










DEFERRED DISPOSITION AND DRIVING SAFETY COURSES

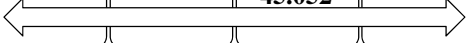

 Ryan Kellus Turner
 General Counsel & Director of Education
 TMCEC
Winter 2011


Forms of Probation in Chapter 45 Code of Criminal Procedure



Deferred Disposition			Chemically Dependent Persons
			
Art. 45.051	Art. 45.0511	Art. 45.052	Art. 45.053


 See, Chart: Comparison of
Deferred Options

Deferred Disposition


 Article 45.051
 Code of Criminal Procedure
(It's Not Deferred Adjudication)

What Does it Take to Get Deferred Disposition?



- ☞ Permission from the Judge. It's Discretionary
- ☞ Plea of (1) guilty or (2) nolo contendere
- ☞ Or (3) upon a Finding of Guilt (i.e. It is a Sentencing Option for the *Judge*)
- ☞ Payment of *court costs*
 - ☞ All at once, OR
 - ☞ In installments, community service, or combination
- ☞ Court defers proceedings for 1 to 180 days

What Does it Cost? "Special Expense Fee" (SEF) Art. 45.051 (a)



SEF - a dollar amount not to exceed the amount of the *fine* that could be imposed on the defendant as punishment for the offense. fee prior to the end of the deferral period.

Prior to 1999, SEF could not be collected until the end of the deferral period.

SEF may be collected at any time before the date on which the period of probation ends.

The judge may elect not to impose the SEF for good cause shown by the defendant.

If the judge orders the collection of a SEF, the judge shall require that the amount of the special expense fee be credited toward the payment of the amount of the *fine* imposed by the judge.

Deferred Disposition: Application



- ☞ All fine only Offenses Except
 - ☞ "Offenses committed in a construction maintenance work zone" (542.404 T.C.)
 - ☞ The preceding is an incomplete rule of law. Why?
 - ☞ DUI and consumption w/2 convictions (Ch. 106 ABC)
 - ☞ Holder of CDL (includes at time of offense)
 - ☞ Accused of state law or city ordinance involving
 - ☞ Offense Relating to "Motor Vehicle Control"
 - ☞ Excluding "parking violations"

Deferred Disposition -Art. 45.051(b):
Conditions May Be Imposed



- ☞ (1) Post bond in amount of fine to secure payment of *fine*
- ☞ (2) Pay restitution to Victim not to exceed *fine*
- ☞ (3) Professional counseling
- ☞ (4) Diagnostic testing for alcohol or drugs
- ☞ (5) Psychosocial assessment
- ☞ (6) Participate in alcohol and drug abuse treatment or education program
- ☞ (7) Pay directly or through *court costs* of testing, assessment, treatment or education program
- ☞ (8) Driving Safety Course
- ☞ (9) Require Submission of Proof
- ☞ (10) ANY REASONABLE CONDITION

Deferred Disposition -Art. 45.051(b):
Conditions **MUST** Be Imposed
(when granted in certain cases)



YOUTHFUL DRIVERS (b-1) **YOUTHFUL DRINKERS**
(Ch. 106 ABC)

- ☞ Only applies to "traffic offenses" (720.002(e), TC?) that are "moving violations"
- ☞ Alleged against defendant's under 25
- ☞ Provisional DL holders required to be re-examined for DL
 - ☞ Must pay \$10 to DPS for Gen. Rev.
- ☞ All alcohol offenses, including PI-under age 21 (Status Offenses)
 - ☞ Alcohol Awareness Course required
 - ☞ Community service required (except DUI)
 - ☞ First offense - 8 to 12 hours
 - ☞ Second offense - 20 to 40 hours

DSC + Alive at 25 = Safer Roads

- **In addition to DSC**, effective 9/1/11, courts may order participation in Alive at 25 Curriculum (Art. 45.0511 (b-1))
- Gives judges one more option to reach young drivers charged with moving violations
- Must be a 4-hour, live, interactive class
- Must make written promise not to engage in dangerous driving habits



Proud Member

Deferred Disposition: Pass or Fail?



