

DRIVING SAFETY COURSE, DEFERRED DISPOSITION, & OTHER DISMISSALS

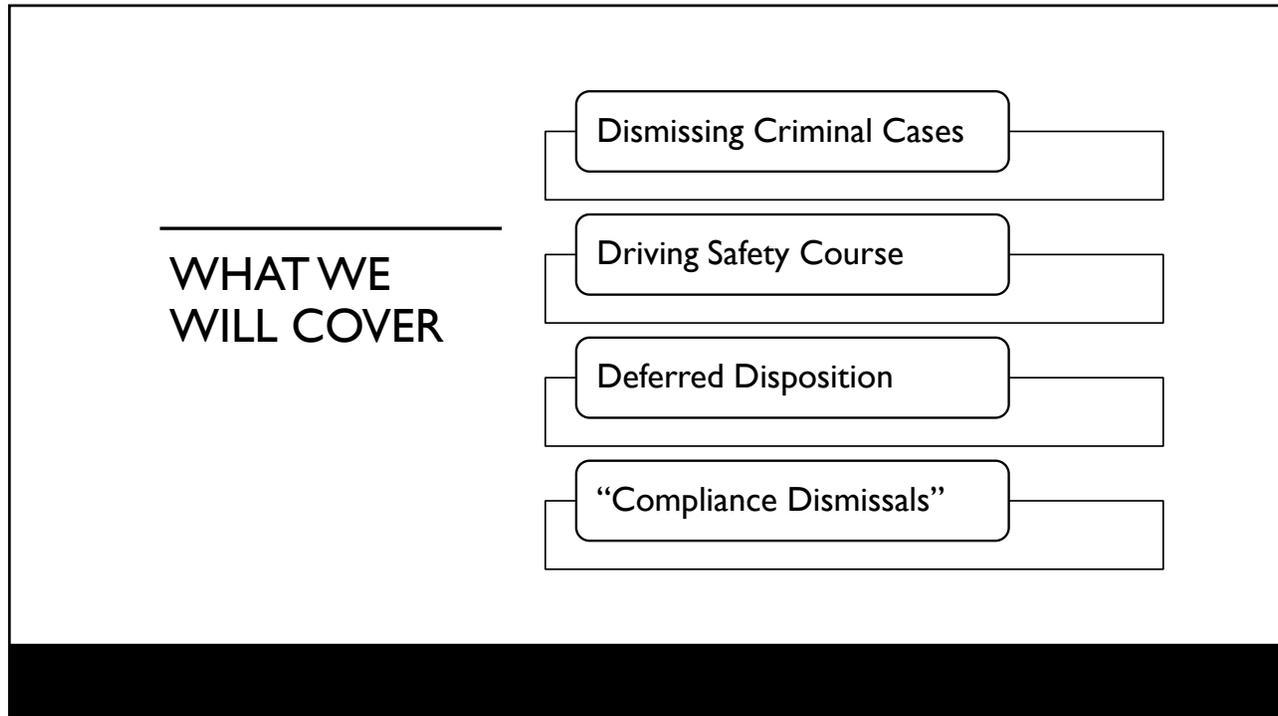
BRONSON TUCKER
DIRECTOR OF CURRICULUM
TJCTC

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RESOURCES

- TJCTC Deskbook – Criminal Procedure Chapter 5 (pages 39 – 58)
- Code of Criminal Procedure Ch. 45
- www.statutes.legis.tx.us
- www.tjctc.org
 - Forms, Newsletter Articles, Webinars, Flowcharts
 - Legal Q&A Board

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WHEN MAY A CRIMINAL CASE BE DISMISSED?

- Two and only two conditions allow a justice court to dismiss a criminal case:
 - A **motion to dismiss** from a prosecutor, **or**
 - A **statute** granting explicit authority for the court to dismiss the case.

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MOTION TO DISMISS

A witness for the state (including the victim, or a peace officer who made the arrest or filed the complaint) **may not** make a motion to dismiss, **only a prosecutor may.**

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DO I HAVE TO SIGN A MOTION TO DISMISS?

