ABOUT ME

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MODULES

1. Municipal Court Reform Act
   • Jurisdiction
   • Clerk duties

2. Fees, Costs, and Taxes

3. Reporting
   • Department of Safety
   • Department of Revenue

4. Frequent Issues
   • Who gets what?
   • Can courts do this?

5. Updates for 2020
   • Fun stuff
JURISDICTION FOR MUNICIPAL COURTS

1. Charter
2. Code of Ordinances
3. Municipal Court Reform Act
4. State Traffic Violations

CHARTERS AND CODES

Charter
- Basically a city's birth certificate issued by the TN General Assembly
- Says what a city can do and cannot do
- Rarely changes, and difficult to do so
- Three types of charters
  - Private Acts – specific to a city (these must have been in existence prior to 1953)
  - General Laws – apply to all cities within a certain class, city may adopt “form charter” that are written into the state code
  - Home Rule – writes charter and adopts it in referendum.

Code of Ordinances
- Compilation of city’s laws and some of its regulations
- Passed by the city’s governing body, like city council or board of aldermen
- Regulations, laws, budget items, who makes decisions
- Should be updated frequently with new ordinances
- Much easier to revise than a city’s charter
- Can adopt certain state misdemeanors into code and enforce in city courts
CHARTER & JURISDICTION

- A city’s charter can create a municipal court
- Not every city in Tennessee has a city court
- But every city could create one if they wanted to
- Cities created after 1953 (i.e., after Private Act charters were no longer permitted) must use a charter format that creates a city court

MUNICIPAL COURT REFORM ACT

We will cover:
- Jurisdiction of Municipal Courts
- Types of offenses heard
- Clerk duties
- Statutory authority for fines, fees, court costs
- Municipal Court Judges
- Court Clerk Training
JURISDICTION – MUNICIPAL COURT REFORM ACT

Municipal Court Reform Act of 2004
Tennessee Code Annotated § 16-18-304, et. al.

The Municipal Court Reform Act will give you the best introductory guide of what a new Municipal Court Clerk does.

This statute also applies to Municipal Court Judges.

Finally, depending on the size of your town, different sections may apply to some cites, but not others.

MUNICIPAL COURT REFORM ACT OF 2004

Prior to this act in 2004, city courts had very little consistency in their operations from city to city. Some city courts originated from police departments, others from the mayor’s office, and others from the finance department.

This act established a general framework of how city courts are to operate and describe their jurisdiction.

Unlike other court settings however, this Act does not 100% detail every element of operation for city courts. Many of the issues that relate to city courts must still be found in other parts of the TN Code.
MUNICIPAL COURTS – QUIZ TIME

How many cities are there in Tennessee?  □ 345
How many cities have municipal courts? □ 225
How many of those municipal courts exercise concurrent general sessions jurisdiction? □ 25
Name them all □ Just kidding

TWO TYPES OF MUNICIPAL COURTS

Municipal Courts – Traditional
- Most common
- Municipal ordinance violations
- Every city can establish one if they want. Method of establishment depends on your city’s type of charter

Municipal Courts with Concurrent General Sessions Jurisdiction
- Municipal ordinance violations
- Criminal matters at the General Sessions level
- Court clerks are elected
- Probably have funnier stories.
DEFINITIONS - TCA § 16-18-301

There are two definitions in the Municipal Court Reform Act. These two definitions play a role in how one may interpret some of the actions or roles of a city court.

- TCA 16-18-301(b)(1) - “Any law to the contrary” includes, but is not limited to, any conflicting provision of any general statute, local law, private act, charter provision, municipal law, or municipal ordinance;
- TCA 16-18-301(b)(2) – “Municipal court” includes the city, town, mayor’s, recorder’s or municipal court, or other similarly functioning court, however designated, for any city, town, municipality or metropolitan government, whether the court exists pursuant to general statute, local law, private act, charter provision, municipal law, municipal ordinance or other legal authorization.

MUNICIPAL COURT JURISDICTION – TCA § 16-18-302

Can a Municipal Court hear everything that a State court can hear?
- Divorces?
- Personal Injury?
- Lawsuits against your city?

Can a Municipal Court hear criminal cases?
- Only if you have concurrent general sessions jurisdiction.
JURISDICTION – “CIVIL IN CHARACTER”

“Civil in Character”
Municipal ordinance violations are civil in nature – Mullins v. State, 380 S.W2d 201 (Tenn 1964)
“Over the years this Court has held that violations of a city ordinance is proceeded with as a civil matter rather than a criminal court.

Reaffirmed in Chattanooga v. Davis, 54 S.W.3d 248 (Tenn. 2001) – “Since our decision in City of Chattanooga v. Myers, … the law now appears settled that proceedings for a municipal ordinance violation are civil in nature, at least in terms of technical application of procedure and pursuing avenues of appeal…Indeed, depending up on the precise issue before the particular court, proceedings for a municipal ordinance violation have been described as “civil in character,”….

