

Introduction to criminal

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What we will cover

- How Does a Criminal Case Start?
- Response to a Citation
- What if They Fail to Appear?
- When May the Court Dismiss the Case?
 - Driving Safety Course (DSC)
 - Deferred Disposition
 - Compliance Dismissals

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What we will cover

- Judgment
- Appeal
- Enforcement
 - Payment Alternatives
 - Courtesy Letter
 - Collections
 - Omni
 - Capias pro Fine
 - Commitment to Jail

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resources



Criminal Deskbook
(3rd ed. September 2021) at
www.tjctc.org > legal
resources > deskbooks



Forms and Flowcharts at
www.tjctc.org > legal
resources > forms or >
charts and checklists



Code of Criminal
Procedure (as cited on
slides)



Legal Board Q&As

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HOW DOES A CRIMINAL CASE START?

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How Does a Criminal Case Start?

- A criminal case in Justice Court usually starts when a law enforcement officer sees someone commit a fine only offense.

For example:

- Speeding
- DWLI (driving with license invalid)
- Minor in possession of alcohol

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How Does a Criminal Case Start?

- The officer usually gives the person a citation (or ticket).
 - The citation tells the person which court they have to appear in to answer the charge and by what date.
 - A duplicate copy of the citation must be filed with the court.

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How Does a Criminal Case Start?

- The duplicate copy of the citation “serves as a complaint to which the defendant may plead guilty, not guilty or nolo contendere.”
 - Art. 27.14(d), CCP

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“NOLO Contendere?”
(Seriously?)

TIME OUT!
What does “Nolo” mean?

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How Does a Criminal Case Start?

- When an officer stops someone and gives them a citation, they are in custody (they are not free to leave).
- For traffic offenses, the officer will ask the person to sign a **promise to appear** in court.
- The promise to appear is a condition of their release from custody.

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How Does a Criminal Case Start?

- What happens if the person refuses to sign the promise to appear?
 - Officer says: "Follow me."
- But most people are released after being given a citation and promising to appear.

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How Does a Criminal Case Start?



Are there cases that are started without a citation being issued?



Yes!



For example:

Parent contributing to non-attendance

Theft by check

Environmental (e.g. septic or nuisance)

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How Does a Criminal Case Start?

- In those cases a complaint is filed first, charging the defendant with an offense, and then a **summons** is issued requiring the person to appear and answer the charge.
- Does that defendant make a promise to appear in court?
- No!

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RESPONSE TO A CITATION

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Response to a citation

- When a person is given a citation, they might do one of the following:
 - Mail or deliver in person a plea of not guilty;
 - Mail or deliver in person a plea of guilty or nolo contendere without any payment;
- [continued on next slide]

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Response to a citation

Ask	Ask the court what the amount of an appeal bond is (usually through a lawyer);
Mail	Mail in all or part of the fine and court costs;
Appear	Appear in person at the window and ask what their options are; <ul style="list-style-type: none"> • [continued on next slide]

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Response to a citation

- Appear in person at the window and ask if they can talk to the judge;
- Call the clerk and then never follow up;
- Ignore the citation and hope the whole thing goes away.

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Response 1: mails or Delivers a plea of not guilty

- If the defendant mails in or delivers in person a plea of not guilty:
 - A **sworn complaint** must be filed charging the defendant with commission of the offense.
 - Signed by the officer or a prosecutor, not by the court.
 - Meet the requirements of Art. 45.019, CCP.
 - A trial date should be set and the defendant should be notified.

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**RESPONSE 1:
MAILS OR DELIVERS
A
PLEA OF NOT GUILTY**

- When you set it for trial does it have to be a jury trial?
 - Yes! They get a jury trial unless they waive their right to a jury in writing.
 - Do they have to pay a jury fee?
 - No!

