

TEXAS JUSTICE COURT



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FY2019
1-Hour Webinar

Criminal
Q&A

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An Educational Endeavor of the Justices of the Peace and Constables Association, Inc.
Funded by a grant from the Texas Court of Criminal Appeals

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Criminal Q&A

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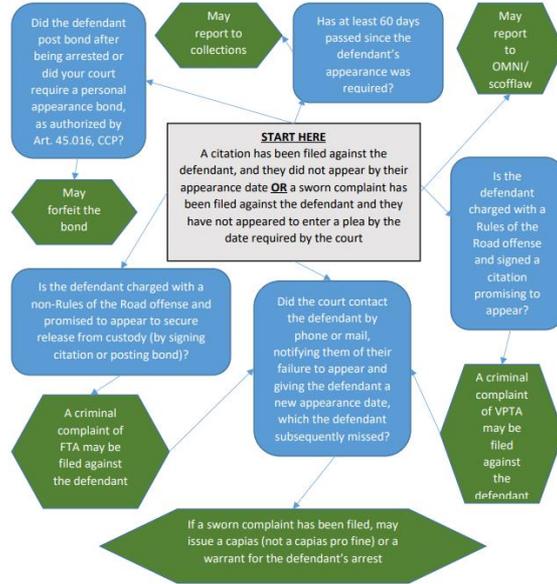
Resources

- Criminal Deskbook
 - www.tjctc.org/tjctc-resources/Deskbooks.html
 - TJCTC website: click “Resources” tab and then “TJCTC Deskbooks” in the drop down menu
- Code of Criminal Procedure:
 - Chapter 45
- Transportation Code:
 - Chapters 541 – 553 (Rules of the Road)
 - Chapter 601 (Motor Vehicle Safety Responsibility Act)
- Tricky Issues: Criminal Webinar (March 12, 2019):
<https://www.gotostage.com/channel/2b2ba40b2e984d5693bcbf3e08331898/recording/341aeed40d1240a2beb6a46bbc6c598c/watch>

2

J. Flowchart – Failure to Appear to Enter a Plea

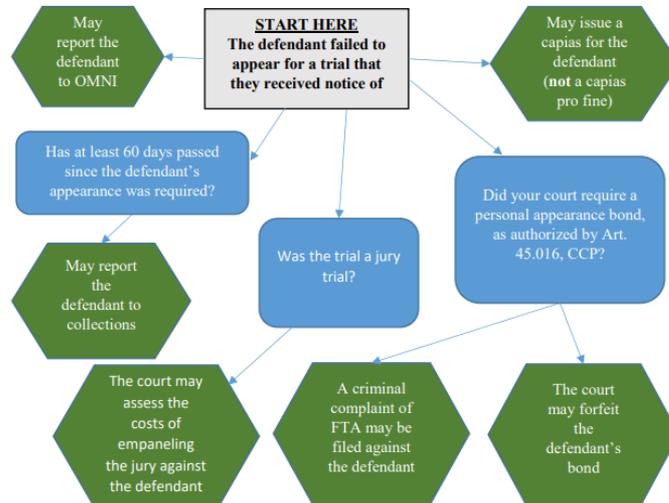
To use this chart, begin in the silver box. The blue boxes are a filter to see if the remedies in the green boxes can be used by the court.



