

Four Frequently Asked Questions for New Court Clerks

Greetings, this is John Eskew. I started with MTAS in January 2020 as the new Municipal Court Specialist. If you are a new municipal court clerk, you likely had many of the same questions as I did when I started this position. Here are four questions that I encountered which I believe would be useful to a new court clerk.

Question 1: What are these 5 day, 30 day, and 6 month requirements for moving vehicle tickets?

Answer: Simply put, these are the time limits to report moving vehicle violation convictions to the Department of Safety. We will take them one at a time.

- 5 days – Commercial Drivers Licenses. If a person has a CDL and was convicted of a moving vehicle violation, the court clerk has five days to report that conviction to the Department of Safety. This requirement is found in TCA 55-50-409.
- 30 days – For everyone else (non-commercial driver's license holders) if a person is convicted of a moving vehicle violation (or forfeits the bail by not showing up to court by paying the ticket ahead of time) the court clerk must report that conviction to the Department of Safety within 30 days. This is found in TCA 55-10-306.
- 6 months – The "Six Month Rule" only applies for suspending a person's driver's license for a Failure to Appear in court on a moving vehicle violation. Under TCA 55-50-502(a)(1)(I), if a person is issued a moving vehicle violation ticket and the defendant Fails to Appear in court for that violation, that person's licenses can be suspended by the Department of Safety. However, all submissions for suspension for a FTA must be submitted to the Department of Safety within six months of when the ticket was written. That means the court hearing should be held within six months of the ticket issuance date.

In most cities, court is held at least once a month, so this usually isn't an issue. As we saw with COVID and in-person court hearings being shut down for months at a time, some cities had a hard time hearing a case within the six-month time frame.

The "Six Month Rule" does not affect any other reporting requirements. So if there is a nine month gap between the issuance of a ticket and the court hearing, and the person shows up to court and is found guilty, you report that like normal and the DOS will issue points on the license like normal. The "Six Month Rule" does not affect any Failures to Pay either. Those are governed like they always are.

Even if a FTA is reported after the six month time frame, I still recommend reporting the guilty conviction like normal. While the DOS will not suspend a person's license for a FTA after that six-month time limit, it will still record the conviction, assess points on the person's license, and it'll go on the person's driving record. They just won't have their licenses suspended for FTA.

Question 2: What is the difference between litigation tax and bond forfeiture fee?

Answer: There isn't too much of a difference, but for every conviction in a city court, you need to collect either the litigation tax, or the bond forfeiture fee, but not both.

Litigation taxes are governed by the Municipal Court Reform Act, TCA 16-18-305(a). You pay a litigation tax for a case that results in a conviction. For traditional city courts, which is most city

courts, that tax is \$13.75 per case. For city courts exercising general sessions jurisdiction, that tax is \$17.75. That is found in TCA 67-4-602(c). The Department of Revenue receives the money and you use its Litigation Tax Form PRV 401. This litigation tax money goes to the Department of Revenue's general fund.

The bond forfeiture fee is found in TCA 38-6-103(d). This is to be paid when a defendant pays the entire ticket ahead of time, which is the same as posting a bond promising that he or she will show up to court, but when the person doesn't show up to court (because they just paid the whole thing to avoid showing up) that bond is forfeited and also paid to the Department of Revenue and is reported on the Litigation Fines and Fees Return Form PRV 414. Conveniently, this dollar amount is also \$13.75. While this money is forwarded to the Department of Revenue, it's allocated to the Tennessee Bureau of Investigation crime lab fund.

So when do you forward the money using Form 401 (Litigation Tax) or Form 414 (Bond Forfeiture Fee)?

Short answer: Different cities do it different ways, and there isn't a state consensus. Most cities do it like this though:

- The court date is the determining factor.
- If a person simply pays the ticket in its entirety before the court date, the \$13.75 is treated as a Bond Forfeiture Fee.
 - Technically a person could pay the entire ticket ahead of time and still show up to court to contest the charge. That money would be treated like a bond and if they show up and prevail with no conviction, they get the money back.
 - But, as it most commonly happens, the person pays the entire ticket and never shows up to court. This results in a forfeiture of the bond, and it goes to PRV 414 as a cash bond forfeiture fee.
- If a person shows up to court and is convicted by the judge or pleads guilty, that results in a conviction where the Litigation Tax is paid on Form 401.

Some cities only use the litigation tax for all cases. They treat the paying of the ticket in full and not showing up to court as a default judgement resulting in a conviction. That's ok.

The main takeaway is to make sure you collect and forward one or the other, but not both.

Question 3: Our city implemented the \$5 e-citation fee for the police department's handheld e-citation machines, but our five-year period to collect this fee is running out. What do we do?

Answer: Short answer, increase your court costs by \$5 and allow the \$5 e-citation fee to lapse.

E-citation programs are a great tool for your police department and your court clerks. It's more efficient, reduces errors with docket keeping, and easily integrates with your court software. They are also expensive.

E-citation programs and devices are like buying cars. Most people don't have enough money to pay for a car outright, so they finance the cars by making payments over several years. After those years, the car is paid for. The same is true with e-citation devices, so you "finance" the devices

with the extra \$5 fee per moving vehicle violation as permitted by TCA 55-10-207(e). However, state law says this separate fee shall “sunset” after five years (See TCA 55-10-207(e)(4)). This means once a city enacts this additional fee, state law says it automatically ends after five years. The belief is that after five years, all the upfront costs of the devices have been paid and the fee goes away.

However, much like with cars, once the initial purchase price is paid off, the devices still require maintenance and upkeep to be operational. Once a car is paid off, you still must buy gas, tires, oil changes, and maintenance. Same with e-citation programs. You may have to repair the devices, have software upgrades, paper, ink, computer server space, etc.

So to cover those expenses, I would recommend increasing the city’s court costs by \$5. When the e-citation fee lapses after five years, you will have five years’ worth of data and expenses to demonstrate the costs to operate the program and the cost benefits of having the program. Then just pass an ordinance to update the court costs. You’ll have the data to support your position and the costs of the program will fall towards the violators and not towards the traditional taxpayers of your city.

Question 4: I have questions for the Department of Safety for several issues. What is the best way to reach them?

Answer: Use this email address, DOSHS_court.reporting@tn.gov. This email address is monitored by a small team of Department of Safety employees. They will respond timely with great information. NOTE: This email is intended for court reporters, so please don’t give that email out to the public.