

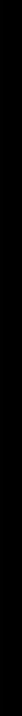


**OCCUPATIONAL
DRIVER'S LICENSE
(ODL)**

**REBECCA GLISAN
STAFF ATTORNEY, TJCTC**



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Resources

- **Administrative Proceedings Deskbook:** <https://www.tjctc.org/tjctc-resources/Deskbooks.html>
 - Chapter 9 (includes a flowchart)
 - *Note:* This Deskbook updated May 2020. If using an older version of the deskbook, follow this presentation in the event of any conflicts with the deskbook.
- **Forms:** <https://www.tjctc.org/tjctc-resources/forms.html>
 - Under “Administrative Hearing” Tab
- **Statute:** <https://statutes.capitol.texas.gov/>
 - Subchapter L of Chapter 521 of the Transportation Code

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Abbreviations



ODL = Occupational Driver's License

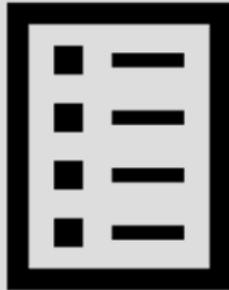


TC = Transportation Code



IID = Ignition Interlock Device

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WHAT IS IT?

Administrative Proceedings
Deskbook – Chapter 9, Sections A, G

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What is an Occupational Driver's License?

An Occupational Driver's License (ODL) is a license that a person can use to drive while their regular license is suspended

- Except in certain situations (that we will cover later), a person can apply for an ODL in a justice court
- An ODL has restrictions that a regular license won't have.
- An ODL may **not** be used to operate a commercial motor vehicle (CMV)
 - But someone who has a commercial driver's license (CDL) could potentially get an ODL to drive a non-CMV

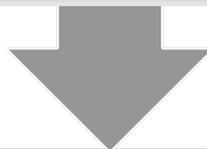


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If Request for
ODL Is
Granted,
What
Documents
Does the
Person Need
to Carry on
Them?

A court order granting an ODL serves as a temporary driver's license for the first 45 days

This gives the applicant time to get the ODL from the Department of Public Safety (DPS) – which they will get after the necessary paperwork is completed and any required fees are paid



After 45 days, the person must keep both the certified copy of the court order and the license from DPS on them at all times when driving

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WHO IS ELIGIBLE TO REQUEST AN ODL IN YOUR COURT?

Administrative Proceedings Deskbook – Chapter 9, Section C

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To Be Eligible For an ODL, the Person's Driver's License or Privilege To Drive Must Be Suspended

First Consideration – Is the applicant's license or privilege to drive suspended? (So they can't just go to the DMV and get one)

License or Privilege To Drive =

- Actual driver's license
- Expired License
- Permit
- Valid license from somewhere other than TX

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What If the Applicant Has Never Had a Driver's License?

- Clearly, if there is no suspension in place, they are not eligible for an ODL
- But there could be a suspension in place even if they've never had a license
 - Ex: A person without a license gets a suspension from DPS for being a habitual violator of traffic laws under TC 521.292.

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What If the Applicant Has Never Had a Driver's License?

- If they never had a license and there is a suspension order in place, the law is unclear about if they are eligible for an ODL
 - A strict reading of the statute could suggest they aren't eligible because no license or privilege exists to suspend, but DPS has said they will honor these
 - So the judge has to decide if they are going to deny or grant these applications
 - They can do whichever they are most comfortable with, as long as they are consistent

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What If the Applicant's License Cannot Be Renewed Because They Are in OMNI?

(A person could be placed in OMNI if they don't appear in a criminal case or if they fail to pay their judgment in a criminal case)

They are NOT eligible for an ODL because this isn't technically a suspension – it is a non-renewal

- If they want to drive, they need to do what is required to get out of OMNI (See Criminal Deskbook Ch. 3, Section D and Ch. 8, Section D)

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To Be Eligible For an ODL, the License/Privilege Must Be Suspended for an **Eligible Reason**

Second Consideration – Is the driver’s license or privilege to drive suspended for an “eligible” reason?

How Do You Know Why an Applicant’s License Was Suspended?

