

Deferred Disposition and Driving Safety Course (DSC) Dismissals

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1

Funded By A Grant From The Texas Court Of Criminal Appeals

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2

Resources

www.txcourts.gov

- Texas Rules of Civil Procedure (TRCP)

www.statutes.capitol.texas.gov

- Texas Constitutions and Laws

www.tjctc.org (The Training Center's website)

- Deskbooks, including Criminal Deskbook and Fines, Fees, and Costs Deskbook
- Legal question board, **forms**, webinars, recordings for credit, self-paced modules, Charts & Checklists

3

Deferred Disposition

4

Deferred Disposition Defined

Deferred disposition is a process where the court **dismisses** a criminal case when the defendant complies with **conditions** that the court orders.

~Art. 45.051, Code of Criminal Procedure

5

Broad Discretion

- Courts have very broad discretion on whether or not to permit a defendant to have a deferred disposition.
- Unlike DSC dismissal, a defendant is generally not **entitled** to deferred disposition.
 - Juvenile tobacco offenses are an exception and have their own specific procedures. See Chapter 5 of the Juvenile Deskbook for additional information!

6

Eligible Offenses – Deferred Disposition

Any offense **may** be deferred **except**:

- Offense **relating to motor vehicle control** committed by a person holding a CDL or who held a CDL at time of the offense.
- **Rules of the Road** offense that occurs in a **work zone** with workers present.
- **Exception:** seat belt or child safety seat offenses may be deferred even if committed in a work zone with workers present.

7

Fees & Costs – Deferred Disposition

All court costs **may** be required to be paid when the defendant enters the plea. The judge **may** allow the defendant to enter into a payment plan or waive court costs if the person is unable to pay them.

8

Fine – Deferred Disposition

- In addition to court costs, the court may charge a “**fine.**”
- This initial fine **must not** exceed the maximum fine for the offense.
 - For example, the maximum fine for speeding is \$200. You can impose an initial fine of up to \$200 + court costs to defer a speeding case.
There **must not** be any additional fine on top of this **if the initial fine is at the maximum level!**

9

Inability to Afford Payment – Deferrals

If the defendant is unable to afford the initial fine or court costs, the court must allow the defendant to dispose of them in the same manner as when the defendant cannot pay a fine or costs on conviction.

- Community Service, Payment Plans, Waiver

10

Deferral Conditions

- The judge gives a list of **conditions** to the defendant. If the defendant complies with all the conditions, then the case is **dismissed**.
- The law gives the judge a laundry list of possible conditions **plus** a catch-all of “any other reasonable condition” so the judge has **broad discretion** in what to require.
 - Conditions should be related to the offense/situation.

11

Unreasonable Conditions

- Examples where judges have gotten in trouble:
 - ordering parent to spank child;
 - ordering defendant to donate to a specific charity; and
 - ordering a defendant to provide personal services to the judge or county!

12

List of Conditions – Deferred Disposition

Laundry list includes:

- Pay restitution to the victim
- Submit to professional counseling
- Submit to drug/alcohol testing
- Submit to psychosocial assessment
- Participate in drug/alcohol treatment/education program
- Complete a DSC (but DSC dismissal statute rules wouldn't apply here)
- Provide proof to the court of compliance with terms of deferral

13

Mandatory Deferral Conditions

Certain offenses have **mandatory** deferral conditions if the court elects to grant deferral:

- Moving violation by driver under 25 must include DSC as a condition of deferral (but remember: DSC statute rules don't apply)
- Provisional license holders (under 18) must retake the driving test.
- Certain case types may also have specific requirements (like alcohol and tobacco cases – see Juvenile Deskbook for more info).

14

Contents of Written Order (1 of 3)

1. All terms and conditions with which the defendant is required to comply.
 - TJCTC recommends including a condition requiring the defendant to demonstrate compliance with the court's order.
2. The amount of the initial fine.
 - This may not exceed the maximum possible fine for the charged offense.

15

Contents of Written Order (2 of 3)

3. The amount of the **“fine as punishment for the offense”** to be assessed if the defendant is ultimately convicted of the offense.
 - May be a different amount than the initial fine and different from what the county fine schedule says.
4. A statement indicating whether the defendant is required to pay court costs immediately or “in installments during the defendant's period of probation.”

