

## DEFERRED DISPOSITION AND DRIVING SAFETY COURSES

CATHY RIEDEL  
PROGRAM DIRECTOR  
TMCEC  
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## DEFERRED DISPOSITION

Article 45.051  
Code of Criminal Procedure

### Deferred Disposition: 45.051(a)

- Discretionary
- Plea of guilty or nolo contendere or a finding of guilt

### 45.051(a):

- Payment of *court costs*
  - All at once, OR
  - In installments, community service, or combination
- Court defers proceedings for a period, not to exceed 180 days

### Special Expense Fee (SEF)

Article 45.051(a), CCP, amended to authorize a the collection of the "special expense" prior to the end of the deferral period).

Previously no statutory authorization for a SEF to be collected until the end of the deferral period. (effective Sept. 1, 2009)

### Special Expense Fee (cont.):

- 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

- All fine only Offenses Except:
  - Offenses committed in a construction maintenance work zone (542.404 T.C.)
    - Is there a catch?
  - 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

- Conditions (May)
  - Post bond in amount of fine to secure payment of *fine*
  - Pay restitution not to exceed fine
  - Professional counseling
  - Diagnostic testing for alcohol or drugs
  - Psychosocial assessment

### Deferred Disposition conditions:

- Participate in alcohol and drug abuse treatment or education program
- Pay costs directly or through court costs of testing, assessment, treatment or education program
- Driving Safety Course
- Reasonable conditions

### DEFERRED DISPOSITION UNDER AGE 25

- 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. MUST TAKE DSC!

### Deferred Disposition-outside the CCP-

- All alcohol offenses, including PI-under age 21
  - Alcohol Awareness Course required
  - Community service required (except DUI)
    - First offense - 8 to 12 hours
    - Second offense - 20 to 40 hours

### Deferred Disposition

- Completion of terms
  - Dismisses charge
- Failure to complete terms
  - 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+
  - Court MUST impose fine if under 25
  - Defendant pays fine or may appeal

## Deferred Disposition

- Report to DPS
  - May not report traffic offenses deferred unless defendant fails to complete and there is a conviction (Sec. 543.204, T.C.)
  - Required to report deferrals of all Alcoholic Beverage Code offenses (Sec. 106.117, A.B.C.) (Reported on DIC-15 when case deferred)

## DSC & MOC Art. 45.0511, C.C.P.

## DSC - Subsection (b)

- Qualified Offense
- If Defendant Elects DSC
- And does so Timely
- And Defendant meets 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
- DSC Does Not Apply to Offense Committed by CDL holder 45.0511 (s)
  - Including at time of offense

## DSC - Qualified Offense

- 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 - Election (b)(3)(A)&(B)

- Election
  - In Person
  - By Attorney
  - By Certified Mail

### DSC - Timely

- Before the Answer Date
- 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

#### Evidence of Financial Responsibility

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

### DSC - Discretionary

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

### DSC-Fees

- Mandatory or (b)
  - no more than \$10, plus Court Cost
- Discretionary (d)
  - Special expense up to fine amount, plus Court Cost
- No refunds if course not taken

### Safety Seats and Seatbelts

- Violations of 545.412 & 545.13(b) TC
- Must take DSC w/ 4 hours of Instruction Encouraging Use of Child Seats and Seatbelts
- TEA must approve this Special DSC
- Rule is found in 545.413 (i) TC
- Judge may allow Special Seatbelt DSC if defendant 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-Notification

- Ticket required to have notice, Art. 45.0511 (q)
  - Statement of right
  - May be able to have charged dismissed
- Court required to notify, Art. 45.0511(r) – See TMCEC Forms Book

### DSC - Subsection (c)

- Court enters judgment on plea
- Court costs collected
- Court defers imposition of judgment for 90 days (180 if offense before 9/1/03)
- During deferral period - court requires
  - Proof of DSC
  - Driving Record
    - Defendant's Responsibility or
    - (c-1) Texas On-Line
  - Affidavit
    - Including Military Affidavit

### DSC - Compliance

- On proof of Completion
  - 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

### DSC - Show Cause Hearing

- Failure to complete
  - Court notifies in writing of show cause hearing
    - of failure
    - of time of hearing
    - of place of hearing
  - Court mails notice to address on file with court

### DSC - Show Cause Hearing

- Appears at show cause
  - Court may allow extension of time to present certificate, or
  - Court may impose judgment
  - Defendant may pay the fine or appeal

### DSC - Show Cause Hearing

- Failure to appear at show cause hearing
  - Impose judgment on underlying charge requiring fine to be paid immediately
  - Issues *capias pro fine*

QUESTIONS?

Thanks for your attention.