

Fundamentals of Criminal Cases

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Resources

- TJCTC Deskbook – Criminal Procedure
- www.tjctc.org
 - Webinar Archives
 - Q & A Board
- www.statutes.legis.state.tx.us/Index.aspx
 - Code of Criminal Procedure - CCP (esp. Ch. 45)
 - Transportation Code - TC
 - Penal Code - PC
 - Alcoholic Beverage Code – ABC - Ch. 106
 - Education Code – TEC – 25.093

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Code of Criminal Procedure Chapter 45

- This chapter contains the governing laws for criminal cases in justice court. You should familiarize yourself with this chapter, and have a copy on hand in the office, either paper or electronic.

- Any provisions in the Code of Criminal Procedure (**CCP**) that conflict with Chapter 45, we don't use!

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General Rules

- The Rules of Evidence govern criminal cases in justice court, just as in county/district court

- Electronic records are just as good as originals, and originals may be scanned/maintained electronically

- A document is timely filed as long as it is postmarked by the due date and received within **10 working days** of the due date

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Types of Criminal Cases

- There are 2 levels of Criminal cases,
- Felonies are broken down into several categories, with first-degree felonies being the most serious, down to state jail felonies being least serious.
- Misdemeanor cases are mainly broken into Class A, B, and **C** with Class C misdemeanors being the least serious.
- A defendant **cannot** be sentenced to jail time as punishment for a Class C misdemeanor

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Jurisdiction and Venue

- **Jurisdiction** means “power of a court to act.” If a court does not have jurisdiction, it must dismiss a case.

VS

- **Venue** means “location where a case is held.” Generally, a party must raise a question to venue, otherwise the court proceeds on.

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Jurisdiction

- Justice court criminal jurisdiction includes all misdemeanors punishable by only a fine, or by a fine and a non-jail sanction (for example, alcohol awareness class for an MIP)
- **Class C Misdemeanors** are a specific type of fine-only misdemeanor with a fine range of **\$1-500**.
- We have jurisdiction over **other offenses** that aren't Class C because they have a different fine range. (Speeding is **\$1-200**, passing a school bus is **\$500-1250**, both are fine-only misdemeanors, not Class Cs)

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Venue

- A criminal case **must** be tried in the **county** where the **offense occurred**.
- Venue is governed by Art. 4.12 of the CCP and may be in:
 - The precinct where the defendant lives
 - The precinct where the offense occurred
 - Any other precinct in the county, by agreement between the defendant and the state

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Venue

- If a case is filed in a venue **OTHER** than that listed, TJCTC's recommendation is that the court should go forward with the case unless the defendant files a **motion to transfer** venue or unless the county has developed administrative rules of transfer.
- Each county **must** develop administrative rules governing transfer of criminal cases. Our recommendation is for the county to adopt a rule that a case filed in a precinct **OTHER THAN** proper venue under CCP Art. 4.12 **shall** be transferred to the proper venue
- However, it is **best practice** for the case to be filed in the proper venue to begin with

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Filing the Case

- The case will be initiated either by the filing of a 'citation' or a 'complaint' with your court.
- **Citation**
 - A '**ticket**' given to someone charging them with a criminal offense.

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What is a Citation

Whenever a peace officer sees a person commit a criminal offense, they may place the person under arrest. Instead of taking a person to jail to be booked on minor misdemeanor offenses, the officer can give the person a “notice to appear” before the proper court at a later date.

This notice is called a **citation**, or “ticket.”

- Art. 14.06(b), Code of Criminal Procedure

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Filing the Case-Citation

- A citation (ticket) is **not sworn to**, and **does not stop** the statute of limitations from running out on an offense
- This will be filed by a law enforcement officer or state agency.
- The Citation serves as a **valid complaint** to which the defendant may plead.
 - If the defendant enters a plea of ‘**Not Guilty**’ or fails to make an appearance by their answer date, a sworn complaint meeting the requirements of **CCP 45.019 must** be filed with the court.