MUNICIPAL COURT JURISDICTION – TCA § 16-18-302

Pursuant to T.C.A. § 16-18-302(a)(1) and (a)(2) a municipal court can hear the following:
Part (1)
- Cases for violation of the laws and ordinances of the municipality; or
- Cases arising under the laws and ordinances of the municipality; and
Part (2)
- City Ordinances that mirror/duplicate/ incorporate by reference State criminal laws that are Class C misdemeanors where the maximum penalty is a civil fine that does not exceed $50
MUNICIPAL COURT JURISDICTION – TCA § 16-18-302(B)(1)-(8)

For cities with populations over 150,000, those courts also have jurisdiction to enforce municipal laws that mirror/duplicate/incorporate by reference a few more severe violations:
- Driving without a license
- Reckless Driving (Class B Misdemeanor)
- Alcohol violations (Class A Misdemeanors)
  - Underage consumption,
  - Underage purchase
  - Illegal possession and transportation, and
  - Illegal sales
- Yelling “Roll Tide” – Class C Felony – Crimes Against Good Taste

Cities with populations over 150,000:
- Nashville
- Memphis
- Knoxville
- Chattanooga
- Clarksville
- Murfreesboro
MUNICIPAL COURT OATH ADMINISTRATION – TCA § 16-18-303

TCA 16-18-303 allows a popularly elected or appointed judge of a municipal court to administer oaths.

This allows judges to swear in new court clerks, swear in witnesses or defendants, possibly other city positions like city attorney, mayor, etc.

BECOMING A NEW COURT CLERK – TCA § 16-18-310(A)

TCA § 16-18-310(a) – A person can become the municipal court clerk three ways:

1. Election
2. Appointed
3. Designated

Upon becoming the new court clerk, someone must notify the Administrative Office of the Court of the news. That “someone” is the chief administrative officer of the municipality. This can be the mayor, city manager, or other designee.
COURT CLERK DUTIES – TCA § 16-18-310

Under T.C.A. § 16-18-310(b), Municipal Clerks shall maintain accurate and detailed records and summary reports of all financial transactions and affairs of the court, reflecting:

- All disposed cases (judgments/guilty/dismissed, etc.)
- Assessments
- Collections (including keeping track of payment plans)
- Suspensions
- Waivers and transmittals of litigation taxes
- Court costs
- Forfeitures
- Fines
- Fees
- Any other receipts and disbursements

COURT CLERK TRAINING – TCA § 16-18-309(B)(1)

Municipal Court Clerks must complete at least three hours of training each year.

Types of training:
- Training taught by MTAS
- Training approved by the AOC, which basically is MTAS again.
- Training by me!
- Only the chief clerk required to get training pursuant to TCA § 6-54-120.
MUNICIPAL JUDGE TRAINING – TCA § 16-18-309(A)

Judges receive training too.
- Must complete the required CLE hours (12 general, 3 ethics) PLUS an additional 3 hours of specific continuing education provided through or by the Administrative Office of the Courts, tailored for municipal court judges.
- Most city judges practice law full time and are city judges as a part time role.
- Larger cities with concurrent general sessions may have full time judges (Nashville, Memphis)

CONTEMPT OF COURT – TCA 16-18-306

Contempt of Court shall be punishable by a fine in the amount of $50

A municipal judge cannot send anyone to jail for contempt in a traditional municipal court.

Concurrent general sessions jurisdiction courts may have more contempt powers in a court with. Jail time may be possible for willful non-payment of fine, but only because general sessions can hear some criminal matters, while traditional municipal courts could not.
APPEALS – TCA § 16-18-307

Pursuant to T.C.A. § 16-18-307, a party unhappy with the ruling from the municipal court judge may appeal directly to the circuit court of that judicial district.

Requirements:

- Must file notice of appeal within 10 days (not counting Sundays) with the circuit court of the county;
- Give a $250 bond for the person’s appearance and faithful prosecution of the appeal (or file a pauper’s oath)

De Novo Review - All appeals will be heard “de novo” meaning that the circuit court will hear the appeal as if it was brand new, never been heard before in any other court, and will not presume the municipal court’s previous ruling as either correct or incorrect.

APPEALS - CONTINUED

The bond is essentially a pile of money that the circuit court will use to pay off any unpaid circuit court fees if the defendant owes any additional money.

If the defendant pays everything in the circuit court, then defendant should receive a return of the $250 in full.

MTAS recommends that the city court clerk collect the $250 bond from the defendant.

The city court clerk will then record the bond payment in the file and deliver the money to the circuit court clerk.

The defendant will file the appeal.

The defendant most likely will also have to pay the filing fees associated with that circuit court. Those fees may differ from county to county.
CONCURRENT GENERAL SESSIONS JURISDICTION – TCA § 16-18-311

TCA § 16-18-311 is a lengthy section that details the required steps a city must undertake to exercise or create a court with general sessions jurisdiction.

- Courts with general sessions jurisdiction can hear the same cases as the county’s general sessions court.
  - All classes of misdemeanors. Reckless driving, alcohol violations, suspended driver’s licenses, some drug offenses.
- Courts that were exercising concurrent general sessions jurisdiction prior to May 12, 2003 could continue to exercise GS jurisdiction upon passage of the MCRA.
- Courts that had GS jurisdictions in their charters but were not exercising GS court cases, however, could not start exercising concurrent GS jurisdictions.
- Courts wishing to create a jurisdiction to exercise concurrent general sessions cases can do so, but must follow the lengthy processes detailed in the statute.

