

DL, Handgun, & Environmental Hearings

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Procedure Only

not reviewing underlying laws or issues

Civil, Criminal, or Other?

- Hearings which impose a punitive fine or confinement in jail are considered criminal in nature.
- American jurisprudence recognizes that there is a third category of case. This type of case “is not an adversarial proceeding, a civil action, or a criminal prosecution ... instead, it is administrative in nature.”

Wisser v. State, 350 S.W.3d 161 (Tex. App. –San Antonio 2011), quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972).

Civil, Criminal, or Other?

- TJCTC's position: "administrative hearings" are principally governed by statute. Follow the statutes. If the hearing has been identified as civil in nature, we recommend applying the Texas Rules of Civil Procedure to the extent that doing so is possible. If the rules conflict with a statute, the statute controls.
- If a type of administrative hearing has not been identified by a Texas court or the attorney general as civil or criminal in nature, assume that the hearing is administrative in nature.
- In this presentation, only DL hearings are civil.

Texas Department of Public Safety v. Styron, 226 S.W.3d 576 (Tex. App.—Houston [1st Dist.] 2007)

DL Suspension Hearing

Transportation Code Section 521, Subchapter N.

Civil Proceeding

Why Suspended by DPS?

TC §521.292

- (1) drive while the person's license was suspended, canceled, disqualified, or revoked, or without a license after an application denied;
- (2) habitually reckless or negligent operator of a motor vehicle;
- (3) habitual violator of the traffic laws; (4 or > convictions that arise out of different transactions in 12 consecutive months, or 7 or > convictions that arise out of different transactions in 24 months, if the convictions are for moving violations of the traffic laws of any state)
- (4) permitted the unlawful or fraudulent use of the person's license;
- (5) committed an offense in another state would be grounds for suspension in Texas;
- (6) convicted of 2 or > separate offenses of a violation of a restriction imposed on the use of the license;
- (7) responsible as a driver for any accident resulting in serious personal injury or serious property damage;
- (8) holder of a provisional license and has been convicted of 2 or > moving violations committed within a 12-month period; or
- (9) committed an offense under Section 545.421.

Why Revoked by DPS?

TC §521.294

- (1) is incapable of safely operating a motor vehicle;
- (2) has not complied with the terms of a citation issued by a jurisdiction that is a party to the Nonresident Violator Compact of 1977 for a traffic violation to which that compact applies;
- (3) has failed to provide medical records or has failed to undergo medical or other examinations as required by a panel of the medical advisory board;
- (4) has failed to pass an examination required by the director under this chapter;
- (5) has been reported by a court under for failure to appear;
- (6) has been reported within the preceding two years by a justice or municipal court for failure to appear or for a default in payment of a fine - other than a failure reported - by a juvenile; or
- (7) has committed an offense in another state or Canadian province that, if committed in this state, would be grounds for revocation.

Period of Suspension
TC § 521.293

- 90 days, unless
- “has operated a motor vehicle on a highway while the person’s license was suspended, canceled, disqualified, or revoked, or without a license after an application for a license was denied;”
 - Then lesser of:
 - (1) the term of the original suspension; or
 - (2) one year.

Notice of DPS Determination
TC §521.295

- If DPS suspends or revokes a DL, the DPS shall send a notice of suspension or revocation by first class mail to the person’s address in the records of the department.
- Notice is considered received on the 5th day after the date the notice is mailed.

Content of Notice TC § 521.296

- MUST state:
- (1) the reason and statutory grounds for the suspension or revocation;
- (2) the effective date of the suspension or revocation;
- (3) the right of the person to a hearing;
- (4) how to request a hearing; and
- (5) the period in which the person must request a hearing.

Hearing Request TC § 521.298

- Hearing shall be held if:
- Request for hearing is sent
- In writing (fax counts) to DPS headquarters in Austin
- By the 15th day after the date on which the person is considered to have received notice of the suspension

Hearing Date TC § 521.299

- Shall be held at least 11 days after the date on which the person requesting the hearing is notified of the hearing.
- Shall be set for the earliest practical date.

- A request for a hearing stays suspension or revocation of a person's license until the date of the final decision of the presiding officer.

Continuance TC § 521.299 & 521.303

- A hearing may be continued on a motion of the person, the department, both parties, or as necessary to accommodate the docket of the presiding officer.
- A continuance stays the suspension or revocation of a license until the date of the final decision of the presiding officer.

Where and Who? TC § 521.300

- Shall be conducted in a municipal court or a justice court in the county in which the person resides. The judge of the municipal court or the justice is designated as the presiding officer.
- The presiding officer is entitled to receive a fee for hearing the case if a fee is approved and set by the commissioners court of the county in which the person resides. The fee may not exceed \$5 and shall be paid from the general revenue fund of the county.
- The presiding officer may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant books and documents.

