

PLEAS AND DRIVING SAFETY COURSE (DSC)

CHAPTER 5

PLEAS AND DRIVING SAFETY COURSE (DSC)

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CHAPTER 5 PLEAS AND DRIVING SAFETY COURSE (DSC)

Most of the requirements relating to acceptance of a plea of guilty or nolo contendere are contained in Article 26.13, C.C.P. The Court of Criminal Appeals has held such statutory requirements inapplicable to misdemeanor cases. *Empy v. State*, 571 S.W.2d 526, 529 (Tex. Crim. App. 1978). Despite the increased number of direct and indirect consequences of being convicted of a Class C misdemeanor in Texas, federal due process only requires a plea of guilty in a misdemeanor be made knowingly and intelligently after being admonished as to the range of punishment. *Tatum v. State*, 861 S.W.2d 27 (Tex. App.—Houston [14th Dist.] 1993, pet. ref’d). A guilty plea is not rendered involuntary by lack of knowledge of collateral consequence (e.g., deportation), and defendants have no constitutional right to be admonished of such consequences. *State v. Jiminez*, 987 S.W.2d 886 (Tex. Crim. App. 1999).

1. Guilty and No Contest Pleas

Checklist 5-1	Script/Notes
<p>“No contest” means that the defendant is neither admitting nor denying the charge but is choosing not to contest the charges in court. Within municipal court, a plea of no contest has the same legal effect as a plea of guilty.</p>	<p>Art. 27.02, C.C.P.</p>
<p>Defendant may waive a trial by jury in writing. Only when a written waiver is made can the court proceed. The decision to waive rests with the defendant. The manner, in writing, is controlled by statute.</p>	<p>Art. 45.025, C.C.P.</p>
<p><input type="checkbox"/> 1. If the court receives payment without a plea, go to Checklist 4-1.</p>	<p>Arts. 27.14(a) and 45.022, C.C.P.</p>
<p><input type="checkbox"/> a. Determine if the court should dismiss the case on its own motion. Go to Checklist 4-2.</p>	
<p><input type="checkbox"/> 2. Give the admonishments and request a plea. Go to Checklist 4-3.</p>	
<p><input type="checkbox"/> 3. If the defendant refuses to plead:</p>	<p>Arts. 27.16(a) and 45.024, C.C.P.</p>
<p><input type="checkbox"/> a. Enter a plea of not guilty;</p>	<p>“If you will not plead, I am</p>
<p><input type="checkbox"/> b. Note on docket that defendant would not plea and that a plea of not guilty was entered by the court;</p>	<p>required by law to enter a plea of not guilty for you. I have done so. Do you want a jury trial? Or do you want to waive a jury trial and have a trial without a jury?”</p>
<p><input type="checkbox"/> c. Note defendant’s election of jury trial or jury waiver on docket; set case for trial; and</p>	
<p><input type="checkbox"/> d. Set a pretrial and trial date.</p>	
<p><input type="checkbox"/> e. Provide defendant with Setting Notice for Pretrial or Trial. Go to Chapters 6 and 7.</p>	
<p><input type="checkbox"/> 4. If defendant pleads not guilty:</p>	<p>“I accept a plea of not guilty. Do</p>

- a. Enter a plea of not guilty;
 - b. Note on docket;
 - c. Note defendant’s election of jury trial or jury waiver on docket; set a pretrial and trial date; and
 - d. Provide defendant with Setting Notice for Pretrial or Trial. Go to Chapters 6 and 7.
5. If the defendant will not elect jury or bench trial, set case for jury trial.
6. If the defendant is charged with an offense that is eligible for dismissal for a Driving Safety Course (DSC) pursuant to Art. 45.0511, C.C.P., the court must inform the defendant that DSC may be an option.
7. If defendant pleads guilty or no contest without conditions, go to Step 9.
- a. The most common conditional plea is a plea of guilty or no contest made with an election to take DSC. If the defendant elects DSC, go to Checklists 5-2 and 5-3.
 - b. Another conditional plea is a plea pursuant to a plea bargaining with the prosecutor.
 - (1) Advise the defendant that you, the judge, are not bound by the plea offer.
 - (2) Inform the defendant that if you reject the offer, the plea may be withdrawn.
 - (3) Accept or deny the offer.

you wish to have a jury trial or to waive a jury trial and have a trial before the court?”

