

ADMINISTRATIVE LICENSE REVOCATION MANUAL

A Practitioner's Guide to Administrative License Revocation

Lawrence G. Boyd

CHAPTER 1

HIERARCHY OF GOVERNING ALR LAWS

Section I. Relationship of Governing Statutes

- A. Failure
- B. Refusal
- C. Both
- D. Conflicts Between SOAH Rules and the Transportation Code

Section II. Original ALR Statutes Control Over Transportation Code Revisions

- A. Generally
- B. Recodified Statutes
- C. Legislative and Constitutional Declarations Prohibiting Substantive Change
 - 1. Statutes
 - 2. Constitution
- D. Texas Supreme Court's Decisions Relating to Conflicts Between Former Statutes and Recodification

CHAPTER 2

SETTING AN ALR HEARING

Section I. Preliminary Procedural Steps Required of Arresting Officer

- A. Contents of the Notice
- B. Consequence of Misstated/Omitted Grounds
- C. Method of Service of Notice
- D. Rescission of Notice

Section II. Report to DPS by Arresting Officer (Form DIC-23)

- A. Generally
- B. Status of Five-Day Rule
- C. Contents of the Officer's Sworn Report in a Failure Case: The "Complaint" Requirement
- D. Contents of the Statutory Warning (Form DIC-24) As a Mandatory Component of the Arresting Officer's Report in Refusal Cases
 - 1. Officer's Failure to Complete DIC-24
 - 2. CDL Warnings
 - 2. General Improper Warnings
 - 3. Effect of Improper, or No, Written Warnings

Section III. Initial Decision: In Person or by Telephone

- A. General Rule Regarding Telephone Hearings
- B. Advantages in a Telephone Hearing
- C. Method of Request
 - 1. Written Request Transmission
 - 2. Telephone Request
- D. Deadline Compliance
- E. Sufficiency of Information in Request
- F. Rejection Notice From DPS



- G. Missed the Fifteen-Day Deadline?
- H. Defendant's Right to Waive Hearing Demand

Section IV. Notice Requirements

- A. Shall: When It Means "Shall" and When It Means "May"
- B. Timing
- C. Contents of DPS's Notice of Hearing/Trial Amendments
 - 1. DPS's Notice of Hearing Is a Pleading
 - 2. Trial Amendments
- D. Location of Hearing
- E. Hearing Officer
 - 1. Vesting Authority
 - 2. Recusal

Section V. What Happens After You Win the Hearing

- A. Rescinding the Suspension
- B. Reinstatement of License: Fee Requirement

Section VI. What Happens After You Lose the Hearing

CHAPTER 3

PREHEARING STRATEGIES

Section I. Prehearing Discovery Pursuant to SOAH Rules

- A. Discovery Rules Changed on January 20, 2009
 - 1. What is Discoverable
 - 2. Where to Direct Discovery Requests
 - 3. When You May Request Discovery
 - 4. DPS's Required Response and Deadline
 - 5. Mandatory Continuance for DPS's Late Furnishing of Discovery
 - 6. Effectiveness of TCDLA Participation in Rule-Making Hearing/Your Dues at Work
 - 7. Contrast to Prior Regulations Governing Discovery
 - 8. Scope of Administrative Discovery
 - 9. Maintenance and Repair Records
 - 10. Inadmissibility of Documents Not Furnished Within Five-Day Deadline
 - 11. DPS's Right to Reciprocal Discovery

Section II. Right to Require Presence of Witnesses

- A. SOAH Regulations Governing Subpoenas at ALR Hearings Were Extensively Modified Effective January, 20, 2009
 - 1. Section 159.103. Subpoenas
- B. Obtaining a Subpoena for the Breath-Test Operator ("BTO") and/or Technical Supervisor ("Tech. Sup.") for the ALR Hearing—Significant Legislative Change
 - 1. Procedure Prior to September 1, 2009
 - 2. Procedure On or After September 1, 2009

Section III. Continuances

- A. Defense Continuances
 - 1. Continuance As Matter of Right/"Five-Day" Continuance
 - 2. Further SOAH Continuance Due to Illness of Defendant
- B. DPS Continuance
 - 1. ALR Forty-Eight-Hour Deadline Rule (Applies Until 9/1/09, when the new statute requiring the defense to Subpoena the Technical Supervisor and BTO Takes Effect)

2. SOAH's Version of the DPS Continuance for Unavailability of Technical Supervisor and BTO (Applies Until 9/1/09, when the new statute requiring the defense to Subpoena the Technical Supervisor and BTO Takes Effect)
3. SOAH's DPS Continuance for Unavailability of a Witness Subpoenaed by the Defense

Section IV. Decision of ALJ and Effective Date of Suspension

Section V. Withdrawal of Counsel

Section VI. Failure to Appear; Vacating Default Order

- A. General Rule
- B. DPS Burden
- C. Vacating a Default Order
- D. Appearance by Counsel/Decision to Have Client at Hearing
- E. Rescission and Expunction

CHAPTER 4

THE STEPS TO A SUCCESSFUL HEARING

Section I. Why Have an ALR Hearing?