SUBSTITUTE JUDGES – TCA § 16-18-312

If a municipal judge is unable to preside over municipal court for any reason, then a special substitute municipal judge shall be determined pursuant to an:

1. Ordinance of the governing body of such municipal court
2. In the absence of such ordinance, then a municipal judge may designate in writing, to be filed with the clerk of the municipal court, the name a special substitute judge to hold court in the municipal judge’s place and stead.
3. The special substitute judge must meet the judge requirements set forth in the state law and the city’s charter and must take the same oath as the municipal judge
4. Such appointment is effective for no more than 30 days, after which a new appointment is required.

Municipal court judges and general sessions court judges are empowered to sit by interchange for other municipal court judges. TCA 16-18-312(b)
JUVENILE JURISDICTION – TCA § 37-1-146

- Juvenile courts have original jurisdiction for traffic violations of minors.
- Juvenile court judges may waive that jurisdiction to city courts for traffic offenses.

Under the TCA 16-18-302(d) (Municipal Court Reform Act), a municipal court may exercise no jurisdiction other than the jurisdiction authorized by the section; provide however that this section shall not be construed to impair or in any way restrict the authority of a juvenile judge to waive jurisdiction over any cases or class of cases of alleged traffic violations, as authorized pursuant to TCA 37-1-146, or the authority of a municipal court to receive and dispose of such cases or classes of cases of alleged traffic violations.

TCA § 37-1-146(c) (Juvenile Courts and Proceedings) allows the juvenile court judge to waive jurisdiction of traffic violators who are 16 years of age or older, and such cases shall be heard by the court having jurisdiction of adult traffic violators, or the child's parent or legal guardian may pay the stipulated fine to a traffic bureau.

JUVENILE TRAFFIC OFFENDER - CONTINUED

When a municipal court judge is permitted to hear a juvenile traffic offense case, the court may make one or any combination of the following decisions:

1. Suspend and hold the child's driver license for a specified or indefinite time;
2. Limit the child's driving privileges as an order of the court;
3. Order the child to attend traffic school, if available, or to receive driving instructions;
4. Impose a fine of not more than fifty dollars ($50.00) against the child's parent or legal guardian; or
5. Perform community service work in lieu of a fine (permitted by law, but generally not advised in city court because it may border on criminal court remedies)

Tenn. Code Ann. § 37-1-146

NOTE – Juvenile court law allows a juvenile judge to place the child on probation pursuant to § 37-1-131(a)(2) but municipal courts do not appear to have that type of power since that is a criminal law affiliated program.
Municipal Court Reform Act
Jurisdiction
Clerk duties

Fines, Fees, Costs, and Taxes

Reporting
Department of Safety
Department of Revenue

Frequent Issues
Who gets what?
Can courts do this?

Updates for 2020
Fun stuff

FINES, FEES, COSTS, AND TAXES

1. Judgment
2. Fines
3. Litigation Taxes
4. Bond Forfeiture Fees
5. Court Costs
ELEMENTS OF A CITY COURT JUDGMENT

1. Fine
2. Court Costs
3. State Litigation Tax (or Cash Bond Forfeiture)
4. Local Litigation Tax (if applicable)
5. E-citation fee (if applicable)

= Grand Total of Judgment

PART I - FINE

A municipal court judge can issue fines against those cited, but only up to $50.

Why?

The Tennessee Constitution, Article VI, § 14 places a $50 limit on any fine assessed against a party where there is not an opportunity for the fine to be assessed by a jury of a person’s peers.

Back in 1796, $50 was a high, steep fine. Adjusted for inflation, that would be close to $975 today.
PART 1 - FINES

Fines are only collected with a conviction.

So who receives the money?

It depends on the violation and cited offense.

If the violation is for a city ordinance violation, the city keeps the fine.

If the violation is for a state law violation adjudicated in a city court, then the State of Tennessee gets the money.

- This scenario is usually for specific moving vehicle violations like seat belts, child restraint, etc. where the statute explicitly states the State of Tennessee receives the money.

However, while the fine itself may only be $50, the additional court cost can exceed $50 and be constitutional as long as the addition court costs are not punitive in nature.

See Tennessee Attorney General Opinion
Number 06-075
**PART 2 – COURT COSTS**

**T.C.A. § 16-18-304** details the court costs.

Each city sets its own court costs and they vary from city to city.

Court Costs are intended to cover the expenses for:
- Clerk staff
- Judges
- Courtrooms
- Court officers
- Paper
- Computer software
- All things needed to run a court

Ideally, most of the funds needed to cover the court come from court costs, and less from tax dollars.

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**PART 2 – COURT COSTS**

There is no set amount for any city’s court costs

No state guidance on court costs

Key phrase is “reasonable court costs”

Court costs are not intended to be punitive

Court costs are to be determined by the expenditures needed to properly operate your court

Court costs are typically established in your city's code of ordinances, or established by a subcommittee of the city council or board of aldermen
PART 2 – COURT COSTS

Municipal Training Education Fee - $1

Under T.C.A. § 16-18-304,
- The only specific dollar amount mentioned in the MCRA regarding court costs is the Municipal Training Education fee.
- $1.00 of each court costs transactions associated with paying a fine, fee, litigation tax, etc. will go to the Administrative Office of the Courts (AOC) for training municipal clerks statewide.
- MTAS is specifically named to provide the training for this service to the clerks statewide.
- That $1 fee covers these classes and trainings across the state.
- That includes this class right here.

