

## DEFERRED DISPOSITION AND DRIVING SAFETY COURSES

Judge Stewart Milner  
City of Arlington Municipal Court

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## Deferred Disposition

Article 45.051  
Code of Criminal Procedure

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## Deferred Disposition

- Always “discretionary” with the Court
- After plea of Guilty or Nolo Contendere; or Finding of Guilty after trial
- Payment of court costs:
  - at time of order, in installments, by community service, or any combination
- Court defers proceedings for up to 180 days

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**Special Expense Fee (SEF)**

- Amended Article 45.051(a) authorizes collection of a “special expense fee” prior to the end of the deferral period.
- Prior to 2009, no statutory authority to collect SEF until the end of the deferral period.

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**Special Expense Fee (SEF) (cont.)**

- SEF may be collected at any time before end of the deferral period.
- Judge may elect not to impose SEF for good cause shown by defendant.
- If Defendant violates probation and Judge orders collection of SEF, amount must be credited toward payment of fine imposed by Judge.

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**Deferred Disposition**

All fine only Offenses, Except:

- Offenses committed in a **construction maintenance work zone**
- **DUI** and consumption w/2 convictions
- Holders of **CDL**
  - Accused of state law or city ordinance violations relating to “Motor Vehicle Control”.
  - Excluding “parking violations”
  - FMFR?

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## Deferred Disposition

Conditions (the Judge May Order):

- Post **bond** in amount of fine to secure payment of *fine*
- Pay **restitution** not to exceed fine
- Professional **counseling**
- **Diagnostic testing** for alcohol or drugs
- **Psychosocial assessment**

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## Deferred Disposition

Conditions (cont'd.):

- Participate in alcohol and drug abuse treatment or **education program**
- **Pay costs** for directly or through court costs for any testing, assessment, treatment or education program
- **Driving Safety Course**
- Present **evidence of compliance** with conditions
- Any **reasonable condition**

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## Mandatory DSC as Part of Deferred Disposition

- Only applies to “traffic offenses” that are “moving violations”
- Applies to Defendant’s under 25
- NEW LAW ALERT – Court may require a course specifically designed for younger drivers. Four hours of class is live/interactive. S.B. 1330 (Offenses committed after 01/01/2012)
- Provisional DL holders are required to be re-examined for DL
  - Must pay \$10 to DPS for Gen. Rev.

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## Deferred Disposition

All alcohol offenses (including PI under 21):

- Alcohol Awareness Course required
- Community service required (except DUI)
  - First offense - 8 to 12 hours
  - Second offense - 20 to 40 hours
- Third offense?

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## Deferred Disposition

Compliance with Terms:

- Dismissal of Charge  
(If dismissed, no conviction reported and case may **not** be used against person for any purpose. (Kind of!))
- Alcohol offenses by minors are still convictions for “enhancement” purposes.

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## Deferred Disposition (Cont’d.)

Failure to Comply with Terms:

- Mandatory Show Cause Hearing
  - Notice in Writing
  - “Additional Period”
- Court may impose judgment or reduce fine if Defendant is 25+
- Court **MUST** impose fine if under 25
- Defendant pays fine or may appeal

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## Deferred Disposition

- Reporting to DPS
  - May not report traffic offenses deferred unless Defendant fails to complete and there is a conviction (Sec. 543.204, T.C.)
  - Must report deferrals of all Alcoholic Beverage Code offenses (Sec. 106.117, A.B.C.)
  - Reported on DIC-15 when case deferred

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## Driving Safety Course and Motorcycle Operator Course

Article 45.0511  
Code of Criminal Procedure

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“Mandatory” DSC  
Subsection (b)  
vs.  
“Discretionary” DSC  
Subsection (d)

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## “Mandatory” DSC Subsection (b)

The Judge shall grant DSC if:

- Charged with Eligible Offense;
- Makes “timely” “election”; and
- Meets Statutory Qualifications.

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## Mandatory DSC

Applies to offenses:

- within jurisdiction of municipal or justice courts;
- involving operation of motor vehicles.