- A. The Easy Win
- B. It May Be Your Only Chance for Discovery
 1. A Suppression Hearing May Be Too Little, Too Late
 2. The State's "Layer-Cake" Defense

Section II. The ALR Advantage

Section III. A Must-Do Checklist

- A. Demand the Hearing by Fax
- B. Demand Discovery
- C. Request a Subpoena for the Breath-Test Operator and the Technical Supervisor (after September 1, 2009)
- D. Keep an Eye Out for Your Initial Notice of Hearing
- E. Use Your Five-Day Continuance
- F. Subpoena the Arresting Officer

Section IV. The Blueprint for Cross-Examination

- A. Arresting Officers
- B. Technical Supervisors
- C. Breath-Test Operators

Section V. Effective Use of the ALR Hearing in the Criminal (DWI) Trial

- A. The Right to Confront and Cross-Examine the Arresting Officer at the Criminal Trial
- B. Impeachment by Evidence of Prior Inconsistent Statements
- C. Cross-Examination at the Criminal Trial Concerning Field Sobriety Tests

CHAPTER 5

DPS's PROOF AT THE ALR HEARING

Section I. Suspension Law Inapplicable When Not Under Arrest

- A. Authority
 1. Arrest Requirement for Refusals
 2. Arrest Requirement for Failures
 3. Case Law



- B. In Texas “Arrest” Is Defined by Statute
- C. Recent Court Decisions: Defendant Taken to Hospital Not Under Arrest
- D. Significance of Why and How Blood Sample Was Taken

Section II. Source of the Elements

- A. Issues for Failure Hearing Under Transportation Code Chapter 524
- B. Issues for Refusal Hearing Under Transportation Code Chapter 724

Section III. Stops and Arrests

- A. Determining the Standard
- B. Preserving Complaints of Illegal Arrests and Detentions

CHAPTER 6

VEHICULAR STOPS: REASONABLE SUSPICION AND PROBABLE CAUSE

Section I. Reasonable Suspicion: The Standard

- A. Cases Where Court Did Not Require AO Testimony That AO Believed Defendant Was DWI
 1. Defendant “All Over the Road”
 2. Slow Driving That Impedes Normal Flow of Traffic
 3. Weaving Within a Lane Plus Acceleration and Deceleration
- B. Case Where Court Required AO Testimony That AO Believed Defendant Was DWI

Section II. What Constitutes a Stop?

- A. Defining the Terms
- B. Examples of “Mere Encounter”
 1. The Case of Dumb and Dumber
 2. Case Where Overhead Emergency Lights Did Not a Detention Make but Another Case Where Use of a Spotlight Combined With Other Factors Did

Section III. Right to Stop

- A. CCA Rejects “As Consistent With Innocent Activity” Test
- B. Limits on Length and Purpose of Detention
- C. Conclusory Information Is Insufficient

Section IV. Probable Cause Is the Proper Standard for a Traffic Stop

- A. Sufficiency Examples
 1. Anytime the Officer Reasonably Believes You Have Committed an Offense
 2. Speeding
 3. Failure to Signal
 4. Following Too Closely
 5. Left Lane for Passing Only
 6. Unsafe Turn
 7. Impeding Traffic
 8. Tag Poorly Lit
 9. No Seat Belt
 10. Failure to Stop When Exiting a Driveway
 11. Equipment Violations—License Plates: Frames & Locations on Vehicle
 12. Wide Right Turn
 13. Anti-Noise Violation
 14. Driver Passed Out in Parked Car
 15. Vehicle’s Owner Has Warrants and Driver Matches Description
 16. Stopping on a Crosswalk or in an Intersection

17. Will “Driving on a Shoulder” Supplant “Weaving” as The Reason for a DWI Stop, Thereby Eliminating Case Law Requirements of “Unsafety” in Many Cases?
 18. Littering
 19. Non-functioning Stoplamp
 20. Other Examples
- B. Insufficiency Examples
1. Cracked Taillights
 2. No Front License Plate—Out-of-State Vehicle
 3. Multiple Lane Changes
 4. Failure to Yield Leaving Parking Lot
 5. Slow Speed
 6. Following Too Closely
 7. Driver Passed Out in a Parked Car
 8. Driving Onto a Private Oil Field at Night
 9. Exhibition of Acceleration
 10. Operating an Uninsured Motor Vehicle
 11. Left-Turn into Outside Lane
 12. Compliance with Traffic Control Device
- C. Special Problems Related to Speeding
- D. When Is Weaving Really a Traffic Violation?
1. Weaving Within a Lane
 2. Crossing Outside a Lane
 3. Examples of Unsafe Manner
 4. Weaving Alone Does Not Equal Reasonable Suspicion of DWI
 5. Does Failure to Signal a “Weave” Amount to an Offense?
- E. Can Officers Stalk Drivers to Develop Probable Cause?
- F. Practice Notes

Section V. When Reasonable Suspicion or Probable Cause Is Not Witnessed by Arresting Officer

- A. Reports From Unnamed Civilians
1. When Held Sufficient
 2. When Held Insufficient
- B. Reports From Named Civilians
1. When Credibility Is Unknown
 2. When Credibility Is Known
- C. Arrest Request From Another Officer
1. Credibility
 2. Conclusory
 3. Information Known by Requesting Officer
- D. Police Bulletin
- E. Driver Involved in “Disturbance” Leaves Scene
- F. Observation Contradicting Information Received

Section VI. Vehicular Search Incident to Arrest

CHAPTER 7

STOPS WHERE REASONABLE SUSPICION INAPPLICABLE

Section I. Checkpoint Stops

- A. DWI Checkpoints
- B. Non-DWI Checkpoints
- C. Multi-Purpose Checkpoint
- D. What Constitutes a Checkpoint?

Section II. Water Safety Check of Boats

Section III. Community Caretaking Stop

CHAPTER 8

BREACHES OF THE PEACE, CITIZEN'S ARRESTS, AND GEOGRAPHIC JURISDICTION

Section I. Citizen's Arrest

- A. Authorization
- B. DWI: Offense Against the Public Peace?
- C. Standard of Evidence

Section II. Geographic Jurisdiction

- A. Historically Speaking
- B. Current Rules of Jurisdiction
- C. *But see Dixon v. State*
- D. Special Types of Peace Officers

CHAPTER 9

PROBABLE CAUSE TO ARREST FOR DWI

Section I. Continued Detention for Field Sobriety Tests ("Intervening" Probable Cause)

- A. Limits on Length and Purpose of Detention
- B. Continued Detention to Wait for SFST Officer
- C. Factors Providing Reasonable Suspicion for Continued Detention

Section II. What Constitutes an Arrest in Texas

- A. Code of Criminal Procedure Definition
- B. Recent Appellate Trend Narrows What Qualifies

Section III. Probable Cause to Arrest

- A. Relationship of Texas and U.S. Constitutional Safeguards
- B. Federal Standard of Probable Cause
- C. Texas's Standard of Probable Cause: CCP Article Fourteen
 1. Committed in Presence
 2. Not Committed in Presence
 3. DWI Implications Where Driving Not Observed by Officer or Magistrate

Section IV. Does Implied Consent Apply to Offenses Other Than DWI?

