

# Introduction to Criminal Procedure II

Driving Safety Course, Deferred Disposition,  
& Other Dismissals

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## Resources

- Criminal Procedure Deskbook Chapter 5
- Code of Criminal Procedure Ch. 45 (as cited on slides), at [www.statutes.legis.tx.us](http://www.statutes.legis.tx.us)
- [www.tjctc.org](http://www.tjctc.org)
  - Forms and Flowcharts – DSC; Deferral; Compliance Dismissal
  - Webinars
  - Legal Q&A Board

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## What We Will Cover

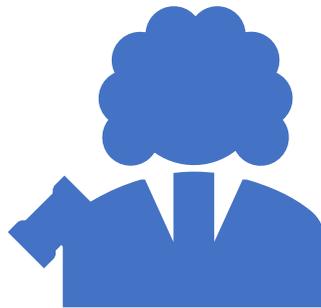
Dismissing Criminal Cases

Driving Safety Course

Deferred Disposition

“Compliance Dismissals”

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## How Dismissal Works

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## What Does “Dismissing a Case” Mean?

- When a criminal case is dismissed, an order is entered that the case is “going away.”
- The defendant **will not** have a criminal conviction on their record.

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Poll: A judge can always decide to dismiss a case if they think there was no basis for filing the case.

- A. True
- B. False

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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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- Judges have been sanctioned by the Commission on Judicial Conduct for dismissing criminal cases unlawfully.

What if I  
dismiss a  
case  
without  
authority?

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## What is a motion to dismiss?

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Remember that a **motion** is a request for the court to do something. Here the state is asking for the criminal case against the defendant to be dismissed.

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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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## Does a Judge Have to Grant 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.
- The Court of Criminal Appeals said the court had the right not to sign the motion, and the conviction was valid.

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## Best Practice

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

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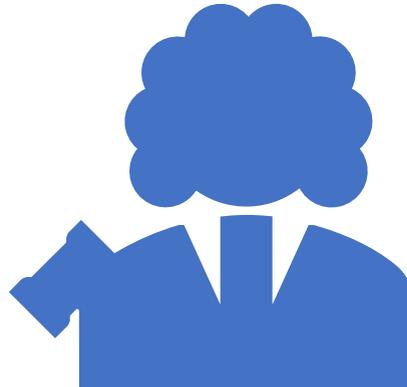
## What if No Prosecutor Appears for Trial?

- Remember 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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## Statutory Dismissals

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 does **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. 45.0511, 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 – 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.

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## Eligibility 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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## Eligibility for Mandatory DSC (continued)

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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## Eligibility for Mandatory DSC – Time Period

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.

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**Work  
Problem!**

Using the Criminal Deskbook (hint: see page 54), look up and answer the following questions:

What if the defendant's license is currently suspended? Are they eligible for DSC?

What if the defendant has an ODL? Are they eligible for DSC?

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**Work  
Problem!**

What if the defendant did not have a valid license at the time of the offense but does now? Are they eligible for DSC?

What if the defendant has a valid Alabama driver's license? Are they eligible for DSC?

Discuss at your table!

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## 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

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## 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.

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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 47 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, and **even if** the offense occurred in a work zone with workers present.
  - Effective June 1, 2023, this specialized training requirement will end and seat belt and child safety seat offenses may be dismissed under the normal DSC procedures.

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Discretionary DSC:  
Art. 45.0511(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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Poll

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

Yes

No

See Criminal Deskbook at page 52.

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## Poll

Q. 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?

Yes

No

See Criminal Deskbook at page 52.

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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)
  - **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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## Time Payment Reimbursement Fee

- If the defendant pays any amount of these fees and costs (or fine for discretionary DSC) more than 30 days after the order to pay them, then they must also pay a \$15 **Time Payment Reimbursement Fee**.

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## 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.

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## 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.

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## 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.

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## Can the Defendant Submit an Electronic Course Certificate?

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

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## 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.

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## 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.

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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 after the order, then the defendant must also pay a **time payment reimbursement fee** of \$15.

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## Poll

Q. What do we do if the citation has not been filed by the appearance date?

Ask the defendant to give you their citation and make a copy of it for your files.

Tell the defendant the court does not have jurisdiction yet and they will get a new appearance date once the citation is filed.

