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## Flowchart on DPS Surcharges

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# Flowchart on DPS Surcharges



**Ted Wood**

[3]

**The flowchart consists of two pages.**

Page One (Boxes 1?34) can be used to determine if a defendant?s conviction will result in the assessment of a surcharge. DWI is not the only criminal offense that results in the assessment of a surcharge. Page One also shows the amount of any assessed surcharge. The amount of the surcharge varies depending on the offense in question.

Page Two (Boxes 34?59) describes various avenues that can be pursued to eliminate, reduce, or defer the assessed surcharges.

The bold language at the beginning of the detailed description of each box is taken verbatim from the words in each box of the flowchart. The symbol ??? is used on the flowchart to mean ?defendant.?

## **BOX 1**

### **BEGIN HERE?? is convicted of an offense.**

For purposes of the assessment of DPS surcharges, a conviction includes all cases in which defendants are ?convicted.? This includes cases in which defendants are convicted but their sentences of confinement are suspended and they are placed on community supervision. Tex. Transp. Code Ann. §?708.003 (West 2011). This does not include cases in which the defendant is placed on deferred adjudication because such placement does not constitute a conviction. Tex. Code Crim. Proc. Ann. art. 42.12, Section 5(c) (West Supp. 2016).

Also, the conviction must be final. *Id.* Thus, if a conviction is on appeal, DPS should treat the case as if there is no con-vic-tion. HOWEVER, this rarely (if ever) happens automatically. The surcharge process kicks into gear upon a conviction in a trial court. Trial courts report convictions to DPS. Typically, this reporting hap-pens shortly after conviction. DPS then assesses a surcharge and refers the matter to its contracted vendor?Municipal Services Bureau (MSB). A defendant must contact DPS at (512)424-2600 to explain that the case is on appeal and that the surcharge should not have been assessed. (This is not a particularly easy administrative task to accomplish?one must deal with the huge bureaucracy that is DPS.)

## **BOX 2**

### **Does offense relate to the operation of a motor vehicle while intoxicated?**

If the answer is yes, go to Box 3. If the answer is no, drop down to Box 7.

A surcharge is to be assessed upon conviction of an ?offense relating to the operating of a motor vehicle while intoxicated.? Tex. Transp. Code Ann. §?708.102(a) (West 2011). The following offenses (all of which are codified in the Texas Penal Code) are included in this category:

- (1) Driving while Intoxicated?§?49.04;
- (2) Driving while Intoxicated with Child Passenger?§?49.045;
- (3) Intoxication Assault?§?49.07 (if vehicle was a motor vehicle); and
- (4) Intoxication Manslaughter?§?49.08 (if vehicle was a motor vehicle). Tex. Penal Code Ann. §49.09(c) (West Supp. 2016).

Also, included is ?an offense of the laws of another state that prohibit the operation of a motor vehicle while intoxicated.? *Id.*

## **BOX 3**

### **DPS will assess a surcharge on ??s driver?s license to be paid each year for three years.**

?Each year the department [DPS] shall assess a surcharge on the license of a person who during the preceding 36-month period has been finally convicted of an offense relating to the operating of a motor

vehicle while intoxicated.? Tex. Transp. Code Ann. §708.102(b) (West 2011).

#### **BOX 4**

##### **Was ??s alcohol concentration level shown to be 0.16 or more?**

If the answer is yes, go to Box 5. If the answer is no, drop down to Box 9.

The amount of the surcharge assessed upon conviction of an ?offense relating to the operation of a motor vehicle while intoxicated? varies. The surcharge is higher if the defendant?s alcohol concentration level was 0.16 or higher at the time the analysis was performed. Tex. Transp. Code Ann. §708.102(c)(2) (West 2011).

#### **BOX 5**

##### **\$2,000 per year surcharge is imposed.GO TO BOX 34.**

The amount of the annual surcharge is \$2,000 if the defendant?s alcohol concentration level was 0.16 or higher. Tex. Transp. Code Ann. §708.102(c)(2) (West 2011).

#### **BOX 6**

##### **Was offense committed on or after 09-01-2003?**

If the answer is yes, go to Box 2. If the answer is no, drop down to Box 11.

The entire surcharge-assessment scheme is not applicable to convictions that occurred prior to September 1, 2003. Tex. Transp. Code Ann. §§708.051, 708.105 (West 2011). Accordingly, this question must be considered up front.

