

**Handling Traffic &
Misdemeanor Matters for
Re-Entry Participants**

LOUISIANA RE-ENTRY COURT LEGAL PRO BONO PROGRAM

BASIC INSTRUCTIONS FOR HANDLING UNRESOLVED MISDEMEANOR CHARGES, INCLUDING TRAFFIC CITATIONS

Thank you for volunteering to assist a participant in Reentry Court to resolve his outstanding misdemeanor charges, including traffic citations and outstanding cases in municipal court, through the Louisiana Re-Entry Court Legal Pro Bono Program (The Program).

This guide is intended to provide suggested approaches for handling typical cases. It is not comprehensive and does not necessarily address all situations nor does it supplant your legal judgment or expertise. However, we hope it will be helpful in getting you started.

Primer on Traffic and Other Misdemeanor Offenses and the Courts in Which They are Tried

Whether an offense is a misdemeanor or a felony is determined by the penalty it carries. Felonies are offenses that carry a penalty of death or imprisonment at hard labor. All other offenses, including local penal ordinances, are misdemeanors. *LSA-C.Cr.P. Art. 933*. Most traffic citations are misdemeanors.

In Louisiana, the principal trial courts that handle misdemeanors are city courts, which are courts of limited jurisdiction. There are approximately 46 city courts outside of Orleans Parish. The court structures in Orleans, Jefferson and Ascension parishes differ from the rest of the state. In Orleans Parish, misdemeanors, except traffic citations, are handled in Municipal Court. Traffic citations are handled in Traffic Court. (The two city courts in New Orleans, First and Second City Court, handle only civil cases.) In Jefferson and Ascension Parish, Parish Courts handle misdemeanors, including traffic citations. Jefferson Parish has two parish courts, First Parish Court, which covers the East Bank, and Second Parish Court, which covers the West Bank. Ascension Parish Court handles misdemeanors, including misdemeanor traffic offenses, which carry penalties of up to \$1,000 or 6 months in parish jail. Finally, many small towns and villages have established mayor's courts, which have jurisdiction over violations of municipal ordinances.

Case Assignment

At the time of the referral, you should have been provided with your client's name and contact information, a copy of his driving record obtained from the Department of Public Safety, and a letter of incarceration from Louisiana State Penitentiary verifying your client's dates of incarceration. **If you have not received this information, please contact the organization from which you received your client referral.**

At the outset, you should make clear to your client the scope of your representation. The organization from which you received the referral may have already had your client enter into a representation agreement that covers the scope of the representation you have agreed to provide. However, you should verify this with the referring organization. Before beginning the representation, you should insure that the representation agreement with your client accurately reflects the scope of the representation and comports with the Louisiana Rules of Professional Conduct and applicable law. See Louisiana Rule of Professional Conduct 1.2.

Suggestions for Handling Misdemeanors, including Traffic Citations

The driving record you were provided at the time of referral generally reflects unresolved traffic citations that are blocking reinstatement of the reentrant's driving privileges, but the system is not foolproof and it is possible that other traffic citations exist that are not reflected on the driving record. If the Pro Bono Program is aware of the existence of other unresolved traffic citations, municipal violations or other misdemeanors, we have provided that information to you.

If you have agreed to handle all unresolved misdemeanors, including traffic citations, for your client, then you should review the driving record and the records provided regarding any other misdemeanor charges to determine in what court or courts your client has unresolved charges. Be aware that sometimes the driving record does not necessarily identify every traffic citation pending in a particular court so we recommend that you first visit the Clerk of Court's offices in each of the courts in which you have reason to believe your client has unresolved misdemeanor charges, including traffic citations, to 1) insure that you are addressing all of the citations/charges on record in that court and 2) determine the division of court to which each citation/charge is assigned. If you have agreed to handle only certain unresolved misdemeanor charges/traffic citations for your client in a particular jurisdiction, then obviously your research will be limited to identifying all citations/charges in that particular jurisdiction.

