

By: Harris

S.B. No. 631

A BILL TO BE ENTITLED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

relating to the suspension of sentence and the deferral of adjudication in cases involving certain misdemeanor traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 45.051, Code of Criminal Procedure, is amended to read as follows:

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 [~~justice~~] may, at the judge's discretion, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.

(b) During the deferral period, the judge [~~justice~~] may, at the judge's discretion, require the defendant to:

- (1) post a 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 a controlled substance or drug;
- (5) submit to a psychosocial assessment;

1 (6) participate in an alcohol or drug abuse treatment
2 or education program;

3 (7) pay the costs of any diagnostic testing,
4 psychosocial assessment, or participation in a treatment or
5 education program either directly or through the court as court
6 costs; ~~and~~

7 (8) complete a driving safety course approved under
8 the Texas Driver and Traffic Safety Education Act (Article
9 4413(29c), Vernon's Texas Civil Statutes) or another course as
10 directed by the judge; and

11 (9) comply with any other reasonable condition.

12 (c) The ~~[At the conclusion of the deferral period, if the]~~
13 defendant must present to the court ~~[presents]~~ satisfactory
14 evidence that the defendant ~~[he]~~ has complied with the requirements
15 imposed by ~~[r]~~ the judge under this article before the conclusion of
16 the deferral period. If satisfactory evidence is timely presented
17 to the court, the judge ~~[justice]~~ shall dismiss the complaint, and
18 it shall be clearly noted in the docket that the complaint is
19 dismissed and that there is not a final conviction. ~~[Otherwise, the~~
20 ~~justice may proceed with an adjudication of guilt. After an~~
21 ~~adjudication of guilt, the justice may reduce the fine assessed or~~
22 ~~may then impose the fine assessed, less any portion of the assessed~~
23 ~~fine that has been paid.]~~ If the complaint is dismissed, a special
24 expense not to exceed the amount of the fine assessed may be
25 imposed.

26 (d) If by ~~[at]~~ the conclusion of the deferral period the
27 defendant does not present satisfactory evidence that the defendant

1 complied with the requirements imposed, the judge [~~justice~~] may
2 impose the fine assessed or impose a lesser fine. The imposition of
3 the fine or lesser fine constitutes a final conviction of the
4 defendant.

5 (e) Records relating to a complaint dismissed as provided by
6 this article may be expunged under Article 55.01 [~~of this code~~]. If
7 a complaint is dismissed under this article, there is not a final
8 conviction and the complaint may not be used against the person for
9 any purpose.

10 (f) This article does not apply to:

11 (1) an offense to which Section 542.404 or 729.004(b),
12 Transportation Code, applies; or

13 (2) a traffic offense committed by a person who holds a
14 commercial driver's license.

15 SECTION 2. Article 45.0511, Code of Criminal Procedure, is
16 amended to read as follows:

17 Art. 45.0511. DRIVING SAFETY COURSE OR MOTORCYCLE OPERATOR
18 COURSE DISMISSAL [~~DEFERRED DISPOSITION~~] PROCEDURES [~~APPLICABLE TO~~
19 ~~TRAFFIC OFFENSES~~]. (a) This article applies only to an alleged
20 offense that:

21 (1) is within the jurisdiction of a justice court or a
22 municipal court;

23 (2) involves [~~involving~~] the operation of a motor
24 vehicle; and

25 (3) is [~~other than a commercial motor vehicle, as~~]
26 defined by:

27 (A) Section 472.022 [~~522.003~~], Transportation

1 Code;

2 (B) Subtitle C, Title 7, Transportation Code; or

3 (C) Section 729.001(a)(3), Transportation Code~~7~~
4 ~~and supplements Article 45.051].~~

5 (b) The judge ~~[During the deferral period under Article~~
6 ~~45.051, the justice:~~

7 ~~[(1)]~~ shall require the defendant to successfully
8 complete a driving safety course approved by the Texas Education
9 Agency or a course under the motorcycle operator training and
10 safety program approved by the designated state agency under
11 Chapter 662, Transportation Code, if:

12 (1) the defendant elects driving safety course or
13 motorcycle operator training course dismissal under this article;

14 (2) [deferred disposition and] the defendant has not
15 completed an approved driving safety course or motorcycle operator
16 training course, as appropriate, within the [preceding] 12 months
17 preceding the date of the offense;

18 (3) [and

19 ~~[(2) may require the defendant to successfully~~
20 ~~complete a driving safety course approved by the Texas Education~~
21 ~~Agency if the defendant has completed an approved driving safety~~
22 ~~course within the preceding 12 months.~~