- A. Public Intoxication
- B. Arrest Involving Felony

Section V. Residence Entry Limitations to Warrantless Arrests

Section VI. Accident Investigations/Defendant's "Accident Investigation" Statement Regarding Driving

- A. Argument for Involuntariness Rejected by the Court of Criminal Appeals
- B. Accident Investigation/Authority to Investigate Accident/Monetary Amount/Confidentiality

Section VII. Probable Cause With Relation to the "Operating" Requirement

- A. The *Denton* Definition
- B. Pre-*Denton* Definition
- C. Pre-*Denton* Holdings
 - 1. Examples Sufficient to Prove Operating
 - 2. Examples Insufficient to Prove Operating
- D. DPS Does Not Have to Wheel the Defendant

CHAPTER 10

PROBABLE CAUSE REGARDING INTOXICATION

Section I. Standardized Field Sobriety Tests as Basis for "Intoxication"

- A. The Horizontal Gaze Nystagmus Test
- B. The Vertical Gaze Nystagmus Test
- C. The One-Leg-Stand and the Walk-and-Turn Tests

Section II. Probable Cause Regarding DWI Intoxication

- A. Definition
- B. Examples of Sufficient Probable Cause
- C. Examples of Insufficient Probable Cause
- D. The Portable Breath Test

Section III. Probable Cause Regarding Public Intoxication

- A. Definition
- B. Public Place Requirement
 - 1. Places that Qualify as "Public"
 - 2. Places Not Qualifying as "Public"
- C. "May Endanger" Element
- D. Statutory Defense to Public Intoxication

CHAPTER 11

PROBABLE CAUSE ELEMENTS IN ALR

Section I. Probable Cause Regarding "The Person" Element

- A. Person Other Than Defendant
- B. In-Court Identification

Section II. The "While" Element

- A. Relating Test Results to Time of Driving
- B. *Daubert-Kelly* Standard
- C. Requirement for Retrograde Extrapolation and Applicability to ALR Hearing
 - 1. General Rule for ALR Practice: Breath Test Evidence in an ALR Hearing Does Not Have to Be Extrapolated
 - 2. Relevance of *Mata* to ALR Practice
 - 3. Error in a Criminal Case to Admit Improperly Extrapolated Breath Test Evidence
 - 4. Reasons Courts Have Excluded Defense Experts' Testimony Regarding Problems With Breath Testing

- D. Parallel Criminal Case
- E. Austin Court Incorrectly Applies *Geesa* Criminal Standard
- F. Applicable Civil Law Standard Parallels Pre-*Geesa* Criminal Standard
- G. Proof of Time of Driving
 - 1. Examples of Sufficient Evidence of Time of Driving
 - 2. Examples of Insufficient Evidence of Time of Driving
- H. Time of Drinking: Pre- or Post-Driving?

Section III. The “Operating” Element

- A. Defendant Passed-Out or Asleep in Vehicle
- B. Single Vehicle Accident Cases
 - 1. Where There are *Res Gestae* Statements by Defendant
 - 2. Where There Are No Statements by Defendant

Section IV. The “Motor Vehicle” Element

Section V. The “Public Place” Element

Section VI. The “Intoxicated” Element

Section VII. The “Placed Under Arrest” Element

Section VIII. The “Offered An Opportunity to Give a Specimen Under This Act” Element

- A. “Under This Act”
- B. Stating Incorrect Time for Alcohol Concentration

Section IX. The “Did the Person Refuse To Give A Specimen” Element

- A. Potential Defenses
 - 1. Mixed Warnings
 - 2. Inability to Give Sufficient Sample
 - 3. The “Justified Refusal” Doctrine
- B. Constructive Refusal
 - 1. Nonresponsive Answers Amount to a Refusal
 - 2. Request for Lawyer
- C. Invalid Defenses
 - 1. Right of Counsel
 - 2. Failure to Give *Miranda* Warning
 - 3. Right to Alternative Test
 - 4. Defendant Already Provided A Specimen

Section X. The “On Proper Request of the Officer” Element

Section XI. Voluntariness Issues

- A. Consent Must Be Voluntary
- B. Involuntary Consent: *Erdman* Error
 - 1. Requirements
 - 2. Authorized Consequences Limited to Two
 - 3. Establishing Involuntariness of Consent
- C. Voluntariness When Sample Taken for Medical Purpose

