

SPEEDING & SPEED LIMITS

**TMCEC Traffic Safety Initiatives
Conference 2013**

**David S. Johnson
Deputy Chief Prosecutor, Arlington**

OVERVIEW

- i. General Laws Applicable to Speeding and Speed Limits**
- ii. Citations, Complaints, and Trial**
- iii. Consequences of Conviction**

I. General Laws relating to Speeding and Speed Limits

- 1. General Offense**
- 2. Default Prima Facie Speed Limits**
- 3. Setting Speed Limits**
- 4. Speed Limit Signs**

Texas Transportation Code (TC), Chapter 545, Subchapter H – Speed Restrictions (§§ 545.351 - 365)

1. General Offense

Person may not drive at a speed greater than reasonable and prudent under the circumstances then existing. TC § 545.351(a)

Speed in excess of the speed limit is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful. TC § 545.352(a)

Prima Facie concept

“All speed limits are considered ‘prima facie’ limits. Prima facie limits are those limits which on the face of it, are reasonable and prudent under normal conditions.”
43 Texas Administrative Code (TAC) § 25.21(b)(1)

SPEED LIMITS
DAY — REASONABLE & PRUDENT
TRUCK — 60
NIGHT — ALL VEHICLES — 55

2. Default Prima Facie Speed Limits

- 30 mph in an urban district on a street, 15 mph in an alley;
- 70 mph on a numbered U.S. or Texas highway outside an urban district;
- 60 mph on a U.S. or Texas highway that is not numbered, outside an urban district; or
- 15 mph on a beach or on a county road adjacent to a beach.

TC § 545.352(b)

3. Setting Speed Limits - State Highways

- If Transportation Commission determines from an engineering and traffic investigation that a (default) prima facie speed limit is unreasonable or unsafe on a part of the state highway system, it may declare a different speed limit by minute order. TC § 545.353(a)
- If the location is within a city, such speed limits may be set by either: (1) minute order, or (2) city ordinance or resolution. 43 TAC § 25.24(a)
- Speed limit is effective when signs are posted. TC § 545.353(c)

Setting Speed Limits - City Highways

- City may alter (default) prima facie speed limits by ordinance for highways within the city, including those part of the state highway system, after conducting an engineering and traffic investigation. TC § 545.356(a)
- Transportation Commission minute order supersedes any conflicting speed limit set by a city. TC § 545.359
- In general, speed limits can be 25 mph to 75 mph. TC § 545.356(a), (b-1)
- "**Highway or street**" means the width between the boundary lines of a publicly maintained way open to the public for vehicular traffic. TC § 541.302(5)

Minimum Speed Limits

- **Minimum speed limits may be set by Transportation Commission or a city based on the results of an engineering and traffic investigation showing that slow speeds on a highway consistently impede traffic.** TC § 545.363(b)



Speed Studies

- **Department of Transportation (TxDOT) regulations and guidelines for establishing speed limits, including conducting engineering and traffic investigations (speed studies), found at 43 TAC, Part 1, Chapter 25, Subchapter B (§§ 25.20 - 25.26, in particular, § 25.23)**

4. Speed Limit Signs

- **Speed limit signs must comply with the Texas Manual on Uniform Traffic Control Devices.** TC §§ 544.001, -002; 43 TAC § 25.1
- **Speed limit signs should be within about 5 feet of the actual reference marker in minute order or ordinance.** 43 TAC § 25.23(d)(8)
- **Local authority may not place any traffic control devices on a highway under TxDOT's jurisdiction without permission.** TC §§ 544.002(c), 541.002(3), 541.304(1)



II. Citations, Complaints and Trial

1. Requirements for Speeding Citations and Complaints
2. Issuance of Citation and Authority to Arrest
3. Emergency Situations
4. Culpable Mental States

1. Requirements for Speeding Citations and Complaints

- General citation requirements:**
 1. Time and place to appear before magistrate in court;
 2. Defendant's name and address;
 3. Offense charged; and
 4. if applicable, license plate of vehicle.

