

SUBJECT: Deferred disposition and driving safety courses for traffic violations

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Keel, Ellis, Denny, Hodge, Talton
0 nays
4 absent — Riddle, Dunnam, P. Moreno, Pena

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Gerald Patrick Monks, Municipal Justice Bar Association
Against — None

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 45.051, on a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by a fine only and payment of all court costs, a judge may defer proceedings without entering an adjudication of guilt and may place the defendant on probation for up to 180 days. During this deferral period, the judge may require the defendant to take several actions listed in the code, such as post a bond, attend counseling, or pay restitution. Judges also may require defendants to comply with any other reasonable condition.

CCP, art. 45.0511 lists procedures for deferred dispositions for traffic offenses. It applies to motor vehicle offenses other than those that involve commercial motor vehicles. During a deferral period, a judge must require a defendant who meets certain criteria to take a state-approved driving safety course if the defendant elects deferred disposition and has not completed a driving safety course or motorcycle operator training course within the preceding 12 months. Judges may require defendants to take a driving safety course even if they have taken a course within the preceding 12 months.

Art. 45.0511(p) states that the right to complete a driving safety course does not apply to certain convictions that result from driving a commercial vehicle. These “serious traffic violations,” listed in Transportation Code, sec. 522.003,

include speeding, reckless driving, a violation relating to traffic control, improper or erratic lane changes, and following too closely.

DIGEST:

CSSB 631 would add to the list in CCP, art. 45.051 of actions that a judge may require a defendant to take if a sentence has been suspended and the person is placed on probation. A judge could require a defendant to complete a state-approved driving safety course or another course chosen by the judge. The bill would add state-approved motorcycle operator training and safety programs to the types of courses that judges could require defendants to attend. It also would specify that an order of deferral would terminate any liability under a bail bond or an appearance bond given for the charge.

The authorization for a judge to suspend a sentence and defer disposition would not apply to an offense committed by a person holding a commercial driver's license or to certain offenses committed in construction or maintenance work zones when workers were present.

CSSB 631 would change the language specifying what offenses are covered by the procedures for deferred disposition of traffic offenses. The section would apply only to offenses within the jurisdiction of a justice or municipal court that involved the "rules of the road" traffic offenses in Transportation Code, Title 7, subtitle C, the offense of not observing a warning sign and some traffic offenses by minors.

A driver could not have completed a driving or motorcycle safety course in the 12 months preceding the offense, rather than the "preceding" 12 months. Also, the bill would eliminate judges' current authority to require defendants to take a driving safety course if they already had completed a course in the preceding 12 months.

Defendants wishing to take driving safety courses could enter their pleas on or before the answer date on the notice to appear, rather than before the answer date. Defendants could have their lawyers submit their requests to take a course instead of having to do so in person.

CSSB 631 would require judges to impose deadlines for completing safety courses. A defendant would have to be given 90 days to complete a driving safety or motorcycle training course successfully and present a certificate of

completion to the court, along with other proof that the defendant was eligible to take the course.

The bill would specify that the currently authorized fee of up to \$10 that courts can charge people who take driving safety or motorcycle training courses is in addition to other authorized court costs and fees. Judges could require defendants to pay a court-set fee that could not exceed the maximum fine allowed for the offense, instead of the current authorization to impose any fee authorized by statute or municipal ordinance.

A court would have to enter an adjudication of guilt and impose a sentence if a person failed to comply with a notice to appear before the court to show why the defendant did not complete a course during the required period, or if the defendant appeared before the court as required but did not show good cause for not completing the course. The bill would repeal a current provision making it a misdemeanor under the Transportation Code to fail to appear before the court.

CCP, art. 45.0511, which details the procedures for deferred dispositions for traffic offenses, would not apply to an offense committed by a person who held a commercial driver's license. Also, an order of deferral would terminate any liability under a bail bond or appearance bond given for the charge. The right to take a driving safety course would not apply to specific serious traffic violations involving commercial vehicles, nor would it apply to certain offenses committed in a construction or maintenance work zone.

CSSB 631 would repeal a provision that allows charges for violations relating to offenses in construction or maintenance zones to be dismissed only upon a prosecutor's motion.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 631 would clean up language in the CCP that outlines procedures for people to have traffic offenses dismissed if they take driving safety courses. The 76th Legislature merged language in the Transportation Code and the CCP to create a single statute for this procedure. CSSB 631 bill would clear up ambiguities that remained after that merger.

Many of the bill's provisions simply would clarify current law. For example, judges already have broad authority to impose conditions on defendants who receive probation, including requiring them to take driving safety courses, but the bill explicitly would authorize this. It also would include motorcycle courses throughout the statute instead of only under some provisions. These changes would ensure that all judges were aware of their authority.

CSSB 631 would clarify the offenses for which people would be allowed to take driving safety courses. It would specify that a driving safety course could not have been taken in the 12 months preceding an offense. This would clear up confusing language that has led some to interpret current law to mean that the course could be taken within 12 months of another course. The bill would impose no new fees but would clarify current language that allows courts to charge special expense fees in some situations.

The provisions prohibiting the use of driving schools to defer tickets for offenses committed by people who hold commercial driver's licenses are necessary to comply with federal law. Under the federal Motor Carrier Act of 1999, Texas could lose its authority to issue commercial driver's licenses and could lose some road-repair funds if the state allowed information about violations of commercial drivers to be withheld or masked in any way. There is general agreement that the state must track violations of commercial license holders whether the violations occur in a commercial vehicle or in a personal vehicle. CSSB 631 would facilitate this by prohibiting holders of commercial driver's licenses from taking driving safety courses and receiving deferred disposition.

**OPPONENTS
SAY:**

It would be unnecessary and unfair to prohibit people who hold commercial driver's licenses from taking driving safety courses and being placed on deferred disposition for offenses committed while in personal vehicles.

NOTES:

The committee substitute changed the Senate engrossed version of SB 631 by specifying that an order of deferral would terminate any liability under a bail bond or an appearance bond given for the charge.

SB 730 by Harris, enacted by the 77th Legislature in 2001, contained most provisions of CSSB 631. However, Gov. Rick Perry vetoed the bill, citing

objections to a provision that would have limited arrests for traffic offenses that does not appear in CSSB 631.