1. **Traffic Citations**

- a. ***Procedures:*** Procedures vary from court to court and judge to judge and parish to parish. In Orleans parish, you generally start the process of resolving outstanding traffic charges by setting the case for trial. This must be done in person. If you are handling multiple traffic charges in Orleans parish, then you may be able to have the cases consolidated. This should be addressed with each division of court where a charge is pending. Since the first appearance date will likely have passed, the Clerk may seek a \$100 contempt fee before the Clerk will set a trial date. (See <http://www.nola.gov/traffic-court/>). If that happens, talk with the judge before whom the case is pending about either waiving the fee or deferring payment of the fee until the conclusion of the case. When speaking with a Traffic Court judge, be sure to

identify yourself as a volunteer in the Re-Entry Court Pro Bono Program representing a re-entry court participant.

The foregoing notwithstanding, the Program has met with members of the Orleans Traffic Court bench to educate them about the Program. As a result, the Honorable Robert Jones, Traffic Court Judge, has offered to assist in the disposition of matters being handled by volunteers in the Program. The Honorable Mark Shea has offered to handle such matters if Judge Jones is not available. Judge Jones has indicated that he will work with Program volunteers on any regular court day; Judge Shea has indicated that Mondays are the best day to bring Re-Entry Court participant matters to his attention. In the interest of efficiency, these judges have indicated that they are willing to consolidate matters from other sections of traffic court to their section so that all unresolved traffic charges may be handled more expeditiously.

When meeting with any of the Orleans Parish Traffic Court Judges, you should identify yourself as a volunteer in the Re-Entry Court Pro Bono Program representing a re-entry court participant. You should bring with you a copy of your client's OMV record and their letter of incarceration or other proof of your client's dates of incarceration.

Once all unresolved traffic citations pending in the jurisdiction have been set for trial or resolved, your client (or you on behalf of your client) may obtain a reinstatement letter from the Clerk of Court to present to the OMV. (For Orleans Parish, see <http://www.nola.gov/traffic-court/> for information about what information your client will need in order to obtain the reinstatement letter.) The OMV will not reissue a permanent license that has been suspended due to unresolved traffic citations without a reinstatement letter from each jurisdiction in which citations were issued. Alternatively, a receipt from the Court upon resolution of the matter that is annotated with "Eligible for Reinstatement" will also generally satisfy OMV requirements. (Note: Your client may obtain a provisional license before undertaking to resolve his outstanding charges. See the Basic Instructions for Handling Administrative Matters with the Office of Motor Vehicles.)

On the day of trial, check in with the Section Clerk in the section to which your case is assigned. The clerk should be able to provide you with the Court's record of the case. (If the charge is Operating Under the Influence (OUI) aka DWI, then you will need to check in with the OUI clerk of that section.) Ask the Section Clerk if the City Attorney is in. Generally, you will be directed to walk back to the City Attorney's room behind the bench and wait in line with the other attorneys but ahead of *pro se* litigants. The City Attorney will call you in and you discuss the case with him there. As noted above, the Program has worked to educate the New Orleans City

Attorney and the New Orleans Traffic and Municipal Court judges of the Program so it may be helpful to let the City Attorney know that you are with the Re-Entry Court Legal Pro Bono Program.

Usually, the City Attorney will have the information that he needs to discuss your case available on his computer. Your resolution of the case should include recall of all arrest attachments or warrants issued in connection with the case and, if possible, waiver of any court costs, fees and fines. Resolution of the charges can be handled by the City Attorney but resolution of warrants, attachments, and waiver of court costs, fines and fees will have to be done by the Court. Traffic Court judges frequently handle such matters in chambers. After you have resolved the case, including the charges, arrest warrants and attachments, and court costs/fines/fee waivers, if possible, then you should obtain a stamped copy of the resolution from the Section Clerk before leaving the courthouse. Generally, this takes the form of a receipt. Be sure the receipt is annotated with the words "Eligible for Reinstatement." If the City Attorney agrees to *nolle pros* a case, then he will usually make a note on the charging document and you should also obtain a stamped copy of the annotated charging document.

