

By: Harris

S.B. No. 631

Substitute the following for S.B. No. 631:

By: Talton

C.S.S.B. No. 631

A BILL TO BE ENTITLED

AN ACT

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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. An order of deferral under this subsection terminates any liability under a bail bond or an appearance bond given for the charge.

(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

1 controlled substance or drug;

2 (5) submit to a psychosocial assessment;

3 (6) participate in an alcohol or drug abuse treatment
4 or education program;

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

9 (8) complete a driving safety course approved under
10 the Texas Driver and Traffic Safety Education Act (Article
11 4413(29c), Vernon's Texas Civil Statutes) or another course as
12 directed by the judge;

13 (9) present to the court satisfactory evidence that
14 the defendant has complied with each requirement imposed by the
15 judge under this article; and

16 (10) comply with any other reasonable condition.

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

1 (d) If by [~~at~~] the conclusion of the deferral period the
2 defendant does not present satisfactory evidence that the defendant
3 complied with the requirements imposed, the judge [~~justice~~] may
4 impose the fine assessed or impose a lesser fine. The imposition of
5 the fine or lesser fine constitutes a final conviction of the
6 defendant.

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

12 (f) This article does not apply to:

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

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

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

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

23 (1) is within the jurisdiction of a justice court or a
24 municipal court;

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

27 (3) is [~~other than a commercial motor vehicle, as~~]

1 defined by:

2 (A) Section 472.022 [~~522.003~~], Transportation
3 Code;

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

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

7 (b) The judge [~~During the deferral period under Article~~
8 ~~45.051, the justice:~~

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

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

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

20 (3) [~~and~~

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

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

26 [(1)] the defendant [~~person~~] enters a plea under
27 Article 45.021 in person or in writing of no contest or guilty on or

1 ~~and,~~ before the answer date on the notice to appear and:

2 (A) presents in person or by counsel to the court
3 a ~~[an oral or written]~~ request to take a course; or

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

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

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

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

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

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

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

1 (c) The court shall enter judgment on the defendant's plea
2 of no contest or guilty at the time the plea is made, defer
3 imposition of the judgment, and allow the defendant 90 days to
4 successfully complete the approved driving safety course or
5 motorcycle operator training course and present to the court:

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

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

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

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

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

1 defendant's [~~person's~~] promise to appear.

2 (f) In addition to court costs and fees authorized or
3 imposed by a law of this state and applicable to the offense, the
4 [The] court may:

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

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

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

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

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

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

1 (2) require the defendant [~~person~~] to appear at the
2 time and place stated in the notice to show cause why the evidence
3 was not timely submitted to the court.

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

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

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

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

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

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

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

1 record; and

2 (3) state in that ~~[this]~~ report whether the course was
3 taken under ~~[the procedure provided by]~~ this article to provide
4 information necessary to determine eligibility to take a subsequent
5 course under Subsection (b).

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

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

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

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

24 (1) a violation of Section 545.066, ~~[545.401,~~
25 ~~545.421,]~~ 550.022, or 550.023, Transportation Code;

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

27 (3) an offense to which ~~[as defined by]~~ Section

1 542.404 or 729.004(b) [522.003], Transportation Code, applies.

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

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

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

23 (s) This article does not apply to an offense committed by a
24 person who holds a commercial driver's license.

25 (t) An order of deferral under Subsection (c) terminates any
26 liability under a bail bond or appearance bond given for the charge.

27 ~~[Nothing in this article shall prevent a court from assessing a~~

1 ~~special expense for deferred disposition in the same manner as~~
2 ~~provided by Article 45.051. For a deferred disposition under~~
3 ~~Subsection (b)(1), the court may only collect a fee of not more than~~
4 ~~\$10 in addition to any applicable court cost.]~~

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

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

11 SECTION 4. The following laws are repealed:

- 12 (1) Section 543.101, Transportation Code; and
13 (2) Section 543.117, Transportation Code.

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

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

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