PART 3 – STATE LITIGATION TAX

TCA § 16-18-305(a) – all cases in municipal court
- State of Tennessee privilege tax on litigation - $13.75
- Different than court costs
- Send to Department of Revenue monthly

TCA § 16-18-305(b) - $1 litigation tax on all public parking tickets
- Typically not heard in a city court
- Can be parking meters, fire lanes, handicap spaces, city owned parking structures
- Even if your town doesn’t have parking meters, you can still issue parking citations (if violation is in city’s code)
- Parking violations can be issued by both sworn (police and/or fire) and non-sworn personnel (parking enforcement)
PART 3 – STATE LITIGATION TAX

Collect litigation taxes when:
1. Found guilty by a judge after a hearing
2. Pleads guilty
3. Pays the fine before court

Do not collect when:
1. Found not guilty by a judge after a hearing
2. Case dismissed by a judge (but a judge could still collect court costs)
3. Cash bond paid (but you do collect the cash bond forfeiture fee)

Pay TN Department of Revenue
Due Date – 15th of each month

However, the state law has a “grace period” of sorts. Litigation taxes will be considered delinquent if not paid within 45 days.

T.C.A. § 67-4-206

Many cities have encountered this hurdle during the pandemic due to inability to work in their normal offices and have access to their court reporting software.

Be sure to pay these taxes.

Any fees will be considered the debt of the clerk and the clerk and the clerk’s official bondsman will be liable for these amounts – T.C.A. § 16-18-305(d)
PART 4 – LOCAL LITIGATION TAX

T.C.A. § 16-18-305(c) – A city can add another local litigation tax on top of the existing State Litigation Tax.

Additional local tax on litigation up to $13.75

Must be passed by ordinance by your city

- Note – Not every city charges another tax of $13.75 per transaction. The additional tax is up to each city. In an MTAS survey in 2014, other cities charged:
  - Clarksville - $2
  - Chattanooga $5.25
  - Mt. Juliet - $0
  - Brentwood - $0

Does your city have a local litigation tax?

PART 5 – E-CITATION FEE

If a city wishes to implement an electronic citation program, the State permits a separate fee to add on to each traffic citation resulting in a conviction to offset the costs of a new program.

TCA § 55-10-207(e)(1) allows a separate $5 per traffic ticket to be added to each violation.

- Traffic tickets only
- Must be passed by city ordinance
- Police keeps $4 and court clerk office keeps $1
- Ordinance automatically “sunsets” (i.e. terminates) after 5 years
- Once five years is over, a city can retain the fee by adding that to the court costs, because it would be a “reasonable” expense.
MODULES

1. Municipal Court Reform Act
   - Jurisdiction
   - Clerk duties

2. Fees, Costs, and Taxes

3. Reporting
   - Department of Safety
   - Department of Revenue

4. Frequent Issues
   - Who gets what?
   - Can courts do this?

5. Updates for 2020
   - Fun stuff

MODULE 3 - REPORTING

Department of Revenue
- Form PRV 401 – Litigation Taxes
- Form PRV 414 – Litigation Fines and Fees Return

Department of Safety
- Court Action Report
- Report of Fines, Fees, and Costs for Violations of the TN Motor Vehicle Law
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal Courts not exercising General Sessions jurisdiction</td>
<td>$172.50</td>
</tr>
<tr>
<td>Civil cases in Chancery/Circuit/Probate Courts or General Sessions Courts when exercising State Court jurisdiction</td>
<td>$172.50</td>
</tr>
<tr>
<td>Civil Cases-General Sessions or Municipal Courts exercising General Sessions jurisdiction</td>
<td>$172.50</td>
</tr>
<tr>
<td>General Sessions Court cases exercising state court jurisdiction except juvenile cases</td>
<td>$172.50</td>
</tr>
<tr>
<td>Municipal parking violations</td>
<td>$172.50</td>
</tr>
<tr>
<td>Criminal Charges</td>
<td>$172.50</td>
</tr>
<tr>
<td>Criminal Charges involving cases in Title 55 – Chapter 8</td>
<td>$172.50</td>
</tr>
<tr>
<td>Criminal Charges- victim notification fund</td>
<td>$172.50</td>
</tr>
<tr>
<td>Criminal Charges - continuing judicial education</td>
<td>$172.50</td>
</tr>
<tr>
<td>Adjustments</td>
<td>$172.50</td>
</tr>
<tr>
<td>Delinquent taxpayer penalties and interest under Tenn. Code Ann. § 67-4-206</td>
<td>$172.50</td>
</tr>
<tr>
<td>Gross tax subtotal (add Lines 1 through 11)</td>
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</tr>
<tr>
<td>County Commission - Multiply Line 12 by commission rate</td>
<td>$172.50</td>
</tr>
<tr>
<td>Municipal Commission - Multiply Line 12 by commission rate</td>
<td>$172.50</td>
</tr>
<tr>
<td>Net tax subtotal - Line 12 less either Line 13 or Line 14</td>
<td>$172.50</td>
</tr>
</tbody>
</table>
### Litigation Tax vs. Cash Bond Forfeiture

#### Litigation Tax
- T.C.A. § 16-18-305(a)
- $13.75
- Department of Revenue
- Form 401, line 1
- 2% commission for court clerk

Based on conviction in city court, usually after court hearing or guilty plea.