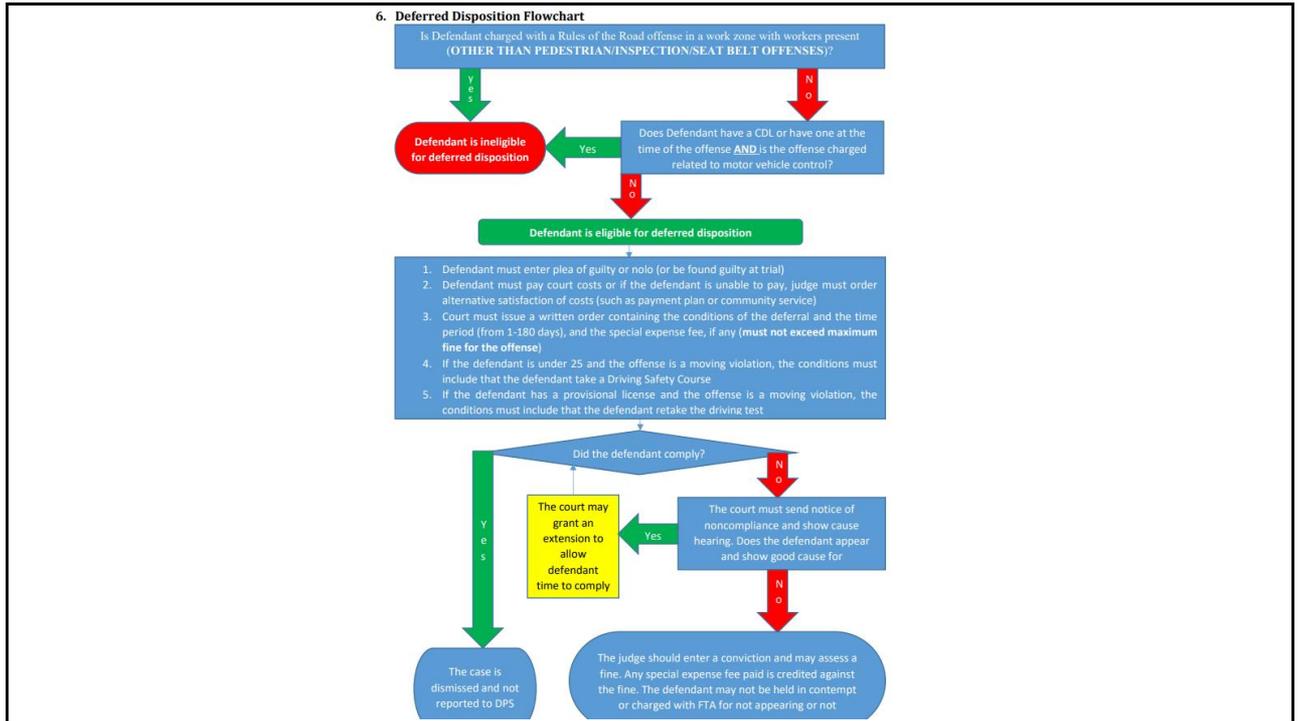
3

K. Flowchart – Failure to Appear for Criminal Trial

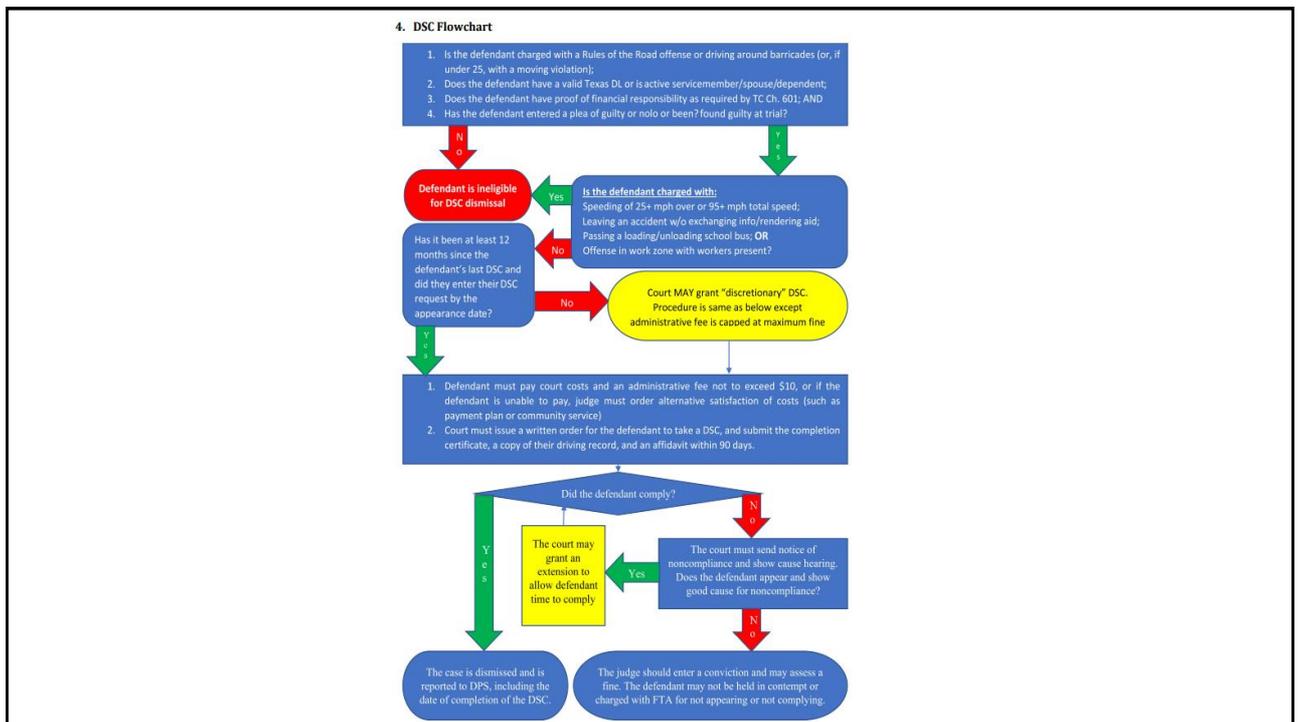
To use this charts, begin in the silver box. The blue boxes are a filter to see if the remedies in the green boxes can be used by the court.