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- If the defendant mails in a plea of guilty or nolo and a waiver of a jury trial, or delivers it in person to the court . . .
- But does not send in a payment,
- The court should dispose of the case without requiring the defendant to appear IF:

Response 2: mails
or
Delivers a plea of
guilty
or nolo but no
payment

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- The court receives the plea and waiver before the time the defendant was scheduled to appear in court; **or**
- The court receives the plea and waiver after the time the defendant was scheduled to appear in court but at least five business days before a scheduled trial date.
-- Art. 27.14(b), CCP

Response 2: mails
or
Delivers a plea of
guilty
or nolo but no
payment

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- Sometimes when a defendant does this they also ask what the amount of an appeal bond will be.
 - This is usually done through a lawyer
- Why do this?
- They are going to appeal immediately and get a trial in the county court.

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

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- But the procedure is the same whether they ask for the amount of an appeal bond or just send in a guilty or nolo plea:
- The court should “dispose of the case” without requiring an appearance by the defendant (if the court receives the plea at least five business days before a scheduled trial)

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

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- To “dispose of the case” the court must notify the defendant either in person or by regular mail of:
 - The amount of any fine or costs assessed in the case;

[Continued on next slide]

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

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- Information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount; and
- If requested by the defendant, the amount of an appeal bond the court will approve.
-- Art. 27.14(b), CCP

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

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- Defendant must pay any fine or costs assessed, or give an appeal bond in the amount stated in the notice, before the 31st day after receiving the notice.
-- Art. 27.14(b), CCP

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

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Response 3: Mails in the fine amount

- What if the defendant mails in payment?
- Art. 27.14(c): “Payment of a fine or an amount accepted by the court constitutes a finding of guilty in open court as though a plea of nolo contendere had been entered and constitutes a waiver of a jury trial in writing.”

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Response 3: Mails in the fine amount

- So mailing in the payment (or paying in person or by credit card) is a finding of guilt and a waiver of a jury trial.
- If a defendant pays the fine, may they still appeal?
 - NO!

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Response 4:
Appears in person
at the window and
asks
what their options
are

- What do you tell them?
 - Plead guilty or nolo and pay a fine?
 - Option of an installment plan?
 - Plead not guilty and go to trial?
 - DSC or a deferred disposition?
 - Speak with the judge about alternatives to full payment of the fine and court costs?

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“DSC” and “Deferred”?

TIME OUT!
What is “DSC?”
What is a “Deferred Disposition?”

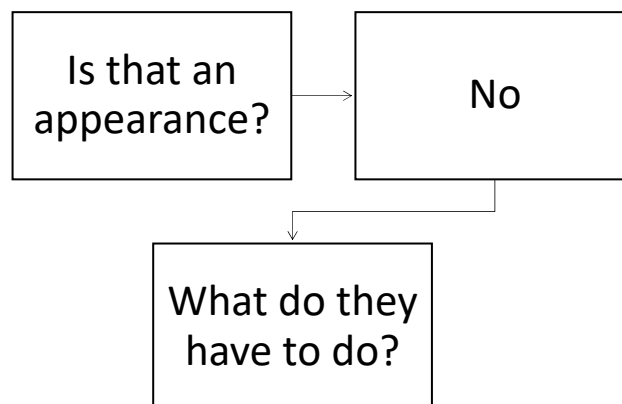
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Response 5:
Appears in
person
at the window
and asks
if they can talk
with the judge

- What can the judge do?
 - DSC
 - Deferred disposition
 - Alternatives to full payment of fine and court costs:
 - Installment plan
 - Community service
 - Waiver

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Response 6:
Calls the clerk
and never
follows up



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Poll

Joe gets a citation for speeding. He mails in a plea of not guilty and does not waive his right to a jury. The court should:

- A. Set the case for a bench trial since it is hard to schedule a jury trial right now in my county.
- B. Tell Joe he has to pay the \$22 jury fee.
- C. Set the case for a jury trial.

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Poll

Suzie gets a speeding ticket; the amount of the fine the court will accept is \$135 plus \$105 in court costs. Suzie calls the court and says she lost her job and if she has to pay \$240 she won't be able to pay her rent this month. The best thing to do would be to:

- A. Set the case for trial.
- B. Let her know that she needs to pay or she might lose her driver's license.
- C. Have her talk to the judge about alternatives to payment of the fine and court costs in full.

