

COMPARISONS OF DEFERRED OPTIONS

(Effective September 1, 2011)



| | Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures, Article 45.0511, C.C.P. | Suspension of Sentence and Deferral of Final Disposition, Article 45.051, C.C.P. |
|---|--|--|
| Application/Use | <p>If defendant is at least 25 years of age, applies to the following traffic offenses:</p> <ul style="list-style-type: none"> Section 472.022, T.C.; (Obeying Warning Signs) Subtitle C, Title 7, T.C.; (Rules of the Road) Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minor) <p>If defendant is under 25, applies to offenses classified as moving violations</p> <p>Does <u>not</u> apply to:</p> <ul style="list-style-type: none"> Offenses committed in a construction work maintenance zone when workers are present, Sec. 542.404, T.C.; Art. 45.0511(p)(3), C.C.P.; Traffic offenses committed by a person with a commercial driver's license, Art. 45.0511(s), C.C.P.; Passing a school bus, Sec. 545.066, T.C.; Leaving the scene of an accident, Sec. 550.022 or 550.023, T.C.; or Speeding 25 mph or more over the limit or in excess of 95 m.p.h. Art. 45.0511(b)(5), C.C.P. <p>Court must advise person charged with offenses under Subtitle C, Rules of the Road, T.C., of right to take course.</p> | <p>Applies to all fine-only offenses except:</p> <ul style="list-style-type: none"> Traffic offenses committed in a construction work maintenance zone when workers present (Sec. 542.404, T.C.; Art. 45.051(f)(1), C.C.P.); or A violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who holds a commercial driver's license; or held a commercial driver's license when offense committed (Art. 45.051(f), C.C.P.). |
| How Often | <p>Defendant may request if the defendant has not had a driving safety course within the 12 months preceding the date of the current offense.</p> <p>Under Subsection (u), defendants may take DSC for a violation of Child Passenger Safety Seat laws even if they have taken DSC in the last 12 months, as long as the judge requires the defendant to take a specialized DSC (including 4 hours of instruction on child passenger safety seat systems) and any course the defendant has taken in the last 12 months did not include such instruction.</p> <p>If the defendant is a member, spouse, or dependent child of a member, of the US military forces serving on active duty, the defendant cannot have taken a DSC/MOC in another state within the 12 months preceding the date of the current offense.</p> <p>Under Subsection (d), the court has discretion to grant DSC/MOC even if one has been taken within the previous 12 month period, or if the request was not made timely.</p> | <p>Subject to judicial discretion.</p> |
| Plea Required | <p>A plea of guilty or nolo contendere is required when the request is made. Request must be made on or before answer date on citation. Judge has discretion to grant a late request under Subsection (d).</p> | <p>A plea of guilty or nolo contendere or a finding of guilt required.</p> |
| Proof of TX DL or on Active Military Duty | <p>Defendant must have a Texas driver's license or permit. If the defendant is on active military duty or is an active duty military spouse or dependant child, the defendant does not have to have a Texas driver's license or permit.</p> | <p>NO</p> |
| Proof of Financial Responsibility | <p>Defendants are required to present proof of financial responsibility as required by Chapter 601, Transportation Code.</p> | <p>NO</p> |
| State Court Cost Collected | <p>YES Due when request made.</p> | <p>YES Judge may allow defendant to pay out during deferral period by time payments, performing community service, or both.</p> |
| Time Limit | <p>Court defers imposition of the judgment for 90 days. The defendant must take the course and present evidence of completion by the 90th day. Defendant is also required to present to the court a certified copy of his or her driving record as maintained by DPS and an affidavit stating that he or she was not taking DSC or MOC at the time of the request nor has he or she taken a course that is not on his or her driving record. Under Subsection (u), the defendant's driving record and affidavit are required to show that defendant did not have specialized DSC in preceding 12 months.</p> | <p>Not to exceed 180 days. (1 to 180 days)</p> |
| Optional Administrative or Special Expense Fee | <p>If defendant makes request on or before answer date, the court may only assess an administrative \$10 non-refundable fee.</p> <p>If the judge grants a course before the final disposition of the case under Subsection (d), the court may assess a fee not to exceed the maximum possible penalty for the offense.</p> | <p>SPECIAL EXPENSE FEE (SEF), not to exceed amount of fine that could be imposed at the time the court grants the deferral. Court may elect not to collect for good cause shown. SEF may be collected at anytime before the date the probation ends. In the event of default, the judge shall require that the amount of the SEF be credited toward the amount of the fine imposed by the judge.</p> |

| | Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures Article 45.0511, C.C.P. | Suspension of Sentence and Deferral of Final Disposition Article 45.051, C.C.P. |
|--------------------------------|--|---|
| Fee for Driving Record | Rather than allowing the defendant to obtain his or her driving record and provide it to the court, the court may obtain the certified driving record from DPS. A \$10 fee plus the \$2 state electronic Internet portal fee may be imposed if the court chooses this option (Art. 45.0511 (c-1), C.C.P.). | Court is not required to order the defendant to obtain a driving record (it may, however, be mandated as a reasonable condition). There is no authorization for the court to collect a fee for obtaining the defendant's driving record. |
| Other Requirements | <p>Request may be oral or in writing. If mailed, request must be sent certified mail. (Art. 45.0511(b)(3), C.C.P.)</p> <p>When a defendant requests a course on or before the answer date on the citation, the defendant must present evidence of a valid Texas driver's license or permit, or show that he or she is on active military duty.</p> <p>On or before the 90th day after the request the defendant must present:</p> <ol style="list-style-type: none"> 1. Evidence of course completion; 2. A copy of his or her driving record as maintained by DPS, if any; 3. If the defendant is on active military duty and does not have a Texas driver's license, the affidavit must state that the defendant was not taking a DSC or MOC, as appropriate, in another state on the date of the request to take the course was made and had not completed such a course within the 12 months preceding the date of the offense. 4. An affidavit stating that he or she was not taking a course at the time of request for the current offense nor had he or she taken a course that was not yet on his or her driving record within the 12 months preceding the date of the current offense. 5. If the offense is charged under Section 545.412, T.C., (Child Passenger Safety Seat Systems), the defendant's driving record and affidavit are only required to show that they have not taken the specialized DSC in the last 12 months. <p><i>The judge may also require an additional DSC for drivers under age 25 per Sec. 1001.11, Education Code.</i></p> | <p>Requirements: Judge <u>may</u> require the defendant to do the following:</p> <ol style="list-style-type: none"> 1. Post bond in the amount of the fine assessed to secure payment of the fine; 2. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed; 3. Submit to professional counseling; 4. Submit to diagnostic testing for alcohol or controlled substance or drug; 5. Submit to psychosocial assessment; 6. Participate in an alcohol or drug abuse treatment or education program; 7. Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; 8. Complete DSC or other course as directed by the judge; 9. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and 10. Comply with any other reasonable condition. <p>-----</p> <p>If defendant under age 25 is charged with a moving traffic offense, Subsection (b)(8) does not apply. The judge <i>shall</i> require DSC. The judge <i>may</i> also require an additional DSC for drivers under age 25 per Sec. 1001.111, Education Code. If the defendant holds a provisional license, the judge shall require the defendant to be examined by DPS under Sec. 521.161(b)(2), T.C., and pay DPS a \$10 fee.</p> <p>For Alcoholic Beverage Code Offenses and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require an alcohol awareness course. Sec. 106.115(a), A.B.C.</p> <p>For Alcoholic Beverage Code offenses, except DUI, and the offense of Public Intoxication (Sec. 49.02(e), P.C., defendant under the age of 21), court must require community service. Sec. 106.071(d), A.B.C.</p> <p>1st offense: eight to 12 hours. 2nd offense: 20 to 40 hours.</p> |
| Satisfactory Completion | Judge shall remove the judgment and dismiss the case; the dismissal must be noted in the docket. Court reports the completion date of the course after the court dismisses the case. | Judge shall dismiss and note in docket that complaint is dismissed. (Only report to DPS the order of deferred for Alcoholic Beverage Code offenses.) |
| Failure to Complete | <p>If defendant fails to furnish the evidence of course completion, a copy of his or her driving record as maintained by DPS that shows that he or she had not taken DSC or MOC within the 12 months preceding the date of offense, and the affidavit, the court shall set a show cause hearing and notify the person by mail. At the hearing the judge may, on a showing of good cause, allow the defendant time to present the uniform certificate of course completion. If the court does not grant more time, the court shall enter a final judgment ordering the defendant to pay the fine.</p> <p>If a defendant fails to appear at the show cause hearing, the court may, after signing a final judgment, issue a <i>caapias</i> pro fine.</p> | <p>If defendant fails to comply with terms of the deferral, the court shall set a show cause hearing and notify the person by mail at the address on file. At the hearing the judge may, on a showing of good cause, allow an additional period during which the defendant may present evidence of compliance with requirements. If at the show cause hearing or by the conclusion of the additional period the defendant does not present satisfactory evidence of compliance, the judge may enter judgment and impose the fine. The judge may reduce fine previously assessed if the defendant is at least 25 years of age or older and not charged with a traffic offense. If the offense is a traffic offense, the court must report the traffic conviction to DPS.</p> <p>If a defendant fails to appear at the show cause hearing, the court may, after signing a final judgment, issue a <i>caapias</i> pro fine.</p> |
| Appeal | The entering of the final judgment triggers the requirements for making a timely appeal (Arts. 45.042-45.043, C.C.P.). | The entering of the final judgment triggers the requirements for making a timely appeal (Arts. 45.042-45.043, C.C.P.). |