Texas Code of Criminal Procedure (CCP) art. 14.06(b);
TC § 543.003 (for Subtitle C offenses)

- General complaint requirements in CCP art. 45.019**

- Citations and Complaints for a charge of Speeding also must include:**

1. Maximum or minimum speed limit for the location; &
2. Defendant's alleged speed.

TC § 543.010

2. Issuance of Citation and Authority to Arrest

- General Rule:** officers may arrest person for any offense committed in their presence or within their view. CCP art. 14.01(b)
 - Key Exception:** officer cannot arrest and can only issue citation if:
 1. Offense charged is *Speeding (or Open Container)*; and
 2. Person makes written promise to appear (by signing the citation).
- TC § 543.004, -005



3. Emergency Situations

- Speeding is not unlawful for:**
 1. Authorized vehicle responding to a call;
 2. Police patrol; or
 3. Physician or ambulance responding to an emergency call.
- TC § 545.365(a)

Exceptions or Defenses? AND Why does it matter?

- All elements of an offense must be pled in the complaint and the Prosecution must prove all elements at trial beyond a reasonable doubt. Texas Penal Code (PC) §§ 2.01, 2.02(b)
- Negation of exceptions are elements of an offense. PC § 1.07(a)(22)(D)
- Complaint must negate all exceptions and the Prosecution must negate them with evidence beyond a reasonable doubt at trial. PC § 2.02(a), (b)
- Defenses are not elements of an offense and are not required to be pled in the complaint. The Prosecution is not required to negate defenses at trial. PC § 2.03(a), (b); 1.07(a)(22)

Factors to Consider ...

1. **Title of Sec. 545.365: "Exception for Emergencies..."**
2. **An exception to an offense is labeled "It is an exception to the application of..."** PC § 2.02(a)
 - Sec. 545.365 begins with "The regulation of the speed of a vehicle ... does not apply to..."
3. **A defense is labeled "It is a defense to prosecution."** PC § 2.03(a)

4. **An "exception" is not really an *exception*, unless it is set out in the same section as the one defining the offense.**
Hicks v. State, 18 S.W.3d 743 (Tex. App.—San Antonio 2000), *citing Bragg v. State*, 740 S.W.2d 574 (Tex. App.—Houston [1st Dist.] 1987).
 - Emergency situations are found in Sec. 545.365
 - Offense of *Speeding* is found in Sec. 545.351
5. **A ground of defense that is not plainly labeled as required by Penal Code, chapter 2, is a defense.** PC § 2.02(e)

Conclusion

- **Emergency Situations for *Speeding* offenses in Sec. 545.365 are defenses, NOT exceptions.**
 - *Ellis v. State*, 2000 WL 5200 (Tex. App.—Dallas 2000)
 - *McClain v. State*, 1997 WL 312309 (Tex. App.—Houston [14th Dist.] 1997)

4. Culpable Mental State (CMS)

- **Culpable Mental States: Intentional, Knowing, Reckless, and Criminal Negligence.** PC §§ 6.02(d), 6.03

- **General Rule:**
 - CMS is required for all criminal offenses. PC § 6.02(a)
 - If the definition of an offense does not prescribe a CMS, one is still required, unless the definition of the offense dispenses with the CMS. PC § 6.02(b)



□ **Key Exceptions:**

- **Speeding does not require a CMS even though the law defining the offense does not explicitly dispense with one.** *Zulauf v. State*, 591 S.W.2d 869, 872-73 (Tex. Crim. App. 1979)
- **Many Transportation Code offenses, in general, may be strict liability offenses without a CMS, even though the law defining the offense does not explicitly dispense with one.** *Honeycutt v. State*, 627 S.W.2d 417, 424 n. 4 (Tex. Crim. App. 1981).

III. Consequences of Conviction

1. **Moving Violations**

2. **Special Consequences for Commercial Driver's License (CDL) Holders**



1. Moving Violations

- A **moving violation** is “an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.” 37 TAC § 15.89(a)

- Convictions for “moving violations” can result in driver’s license suspension and surcharges. TC § 521.292(a)(3), (b); 37 TAC, Part 1, Chapter 15, Subchapter D
 - **Habitual Violator Suspension Standard:**
 - 4 or more convictions in 12 months, or
 - 7 or more convictions in 24 months.