CHAPTER 12

SPECIAL PROBLEMS OF PROOF AT ALR HEARINGS

Section I. Proof Required for Enhancement

- A. Proof Must Be Submitted at Hearing
- B. Sufficiency

Section II. Issues Unique to Proof Offered Through Documents

- A. The Hearsay Problem at the ALR Hearing
 - 1. Recent Supreme Court Case Calls All Following Case Law Into Serious Question
 - 2. In the Situation Where No Party Brings in Any Live Witnesses, the Evidence in the Hearing Consists of Public Records Under 803(8) of the Texas Rules of Evidence
 - 3. The 803(8) “Public Records” Exception of the Texas Rules of Evidence Has Been Interpreted to Allow an Affidavit by a Non-arresting Officer
 - 4. The 803(8) “Public Records” Rule of Evidence Has Been Interpreted So As to Exclude Affidavits Consisting of Mere Conclusions of Law or Fact
 - 5. Hearsay Statements From Civilian Witnesses
 - 6. DPS’s Documentary Evidence May Consist of Faxed Copies of Properly Authenticated Public Records
 - 7. Blood Test Records
 - 8. Criminal Courts Do Not Place Great Trust in Hearsay Reports by Police Officers
 - 9. The “Business Records” Exception to the Hearsay Rule Has Been Interpreted So As to Exclude Statements Made by Persons Outside the Business in Criminal Cases
 - 10. Hearsay at ALR Hearings vs. Hearings on Motion to Suppress and Criminal Trials, a Contrast Worth Noting
- B. Paper Cases: Objecting to Certain Common Defects in DPS’s Documentary Evidence
 - 1. Notary Seal
 - 2. Incorporation by Reference

CHAPTER 13

BREATH TEST: RISK OF FALSE HIGH RESULTS

Section I. Relationship Between Number of Drinks Consumed and Alcohol Concentration

Section II. Risk Factors

- A. The Intoxilyzer 5000 and the “Averaging” Compromise
- B. “At The Time of Driving” Issue
- C. Risk of “Residual Alcohol”
- D. Forced Exhalation Risk
- E. Body Temperature Variations
- F. The Instrument’s Own Tolerance for Error
- G. Inability to Distinguish Between Alcohol and Other Substances
- H. Transient Error

Section III. Instrument Reliability and Analysis Validity

THE BLOOD TEST

Section I. Taking of Blood Specimen

- A. General Rule
- B. Mandatory Requirement
 - 1. Fatality or Likelihood of Fatality (Law Prior to September 1, 2009)
 - 2. Fatality, Likelihood of Fatality, Individual Other than Defendant Has Suffered Serious Bodily Injury, Individual Other Than Defendant Has Suffered Bodily Injury & Been Transported to Medical Facility, DWI w/Child Passenger, or DWI Where Officer Has Information Regarding Prior Convictions (Law to go into Effect on September 1, 2009)
- C. Refusal Is to Be Honored, Exceptions, and Search Warrants
 - 1. Implied Consent Law Did not “Trump” Search Warrants
 - 2. Which Officials May Currently Issue a Search Warrant to Take Blood
- D. Lack of Refusal Does Not Mean Lack of Consent
- E. Who May Take Blood Specimen
 - 1. Qualified Individual
 - 2. Under the Fourth Amendment
 - 3. Immunity from Liability
- F. Right to Request Additional Specimen
- G. The “Justified Refusal” Doctrine/“Sanitary Place” and “Qualified Individual” Requirement for Blood Draws

Section II. Right of Discovery

- A. Defendant Has Right to Full Information Regarding Analysis
- B. SOAH Rules: Section 159.151. Prehearing Discovery

Section III. Blood Sample Requested by Officer

- A. Where Request Made When Not Under Arrest Suspension Law Does Not Apply
- B. General Constitutional Principles Trump Suspension Law

Section IV. Physician-Patient Privilege

- A. In Civil Cases
- B. In Criminal Cases
 - 1. No Physician-Patient Privilege in Criminal Cases in Texas Absent Evidence of Significant State Involvement
 - 2. HIPAA Did Not Restore a Defendant’s Right to Privacy in Medical Records

Section V. Practice Notes

- A. Commentary Regarding Admissibility of Blood Test Results in Criminal Cases
- B. The “While” Element
- C. Plasma or Serum Specimen Gives Reading Higher Than Whole Blood
Table of “Average” Conversion Factors Documented in Scientific Literature
- D. Other Potential Hospital Inaccuracy Factors
- E. Potential Error in Hospital-Drawn Cases Where Nonqualified Individual Draws Blood
- F. Interferants
- G. Acceptable Margin of Error
- H. Right to Confront & Cross-Examine State’s Crime Lab Analyst
- I. Fourth Amendment Reasonableness Requirement When Blood Not Taken in Hospital or Medical Environment

Section VI. Proof of Intoxication in DWI Cases by Substances Other Than Alcohol

- A. Recent Pronouncements by the Court of Criminal Appeals Concerning Whether “Drug” Intoxication Evidence Requires Expert Testimony Regarding the Effect of the Drugs/ Preservation of Error at Trial and in the Appellate Process
- B. Courts of Appeals Have Held that it is Error to Admit Evidence of the Presence of a Controlled Substance in a Defendant’s System Without Evidence of the Effect of the Substance and Retrograde Extrapolation

CHAPTER 15

HANDLING AN ALR APPEAL

Section I. “Substantial Evidence” Standard of Review

- A. Source
- B. Statutory Review Directive
- C. Interpretive Opinions Regarding Substantial Evidence Review
- D. Circumstantial Evidence Review: Circumstances Consistent With Either of Two Facts Where Neither More Probable

Section II. Notice of Appeal

Section III. Where to File Appeal: County Court at Law in County of Arrest

- A. Generally
- B. Wrong County Equals Jurisdictional Defeat of Appeal
- C. Procedure in County Courts

Section IV. (Very) Temporary Stay of Suspension

Section V. Record

- A. Cost
- B. New Deadline for Requesting Record
- C. Burden to File and to Present the Record
- D. Incomplete Record

Section VI. Additional Evidence

Section VII. Effect of Successful Appeal on DPS Driving Record: Absent a Request to the Contrary

- A. Policy Absent Request
- B. Request Pursuant to 37 Tex. Admin. Code § 17.11(e): A Notification Request Should Be Made

Section VIII. Further Appellate Review by the Courts of Appeals

- A. No Review by Courts of Appeals?
- B. Authority to Modify a Judgment

CHAPTER 522. (Selections)
TEXAS TRANSPORTATION CODE
COMMERCIAL DRIVER'S LICENSES AND
ALCOHOL CONSUMPTION SUSPENSIONS AND RELATED SECTIONS