Completion of Terms (c)

- ☞ Judge Dismisses Complaint
- ☞ Dismissal Noted in the Docket as No Final Conviction

Expunction (e)

- ☞ Under Article 55.01, CCP (in District Court)
- ☞ Even without, after dismissal complaint may not be used for any purpose

Failure to Complete Terms (c-1)

- ☞ Mandatory Show Cause Hearing
 - ☞ Notice in Writing to Address on File or On File with Court
 - ☞ "Additional Period"
- ☞ Court **MAY** impose judgment or reduce *fine* if Defendant is 25+ (c-2)
- ☞ Court **MUST** impose *fine* if under 25 (d-1)
- ☞ Defendant pays fine or may appeal

Deferred Disposition: DPS Reporting



Report to DPS

- ☞ May **NOT** report traffic offenses deferred unless defendant fails to complete and there is a **conviction** (Sec. 543.204, T.C.)
- ☞ **MUST** report deferred disposition for all Alcoholic Beverage Code Status Offenses (Sec. 106.117, A.B.C.) (Reported on DIC-15 when case deferred)

Driving Safety Course (DSC) and Motorcycle Operator Course (MOC)



Article 45.0511
Code of Criminal Procedure
(It's Not "Defensive Driving")

Two Paths to DSC



“Mandatory” DSC
Art. 45.0511, Subsection (b)

vs.

“Discretionary” DSC
Art. 45.0511, Subsection (d)

Paths to DSC



As a Condition of
Deferred Disposition
Art. 45.051

DSC

“Mandatory”
45.0511(b)

“Discretionary”
45.0511(d)

DSC is About Jumping Through the Hoops.....



Eligible Offense?	Proper and Timely Request?	Defendant Meets All Qualifications?
----------------------	-------------------------------------	--

DSC: Offenses Eligible?

☞ DSC APPLIES to:

- ☞ Jurisdiction of JP or Municipal Court
- ☞ Involves the Operation of Motor Vehicle
- ☞ Subtitle C Rules of the Road
- ☞ Disobeying Warning Signs
- ☞ Juvenile Offenders on Same Violations

☞ DOES NOT APPLY to Offense Committed by CDL holder 45.0511 (s) - Including at time of offense



☞ and Does NOT APPLY to

- ☞ Speeding 25 mph over limit (b)(5) or 95 mph
- ☞ Passing a school bus
- ☞ Hit and Run Offenses (Occupied Vehicles)
- ☞ Serious traffic offenses (CMV)
- ☞ Work Zone While Workers are Present
- ☞ Subtitle C Rules of Road
- ☞ Not including Seatbelt and Inspection Offenses

DSC - Subsection (b) As a Matter of Right (i.e. "Mandatory" Upon Request)



1. Eligible Offense
2. If Defendant Elects DSC
3. And does so Timely
4. And Defendant meets Qualifications

DSC - Proper and Timely Request (b)(3)

MANNER OF REQUEST

- ☞ Presented
 - ☞ In Person
 - ☞ By Attorney
- ☞ Or By Written Request
 - ☞ By Certified Mail



TIMELY REQUEST

- ☞ On or Before Answer Date on Citation
- ☞ Mailbox Rule Art. 45.013, C.C.P.
 - ☞ If mailed on or before answer date
 - ☞ Must be received within 10 days of answer date
 - ☞ Keep envelope
 - ☞ Legible postmark evidence(US Mail)

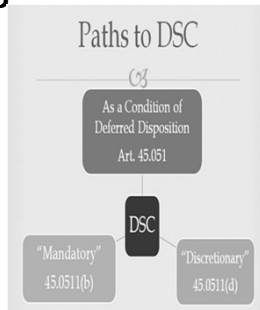
DSC - Qualifications

(b)(4)

- œ Evidence of Financial Responsibility
 - œ "Under Chapter 601 of Trans. Code"
- œ Texas DL
 - œ Or No Tx DL but:
 - œ U.S. Military
 - œ Including spouse and dependent children
 - œ Active Duty
 - œ No DSC or MOC in any state in last 12 mos. Before date of offense

When Does Discretionary DSC (Art. 45.0511(d)) Apply?

- œ **ONLY APPLIES WHEN**
 - œ Defendant had DSC in preceding 12 months
 - œ Request not timely, but before Final Disposition
- œ **REMEMBER** - If not Eligible under 45.0511, Judge generally *MAY* allow DSC as a Condition of Deferred Disposition (Art. 45.051)



DSC: What Does it Cost?