“Since you will not tell me whether you want a trial with or without a jury, I am setting your case for a jury trial.”

See Checklist 5-2 for DSC eligibility.
Art. 45.0511(p), C.C.P.

“You may have the right to elect to have your case dismissed for taking a Driving Safety Course or Motorcycle Operator Training Course under Article 45.0511 of the Code of Criminal Procedure. Do you wish me to further explain that option, or do you wish to elect to take a Driving Safety Course?”

“I am not bound by the plea agreement you made with the State.”

“If I reject the agreement, I will permit you to withdraw your plea of guilty or no contest.”

“I accept the plea agreement.”

CHAPTER 5 PLEAS AND DRIVING SAFETY COURSE (DSC)

2. Eligibility

Checklist 5-2	Script/Notes
<p><input type="checkbox"/> 1. To be entitled to mandatory DSC (where the court must grant DSC according to limited terms), the defendant must meet a four-point test. The elements of that test are:</p> <p><input type="checkbox"/> a. The defendant must elect DSC;</p> <p><input type="checkbox"/> b. The election must be timely;</p> <p><input type="checkbox"/> c. The defendant must be charged with a qualified offense; and</p> <p><input type="checkbox"/> d. The defendant must be qualified.</p> <p><input type="checkbox"/> 2. The defendant must elect to take DSC. No special form or language appears to be necessary. That election should be coupled with a plea of guilty or nolo contendere. The defendant may make that election:</p> <p><input type="checkbox"/> a. In person;</p> <p><input type="checkbox"/> b. By attorney; or</p> <p><input type="checkbox"/> c. By certified mail.</p> <p><input type="checkbox"/> 3. Determine whether defendant has made the election and plea in Step 2 by the answer date on the citation.</p> <p><input type="checkbox"/> a. Amount of time increased by the “Mailbox Rule.”</p> <p><input type="checkbox"/> b. If the defendant has not pled and elected to take a DSC by the answer date on citation,</p>	<p>The defendant must plead guilty or nolo contendere before the court orders the defendant to take DSC under Article 45.0511, C.C.P.</p> <p>See Step 2 below.</p> <p>See Step 3 below.</p> <p>See Steps 4 and 5 below.</p> <p>See Step 6 below.</p> <p>Art. 45.0511(b)(1) and (3), C.C.P. A defendant under the age of 17 must appear and enter a plea in open court. Art. 45.0215, C.C.P.</p> <p>Art. 45.0511(b)(3), C.C.P.</p> <p>Art. 45.013, C.C.P. If the request for a DSC is mailed first class mail on or before the appearance date on the citation and received by the clerk not later than 10 business days after the due date for appearance, the request is timely filed. Make sure the clerk keeps the envelope with the postmark.</p> <p>“Day” does not include Saturday, Sunday, or legal holidays.</p> <p>Art. 45.0511(r), C.C.P. Printing notice of DSC eligibility</p>