- *Look at their application and their driving record (which should be submitted to the court along with the application)*
- *Plug in their info and look on this website:*
<https://txapps.texas.gov/txapp/txdps/dleligibility/login.do>

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Common “Eligible Reasons” a Driver’s License May Be Suspended

One of the reasons listed under TC 521.292

(See Administrative Proceedings Deskbook Chapter 6, Section C)

Providing a breath/blood sample with over .08 BAC following a DWI stop

(TC Ch. 524)

Refusal to submit to a breath or blood test following a DWI stop

(TC Ch. 724)

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What Is NOT an “Eligible Reason” ?

A person is not eligible for an ODL if their driver’s license is suspended due to a physical or mental disability or impairment

- Ex: If the person’s license were suspended because the person developed epilepsy

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When Minors are Not Eligible

A minor (under 21) whose driver’s license is suspended under Chapter 524 (breath/blood sample with over .08 BAC) is not eligible for an ODL for the:

- first 30 days of the suspension if **no prior** convictions of an offense under:
 - Alcoholic Beverage Code § 106.041 (DUI by a Minor);
 - Penal Code § 49.04 (DWI), § 49.045 (DWI w/ Child Passenger), or § 49.06 (Boating While Intoxicated); or
 - Penal Code § 49.07 (Intoxication Assault) or § 49.08 (Intoxication Manslaughter) involving the operation of a motor vehicle or a watercraft
- the first 90 days if the minor has one prior conviction of any of the above offenses
- the entire period of the suspension if the minor has two or more convictions of any of the above offenses

Note: deferred disposition orders and juvenile court adjudications are considered convictions for this.

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A Person Who Is Eligible for an ODL Must File Their Application in a **Proper Court**

Third Consideration – Can they file in your court or do they need to go somewhere else?

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If Driver's License Is Automatically Suspended Following a Conviction

In this case, the person is eligible for an ODL, but must apply with the court that **convicted** them

- **The convicting court will almost never be a justice court** (because it won't have jurisdiction)
 - Examples of convictions with automatic suspensions where a justice court could hear the case: Theft of Motor Fuel; Fictitious License/Plates/Registration/Inspection
- Examples of convictions with automatic suspensions where a non-justice court will hear the case:
 - DWI, DWI with Child Passenger, Intoxication Assault, Intoxication Manslaughter, Evading Arrest or Detention (with a vehicle), etc.

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What if the Person has a DWI Case Currently *Pending* in Another Court?

(or any case that could result in automatic suspension upon conviction)

- Doesn't matter
- They don't have to apply to the court where their case is pending until **after** a conviction that results in automatic suspension is entered

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If No Automatic Suspension Following Conviction, Where Does Applicant File?

- If the applicant's driver's license was not automatically suspended following a conviction, they may file in the **justice**, county, or district court in the county in which:
 - The person resides; or
 - The offense occurred for which the license was suspended
- If the applicant files in justice court, they can pick any justice court in an appropriate county – it does not matter which precinct it is

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If the Person Is Not Eligible or If They Filed in the Wrong Court:

Deny application – no hearing needed

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SCENARIO

A person's license **expired** and they are not able to renew it at the DMV because a suspension order has been entered under TC Ch. 524 for submitting a breath test with a BAC of .08 or higher following a DWI stop. Charges for the DWI are currently pending in district court. The person is now requesting an ODL.

Are they eligible for an ODL? Can they apply in justice court?

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SCENARIO

A 19 year old applicant who lives in your court's precinct is requesting an ODL. Their license has been suspended for refusing to take a breath test at a DWI stop. Their DWI case is currently pending in district court.

Are they eligible for an ODL? Can they apply in your court?

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HOW DOES AN APPLICANT APPLY FOR AN ODL?

Administrative Proceedings Deskbook – Chapter 9, Sections B, D, E

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Petition & Filing Fee

The applicant must file a **verified** petition (*verified means it is sworn to before the clerk or a notary*), and:

Describe in detail and provide any documentation of their **essential need** to operate a motor vehicle

Provide **evidence of financial responsibility**

Provide a certified abstract of their driving record

The applicant must pay the civil filing fee or file a Statement of Inability to Afford Payment of Court Costs

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What Is “Essential Need”?