#### Cash Bond Forfeiture
- T.C.A. § 38-6-103(d)(1)(A)(iv)
- $13.75
- Department of Revenue
- Form 414, Line 14
- 5% commission for court clerk

When defendant pays cash bond prior to court hearing (without pleading guilty on the ticket), but never shows up to contest the charge, forfeiting the bond.
NEW: ONLINE STATE LITIGATION TAXES AND FEES FILING

May 2020 - TN Taxpayer Access Portal

- Department of Revenue
- New online way to pay litigation taxes (Form 401) and Fines and Fees (Form 414) at

https://tntap.tn.gov/EServices

Encouraged, but not mandatory to file online

Log in to TNTAP

Enter the logon details provided to you during the first full week of May and click Logon.

TN TAXPAYER ASSISTANCE PORTAL (TNTAP)
Select Tax Account

- Click on the Litigation Tax or the Litigation Fines and Fees link to see more information about your account.

File a Return

- Each tab (Submissions, Correspondence, etc.) displays information specific to that topic.
- All text in blue can be clicked to display more information.
- Click File Return to submit your return for that period.
The Return

- To file the return, enter the information line-by-line.
- As information is entered in the white fields, TNTAP calculates the numbers in the gray fields.

The Return Cont.

- Click Next to continue.
There are no required supporting documents. 
Click Supporting Documents if you have something to add. 
Click Next to continue.

Payment can be made by ACH Debit or credit card. 
To pay by ACH Debit, click Yes. 
Follow the instructions on the expanded screen.
ACH Debit Payment

Payment Details

Amount Due

Would you like to pay by ACH debit?

No

Yes

Payment Channel

Type

ACH Debtor

Bank account Type

Personal

Account Number

Required

Bank routing number

Required

Bank account number

Required

Account service account number

Required

Date payment cleared for future set

Yes

No

By signing below, you certify that you have contacted your financial institution and authorized payment originating from the date of this transaction.

Send Check
Cancel
Preview
Submit

Confirmation

- When the submission is complete you will see a confirmation page.
- Click Print Confirmation to print a copy of the return.
- Click OK to continue.

TNTAP
SAFETY: COURT ACTION REPORTS

Report Court Action Reports to the Department of Safety within 30 days of disposition (i.e. result of the case)

Report within 5 days of dispositions for Commercial Driver’s License (CDL) cases
SAFETY: COURT ACTION REPORTS

Five disposition options:
1. Guilty as charged
2. Reduced – Guilty of __________
3. Dismissed
4. Failed to Appear – Initiate Suspension
5. Failed to Pay Fine/Costs After Conviction – Initiate Suspension

SAFETY: REPORT OF FINES, FEES, AND COSTS

Report of Fines, Fees, and Cost for Violations of the Tennessee Motor Vehicle Laws:
1. Seat Belt Law
2. Child Restraint Law
3. No Driver’s License in Possession
4. (GS only) Impaired Drivers Fund for DUI offenses

Money due 15th of each month
MODULE 4 – FREQUENT ISSUES

Who gets the fine money for what offenses?

Department of Safety
- Child Restraints
- Seatbelts
- Hands Free Law
- Impaired Driver’s Trust (GS only)
- Traumatic Brain Injury Trust (GS only)
- Driver’s License law
- Financial Responsibility
GENERAL FRAMEWORK FOR MOTOR VEHICLE LAWS IN CITIES

Part 1: Applicable State Laws

- Municipal Court Reform Act - TCA 16-18-302(a)(2) permits cities to have jurisdiction for Class C Misdemeanors that mirror, substantially duplicate, or incorporate by cross reference language of a state criminal statute.

- TCA 55-10-307(a) covers motor vehicle laws. In this section, it reads:
  - (a) Any incorporated municipality may by ordinance adopt, by reference, any of the appropriate provisions of chapter 8 of this title, §§ 55-10-101 -- 55-10-310, 55-12-139, 55-50-301, 55-50-302, 55-50-304, 55-50-305, 55-50-311, and 55-10-312, and may by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the listed sections. All fines, penalties, and forfeitures of bonds imposed or collected under the terms of §§ 55-50-311 and 55-50-312, shall be paid over to the appropriate state agency as provided in § 55-50-604.