#### **BOX 7**

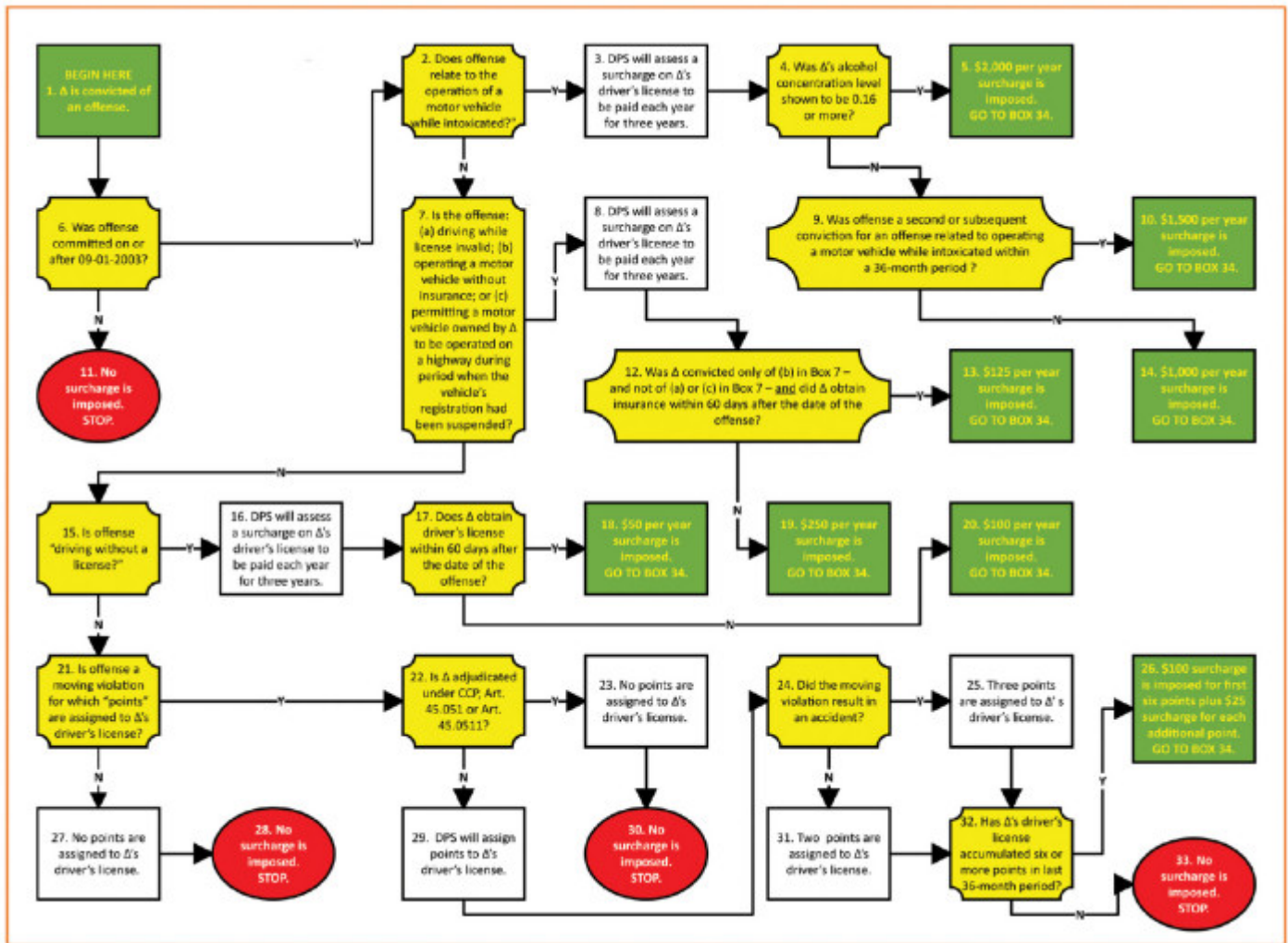
##### **Is the offense: (a) driving while license invalid; (b) operating a motor vehicle without insurance; or (c) permitting a motor vehicle owned by ? to be operated on a highway during period when the vehicle?s registration had been suspended?**

If the answer is yes, move to Box 8. If the answer is no, go to Box 15.

A surcharge is to be assessed upon conviction of one of the following offenses:

- (1) Driving while License Invalid?Transportation Code §?521.457;
- (2) Operation of Motor Vehicle in Violation of Motor Vehicle Liability Insurance Requirement (i.e., no insurance)?Transportation Code §?601.191; and
- (3) Operation of Motor Vehicle in Violation of Suspension?Transportation Code §?601.371

Tex. Transp. Code Ann. §708.103(a) (West Supp. 2016).



**BOX 8**

DPS will assess a surcharge on ??s driver?s license to be paid each year for three years.

?Each year the department [DPS] shall assess a surcharge on the license of each person who during the preceding 36-month period has been convicted of an offense under Section 521.457, 601.191, or 601.371.? Tex. Transp. Code Ann. §708.102(a) (West Supp. 2016).

**BOX 9**

Was offense a second or subsequent conviction for an offense related to operating a motor vehicle while intoxicated within a 36-month period?