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Discussion

- What do you do if a trooper drops off a stack of citations and complaints at your office and the weekend or at night and none of them are notarized?
- Do you sign them ?

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Filing the Case-Complaint

- **Complaint** (CCP 45.017)
 - A formal, written, **sworn** accusation of criminal conduct. Must meet the requirements of (CCP 45.019.)
 - A **sworn** complaint may be filed by law enforcement, prosecutor or a citizen.
 - A complaint **does stop** the statute of limitations from running. (2 years on a misdemeanor)

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When a New Case is Filed

- If a citation is filed, the defendant already received “notice” of their appearance date, because a duplicate copy of the citation was given to them, which serves as their notice to appear
- If a complaint is filed, the court should send the defendant a notice (summons) stating the date by which they must appear. This notice **should contain a warning** that a warrant **may** issue should the defendant **fail to appear**.

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Defendant's Appearance

- The defendant can appear in person, by mail or through their attorney (Art 27.14(b) and 45.020 CCP)

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Appearance by mail

- As noted, the defendant can appear by mail in a few ways:
- Defendant/ can mail in a plea of not guilty – court should proceed as described later.
- Defendant can mail in payment in full – this is taken as a plea of **no contest**.
- They can mail in a plea of guilty/nolo – the court should then notify them of the amount of the fine and costs.

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The court's role in Appearance by Mail

- A common occurrence is for the defendant (or more frequently, the defendant's attorney) to mail in a plea of guilty/nolo and request the amount of the appeal bond.
- The court must mail them a notice which tells them how much the fine and costs are, how much the appeal bond is, and informs them of alternative methods of satisfying the judgment.

(form available on TJCTC website)

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Discuss at your table

- What does your court do when a defendant shows up with a copy of their citation and it has not been imported or the

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Defendant's Appearance

- If a defendant appears with their copy of the citation that has **not** yet been filed with your court, **do not copy their citation and enter it.**
- Instead, take their information and **contact them** when/if the citation is actually filed-or advise them to come or call back at a later date.

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Defendant's Appearance (Defendant's Rights)

At the time of defendant's first appearance, the **clerk/judge may** inform the defendant of:

- The offense of which he/she is charged and the possible penalties of the offense;
- What the Plea options are;
- The defendant's right to a jury trial unless waived in writing; and
- The option to take a Drivers Safety Course if he/she is eligible.
- The option to request Deferred Disposition if he/she is eligible.

(Legal advice vs Legal info)

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Defendant's Appearance

- When the defendant appears, they need to enter a **plea** to the charges. They have three options:
 - **Guilty**
 - They admit the allegations, and are convicted
 - **Nolo Contendere (No Contest)**
 - They aren't challenging the allegations, and are convicted.
 - From court's perspective, = guilty

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Plea of Not Guilty

- **Not Guilty**
- They deny the allegations and want a trial.
- If a defendant refuses to plead, we must enter not guilty and set for Jury Trial.

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Or they could plea the FIF !!!

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Defendant's Appearance

- We recommend always getting a **plea in writing, not orally in person and not over the phone.**

{If the person comes back and says they didn't plea guilty/nolo, how would you prove they did and you do not want to give the appearance of the "clerk" taking the plea and rendering judgment.}

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Payment of fines

- Payment in full by the defendant without a written plea constitutes a plea of nolo contendere (by mail or on-line).
- If making a payment in person at office-make sure you have a plea and waiver of jury trial in writing.
- Do not accept partial payments or begin a payment plan without a written plea from the defendant.