Part 2: Applicable City Ordinances

- Cities must adopt “Class C Misdemeanors that mirror, substantially duplicate, or incorporate by cross reference language of a state criminal statute” into its own Code of Ordinances

- Example: Adoption of the Rules of the Road Ordinance

  15-126. Adoption of state traffic statutes. By the authority granted under Tennessee Code Annotated § 16-18-302, the City of __________ adopts by reference as if fully set forth in this section, the “Rules of the Road,” as codified in Tennessee Code Annotated §§ 55-8-101 through 55-8-131 and §§ 55-8-133 through 55-8-180. Additionally, the City of __________ adopts Tennessee Code Annotated §§ 55-4-101 through 55-4-127, §§ 55-4-130 through 55-4-133, §§ 55-4-135 through 55-4-138, §§ 55-8-181 through 55-8-189, § 55-8-190, §§ 55-8-191 through 55-8-200, §§ 55-9-401 through 55-9-408, §§ 55-9-601 through 55-9-606, § 55-12-139, and § 55-50-351, by reference as if fully set forth in this section.
GENERAL FRAMEWORK FOR MOTOR VEHICLE LAWS IN CITIES

Part 3: Cities can keep it unless the state statute specifies otherwise
- MTAS believes that if a state statute is a Class C Misdemeanor, and
- The applicable State statute does not directly detail that it gets the money,
- Then the cities have the authority to keep it.

Please consult with your city attorney for a formal attorney-client opinion though.

SAFETY: CHILD RESTRAINT AND SEATBELT

TCA 55-9-602 – Child Restraint Systems
- If first offense, may attend approved class to educate hazards of not properly transporting children in cars. A fee may be charged.
- $50 fine issued to driver/guardian
- No litigation tax, no court costs
- State gets the money
- One citation per vehicle (not one citation for every unrestrained kid)

TCA 55-9-603 – Seat Belts
- The fine for the first offense is $30 for adult seat belt violators and 16-17-year-old offenders; $50 for second or more offenders
- Municipal court clerk keeps the remaining $5 of the $30 fine.
- $25 is submitted to Safety
- Under the statute, the fine for a second or subsequent offense is increased to $55 (but $50 for city courts only because of the $50 cap)
HANDS FREE LAW – TCA 55-8-199

Class C Misdemeanor
TCA 55-8-199 is included in the list of offenses that can be incorporated into the city code
MTAS believes this fine can stay with the cities.
- First time offenders – max fine of $50 (depending on your city’s code if adopted)
- Third or subsequent offenders - $100
- Violation results in an accident - $100
- TDOT work zone, construction work zone, or school zone - $200
  - But, these fines are capped at $50 if ticket is written for the city ordinance

Court Costs limited to $10
- Still forward the $1 MTE fee from the court costs

For first time offenders, driver may attend and complete driver education courts (i.e. traffic school).
- Permissible by the judge’s decision
**IMPAIRED DRIVERS TRUST FUND – TRAUMATIC BRAIN INJURY TRUST FUND**

**Impaired Drivers Trust Fund**
- General Sessions Court Only
- TCA 55-10-413(b)
- $5 fee for all DUI convictions
- Forwarded to Department of Safety
- Deposited into the "Impaired Drivers Trust Fund"

**Traumatic Brain Injury Fund**
- General Sessions Court Only
- TCA 68-55-401
- Speeding in excess of 10 mph - $5
- Reckless Driving - $30
- Driving when license is cancelled, revoked, suspended - $15
- DUI - $15 (Courts collect total of $20 for DUI. $15 for TBIF and $5 for Impaired Drivers)
- Accidents involving death or personal injury - $15
- Drag racing - $25

**DRIVERS LICENSE ISSUES – TCA 55-50-351**

**Driving without license in possession**
- If a person has a valid license, but does not have it in his or her possession, city court has jurisdiction
- Class C Misdemeanor –fine goes to Safety
- Court Costs stay with the city since heard in city court

**Driving on suspended, cancelled or revoked**
- If license suspended, revoked, or cancelled, cannot hear in traditional city court
- More severe than a Class C Misdemeanor
- GS jurisdiction courts can hear this
- Fine goes to the State
FINANCIAL RESPONSIBILITY – TCA 55-12-139

Insurance Law
- Class C Misdemeanor
- Can be adopted as city offense into city code
- Can be heard in city courts
- MTAS believes city has the authority to keep the fine money if adopted into city code
- Statute says max fine $300, but if it's a city violation, max fine of $50
- Cannot charge this offense by itself. Must charge with other moving vehicle violation and then add this on.
  - “At the time a driver of a motor vehicle is charged with any violation under….” TCA 55-12-139(b)(1)(A)

Had valid insurance when cited
- Had valid insurance, but could not produce a proof of insurance card or mobile device display
- Returns to court with proof of insurance showing coverage on the cited date
- First citation: Court must dismiss the citation
- Second or subsequent citation: Court may dismiss
  - TCA 55-12-139(e)(1)
  - If dismissed, no fine, no court costs, no taxes, no fees

Did not have valid insurance when cited
- If you did not have valid insurance at the time when cited
- No dismissal is allowed – TCA 55-12-139(e)(2)
- Will be found guilty and reported to Department of Safety
- Fine determined by city’s code (if adopted as city violation), max fine $50
ADDITIONAL ISSUES

RE记ACTING MOTOR VEHICLE ACCIDENT REPORTS

TRAFFIC SCHOOL

RESTITUTION

COLLECTIONS

RECORDS REQUEST FOR MOTOR VEHICLE ACCIDENT REPORTS

TCA 10-7-504(a)(31)(e) - “Personally Identifying Information” which may need to be redacted.