16

Contents of Written Order (3 of 3)

5. A statement indicating whether the defendant may discharge costs by performing community service or attending a tutoring program or whether the costs are waived.

17

Deferral Process – Defendant Complies

The court can give the defendant up to 180 days to comply with the order.

If they comply, the case is dismissed and **should not be reported to DPS.**

18

Show Cause Hearing

If the defendant fails to comply, the court shall notify the defendant in writing that they have failed to comply and shall set a show cause hearing.

- Remember that a **show cause hearing** is a hearing where the defendant must give a good reason why the court should not take an action.

19

Show Cause Hearing - Procedure

If defendant shows good cause, the judge **may** grant an extension to allow the defendant additional time to comply.

If defendant fails to appear or show good cause, the court should enter a judgment of **conviction** and may assess a fine.

- The defendant **should not** be held in contempt for violating terms of the deferral. The penalty is the conviction.

20

Fine as Punishment

- If the defendant is convicted and a “fine as punishment for the offense” is assessed, they get credit toward that fine for whatever initial fine they have already paid – **no double dipping!**
- Say the defendant paid a \$50 initial fine and \$76 court costs. They are now convicted, and the court assesses a \$200 “fine as punishment for the offense.” They do not have to pay court costs again, and they get \$50 credit against the “fine as punishment for the offense.” They owe **\$150 total** now.
- Also, the fine as punishment cannot exceed the maximum fine for the specific offense charged.

21

Failure to Appear at Show Cause Hearing

If defendant does not come to the show cause hearing, **do not** charge them with FTA or VPTA, or report them to OMNI for **failing to appear**.

- The defendant appeared in the case by pleading guilty/nolo.
- The penalty is conviction.

If the defendant is convicted and subsequently fails to satisfy the judgment, the court may enforce the judgment, including post-judgment reporting to OMNI.

22

Question 1

- Jeff is charged with speeding by going 96 mph on I-10 where the speed limit is 80 mph. He has an Alabama driver's license and is not in active-duty military service. He is also charged with no insurance. Is he eligible for a deferred disposition? If so, what conditions would you recommend as a condition of the deferral?

23

Question 2

Jess, 23 years old, gets a ticket for Unsafe Lane Change in a construction zone with workers present. Judge rules she is not eligible for deferred disposition. Is the judge correct? Can Jess appeal the judge's deferral denial?

24

Driving Safety Course (DSC) Dismissal

25

DSC Basics (1 of 2)

- Often referred to as “**defensive driving**,” DSC dismissal is a process where a defendant can get a criminal case dismissed by taking a class on driving safety.
- The court **must** advise the defendant of their right to dismiss their case using DSC if they are eligible and come into court to dispose of their case.

~ Art. 45.0511, Code of Criminal Procedure

26

DSC Basics (2 of 2)

- DSC dismissal has strict eligibility requirements, which the court can only waive in very limited circumstances.
- And if a defendant **does** qualify for a DSC dismissal, the court **must** allow them to take the course!

27

“Mandatory” DSC

- We will refer to the situation where the court **must** allow an eligible defendant to dismiss their case through DSC as “**mandatory DSC.**”

28

“Mandatory” DSC – Defendant’s Option

- It is mandatory that the court allows the defendant to take it, not mandatory for the defendant to choose to take it.
 - Defendant could instead plead not guilty and go to trial or elect to plead guilty/nolo and simply pay the fine and court costs.

29

Eligibility for Mandatory DSC (1 of 3)

On or before the answer date, the defendant must:

1. enter a plea of guilty or nolo in person or in writing, **and**
2. request to take DSC (the request must be made by certified mail or in person—by defendant or defendant’s attorney—to be guaranteed the right to DSC, but the court is free to accept requests sent by regular mail.)

30

Eligibility for Mandatory DSC (2 of 3)

3. The defendant **must** provide proof of financial responsibility (insurance).
4. The defendant **must** have a valid TX DL or must be an active duty military servicemember, or the dependent of an active servicemember.

31

Eligibility for Mandatory DSC (3 of 3)

5. The defendant **must not** have taken DSC in the previous 12 months, counting from the date the last course was taken to the date of the new offense.
 - So, say defendant got the first citation on **9-27-22**, takes course on **10-25-22**, case dismissed on **12-27-22**.
 - Defendant **is eligible** if the new offense happened on **10-26-23** or later.