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WHAT IF THEY JUST IGNORE THE CITATION AND FAIL TO APPEAR?

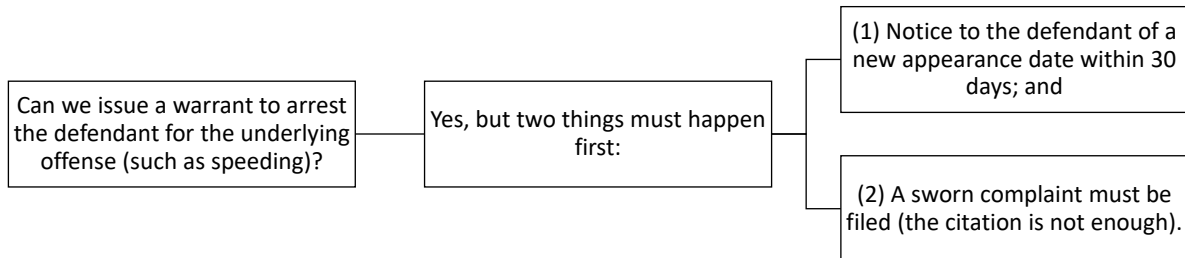
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Option 1: courtesy letter

- May the court send one after the defendant doesn't show up?
 - What should it say?

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Option 2: Arrest Warrant



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OPTION 2: ARREST WARRANT

- The notice may be provided by telephone or first class mail.
- It must give:
 - A date and time within 30 days of the date of the notice when the defendant must appear before the judge;
 - The name and address of the court;

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Option 2: arrest warrant

- The court must recall the warrant if the “defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.”
-- Art. 45.014(g), CCP

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Poll

Since the defendant failed to show up, we can now add \$200 to the fine we can impose on his original offense?

- A. True
- B. False

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OPTION 3: NEW OFFENSE OF VPTA OR FTA

- A charge of Violate Promise to Appear or Failure to Appear is a brand new criminal offense, just like a charge of speeding.
- There must be a sworn complaint alleging the offense (preferably filed by law enforcement or a prosecutor).
- The defendant must enter a plea, and is entitled to a jury, just like any other criminal charge.

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OPTION 3: NEW OFFENSE OF VPTA OR FTA

- VPTA applies only to a Rules of the Road offense.
- Subtitle C of Title 7 of the Transportation Code (Chapters 540- 600).
- If a person willfully violates their promise to appear in court, which they made to be released from custody, then they commit a new offense regardless of what happens with the underlying offense.
- -- Section 543.009, Transportation Code

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**OPTION 3: NEW
OFFENSE
OF VPTA OR FTA**

- Fine amount for VPTA is not less than \$1 nor more than \$200.
-- Section 542.401, Transportation Code

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**OPTION 3: NEW
OFFENSE
OF VPTA OR FTA**

- Failure to Appear applies to offenses other than Rules of the Road offenses
 - For example, possession of drug paraphernalia
 - It applies if a person is released from custody on condition that he subsequently appear but he then intentionally or knowingly fails to appear in accordance with his terms of release.
- An FTA offense is a Class C misdemeanor (so fine up to \$500)
-- Section 38.10(e), Penal Code

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OPTION 3: NEW OFFENSE OF VPTA OR FTA

- Can a defendant be charged with FTA for a Rules of the Road offense since it's a higher fine amount?
- No!
- If the offense was Rules of the Road, the defendant can **ONLY** be charged with VPTA if he fails to appear; he can't be charged with FTA.
- -- Azeez v. State (Tex. Crim. App. 2008)

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Option 4: OMNI

- OMNI is a program that denies criminal defendants the ability to renew their driver's license.
- DPS "may deny renewal of the person's driver's license for **failure to appear based on a complaint or citation . . .**"
-- Section 706.004, Transportation Code