<p>determine that the defendant was advised of his or her right to take a driving safety course.</p> <p><input type="checkbox"/> c. If the defendant was not advised of his or her right to a DSC, advise the defendant now and allow the defendant to enter plea of guilty or no contest and request a DSC as if it had been timely made.</p>	<p>on defendant's copy of citation should satisfy this requirement. Arts. 45.0511(p) and (q), C.C.P.</p>
<p><input type="checkbox"/> 4. The defendant may elect DSC for offenses:</p> <p><input type="checkbox"/> a. Under the jurisdiction of the municipal or justice court; and</p> <p><input type="checkbox"/> b. Involving the operation of a motor vehicle; and</p> <p><input type="checkbox"/> c. Defined by:</p> <p><input type="checkbox"/> (1) Section 472.022, T.C. (Obeying Warning Signs);</p> <p><input type="checkbox"/> (2) Subtitle C, Title 7, T.C. (Rules of the Road); or</p> <p><input type="checkbox"/> (3) Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minor).</p>	<p>Art. 45.0511(a)(1), C.C.P.</p> <p>Art. 45.0511(a)(2) and (3), C.C.P.</p>
<p><input type="checkbox"/> 5. A defendant under the age of 25 may elect DSC for offenses:</p> <p><input type="checkbox"/> a. Under the jurisdiction of the municipal or justice court; and</p> <p><input type="checkbox"/> b. Involving the operation of a motor vehicle; and</p> <p><input type="checkbox"/> c. Classified as moving violations.</p>	<p>Art. 45.0511(a-1), C.C.P.</p>
<p><input type="checkbox"/> 6. Article 45.0511 does not apply to a person who holds a commercial driver's license or held a commercial driver's license when the offense was committed.</p>	<p>Art. 45.0511(s), C.C.P.</p>
<p><input type="checkbox"/> 7. Mandatory DSC is not available for certain excepted offenses:</p> <p><input type="checkbox"/> a. Speeding 95 mph or more;</p> <p><input type="checkbox"/> b. Speeding 25 mph or more over limit;</p>	<p>Art. 45.0511(b)(5)(A), C.C.P.</p> <p>Art. 45.0511(b)(5)(B), C.C.P.</p>

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| <ul style="list-style-type: none"> <input type="checkbox"/> c. Fail to remain at accident scene; | <p>Sec. 550.022, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> d. Duty to give information and aid; | <p>Sec. 550.023, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. Overtaking and passing a school bus; | <p>Sec. 545.066, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> f. Offenses committed in a construction or maintenance work zone while workers are present, except: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Inspection Offenses; <input type="checkbox"/> (2) Pedestrian Offenses; and <input type="checkbox"/> (3) Safety Belt and Child Safety Seat Offenses. | <p>Sec. 542.404, T.C.</p> <p>Chapter 548, T.C.</p> <p>Chapter 552, T.C.</p> <p>Secs. 545.412 and 545.413, T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> g. Serious traffic violations defined in Section 522.003, T.C. Serious traffic violations means a conviction arising from the driving of a commercial motor vehicle for: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Excessive speeding 15 mph or more; <input type="checkbox"/> (2) Reckless driving (Class B misdemeanor); <input type="checkbox"/> (3) Violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; <input type="checkbox"/> (4) Improper or erratic lane change; or <input type="checkbox"/> (5) Following too closely. | <p>.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> h. DSC is available for safety belt violations. | <p>.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> i. If the violation involved a child passenger safety seat system or failing to secure a child younger than age 17 in a safety belt, the defendant must complete a special driving safety class with instructions on child restraint. | <p>Secs. 545.412(g) and 545.413(i), T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> j. Defendants charged with an offense under Section 545.412, T.C., have a right to take a specialized driving safety course on child restraints, even if they have had a regular DSC course in the preceding 12 months from a current offense. Defendant does not have | <p>Art. 45.0511(u), C.C.P.</p> |

this right if the course included specialized instruction on child restraint.

