SR-22 proof of financial responsibility with you at all times while you drive.

You should also ensure that a certified copy of the petition and order are sent to DPS. Before DPS will issue your occupational driver's license, you must pay the [occupational license fee](#) (\$10 for one year or \$20 for two years) and any [reinstatement fees](#).

For 45 days from the date the court order takes effect, you may use the order by itself as your occupational driver's license. However, ***after the 45<sup>th</sup> day, you must have both the court order and the DPS issued license to be permitted to drive.*** If you have not received the DPS issued license by the 46<sup>th</sup> day, you must stop driving and

should contact DPS to verify the status of your occupational license. Once you receive the license, you may again drive with both the order and license in your possession.

**Violating the Court Order:**

*Violating a court order for an occupational driver’s license is a class B misdemeanor offense.* This includes violating any of the terms of the order, such as the time and date, location, or reasons for travel restrictions, or obligations such as drug and alcohol testing. *It is also a class B misdemeanor offense to drive without a certified copy of the court order in your possession.*

In addition, if you are convicted for this offense, the order and occupational license **will be revoked** and you will not be permitted to drive at all for the remainder of your original suspension.

**Modifying the Order:**

If, after being issued an order for an occupational driver’s license, your circumstances change creating an essential need to drive at days, times, or locations outside of those permitted in your order, you may ask the court to modify the order. You will need to file a *Motion to Modify Order for Occupational Driver’s License*. Your motion should state the modifications you are requesting and why it is necessary. The motion should contain enough information for the court to determine if there is good cause for the order to be modified.

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## SURCHARGES

If you are required to pay surcharges to DPS but do not have the ability to make those payments, there may be options available to you. Before you seek an order for occupational driver’s license for a surcharge suspension, you should see if any of those options are available to you.

**DPS Indigency and Incentive Programs**

You may apply for the Indigency or Incentive Programs directly through DPS. You can mail the [application](#) to DPS or apply online at [www.txsurchargeonline.com/OnlineServices.aspx](http://www.txsurchargeonline.com/OnlineServices.aspx). Supporting documentation may be required.

You may qualify for the **Indigency Program** if you are living at or below 125% of the federal poverty level. If your application is approved for this program, your surcharges will be waived completely.

If you are living above 125% of the federal poverty level, but are below 300%, you may qualify for the **Incentive Program**. If your application is approved, your surcharges will be reduced to 50% of the total amount that was assessed and any license suspension due to the failure to pay surcharges will be lifted for a period of 6 months. If you have not paid the balance of your surcharges within those 6 months, a surcharge suspension will be applied until you pay the remaining amount in full.

Be aware, however, that these programs will not remove any non-surcharge related suspensions on your driving record. For more information about these programs visit [www.txsurchargeonline.com](http://www.txsurchargeonline.com) or contact DPS.

**Court Ordered Waiver**

If you are unable to afford the payment of your surcharges due to indigency, you may also seek a court ordered waiver of surcharges under [Texas Transportation Code §708.158](#).

This waiver must come from the court in which you were convicted of the offense which resulted in the surcharges. You will be required to provide proof that you are indigent to the court. This proof may include:

- your most recent federal income tax return showing your or your household income does not exceed 125% of the federal poverty level;
- a copy of your most recent statement of wages (pay stub) showing that your or your household income does not exceed 125% of the federal poverty level; or
- documentation showing that you receive government assistance such as food stamps, WIC, Medicaid, CHIP, or free or reduced-price lunches.

If the court finds that you have provided sufficient proof of indigency, the court should send a court ordered waiver to DPS waiving surcharges.