If the answer is yes, go to Box 10. If the answer is no, move to Box 14.

The amount of the surcharge for assessed upon conviction of an ?offense relating to the operation of a motor vehicle while intoxicated? varies. The surcharge is higher if the conviction is the defendant?s second or subsequent conviction within a 36-month period for an offense relating to the operation of a motor vehicle while intoxicated. Tex. Transp. Code Ann. §708.102(c)(1) (West 2011).

## **BOX 10**

**\$1,500 per year surcharge is imposed. GO TO BOX 34.**

The amount of the annual surcharge is \$1,500 if the defendant's conviction is a second or subsequent conviction for an offense relating to the operation of a motor vehicle while intoxicated. Tex. Transp. Code Ann. §708.102(c)(1) (West 2011).

## **BOX 11**

**No surcharge is imposed. STOP.**

DPS should not assess any surcharge on the defendant.

## **BOX 12**

**Was ? convicted only of (b) in Box 7?and not of (a) or (c) in Box 7?and did ? obtain insurance within 60 days after the date of the offense?**

If the answer is yes, advance to Box 13. If the answer is no, drop down to Box 19.

A surcharge imposed for the offense of ?Operation of Motor Vehicle in Violation of Motor Vehicle Liability Insurance Requirement? (i.e., no insurance?Transportation Code §601.191) can be reduced. The reduction is mandated if the defendant obtains in-surance within 60 days after the date of the offense. Transportation Code §708.103(c) (West Supp. 2016). The insurance policy must be prepaid and valid for at least a six-month period. *Id.*

## **BOX 13**

**\$125 per year surcharge is imposed.**

The amount of the annual surcharge is \$125. Tex. Transp. Code Ann. §708.103(c) (West Supp. 2016).

## **BOX 14**

**\$1,000 per year surcharge is imposed.**

The amount of the surcharge is \$1,000 annually for three years. Tex. Transp. Code Ann. §708.102(c) (West 2011).

## **BOX 15**



### **Is offense ?driving without a license??**

If the answer is yes, advance to Box 16. If the answer is no, drop down to Box 21.

A surcharge is to be assessed upon conviction of the offense of ?Driving Without a Valid License.? Tex. Transp. Code Ann. §708.104(a) (West Supp. 2016).

### **BOX 16**

#### **DPS will assess a surcharge on ??s driver?s license to be paid each year for three years.**

?Each year the department [DPS] shall assess a surcharge on the license of a person who during the preceding 36-month period has been convicted of an offense under Section 521.021 (Driving without a License).? Tex. Transp. Code Ann. §708.104(a) (West Supp. 2016).

### **BOX 17**

#### **Does ? obtain driver?s license within 60 days after the date of the offense?**

If the answer is yes, go to Box 18. If the answer is no, advance to Box 20.

The answer to this question will dictate the amount of the surcharge. The amount will be \$50 if the defendant obtains a license or \$100 if he or she does not obtain a license. Tex. Transp. Code Ann. §708.104 (West Supp. 2016).

### **BOX 18**

#### **\$50 per year surcharge is imposed.GO TO BOX 34.**

The surcharge is \$50 if the defendant ?obtains a driver?s license not later than the 60th day after the date of the offense.? Tex. Transp. Code Ann. §708.104(b-1) (West Supp. 2016).

### **BOX 19**

#### **\$250 per year surcharge is imposed.GO TO BOX 34.**

The surcharge is \$250 per year. Tex. Transp. Code Ann. §708.103(b) (West Supp. 2016).

### **BOX 20**

#### **\$100 per year surcharge is imposed.GO TO BOX 34.**

The surcharge is \$100 per year if the defendant does not obtain a driver?s license within sixty days. Tex.

Transp. Code Ann. §708.104(b), (B-1) (West Supp. 2016).

## **BOX 21**

### **Is offense a moving violation for which ?points? are assigned to ??s driver?s license?**

If the answer is yes, go to Box 22. If the answer is no, drop down to Box 27.

A person?s driver?s license will be assessed a certain number of ?points? for each conviction of a person for certain ?moving violations.? Tex. Transp. Code Ann. §708.052 (West 2011). Not every traffic law violation is a moving violation. And not all moving violations result in the accumulation of points. DPS decides which violations are considered to be moving violations?this authority is given to DPS by the Legislature. Tex. Transp. Code Ann. §708.052(c) (West 2011). DPS?s list of moving violations can be found at 37 Tex. Admin. Code, §15.89 (Tex. Dep?t of Public Safety, Driver License Rules?Driver Improvement). A copy of the list is included as Appendix A.

The DPS list of moving violations is arranged alphabetically. As mentioned above, not every violation on the list results in the assessment of points. The list contains a column showing whether the moving violation in question results in the assessment of points.