- No. In *Swisher v. State*, the prosecutor made a motion to dismiss.
- The court didn't sign it, the case moved forward, and the defendant was convicted.
- The defendant appealed saying that wasn't fair because the court had to dismiss, since the prosecutor made a motion to dismiss.
- Court of Criminal Appeals said the court had the right to not sign the motion, valid conviction.

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DO I HAVE TO SIGN A MOTION TO DISMISS?

- However, TJCTC recommends signing motions to dismiss when requested unless you have a compelling reason not to sign.

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WHAT IF NO PROSECUTOR APPEARS FOR TRIAL?

- Remember that the court has 3 options (postpone the case; appoint an attorney as prosecutor, who your county must pay; or go to trial.)
- If you go to trial without a prosecutor, the case is **not dismissed**. The defendant is **acquitted** (found **not guilty**), because the state didn't prove its case.

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STATUTES THAT ALLOW A COURT TO DISMISS A CRIMINAL CASE ON ITS OWN

**DRIVING SAFETY COURSE (DSC),
DEFERRED DISPOSITION AND
COMPLIANCE DISMISSALS**



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DISMISSAL STATUTES

- The most common ways that justice courts dismiss criminal cases on their own are if the defendant takes a **Driving Safety Course (DSC)** or completes a **deferred disposition**.
 - The processes are similar but have important differences.
- Some other statutes also allow a court to dismiss a case (without a motion from a prosecutor) when the defendant complies with certain requirements. We call these “**compliance dismissals**”

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DRIVING SAFETY COURSE (DSC) DISMISSAL



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DRIVING SAFETY COURSE (DSC) DISMISSAL: ART. 45.051 I, CODE OF CRIMINAL PROCEDURE

- 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.

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DRIVING SAFETY COURSE (DSC) DISMISSAL

- 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!

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“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.**”

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“MANDATORY” DSC

- 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.

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TO BE ELIGIBLE FOR MANDATORY DSC

- **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.)

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TO BE ELIGIBLE FOR MANDATORY DSC

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.

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TO BE ELIGIBLE FOR MANDATORY DSC

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 **9-27-19**, takes course on **10-25-19**, case dismissed on **12-27-19**.
 - Defendant **is eligible** if the new offense happened on **10-26-20** or later.

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WHAT OFFENSES ARE ELIGIBLE FOR DSC?

- Disregarding warning signs/barricades
- All “**Rules of the Road**” (Transportation Code §§ 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

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ELIGIBILITY FOR MANDATORY 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.

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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 45 of the Criminal Deskbook).

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ELIGIBLE OFFENSES – SEAT BELT OFFENSES

- If the defendant is charged with a seat belt or child safety seat offense, they must take a specialized class that focuses on the importance of seat belts and child seats.
 - They are eligible for this dismissal as long as they haven’t taken the “specialized” class in the previous 12 months, **even if** they have taken a “regular” DSC in the previous 12 months.
 - They are eligible for this dismissal **even if** the offense occurred in a work zone with workers present.

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DISCRETIONARY DSC:
ART. 45.051 I (D), CODE OF CRIMINAL PROCEDURE

- 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.

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FEES & COSTS

- Defendant must pay the court costs for the offense and a **reimbursement** fee (for mandatory) or a fine (for discretionary) (name change effective 1/1/20)
 - **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.

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FEES & COSTS

- If the defendant pays these fees and costs (or fine for discretionary DSC) more than 30 days after the order to pay them, and that payment was made on or after 1/1/20, then the court **does not** assess the \$15 **Time Payment Reimbursement Fee**.
 - This is because the time payment reimbursement fee **only** applies to a conviction, not to a DSC or deferral, after 1/1/20.

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FEES & COSTS

- 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
 - However, unlike a fine, costs can be waived **even if** community service would not be an undue hardship.

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PROCESS FOR DSC

- 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.

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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.

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CAN THE DEFENDANT SUBMIT AN ELECTRONIC COURSE CERTIFICATE?

- Yes. Regulations changed in November 2018 allowing a defendant to submit electronic course certificates.
- Go to www.tdlr.texas.gov/DESsearch to verify the defendant's electronic certificate, if necessary.

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DEFENDANT FAILS 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.

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SHOW CAUSE HEARING

- At the 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: They cannot be charged with Failure to Appear or VPTA for not showing up for their show cause hearing; the result is just that they are convicted of the offense, not that they are charged with a new offense.