4



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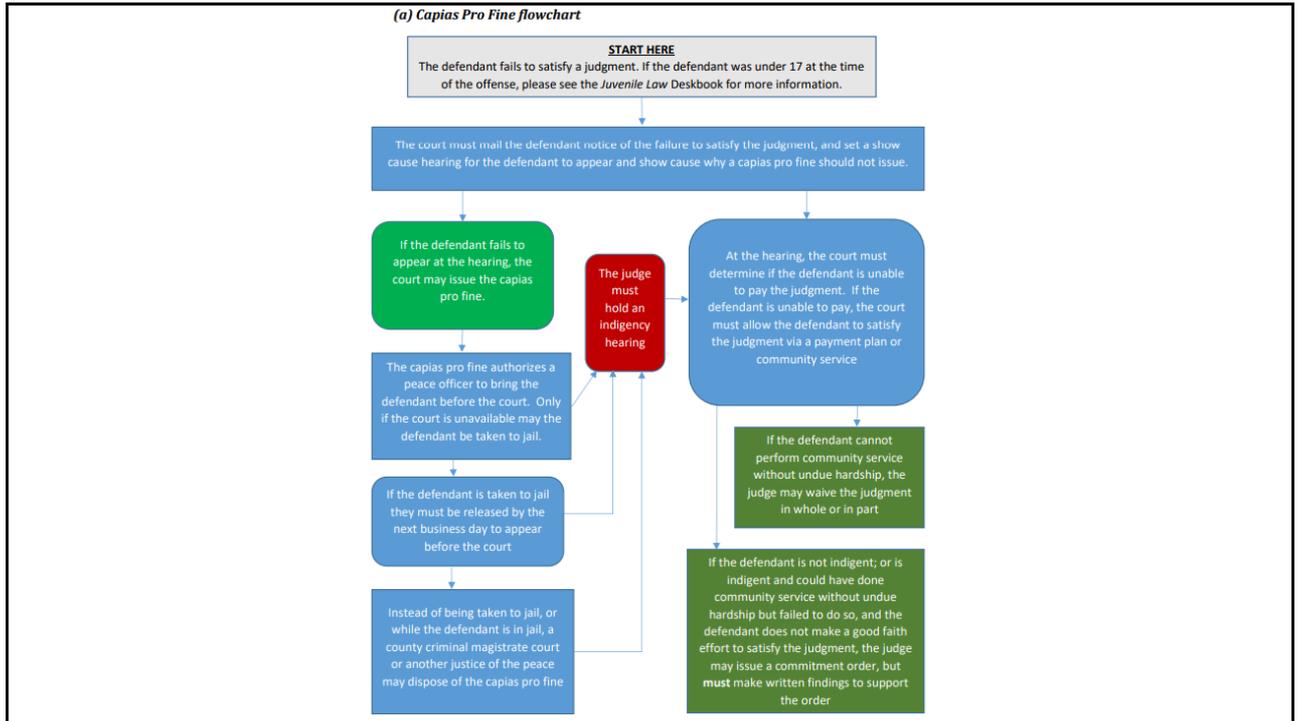
C. Comparison of Deferred Disposition and Driving Safety Course Dismissals

