1982

Probation for Class C Misdemeanors: To Fine or Not to Fine is Now the Question

Thomas E. Baker

Florida International University College of Law

Follow this and additional works at: http://ecollections.law.fiu.edu/faculty_publications

Part of the Courts Commons

Recommended Citation

Thomas E. Baker, Probation for Class C Misdemeanors: To Fine or Not to Fine is Now the Question, 22 S. Tex. L.J. 249 (1982).

Available at: http://ecollections.law.fiu.edu/faculty_publications/176

This Article is brought to you for free and open access by the Faculty Scholarship at eCollections @ FIU Law Library. It has been accepted for inclusion in Faculty Publications by an authorized administrator of eCollections @ FIU Law Library. For more information, please contact lisdavis@fiu.edu.
PROBATION FOR CLASS C MISDEMEANORS: TO FINE OR NOT TO FINE IS NOW THE QUESTION

THOMAS E. BAKER*, CHARLES P. BUBANY**

INTRODUCTION

More than twice as many non-traffic misdemeanors punishable by fine only, Class C misdemeanors, are filed in the Justice of the Peace and Municipal Courts of Texas each year than all other misdemeanor and felony cases combined.¹ Before this year, these courts had no express statutory authority to probate any fine assessed. In fact, the 1979 amendments to the Adult Misdemeanor andProbation Law expressly limited probation authority to “courts of record,” thereby excluding Justice of the Peace and most Municipal Courts.² Before these amendments, the statute did not expressly exclude these courts, but the law had been interpreted as making misdemeanor probation unavailable to defendants convicted of offenses with a maximum punishment of a fine not to exceed $200.³ It is no secret that some Justice of the Peace and Municipal Courts did engage in probation-like activity despite the lack of express authority.⁴ In some instances, an informal probation was accomplished by simply holding the complaint for a time and dismissing it on the accused’s good behavior—a kind of “desk drawer” probation. Other judges, rather than deferring prosecution, entered a conviction but postponed sentencing to give the defendant an “opportunity,” purely voluntary, of course, to mitigate the punishment by making restitution or performing some community service.

---

¹. Over 790,000 non-traffic misdemeanors were filed in 1979; all other criminal cases totaled just over 390,000. TEX. JUD. COUNCIL & OFF. OF CT. ADMIN. ANN. REP. 130, 147, 481 and 607 (1980).
⁴. Consistent with the Texas Constitution, article IV, section 11A, the Legislature expressly has empowered the Texas courts to impose probation in felonies, TEX. CODE CRIM. PRO. ANN. art. 42.12 (Vernon 1979), and jailable misdemeanors, TEX. CODE CRIM. PRO. ANN. art. 42.13 (Vernon Supp. 1982).
which would be taken into account when the judge eventually entered sentence.

Now, judges of courts not of record will no longer need to resort to such dubious informal devices. The new article 45.54 of the Texas Code of Criminal Procedure gives these courts probation authority, without ever expressly referring to it as such. The terms of the new legislation, its potential uses and some likely problems in its application are considered in this article.

The major characteristics of the article 45.54 are:

1. it is applicable to all Class C Misdemeanors, except traffic offenses;
2. the judge has discretion to suspend the imposition of a fine and defer final disposition for up to 180 days;
3. the judge may impose probation-like conditions to be performed during the deferral period;
4. at the conclusion of the deferral period, upon presentation of satisfactory evidence of compliance with the conditions imposed, the judge has discretion to: (A) dismiss the complaint and assess a special expense not to exceed $50; (B) reduce the assessed fine; or (C) impose the assessed fine;
5. expungement of the records, which would otherwise be available, is