A person’s need to drive for:

- Work or to get to and from work
 - Includes needing to drive to go to job interviews even if the person does not currently have a job
- School or to get to and from school
- The performance of essential household duties
 - Ex: grocery shopping, medical appointments, children’s school/activities, etc.

The court shall consider the person’s driving record when deciding if an essential need exists

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What Is “Evidence of Financial Responsibility”?

- Evidence of financial responsibility in accordance with Chapter 601 of the Transportation Code
 - Basically just proof of valid insurance that will cover the applicant when they drive
 - This is most often an “SR-22” form
 - An SR-22 is a certificate that shows that the person is meeting the minimum insurance requirements and will continue to do so for a set amount of time – this is required after certain offenses/suspensions and in certain other situations
 - For more info, see:
<http://www.dps.texas.gov/driverlicense/alcoholrelatedoffenses.htm>
<https://www.dps.texas.gov/DriverLicense/sr22InsuranceCertificate.htm>

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SCENARIO



An applicant has stated that they have an essential need to drive because they need to get to and from work. There is a bus they could take, but they have stated that they don't want to take the bus because it will add an hour to their total commute time.

Have they demonstrated an essential need to drive?

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HOW DOES THE JUDGE DECIDE WHETHER TO GRANT AN ODL?

Administrative Proceedings Deskbook – Chapter 9, Section E

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Checklist

- ✓ License or privilege to drive suspended for an eligible reason?
- ✓ Petition filed in proper court?
- ✓ Demonstration of essential need?
- ✓ Evidence of financial responsibility?

If any of these are not present – deny application

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Is a Hearing Required?

- The judge may decide whether or not to hold a live hearing before making a decision
 - A prosecutor may be notified and attend, but this is not required
 - A hearing may be held **ex parte** (*with only the applicant present*)
- TJCTC recommends holding a live hearing if the court does not have enough information to make a decision

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THE JUDGE GRANTS THE ODL. NOW WHAT GOES IN THE ORDER?

Administrative Proceedings Deskbook – Chapter 9, Section F

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Possible Contents of Order (Depending on Circumstances)

1. Travel Limits
2. Driving Log
3. Ignition Interlock Device Restriction
4. Alcohol Counseling Program
5. Testing for Alcohol/Drugs
6. Supervision

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Travel Limits

The order **MUST** include restrictions on when, where, and why a person can drive

■ Days/hours

- Generally, not more than 4 hours in any 24 hour period
- Court may allow up to 12 hours if applicant shows why it is necessary

■ Areas or routes of travel

- Could be a county, group of counties, or a particular route or routes

■ Purpose of travel

- Actual reasons applicant is allowed to drive (to get to work, school, etc.)

EXCEPTION: The order can't include travel limits if it restricts the applicant to the operation of a motor vehicle equipped with an ignition interlock device (more info on this coming up)

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Travel Limits

Restrictions are based on the reasons the applicant has demonstrated for why they need to drive

- Ex: Basing days/hours around the applicant's work schedule
- Ex: Allowing an applicant who is applying for jobs in another county to drive from where they live to that county (route of travel), but only for the purpose of job interviews (purpose of travel)

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Driving Log

If travel limits are included in the order, the judge **MAY** (but doesn't have to) require a person to keep a detailed log of every time they drive, listing for each trip:

- Start and end time / mileage numbers
- Destination
- Purpose

They can be required to keep the log on them at all times when driving

The image shows a sample driving log form. At the top, it says "Driving Log" and "Name: _____". Below that is a table with four columns: "Date", "Miles", "Destination", and "Purpose". The table has 15 rows for recording trips.

Date	Miles	Destination	Purpose

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Ignition Interlock Device (IID) Restriction

- An IID restriction is a requirement that the applicant may only operate a motor vehicle that has been equipped with an IID
- An IID is a device that is connected to a person's vehicle and tests if a person has been drinking
 - The person has to pass the test before they can start the car
 - The person also has to pass random "rolling" tests as required by the device for as long as the car remains on

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Ignition Interlock Device (IID) Restriction

- The order **MUST** include an IID restriction if another court order already exists requiring the person to install an IID on any vehicle they own/operate

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Possible Other Court Orders Requiring an IID

Bond
Condition
(*most common*)

Example: IID Bond condition imposed after DWI arrest and defendant is seeking an ODL pending trial.