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Option 4: OMNI

- To place a person into OMNI for not appearing in response to a citation, the court:
 - Does NOT need to have a sworn complaint
 - Does NOT have to issue a warrant
 - Does NOT need to have an FTA or VPTA criminal charge filed

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Option 4: OMNI Removal from omni

- A defendant must be removed from OMNI if they are acquitted of the offense (no fee required).
 - Otherwise, they must pay a \$10 reimbursement fee and:
 - Perfect an appeal of the case;
 - Obtain dismissal of the charge;
 - Post an appearance bond;
 - Pay or discharge the fine and costs on an outstanding judgment; or
 - Make other suitable arrangements to pay the fine and costs within the court's discretion (like an installment plan)
- Section 706.005(a)


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- If someone fails to appear after promising to appear or after receiving a notice to appear, they may be turned over to an attorney or collection services.
- A collection fee of 30% may be added on to any amount that is more than 60 days past due and has been referred to the attorney for collection.
-- Art. 103.0031(b), CCP

Option 5: PRE-JUDGMENT REFERRAL TO COLLECTIONS


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Option 6: WHAT ABOUT CONVICTION?




Can we just go ahead and impose a fine and court costs?

What if they no-show over and over again?



NO! A defendant NEVER owes a fine or court costs until they:

Plead guilty or nolo contendere; or
Are proven guilty beyond a reasonable doubt by the state at trial.



So this is NOT an option!

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Failure to Appear Flowchart



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Break Out Group Discussion (5 minutes)

Sam gets a citation for speeding. He does not enter a plea of guilty, nolo or not guilty; he does not contact the court; he just ignores it hoping the whole thing will go away. Your judge asks you what she should do.

Use the Failure to Appear Flowchart to discuss:

- A. The Court's Options; and
- B. What your recommendation to the judge would be.

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WHEN MAY THE COURT DISMISS A CASE?

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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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Dismissal statutes

- The two 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.**

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Dismissal statutes

- A third option is a **“compliance dismissal.”**
 - Some statutes allow a court to dismiss a case (without a motion from a prosecutor) when the defendant complies with certain requirements.
 - For example: the defendant gets a ticket for no front license plate. A statute says if the defendant gets a front license plate and pays a \$10 reimbursement fee before their first appearance date, then the case will be dismissed.

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Driving Safety Course (DSC) dismissal

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Driving safety Course (DSC) dismissal

- “**Defensive driving**” -- the case will be dismissed if the defendant takes a class on driving safety.
- The court **must** tell the defendant they have a right to dismiss their case by taking a DSC if they are eligible and come into court to dispose of their case.

-- Art. 45.0511, Code of Criminal Procedure

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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 if they request it!

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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.
 - They could plead **not guilty** and go to trial, or plead guilty and just pay the fine and 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.

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Eligibility for mandatory DSC

3. The defendant **must** provide proof of financial responsibility (insurance).
 - See pages 54 - 55 of the Criminal Deskbook for more information.
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.
 - For example: Bill got a citation on **9-27-20**, took DSC on **10-25-20**, and the case was dismissed on **12-27-20**.
 - Bill **is eligible** if the new offense happened on **10-26-21** 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, the DSC statute applies to any offense within the jurisdiction of a justice court involving the operation of a motor vehicle that is classified as a moving violation.
 - The list of moving violations can be found by clicking on the link in the “Definition of Moving Violation” box on page 47 of the Criminal Deskbook.
- The other requirements (like TX DL) and the exceptions to eligibility (like going > 95 mph) still apply.

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Discretionary DSC

- Judge **may** allow the defendant to take a DSC **even if** defendant has taken course within 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.

-- Art. 45.0511(d)

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FEES & COSTS

- **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 more than 30 days after the order allowing DSC, then they must also pay a **time payment reimbursement fee** of \$15.

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Poll

- Select four items that make a defendant ineligible for DSC:
 - Speeding 15 mph or more over the speed limit.
 - Passing a school bus while it is loading or unloading children.
 - Speeding in a construction zone with workers present.
 - Refusing to show the officer your driver's license.
 - Having a CDL (commercial driver's license).
 - Refusing to sign the promise to appear form.
 - Not providing the court with proof of insurance.