## **BOX 22**

### **Is ? adjudicated under CCP, Art. 45.051 or Art. 45.0511?**

If the answer is yes, go to Box 23. If the answer is no, drop down to Box 29.

This box is reached only if the defendant has been ?convicted? of a moving violation. Cases involving moving violations are often handled in the courts under Articles 45.051 and 45.0511 of the Code of Criminal Procedure. Article 45.051 deals with deferred disposition. As is the case with deferred adjudication, a deferred disposition is not considered to be a conviction. See Tex. Code Crim. Proc. Ann. art. 45.051(c) (West Supp. 2016). The Transportation Code expressly states that DPS ?may not assign points to a person?s license if the offense committed by the person was adjudicated under Article 45.051.? Tex. Transp. Code Ann. §708.052(e) (West 2011).

Similarly, DPS may not assign points to a person?s license if the offense is adjudicated under Article 45.0511. This article involves the handling of the case through the defendant?s completion of a driving safety course. Tex. Code Crim. Proc. Ann. art. 45.0511 (West Supp. 2016). Successful completion of the course results in the charges against the defendant being dismissed. Tex. Code Crim. Proc. Ann. art. 45.0511(l) (West Supp. 2016).

Even if the defendant is charged with a moving violation, no points will be assessed if the case is handled under Article 45.051 or 45.0511.

## **BOX 23**

### **No points are assigned to ??s driver?s license.**

As noted in Box 22, no points are assessed against a defendant?s driver?s license. Tex. Transp. Code Ann.



§708.052(e) (West 2011).

#### **BOX 24**

##### **Did the moving violation result in an accident?**

If the answer is yes, go to Box 25. If the answer is no, drop down to Box 31.

We ask this question because the number of points assessed for a moving violation depends on whether the moving violation resulted in an accident. See Tex. Transp. Code Ann. §708.052(b) (West 2011).

#### **BOX 25**

##### **Three points are assigned to ??s driver?s license.**

Three points are assigned to a defendant?s driver?s license if the conviction was for a relevant moving violation that resulted in an accident. Tex. Transp. Code Ann. §708.052(b)(2) (West 2011).

#### **BOX 26**

##### **\$100 surcharge is imposed for first six points plus \$25 surcharge for each additional point.GO TO BOX 34.**

The amount of a surcharge assessed against a person who has accumulated six points on his or her driver?s license is \$100. For each additional accumulated point, there is an additional \$25 surcharge. Tex. Transp. Code Ann. §708.054 (West 2011).

#### **BOX 27**

##### **No points are assessed to ??s driver?s license.**

By reaching this box, a determination has been made that no points will be assessed against a defendant?s driver?s license.

#### **BOX 28**

##### **No surcharge is imposed.STOP.**

By reaching this box, a determination has been made that the defendant has not been convicted of any offense that would result in the assessment of a surcharge. No surcharge should be imposed. The analysis ends at this point.

## **BOX 29**

### **DPS will assign points to ??s driver?s license.**

By reaching this box, the defendant must necessarily have been convicted of a moving violation for which points are assigned. See Tex. Transp. Code Ann. §708.052 (West 2011).

## **BOX 30**

### **No surcharge is imposed.STOP.**

By reaching this box, a determination has been made that no points will be assigned to the defendant?s driver?s license. A determination has also been made that the defendant has not been convicted of any offense that would result in the assessment of a surcharge. No surcharge should be imposed. The analysis stops at this point.

## **BOX 31**

### **Two points are assigned to ??s driver?s license.**

Two points are assigned to a defendant?s driver?s license if the conviction was for a relevant moving violation that did not result in an accident. Tex. Transp. Code Ann. §708.052(b)(1) (West 2011).