- b. ***If possible, negotiate a nolle pros:*** Although one way to resolve a traffic citation is to have your client enter a guilty plea with credit for time served, this is not ideal in some circumstances because of the consequences of the additional conviction. For example, some charges, including driving with a suspended driver's license, leave the door open for the OMV to impose an additional period of suspension against the driver's license and the goal is to clear your client's driver's license and get it reinstated as quickly as possible. Accordingly, ideally, you will seek to have each traffic citation *nolle prossed* by the handling prosecuting body, usually the City or Parish Attorney's Office. Many times, this can be accomplished with a letter from your client. A sample letter is attached (See Attachment No. 1).
- c. ***Motion to Quash Charges:*** In some circumstances, you may have a valid motion to quash based on the prosecution's failure to timely bring the case to trial after the prosecution has been instituted. See LSA-R.S. 32: 398.2 and Louisiana Code of Criminal Procedure Articles 578-583. ***Note: This option will likely only be available in limited circumstances.*** Attached is a brief summary of the statutory basis for interruption under Article 579 and the State's burden of proof. (See Attachment No. 2.) Knowing if you have a meritorious motion to quash can be helpful in negotiating a *nolle pros* of the citation.
- d. ***Guilty plea with credit for time served:*** If you are unable to have the citation *nolle prossed* or quashed, then you may consider negotiating the charge down as far as

possible with your client accepting a guilty plea with credit for time served, thereby avoiding any additional jail time or fines. Obviously, you should try to negotiate the lowest possible charge when agreeing to a guilty plea. Also, since the goal is to get the impediments to reinstatement of driving privileges removed, the charge to which your client agrees to plead guilty should not be one that will trigger the OMV's right to impose an additional period of suspension, e.g. driving with a suspended license. Because sometimes the OMV will look not to the charge to which the defendant pled guilty but rather to the original charge, a guilty plea should be avoided if the case can be *nolle prossed* or dismissed.

When considering whether to agree to a guilty plea on a charge offered by the prosecutor, you should be aware of the following potential consequences:

- Some misdemeanor offenses, when cumulated, become felonies. For example, the first two convictions of OUI (aka DWI) are misdemeanors, *LSA-C.Cr.P. Arts. 98.1 and 98.2*, but a third conviction is a felony if hard labor is imposed. *LSA-C.Cr.P. Art. 98.3*. Also, a second OUI conviction may result in a four-year suspension of the defendant's driver's license. *LSA-C.Cr.P. Art. 98.2(A)(3)(b)*.
 - As noted above, some traffic offenses, including driving with a suspended driver's license and a second offense OUI, leave the door open for the OMV to impose an additional period of suspension against the defendant's driver's license. In lieu of pleading to driving with a suspended driver's license, consider pleading your client to operating a motor vehicle without a valid driver's license on his person. Also, when considering whether to recommend that your client plead guilty to a reduced charge, consideration should be given to whether the OMV will look not to the charge to which the defendant pled guilty but rather to the original charge.
- e. Helpful information about procedures and costs in a particular jurisdiction can often be obtained from the Court's website. See, for example, <http://www.nola.gov/traffic-court/>.

2. Misdemeanor Charges

The above process and suggested options for resolving outstanding traffic citations generally apply to other outstanding misdemeanor charges. The overarching concern for resolving all misdemeanor charges is to avoid having your client plead guilty, thereby accumulating additional criminal charges on his record. So, as with traffic citations, the first approach for other misdemeanor charges should be to seek a *nolle pros*. From there, as with traffic citations, you should consider the viability of a motion to quash or, in lieu

of those options, a reduction in the charge to the lowest possible offense with credit for time served. As with traffic charges, you should try to negotiate a waiver of fees, penalties and costs. Also, be sure that the resolution includes an order withdrawing all arrest warrants and attachments and obtain documentation of the resolution of the case.