- Street address and ZIP codes
- Telephone numbers
- Driver license numbers; and
- Insurance information

Whether or not redactions are needed depends on who is requesting the report
RECORDS REQUEST FOR MOTOR VEHICLE ACCIDENT REPORTS

- Person named in the report as driver, passenger, witness, etc.
  - TCA 10-7-504(a)(31)(B)

  ![Diagram](image)

- Named person’s agent, legal representative, attorney, or person with permission
  - TCA 10-7-504(a)(31)(B)
  - See sample Certification Form

  ![Diagram](image)
RECORDS REQUEST FOR MOTOR VEHICLE ACCIDENT REPORTS

- Government or law enforcement carrying out its official duties – Unredacted Report TCA 10-7-504(a)(31)(C)

Request from government or law enforcement

Provide unredacted report

RECORDS REQUEST FOR MOTOR VEHICLE ACCIDENT REPORTS

- General Public (members of public, members of media or news organizations, other professions using the accident reports to market business like chiropractors or personal injury lawyers).

General Public

Check ID for TN residency if required by your city's policy

Cannot provide authorization for unredacted release

Redact “Personally Identifying Information”

- You should redact “Personally Identifying Information” as defined in TCA 10-7-504(a)(31)(E):
  - Street Address and Zip Codes
  - Telephone numbers
  - Driver License number; and
  - Insurance Information.
TRAFFIC SCHOOL – TCA 55-10-301

- Driver education courses may be offered at the judge’s discretion
- Not every city offers traffic school, nor are cities required to offer it
- Typically, a case is dismissed upon successful completion of traffic school
- Report to Safety the defendant attended traffic school
- Judges can convict someone of a driving offense, and still send them to traffic school (usually reserve that for more severe cases) [TCA 55-10-301(b)(1)]

TRAFFIC SCHOOL - CONTINUED

- Traffic school can be taught in house or virtually by city personnel (usually police), or through a third party vendor (in person or online)
- All traffic schools must be approved by the Department of Safety
- 4 hour and 8 hour classes, costs must be “reasonable” ranging from $50 - $175 - see TCA 55-10-301(a)(2)
- Judges discretion on any “look back” period of previous traffic school attendance before offering (no state standard)
- List of approved class providers shall be provided by the clerk. Full list is available on the Department of Safety’s website
RESTITUTION

Restitution is separate from the fine and must be “remedial” – City of Chattanooga v. Davis 54 S.W.3d 248 (Tenn. 2001).

“Remedial” is intended to recover expenses incurred by the city to correct the cited offense.

- Clean up costs, landfill fees, etc.
- Must be able to prove specific expenses per citation (i.e. illegal dumping, show receipt for the city’s landfill fee)
- Cannot be punitive, so it is separate from the fine
- Rarely utilized and very little case law about it for city courts, especially since most city court violations are moving vehicle offenses, which there are no outside city costs other than regular law enforcement

COLLECTIONS AND COLLECTIONS AGENCIES

City can contract with a collections agency, or Sue the defendant in civil court like any other matter.

If use collection agency, T.C.A. § 40-24-105(e) requires:

1. City passes ordinance allowing collection agency to collect on its behalf for fines and cost 60 days past due or later
2. Collection agency may be paid an amount not exceeding 40% of sums collected
3. Written contract states whether the collections agency can institute an action (lawsuit) to collect the fines and costs
4. This section does not allow the collection agency to go after unpaid parking tickets in violation of TCA § 6-54-513.

Collection fee can be a contingency of the total ticket, or potentially added onto the entire ticket price, making the collected amount higher than the court judgment.
ROBINSON V PURKEY HAS BEEN REVERSED

Does this mean Robinson has been overturned!!

So will the State start suspending driver's licenses again?

Wooooo!!!

NOT SO FAST MY FRIEND
ROBINSON V. LONG – CASE HISTORY AND OTHER EVENTS

- Nashville Federal Court Opinion issued October 16, 2018 – State cannot suspend licenses for traffic debts, must offer payment plans
- State of TN Appealed to 6th Circuit Court of Appeals in Cincinnati (Federal Appellate Court)
- While pending appeal, similar case arising out of Michigan is decided, Fowler v. Michigan. That federal court also struck down Michigan's practice of suspending licenses for nonpayment of traffic debt. Michigan also appealed to the 6th Circuit.
- Michigan's case was heard first. 6th Circuit agreed with Michigan and revered the Michigan district court.
- 6th Circuit was now bound by its own decision when the TN case was heard by the same court. 6th Circuit reversed the Nashville district judge.
- Robinson v. Long rehearing en banc petition was denied. Case remanded to Nashville district court.

UPDATES – PAYMENT PLANS

Thomas v. Haslam (now Thomas v. Lee)
- Criminal cases – if you don't pay criminal fines, can lose driver's license (only applies to GS courts)
- Plaintiffs sued, plaintiffs won, State of Tennessee appeal
- State legislature changed law implementing payment plans detailed in TCA 40-24-105
- State began suspending DL of non-complaint starting September 1, 2020 (criminal violators only)

Robinson v. Purkey (now Robinson v. Long)
- Civil courts – Traffic Debt and Payment Plans
- Plaintiffs sued, plaintiffs won, State of Tennessee appealed
- State legislature changed law implementing payment plans, detailed in TCA 55-50-502(j)
- We are still stuck with payment plan law though
- Department of Safety not resumed suspending licenses
- Still in holding pattern
Payment Plans in General

1. **Required** – Payment plans will be required for every licensee convicted of a driving offense and fails to pay the fines and costs on the disposition date, i.e. court date.
   - Person will discuss payment plan options with the judge if in a hearing. Make payments in accordance to the plan.
   - Subject to Payment Plan until fully paid or if outstanding costs are waived by the court.