Defined as:

- Disobeying Warning Signs and Barricades (Sec. 472.022)
- “Rules of the Road” violations (Sec. 541-600)
- Juvenile offenses for same violations (Sec. 729.001(a)(3))

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## Ineligible Offenses

DSC not available for:

- Speeding 25 mph over limit or over 95 mph
- Passing a school bus
- Hit and Run Offenses (Occupied Vehicles)
- Serious Traffic Violations (CMV)
- Construction Zone While Workers Present
  - Subtitle C Rules of Road
  - Not including Seatbelt and Inspection Offenses
- Offense Committed by CDL holders (“Held-ers” too!)

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## Mandatory DSC – “Timely”

What constitutes “Timely”?

- Before the Answer Date
- Mailbox Rule Art. 45.013, C.C.P.
  - If mailed on or before answer date
  - Must be received within 10 days of answer date
- Keep envelope
  - Legible postmark is evidence of receipt

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## Mandatory DSC – “Election”

What constitutes an Election?

- In Person
- By Attorney
- By Certified Mail

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## Mandatory DSC - Qualifications

Who qualifies for Mandatory DSC?

- Evidence of Financial Responsibility
  - “Under Chapter 601 of Trans. Code”
- Texas Drivers License
  - Or, if no Texas DL but:
    - U.S. Military (Including spouse and dependents)
    - Active Duty
    - No DSC / MOC in any state in last 12 mos. prior date of offense

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## “Discretionary” DSC Subsection (d)

The Judge may grant DSC to a Defendant even if Defendant does not qualify under normal circumstances.

- 45.0511(d)
- 45.051

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## Discretionary DSC

Under 45.0511(d), the Judge may grant DSC even if:

- Defendant has completed DSC in past 12 months.
- Request is untimely (but before Final Disposition)

REMEMBER - If not eligible under Sec. 45.0511, Judge generally *MAY* allow DSC as a Condition of Deferred Disposition (Sec. 45.051)

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## DSC-Fees

### Mandatory (45.0511(b))

- no more than \$10, plus Court Costs

### Discretionary (45.0511(d))

- SEF up to amount of fine, plus Court Costs

No refunds if course not taken

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## Safety Seats and Seatbelts

- Violations of 545.412 & 545.413(b), T.C.
- “Specialized” DSC w/4 hours of Instruction  
“Encouraging Use of Child Seats and Seatbelts”
- Can take Specialized DSC even if defendant had regular DSC within last 12 months
  - DL record must show no special DSC in last 12 months

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## DSC-Notification

Citation must have required notice:

*“You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.”*

No Notice = “Mandatory DSC” continues until notice is given

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## DSC – Processing

- Court enters judgment on plea;
- Collects costs;
- Defers imposition of judgment for 90 days
- During deferral period, Defendant must present:
  - Certificate of Completion
  - Driving Record as maintained by DPS
    - “Valet DSC” (alt. method under (c-1) Texas On-Line)
  - Affidavit of Eligibility
    - Including Military Affidavit

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## DSC – Compliance

- On proof of Completion:
  - Court removes judgment
  - Reports to DPS date of completion
- DSC certificates are **not** “uniform” in appearance
- Court may only dismiss one charge for each completion

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## DSC - Failure to Comply

### Show Cause Hearing

- Court notifies Defendant in writing:
  - of failure to comply
  - of time of hearing
  - of place of hearing
- Court “requires” Defendant to appear

Contempt for Failure to Appear???

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## DSC - Show Cause Hearing

If Defendant Appears, Court may:

- Allow extension of time to comply; or
- Impose judgment on underlying charge

Defendant may pay the fine or appeal

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## DSC - Show Cause Hearing

If Defendant Fails to Appear, Court may:

- Impose judgment on underlying charge;
- Require immediate payment of outstanding fine;
- If immediate, Issue *Capias Pro Fine*

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Questions? Comments? Concerns?

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Complaints? Criticisms?

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