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Payments

- Also do not accept payment from someone else without a written plea from defendant. (mom/gf/bf/etc)
- *** (CDL drivers/companies)

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Plea of Guilty or Nolo

- **ONLY your JUDGE** renders a judgment;
- may assess fine, order community service, allow Drivers Safety Course if eligible, and may grant Deferred Disposition.
- Determine how / when fine & cost is to be paid:
 - Immediately after judgment or
 - At a later date agreed upon with the court, such as time payments or 30 day extension – {\$15.00 time pmt fee}
- If **indigence** (inability to pay) is claimed, **judge must conduct hearing**

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Written Judgment

- A written judgment of conviction should be created immediately upon a plea of guilty or nolo. (TJCTC form available) Art. 45.041, CCP
- This is not required if placing the defendant on Deferred Disposition or Driving Safety Course.
- More information on these very common procedures is found in Chapter 5 of the Criminal Deskbook

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If the Defendant Does Not Appear

- Court **may** choose **one or more** of the following:
 - Issue a warrant (after *notice* is given) for the arrest of defendant for the offense they are charged with (**MUST** have a **sworn complaint** filed for that offense, not just a citation/ticket)
 - Enter the defendant into **OMNI** for failing to appear
 - Report the conduct to law enforcement or a prosecutor, resulting in a new criminal charge against the defendant for **VPTA/FTA** whichever applies to charge.

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Warrant based on Defendant NOT appearing

- An arrest warrant or capias may not issue solely based on the filing of a citation or “ticket” in justice court.
- A warrant may not be issued if the defendant fails to appear by their appearance date, even after a sworn complaint has been filed, **until:**
- 1) a “**notice**” is given to the defendant by telephone or by mail that includes:

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Notice of Failure to Appear Prior to Issuance of Warrant (TJCTC form)

- a date and time, occurring within the **30-day** period following the date that notice is
- provided, when the defendant must appear before the justice or judge;
- the name and address of the court with jurisdiction in the case;

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Notice of Failure to Appear Prior to Issuance of Warrant

- information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount; and
- an explanation of the consequences if the defendant fails to appear before the justice or judge as required by this article.

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If the Defendant Does Not Appear

- Court may **NOT** go forward and enter a judgment of conviction against a defendant who does not appear.
- New charges of **Failure To Appear (FTA)** or **Violate Promise To Appear (VPTA)** may be appropriate in some circumstances.
- Best practice is for **law enforcement** or a **prosecutor** to file these, rather than the clerk
 - These are **new criminal charges**, that the entire process of a criminal case apply to. You may **NOT** just add the fine and costs to the defendant's case.

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When a Capias May Issue

- TJCTC's position: A justice court may issue a capias if:
 - 1) the court ordered or summoned a defendant to appear in court on a specified date **in writing**;
 - 2) the defendant **fails to appear**; and
 - 3) the justice court **verifies** that the defendant received the written order or summons to appear
(pitfalls of mailing summons)

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VPTA vs. FTA

- **Violate Promise to Appear (VPTA)** is a violation of Transportation Code Sec. 543.009
- To commit this offense, the defendant must:
 - Have been charged with a "**Rules of the Road**" offense in the Transportation Code
 - (Chapters 541-553)
 - Have signed a promise to appear (on the citation)
 - Have 'willfully' failed to enter an appearance by the date on the citation

Maximum fine is **\$200** + court costs

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FTA vs. VPTA

- **Failure to Appear** (FTA) is a violation of Penal Code 38.10.
- To commit this offense, the defendant must:
 - Have been in custody (pulled over by law enforcement is sufficient)
 - Been released from custody upon a promise to appear (by signing a citation or posting a bond)
 - Intentionally or knowingly failed to appear by their appearance date
- Maximum fine is **\$500** + court costs

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FTA vs. VPTA

- A warrant can be issued for one of these offenses only after a **sworn complaint** for the offense of **FTA** or **VPTA** is filed with the court
- Do **NOT** initiate **FTA** or **VPTA** charges in any situation where the defendant **has already entered a plea** of guilty or nolo contendere to the original offense (failure to satisfy judgment, for example)
- Do **NOT** initiate **FTA** or **VPTA** charges for the defendant failing to appear at a **pretrial conference** set for the purpose of negotiating with the prosecutor.