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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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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 defendant already paid court costs, they don't have to pay them again.

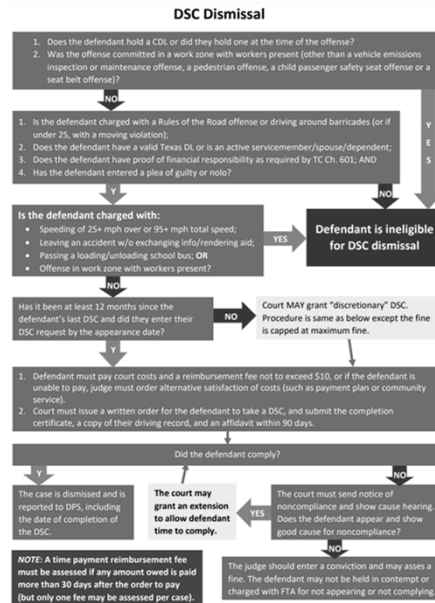
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show cause hearing

- **Do not** charge the defendant with FTA or VPTA, or report them to OMNI, if they no-show for the show cause hearing.
 - The defendant appeared in the case by pleading guilty or nolo.
 - If the defendant is convicted and subsequently fails to satisfy the judgment, the court may enforce the judgment as usual (discussed below).

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DSC Flowchart (criminal Deskbook P. 59)



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Break Out group Discussion (5 minutes)

Using the DSC Flowchart, decide what to do in the following scenarios:

- Sam gets a speeding ticket for going 50 mph in a 35 mph zone. He completed a DSC 11 ½ months before the date of his current offense. Is he eligible for mandatory DSC? If not, may the court allow him to take DSC anyway? If so, what is the difference in what he may have to pay?

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Break Out group Discussion (5 minutes)

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

3. Harold requests DSC for a speeding ticket. He has an Alabama driver's license. He is not a service member or a dependent of a service member. Is he eligible for DSC?

4. Louise is charged with speeding in a school zone (33 mph in a 20 mph zone). Is she eligible for DSC?

83

Deferred
disposition

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Deferred Disposition

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

-- Art. 45.501, Code of Criminal Procedure

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Broad discretion

- Courts generally have very broad discretion on whether or not to allow a defendant the option of deferred disposition.
- Unlike DSC dismissal, a defendant generally does not have a **right** to a deferred disposition; it is just up to the judge.

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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.
 - See page 42 of the Criminal Deskbook for more information on what “motor vehicle control” means
 - **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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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.

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fees & costs

- 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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Time Payment Reimbursement Fee

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

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Conditions

- The judge gives **conditions** to the defendant. If the defendant complies with all the conditions, then the case is **dismissed**.
- The law gives the judge a list of possible conditions PLUS a catch-all of “any other reasonable condition” so the judge has **broad discretion** in what to require.
 - See page 46 - 47 of the Criminal Deskbook for mandatory conditions in some circumstances.

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conditions

- 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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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" to be assessed if the defendant is ultimately convicted of the offense.
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, court shall notify the defendant in writing that they have failed to comply and shall set a show cause hearing.
- 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!

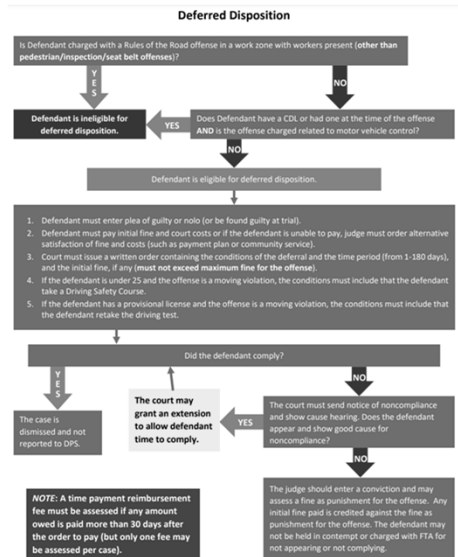
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show cause hearing

- 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 or nolo.
- If the defendant is convicted and subsequently fails to satisfy the judgment, the court may enforce the judgment as usual (discussed below).