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TIME PAYMENT REIMBURSEMENT FEE FOLLOWING CONVICTION

- If the defendant is convicted of the offense following a show cause hearing, and a fine is assessed and the defendant pays any portion of the fine more than 30 days later and the date of the payment is on or after 1/1/20, then the defendant must also pay a **time payment reimbursement fee** of \$15.
 - As noted above, this only applies following a conviction; not if the offense is dismissed because the defendant successfully completed DSC.

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DEFERRED DISPOSITION



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DEFERRED DISPOSITION: ART. 45.05 I, CODE OF CRIMINAL PROCEDURE

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

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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.

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WHAT OFFENSES ARE ELIGIBLE

- 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.

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WHAT DOES “RELATED TO MOTOR VEHICLE CONTROL” MEAN?

- Many offenses clearly meet this restriction: speeding, unsafe lane change, following too closely.
- Many offenses clearly do not: public intoxication, disorderly conduct, issuance of bad check.
- Some are in the gray area: insurance, weight, registration offenses.
 - Judge will have to decide how they wish to handle these.

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FEES & COSTS

- 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.
- Even if any portion of the court costs are paid more than 30 days after the order to pay them, and the 31st day falls on or after 1/1/20, then the **\$15 Time Payment Reimbursement Fee is not assessed** because after 1/1/20 that fee is only assessed **upon conviction**.

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FEES & COSTS

- In addition to court costs, the court may charge a **“fine” (prior to 1/1/20 this was called a “special expense fee”)**.
- 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 fee on top of this.

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FEES & COSTS

- 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
 - Note that costs may be waived **even if** community service is not an undue hardship.

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

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CONDITIONS

- 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 statute rules wouldn't apply here)
 - Provide proof to the court of compliance with terms of deferral

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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).

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CONTENTS OF WRITTEN ORDER

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.

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CONTENTS OF WRITTEN ORDER

3. The amount of the “fine as punishment for the offense” (new language as of 1/1/20) 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.”

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CONTENTS OF WRITTEN ORDER

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.

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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.**

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DEFENDANT FAILS TO COMPLY

- 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 shouldn't take an action.

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SHOW CAUSE HEARING

- At the show cause hearing:
 - 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.
 - **Do not** hold the defendant in contempt for violating terms of the deferral. The penalty is the conviction.

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SHOW CAUSE HEARING

- If the defendant is convicted and a “fine as punishment for the offense” (new language as of 1/1/20) 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 you assess 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.

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TIME PAYMENT REIMBURSEMENT FEE FOLLOWING CONVICTION

- As with DSC, if the defendant is convicted of the offense following a show cause hearing, and a fine is assessed and the defendant pays any portion of the fine more than 30 days later and the date of the payment is on or after 1/1/20, then the defendant must also pay a **time payment reimbursement fee** of \$15.
 - Again, this only applies following a **conviction**; not if the offense is dismissed because the defendant complied with the conditions of deferral.

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

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TWO SEPARATE PROCESSES

DRIVING SAFETY COURSE

– ART. 45.0511 - CCP

- Court **must** allow a defendant who meets the requirements to take a DSC
- Court has very limited discretion to allow other defendants to take DSC

DEFERRED DISPOSITION

– ART. 45.051 - CCP

- Court has **broad discretion** to allow any defendant to be placed on deferred disposition
- Only limitations are CDL holders and offenses in work zones with workers present
- 45.051 (and not 45.0511) rules apply **EVEN** IF making a DSC a condition of deferred!

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COMPLIANCE DISMISSALS



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COMPLIANCE DISMISSALS

- These statutes provide explicit permission for the court to dismiss an offense without a motion from the prosecutor.
 - These usually require proof of correction of the defect or **compliance** with a legal requirement by the defendant.

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FEES & PLEAS

- Many of these offenses used to carry “**administrative fees**” that the court could assess when dismissing these offenses. **As of 1/1/20 these fees are called fines.**
 - They are no longer called “administrative fees” or “compliance dismissal fees.”
- It is **not necessary** to get a plea from the defendant when dismissing an offense as provided by these statutes.

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