5. **Tex. Code Crim. Pro. Ann. art. 45.54 (Vernon Supp. 1982), provides:**
   (1) Upon conviction of the defendant of a misdemeanor punishable by fine only, other than a misdemeanor described by Section 143A, Uniform Act Regulating Traffic on Highways as amended (Article 670d, Vernon's Texas Civil Statutes), the justice may suspend the imposition of the fine and defer final disposition of the case for a period not to exceed 180 days.
   (2) During said deferral period, the justice may require the defendant to:
      (a) post a bond in the amount of the fine assessed to secure payment of the fine;
      (b) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
      (c) submit to professional counseling; and
      (d) comply with any other reasonable condition, other than payment of all or part of the fine assessed.
   (3) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice may dismiss the complaint. Otherwise, the justice may reduce the fine assessed or may then impose the fine assessed. If the complaint is dismissed, a special expense not to exceed $50 may be imposed.
   (4) Records relating to a complaint dismissed as provided by this article may not be expunged under Article 55.01 of this code.

6. "Probation" may be defined as "a sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of the sentence or to resentence the offender if he violates the conditions." ABA Standards Relating to the Administration of Criminal Justice, Compilation 393 (Probation) [hereinafter cited as Probation Standards]. Article 45.54 clearly satisfies this definition. To the extent that the omission of any reference to the term "probation" in the statute itself was calculated to avoid controversy that might have diminished the bill's chances of passing, it was obviously successful. The bill attracted little attention.

These major characteristics raise several significant issues.

COVERED OFFENSES

Article 45.54 expressly applies to any non-traffic criminal offense over which the court has jurisdiction, including ordinance violations. Apparently, it would apply even to those offenses which, although traffic-related, are charged as non-traffic Class C misdemeanors. The most common example would be a DWI offense charged as the lesser included Class C misdemeanor of public intoxication. In the past, the Municipal Court or Justice of Peace Court has been limited to fining the defendant up to $200 plus statutorily-required costs. Now, these courts have authority similar to that of the county court to require an accused to meet certain conditions such as submission to an alcohol rehabilitation program. Perhaps, traffic offenses were excluded because they are a unique class of cases for which the courts already have the probation-like authority to allow attendance of a driving safety course in lieu of prosecution.

INVOCATION

By its express terms, article 45.54 lodges complete discretion in the judge to invoke its provisions. While the burden of establishing eligibility may be on the defendant, presumably the judge may exercise sound discretion in granting or denying this type of probation. The court appar-

9. Chief Justice’s Task Force for Court Improvement, Justice at the Crossroads: Court Improvement in Texas 4 (1972). “The result is that the city gets the revenue, while the driver avoids the loss of his driver’s license and other disadvantages of a conviction for DWI.” Id. See also Comment, Statutory DWI and Its Interpretation by Texas Courts, 14 Hous. L. Rev. 1082, 1102 (1977). For an opinion that the offense of public intoxication may properly be a lesser included offense of DWI, see Tex. Att’y Gen. Op. No. MW-197 (1980).
11. Tex. Code Crim. Proc. Ann. art. 42.13 § 6 (Vernon Supp. 1982) now provides that the court shall require as a condition of DWI probation that the defendant attend an alcohol program unless the court waives the requirement for good cause on a written motion by the defendant.
ently may invoke article 45.54 *sua sponte*, even if the defendant objects to deferral and requests immediate imposition of sentence. Although there appears to be no right under Texas law to refuse probation, the relationship between probationer and court has been characterized as contractual in nature. Imposition of an unwanted probation on a defendant who considers it more burdensome than immediate payment of a fine makes it more penal than contractual. Moreover, in a situation in which a defendant has indicated a reluctance or unwillingness to comply with proposed conditions, to nevertheless impose them appears to be at best an empty act and at worst a frustration of the spirit of the statute.

**DEFERRAL PERIOD**

The length of the deferral period, which may be for any number of days up to a maximum of 180 days, is the same as the period of probation allowed for Class B misdemeanors under the Misdemeanor Adult Probation and Supervision Law, which ties the permissible length of probation to the applicable maximum imprisonment (180 days jail). Unlike Class B misdemeanor probation, however, Class C misdemeanor deferral cannot be rationalized as an alternative to the potentially corrupting effects of jail because Class C misdemeanors are punishable by fine only. Instead, it reflects an orientation toward having the court take a positive approach to rehabilitating the offender, which provides the justification for the extension of jurisdiction accomplished by allowing deferral on condition.