Subchapter A. General Provisions

- Sec. 522.003. Definitions
- Sec. 522.004. Applicability
- Sec. 522.005. Rulemaking Authority

Subchapter B. License or Permit Required

- Sec. 522.011. License or Permit Required; Offense
- Sec. 522.013. Nonresident License
- Sec. 522.015. License or Permit Issued by Other Jurisdiction

Subchapter C. License or Permit Application and Issuance

- Sec. 522.026. Limitation on Number of Driver's Licenses; Offense

Subchapter F. Notification of Conviction, Administration Action, or Previous Employment

- Sec. 522.061. Notification of Conviction to Department or Employer
- Sec. 522.062. Notification of Conviction to Licensing Authority in Other State
- Sec. 522.063. Notification of Disqualification
- Sec. 522.064. Notification of Previous Employment and Offenses

Subchapter G. Unauthorized Driving

- Sec. 522.071. Driving While Disqualified Prohibited
- Sec. 522.072. Employer Responsibilities

Subchapter H. Disqualification From Driving Commercial Motor Vehicle

- Sec. 522.081. Disqualification
- Sec. 522.082. Reinstatement Following Disqualification for Life
- Sec. 522.083. Update of Records
- Sec. 522.084. Notification to Other Jurisdiction
- Sec. 522.085. Probation of Disqualification Prohibited
- Sec. 522.086. Issuance of Essential Need or Occupational Driver's License Prohibited
- Sec. 522.087. Procedures Applicable to Disqualification
- Sec. 522.088. Applicability of Other Law
- Sec. 522.089. Effect of Suspension, Revocation, Cancellation, or Denial of License Under Other Laws
- Sec. 522.090. Additional Penalty
- Sec. 522.091. Recognition of Action Taken by Other State
- Sec. 522.092. Suspension, Revocation, Cancellation, or Denial of Driver's License Under Other Laws

Subchapter I. Driving While Having Alcohol, Controlled Substance, or Drug in System

- Sec. 522.101. Driving While Having Alcohol in System Prohibited
- Sec. 522.102. Implied Consent to Taking of Specimen
- Sec. 522.103. Warning by Peace Officer
- Sec. 522.104. Submission of Report to Department
- Sec. 522.105. Disqualification of Driver
- Sec. 522.106. Affidavit by Certified Breath Test Technical Supervisor

**SUSPENSIONS AND MINORS
TEXAS TRANSPORTATION CODE**

Section I. Test Failure: § 524

- A. § 524.001. Definitions
- B. § 524.011. Officer's Duties for Driver's License Suspension
- C. § 524.012. Department's Determination for Driver's License Suspension
- D. § 524.022. Period of Suspension
- E. § 524.023. Application of Suspension Under Other Laws
- F. § 524.035. Hearing
- G. § 524.042. Stay of Suspension of Appeal
- H. § 524.043. Review: Additional Evidence

Section II. Test Refusal: § 724

- A. § 724.001. Definitions
- B. § 724.011. Consent to Taking of Specimens—Implied Consent Law
- C. § 724.012. Taking of Specimen
- D. § 724.015. Information Provided by Officer Before Requesting Specimen
- E. § 724.035. Suspension or Denial of License

Section III. Driving Under the Influence of Alcohol by a Minor (Effective September 1, 1997, for Offenses Committed On or After That Date)

- A. A Minor Who Is Not a Child
- B. A Minor Child Who Is a Child

Section IV. Representing Minors in the Age of "Zero Tolerance"

- A. Possessory Offenses and Automatic License Suspensions
- B. Driving Under the Influence of Alcohol by a Minor
 - 1. General
 - 2. Does DUIM Require Proof of Actual Full-Custody "Arrest"?
 - 3. Must Minor be Prosecuted for DUIM (In Pari Materia)
 - 4. Proof Requirements for DUIM
 - 5. Portable Breath Testing and Proof of "Detectable Amount"
- C. Reporting Requirements
- D. Public Intoxication by Minor/License Suspension
- E. Delinquent Conduct Definition
- F. Processing Juveniles at Adult Facilities
- G. Justice of the Peace/Municipal Court Jurisdiction
- H. Minor "ALRS" Under Transp. Code Ch. 524 ("Failures")
- I. Minor "ALRS" Under Transp. Code Ch. 724 ("Refusals")

CHAPTER 18

OCCUPATIONAL LICENSES TEXAS TRANSPORTATION CODE

Subtitle B. Driver's Licenses and Personal Identification Cards

Chapter 521. Driver's Licenses and Certificates

- Sec. 521.241. Definitions
- Sec. 521.242. Petition
- Sec. 521.243. Notice to State; Presentation of Evidence
- Sec. 521.244. Hearing; Order; Determination of Essential Need
- Sec. 521.245. Required Counseling
- Sec. 521.246. Ignition Interlock Device Requirement
- Sec. 521.2465. Restricted License
- Sec. 521.247. Approval of Ignition Interlock Devices by Department
- Sec. 521.2475. Ignition Interlock Device Evaluation
- Sec. 521.2476. Minimum Standards for Vendors of Ignition Interlock Devices
- Sec. 521.248. Order Requirements
- Sec. 521.249. Notice to Department; Issuance of Occupational License
- Sec. 521.250. Court Order in Operator's Possession
- Sec. 521.251. Effective Date of Occupational License
- Sec. 521.252. License Revocation
- Sec. 521.253. Criminal Penalty
- Sec. 521.457. Driving While License Invalid

CHAPTER 19

THE STATUTES: TEXAS TRANSPORTATION CODE AND CONTROLLING ORIGINAL STATUTES

Section I. Chapter 524. Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication

Subchapter A. General Provisions

- Sec. 524.001. Definitions
- Sec. 524.002. Rules, Application of Administrative Procedure Act

Subchapter B. Suspension Determination and Notice

- Sec. 524.011. Officer's Duties for Driver's License Suspension
- Sec. 524.012. Department's Determination for Driver's License Suspension
- Sec. 524.013. Notice of Department's Determination
- Sec. 524.014. Notice of Suspension
- Sec. 524.015. Effect of Disposition of Criminal Charge on Driver's License Suspension

Subchapter C. Suspension Provisions

- Sec. 524.021. Suspension Effective Date
- Sec. 524.022. Period of Suspension
- Sec. 524.023. Application of Suspension Under Other Laws

Subchapter D. Hearing and Appeal

- Sec. 524.031. Hearing Request
- Sec. 524.032. Hearing Date, Rescheduling
- Sec. 524.033. State Office of Administrative Hearings
- Sec. 524.034. Hearing Location



- Sec. 524.035. Hearing
- Sec. 524.036. Failure to Appear
- Sec. 524.037. Continuance
- Sec. 524.038. Instrument Reliability and Analysis Validity
- Sec. 524.039. Appearance of Technicians at Hearing
- Sec. 524.040. Notice Requirements
- Sec. 524.041. Appeal From Administrative Hearing
- Sec. 524.042. Stay of Suspension on Appeal
- Sec. 524.043. Review, Additional Evidence
- Sec. 524.044. Transcript of Administrative Hearing

Subchapter E. Reinstatement and Reissuance of Driver's License

- Sec. 524.051. Reinstatement and Reissuance

Section II. Chapter 724. Implied Consent

Subchapter A. General Provisions

- Sec. 724.001. Definitions
- Sec. 724.002. Applicability
- Sec. 724.003. Rulemaking

Subchapter B. Taking and Analysis of Specimen

- Sec. 724.011. Consent to Taking of Specimen
- Sec. 724.012. Taking of Specimen
- Sec. 724.013. Prohibition on Taking Specimen if Person Refuses, Exception
- Sec. 724.014. Person Incapable of Refusal
- Sec. 724.015. Information Provided by Officer Before Requesting Specimen
- Sec. 724.016. Breath Specimen
- Sec. 724.017. Blood Specimen
- Sec. 724.018. Furnishing Information Concerning Test Results
- Sec. 724.019. Additional Analysis by Request

Subchapter C. Suspension or Denial of License on Refusal of Specimen

- Sec. 724.031. Statement Requested on Refusal
- Sec. 724.032. Officer's Duties for License Suspension, Written Refusal Report
- Sec. 724.033. Issuance by Department of Notice of Suspension or Denial of License
- Sec. 724.034. Contents of Notice of Suspension or Denial of License
- Sec. 724.035. Suspension or Denial of License

Subchapter D. Hearing

- Sec. 724.041. Hearing on Suspension or Denial
- Sec. 724.042. Issues at Hearing
- Sec. 724.043. Findings of Administrative Law Judge
- Sec. 724.044. Waiver of Right to Hearing
- Sec. 724.045. Prohibition on Probation of Suspension
- Sec. 724.046. Reinstatement of License or Issuance of New License
- Sec. 724.047. Appeal
- Sec. 724.048. Relationship of Administrative Proceeding to Criminal Proceeding

Subchapter E. Admissibility of Evidence

- Sec. 724.061. Admissibility of Refusal of Person to Submit to Taking of Specimen
- Sec. 724.062. Admissibility of Refusal of Request for Additional Test
- Sec. 724.063. Admissibility of Alcohol Concentration or Presence of Substance



Conversion Tables, Former Statutes to Recodified Statutes

- Table 1: Suspension for Test Failure
- Table 2: Suspension for Test Refusal
- Table 3: Commercial Disqualification for Test Failure or Refusal
- Table 4: Occupational Licenses and Driving While License Suspended

CHAPTER 20

SOAH RULE CHANGES AND COMMENTS

SOAH Comments on 2009 ALR Rules

- Chapter 159. Rules of Procedure for Administrative License Suspension Proceedings
 - Subchapter A. General
 - Subchapter B. Representation
 - Subchapter C. Witnesses and Subpoenas
 - Subchapter D. Discovery
 - Subchapter E. Hearing and Prehearing
 - Subchapter F. Disposition of Case

CHAPTER 21

**ADMINISTRATIVE PROCEDURE AND PRACTICE:
CHAPTER 2001. ADMINISTRATIVE PROCEDURE
AND TEXAS REGISTER ACT**

Subchapter A. General Provisions

- Sec. 2001.001. Purpose
- Sec. 2001.002. Short Title
- Sec. 2001.003. Definitions
- Sec. 2001.004. Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions
- Sec. 2001.005. Rule, Order, or Decision Not Effective Until Indexed

Subchapter B. Rulemaking

- Sec. 2001.021. Petition for Adoption of Rules
- Sec. 2001.022. Local Employment Impact Statements
- Sec. 2001.023. Notice of Proposed Rule
- Sec. 2001.024. Content of Notice
- Sec. 2001.025. Effective Date of Notice
- Sec. 2001.026. Notice to Persons Requesting Advance Notice of Proposed Rules
- Sec. 2001.027. Withdrawal of Proposed Rule
- Sec. 2001.028. Notice of Proposed Law Enforcement Rules
- Sec. 2001.029. Public Comment
- Sec. 2001.030. Statement of Reasons For or Against Adoption
- Sec. 2001.031. Informal Conferences and Advisory Committees
- Sec. 2001.032. Legislative Review
- Sec. 2001.033. State Agency Order Adopting Rule
- Sec. 2001.034. Emergency Rulemaking
- Sec. 2001.035. Substantial Compliance Requirement; Time Limit on Procedural Challenge
- Sec. 2001.036. Effective Date of Rules; Effect of Filing With Secretary of State
- Sec. 2001.037. Official Text of Rule