Issue to be decided TC § 521.301

- It must be proved at the hearing whether the grounds for suspension or revocation stated in the notice are true.
- By a preponderance of the evidence

Outcome
TC §521.301

- If the judge says DPS grounds are true, the suspension or revocation is sustained.
 - DPS shall suspend the person's license for the period specified by the presiding officer, which may not be less than 30 days or more than one year.
- If the judge says DPS grounds are not true, DPS may not suspend or revoke the person's license.
- The decision of the presiding officer is final when issued and signed.

Failure to Appear
TC § 521.302

A person who requests a hearing under this subchapter and fails to appear without just cause waives the right to a hearing and the department's determination is final.

Appeal
TC §521.308

- Must file a petition
- Within 30 days from department order entered
- In the county court at law -- if no CCL, in the county court.
- Must send a file-stamped copy of the petition, certified by the clerk of the court in which the petition is filed, to DPS by certified mail.
- The CCL or County Court shall notify the department of the hearing at least 31 days before the hearing date.

Appeal TC §521.308

- The appeal is a trial de novo; right to trial by jury.
- The CCL or County Court shall take testimony, examine the facts of the case, and determine whether the petitioner is subject to the suspension or revocation of a license under this subchapter.
- The filing of a petition of stays an order of suspension, probated suspension, or revocation until the final judgment after trial or 91 days after appeal filed, whichever is earlier.
- On expiration of the stay, DPS shall impose the suspension, probated suspension, or revocation. The stay may not be extended, and an additional stay may not be granted.

Probation of Suspension TC § 521.309

- On determining that a license shall be suspended, the presiding officer who conducts a hearing under this subchapter, or the court that tries an appeal under this subchapter, may recommend that the suspension be probated on any terms and conditions considered necessary or proper by the presiding officer or court, if it appears that justice and the best interests of the public and the person will be served by the probation.
- (b) The revocation of a license may not be probated.
- (c) The report to DPS of the results of the hearing must include any terms and conditions of the probation.
- (d) If probation is recommended, DPS shall probate the suspension.
- (e) If a presiding officer or a court probates a suspension of a license, the probationary period shall be for a term of not less than 90 days or more than two years.

Probation Violation TC § 521.310

- (a) If the director believes that a person who has been placed on probation has violated a term or condition of the probation, the director shall notify the person and summon the person to appear at a hearing in the court or before the presiding officer or judge who recommended that the person be placed on probation after notice as provided by [like the original notice of suspension].
- (b) The issue at the hearing under this section is whether a term or condition of the probation has been violated. The presiding officer or judge presiding at the hearing shall report the finding to the department. If the finding is that a term or condition of the probation has been violated, the department shall take the action as determined in the original hearing.

**Effective date of Order
TC § 521.311**

A decision under this subchapter takes effect on the 11th day after the date on which an order is rendered.

**Reinstatement of DL
TC §521.312**

- Revocation of a license is for an indefinite period.
- Suspension of a license does not exceed one year.
- The department may not reinstate a license revoked for failure to appear until the court that filed the report for which the license was revoked files an additional report on final disposition of the case.

**Fee
TC § 521.313**

- A license suspended or revoked may not be reinstated or another license issued until the person pays DPS a fee of \$100 in addition to any other fee required by law.
- Not required if a suspension or revocation:
 - (1) rescinded by the department; or
 - (2) not sustained by a presiding officer or a court.
- Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

Handgun License Revocation/Denial Hearing

Chapter 411, Subchapter H, Government Code

Administrative Proceeding

“LTC” License to Carry

- Texas previously had a concealed handgun law
- HB 910
- Removed the word ‘concealed’ when referring to handgun throughout the codes
- Now just a license to carry - open or concealed

Who & When? Gov’t Code § 411.180(a)

- When application is denied or when license is suspended or revoked, the person may request a hearing by contacting DPS within 30 days of receiving written notice of the denial/suspension/ revocation.
- DPS then files a petition for a hearing with a justice court in the applicant’s/licensee’s county of residence, and is required to send a copy of the petition to the applicant/licensee.

Why?

- Reasons for suspension/revocation/denial of application include:
 - Failure to disclose material facts in an application;
 - Failure to notify DPS of a change of address;
 - Being charged with the commission of a Class A or B misdemeanor;
 - Being convicted of the offense of unlawfully carrying a handgun by license holder.
- For a complete list, please review Chapter 411.

Deadlines Gov't Code §411.180(b)

- The hearing must be scheduled (set on a docket) within 30 days of DPS receiving the person's request for a hearing.
- The hearing must be held within 60 days of DPS receiving the person's request for a hearing.
- Either party, or the court, may move for a continuance, as long as the 60 day deadline is met.

Hearing Gov't Code §411.180

- Purpose: "the justice court shall conduct a hearing to review the denial, revocation, or suspension of the license."(a)
- A district attorney or county attorney, the attorney general, or a designated member of the Department of Public Safety may represent the department.(a)
- The justice court shall determine if the denial, revocation, or suspension is supported by a preponderance of the evidence. Both the applicant or license holder and the department may present evidence. (c)

Possible Outcomes Gov't Code § 411.180 (c)

- The court shall affirm the denial, revocation, or suspension if the court determines that denial, revocation, or suspension is supported by a preponderance of the evidence.
- If the court determines that the denial, revocation, or suspension is not supported by a preponderance of the evidence, the court shall order the department to immediately issue or return the license to the applicant or license holder.