Specific Moving Violations

- Specific “moving violations” related to **Speeding:**
 1. Speeding greater than 10% above speed limit (3586)
 2. Speeding – 15 mph or over (CDL) (3039)
 3. Speeding – school zone (3596)
 4. Speed under minimum (3051)
 5. Unsafe speed (too fast for conditions) (3002)
 6. Fail to control speed (3050)37 TAC § 15.89(b)

2. Special Consequences for CDL Holders

- **Serious Traffic Violation (STV) includes:**
 - **Excessive speeding, driving 15 mph or more above the posted speed limit.** TC § 522.003(25)(A)(i)



Consequences of Convictions for STVs

- When applying for a job as a commercial motor vehicle driver, person must disclose to the employer all convictions for STVs in last 10 years.
TC § 522.064(a)(4)

- CDL holders are disqualified from driving a commercial motor vehicle for:
 - 60 days if convicted of 2 STVs in a 3-year period; or
 - 120 days if convicted of 3 STVs arising from separate incidents in a 3-year period.TC § 522.081(a)
- CDL holders who are disqualified may also have their license suspended if the conduct that is the ground for disqualification is also a ground suspension under Chapter 521.
TC §§ 522.092(1); 521.292(a)(3), -(b)

QUESTIONS?

David S. Johnson
Deputy Chief Prosecutor, Arlington
817-459-6878
david.s.johnson@arlingtontx.gov

SPEEDING & SPEED LIMITS OUTLINE

I. General Laws Applicable to Speeding and Speed Limits

- a. **TC, Chap. 545, Subchapter H – Speed Restrictions (§§ 545.351 - 365)**
- b. **General Offense:**
 - i. Person may not drive at a speed greater than reasonable and prudent under the circumstances then existing. TC § 545.351(a)
 - ii. Speed in excess of the speed limit is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful. TC § 545.352(a)
- c. **Prima Facie concept:** “All speed limits are considered ‘prima facie’ limits. Prima facie limits are those limits which on the face of it, are reasonable and prudent under normal conditions.” 43 TAC § 25.21(b)(1)
- d. **Default Lawful Speed Limits**
 - i. 30 mph in an urban district on a street, 15 mph in an alley;
 - ii. 70 mph on a numbered U.S. or Texas highway outside an urban district;
 - iii. 60 mph on a U.S. or Texas highway that is not numbered, outside an urban district; or
 - iv. 15 mph on a beach or on a county road adjacent to a beach. TC § 545.352(b)
- e. **Setting Speed Limits - State Highways**
 - i. If Transportation Commission determines from an engineering and traffic investigation that a (default) prima facie speed limit is unreasonable or unsafe on a part of the state highway system, it may declare a different speed limit by minute order. TC § 545.353(a)
 - ii. If the location is within a city, such speed limits may be set by either:
 - 1. minute order, or
 - 2. city ordinance or resolution. 43 TAC § 25.24(a)
 - iii. Speed limit is effective when signs are posted. TC § 545.353(c)
- f. **Setting Speed Limits - City Highways**
 - i. City may alter (default) prima facie speed limits by ordinance for highways within the city, including those part of the state highway system, after conducting an engineering and traffic investigation. TC § 545.356(a)

- ii. Transportation Commission minute order supersedes any conflicting speed limit set by a city. TC § 545.359
- iii. In general, speed limits can be 25 mph to 75 mph. TC § 545.356(a), (b-1)
- iv. “Highway or street” means the width between the boundary lines of a publicly maintained way open to the public for vehicular traffic. TC § 541.302(5)
- g. **Minimum Speed Limits** may be set by Transportation Commission or a city based on the results of an engineering and traffic investigation showing that slow speeds on a highway consistently impede traffic. TC § 545.363(b)
- h. **Speed Studies:** TxDOT regulations and guidelines for engineering and traffic investigations found at 43 TAC, Part 1, Chapter 25, Subchapter B (§§ 25.20 - 25.26, in particular, § 25.23)
- i. **Speed Limit Signs**
 - i. Must comply with the *Texas Manual on Uniform Traffic Control Devices*. TC §§ 544.001, -002; 43 TAC § 25.1
 - ii. Speed limit signs should be within about 5 feet of the actual reference marker in minute order or ordinance. 43 TAC § 25.23(d)(8)
 - iii. Local authority (including a city) may not place traffic control devices (including speed limit signs) on a highway under TxDOT’s jurisdiction without permission. TC §§ 544.002(c), 541.002(3), 541.304(1)