3. Outstanding Arrest Warrants/Attachments

Consideration should be given to whether it is prudent for you to bring your client with you when appearing in Court or in sending your client to Court without you, even to retrieve documents or information for you. Factoring into this decision should be whether your client has any outstanding arrest warrants or attachments against him, which could result in his being jailed. Arrest attachments are typically issued if a defendant fails to appear for his arraignment (first appearance date) or trial so, often, an outstanding attachment will exist for unresolved traffic or other misdemeanor charges. In those circumstances, appearing on your client's behalf without him present may be the prudent course of action.

Louisiana Code of Criminal Procedure Article 833 gives the Court discretion to allow a defendant charged with a misdemeanor to be arraigned, plead guilty or tried without being present. Most of the Traffic Court judges in Orleans Parish are willing to resolve traffic charges without your client's presence, especially if the client is gainfully employed and his appearance will require him to miss work.

As noted above, in resolving misdemeanor charges, including traffic citations, be sure to take steps to have all warrants or attachments issued in connection with the charge or citation withdrawn.

4. Costs

As part of resolving the citation or charge, you should seek to have the Court waive any fees, fines and costs. Noting to the Court your client's participation in the reentry program in which he underwent two years of intensive social, moral and vocational mentoring, his commitment to successful reentry into his community, and his attendant need to clear his driving record to facilitate maintaining gainful employment may increase the Court's receptiveness to waiving fees and costs.

ATTACHMENT NO. 1
SAMPLE REENTRANT LETTER

Dear Sir or Madam:

I was incarcerated at Louisiana State Penitentiary at Angola (LSP) from [START DATE OF INCARCERATION] to [END DATE OF INCARCERATION]. Please see the attached letter from LSP verifying my incarceration dates.

While incarcerated at LSP, I successfully completed the Offender Rehabilitation and Workforce Development Program (also known as the Angola Reentry Program) where I received moral, social and trade mentoring and training. Since my release, I have been under active supervision by Reentry Court Judge [NAME OF JUDGE] IN [PARISH] Parish. I am working to better myself and my situation by going through the reentry program.

Before I was incarcerated, I received one or more traffic tickets in [CITY/PARISH]. I would like to clear all of my traffic tickets so that I may get my driver's license reinstated. Having a valid driver's license as soon as possible will help me get and keep a job. I am requesting that you *nolle prosequi* my traffic tickets.

Thank you for your consideration.

[REENTRANT SIGNATURE]

[PRINTED NAME]

DOC No. _____

DATE OF BIRTH: _____

ATTACHMENT NO. 2
SUMMARY OF THE BURDEN OF PROOF FOR
INTERRUPTION UNDER LA. C. Cr. P. ART. 579¹

The filing of charges -- which can be something as simple as when a police officer files the traffic citation at Traffic Court or a more formal document such as an indictment -- triggers the running of the period for bringing the defendant to trial under La.C.Cr.P. Art. 578. For misdemeanors, the prosecution has one year to bring the defendant to trial. If the prosecutor fails to timely bring the defendant to trial on a misdemeanor charge, the court must dismiss the charge on a motion to quash filed by the defendant. La.C.Cr.P. Art. 581. This right to quash is waived unless the motion is made prior to trial.

The one-year time-limitation for bringing the defendant to trial can be interrupted or suspended for the reasons set forth in La.C.Cr.P. Arts. 579 (Interruption) or 580 (Suspension). The reasons for interruption include the defendant's failure to appear at any proceeding pursuant to actual notice or the prosecuting body's inability to secure the defendant's presence for trial by legal process or for "any other cause beyond the control of the state." La.C.Cr.P. Art. 579.

Generally, once the defendant shows that the time has lapsed, the state bears a heavy burden in establishing interruption or suspension. *See, State v. Chadbourne*, 728 So.2d 832 (La. 1999), *State v. Bobo*, 872 So.2d 1052, 1055-1056 (La. 2004), *State v. Cooper*, 91 So.3d 404 (La.App.5 Cir. 2012). To satisfy its burden, the state must show that due diligence was exercised in discovering the defendant's whereabouts and in taking appropriate steps to secure his presence for trial. *Id.* However, two revisions to La. C.Cr.P. Art. 579, Subsection (A)(3) added in 1984 and Section (C) added in 2013, are worth highlighting.

