

# DSC vs. Deferred

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## Resources

- TJCTC Deskbook – Criminal Procedure Chapter 5
- Code of Criminal Procedure Ch. 45
- [www.statutes.legis.tx.us](http://www.statutes.legis.tx.us)
- [www.tjctc.org](http://www.tjctc.org)
  - Forms, Newsletter Articles, Webinars
  - Legal Q&A Board

## No motion to dismiss needed from a prosecutor

- The most common ways that justice courts dismiss criminal cases on their own are if the defendant does **Driving Safety Course (DSC) dismissal** or completes a **deferred disposition**.
- The processes are similar but have important differences.

Driving Safety Course  
(DSC) dismissal



## Driving safety Course (DSC) dismissal – CCP ART. 45.0511

- 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 via DSC if they are eligible and come into court to dispose of their case.

## 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!

## “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.**”

## “mandatory” dSC

- It is mandatory that the court **allows** the defendant to take it, **not** mandatory for the defendant to **choose** to take it.
  - Defendant could plead **not guilty** instead, or elect to plead guilty/nolo and simply pay the fine and costs.

## 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.)

## Eligibility for mandatory DSC

3. The defendant **must** provide proof of financial responsibility (insurance).
  - Sometimes it is tricky figuring out if the proof of insurance is valid. See Criminal Deskbook Chapter 5, Section (B)(1)(d) for more info and some examples.
4. The defendant **must** have a valid TX DL or must be an active duty military servicemember, or the dependent of an active servicemember.

## Eligibility for mandatory DSC

5. The defendant **must not** have taken a DSC in the previous 12 months, counting from the date the last course was taken to the date of the new offense.
- *Example:* Defendant got the first citation on **9-27-17**, took a course on **10-25-17**, case was dismissed on **12-27-17**.
    - Defendant **is eligible** if the new offense happened on **10-26-18** or later.
  - **Exception:** Child safety seat offenses – required to take a specialized course and so eligible as long as haven't taken the specialized course in the past 12 months (doesn't matter if have taken the regular course).

## What offenses are eligible for dsc?

- Disregarding warning signs/barricades
- All “**Rules of the Road**” (TC Ch. 541-553) offenses **except:**
  - Passing a school bus-unloading/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

## 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, & TC Ch. 548 offenses), **or**
  - The defendant has a **Commercial Driver's License (CDL)** or had one at the time of the offense.

## 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 in Chapter 5, Section (A)(2)(e) of the Criminal Deskbook).

## Discretionary DSC – CCP art. 45.0511(d)

- 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 98mph or someone with a CDL.

## FEES & COSTS

- Defendant must pay the court costs for the offense and an administrative fee (not a *fine*, cause not a conviction).
  - **Mandatory** DSC – fee of up to \$10.
  - **Discretionary** DSC – fee of up to the maximum fine for the offense (starting 1/1/20, this “fee” will be a “fine”).
- Court **may** order the fees and costs to be paid up front, or **may** allow them to be paid within 90 days.



## FEES & COSTS

- If the defendant pays the costs more than 30 days after the order to pay them, the court must assess a **Time Payment Fee**.
  - Between now and 12/31/19 – check with your county on what the amount is for this fee.
  - Starting 1/1/20 – the fee is \$15.
- TJCTC recommends notifying the defendant about the fee up front if allowing the defendant to pay the costs over time.

## FEES & COSTS

- If the defendant is unable to afford the administrative 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

## REQUIREMENTS

- 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 their driving record.

## 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.

## 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.

## 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.
    - Do not hold in contempt for not following order – just enter the conviction.
    - If defendant already paid court costs, they don't have to pay them again.

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

Bronson is a defendant in your court. He took a DSC to dismiss a previous case 11 ½ months before the date that his current offense was allegedly committed. Could the court allow him to do DSC dismissal again now?

A. Yes

B. No

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

A. Yes

B. No

Deferred  
disposition



## Deferred Disposition – CCP art. 45.051

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

## 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 is generally not **entitled** to deferred disposition.
  - Juvenile tobacco offenses are an exception and have their own specific procedures.

## What offenses are eligible

- Any offense **may** be deferred EXCEPT:
  - Offense **relating to motor vehicle control** committed by person holding CDL or holding CDL at time of offense.
  - **Rules of the Road** offense that occurs in a **work zone** with workers present (except safety belt, safety seat, pedestrian, & TC Ch. 548 offenses).

## What Does “Related to Motor Vehicle Control” Mean?

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

## Fees & costs

- All court costs **may** be required to be paid when the defendant enters the plea. Judge **may** allow the defendant to enter into a payment plan or require a defendant to discharge all or part of those costs by performing community service.
- However, if the costs are paid more than 30 days of the order to pay them, the **Time Payment Fee** must be added.
  - Remember: check with your county for amount between now and 12/31/19; \$15 starting 1/1/20.

## fees & costs

- In addition to court costs, the court may charge a “**special expense fee.**”
  - Note: this will be called a “fine” starting 1/1/20, but the procedures will remain the same.
- The special expense fee/fine **must not** exceed the maximum fine for the offense.
  - For example, max fine for speeding is \$200. You can charge a special expense fee/fine of up to \$200 + court costs to defer a speeding case. There **must not** be any additional fee on top of this.



## FEES & COSTS

- If the defendant is unable to afford the special expense fee/fine 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 after conviction.
  - Community Service, Payment Plans, Waiver

## Conditions

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

## conditions

- Laundry list includes:
  - Pay restitution to the victim
  - Submit to professional counseling
  - Submit to drug/alcohol testing
  - Submit to psychosocial assessment
  - Participate in drug/alcohol treatment/education program
  - Pay for any testing/assessments/treatment
  - Complete a DSC (but DSC statute rules wouldn't apply here)
  - Provide proof to the court of compliance with terms of deferral (recommended)

## conditions

- Certain offenses have MANDATORY deferral conditions IF the court elects to grant deferral:
  - Moving violation by driver under 25 must include DSC as 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).

## Contents of Written Order

1. All terms and conditions with which the defendant is required to comply.
2. The amount of any special expense fee/fine.
3. The amount of the fine 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.”
5. A statement indicating whether the defendant may discharge costs by performing community service or attending a tutoring program; and/or if any portion is waived.

## 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.**

## 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.

## show cause hearing

- At the show cause hearing:
  - If defendant shows good cause, the judge **may** grant an extension to allow the defendant additional time to comply.
  - If defendant fails to appear or show good cause, the court should enter a judgment of **conviction** and may assess a fine.
    - **Do not** hold the defendant in contempt for violating terms of the deferral – just enter the conviction.

## show cause hearing

- If the defendant is convicted and a fine (upon conviction) is assessed, they get credit for any special expense fee/fine (upon deferral) that they have already paid – no double dipping!
- Say the defendant paid a \$100 special expense fee/fine and \$100 court costs. They are now convicted and you assess a \$200 fine. They do not have to pay court costs again, and they get \$100 credit against the fine. They owe **\$100 total** now.

## show cause hearing

- If defendant does not come to the show cause, **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 judgment, including post-judgment reporting to OMNI.

Darby successfully completed deferred disposition on a speeding case. The court should report the successful completion and case dismissal to DPS.

A. True

B. False

Thea got a ticket for going 105 mph. Could the court allow her to do deferred disposition?

A. Yes

B. No

## 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!