II. Citations, Complaints and Trial

- a. **Requirements for Speeding Citations and Complaints**
 - i. General citation requirements:
 - 1. Time and place to appear before magistrate in court;
 - 2. Defendant’s name and address;
 - 3. Offense charged; and
 - 4. if applicable, License plate of vehicle. CCP art. 14.06(b); TC § 543.003 (for Subtitle C offenses)
 - ii. General complaint requirements found in CCP art. 45.019
 - iii. Citations and Complaints for a charge of *Speeding* also must include:
 - 1. Maximum or minimum speed limit for the location; and
 - 2. Defendant’s alleged speed. TC § 543.010

CDL = commercial driver’s license; **CCP** = Texas Code of Criminal Procedure; **CMS** = culpable mental state;
PC = Texas Penal Code; **STV** = serious traffic violation; **TAC** = Texas Administrative Code;
TC = Texas Transportation Code; **TxDOT** = Texas Department of Transportation

SPEEDING & SPEED LIMITS OUTLINE

b. Issuance of Citation and Authority to Arrest

- i. General Rule: officer may arrest person for any offense committed in his presence or within his view. CCP art. 14.01(b)
- ii. Key Exception: officer cannot arrest and can only issue citation if:
 1. Offense charged is *Speeding* (or *Open Container*); and
 2. Person makes written promise to appear (by signing the citation). TC § 543.004, -005

c. Emergency Situations, TC § 545.365(a)

- i. *Speeding* is not unlawful for:
 1. Authorized vehicle responding to call;
 2. Police patrol; or
 3. Physician or ambulance responding to emergency call.
- ii. Emergency Situations for *Speeding* offenses are defenses, NOT exceptions. *Ellis v. State*, 2000 WL 5200 (Tex. App.—Dallas 2000); & *McClain v. State*, 1997 WL 312309 (Tex. App.—Houston [14th Dist.] 1997)
- iii. Defenses are not required to be pled in the complaint and the Prosecution is not required to negate them at trial. PC §§ 2.03(b), (e)

d. Culpable Mental State

- i. Intentional, Knowing, Reckless, and Criminal Negligence. PC §§ 6.02(d), 6.03
- ii. General Rule:
 1. CMS is required for all criminal offenses. PC § 6.02(a)
 2. If the definition of an offense does not prescribe a CMS, one is still required, unless the definition of the offense dispenses with the CMS. PC § 6.02(b)
- iii. Key Exceptions:
 1. *Speeding* does not require a CMS, even though the law defining the offense does not explicitly dispense with one. *Zulauf v. State*, 591 S.W.2d 869, 872-73 (Tex. Crim. App. 1979)
 2. Many Transportation Code offenses, in general, may be strict liability offenses without a CMS, even though the law defining the offense does not explicitly dispense with one. *Honeycutt v. State*, 627 S.W.2d 417, 424 n. 4 (Tex. Crim. App. 1981).