In cases arising under the adult felony and misdemeanor probation laws, the date from which the time for filing a motion for new trial or giving notice of appeal is counted from the date on which the court grants probation. By analogy, the defendant on whom the court has imposed conditions under article 45.54 would have one day after the date the court defers imposition of the fine to file a motion for new trial and ten days in which to perfect his appeal to the county court. Unless the court indicates otherwise in its order, the deferral period would likely begin to run immediately from the time the conditions are imposed by the order. If so,

---

16. Although none-too-persuasive, the argument could be made that any conditions imposed on a recalcitrant offender are "unreasonable" under the statute. See n. 34 and accompanying text infra.
19. The length of time the deferred defendant is subject to the court's jurisdiction is relatively long. Even if a defendant were permitted to "lay out" a maximum fine in jail, at the going rate of not less than $15 per day he could be jailed no longer than thirteen days. Tex. Code Crim. Pro. Ann. art. 45.53 (Vernon Supp. 1981).
the deferral period would include the time for filing a new trial motion and an appeal. To eliminate any potential confusion, a judge should state in his order that the deferral period starts either on the date of the order, on the date the motion for new trial, if filed, is overruled, or on the date when the time for filing an appeal has expired. As a matter of practice, to avoid confusion, the judge should specify both the beginning and ending dates of the deferral period in the order.

POSTING BOND

Although referred to as a "bond," the requirement that security for payment of the assessed fine be given is really nothing more than a fine deposit. Case law requires that the defendant be given an option of either posting a bond in a criminal case either by cash or a surety bond. In practice, however, it may be difficult to obtain a surety bond for such a small amount and, even if one can be obtained, the proportionately large bond fee would discourage defendants from making the bond by other than cash.

The statute does not expressly require that the financial circumstances of the accused be taken into account when deciding whether to require the defendant to post bond. No doubt a defendant's indigency must be considered and a denial of the benefits of the deferral procedure solely because of an indigent's inability to make bond would violate equal protection principles. It would also seem implicit that a bond should be required only in those instances in which the court determines that it is necessary to secure payment of the fine. Of course, if a judge feels insecure about the likelihood of collecting the fine or obtaining compliance with deferral conditions, the situation may not be appropriate for invoking article 45.54.

CONDITIONS

In return for the judge's willingness to defer punishment, a convicted defendant typically must agree to abide by a set of conditions. The legal limits on probation conditions are at once well-developed and vague, and the new article 45.54 reflects as much.

Probation conditions may be of a general nature, a standard condi-

24. In some areas, bail bondsmen may be reluctant to write bonds for the purpose of securing payment of a fine because of the risk of forfeiture. The standard fee for small bonds may be as much as $50.
tion routinely imposed on all probationers, or of a special nature, a condition tailored to the individual situation. Conditions are imposed to serve the sometimes conflicting goals of fostering rehabilitation of the individual and protecting the public. While some probation statutes in the past have imposed a list of general conditions and provided the judge with discretion to impose additional special conditions, article 45.54 goes one step beyond a more recent trend to impose a single statutory general condition that the defendant lead a law-abiding life during the probation period. Article 45.54 imposes no general statutory conditions. Instead, the Legislature, following existing legislation and case law, has empowered the judge to impose any "reasonable condition." Under this broad legislative delegation it remains for the court first to determine what, if any, general conditions to impose in all cases and secondly what special conditions to impose in a particular situation. The single extrastatutory condition which should be imposed as a general condition under article 45.54 is that the defendant not commit another federal, state or local crime during the deferral period. Beyond this, the judge should prescribe additional conditions to fit the situation. Probation conditions must be reasonably related to the nature and circumstances of the offense and the history and characteristics of the offender. While broad, the court's discretion is not complete. A condition of probation will be held invalid if it (1) has no relationship to the crime for which the defendant was convicted, (2) relates to conduct which is itself not criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. A condition of probation is undesirable if it is unrelated to rehabilitation and public protection, difficult to enforce, violates constitutional rights or arbitrarily imposes punishment.

