



Lynn Fitch
ATTORNEY GENERAL

OPINIONS DIVISION

January 31, 2020

The Honorable Albert H. Turnage
Lawrence County Justice Court Judge
Post Office Drawer 1000
Monticello, Mississippi 39654

Re: Failure to Appear in Justice or Municipal Court

Dear Judge Turnage:

Attorney General Lynn Fitch is in receipt of your opinion request and has assigned it to me for research and reply.

OFFICIAL OPINION

Background and Issues Presented

Your request states:

If a person is properly notified pursuant to law of a court setting on a misdemeanor traffic charge and fails to appear at the court date may the court issue a bench warrant for the person's arrest for failure to appear and require that the person post a cash bond in an amount equal to the fines and assessments prior to being released?

Would the response be the same for any other misdemeanor charge such as disturbing the peace or resisting arrest?

Your question asks specifically about a bench warrant. Bench warrants are generally issued upon the failure of a defendant to appear after posting a bond, or failure to appear in response to a show-cause order. A follow-up conversation with you clarified that your question deals with an instance where a person has not posted bond for an offense and no show-cause has been issued. We now understand your question to be, if a judge can issue a warrant when a person fails to appear for a traffic violation on the court date set by the citation.

Brief Response

If a defendant is properly served with a traffic citation and does not appear for court, both justice and municipal court judges have the authority to hold the defendant in contempt for failure to appear and issue a fine and/or arrest warrant as a result of such contempt. A defendant who is found in contempt of court would not be entitled to a bond as the contempt has been adjudicated. However, requiring the amount of the fine for contempt to mirror the amount of the ticket does not resolve the issue of the traffic ticket. The ticket would remain unresolved until it is either adjudicated in absentia or the defendant appears and is tried.

Response and Legal Analysis

If a defendant is properly served and does not appear for court, both justice and municipal court judges have the authority to hold the defendant in contempt for failure to appear and issue a fine and/or arrest warrant as a result of such contempt. Justice Court judges are granted the power to issue contempt orders in Section 9-11-15 of the Mississippi Code Annotated. Section 9-11-15 states, in pertinent part “. . . including power to fine in the amount of fine and length of imprisonment as is authorized for a municipal court in Section 21-23-7(11) for contempt of court. . . .” Section 21-23-7(11) grants municipal judges the authority to issue a contempt order and states, in pertinent part:

(11) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following . . .

Section 21-23-7(11) then lists the allowable court cost for various offenses. Accordingly, both justice court and municipal court judges have the power to issue contempt orders in response to a failure of a defendant to appear for court.

You further ask if the judge can order a cash bond for the amount of fees. A person who is found to be in contempt by the court would not be entitled to a bond as the judge has already adjudicated his contempt.¹ However, Section 21-23-7(11) prescribes the limits on punishment for contempt and sets them at One Thousand Dollars (\$1,000.00) or six (6) months imprisonment, or both. Therefore, the judge could assess the amount of fines, fees, and assessments up to One Thousand (\$1,000.00) dollars in order for the defendant to rid himself of the contempt. Requiring the defendant to pay the fines, fees,

¹ We note that any person who appeals a contempt order would still be entitled to an appeals bond.

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and assessments up to One Thousand Dollars (\$1,000.00) through the contempt order would eliminate the need to incarcerate the defendant for failure to appear. We note that, while it is certainly within the court's authority to imprison the defendant via a contempt order, incarceration is an extreme punishment for failure to appear.

This office recently issued an opinion to Lisa Fairley wherein we discussed two other options for failure to appear on traffic citations. See MS AG Op., Fairley (Oct. 11, 2019). I am attaching a copy of the Fairley opinion for your convenience.

Your second question asks if the answer regarding a contempt warrant would be the same for any other misdemeanor charge such as disturbing the peace or resisting arrest. It is beyond the scope of an official opinion to attempt to list the necessary provisions for contempt for any misdemeanor crime codified by the Mississippi Legislature. If you have a question regarding a specific set of facts, under a specific law, we would be happy to answer in response to a separate request.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

By:

Emiko Hemleben

Emiko Hemleben
Special Assistant Attorney General

Attachment

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 11, 2019

Ms. Lisa B. Fairley
Jackson County Justice Court Clerk
5343 Jefferson Street
Moss Point, Mississippi 39563

Re: Failure to Appear

Dear Ms. Fairley:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Background and Issues Presented

Your request states:

1. If a defendant receives a traffic citation and fails to appear in court, nor makes arrangements to pay by the date on the ticket, and does not respond to the ten (10) day letter mailed out, prior to their license being suspended, are we to send in a notice of suspension (DR-15) to Jackson (MHP) to suspend their license for failure to appear? Referencing House Bill 1352 Section 63-1-53 of the Mississippi Code Annotated (suspension of license; grounds).
2. If we cannot suspend for failure to appear, how will we notify other states when defendant does not appear or pay the citation?
3. Also, how will we get fail to appear on people with a CDL [commercial driver's license]?