Sec. 2001.038. Declaratory Judgment

Subchapter C. Contested Cases: General Rights and Procedures

- Sec. 2001.051. Opportunity for Hearing and Participation; Notice of Hearing
- Sec. 2001.052. Contents of Notice
- Sec. 2001.053. Right to Counsel
- Sec. 2001.054. Licenses
- Sec. 2001.055. Interpreters for Deaf or Hearing Impaired Parties and Witnesses
- Sec. 2001.056. Informal Disposition of Contested Case
- Sec. 2001.057. Continuances
- Sec. 2001.058. Hearing Conducted by State Office of Administrative Hearings
- Sec. 2001.059. Transcript
- Sec. 2001.060. Record
- Sec. 2001.061. Ex Parte Consultations
- Sec. 2001.062. Examination of Record by State Agency; Proposal for Decision

Subchapter D. Contested Cases: Evidence, Witnesses, and Discovery

- Sec. 2001.081. Rules of Evidence
- Sec. 2001.082. Exclusion of Evidence
- Sec. 2001.083. Privilege
- Sec. 2001.084. Objections to Evidence
- Sec. 2001.085. Written Evidence
- Sec. 2001.086. Documentary Evidence
- Sec. 2001.087. Cross-Examination
- Sec. 2001.088. Witnesses
- Sec. 2001.089. Issuance of Subpoena
- Sec. 2001.090. Official Notice; State Agency Evaluation of Evidence
- Sec. 2001.091. Discovery From Parties: Orders for Production or Inspection
- Sec. 2001.092. Discovery From Parties: Identity of Witness or Potential Party; Expert Reports
- Sec. 2001.093. Discovery From Parties: Copy of Previous Statement
- Sec. 2001.094 through 2001.102. Omitted. Inapplicable to ALR
- Sec. 2001.103. Expenses of Witness or Deponent

Subchapter E: Contested Cases: Testimony of Child Omitted. Inapplicable to ALR

Subchapter F. Contested Cases: Final Decisions and Orders; Motions for Rehearing

- Sec. 2001.141. Form of Decision; Findings of Fact and Conclusions of Law
- Sec. 2001.142. Notification of Decisions and Orders
- Sec. 2001.143. Time of Rendering Decision
- Sec. 2001.144. Decisions; When Final
- Sec. 2001.145 through Sec. 2001.147 Omitted. Inapplicable to ALR

Subchapter G. Contested Cases: Judicial Review

- Sec. 2001.171. Judicial Review
- Sec. 2001.172. Scope of Judicial Review
- Sec. 2001.173. Trial De Novo Review. Omitted. Inapplicable to ALR
- Sec. 2001.174. Review Under Substantial Evidence Rule or Undefined Scope of Review
- Sec. 2001.175. Procedures for Review Under Substantial Evidence Rule or Undefined Scope of Review
- Sec. 2001.176. Petition Initiating Judicial Review
- Sec. 2001.177. Cost of Preparing Agency Record
- Sec. 2001.1775. Modification of Agency Findings or Decision

Sec. 2001.178. Cumulative Effect

Subchapter H. Court Enforcement

Sec. 2001.201. Court Enforcement of Subpoena or Commission

Sec. 2001.202. Court Enforcement of Final Orders, Decisions and Rules

Subchapter I. Exceptions

Sec. 2001.221. Driver's Licenses

Sec. 2001.222 through Sec. 2001.226. Omitted. Inapplicable to ALR

Subchapter Z. Miscellaneous

Sec. 2001.901. Appeal From District Court

Sec. 2001.902. Saving Clause

Chapter 2002 Overview

A. Generally

B. Texas Register Publication

C. Administrative Code Publication

CHAPTER 22

DPS RULES REGARDING ALR SUSPENSIONS

Chapter 19. Texas DPS Regulations

Subchapter A. Breath Alcohol Testing Regulations

§ 19.1 Definitions

§ 19.2 Instrument Certification

§ 19.3 Approval of Reference Sample Devices

§ 19.4 Approval of Techniques, Methods, and Programs

§ 19.5 Operator Certification

§ 19.6 Technical Supervisor Certification

§ 19.7 Approval of Courses of Instruction

§ 19.8 Revisions

Subchapter B. Texas Ignition Interlock Device Regulations

§ 19.21 Explanation of Terms and Actions

§ 19.22 Procedure for Device Approval

§ 19.23 Technical Requirements

§ 19.24 Miscellaneous Requirements

§ 19.25 Maintenance and Calibration Requirements

§ 19.26 Approval, Denial, and Withdrawal of Approval

§ 19.27 Certification and Inspection of Service Centers

§ 19.28 Service Representation

§ 19.29 Ignition Interlock Device Inspector

Chapter 17. Administrative License Revocation

§ 17.1 Scope

§ 17.2 Definitions

§ 17.3 Notice of Suspension or Disqualification

§ 17.4 ALR Reports

§ 17.5 Intake

§ 17.6 Rescission

§ 17.7 Administrative Suspension or Disqualification of Driver's License



- § 17.8 Hearing Requests
- § 17.9 Hearings
- § 17.10 Out-of-State Orders and Judgments
- § 17.11 Appeals
- § 17.12 Final Order of Suspension or Disqualification
- § 17.13 Effect of Acquittal; Notification to the Department
- § 17.14 Enforcement of Suspensions or Disqualifications
- § 17.15 Reinstatement
- § 17.16 Service On the Department of Certain Items Required To Be Served On, Mailed To, or Filed With the Department

CHAPTER 23

THE SOAH RULES OF PROCEDURE FOR ALR HEARINGS

Title 1, Texas Administrative Code, Chapter 159, Rules of Procedure for Administrative License Suspension Hearings:

- § 159.1 Scope
- § 159.3 Definitions
- § 159.5 Computation of Time
- § 159.7 Other SOAH Rules of Procedure
- § 159.51 Withdrawal of Counsel
- § 159.101 Breath Test Operator and Technical Supervisor
- § 159.103 Subpoenas
- § 159.151 Prehearing Discovery
- § 159.201 Scheduling and Notice of Hearing
- § 159.203 Waiver or Dismissal of Hearing
- § 159.205 General Request for Relief
- § 159.207 Continuances
- § 159.209 Participation by Telephone or Videoconference
- § 159.211 Hearings
- § 159.213 Failure to Attend Hearing and Default
- § 159.251 Hearing Disposition
- § 159.253 Decision of the Judge
- § 159.255 Appeal of Judge's Decision

Title 1, Texas Administrative Code, Chapter 161, Requests for Records:

- § 161.1 Charges for Copies of Public Records

Title 1, Texas Administrative Code, Chapter 70, Cost of Copies of Public Information:

- § 70.1 Purpose
- § 70.2 Definitions
- § 70.3 Charges for Providing Copies of Public Information
- § 70.4 Requesting an Exemption
- § 70.5 Access to Information Where Copies Are Not Requested
- § 70.6 Format for Copies of Public Information
- § 70.7 Estimates and Waivers of Public Information Charges
- § 70.8 Processing Complaints of Overcharges
- § 70.9 Examples of Charges for Copies of Public Information
- § 70.10 The Attorney General Charge Schedule
- § 70.11 Informing the Public of Basic Rights and Responsibilities Under the Public Information Act
- § 70.12 Allowable Charges Under Section 552.275 of the Texas Government Code



CHAPTER 24

APPLICABLE TEXAS RULES OF CIVIL PROCEDURE

Rule 18b. Grounds for Recusal and Disqualification of Judges

SOAH Rule § 159.103

Rule 176.5. Service [*Successor to Rule 178*]

Rule 176.7. Protection of Person From Undue Burden and Expense

192.3. Scope of Discovery

192.4. Limitations on Scope of Discovery

192.5. Work Product

192.6. Protective Orders

192.7. Definitions

193.2. Objecting to Written Discovery

193.3. Asserting a Privilege

193.7. Production of Documents Self-Authenticating

Rule 196. Requests For Production and Inspection To Parties; Requests and Motions For Entry Upon Property

196.1. Request for Production and Inspection to Parties

196.2. Response to Request for Production and Inspection

196.3. Production

196.6. Expenses of Production

205.2. Notice

205.3. Production of Documents and Tangible Things Without Deposition

215.2. Failure to Comply With Order or With Discovery Request


215.3. Abuse of Discovery Process in Seeking, Making, or Resisting Discovery

APPENDIX A

ALR Practice Forms

No. Title of Form and (Format Type)

- 1 Request for Hearing—Refusal (Fax/Request)
- 2 Request for Hearing—Failure (Fax/Request)
- 3 Request for Hearing—DUIM (Fax/Request)
- 4 Agreed “5-Day” Continuance (Fax/Request)
- 5 Motion For Continuance (Motion)
- 6 Motion to Transfer Venue (Motion)
- 7 Discovery Request—Refusal (Letter/Fax)
- 8 Discovery Request—Breath Test Failure (Letter/Fax)
- 9 Discovery Request—Blood Test Failure (Letter/Fax)
- 10 Motion to Compel—Failure (Motion)
- 11 Request for ALJ-Issued Subpoena (Form)
- 12 Affidavit in Support of Good Cause to Issue Subpoena for Technical Supervisor
- 13 ALJ-Issued Subpoena
- 14 ALR Witness Fee Calculation Sheet
- 15 Defense Attorney-Issued Subpoena Form—*Front Side* (Form)
- 16 Defense Attorney-Issued Subpoena Form—*Back Side* (Form)
- 17 Sample Mandamus Petition to Compel ALJ to Issue Subpoena—*Petition For Writ of Mandamus* (Petition)
- 18 Application for District Court Enforcement of Administrative Subpoena (Petition)
- 19 Sample Cover Letter for Subpoena Request (Letter)

- 
- 20 Sample Cover Letter for Served Subpoena (Letter)
21 Subpoena in Force Letter to Witness Following Continuance (Letter)
22 Letter Brief in Support of Request for Subpoena *Duces Tecum* for CMI Technical Manual (Letter/Fax)
23 Post-Hearing Letter Brief—Availability of Priors for Enhancement (Letter/Fax)
24 Post-Hearing Letter Brief—Yield Right-of-Way (Letter/Fax)
25 Post-Hearing Letter Brief—Regional Hits (Letter/Fax)
26 Appeal of Administrative License Suspension—Short Form (Appeal)
27 Appeal of Administrative License Suspension—Brief Incorporated (Appeal)
28 Sample Letter Requesting SOAH Transcript of ALR Hearing (Letter)
29 Sample Letter Forwarding ALR Appeal to DPS and SOAH (Letter via Certified Mail)
30 Sample Judgment Reversing Administrative Decision
31 Sample ODL Petition With Multiple Options (Petition)
32 Sample ODL Order With Multiple Options (Order)
33 Sample Letter Forwarding *Petition* and *Order Granting Occupational License* to DPS
(Letter via Certified Mail)
34 Sample Letter Forwarding *Petition* and *Order Granting Occupational License* to Client
(Letter via Hand Delivery)
35 Sample Letter Telling Client to Cease Driving Due to Lack of SR-22 (Letter)
36 Demand to DPS for Rescission After Acquittal (Letter/Fax)
37 Affidavit Regarding Insufficient Extrapolation Information (Affidavit)
38 Motion to Set Aside Default Order (Motion)
39 Sample Letter Requesting Hearing Compact Disc (Letter)