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Deferred Disposition Flowchart (Criminal Deskbook P. 50)



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Break Out group Discussion (5 minutes)

Using the Deferred Disposition Flowchart, decide what to do in the following scenarios:

1. Jackie successfully completes a deferred disposition on a speeding case. Should the court report the successful completion and dismissal to DPS?
2. Mathew got a speeding ticket for going 105 mph. Can the court allow him to do a deferred disposition? If so, what conditions should the court impose?

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Break Out group Discussion (5 minutes)

3. Harold got a speeding ticket. He has an Alabama driver's license so is not eligible for DSC. Can the court give him a deferred disposition? If so, what conditions should the court impose?

4. Julie is given a deferred disposition for a traffic offense. She fails to provide proof of compliance with the conditions of deferral. The court sets a show cause hearing but she fails to appear. May the court hold her in contempt?

101

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. The legislature initially changed these to “fines” but **as of 1/1/22 they are called reimbursement fees.**
 - 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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Poll

A prosecutor has to agree to allow a defendant to do DSC dismissal or deferred disposition, but does not need to be consulted for a court to do a compliance dismissal.

- A. True
- B. False

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JUDGMENT

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Judgment

- Two possibilities:
 - Judgment of acquittal;
 - Judgment of conviction.
- Judgment of acquittal should be entered if there is a trial and the defendant is found not guilty.
 - Not the same as a dismissal.

108

Judgment

- Judgment of conviction:
 - Should be entered every time a defendant pleads guilty or nolo or is found guilty at trial;
 - Should be rendered in open court and reduced to writing.
 - Art. 45.041(d), CCP

109

Judgment

- If defendant is present when judgment of conviction is pronounced the **court must**:
 - **Hold a hearing** to determine if the defendant is able to pay the fine and court costs and if necessary
 - **Consider alternatives** to payment in full, such as an installment plan, community service or waiver of some or all of the fine and court costs.
 - Art. 45.014(a-1)

110

Jail credit: For the Offense in Justice Court

- A defendant earns credit toward the fine and costs assessed for any time spent in jail for the **offense charged in justice court.**
 - Applies to time spent in jail before or after conviction.
 - Minimum of \$150 for a period of no less than every 24 hours but no more than every 8 hours.

111

Jail credit: For other Offenses

- A court must credit a defendant for any time confined in jail as a sentence for another offense as long as the confinement occurred after the commission of the justice court offense and the conviction in justice court occurred on or after Sept. 1, 2021.
 - Only applies to time spent in jail as a sentence after conviction (so not after arrest while awaiting trial).
 - Minimum of \$150 per day.

112

MOTION FOR NEW TRIAL

- What is a motion for a new trial?
 - It is a request to set aside a judgment of conviction and let the defendant have a whole new trial in justice court.
- See page 99 of the Criminal Deskbook.

113

RECONSIDERATION OF FINE AND COSTS

114

- If a person notifies the judge that they have difficulty paying the fine and costs ordered in the judgment, then the judge must hold a hearing to determine whether the judgment imposes an undue hardship.

-- Article 45.0445, CCP

115

- If the judge determines that the judgment imposes an undue hardship, then the judge must consider whether to allow the person to satisfy the fine and costs through one or more of the alternative methods:

- Installment plan;
- Community service;
- Waiver.

-- Article 45.0445, CCP

116

Poll

Brad is given a deferred disposition but fails to comply with the conditions of deferral. After he fails to appear for a show cause hearing the judge convicts him of the offense and imposes a fine of \$200 and court costs of \$105. The judge does not need to sign a written judgment because it was a deferred disposition:

- A. True
- B. False

117

Poll

Six weeks later Brad comes to the court and tells a clerk he won't be able to pay his rent if he has to pay \$305. He asks if there is anything he can do? The clerk should:

- A. Tell him it's too late since the court already set a show cause hearing but he failed to show up for it.
- B. Tell him he can talk to the judge but the fine is the fine.
- C. Set a hearing so he can show that the judgment imposes an undue hardship.