32

DSC – Eligible Offenses

Disregarding warning signs/barricades

All “**Rules of the Road**” (Transportation Code Chapters 541-553) offenses **except:**

- Passing a school bus that is loading/unloading children
- Speeding 25mph or more over the speed limit
- Speeding with total speed of 95mph or more
- Failure to stop and render aid after an accident
- Failure to stop and exchange information after an accident

33

Ineligibility for DSC

- The defendant is also **not eligible** for DSC if:
 - The offense occurred in a **work zone** (construction zone) with **workers present** (except safety belt, safety seat, pedestrian, and inspection offenses), **or**
 - The defendant has a **Commercial Driver’s License (CDL)** or had one at the time of the offense.

34

Eligible Offenses – Defendant under 25 years old

- If the defendant is under 25, they are entitled to DSC dismissal if they meet the other DSC requirements previously discussed, and the offense is a **moving violation** other than those excluded above.
 - Not all “Rules of the Road” offenses are “**moving violations.**” The list of moving violations is found in the Texas Administrative Code (direct link can be found in “Definition of Moving Violation” box on page 47 of the Criminal Deskbook).

35

Discretionary DSC

- Judge **may** allow the defendant to take DSC **even if** defendant has taken course within the last 12 months or if request is **after** appearance date.
 - But **cannot waive any** other requirement.
 - For example, **cannot** give DSC to someone who was speeding at 98 mph or someone with a CDL.
- ~Art. 45.0511(d), Code of Criminal Procedure

36

Poll 1

Defendant is charged with going 35 mph in a school zone. Are they eligible for DSC?

- A. Yes
- B. No

37

Poll 2

Defendant is charged with speeding (going 55 mph in 45 mph zone) where there was an accident involving damage to a motor vehicle. Are they eligible for DSC?

- A. Yes
- B. No

38

Fees & Costs

- Defendant must pay the court costs for the offense and a **reimbursement** fee (for mandatory) or a fine (for discretionary)
 - **Mandatory** DSC – Reimbursement fee up to \$10.
 - **Discretionary** DSC – Fine up to the maximum fine for the offense.
- Court **may** order the fees and costs (or fine for discretionary) to be paid up front or **may** allow them to be paid within 90 days.

39

Inability to Afford Payment

If the defendant is unable to afford the reimbursement fee or court costs, the court should allow the defendant to dispose of them in the same manner as when the defendant cannot pay a fine.

- Community Service, Payment Plans, Waiver
- Recall the discussion in the previous class.

40

DSC - Process

- Court allows defendant 90 days to:
 - Provide proof of completion of the DSC.
 - Provide a copy of their DPS Driving Record.
 - Submit an affidavit that they are not currently taking a DSC to dismiss a different case, and that they have not taken a course in the previous 12 months that is not reflected on the driving record.

41

DSC Process – Defendant Complies

- If the defendant completes the DSC and submits all required information to the court, the court shall:
 - Dismiss the charge, **and**
 - Report the fact that the defendant successfully completed a driving safety course and the date of completion to the DPS for inclusion in the person's driving record.

42

Can the Defendant Submit an Electronic Course Certificate?

- Yes. A defendant may submit an electronic course certificate.
- Go to www.tdlr.texas.gov/DESsearch to verify the defendant's electronic certificate, if necessary.

43

DSC Process – Failure to Comply

- If the defendant fails to comply, court shall notify the defendant in writing of their failure and set a show cause hearing.
 - Remember that a **show cause hearing** is a hearing where the defendant must give a good reason why the court shouldn't take an action.

44

Show Cause Hearing

- If defendant shows good cause, the judge **may** grant an extension to allow the defendant to comply.
- If defendant fails to appear or provide good cause, the court should enter a judgment of **conviction** and may assess a fine.
 - If the defendant already paid court costs, they don't have to pay them again.
 - Note: The defendant cannot be charged with Failure to Appear or VPTA for not showing up for their show cause hearing.

45

Find the Missing Information

- Handouts have missing boxes.
- Find the missing info!
- Get ready to share your answers after you found all the missing blanks.

46

Questions?

Thank You!!!