## **BOX 32**

### **Has ??s driver?s license accumulated six or more points in last 36-month period?**

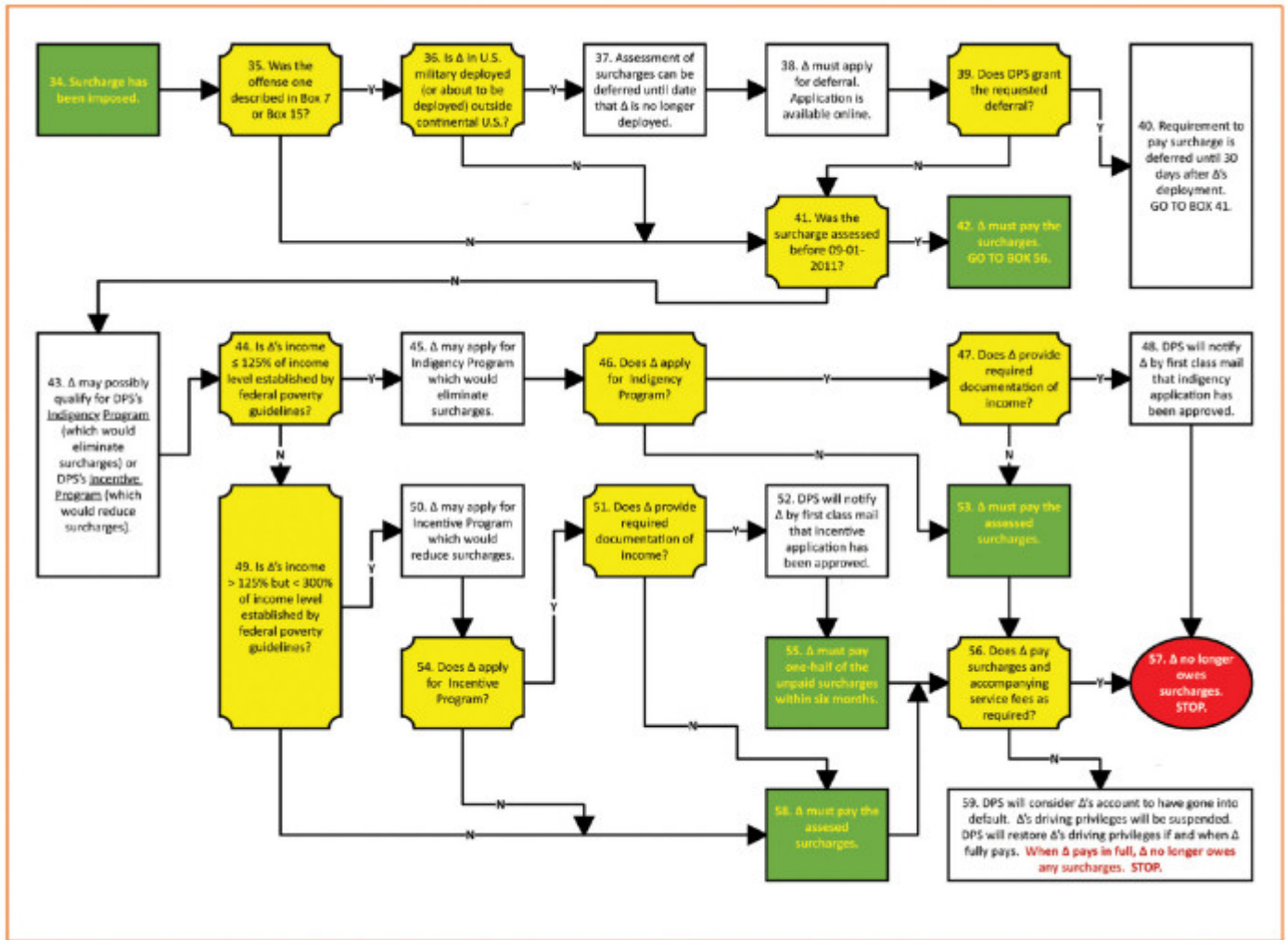
If the answer is yes, go to Box 26. If the answer is no, go to Box 33.

Not every assessment of points against a person?s driver?s license results in the assessment of a surcharge. Rather, the rule concerning the assessment of surcharges for accumulated points is as follows:

Each year, the department [DPS] shall assess a surcharge on the license of a person who has accumulated six or more points . . . during the preceding 36-month period.

Tex. Transp. Code Ann. §708.053 (West 2011).

Each year a person has not been assessed any points, one point will be deducted from the person?s point total. Consider a person who has accumulated six points in Year One. A surcharge will be assessed against the person in Year One. Assume the person has no new points assessed in Year Two. This means one point will be deducted from the person?s total of six points. The person will not have to pay any surcharge in Year Two because the person will only have five accumulated points.



**BOX 33**

**No surcharge is imposed. STOP.**

If a person has accumulated fewer than six points on his or her driver's license, no surcharge is imposed. See Tex. Transp. Code Ann. §708.054 (West 2011).

**BOX 34**

**Surcharge has been imposed.**

This is the first box on Page 2 of the flowchart. This box should only be reached if DPS has imposed a surcharge against the defendant. This is the beginning point for determining whether the surcharge can be eliminated, reduced, or deferred.

**BOX 35**

**Was the offense one described in Box 7 or Box 15?**

If the answer is yes, go to Box 36. If the answer is no, go to Box 41.

Only if an offense described in Box 7 or Box 15 resulted in a surcharge assessment can a deferment of surcharge payments for military deployment possibly be obtained. *See* Tex. Transp. Code Ann. §708.106 (West 2011). There is no possible deferment for surcharges assessed in connection with an offense relating to the operating of a motor vehicle while intoxicated. *See id.* Nor is there any possible deferment for surcharges resulting from the accumulation of points on one's driver's license. *See id.*

### **BOX 36**

#### **Is ? in U.S. military deployed (or about to be deployed) outside continental U.S.?**

If the answer is yes, go to Box 37. If the answer is no, go to Box 41.