2. **Maintain Driving Privileges** – While on a payment plan, a person will maintain driving privileges only if he or she is otherwise eligible for a driver’s license.
STARTING THE PAYMENT PLAN

Payment plans must be reasonable and based on the person’s ability to pay.
- Judge discusses finances with defendant, may require defendant to complete affidavit of indigency.
- Judge orders the plan. Hopefully, the judge, the defendant, and the court clerk all sign the plan.

Court Clerk is required to inform the person that:
1. Failure to timely make payments as ordered by the court results in suspension of the person’s license and a restricted license will be issued.
2. Any default on the payment plan, while on a restricted license, would result in revoking the restricted license and driving privileges.

MODIFICATIONS TO A PAYMENT PLAN

Modifications should be granted when:
1. Person’s financial circumstances change or
2. Upon good cause shown.

Court clerks have the authority to grant modifications.
If modification request was denied by the deputy clerk, the person may appeal to the chief clerk.
If the chief clerk denies the request, the person may petition the court for a hearing.
FAILING TO COMPLY – FIRST TIME

- Court clerk notifies the Department of Safety of failure to comply with the plan
- Department of Safety sends written notice informing person of pending license suspension
- DOS notice instructs the person to contact the court clerk within 30 days (from date of notice) to reestablish compliance with the payment plan or demonstrate compliance
- Once compliance is reestablished or demonstrated, the court clerk shall issue a receipt or other documentation
- Person presents this information to the Department of Safety before the 30 days period expires

LICENSE SUSPENSION AND RESTRICTED LICENSE

License Suspension
1. Person fails to reestablish or demonstrate compliance with payment plan
2. Person fails to present the receipt or other documentation to the Department of Safety by the expiration of the 30 day rule

Restricted License
After license suspended, the person may apply for a restricted license. RL valid only for traveling for the following:
1. Employment
2. School
3. Religious worship
4. Participation in a recovery court
5. Serious illness of person or immediate family member

Court order must state the necessary times and places of permissible operation of vehicle. Must still comply with payment plan
FAILING TO COMPLY – SECOND TIME

- Same process for notifying the Department of Safety and reestablishing or demonstrating compliance.
- Person will be notified that the restricted license will be revoked.
- The license will be revoked for at least 6 months. Revocation occurs when a person fails to comply with the payment plan or present a receipt or other documentation to the Department of Safety before the 30 day period expires.
- Even if license is revoked, the person should still be actively participating in the installment plan.
- After 6 months, may apply for reissued restricted license.

CLERK QUESTIONS TO ASK

A person, with revoked license, may apply to the court clerk for certification to be eligible to receive a reissued restricted license.

Two questions to ask before granting certification:
1. Did the person wait 6 months before applying for the reissued license?
2. Is the person actively participating in a payment plan?
STATE REQUIREMENTS TO OBTAIN REISSUED RESTRICTED LICENSE

- Same geographical and time restrictions apply for a reissued restricted license.

- The person should submit the court clerk’s certification and pay the $65 application fee to the Department of Safety.

- The certification and fee should be presented together, within 10 days after the certification is issued.

- A copy of the certification may serve in lieu of a driver’s license until the reissued restricted license is issued.

FOR LICENSE SUSPENSIONS BEFORE JULY 1, 2019

A licensee may apply for an order reinstating his or her driver’s license upon entering a payment plan with the court clerk (i.e. the court with jurisdiction over the offense).

A certified copy of the court’s order may be presented to the Department of Safety. A driver’s license will be reissued, if the person is otherwise eligible for a driver’s license. There is no fee for the license.

Only applies for licenses suspended under TCA 55-50-502(a)(1)(H). Does not include licenses suspended from criminal court proceedings or fines.
PAYMENT PLANS FOR CRIMINAL CONVICTIONS

- Applicable for concurrent general sessions jurisdiction courts only.
- TCA 40-24-105 – A payment plan is required for any person who holds a TN driver’s license and fails to pay all outstanding litigation taxes, court costs, and fines within one year of completing the sentence.
- The payment plan applies until the person fully pays the court judgment or the court waives any outstanding taxes, costs or fines.
- Process for installment plan is the same as TCA 55-50-502.
- Courts have resumed suspending licenses for nonpayment for these criminal matters starting September 1, 2020.

INDIGENCY DETERMINATIONS

The court shall offer the person an opportunity to submit proof of inability to pay taxes, fines, or court costs.

An indigent person is defined as “any person who does not possess sufficient means to pay reasonable compensation for the services of a competent attorney.” TCA 40-14-201(1)

Uniform Civil Affidavit of Indigency Form available on the TN Supreme Court website http://www.tncourts.gov/sites/default/files/docs/uniformaffidavitofindigency.pdf
QUESTIONS?

Good…but one more thing…

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