23 ~~[(c) Subsection (b)(1) applies only if:~~

24 ~~[(1)]~~ the defendant ~~[person]~~ enters a plea under
25 Article 45.021 in person or in writing of no contest or guilty on or
26 ~~[and,~~ before the answer date on the notice to appear and:

27 (A) presents in person or by counsel to the court

1 a ~~[an oral or written]~~ request to take a course; or

2 (B) sends to the court by certified mail, return
3 receipt requested, postmarked on or before the answer date on the
4 notice to appear, a written request to take a course;

5 (4) ~~[(2) the court enters judgment on the person's
6 plea of no contest or guilty at the time the plea is made but defers
7 imposition of the judgment for 180 days,~~

8 ~~[(3)]~~ the defendant ~~[person]~~ has a valid Texas
9 driver's license or permit;

10 (5) ~~[(4)]~~ the defendant ~~[person]~~ is charged with an
11 offense to which this article applies, other than speeding 25 miles
12 per hour or more over the posted speed limit; and

13 (6) ~~[(5)]~~ the defendant ~~[person]~~ provides evidence of
14 financial responsibility as required by Chapter 601,
15 Transportation Code[+]

16 ~~[(6) the defendant's driving record as maintained by
17 the Texas Department of Public Safety shows the defendant has not
18 completed an approved driving safety course or motorcycle operator
19 training course, as appropriate, within the 12 months preceding the
20 date of the offense, and~~

21 ~~[(7) the defendant files an affidavit with the court
22 stating that the person is not taking a course under this section
23 and has not completed a course that is not shown on the person's
24 driving record within the 12 months preceding the date of the
25 offense].~~

26 (c) The court shall enter judgment on the defendant's plea
27 of no contest or guilty at the time the plea is made, defer

1 imposition of the judgment, and allow the defendant 90 days to
2 successfully complete the approved driving safety course or
3 motorcycle operator training course and present to the court:

4 (1) a uniform certificate of completion of the driving
5 safety course or a verification of completion of the motorcycle
6 operator training course;

7 (2) the defendant's driving record as maintained by
8 the Department of Public Safety showing that the defendant had not
9 completed an approved driving safety course or motorcycle operator
10 training course, as applicable, within the 12 months preceding the
11 date of the offense; and

12 (3) an affidavit stating that the defendant was not
13 taking a driving safety course or motorcycle operator training
14 course, as applicable, under this article on the date the request to
15 take the course was made and had not completed such a course that is
16 not shown on the defendant's driving record within the 12 months
17 preceding the date of the offense.

18 (d) Notwithstanding Subsections (b)(2) and (3), [~~Subsection~~
19 ~~(c)(1), on a written motion submitted to the court~~] before the final
20 disposition of the case, the court may grant a request to take a
21 driving safety course or a motorcycle operator training course
22 under this article.

23 (e) A request to take a driving safety course made at or
24 before the time and at the place at which a defendant [~~person~~] is
25 required to appear in court is an appearance in compliance with the
26 defendant's [~~person's~~] promise to appear.

27 (f) In addition to court costs and fees authorized or

1 imposed by a law of this state and applicable to the offense, the
2 ~~[The]~~ court may:

3 (1) require a defendant [person] requesting a [driving
4 ~~safety]~~ course under Subsection (b) to pay an administrative [a]
5 fee set by the court to cover the cost of administering this article
6 at an amount of not more than \$10; or

7 (2) require a defendant requesting a course under
8 Subsection (d) to pay a fee set by the court at an amount not to
9 exceed the maximum amount of the fine for the offense committed by
10 the defendant[, including any other fee authorized by statute or
11 ~~municipal ordinance, to cover the cost of administering this~~
12 ~~article].~~

13 (g) A defendant [person] who requests but does not take a
14 course is not entitled to a refund of the fee.

15 (h) Fees collected by a municipal court shall be deposited
16 in the municipal treasury. Fees collected by another court shall be
17 deposited in the county treasury of the county in which the court is
18 located.

19 (i) If a defendant [person] requesting a ~~[driving safety]~~
20 course under this article fails to comply with Subsection (c)
21 ~~[furnish evidence of the successful completion of the course to the~~
22 ~~court]~~, the court shall:

23 (1) notify the defendant [person] in writing, mailed
24 to the address on file with the court or appearing on the notice to
25 appear, of that failure; and

26 (2) require the defendant [person] to appear at the
27 time and place stated in the notice to show cause why the evidence

1 was not timely submitted to the court.

2 (j) If the defendant [~~A person who~~] fails to appear at the
3 time and place stated in the notice under Subsection (i), or appears
4 at the time and place stated in the notice but does not show good
5 cause for the defendant's failure to comply with Subsection (c),
6 the court shall enter an adjudication of guilt and impose sentence
7 [~~commits a misdemeanor punishable as provided by Section 543.009,~~
8 ~~Transportation Code~~].