DPS is statutorily required to "establish a deferral program for surcharges assessed . . . against a person who is a member of the United States armed forces on active duty deployed outside of the continental United States." Tex. Transp. Code Ann. §708.106 (West 2011). Please note that the statute makes a service member serving in Alaska or Hawaii eligible for a deferral. The deferral application form (prepared by MSB—the vendor operating the Driver Responsibility Surcharge Program) says nothing about service members in Alaska or Hawaii. By reading the application, one would never know that service members in Alaska and Hawaii are eligible for the deferral. The application form refers only to "de-ployment to a foreign station for military duty." Of course, the statute controls over the form. (The application form is discussed in more detail in Box 38.)

### **BOX 37**

#### **Assessment of surcharges can be deferred until date that ? is no longer deployed.**

Under the relevant statute, surcharges are to be deferred for military personnel serving on active duty outside the continental United States. Tex. Transp. Code Ann. §708.106 (West 2011). The statute says this deferral is to last "until the date the person is no longer deployed." *Id.* According to the deferral application form, the person has 30 days from the date he or she returns to begin making payments toward the assessed surcharged. (The application form is discussed in more detail in Box 38.)

### **BOX 38**

#### **? must apply for deferral. Application is available online.**

Deferrals do not occur automatically. Any defendant seeking a deferral of a requirement to pay surcharges must make an application for a deferral. A copy of the "Military Deployment Deferral Application" is available online. One must go to DPS's website concerning the Driver Responsibility Surcharge Program at [\[6\]www.txsurchargeonline.com](http://www.txsurchargeonline.com). Then go to the "Frequently Asked Questions" section. Go to the question entitled "I am currently in the military and want to know how to defer my payments while deployed outside the continental United States." The answer to that question contains a link to the form.

A copy of the form is included as Appendix B.

The FAQ section referenced above is very good source of information about the Driver Responsibility Surcharge Program.

### **BOX 39**

#### **Does DPS grant the requested deferral?**

If the answer is yes, go to Box 40. If the answer is no, go to Box 41.

### **BOX 40**

#### **Requirement to pay surcharge is deferred until 30 days after ??s deployment. **GO TO BOX 41.****

The application for a deferment due to deployment in the U.S. military outside the continental United States contains a statement that the applicant must acknowledge:

I understand that upon my return to the United States from overseas deployment for military duty, I will have thirty (30) days to begin making minimum payments of payment-in-full to each of the deferred accounts.

Thus, after a defendant returns from his or her deployment, the defendant is again responsible to pay the assessed surcharges. However, the defendant may still possibly be eligible for DPS?s Indigency Program (which can eliminate surcharges) or Incentive Program (which can reduce surcharges).

Accordingly, go to Box 41 to determine if the defendant is eligible for either of these programs.

### **BOX 41**

#### **Was the surcharge assessed before 09-01-2011?**

If the answer is yes, go to Box 42. If the answer is no, move to Box 43.

DPS is statutorily required to waive all assessed surcharges for a person who is indigent. Tex. Transp. Code Ann. ??708.158(a) (West 2011). However, this requirement applies only to surcharges assessed on or after the effective date of the legislative act imposing this waiver requirement. *See* Act of June 1, 2009, 81st Leg. R.S., ch. 1146, ??15.04, 15.07, 15.08, 2009 Tex. Gen. Laws 3583, 3655?56. The effective date of the act was September 1, 2011. Accordingly, if the surcharge in question was assessed prior to September 1, 2011, the surcharge cannot be waived due to the defendant?s indigency.

The same principle applies to the requirement that DPS reduce the amount of a surcharge for certain persons. *See* Act of June 1, 2009, 81st Leg. R.S., ch. 1146, ??15.05, 15.07, 15.08, 2009 Tex. Gen. Laws 3583, 3656. Accordingly, if the surcharge in question was assessed prior to September 1, 2011, the surcharge cannot be reduced under DPS?s incentive program.

### **BOX 42**

? must pay the surcharges. **GO TO BOX 56.**

This box should be reached only if the surcharge in question was assessed before September 1, 2011. As explained in Box 41, surcharges assessed before September 1, 2011, are ineligible for waiver under DPS's Indigency Program. Such surcharges are also ineligible for reduction under DPS's Incentive Program. Therefore, the surcharges must be paid.

### **BOX 43**

? may possibly qualify for DPS's Indigency Program (which would eliminate surcharges) of DPS's Incentive Program (which would reduce surcharges).

The indigency program is described in Tex. Transp. Code Ann. §708.158 (West 2011). DPS is required to waive all surcharges for a person who is indigent. A defendant is considered to be indigent if his or her income or household income does not exceed 125% of the applicable income level established by federal poverty guide-lines. Tex. Transp. Code Ann. §708.158(b) (West 2011).