	Deferred Disposition	Driving Safety Course
Authorizing Statute	CCP Art. 45.051	CCP Art. 45.0511
Up to Court's Discretion?	Yes	Not if defendant meets "mandatory" eligibility requirements
Eligible Offenses	Everything except Disqualified Offenses listed below	Rules of the Road except Disqualified Offenses listed below For Defendants <25 years old, Moving Violations except Disqualified Offenses below
Disqualified Offenses	Offenses related to motor vehicle control committed by CDL holders Rules of the Road offenses other than seat belt offenses committed in work zones with workers present	Speeding <25 mph over limit Speeding <95 mph total speed Passing school bus loading/unloading children Leaving scene of accident without exchanging info Failing to stop and render aid after injury accident Any offense committed by CDL holder Any offense committed in a work zone with workers present
Length of Deferral Period	1-180 days	90 days
Costs and Fees	Court Costs + "Special Expense Fee" which may not exceed the maximum fine for the offense	Court Costs + "Administrative Fee" which is capped at \$10 unless court is proceeding under "discretionary" DSC, in which case capped at maximum fine for the offense
Texas DL required?	No	Yes, unless active duty U.S. servicemember or dependent
Proof of Insurance required?	No	Yes

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OFFENSE	CONDITIONS OF DISMISSAL	DISMISSAL FEE
Failure to Maintain Financial Responsibility (FMFR) (No Insurance) - TC 601.191	Defendant shows insurance policy valid at the time of the offense	None
Expired License Plate TC 502.407	Defendant remedies no later than 20 working days after offense or by appearance date, whichever is later and pays to DMV the delinquent registration fee required by TC 502.045	Not to exceed \$20
Operation of Vehicle with No Registration Insignia (No Registration Sticker) TC 502.473	Defendant remedies the defect by appearance date, or shows that a registration insignia was issued for that time period and has been attached to the vehicle	Not to exceed \$10
Wrong Registration Insignia (Wrong Registration Period) TC 502.475 (a) (3)	Defendant remedies the defect by appearance date	Not to exceed \$10
Operation of Vehicle with No License Plate (Includes Improper Placement, and Failure to Display Two Plates) TC 504.943	Defendant remedies the defect by appearance date	Not to exceed \$10
Wrong, Altered, or Obscured License Plate - TC 504.945	Defendant remedies the defect before the defendant's first court appearance and shows that the vehicle was issued a plate by the department that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed.	Not to exceed \$10
No Driver License - TC 521.025	Defendant produces in court a driver's license issued to that person, appropriate for the type of vehicle operated, and valid at the time of the arrest for the offense.	Not to exceed \$10
Expired Driver License TC 521.026	Defendant remedies no later than 20 working days after offense or by appearance date, whichever is later.	Not to exceed \$20
Failure to Change Name/Address on DL TC 521.054	Defendant remedies the defect within 20 working days of the offense	Not to exceed \$20
Violation of DL Restriction TC 521.221	Court may dismiss if (1) physical condition has been medically or surgically corrected before the date of the offense; or the restriction was imposed in error and that fact established by defendant. (2) The department removes the restriction or endorsement by the defendant's 1st court appearance	Not to exceed \$10

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5. Expunction Chart

Record Type	Requirements and Procedure	Fee	Authorizing Statute
Dismissals/ Acquittals (Defendant under 17)	The case has been dismissed or the defendant was acquitted and the defendant was under 17 years of age at the time of the offense. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(b), Code of Criminal Procedure
Arrest Records Related to ABC Offense	The defendant is now 21 years of age and has only one arrest for an offense under Ch. 106, ABC. Noncustodial arrests (citations) count as arrests. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of ABC Offense	The defendant is now 21 years of age and has only one conviction under Ch. 106, ABC. Deferrals do not count as convictions. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of fine-only misdemeanor (Defendant under 17)	The defendant had only one conviction of a fine-only misdemeanor before their 17 th birthday (other than ABC or tobacco offenses) and is now 17. Applicant files with the convicting court. Application must be sworn and written.	\$30	Art. 45.0216(b), Code of Criminal Procedure
Convictions of tobacco- related offense	The defendant complied with the court's order to take a tobacco awareness course or perform tobacco-related community service. Applicant files with the convicting court.	\$30	Sec. 161.255, Health & Safety Code
Conviction of "sexting" offense	The defendant has only one conviction of an offense under Penal Code Sec. 43.261, was never adjudicated by a juvenile court as having engaged in the same conduct, and is now 17. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(b), (f), Code of Criminal Procedure
Arrest Records Related to Fine-Only Misdemeanors Not Resulting in Conviction	1) Offense is no longer pending, did not result in conviction, no felony charges are pending and at least 180 days has elapsed since arrest; 2) Prosecutor recommends expunction before trial of offense; or	\$100 *	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure

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Some Recent Questions from the Legal Board

- If a defendant request a payment plan, is approved by the Judge, signs the agreement to payments, a judgment is entered and no payments are received until a year later is the time payment fee added after the 31st day of the judgment or 31 day after the actual day the payment is made a year later if the case is not paid in full.
- Section 133.103(a), Local Government Code, states that if a person “pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution,” then the defendant must pay a time payment fee of \$25. So it would apply here on or after the 31st day after the judgment; not 31 days after the person begins making payments. (The Spring 2017 Newsletter contains an email distributed on April 19, 2017 discussing the time payment fee in detail.)
- Please see our email on February 11, 2019 explaining the recent decision by the Court of Appeals for the 14th Judicial District holding the time payment fee allocated to the general revenue fund (90% of the \$25 collected) unconstitutional. As noted in our email, we recommend meeting with county officials, including your county attorney and county auditor, to discuss this opinion and how it affects collection of the time payment fee in your county. (2-22-19)

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Some Recent Questions from the Legal Board

- I apologize for beating a dead horse....however, on a charge of Minor Consuming Alcohol, defendant was given an original appearance date of 12/15/18 by the officer. Notice was mailed to disregard previous appearance date because this is an alcohol related offense and the defendant must appear before the judge and judge was unavailable that day. New appearance/docket call was rescheduled for 1/4/19. Defendant did not appear. Do we have to send the Notice of Failure to Appear Prior to Issuance of Warrant and set another date? Or can a warrant be issued at this time?
- Yes, you have to send the notice before issuing an arrest warrant. The new appearance date became the “initial court setting” when the defendant was told to disregard the date on the citation and instead appear on 1/4/19. Since he did not appear at that time, before an arrest warrant may issue, he must be given a new appearance date within thirty days of the notice and also provided the information required by Art. 45.014(e) of the Code of Criminal Procedure. (1-27-19)

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Some Recent Questions from the Legal Board

- We have a large amount of old cases with previous warrants on them. In going through the files I have found a stack of complaints signed by the officer and dated, but not signed by the previous Judge who had issued the warrants. Are these complaints still valid if the officer signed them? If they are valid can the County Prosecutor sign off on them or are all these old cases needing to be dismissed if they are over 2 years because a valid complaint had not been filed?
- A citation serves as a complaint to which a defendant may plead but if the defendant pleads not guilty or fails to appear by the appearance date in the citation, then Art. 27.14(d), Code of Criminal Procedure, requires that a complaint be filed that conforms to the requirements of Art. 45.019. So if the "stack of complaints" are really just citations that the officer served on the defendant and filed with the court, and not complaints meeting the requirements of Art. 45.019, and they are more than two years old, then the cases may not be prosecuted. But if the officer filed sworn complaints meeting the requirements of Art. 45.019, then the statute of limitations does not run no matter how old they are and they may still be prosecuted. (1-8-19)

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Some Recent Questions from the Legal Board

- what is the appeal time for a criminal case.
- Please see the Criminal Deskbook at page 68: "The appeal bond must be given within ten days after the 'sentence' of the court has been rendered, unless the defendant mails to the court a plea of guilty or of nolo contendere and a waiver of jury trial, and requests notification of the amount of an appeal bond the court will approve. In that case, the appeal bond must be filed before the 31st day after the defendant received the notice of the appeal bond amount. Code of Criminal Procedure Art. 27.14(b). For more information on entering a plea by mail and requesting the appeal bond amount, see page 25." (6-15-18)

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Some Recent Questions from the Legal Board

- If a person has an active warrant on a citation and they make a payment arrangement, do we have to recall the warrant then or can it stay active until the fine is paid in full? Or is it up to the Judge?
- As of September 1, 2017, the judge must recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed. This is a result of SB 1913, passed by the 85th Regular Session of the Texas Legislature in 2017, adding Art. 45.014(g), Code of Criminal Procedure. So if the defendant has appeared voluntarily and entered into a payment plan before the warrant was executed, the warrant should be recalled. (8-16-17)