118

APPEAL

119

- When may a defendant appeal?
 - When there is a final judgment of conviction;
or
 - Upon mailing a plea of guilty or nolo and waiving the right to a jury trial and asking the court what the amount of an appeal bond is.
-- Art. 45.042, Art. 27.14(b), CCP

APPEAL

120

- How do you file an appeal?
 - By filing an appeal bond on time.
 - You do not have to file a “notice of appeal.”
 - Art. 45.0426, CCP

APPEAL

121

- How much is the appeal bond?
 - No less than double the amount of the fine and court costs adjudged against the defendant.
 - Payable to the State of Texas.
 - Minimum bond of \$50.
 - Art. 45.0425

APPEAL

122

- When does the appeal bond have to be filed?
 - Within ten days after the judgment was entered.
 - Art. 45.0426, CCP
 - Or before the 31st day after the defendant receives the notice of the appeal bond amount if they mail in a plea of guilty or nolo and request the amount of the appeal bond.
 - Art. 27.14(b), CCP

APPEAL

123

- What is the effect of perfecting an appeal?
 - The defendant gets a trial de novo in the county court.
 - What is a trial de novo?
 - It means the defendant gets a whole new trial from scratch.
 - The justice court judgment is vacated and "null and void."

APPEAL

124

Poll

Raymond is convicted at trial on Sept. 1 of speeding in a construction zone with workers present. The judge imposes a fine of \$400 (double the normal fine) and court costs of \$110. What is the amount of the appeal bond and when does it have to be filed?

- A. \$400 bond must be filed by Sept. 11.
- B. \$510 bond must be filed by Oct. 2.
- C. \$1,020 bond must be filed by Sept. 11.
- D. \$800 bond must be filed by Oct. 2.

125

enforcement

126

Enforcing criminal judgments

If someone fails or refuses to **satisfy** their judgment, there are multiple options for what a court can do to “enforce” that judgment.

127

Payment Alternatives

128

Determination of ability to pay

- *Remember:* If a defendant is convicted at trial **or** by entering a plea in open court, after assessing the fine and costs, the judge **must** hold a hearing to determine if the defendant is able to immediately pay the fine and costs.
 - Art. 45.041, Code of Criminal Procedure

129

Determination of ability to pay

- And if a defendant is convicted by entering a plea at the clerk window, the clerk **should** inform them that there are alternatives to satisfying the judgment by paying the fine and costs, and ask them if they would like a hearing with the judge to determine their eligibility for those alternatives.
- See the Alternatives to Payment of Fines and Costs form on the TJCTC website (and next slide).
- See pages 83 – 87 and 97 of the Criminal Deskbook concerning:
 - Payment Plans
 - Community Service
 - Waiver of Fine and Costs
 - Jail Credit

130

Alternatives to Payment of Fines and Costs

ALTERNATIVES TO PAYMENT OF FINES AND COSTS

A defendant who is convicted of a criminal offense punishable by fine only is entitled to alternative methods of satisfying the judgment against them if they are unable to pay the fine or costs, in whole or in part.

Those alternative methods include:

- A payment plan, allowing the defendant to make payments toward the fine and costs in designated intervals. Note that if any amount is paid more than 30 days after the judgment assessing the fine or costs then the defendant must be charged a \$15 time payment reimbursement fee.
- Disposition of the amount assessed by performing community service. There are many options that meet the requirements of the law for community service, see the Code of Criminal Procedure Art. 45.049 for full details. A defendant is entitled to a minimum of \$100 credit for every 8 hours of community service performed.
- If performing community service imposes an undue hardship, a defendant who is indigent or who lacks sufficient resources to pay may be entitled to a waiver of the fine and costs, in whole or in part.
- A defendant may be entitled to jail credit in certain circumstances if the defendant was confined in jail or prison after the commission of the offense pending in justice court.