See Criminal Deskbook at pages 52 - 53.

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## Poll

Q. Bronson is a defendant in your court. He took DSC to dismiss a previous case 11 ½ months before the date of the current offense. May the court allow him to do a DSC dismissal again now?

Yes

No

See Criminal Deskbook at page 55.

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## Poll

Q. Rebecca requests DSC dismissal on a speeding ticket on her appearance date, which is Dec. 10. The date of the offense was Oct. 20 and Rebecca got a CDL on Nov. 15. Is she eligible for DSC?

Yes

No

See Criminal Deskbook at page 51.

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## Poll

Q. Billy doesn't own a car. He does have a DL, he rents a car, and purchases the rental car company's insurance. He gets a speeding ticket. When he comes to court, he has returned the car, and doesn't have an insurance policy since he doesn't own a car. Is he eligible for "mandatory" DSC?

Yes

No

See Criminal Deskbook at page 55.

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Deferred  
Disposition



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Deferred Disposition:

Art. 45.051, 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, as well as the upcoming class.

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## 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.

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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.
  - Judges will have to decide how they wish to handle these.

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## 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.
- If any portion of the court costs are paid more than 30 days after the order to pay them, then the **\$15 Time Payment Reimbursement Fee** is assessed.

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## 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 fee on top of this.

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## 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

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

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## 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).

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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 (continued)

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.”

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## Contents of Written Order (continued)

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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## 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.**

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## 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.

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## 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.
  - **Do not** hold the defendant in contempt for violating terms of the deferral. The penalty is the conviction.

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## Credit for Initial Fine

- 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 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

- 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, then the defendant must also pay a **time payment reimbursement fee** of \$15.

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## 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.
- 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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## Scenario 1

Q. 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 impose as a condition of the deferral?

See Criminal Deskbook at page 45.

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## Scenario 2

Q. Fill out the deferred disposition order (Handout 1) for the following defendant: Jessica Foreman, 23 years old, offense is Unsafe Lane Change. The maximum fine for that offense is \$200 and court costs are \$129. Select optional conditions, if any, you think will be useful.

**Handout 1 is on the next page.**

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Compliance  
Dismissals



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CAUSE NO. \_\_\_\_\_

STATE OF TEXAS

§

IN THE JUSTICE COURT

§

v.

§

PRECINCT \_\_\_\_\_

§

§

\_\_\_\_\_  
DEFENDANT

§

\_\_\_\_\_ COUNTY, TEXAS

### DEFERRED DISPOSITION ORDER

Judge Presiding: \_\_\_\_\_

Offense and Date: \_\_\_\_\_

Defendant's Plea: \_\_\_\_\_

Court Costs: \_\_\_\_\_

Initial Fine: \_\_\_\_\_

Restitution Owed: \_\_\_\_\_ Payable to: \_\_\_\_\_

Fine Assessed if Convicted: \_\_\_\_\_

Defendant appeared on \_\_\_\_\_, 20\_\_\_\_ and freely and voluntarily entered the plea indicated.

The court **FINDS** that:

Defendant was charged by:

- Complaint  Citation/written notice.

Defendant appeared:

- In person.
- By mail (in accordance with Code of Criminal Procedure Article 27.14).
- By counsel \_\_\_\_\_.

Defendant:

- Waived the right to trial by jury and entered a plea of guilty to the charged offense after being properly admonished by the court.
- Waived the right to trial by jury and entered a plea of nolo contendere (or "no contest") to the charged offense after being properly admonished by the court.
- Was found guilty by a jury at trial.

- Waived the right to trial by jury, elected to have this case heard by the court, and was found guilty beyond a reasonable doubt by the court.

The court **FINDS** that, in this case, it is in the best interest of society and the Defendant to defer further proceedings without entering an adjudication of guilt. The court **ORDERS, ADJUDGES, AND DECREES** that Defendant shall be placed on probation for a period of \_\_\_\_\_ days (*not to exceed 180*).

The court:

- ORDERS** Defendant to pay an initial fine in the amount of \$\_\_\_\_\_. The court **ORDERS** that the initial fine will be credited toward the payment of the fine assessed upon conviction, if any.
- Elects not to assess an initial fine in this case.