Discussion and Legal Analysis

Your first question asks about Section 63-1-53 of the Mississippi Code Annotated which was amended by House Bill 1352 of the Regular Session 2019. The previous language in Section 63-1-53 stated:

(1) Upon failure of any person to respond timely and properly to a summons or citation charging such person with any violation of this title, or upon failure of any person to pay timely any fine, fee or assessment levied as a result of any violation of this title, the clerk of the court shall give written notice to such person by United States first-class mail at his last known address advising such person that, if within ten (10) days after such notice is deposited in the mail, the person has not properly responded to the summons or citation or has not paid the entire amount of all fines, fees and assessments levied, then the court will give notice thereof to the Commissioner of Public Safety and the commissioner may suspend the driver's license of such person. . . .

(2) The commissioner is hereby authorized to suspend the license of an operator without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee:

~~(h) Has failed to pay any fine, fee or other assessment levied as a result of any violation of this title;~~
~~(i) Has failed to respond to a summons or citation which charged a violation of this title; or~~
~~(j) Has committed a violation for which mandatory revocation of license is required upon conviction, entering a plea of nolo contendere to, or adjudication of delinquency, pursuant to the provisions of subsection (1) of Section 63-1-71.~~

The new language, which went into effect July 1, 2019, in Section 63-1-53, reads:

(1) Upon failure of any person to pay timely any fine, fee or assessment levied as a result of any violation of this title, the clerk of the court shall give written notice to such person by United States first-class mail at his last known address advising such person that, if within ninety (90) days after such notice is deposited in the mail, the person has not paid the entire amount of all fines, fees and assessments levied, then the court will pursue collection as for any other delinquent payment, and shall be entitled to collection of all additional fees in accordance with subsection (4) of this section.

(2) The commissioner is hereby authorized to suspend the license of an operator without preliminary hearing upon a showing by his records or other sufficient evidence that the licensee:

(h) Has committed a violation for which mandatory

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revocation of license is required upon conviction, entering a plea of nolo contendere to, or adjudication of delinquency, pursuant to the provisions of subsection (1) of Section 63-1-71.

As you can see, subsection (1) was amended to change the notice the clerk sends from a ten (10) day notice that informed a defendant that his license would be suspended to a ninety (90) day notice of collection efforts. Additionally, subsections (2)(h) and (2)(i) were removed, and the language in subsection (2)(j) was renumbered. Subsection (2)(h) and (2)(i) allowed the court to suspend driver's licenses for failure to pay fines, fees, and assessments while (2)(i) allowed the court to suspend licenses for failure to respond to a summons or citation.

In response to your first question, no, the court should not send a notice of suspension to the driver's license bureau as the court no longer has the authority to suspend licenses for failure to appear pursuant to this section.

In response to your second question, the statute does not contemplate notice to other states for failure to appear.

OFFICIAL OPINION

Your third question asks about commercial driver's licenses (CDL) which are governed by Sections 63-1-211 *et seq.* of the Mississippi Code Annotated. Suspensions and disqualifications of CDLs are governed by Section 63-1-216 and Chapter 49 Code of Federal Regulations Section 383.52. Please note that this office does not opine on Federal Statutes and regulations. Thus, to the extent your question asks us to do so, we decline. We understand your question to be whether or not the court can suspend a CDL for failure to appear. There is no mention in Section 63-1-216 of failure to appear. Section 63-1-216 prescribes several reasons for disqualification and suspension including: conviction of various offenses, driving under the influence, and being out of compliance with an order for support. The only provision for suspension of licenses for failure to appear in Title 63 was in Section 63-1-53. As noted above, Section 63-1-53 was amended and no longer allows the court to suspend licenses for failure to appear.

If a defendant fails to appear on a traffic citation, the court may have a trial in absentia or issue a show cause order. Whether a trial in absentia or a show cause is appropriate is a determination to be made on an ad-hoc basis. In a previous opinion to the Honorable Cecilia Arnold, this office stated:

It is the opinion of this office that an individual may be tried in absentia on a traffic ticket if the individual has been provided proper notice of the date for the appearance and trial and fails to appear or make other arrangements. Please note that the officer who wrote the ticket must also be present to testify about the offense. The traffic ticket alone is not sufficient to convict an individual of a traffic offense.

MS AG Op., Arnold (January 11, 2002). Additionally, the judge has the authority to issue

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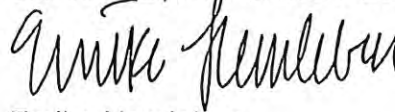
a show cause order to any defendant who fails to appear after being properly noticed for court.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General

OFFICIAL OPINION