III. Consequences of Conviction

a. Moving Violations

- i. Moving Violation is “an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance.” 37 TAC § 15.89(a)
- ii. Convictions for “moving violations” can result in driver’s license suspension and surcharges. TC § 521.292(a)(3), (b); 37 TAC, Part 1, Chapter 15, Subchapter D
 1. *Habitual Violator* Suspension
Standard: 4 or more convictions in 12 months or 7 or more convictions in 24 months.
- iii. Specific *Speeding* “moving violations” (and reporting codes):
 1. Speeding greater than 10% above posted speed limit (3586)
 2. Speeding – 15 mph or over (CDL) (3039)
 3. Speeding – school zone (3596)
 4. Speed under minimum (3051)
 5. Unsafe speed (too fast for conditions) (3002)
 6. Fail to control speed. (3050)
37 TAC § 15.89(b)

b. Special Consequences for CDL Holders

- i. STVs include: excessive speeding, driving 15 mph or more above the posted speed limit. TC § 522.003(25)(A)(i)
- ii. Consequences of Convictions for STVs:
 1. When applying for a job as a commercial motor vehicle driver, person must disclose to employer all convictions for STVs in last 10 years. TC § 522.064(a)(4)
 2. CDL holders are disqualified from driving commercial motor vehicle for:
 - a. 60 days if convicted of 2 STVs in a 3-year period; or
 - b. 120 days if convicted of 3 STVs arising from separate incidents in a 3-year period.
TC § 522.081(a)
 3. CDL holders who are disqualified may also have their license suspended if the conduct that is the ground for disqualification is also a ground for suspension under Chapter 521. TC §§ 522.092(1); 521.292(a)(3), (b)

TEXAS TRANSPORTATION COMMISSION

VARIOUS County

MINUTE ORDER

Page 1 of 1

District VARIOUS

The Texas Natural Resources Conservation Commission (TNRCC) on January 11, 2001 requested the Texas Department of Transportation (department), pursuant to Title 43, Sections 25.23 and 25.24 of the Texas Administrative Code, to establish environmental speed limits on various roadways in the Dallas-Fort Worth area.

TNRCC is the state agency primarily responsible for developing the state's plan to attain or maintain air quality levels that satisfy the federal National Ambient Air Quality Standards (NAAQS). The Dallas-Fort Worth Attainment Demonstration State Implementation Plan (Rule Log # 1999-055-SIP-AI) is a portion of this statewide plan and contains detailed requirements for establishing environmental speed limits for various categories of public roads, streets, and highways.

TNRCC has concluded, based on a study included in the Dallas-Fort Worth Attainment Demonstration State Implementation Plan, that the implementation of environmental speed limits on certain portions of the state highway system in the Dallas-Fort Worth area would assist the state to attain or maintain the federal NAAQS. Exhibit A of this order lists the segments of the state highway system on which TNRCC has determined speed limit reductions are necessary for the areas to attain or maintain the federal NAAQS.

Based upon the studies and conclusions of the TNRCC, the Texas Transportation Commission (commission) concurs that lower vehicle speeds on certain portions of the state highway system in the Dallas-Fort Worth area would assist the state to attain or maintain the federal NAAQS. The commission has also evaluated these proposed environmental speed limits and finds that they are reasonable and serve the long term interests of the department and the state of Texas.

IT IS THEREFORE ORDERED by the commission that the environmental speed limits as determined by the TNRCC and listed in Exhibit A of this order be accepted as in accordance with Title 43, Sections 25.23 and 25.24 of the Texas Administrative Code. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing environmental speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order, with the exception of school and construction speed zones, is superceded to the extent of that conflict.

Submitted and reviewed by:

Recommended by:

Director, Traffic Operations Division

Executive Director

108409 JAN 25 01
Minute Date
Number Passed

ENVIRONMENTAL SPEED ZONES

County (City)	Highway Control Section	Limits MP-Milepoint	Length (Miles)	Speed (Miles Per Hour)
		BEGIN	END	
<i>Fort Worth District</i>				
Parker	US 377 80-6	MP 1.000	MP 6.337	65
Tarrant	IH 20 8-12	MP 0.206	MP 9.316	60
Tarrant	IH 20 8-13	MP 9.312	MP 14.508	60
Tarrant	IH 20 8-16	MP 0.962	MP 5.278	65
Tarrant	IH 20 8-16	MP 5.278	MP 10.527	60
Tarrant	IH 20 2374-5	MP 1.000	MP 11.520	60
Tarrant	IH 20 2374-5	MP 11.520	MP 13.047	65