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DL Consequences of Not Appearing

- A justice court “**shall** report to the [Department of Public Safety] a person charged with a traffic offense under [Chapter 521 of the Transportation Code] who does not appear before the court as required by law.”
- Therefore, if a defendant fails to appear for any of the following offenses, it **shall** be reported to DPS, which will revoke the defendant’s license:

No/expired DL, Violation of license restriction, Violation of occupational license (ODL) requirements, fictitious DL, and DWLI.

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OMNI reporting – Failure to Appear

- **Transportation Code Sec. 706.004. DENIAL OF RENEWAL OF DRIVER'S LICENSE.**
- (a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for **failure to appear based on a complaint or citation (Pre) or failure to pay or satisfy a judgment (Post)** ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a).

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Pretrial OMNI Reporting

- Although the “**OMNI** statute” is found in the Transportation Code, it **applies to all criminal offenses** for which the justice court has jurisdiction under the Code of Criminal Procedure.
- Therefore, if a defendant fails to appear as promised based on a public intoxication citation, the defendant **may** be reported to DPS.

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Pretrial OMNI Reporting

- Being reported to DPS via **OMNI** results in the defendant’s **inability to renew** his or her Texas driver’s license. -**Sec. 706.004, Transp. Code**
- Generally speaking, the defendant’s case must be disposed of and the defendant must pay a **\$15.00** administrative fee (commonly referred to as the “OMNI fee”) in order to be removed from the system. -**Sec. 706.006, Transp. Code**

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Pretrial OMNI Reporting

- The defendant's failure to appear must be "based on a **complaint or citation.**"
- TJCTC's position: Reporting a defendant's failure to appear to OMNI **after** the defendant is placed on deferred disposition, ordered to complete a driving safety course, or convicted **is not appropriate.**

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Information to Include in OMNI report

- Name, date of birth, and driver's license number of the defendant
- The nature and date of the alleged violation
- A statement that the person failed to appear as required by law or failed to satisfy a judgment ordering the payment of a fine and cost; and
- Any other information required by the department.

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Pretrial OMNI Reporting: Driver's License Required

- **“Driver's license’** means an authorization issued by the department for the operation of a motor vehicle. The term includes:
 - (A) a temporary license or instruction permit; and
 - (B) an occupational license.”

- **“License’** means an authorization to operate a motor vehicle that is issued under or granted by the laws of this state. The term includes:
 - (A) a driver's license;
 - (B) the privilege of a person to operate a motor vehicle regardless of whether the person holds a driver's license; and
 - (C) a nonresident's operating privilege.”

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Removal from OMNI - Pretrial

- A justice court **shall** “immediately” request the defendant’s removal from OMNI if the defendant pays the **\$15.00 “OMNI fee”** and:
 - 1) an **appeal** to county court is perfected following the defendant’s conviction;
 - 2) the case is **dismissed**;
 - 3) the defendant posts an **appearance bond**;
 - 4) the defendant is placed on deferred disposition, ordered to complete a driving safety course, or convicted and placed on a payment plan; or
 - 5) the defendant is convicted and satisfies the judgment in full

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Removal from OMNI - Pretrial

- A justice court shall “**immediately**” request the defendant’s removal from OMNI **without** requiring the defendant to pay the \$15.00 “OMNI fee” **if**:
 - 1) the defendant is **acquitted** of the charge for which he failed to appear;
 - 2) the initial report was made in **error**; or
 - 3) the case records have “been **destroyed** in accordance with the political subdivision’s records retention policy.”

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Plea of Not Guilty

- Upon a plea of Not guilty and request for Jury/Bench trial then the case may be set on either on the Trial or Pre-trial docket.
- They may both be on the same day.
- Have Pre-trial w/prosecutor and if they do not reach an agreement then Trial begins immediately after all defendants have had opportunity to speak to prosecutor and plea out.

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Innocent until proven Guilty

- The defendant is “presumed innocent” until they either admit guilt or are proven guilty by the State of Texas.
- The defendant does not “owe money” until they either plead guilty, plead no contest (nolo contendere), or are proven guilty beyond a reasonable doubt at trial.