- œ "Mandatory" - Section (b)
 - œ no more than \$10, plus Court Cost
- œ "Discretionary" - Section (d)
 - œ Special expense up to fine amount, plus Court Cost
- œ No Refunds if Course not Taken
- œ One Course = One Case



Special DSC Safety Seats and Seatbelts (Sec. 545.413 (i) Trans. Code)
(It's Not Regular DSC!)

- ☞ ONLY Applies to Violations of Trans. Code
 - ☞ Sec. 545.412 (Child Safety Seat) &
 - ☞ Sec. 545.413(b) (Child Not Wearing Seatbelt)
- ☞ This Special DSC MUST be Approved by TEA and Consist of 4 hours of Instruction Encouraging Use of Child Seats and Seatbelts
- ☞ Judge may allow Special DSC even if defendant has had regular DSC within last 12 months (Article 45.0511(u), C.C.P.)
 - ☞ DL record must show no *Special DSC* in last 12 months

DSC- Required Notice (q) and (r)

Citation must have required notice:
"You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course."

No Notice = "Mandatory DSC" continues until notice is given

DSC - Subsection (c)

- ☞ Court enters Judgment on Plea.
- ☞ Court costs Collected
- ☞ Court Defers imposition of Final Judgment for 90 Days
- ☞ During Deferral Period - Statute Requires:
 - ☞ Proof of DSC
 - ☞ Driving Record
 - ☞ Defendant's Responsibility or
 - ☞ (c-1) "State Electronic Internet Portal"
 - ☞ Affidavit
 - ☞ Including Military Affidavit

DSC - Pass or Fail?

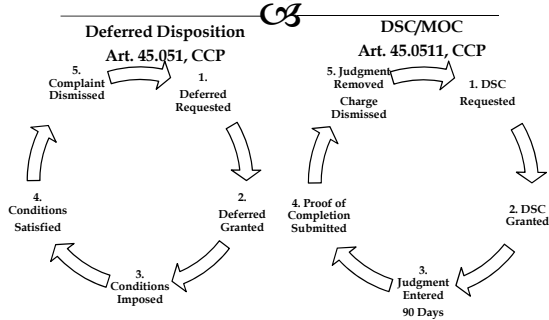
- | | |
|--|--|
| <p>☞ On proof of Completion</p> <ul style="list-style-type: none"> ☞ Court removes judgment ☞ Reports to DPS date of completion ☞ Court may only dismiss one charge for each completion ☞ Note: DSC certificates may not be uniform in appearance | <p>☞ Failure to complete</p> <ul style="list-style-type: none"> ☞ Court notifies in writing of show cause hearing <ul style="list-style-type: none"> ☞ of failure ☞ of time of hearing ☞ of place of hearing ☞ Court mails notice to address on file with court |
|--|--|

DSC - Show Cause Hearing

- | | |
|--|---|
| <p>☞ Appears at Show Cause:</p> <ul style="list-style-type: none"> ☞ Court may allow extension of time to present certificate, or ☞ Court may impose judgment ☞ Defendant may pay the fine or appeal | <p>☞ Failure to appear at Show Cause:</p> <ul style="list-style-type: none"> ☞ Impose judgment on underlying charge requiring fine to be paid immediately ☞ <i>Capias Pro Fine</i> may issue |
|--|---|

Completion Cycle Comparison

See, Chart: Comparison of Deferred Options



COMPARISONS OF DEFERRED OPTIONS

(Effective September 1, 2011)