The incentive program is not described in detail in statute. The relevant statute simply says that DPS:

shall offer a holder of a driver's license on which a surcharge has been assessed an incentive for compliance with the law and efforts at rehabilitation, including a reduction of a sur-charge or a decrease in the length of an installment plan.

Tex. Transp. Code Ann. §708.157(b) (West 2011).

DPS has this to say about the incentive program in its FAQ publication (*see* Box 38 for website information):

The incentive program applies to individuals who are living above 125% but are below 300% federal poverty level, defined annually by the United States Department of Health and Human Services. For approved applicants, the surcharge fees will be reduced by 50% of the total amount assessed (service fees apply).

In summary, a defendant whose income is at or below 125% of the income level established by federal poverty guidelines is eligible for the indigent program. This program results in the waiver of the assessed surcharges. A defendant whose income is above 125%, but below 300%, of the income level established by federal poverty guidelines is eligible for the incentive program. This program results in the assessed surcharges being cut in half.

### **BOX 44**

**Is ??s income ? 125% of income level established by federal poverty guidelines?**

If the answer is yes, go to Box 45. If the answer is no, drop down to Box 49.

Currently, 125% of the poverty level as established by the federal poverty guidelines is \$14,850. *See* Federal Register, January 25, 2016. This is the amount for one person in Texas and any other of the 48 continental United States. For a family of two persons, the amount is \$20,025. For a family of three, the amount is \$25,200, while the amount for a family of four is \$30,375. The amount for a family of five is \$35,550, and the amount for a family of six is \$40,725. Finally, the amount for a family of seven is \$45,912.50, while the



amount for a family of eight is \$51,112.50. For each additional person over the eighth person, \$5,200 should be added to the \$51,112.50 amount.

#### **BOX 45**

##### **? may apply for Indigency Program, which would eliminate surcharges.**

Surcharges are not automatically waived if a defendant is indigent. The defendant must make an application in order to qualify for the indigency program and have his or her surcharges waived. The application form can be accessed through DPS's Driver Responsibility Surcharge Program website:

[www.txsurchargeonline.com](http://www.txsurchargeonline.com)

The defendant will need to provide the following information in order to access his or her account information (to make an application): (1) the defendant's driver's license number, I.D. card number, or DPS assigned number; (2) the reference number from the surcharge notice letter sent to the defendant; (3) a valid credit card, debit card, checking account, savings account, or money market account.

The application form does not have to be notarized.

If a person has no internet access, he or she may call the Municipal Services Bureau (MSB) 1-866-223-3583 to request an application form.

#### **BOX 46**

##### **Does ? apply for Indigency Program?**

If the answer is yes, go to Box 47. If the answer is no, go to Box 53.

The application can be submitted by mail or online. The mailing address is:

DRP  
Indigency/Incentive Application Processing  
PO Box 16733  
Austin, TX 78761

Online submission will yield faster results. A person who applies online can go to [\[7\] www.surchargeonline.com](http://www.surchargeonline.com) to check on the status of his or her application. This status should be available 14 business days after the application is made. A person who applies by mail will be mailed a notification of eligibility, but this generally takes about 60 days from the date of application.

#### **BOX 47**

##### **Does ? provide required documentation of income?**

If the answer is yes, go to Box 48. If the answer is no, go to Box 53.

Evidence of the ??s income level will be required along with the application. Section 708.158(b) of the

Government Code declares that copies of any of the following documents will constitute sufficient documentation:

- (1) defendant's federal income tax return;
- (2) defendant's most recent statement of wages;
- (3) documentation from a federal agency, state agency, or school district showing that the defendant (or, if the defendant is dependent for tax purposes, the taxpayer claiming the defendant as a dependent) receives assistance from:
  - a. the food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;
  - b. the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786;
  - c. the medical assistance program under Chapter 32, Human Resources Code;
  - d. the child health plan program under Chapter 62, Health and Safety Code; or
  - e. the national free or reduced-price lunch programs established under 42 U.S.C. Section 1751 et seq.

#### **BOX 48**

**DPS will notify ? by first class mail that indigency application has been approved.**

As noted in Box 46, this notification generally occurs about 60 days after the application is submitted.

#### **BOX 49**

**Is ??s income > 125% but < 300% of income level established by federal poverty guidelines?**

If the answer is yes, go to Box 50. If the answer is no, move to Box 58.

Currently, 300% of the poverty level as established by the federal poverty guidelines is \$35,640. *See* Federal Register, January 25, 2016. This is the amount for one person in Texas and any other of the 48 continental United States. For a family of two persons, the amount is \$48,060. For a family of three, the amount is \$60,480 while the amount for a family of four is \$72,900. The amount for a family of five is \$85,320, and the amount for a family of six is \$97,740. Finally, the amount for a family of seven is \$110,190, while the amount for a family of eight is \$122,670. For each additional person over the eighth person, \$12,480 should be added to the \$122,670 amount.