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Trial Procedure

- All prosecutions **must** be conducted by the **prosecutor**. A trooper, police officer, deputy, other witness, or the judge is not allowed to put on the state’s evidence for it.
- The state **must** prove its case **beyond a reasonable doubt** or the defendant **must** be found **not guilty**.

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Trial Procedure

- If no prosecutor is present when the case is called for trial, there are 3 options:
 - 1. Continue the case to another date
 - 2. The judge may appoint another attorney to prosecute the case, who must be paid \$\$\$ by the county
 - 3. Proceed to trial. The state puts on no evidence, therefore they do not prove the case beyond a reasonable doubt, therefore the defendant is found “**not guilty.**”
- Option 3 is **NOT** the same as **dismissing** the case. Courts generally **DO NOT** have authority to dismiss criminal cases without a motion from the prosecutor.

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Trial Procedure

- The defendant has the right to appear by counsel but does not have a right to have counsel appointed for him.
 - Right to have counsel appointed only applies to offenses punishable by jail
- The prosecutor has the right to put on evidence first and last during the trial

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Discussion

- What are some hurdles and pitfalls in ensuring that you have jurors present?
- How have you addressed those?
- What would you do if you had a jury trial scheduled and when you got to court, you didn't have enough jurors?

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Jury Trial Procedure

- Jury formation is done as it is in other criminal courts and is governed by **Chapter 35 in the CCP**
- Each side may question the potential jurors.
(often called "voir dire")
- May challenge any potential jurors for "cause" (meaning they would be unfair in the given case).
- Each side also gets 3 "peremptory strikes", meaning they can strike those 3 people for any reason or no reason at all. (except for race or their gender).

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Jury Trial Procedure

- The verdict in a criminal case **must be unanimous**.
- The judge then renders judgment and punishment on the jury's verdict in open court.
- If the state fails to put on any evidence to support one or more elements of the offense, the judge may direct (order) the jury to return a verdict of '**not guilty**.'

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Motion for New Trial

- Motion **must** be made WITHIN five (**5**) days of rendition of judgment and **NOT** afterwards. Only one MNT may be made in any given case.
- Not later than the **10th** day after judgment is entered a judge **may**, for good cause shown, grant the defendant a new trial, whenever the judge considers that justice has not been done in the trial of the case.
- So the defendant has **5 days** from judgment to **ask** for it, judge has **10 days** from judgment to **give** it
- **EXCEPTION:** If person enters plea at jail, they **SHALL** be given new trial if requested within **10** days

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Appeal

- If a defendant wishes to **appeal**, they **must** post an appeal bond (either cash or surety bond) in the amount of **twice the fine and costs** assessed against them, payable to the State of Texas
- A defendant has **10 days** in which to appeal **UNLESS** they **mailed** in their **plea** and a **request for the amount** of the appeal bond. If they do that, the court must mail them a letter informing them of the bond amount. They then have **31 days** to post that appeal bond. Art. 27.14(b), CCP.

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Appeal

- The appeal is then sent up to county court for “**trial de novo**” meaning a brand new trial as if the first had never happened.
- Once the county court accepts the case the appeal is “**perfected**” and **our judgment goes away**.
- The county court can **NOT** send the case back down to our court on a ‘**writ of procedendo**’ unless they never had jurisdiction of the appeal !!!!!
(for example, if it was filed too late).

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Dismissals

DSC, Deferred Disposition, & Compliance Dismissals

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Discussion

- What are Sammy's options on the violation of Speeding 125/55
- Mandatory DSC?
- Discretionary DSC
- Deferred Disposition?
- What would you do if you were the Judge?