Order Under
PC 49.09(h)

Example: IID required after DWI conviction suspension has ended and then license is suspended again for an unrelated reason.

Condition of Community
Supervision or Installed
IID Under 42A.407(g)

Example: License isn't suspended after DWI conviction when placed on community supervision, IID is required, and then license is suspended again for an unrelated reason.

-- TC 521.242, 521.248(4), CCP 17.441, 42A.407, 42A.408; PC 49.09(h)

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Ignition Interlock Device (IID) Restriction

The order **MAY** include an IID restriction if:

- The person's driver's license has been suspended under TC Ch. 524 or 724 (*BAC over .08 or refusal to test*); and
- They **voluntarily** submit proof that they have an IID installed on each vehicle that they own or operate
 - The court can't *force* a person to do this if there is not already a court order in place requiring an IID

Note: While the court is not required to do this, it is highly recommended

-TC 521.251(d-1); *Deleon v. State*, 284 S.W.3d 894 (Tex. App.—Dallas 2009, no pet.)

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Ignition Interlock Device Restriction

If applicant is restricted to operation of a motor vehicle equipped with an IID in the ODL order, do **not** include in the order:

- Travel limits (when, where, & why applicant can drive)
- Supervision – more on this coming up

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Alcohol Counseling Program & Testing For Alcohol/Drugs

IF the applicant's license has been suspended under TC Ch. 524 or 724 (*BAC over .08 or refusal to test*), the order:

- **MUST** require an alcohol counseling program; &
- **MAY** require alcohol/drug testing

The court may require the person to report periodically to the court to verify that the person is attending the alcohol counseling program

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Supervision

- The court **MAY** (but does not have to) order the applicant to submit to supervision to verify compliance with the requirements in the order
 - ***But Remember:*** If the applicant is restricted to an IID, the order **CAN'T** include supervision
- If supervision is ordered, the court may order it to continue until the end of the suspension period and may modify or terminate it for good cause

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Supervision

Since 9/1/19, **if supervision is ordered**, the options are:

- Supervision by CSCD
 - The *Judge* **MUST** assess \$25-60 fee
- Supervision by a personal bond office established under CCP 17.42
 - The *office* **MAY** collect \$25-60 fee

These changes apply to an ODL order issued on or after 9/1/19, regardless of whether the underlying offense giving rise to the order was committed before, on, or after that date

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SCENARIO

The judge has issued an order granting an ODL. The person's driver's license was suspended for a breath sample of over .08 at a DWI stop. The person has a bond condition in place requiring them to only drive a vehicle that is equipped with an ignition interlock device.

What must be included in the order?

What may, but is not required to be, included in the order?

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EFFECTIVE DATES & DURATION OF ORDER

Administrative Proceedings Deskbook – Chapter 9, Sections H, I

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Effective Dates

The order is effective **immediately** except for certain situations when the suspension is under TC Ch. 524 or 724 (*BAC over .08 or refusal to test*) **AND** the person **IS NOT** restricted to an ignition interlock device:

- Effective 91 days after the date of the suspension
 - If prior TC Ch. 524 or 724 suspension in 5 years before arrest
- Effective 181 days after the date of the suspension
 - If conviction for an offense under Penal Code 49.04-49.08 (DWI offenses) in five years before arrest

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Duration

- A court order granting an ODL is valid until the end of the period of suspension of the person's regular license
 - The person may need to renew the ODL issued by DPS, but will not need a new order from the court to do this
- This is different from the first 45 days that an order serves as an actual license
 - After the first 45 days, the person now needs to have both the order and the DPS license on them; but the order is a valid court order the whole time

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Grab Handout:
Order Granting ODL



SCENARIO

- Applicant has a TX driver's license (#12345678) that has been suspended for breathing over .08 at a DWI stop.
- Applicant has submitted his application (which shows an essential need to drive to get to and from work), and he has attached documents showing proof of his job/hours. He has also attached proof of insurance and the certified abstract of his driving record.
- One of Applicant's bond conditions on his criminal case require him to have an IID on any vehicle he drives; and he has submitted proof that the IID is already installed on his vehicle.
- Applicant was convicted of a separate DWI 3 years ago.