The court:

- WAIVES** court costs because Defendant is indigent, lacks sufficient resources or income to pay the court costs, or was a child at the time of the offense.
- ORDERS** Defendant to pay court costs, in the amount indicated above in the following manner:
  - Defendant shall pay the court costs immediately.
  - Defendant shall pay \$\_\_\_\_\_ of the court costs in installments during the period of probation, as specified by the court below:

\_\_\_\_\_  
\_\_\_\_\_

- Defendant shall discharge \$\_\_\_\_\_ of the court costs by performing community service or attending a tutoring program, as specified by the court below:

\_\_\_\_\_  
\_\_\_\_\_

**If any amount is paid on or after the 31<sup>st</sup> day from date this order is signed, a \$15 time payment reimbursement fee will be assessed.**

The court **FINDS** that:

- Defendant owes no restitution in connection with the charged offense.

- Defendant owes restitution to a victim of the offense, and the Defendant is **ORDERED** to make restitution to \_\_\_\_\_, the victim of the offense, as specified by the court below.
- 

The court **ORDERS** Defendant to comply with the following terms and conditions during the probation period:

- Do not commit any offense against the laws of the United States, the State of Texas, a political subdivision of the State of Texas, or another state.
  - Complete a driving safety course approved under Education Code Chapter 1001, or another course as directed by the judge. *(Mandatory if Defendant is under the age of 25 and the charged offense is a traffic offense classified as a moving violation)*
  - Submit to a driving examination conducted by the Department of Public Safety in accordance with Transportation Code § 521.161(b)(2), regardless of whether you have previously completed a driving exam. Pay the \$10.00 examination fee. *(Mandatory if Defendant is under the age of 25, holds a provisional license, and the charged offense is a traffic offense classified as a moving violation)*
  - Present satisfactory evidence of full and complete compliance with this order to the court in the manner indicated below.
- 

- Post a bond in the amount of \$\_\_\_\_\_ to secure payment of the fine.
  - Submit to professional counseling as indicated below:
- 

- Submit to diagnostic testing for alcohol, controlled substances, or other drugs as indicated below:
- 

- Submit to a psychosocial assessment as indicated below:
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-

Participate in an alcohol or drug abuse treatment or education program as indicated below:

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Pay the costs for any diagnostic testing, psychosocial assessment or treatment, or education program in the manner indicated below:

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Comply with these additional reasonable terms and conditions:

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The court admonishes Defendant that full and complete compliance with this order will result in the dismissal of the charged offense.

If Defendant fails to comply with the court's order, the court will summon Defendant to a hearing. If Defendant fails to show good cause at the hearing for the failure to comply with this order, the court will issue a judgment of conviction and impose the fine assessed in the amount indicated above.

**ISSUED AND SIGNED** on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

## 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 carry “**reimbursement fees**” that the court can assess when dismissing these offenses.
  - They are no longer called “administrative fees” or “compliance dismissal fees” or “fines.”
- It is **not necessary** to get a plea from the defendant when dismissing an offense as provided by these statutes.

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## Common Compliance Dismissals

- Transportation Code compliance dismissals.
  - For example: defendant is given a citation for no insurance and shows he had an insurance policy that was valid at the time of the offense.
  - See page 60 of the Criminal Deskbook and the Chart on that page.
- Parks & Wildlife compliance dismissals
  - Pages 116 - 118 of the Criminal Deskbook and the Chart on page 118.

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## Parent Contributing to Non-Attendance

- The court **may** (but does not have to) dismiss a charge of Parent Contributing to Non-Attendance on its own if it is in the **best interest of justice** because:
  - There is a low likelihood of repeating the offense, **or**
  - There is 'sufficient justification' for the child's failure to attend school.
- There is no fee or fine and no defect to correct or requirement for the defendant to comply with for this one.

*For more information on this type of case, see page 129 of the Criminal Deskbook and Chapter 2 of the Juvenile Deskbook*

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**Poll**

Q. Should the court check to make sure the insurance is valid before dismissing a no insurance ticket?

Yes  
No

See Transp. Code § 601.193.

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**Poll**

Q. True or False: A prosecutor must agree to allow a defendant to do:  
A DSC Dismissal;  
A Deferred Disposition;  
A Compliance Dismissal.

True  
False

See Criminal Deskbook at pages 41  
- 42, 60.

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