In *State v. Romar*, 985 So.2d 722 (La. 2008), the Louisiana Supreme Court observed that the jurisprudence imposing a "heavy burden" on the state to demonstrate the "exercise of due diligence in discovering the whereabouts of the defendant as well as taking appropriate steps to secure his presence for trial once it has found him" evolved under the statutory guidelines for determining interruption under Art. 579(A)(1) and (A)(2). It also noted that its decisions requiring the state to take affirmative steps to secure the defendant's presence for trial when the defendant's absence results from his imprisonment in another jurisdiction, were made before 1984 when the Legislature enacted Art. 579(A)(3). *See State v. Amarena*, 426 So.2d 613 (La. 1983), *State v. Williams*, 414 So.2d 767 (La. 1982), *State v. Devito*, 391 So.2d 813 (La. 1980). *Romar* noted a split in the Circuits after the amendment regarding whether the State bore the same burden under (A)(3) of showing that it exercised due diligence in determining the whereabouts of the defendant and in

¹ This summary is not intended to be comprehensive. You should always research the law in light of your facts for relevant statutory or jurisprudential authority, including amendments and updates.

securing his presence for trial as it did under (A)(1) and (A)(2). *Romar* resolved the split holding that “La.C.Cr.P. Art. 579(A)(3) does not impose on the state the same affirmative duty to search for a defendant who has failed to appear for trial after receiving actual notice.”

In *State v. Baptiste*, 38 So. 3d 247 (La. 2010), Baptiste failed to appear for a pre-trial conference despite actual notice in a criminal case pending in Plaquemines Parish and an arrest warrant was issued. While the Plaquemines arrest warrant was still outstanding, the defendant was arrested and incarcerated in St. Charles Parish for a probation violation. The two-year period for Plaquemines to bring the defendant to trial lapsed while the defendant was incarcerated in St. Charles Parish. More than two years after the Plaquemines Parish charges were filed, St. Charles Parish authorities contacted Plaquemines Parish authorities and informed them of defendant’s impending release and their discovery of the outstanding Plaquemines arrest warrant. The Louisiana Supreme Court held that the State does not have a duty to monitor the status of an outstanding arrest warrant and, thus, the period for bringing the defendant to trial was interrupted when defendant failed to appear despite actual notice. The interruption only ceased when St. Charles Parish notified Plaquemines Parish of the defendant’s whereabouts.

See, also, State v. Cooper, 91 So.3d 404 (La. App. 5th Cir. 2012).

These cases instruct that, if your client failed to appear at a hearing set forth in a traffic ticket that he received when stopped, i.e. actual notice, then the one-year window is interrupted and the interruption may continue even if the defendant is subsequently arrested on another charge and is held in State custody, e.g. the Angola reentry program, unless the defendant can show that the prosecuting parish or municipality was actually aware of the defendant’s custodial location. On the other hand, the interruption may cease at the time of arrest if the subsequent arrest is made in the same parish where the traffic citation is pending since that parish should know the whereabouts of the defendant.

A 2013 amendment added the following provision to Art. 579:

(C) If the defendant fails to appear in court pursuant to any provision of this Article and the defendant is subsequently arrested, the periods of limitations established by Article 578 of this Code shall not commence to run anew until the defendant appears in open court where the case on the original charge is pending, or the district attorney prosecuting the original charge has notice of the defendant’s custodial location. For purposes of this Paragraph, “notice” shall mean either of the following:

- (1) Filing in the record by either the defendant or his counsel advising the court of his incarceration with a copy provided to the district attorney and certification of notice provided to the district attorney.

- (2) Following the seventy-two hour hearing provided by Article 230.1 of this Code, actual notice of arrest is provided to the district attorney and filed in the record of the proceeding of which the warrant against the defendant was issued.

No reported decisions interpreting the 2013 amendment were found but this provision may be determinative for arrests occurring after the effective date of the amendment. Accordingly, you should check the record to determine if notice pursuant to Art. 579(C) was made when analyzing the merit of a motion to quash in your case.
