

# SENTENCING, DEFERRED, AND INDIGENCE

<b>CHAPTER 8</b>	<b>SENTENCING, DEFERRED, AND INDIGENCE</b>
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	<p>does not preclude community service per Art. 45.049, C.C.P. or waiver of fines and costs per Art. 45.0491, C.C.P.) See <i>TMCEC Forms Book</i>: Order of the Court for Installment Agreement; and Schedule of Payments for Installment Agreement.</p>
<p><input type="checkbox"/> b. The entire fine and costs at some later date; or</p>	<p>“You will pay the total amount of \$(<i>fine and costs</i>) immediately.” “You will pay the total amount of \$(<i>fine and costs</i>) on or before (<i>date</i>).”</p>
<p><input type="checkbox"/> c. A specified portion of the fine and costs at designated intervals.</p>	<p>“You will pay the amount of \$(<i>payment</i>) on or before (<i>date</i>) and payments of \$(<i>installment</i>) each (<i>installment period</i>) until the total amount of \$(<i>fine and costs</i>) is paid.”</p>
	<p>A time payment fee of \$25 must be paid if the total fine and costs are not paid before the 31<sup>st</sup> day after judgment. Sec. 133.103, L.G.C.</p>
	<p>For more information on payment plans, see Checklist 8-3.</p>
<p><input type="checkbox"/> 8. The court should impose orders authorized or required by law.</p>	<p>Art. 45.041(b)(3). For special sanctions allowed and required in juvenile cases, see Checklist 13-6 (alcohol), 13-7 (DUI), 13-14 (school attendance), 13-15 (all other juvenile cases).</p>
<p><input type="checkbox"/> 9. The court, if applicable, may direct the defendant to pay restitution to any <b>victim</b> of the offense. In instances involving passing a bad check, restitution is limited to \$5,000.</p>	<p>Art. 45.041(b)(2) and (b-1), C.C.P.</p>
<p><input type="checkbox"/> 10. If the defendant has been placed in jail on the charge, the court must calculate jail credit.</p>	<p>Arts. 42.03, Sec. 2; 45.041(c), and 45.048, C.C.P.</p>
<p><input type="checkbox"/> a. Court must determine the period of time that must be served to get credit. The period can be no less than eight hours nor more than 24 hours.</p>	<p>Art. 45.048(b), C.C.P.</p>
<p><input type="checkbox"/> b. Each period earns not less than \$50 in credit against the fine and costs for each period</p>	<p>Art. 45.048(a)(2), C.C.P. The credit amount is \$100 per period</p>

served.

- c. Credit must be given for all time in jail in said cause prior to sentence in each cause even when the effect is the defendant receives multiple jail credits.
- 11. The court must enter a written judgment signed by the trial judge reflecting the sentence and terms rendered above.
- 12. A copy of the judgment should be provided to the defendant.

served if the offense was committed before Jan. 1, 2004.

*Ex Parte Hannington*, 832 S.W.2d 355 (Tex. Crim. App. 1992).

Art. 42.01, Sec. 1, C.C.P.

**CHAPTER 8 SENTENCING, DEFERRED, AND INDIGENCE**

**2. Deferred Disposition, Art. 45.051, C.C.P.**

Deferred disposition is a form of probation used by municipal and justice courts that can last up to six months. Granting deferred disposition is within the court’s discretion. It is not mandatory.

Checklist 8-2	Script/Notes
<p><input type="checkbox"/> 1. Determine that deferred disposition is available for the alleged offense. It is not available for:</p> <p><input type="checkbox"/> a. Traffic offenses committed in a work-construction zone while workers are present;</p> <p><input type="checkbox"/> b. 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 at the time of the offense; or</p> <p><input type="checkbox"/> c. A minor with two prior convictions for Consumption of Alcohol by a Minor (Sec. 106.04, A.B.C.) and Driving or Operating Watercraft Under the Influence of Alcohol by a Minor (Sec. 106.041, A.B.C.).</p> <p><input type="checkbox"/> 2. Deferred disposition may be granted:</p> <p><input type="checkbox"/> a. After defendant pleads guilty or no contest; or</p> <p><input type="checkbox"/> b. After a finding of guilt by judge or jury.</p> <p><input type="checkbox"/> 3. Set a fine.</p> <p><input type="checkbox"/> 4. Defendant must pay court costs:</p> <p><input type="checkbox"/> a. At the time the deferred disposition is granted or ordered; or,</p> <p><input type="checkbox"/> b. Alternatively, notwithstanding any other provision of law;</p>	<p>Art. 45.051(f)(1), C.C.P.</p> <p>Art. 45.051(f)(2), C.C.P.</p> <p>If there are two prior convictions, the municipal court must waive jurisdiction of the third or subsequent offenses unless the court has a juvenile case manager. Sec. 51.08, F.C.</p> <p>See <i>TMCEC Forms Book</i>: Deferred Disposition Order.</p> <p>The plea may be oral or written.</p> <p>Deferred may be granted at the defendant’s request, the prosecutor’s suggestion, or the court’s own motion.</p> <p>The court must set a fine when granting deferred disposition, even though the case may be dismissed later.</p> <p>Art. 45.051(a), C.C.P.; Sec. 133.101, G.C.</p> <p>Art. 45.051(a-1), C.C.P.</p>