❖ Let's fill out the order!

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**ORDER IS GRANTED, FILLED
OUT, & AND SIGNED –
DOES THE COURT HAVE TO
SEND IT ANYWHERE?**

Administrative Proceedings Deskbook – Chapter 9, Section M

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Yes! Give a Copy to Applicant & Send a Copy to DPS

- Give applicant a *certified* copy of the order
- Send a *certified* copy of both the petition and the order to DPS
 - *Note:* The court (and not the applicant) is required by statute to send the certified copies. The court must pay any postage and may not charge any extra fee to the applicant for this purpose.



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How to Send to DPS

Can send by mail, e-mail, or fax

Enforcement and Compliance Service
Attn: ECA
PO BOX 4087
Austin TX 78773

e-mail: Driver.Improvement@dps.texas.gov

Fax: 512-424-2848

Phone: 512-424-2000, extension 84620 (court use only)

<https://www.dps.texas.gov/DriverLicense/OccupationalLicense.htm>

Address if sending along with money:

Texas DPS Central Cash Receiving
PO Box 15999
Austin, Texas 78761-5999



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CAN THE APPLICANT APPEAL THE DECISION?

Administrative Proceedings Deskbook – Chapter 9, Section J

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There Is No Appeal Option

But there is also nothing saying the applicant can't try again and file a new application in any other court where they could have filed in the first place

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CAN THE COURT MODIFY THE ORDER?

Administrative Proceedings Deskbook – Chapter 9, Section K, M

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Modification

- A court may modify an order at any point as long as the order is still valid.
 - Govt. Code 21.001 (“A court has all powers necessary for enforcement of its lawful orders”)
- No filing fees are required for a modification since the person is not filing a new petition

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Why Would It Need To Be Modified?

Main reason would be if any of the conditions in the order need to be changed because of a change in circumstances

- Ex: If a person changes jobs, the hours that they need to be able to drive could change to a time outside of what their order currently allows
- Ex: If a person moves, the area or routes of travel may need to be changed

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Must Send Order to DPS

- The court must send a certified copy of any order modifying an order granting an ODL to DPS
 - (and pay for any postage)
- DPS may charge the applicant another fee if they also need a new ODL from DPS, but that's between the applicant and DPS



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WHAT IF THE APPLICANT VIOLATES THE ORDER?

Administrative Proceedings Deskbook – Chapter 9, Section F(3), L, M

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Class B Misdemeanor

A person who holds an occupational license commits a Class B misdemeanor if the person:

- Operates a motor vehicle in violation of a restriction imposed on the license; or
- Fails to have a certified copy of the court's order in their possession when driving

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When the Court Must Revoke the ODL Order

- A court must issue an order revoking its previous order to grant an ODL if:
 - The court becomes aware that the person has been *convicted* of the offense described on the previous slide; or
 - The person was restricted to an IID, provided proof of installation, and then removed the IID

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When the Court May (But Is Not Required To) Revoke the ODL Order

- A court may revoke its order granting an ODL at any time for good cause
 - The judge may hold a hearing for this purpose if they would like
 - It is up to the judge to decide what counts as “good cause”
 - Ex: If a person is not complying with the travel limits set out in their order and/or is not keeping a driving log as required

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When the Court May (But Is Not Required To) Revoke the ODL Order

- A court may revoke its order granting an ODL if it makes a finding that the person is not attending an alcohol counseling program as required by their order
- On receipt of the order revoking the ODL, DPS must suspend the ODL for:
 - 60 days if the original suspension was under TC Ch. 524 (BAC over .08)
 - 90 days if the original suspension was under TC Ch. 724 (refusal to test)
- A person is not eligible for a new occupational license during this period of suspension

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Must Send Order to DPS

- The court must send a certified copy of any order revoking an ODL to DPS
 - (and pay for any postage)
- If it isn't sent, no one will know that the order has been revoked



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