9 (k) On a defendant's [~~person's~~] showing of good cause for
10 failure to furnish evidence to the court, the court may allow an
11 extension of time during which the defendant [~~person~~] may present:

12 (1) a uniform certificate of course completion as
13 evidence that the defendant [~~person~~] successfully completed the
14 driving safety course; or

15 (2) a verification of course completion as evidence
16 that the defendant successfully completed the motorcycle operator
17 training course.

18 (l) When a defendant [~~person~~] complies with Subsection (c)
19 [~~(b) and a uniform certificate of course completion is accepted by~~
20 ~~the court~~], the court shall:

21 (1) remove the judgment and dismiss the charge;

22 (2) report the fact that the defendant [~~person~~]
23 successfully completed a driving safety course or a motorcycle
24 operator training course and the date of completion to the Texas
25 Department of Public Safety for inclusion in the person's driving
26 record; and

27 (3) state in that [~~this~~] report whether the course was

1 taken under ~~[the procedure provided by]~~ this article to provide
2 information necessary to determine eligibility to take a subsequent
3 course under Subsection (b).

4 (m) The court may dismiss only one charge for each
5 completion of a course.

6 (n) A charge that is dismissed under this article may not be
7 part of a person's driving record or used for any purpose.

8 (o) An insurer delivering or issuing for delivery a motor
9 vehicle insurance policy in this state may not cancel or increase
10 the premium charged an insured under the policy because the insured
11 completed a driving safety course or a motorcycle operator training
12 course, or had a charge dismissed under this article.

13 (p) The court shall advise a defendant ~~[person]~~ charged with
14 a misdemeanor under Section 472.022, Transportation Code, Subtitle
15 C, Title 7, Transportation Code, or Section 729.001(a)(3),
16 Transportation Code, committed while operating a motor vehicle of
17 the defendant's ~~[person's]~~ right under this article to successfully
18 complete a driving safety course or, if the offense was committed
19 while operating a motorcycle, a motorcycle operator training
20 course. The right to complete a course does not apply to a
21 defendant ~~[person]~~ charged with:

22 (1) a violation of Section 545.066, ~~[545.401,~~
23 ~~545.421,]~~ 550.022, or 550.023, Transportation Code;

24 (2) a ~~[, or]~~ serious traffic violation; or

25 (3) an offense to which ~~[as defined by]~~ Section
26 542.404 or 729.004(b) ~~[522.003]~~, Transportation Code, applies.

27 (q) A notice to appear issued for an offense to which this

1 article applies must inform a defendant charged with an offense
2 under Section 472.022, Transportation Code, an offense under
3 Subtitle C, Title 7, Transportation Code, or an offense under
4 Section 729.001(a)(3), Transportation Code, committed while
5 operating a motor vehicle of the defendant's right to complete a
6 driving safety course or, if the offense was committed while
7 operating a motorcycle, of the defendant's right to complete a
8 motorcycle operator training course. The notice required by this
9 subsection must read substantially as follows:

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

15 (r) If the notice required by Subsection (q) is not provided
16 to the defendant charged with the offense, the defendant may
17 continue to exercise the defendant's right to take a driving safety
18 course or a motorcycle operator training course until the notice
19 required by Subsection (q) is provided to the defendant or there is
20 a final disposition of the case.

21 (s) This article does not apply to an offense committed by a
22 person who holds a commercial driver's license [~~Nothing in this~~
23 ~~article shall prevent a court from assessing a special expense for~~
24 ~~deferred disposition in the same manner as provided by Article~~
25 ~~45.051. For a deferred disposition under Subsection (b)(1), the~~
26 ~~court may only collect a fee of not more than \$10 in addition to any~~
27 ~~applicable court cost].~~

1 SECTION 3. Subsection (f), Section 472.022, Transportation
2 Code, is amended to read as follows:

3 (f) Articles 45.051 and 45.0511 [~~Article 45.54~~], Code of
4 Criminal Procedure, do [~~does~~] not apply to an offense under this
5 section committed in a construction or maintenance work zone when
6 workers are present.

7 SECTION 4. The following laws are repealed:

8 (1) Section 543.101, Transportation Code; and

9 (2) Section 543.117, Transportation Code.

10 SECTION 5. (a) This Act takes effect September 1, 2003.

11 (b) The change in law made by this Act applies only to an
12 offense committed on or after September 1, 2003.

13 (c) An offense committed before September 1, 2003, is
14 covered by the law in effect when the offense was committed, and the
15 former law is continued in effect for that purpose. For purposes of
16 this section, an offense was committed before September 1, 2003, if
17 any element of the offense was committed before that date.