131

Courtesy letter

132

Courtesy Letter

- Has a defendant not paid by the due date, missed a payment on a payment plan, etc.?
- Often a courtesy letter will solve the problem. People forget stuff!
- Many courts do this automatically before moving on to other options.

133

Post-judgment
referral to collections

134

Post-judgment Collections

- Defendant may be referred to collections if any amount is **60 days** past due.
- A **30%** fee is added to all amounts **paid** on cases referred to collections.
 - This fee is **not** added for cases disposed of by jail credit or community service.

-- Art. 103.0031, Code of Criminal Procedure

135

Post-judgment Reporting to omni

136

Post-judgment Reporting to omni

- A court may report a defendant to Omni to block renewal of their driver's license if they fail to satisfy a criminal judgment.
- Procedure for release from Omni is discussed on Slide 52 above.
 - See page 91 of the Criminal Deskbook

137

Capias pro fine

138

Capias pro fine

- A **capias pro fine** is an order to have a defendant arrested and **brought to the court** to determine why they have not satisfied the judgment.
- A capias pro fine **must not** be issued before the defendant is sent a notice of failure to satisfy the judgment and a **show cause hearing** is set for the defendant to explain why they have not satisfied the judgment.
 - See Flowchart at page 95 of Criminal Deskbook

139

Show Cause – If defendant appears

- If the defendant **appears at the hearing**, the court should determine why they have not satisfied the judgment, and the court could:
 - grant a payment plan,
 - grant community service,
 - waive all or part of the fine and costs; or
 - enter an order of commitment, requiring defendant to lay out the fine/costs in jail (more on requirements for this coming up).

140

Show cause – if defendant doesn't appear

- If the defendant **fails to appear at that show cause hearing** the court may issue the **capias pro fine**.

141

when Capias pro fine is executed

- When defendant is brought before the court, the judge disposes of the **capias pro fine** by holding a hearing and:
 - granting time served,
 - granting a payment plan,
 - granting community service,
 - waiving fines and costs in full or in part, or
 - when appropriate, by entering an order of commitment (more info on requirements for this coming up).

142

Recall capias pro fine

The court must recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears and resolves the amount owed.

143

Order of commitment

144

Order of commitment

- Sometimes, it may be appropriate to order a defendant committed to jail to “lay out” the fine and costs
- However, ordering someone to jail to lay out the fine and costs because they are too poor to pay is referred to as “**debtor’s prison**” and violates the United States Constitution. (*Tate v. Short*, 401 U.S. 395 (1971))

145

Findings

- An order of commitment may **only** be issued if the judge first finds **in writing** that the defendant:
 - Is **not indigent** and has failed to make a good faith effort to pay, **or**
 - Is **indigent**, was given the chance to do community service, failed to do community service, **and** could have done community service without **any undue hardship**.

-- Art. 45.046, Code of Criminal Procedure

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Amount of credit for time served

- The defendant gets a **minimum of \$150** per unit of time, which the judge can set at **no less than 8 and no more than 24 hours**.
- For example, the judge could say the defendant earns \$200 for every 12 hours spent in jail.

-- Arts. 45.046 and 45.048, Code of Criminal Procedure

147

Poll

Before a defendant can be reported to OMNI for failure to satisfy a judgment, the court must first hold a show cause hearing.

- A. True
- B. False

148

Poll

A defendant can never be ordered to lay out their fine in jail if they are indigent.

A. True

B. False

149

Poll

If a defendant fails to pay their fine and court costs the court should immediately issue a Capias Pro Fine to have them arrested

A. True

B. False

150

Poll

The court issues a *capias pro fine* but before the defendant is arrested he comes in voluntarily to resolve the fine and court costs. The court should:

A. Have the defendant wait until a constable can come by to arrest him by executing the *capias pro fine*.

B. Recall the *capias pro fine* if he is able to resolve the fine and court costs either by paying or agreeing to alternatives acceptable to the judge (such as a payment plan or community service)

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QUESTIONS?

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