- (1) in installments during the probation period;
  - (2) by performing community service, if eligible, under Article 45.049, C.C.P., if:
    - (a) Defendant failed to pay previously assessed fine or cost; or
    - (b) Defendant is determined by the court to have insufficient resources or income to pay fine or costs;
  - (3) by performing community service, if defendant is younger than 17 years, under Article 45.0492, C.C.P.;
  - (4) by performing tutoring, if defendant is younger than 17 years of age and the offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492, C.C.P.; or
  - (5) through a combination of the alternatives described above.
5. Defer the proceedings for a period of time not to exceed 180 days.
6. Set any or all of the following conditions to be performed by the defendant during the deferral period, which may include:
- a. Post bond in amount of the fine to secure payment of the fine;
  - b. Require payment of restitution to victim;
  - c. Go to professional counseling;
  - d. Submit to alcohol or drug testing;
  - e. Submit to psychosocial assessment;

Alternatives should be incorporated as conditions of the deferred disposition order. See checkbox 6 below.

Restitution under the deferred statute may not be more than the fine assessed.

- f. Participate in an alcohol or drug abuse treatment or education program;
- g. Pay for testing, treatment, or education;
- h. Complete a driving safety course or other course;
  
- i. Present the court with proof of compliance with any required conditions;
- j. Comply with any other reasonable requirements;
  
- k. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Driving or Operating Watercraft Under the Influence of Alcohol by a Minor, the court must require as a condition of deferred disposition that the minor attend an alcohol awareness course;
  
- l. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; or Misrepresentation of Age by a Minor; the court must require as a condition of deferred disposition that the minor performs eight to 12 hours of community service for a first offense and 20 to 40 hours of community service for a subsequent offense; and/or
  
- m. If the offense is a “traffic offense classified as a moving violation” and the defendant is younger than age 25:
  - (1) The judge **shall** require as a condition of deferred disposition that the defendant complete a driving safety course;
  - (2) The judge **may** require as a condition

If the offense is a “traffic offense classified as a moving violation” and the defendant is younger than age 25, the judge shall require as a condition of deferred disposition that the defendant complete a driving safety course. See checkbox m below.

Community service and committing no further offenses are examples of “other reasonable requirements.”

Sec. 106.115(a), A.B.C.

Sec. 106.071(d), A.B.C.

Art. 45.051(b-1) through (b-3), C.C.P.

This provision of Art. 45.051(b-1),

of deferred disposition that the defendant complete an additional driving safety course designed for drivers younger than 25 years of age; and

- (3) If the defendant holds a provisional license, during the deferral period, the judge **shall** require that the defendant be examined by the DPS.

7. Inform the defendant:

- a. When all the conditions are met, the case will be dismissed at the end of the deferral period. Otherwise the court will enter a judgment, and the fine will be due; and
- b. Whether a special expense fee is imposed.

8. At the end of the deferral period:

- a. If the defendant presents satisfactory evidence of compliance with the requirements, then dismiss the case.
- b. If the defendant fails to provide proof of compliance within the deferred period:
  - (1) The court must set the matter for a show cause hearing.
  - (2) The court must provide notice in writing of the defendant's

C.C.P., becomes effective January 1, 2012.

Sec. 521.123, T.C. Persons under age 18 hold provisional licenses.  
Sec. 521.161(b)(2), T.C.

Give the defendant a written copy of the order deferring disposition, listing all the conditions, and the consequences of both successful and unsuccessful compliance.

Art. 45.051(a), C.C.P.  
The judge may impose a special expense fee on the defendant not to exceed the amount of the fine that could be imposed. The special expense fee may be collected at any time before the end of the probation period. The judge may elect not to impose the special expense fee for good cause shown. If the judge orders the collection of a special expense fee, the judge shall require that the amount of the special expense fee be credited in the event of default by the defendant toward the payment of the amount of the fine imposed by the judge.

Art. 45.051(c-1), C.C.P.

opportunity to show cause. The notice shall be mailed to either the address on file with the court or the address that appeared on the citation.