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| <ul style="list-style-type: none"> <input type="checkbox"/> 8. The court may dismiss only one charge for each course. | <p>Art. 45.0511(m), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 9. The defendant must be qualified for DSC. <ul style="list-style-type: none"> <input type="checkbox"/> a. The defendant must not have completed DSC under Article 45.0511, C.C.P., in the 12 months preceding the offense. [See exception 5(j) above.] <ul style="list-style-type: none"> <input type="checkbox"/> (1) The 12 month period begins with completion of the course. <input type="checkbox"/> (2) The 12 month period ends on the date of the current citation. <input type="checkbox"/> b. The defendant must produce evidence of financial responsibility under the Texas Motor Vehicle Responsibility Act. This is most commonly done by presenting a motor vehicle insurance card. <input type="checkbox"/> c. The defendant must produce a valid Texas driver’s license or permit or be a member, spouse, or dependent child of a member of the U.S. military forces serving on active duty: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Requiring a Texas driver’s license or permit is likely to violate the “Full Faith and Credit” provision of the U.S. Constitution. This may be remedied by the court providing a similar relief to out-of-state drivers under Article 45.051, C.C.P. (deferred disposition). <input type="checkbox"/> (2) The holder of a commercial driver’s license may not be granted DSC. Neither may an individual who held a commercial driver’s license when the offense was committed. | <p>Art. 45.0511(b)(2), C.C.P.</p> <p>Art. 45.0511(b)(6), C.C.P.
Ch. 601, T.C.</p> <p>Art. 45.0511(b)(4), C.C.P.</p> <p>Art. IV, U.S. Constitution
See Checklist 8-2.</p> <p>Art. 45.0511(s), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 10. Other alternatives <ul style="list-style-type: none"> <input type="checkbox"/> a. Discretionary DSC <ul style="list-style-type: none"> <input type="checkbox"/> (1) The court may grant DSC if the defendant has taken a course in the 12 months preceding the citation, or if the defendant failed to make a | <p>Art. 45.0511(d), C.C.P.</p> |

timely election.

- (2) If the court grants discretionary DSC, the procedures in Checklist 5-3 are followed, except:
 - The court may assess a special expense fee not to exceed the maximum possible fine.
- b. The court may consider deferred disposition under Art. 45.051, C.C.P., even if a defendant is not qualified for DSC under 45.0511, C.C.P.

Art. 45.0511(f)(2), C.C.P.

See Checklist 8-2

The defendant may not be granted deferred disposition for a traffic offense committed in a work zone while workers are present (Sec. 472.022, T.C.) or a moving violation committed by the holder of a commercial driver's license.

CHAPTER 5 PLEAS AND DSC

3. Procedure

Checklist 5-3	Script/Notes
<p><input type="checkbox"/> 1. When the court accepts the conditional plea of guilty and determines that the defendant is eligible, the court should enter judgment on the plea and defer imposition of judgment.</p>	<p>See <i>TMCEC Forms Book</i>: Judgment: Driving Safety Course Granted; and Request for Driving Safety Course. Art. 45.0511(c), C.C.P.</p>
<p><input type="checkbox"/> 2. Court must assess and collect all state and local court costs.</p>	<p>Art. 45.0511(f), C.C.P.; Sec. 133.101, L.G.C.</p>
<p><input type="checkbox"/> 3. The court must impose the following conditions:</p>	
<p><input type="checkbox"/> a. Defer imposition of sentence for 90 days;</p>	<p>Art. 45.0511(c), C.C.P.</p>
<p><input type="checkbox"/> b. During the deferral period, require the defendant to successfully complete a driving safety course approved by the Texas Education Agency or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, T.C.</p>	<p>Art. 45.0511(b), C.C.P.</p>
<p><input type="checkbox"/> c. During the deferral period, present the court with a uniform certificate of completion of the driving safety course or verification of completion of the motorcycle operator training course.</p>	<p>Art. 45.0511(c)(1), C.C.P.</p>
<p><input type="checkbox"/> d. During the deferral period, present to the court the defendant’s DPS driving record showing that the defendant had not completed an approved driving safety course or motorcycle operator training course in the 12 months preceding the date of the citation.</p>	<p>Art. 45.0511(c)(2), C.C.P.</p>
<p>A judge, at the time the defendant requests a driving safety course or motorcycle operator training course, is authorized to require the defendant to pay a fee equal to the sum of the fee as established by Sec. 521.048, T.C., and the state electronic Internet portal fee for obtaining the defendant’s driving record by using the state electronic Internet portal, and require DPS to provide by means of the state electronic Internet portal a copy of the</p>	<p>Art. 45.0511(c-1), C.C.P.</p>