The guidelines for 125% of the poverty level are detailed in Box 44.

#### **BOX 50**

**? may apply for Incentive Program, which would reduce surcharges.**

Surcharges are not automatically reduced if a defendant's income level meets the incentive program standards. The defendant must make an application in order to qualify for the incentive program and have his or her surcharges reduced. The application form can be accessed through DPS's Driver Responsibility

Surcharge Program website at [\[6\]www.txsurchargeonline.com](http://www.txsurchargeonline.com).

The defendant will need to provide the following information in order to access his or her account information (to make an application): (1) the defendant's driver's license number, I.D. card number, or DPS assigned number; (2) the reference number from the surcharge notice letter sent to the defendant; (3) a valid credit card, debit card, checking account, savings account, or money market account.

The application form does not have to be notarized.

If a person has no internet access, he or she may call the Municipal Services Bureau (MSB) 1-866-223-3583 to request an application form.

## **BOX 51**

### **Does ? provide required documentation of income?**

If the answer is yes, go to Box 52. If the answer is no, go to Box 58.

Evidence of the ?'s income level will be required along with the application. The same evidence that can be used to support an application for the indigency program can be used to support this application for the incentive program. This evidence is detailed in Box 47.

## **BOX 52**

### **DPS will notify ? by first class mail that incentive application has been approved.**

This notification generally occurs about 60 days after the application is submitted. Any driver's license suspension will be lifted at that time.

## **BOX 53**

### **? must pay the assessed surcharges.**

This box is reached if the defendant is eligible to apply for the indigency program, but does not do so. This box is also reached if the defendant does not provide adequate documentation of his or her income. In such circumstances, the defendant will be re-required to pay the assessed surcharges.

There is no deadline for applying for the indigency program? a person can apply even after making partial surcharge payments. Any payments made before surcharges are waived under the indigency program are not refunded to the defendant.

## **BOX 54**

### **Does ? apply for Incentive Program?**

If the answer is yes, go to Box 51. If the answer is no, go to Box 58.

The application can be submitted by mail or online. Please see details concerning the submission of an application in Box 46.

## **BOX 55**

**? must pay one-half of the unpaid surcharges within six months.**

DPS describes its incentive program as follows:

The incentive program applies to individuals who are living above 125% but are below 300% federal poverty level . . . For approved applicants, the surcharge fees will be reduced by 50% of the total amount assessed (service fees apply).

DPS FAQ's on the Driver Responsibility Program, available online at [\[6\]www.txsurchargeonline.com](http://www.txsurchargeonline.com).

The service fees referenced above are as follows:

- (1) service fee of 4% of the original surcharge amount;
- (2) installment plan fee of \$2.50 per partial payment;
- (3) credit/debit card fee of 2.25% of payment plus \$0.25; and
- (4) electronic check fee of \$2.00 per payment.

*Id.*

There are several different ways to pay. The surcharges and accompanying service fees can be paid over the course of time on a monthly payment plan. This is the most common way for surcharges to be paid. There is also an option for paying all of the surcharge amounts owed at once. These payment options are detailed on DPS's FAQ sheet.

If the reduced surcharges under the incentive program are not paid within six months, then the defendant's driving privileges will be suspended until the reduced surcharges are paid in full.

## **BOX 56**

**Does ? pay surcharges and accompanying service fees as required?**

If the answer is yes, go to Box 57. If the answer is no, drop down to Box 59.

## **BOX 57**

**? no longer owes surcharges. STOP.**

If this box has been reached, the defendant's indigency application has been approved. The defendant no longer owes the assessed surcharge.

## **BOX 58**

### **? must pay the assessed surcharges.**

This box is reached if the defendant is required to pay surcharges.

There is no deadline for applying for the incentive program? a person can apply even after making partial surcharge payments. Any payments made before surcharges are waived under the indigency program are not refunded to the defendant. Any payments made before surcharges are reduced (under the incentive program) are counted toward the reduced balance owed.

## **BOX 59**

**DPS will consider ??s account to have gone into default. ??s driving privileges will be suspended. DPS will restore ??s driving privileges if and when ? fully pays. When ? pays in full, ? no longer owes any surcharges. STOP.**

Article 708.152 of the Transportation Code reads as follows:

(a) If on the 60th day after the date the department [DPS] sends a second notice under Section 708.151 the person fails to pay the amount of a surcharge on the person?s license or fails to enter into an installment payment agreement with the department, the license of the person is automatically suspended. A person?s license may not be suspended under this section before the 105th day after the date the surcharge was assessed by the department.

(b) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

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