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Mandatory DSC – CCP 45.0511

- Court **MUST** allow defendant to dismiss case via **DSC** if the following requirements are met:
 - MUST enter **plea** of No Contest or Guilty **by appearance date** in person or certified mail
(must be certified mail or in person to guarantee right, court is **free to accept** if sent first class mail)
- Must provide proof of **financial responsibility**

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Mandatory DSC – CCP 45.0511

- Have a valid TX DL or “Active” duty military includes direct family members or dependents.
- Has not taken a DSC to dispose of a citation in the previous 12 months (count from last date course taken to date of new offense)

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Mandatory DSC – CCP 45.0511

- Must be charged with a “**Rules of the Road**” offense to be eligible
- **Does not apply to defendant charged with:**
 - **Passing a school bus**-loading/unloading children
 - Speeding **25mph** or more over the limit
 - Speeding with total speed of **95mph** or more
 - Failure to stop and **render aid**

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45.051 Does not apply to:

- Failure to stop & exchange information
- Any offense committed by someone who has CDL or did at time of offense
- Any offense committed in work zone w/workers present

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Mandatory DSC – CCP 45.0511

- Court defers imposition of judgment and allows defendant **90 days** to:
 - Provide proof of completion of DSC.
 - Provide copy of DPS Driving Record
 - Pay admin. fee not to exceed \$10
 - Pay court costs for the offense
- If defendant complies, court **shall dismiss**

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Mandatory DSC – CCP 45.0511

- If defendant **fails to comply**, court **shall notify** defendant in writing of failure and **set show cause hearing**
 - (Same procedures apply to 45.0511 and 45.051)
 - If defendant shows good cause judge **may** grant extension.
 - If defendant fails to appear or provide good cause, the court may enter judgment of conviction and assess fine
****explain time payment fee ****

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Discretionary DSC – CCP 45.051

- Judge **may** allow even if defendant has taken course **w/in last 12 months** OR if request is **AFTER appearance date** but cannot waive any other requirement.

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Deferred Disposition - CCP 45.051

- **Any offense** may be deferred **EXCEPT:**
 - Offense relating to **motor vehicle control** committed by person holding **CDL** or holding a **CDL at time of offense**
 - Rules of the Road offense other than seat belt or child safety seat violation **that occurs in a work zone with workers present.**

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Art. 45.051 Suspension of Sentence and Deferral of Final Disposition

(a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs the judge may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period **not to exceed 180 days.**

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Deferred Disposition – CCP 45.051

- Similar to probation, judge gives list of conditions to defendant. If defendant complies, **case is dismissed.**
- Judge has laundry list of possible conditions **PLUS** catch-all “or any other **reasonable condition**” clause – broad discretion

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Discussion

- **What are some unique, unusual or out of the box types of things your judge orders as conditions of Deferred?**

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Permissive Conditions

- ** Should be reasonably related to the offense
- * GPS monitoring bracelets
- * Insurance violations-Conviction vs. Deferral
- ** Conditions that go too far :
donations, paddling, etc

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Deferred Disposition - CCP 45.051

- Certain offense have **MANDATORY** deferral conditions IF the court elects to grant deferral:
 - Moving violation by **driver under 25** must include DSC as condition of deferral (none of the DSC statutory rules apply, so could defer 21 year old driving 30mph over the limit)
 - Alcohol offenses must include the standard **community service** that would apply on conviction, and **must** include an **alcohol awareness** course if first offense

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Show Cause Hearing – CCP 45.051

- If defendant fails to comply, court shall notify defendant in writing of failure and set show cause hearing
- If defendant shows good cause judge may grant extension.
- If defendant fails to appear or provide good cause, the court may enter judgment of conviction and assess fine *(time pmt)*

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Deferred Disposition – CCP 45.051

- Do not charge with FTA if they no-show for show cause hearing (they already appeared by pleading guilty/nolo)
- If they subsequently fail to pay their fine, court may enter into OMNI

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Parks & Wildlife Dismissals

- Charged with Failure to Display Hunting, Fishing or Trapping License:
 - Court shall dismiss if defendant produces license that was valid at the time of the offense.
- Charged with Failure to Display Hunter Education Certificate
 - Defendant may make to the court no later than the **10th day** after the date of offense an **oral or written motion** requesting permission to take a Hunter Education Course. The court **SHALL** defer the proceedings and allow the person **90 days** to successfully complete the course. If completed, the court **SHALL** dismiss the charge w/no fee.

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