- (3) The court shall require the defendant to appear at the time and place stated in the notice and show cause why the deferral should not be revoked.
- (4) At the show cause hearing on the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements of the deferred order, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the order's requirements.
- (5) After a show cause hearing the judge may either:
  - (a) impose the fine originally suspended pending the deferral period; or
  - (b) impose a lesser fine (except in instances involving defendants younger than 25 years of age involving traffic offenses classified as moving violations; court shall impose the original fine assessed.)

Art. 45.051(c-2), C.C.P.

Art. 45.051(d)-(d-1), C.C.P.



- 3. Consider the defendant's income and resources:
  - a. Amount of income;
  - b. Source of income:
    - (1) Wages, investment income, checking/savings, child support, social security/disability/welfare income, selling assets/non-exempt property, etc.
    - (2) Loans and ability to borrow money.
    - (3) Whether defendant has posted bail (cash bond or surety).
- 4. Consider the defendant's expenses:
  - a. Number and ages of dependents;
  - b. Rent/mortgage payment;
  - c. Debts and obligations (car notes, credit cards, etc.);
  - d. Personal expenses; and
  - e. Illness/incapacity of defendant or spouse.
- 5. Consider other evidence:
  - a. Ability to work; and
  - b. Spouse's financial condition.
- 6. Factors not to be considered:
  - a. Financial resources of parents and other relatives;
  - b. Exempt property including homestead and vehicles (see Texas Property Code); and

"I'm going to place you under oath before conducting this indigence hearing and reviewing your financial information sheet. Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth in this matter pending before the court?"

- c. Attitude.
- 7. Review financial information sheet with the defendant, if necessary.
- 8. Review any federal assistance program(s) that the defendant is participating in.
- 9. Procedural issues:
  - a. Consider the truthfulness of indigent affidavit and defendant’s testimony;
  - b. Examine court records — payment history and/or prior indigence hearing;
  - c. Documentation:
    - (1) Note date and time of hearing or ruling; and
    - (2) Attach or secure all documentation with ruling and place in file.
- 10. Upon determination that defendant is unable to pay the fine, costs, or special expense fee:
  - a. Advise of right to appeal.
    - (1) Appeal:
      - (a) Grant personal bond for appeal bond; and
      - (b) Send case up.
    - (2) No Appeal:
      - (a) Time payment if defendant can obtain funds at a later time:
        - (i) All payable at a later date;
        - (ii) Payment in periodic installments;
        - (iii) Explain that if the

“You understand that there is a judgment or sentence in your case. I have determined that you are financially unable to pay this judgment. You have the right to appeal your conviction to an appellate court without having to post bond — notice of appeal or a personal appeal bond will be granted — if you wish to appeal.”

See Chapter 10 in this book.

“If you do not wish to appeal this conviction, you have the option to request to pay out the judgment on a time-payment schedule or you can perform community service or you could even request that I allow you to sit or lay out the judgment in jail at a rate of not less than \$50 for each period of time.” (“Period of time” is a time specified by the court in the judgment that is not less than eight hours or more than 24 hours. Art. 45.048, C.C.P.)

defendant wants time payment or an extension, he or she will have to pay an additional \$25 for each charge where there is a conviction if any part of the fine or court costs is paid on or after the 31<sup>st</sup> day after judgment is entered.

Art. 45.041(b), C.C.P.

Sec. 133.103, L.G.C.

b. Community Service:

- (1) Each eight hours of service discharges not less than \$50 of the fine and costs.
- (2) No more than 16 hours per week, unless the court finds that a greater period would not work a hardship.
- (3) Court should specify the number of hours to be worked.
- (4) Can be used in conjunction with partial payment.
- (5) Defendants charged with a traffic offense or possession of alcohol by a minor who are residents of Texas and ordered to perform community service as a condition of deferred disposition may elect to perform the required community service in the county in which the court is located, or the county in which the defendant resides; but only if the entity or organization agrees to supervise the defendant in the performance of the defendant's community service work and report to the court on the defendant's community service work.

Art. 45.049, C.C.P.

See *TMCEC Forms Book*:  
Community Service Order; and  
Community Service Time Sheet.

Art. 45.051(b)(10), C.C.P.

c. Waiver of Cost and Fine:

- (1) Court must order immediate payment and the defendant subsequently defaults in payment.

Art. 45.0491, C.C.P.

See *TMCEC Forms Book*: Waiver  
of Payment of Fine and Costs for  
Indigent Defendants.

- (2) Defendant must be indigent and unable to make installment payments.
  - (3) Community service must impose an undue hardship on defendant.
  - (4) Note these findings and waiver in court records.
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- 11. Capias Pro Fine

Capias Pro Fine is an order to place the defendant in custody when he or she fails to pay a fine. See Checklist 2-11.

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