Application/Use	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures, Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition, Article 45.051, C.C.P.
Application/Use	<p>If defendant is at least 25 years of age, applies to the following traffic offenses that involve the operation of a motor vehicle:</p> <ul style="list-style-type: none"> • Section 472.022, T.C.; (Obeying Warning Signs) • Subtitle C, Title 7, T.C.; (Rules of the Road) • Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minor) <p>If defendant is under 25, applies to offenses that involve the operation of a motor vehicle classified as moving violations</p> <p>Does <u>not</u> apply to:</p> <ul style="list-style-type: none"> • Offenses committed in a construction work maintenance zone when workers are present, Sec. 542.404, T.C.; Art. 45.0511(p)(3), C.C.P.; • Traffic offenses committed by a person with a commercial driver's license, Art. 45.0511(s), C.C.P.; • Passing a school bus, Sec. 545.066, T.C.; • Leaving the scene of an accident, Sec. 550.022 or 550.023, T.C.; or • Speeding 25 mph or more over the limit or in excess of 95 m.p.h. Art. 45.0511(b)(5), C.C.P. <p>Court must advise person charged with an offense to which DSC applies of right to take course.</p>	<p>Applies to all fine-only offenses except:</p> <ul style="list-style-type: none"> • Traffic offenses committed in a construction work maintenance zone when workers present (Sec. 542.404, T.C.; Art. 45.051(f)(1), C.C.P.); or • A violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who holds a commercial driver's license; or held a commercial driver's license when offense committed (Art. 45.051(f), C.C.P.).
How Often	<p>Defendant may request if the defendant has not had a driving safety course within the 12 months preceding the date of the current offense.</p> <p>Under Subsection (u), defendants may take DSC for a violation of Child Passenger Safety Seat laws even if they have taken DSC in the last 12 months, as long as the judge requires the defendant to take a specialized DSC (including 4 hours of instruction on child passenger safety seat systems) and any course the defendant has taken in the last 12 months did not include such instruction.</p> <p>If the defendant is a member, spouse, or dependant child of a member, of the US military forces serving on active duty, the defendant cannot have taken a driving safety course/motorcycle operator course in another state within the 12 months preceding the date of the current offense.</p> <p>Under Subsection (d), the court has discretion to grant DSC/MOC even if one has been taken within the previous 12 month period, or if the request was not made timely.</p>	<p>Subject to judicial discretion.</p>
Plea Required	<p>A plea of guilty or nolo contendere is required when the request is made. Request must be made on or before answer date on citation. Judge has discretion to grant a late request under Subsection (d).</p>	<p>A plea of guilty or nolo contendere or a finding of guilt required.</p>
Proof of TX DL or on Active Military Duty	<p>Defendant must have a Texas driver's license or permit. If the defendant is on active military duty or is an active duty military spouse or dependant child, the defendant does not have to have a Texas driver's license or permit.</p>	NO
Proof of Financial Responsibility	<p>Defendants are required to present proof of financial responsibility as required by Chapter 601, Transportation Code.</p>	NO
State Court Cost Collected	YES	YES
Time Limit	<p>Court defers imposition of the judgment for 90 days. The defendant must take the course and present evidence of completion by the 90th day. Defendant is also required to present to the court a copy of his or her driving record as maintained by DPS and an affidavit stating that he or she was not taking DSC or MOC at the time of the request nor has he or she taken a course that is not on his or her driving record. Under Subsection (u), the defendant's driving record and affidavit are required to show that defendant did not have specialized DSC in preceding 12 months.</p>	<p>Not to exceed 180 days. (1 to 180 days)</p>
Optional Administrative or Special Expense Fee	<p>If defendant makes request on or before answer date, the court may only assess an administrative \$10 non-refundable fee.</p> <p>If the judge grants a course before the final disposition of the case under Subsection (d), the court may assess a fee not to exceed the maximum possible penalty for the offense.</p>	<p>SPECIAL EXPENSE FEE (SEF), not to exceed amount of fine that could be imposed at the time the court grants the deferral. Court may elect not to collect for good cause shown. SEF may be collected at anytime before the date the probation ends. In the event of default, the judge shall require that the amount of the SEF be credited toward the amount of the fine imposed by the judge.</p>

	Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P.	Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P.
Fee for Driving Record	Rather than allowing the defendant to obtain his or her driving record and provide it to the court, the court may obtain the driving record from DPS. A \$10 fee plus the \$2 state electronic Internet portal fee may be imposed if the court chooses this option (Art. 45.0511(c-1), C.C.P.).	Court is not required to order the defendant to obtain a driving record (it may, however, be mandated as a reasonable condition). There is no authorization for the court to collect a fee for obtaining the defendant's driving record.
Other Requirements	<p>Request may be oral or in writing. If mailed, request must be sent certified mail. (Art. 45.0511(b)(3), C.C.P.)</p> <p>When a defendant requests a course on or before the answer date on the citation, the defendant must present evidence of a valid Texas driver's license or permit, or show that he or she is on active military duty.</p> <p>On or before the 90th day after the request, the defendant must present:</p> <ol style="list-style-type: none"> 1. Evidence of course completion; 2. A copy of his or her driving record as maintained by DPS, if any; 3. If the defendant is on active military duty and does not have a Texas driver's license, the affidavit must state that the defendant was not taking a driving safety course or motorcycle operator course, as appropriate, in another state on the date of the request to take the course was made and had not completed such a course within the 12 months preceding the date of the offense; 4. An affidavit stating that he or she was not taking a course at the time of request for the current offense nor had he or she taken a course that was not yet on his or her driving record within the 12 months preceding the date of the current offense; 5. If the offense is charged under Section 545.412, T.C., (Child Passenger Safety Seat Systems), the defendant's driving record and affidavit are only required to show that they have not taken the specialized DSC in the last 12 months. 	<p>Requirements: Judge <u>may</u> require the defendant to do the following:</p> <ol style="list-style-type: none"> 1. Post bond in the amount of the fine assessed to secure payment of the fine; 2. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed; 3. Submit to professional counseling; 4. Submit to diagnostic testing for alcohol or controlled substance or drug; 5. Submit to psychosocial assessment; 6. Participate in an alcohol or drug abuse treatment or education program; 7. Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; 8. Complete DSC or other course as directed by the judge; 9. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and 10. Comply with any other reasonable condition. <p>-----</p> <p>If defendant under age 25 is charged with a moving traffic offense, Subsection (b)(8) does not apply. The judge <i>shall</i> require DSC. The judge <i>may</i> also require an additional DSC for drivers under age 25 per section 1001.111, Education Code. If the defendant holds a provisional license, the judge shall require the defendant to be examined by DPS under Sec. 521.161(b)(2), T.C., and pay DPS a \$10 fee.</p> <p>For Alcoholic Beverage Code Offenses and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require an alcohol awareness course. Sec. 106.115(a), A.B.C.</p> <p>For Alcoholic Beverage Code offenses, except DUI, and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require community service. Sec. 106.071(d), A.B.C.</p> <p>1st offense: eight to 12 hours. 2nd offense: 20 to 40 hours.</p>
Satisfactory Completion	Judge shall remove the judgment and dismiss the case; the dismissal must be noted in the docket. Court reports the completion date of the course after the court dismisses the case.	Judge shall dismiss and note in docket that complaint is dismissed. (Only report to DPS the order of deferred for Alcoholic Beverage Code offenses.)
Failure to Complete	<p>If defendant fails to furnish the evidence of course completion, a copy of his or her driving record as maintained by DPS that shows that he or she had not taken DSC or MOC within the 12 months preceding the date of offense, and the affidavit, the court shall set a show cause hearing and notify the person by mail. At the hearing the judge may, on a showing of good cause, allow the defendant time to present the uniform certificate of course completion. If the court does not grant more time, the court shall enter a final judgment ordering the defendant to pay the fine.</p> <p>If a defendant fails to appear at the show cause hearing, the court may, after signing a final judgment, issue a <i>capias</i> pro fine.</p>	<p>If defendant fails to comply with terms of the deferral, the court shall set a show cause hearing and notify the person by mail to the address on file. At the hearing the judge may, on a showing of good cause, allow an additional period during which the defendant may present evidence of compliance with requirements. If at the show cause hearing or by the conclusion of the additional period the defendant does not present satisfactory evidence of compliance, the judge may enter judgment and impose the fine. The judge may reduce fine previously assessed if the defendant is at least 25 years of age or older and not charged with a traffic offense. If the offense is a traffic offense, the court must report the traffic conviction to DPS.</p> <p>If a defendant fails to appear at the show cause hearing, the court may, after signing a final judgment, issue a <i>capias</i> pro fine.</p>
Appeal	The entering of the final judgment triggers the requirements for making a timely appeal (Arts. 45.042-45.043, C.C.P.).	The entering of the final judgment triggers the requirements for making a timely appeal (Arts. 45.042-45.043, C.C.P.).