Costs/Fees Gov't Code § 411.180 (d)

- "A [CHL proceeding] is subject to Chapter 105, Civil Practice and Remedies Code, relating to fees, expenses, and attorney's fees."
- Chapter 105 addresses frivolous claims by a state agency. Costs/fees may be awarded only if:
 - 1) the applicant/licensee files a motion of frivolous claim;
 - 2) the court finds that the action is frivolous, unreasonable, or without foundation; and
 - 3) the action is dismissed or judgment is awarded to the applicant/licensee.

Appeal Gov't Code § 411.180 (e)

- Either party may appeal the court's ruling by filing a petition with a county court within 30 days.
- Trial at the county court level is de novo, and trial is before the court (no jury permitted).
- What does your court need to do regarding CHL appeals?
Nothing.

Environmental Hearings

Chapter 343, Health & Safety Code

Administrative Proceeding

Why? Public Nuisances
HSC §343.011(c)

- Chapter 343 of the Health & Safety Code addresses the abatement of public nuisances in unincorporated areas of the county. Public nuisances include:
- (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

Why? Public Nuisances
HSC §343.011(c)

- (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
- (4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
- (5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

Why? Public Nuisances HSC §343.021

- (6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched and locked gate; and
 - (B) a cover over the entire swimming pool that cannot be removed by a child;
- (7) maintaining on any property in a neighborhood in a county with a population of more than 1.1 million a swimming pool that is not protected with:
 - (A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or
 - (B) a cover over the entire swimming pool that cannot be removed by a child;

Why? Public Nuisances HSC §343.011(c)

- (8) maintaining a flea market in a manner that constitutes a fire hazard;
- (9) discarding refuse or creating a hazardous visual obstruction on:
 - (A) county-owned land; or
 - (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;
- (10) discarding refuse on the smaller of:
 - (A) the area that spans 20 feet on each side of a utility line; or
 - (B) the actual span of the utility easement;

Why? Public Nuisances HSC §343.011(c)

- (11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;
- (12) discarding refuse on property that is not authorized for that activity; or
- (13) surface discharge from an on-site sewage disposal system as defined by Section [366.002](#).

County Authority to Abate Public Nuisance HSC §343.002

- "Abate" means to eliminate or remedy (depending on the kind of nuisance):
 - (A) by removal, repair, rehabilitation, or demolition;
 - (B) by prohibition or control of access; and
 - (C) by removal, remediation, storage, transportation, disposal, or other means of waste management

County Authority to Abate Public Nuisance HSC §343.002

- A county may abate a public nuisance if it adopts abatement procedures consistent with the general purpose of Chapter 343.
- Prior to abatement of the nuisance by the county, the county must provide notice and a hearing. Notice is typically provided by a county environmental health official or another county employee employed to address public nuisances. (a)

Notice to Offender: Who? HSC §343.002(b)

- Written notice of the existence of a public nuisance must be given to:
 - (1) the owner, lessee, occupant, agent, or person in charge of the premises; and
 - (2) the person responsible for causing a public nuisance on the premises when:
 - (A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and
 - (B) the person responsible can be identified.

Notice to Offender: Content HSC §343.002(c)

- The notice must state:
 - (1) the specific condition that constitutes a nuisance;
 - (2) that the person receiving notice shall abate the nuisance before the:
 - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
 - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

Notice to Offender: Content HSC §343.002 (c)

- (3) that failure to abate the nuisance may result in:
 - (A) abatement by the county;
 - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
 - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;
- (4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section [343.011\(c\)\(1\), \(6\), \(9\), or \(10\)](#); and

Notice to Offender: Content HSC §343.002(c)

- (5) that the person receiving notice is entitled to submit a written request for a hearing before the:
 - (A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or
 - (B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

Notice to Offender: Service HSC §343.002(d)

- The notice must be given:
 - (1) by service in person or by registered or certified mail, return receipt requested; or
 - (2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

Hearing HSC §343.002 (e)

- The abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested.
- The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court.
- The commissioners court may designate a board, commission, or official (including a justice of the peace) to conduct each hearing.

Hearing

The county is asking the official designated to conduct the hearing (which may be a justice of the peace) to determine whether a public nuisance exists and whether the county has the authority to abate the nuisance.

Hearing HSC 343.023

- If a justice court is designated to conduct the hearing and the court finds that a public nuisance exists and the county has the authority to abate the nuisance, the court may assess:
 - (1) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;
 - (2) the cost of legal notification by publication; and
 - (3) an administrative fee of not more than \$100 on the person receiving notice under Section 343.022; OR

Hearing HSC 343.023

- The court may by resolution or order, assess:
 - (1) the cost of abating the nuisance;
 - (2) the cost of legal notification by publication; and
 - (3) an administrative fee of not more than \$100 against the property on which the nuisance exists.
- The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

Appeal

Chapter 343 does not provide a procedure for appealing the order of a justice court (or other designated official).