defendant's driving record on request to the court "as soon as practicable." The custodian of a municipal or county treasury who receives fees collected under this subsection is required to keep a record of the fees and, without deduction or prorating, forward the fees to the Comptroller of Public Accounts.

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| <ul style="list-style-type: none"> <input type="checkbox"/> e. During the deferral period, present to the court an affidavit stating the defendant is not taking a course and did not take a course not reflected on the driving record. <input type="checkbox"/> f. If the defendant did not have a valid Texas driver's license or permit and is a member, spouse, or dependent child of a member, of the U.S. military serving in active duty, the affidavit must state that the defendant was not taking a driving safety course or motorcycle operator course in another state on the date of request and had not completed one in the preceding 12 months from the current offense. <input type="checkbox"/> g. A special driving safety course including instruction of child restraints is required if the offense was a child restraint violation. | <p>See <i>TMCEC Forms Book</i>:
Affidavit for a Driving Safety Course.</p> <p>Art. 45.0511(c)(4), C.C.P.</p> <p>Sec. 545.413(i), T.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. The court may require the payment of an administrative fee in an amount of not more than \$10. <ul style="list-style-type: none"> <input type="checkbox"/> a. No other special expense fee may be charged. <input type="checkbox"/> b. See Step 8 of Checklist 5-2 for special instructions on discretionary DSC. <input type="checkbox"/> c. This fee is not refundable. <input type="checkbox"/> 5. If the defendant completes all of these terms during the 90 day deferral period and presents the court the required evidence, the court shall: <ul style="list-style-type: none"> <input type="checkbox"/> a. Remove the judgment; <input type="checkbox"/> b. Dismiss the charge; and <input type="checkbox"/> c. Report the date the DSC was completed to DPS. <input type="checkbox"/> d. That report cannot be used for any purpose including increasing insurance rates. | <p>Art. 45.0511(f)(1), C.C.P.</p> <p>Art. 45.0511(f)(2), C.C.P.</p> <p>Art. 45.0511(g), C.C.P.</p> <p>Art. 45.0511(l), C.C.P.
See <i>TMCEC Forms Book</i>:
Judgment: Driving Safety Course/Motorcycle Operator Training and Safety Program Granted.</p> <p>Art. 45.0511(l)(2), C.C.P.</p> <p>Art. 45.0511(n)-(o), C.C.P.</p> |

- 6. If the defendant fails to complete the terms during the 90 day deferral period, the court shall:
 - a. Notify the defendant in writing:
 - (1) Mailed to the address on file with the court;
 - (2) That the defendant failed to fulfill the orders of the court; and
 - (3) That the defendant is required to appear at a particular place and time to show good cause why the defendant did not timely comply.
 - b. If the defendant does not appear, enter an adjudication of guilt and impose a fine.
 - c. If the defendant appears and does not show good cause for non-compliance, enter an adjudication of guilt and impose a fine.
 - d. If the defendant appears and shows good cause for non-compliance, the court may allow an extension to allow the defendant to present proof of compliance.
 - e. After entry of judgment and if there is no appeal, the court may proceed to use available collection tools.

Art. 45.0511(i)-(k), C.C.P.

Art. 45.0411(i), C.C.P.
See *TMCEC Forms Book*: Driving Safety Course: Notice to Defendant to Show Cause.

Art. 45.0511(j), C.C.P.
See Checklist 8-1.

See Checklist 8-1.

Art. 45.0511(k), C.C.P.

See Chapter 10 in this book for appeals.
See Checklist 8-3.

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