27. Presumably, other objectives of the criminal code are less prominent in a probation situation. See Tex. Penal Code Ann. § 1.02 (Vernon 1974).
31. Probation Standards § 3.2(a). See Tex. Code Crim. Pro. Ann. art. 42.13, § 6(1) (Vernon Supp. 1982). There may be some cases, however, in which the court may desire to impose only special conditions, for example, to refrain from assaulting a spouse, or, even when the general condition is imposed, to disregard a technical violation, for example, a traffic offense, in deciding a dismiss the complaint.
34. See generally Imlay & Glasheen, See What Condition Your Conditions Are In 35 Fed. Prob. 3 (1971); Jaffe, Probation With A Flair: A Look at Some Out-of-the Ordinary
The absence of specific guidelines in article 45.54 suggests that judges and attorneys should be alert to avoid unreasonable or unconstitutional conditions. For example, a condition that a member of the Southern Baptist church receive counseling from a Methodist minister or that he make regular visits to his own church might be unconstitutional as an impermissible burden on the free exercise of religion. A condition that allows indiscriminate searches by the police of an individual’s person or residence would be an unconstitutionally overbroad infringement of fourth amendment rights.

An important question likely to arise is whether something akin to community-service probation under the misdemeanor probation law is permissible. In the past, some courts have given a defendant the option of “working off his fine” for the city. Without statutory sanction, this risky practice exposes the city to liability for injuries sustained by the quasi-probationer. Arguably, the same problem exists with an attempt to impose community service under the new statute, without an express provision. First, it involves a restriction of liberty, although not as severe as incarceration but still a significant restraint, which arguably cannot be imposed by a court with authority to fine only.\textsuperscript{39} Second, no limit as to the nature or duration of community service is established by the statute unlike the general misdemeanor probation law.\textsuperscript{\textendash}\textsuperscript{49} The absence of standards implies the lack of authority to impose. Some judges may desire to be creative, but caution is advised. Suppose a defendant is required to rebuild a fence he had recklessly damaged. This type of condition involves a kind of forced labor outside the authority of a court with fine-only jurisdiction. In addition, the omission in article 45.54 of a reference to “reparation” as an alternative to restitution unlike the general misdemeanor probation law.\textsuperscript{49} Conditions \textsuperscript{46} FED. PROB. 25 (1979).

35. No court can require an indigent who is financially unable to pay a fine to “lay out” or “work off” the fine. TEX. CODE CRIM. PRO. ANN. art. 45.53 (Vernon Supp. 1982); Tate v. Short, 401 U.S. 395 (1970). There is some question whether even a non-indigent person can be required by a court with fine-only sentencing authority to satisfy a fine by jail time. As part of its original opinion in Ex parte Minjares, No. 57,136 (Tex. Crim. App., Feb. 2, 1979)(en banc), the court noted that by virtue of Texas Code of Criminal Procedure article 43.03, a defendant could not be jailed for default in payment of a fine for any longer than the maximum imprisonment authorized for the offense. Hence, the court concluded that a municipal court having no authority to impose any jail term as part of its original sentence, could not jail the defendant for default in payment of a fine, notwithstanding article 45.52(a), which is repealed by implication. (Article 45.52 authorizes imprisonment of a defendant for failure to pay a fine.) In response to the opinion, an amendment to article 43.03 (S.B. 1241), expressly authorizing jail for the defaulting defendant in fine-only cases, was proposed in the 1979 legislative session, but it died in committee. At about the same time, the court published a final opinion in which the comments in the original slip opinion concerning statutory authority under article 43.03 were excised. Ex parte Minjares, 582 S.W.2d 105 (Tex. Crim. App. 1979). The question whether a Class C misdemeanor court can jail a defaulting defendant remains unresolved.

36. TEX. CODE CRIM. PRO. ANN. art. 42.13, § 3B(d) (Vernon Supp. 1982).
meanor probation law arguably reflects a legislative intent to compensation but not reparation.

A guide to what might be considered other reasonable special conditions under article 45.54 may be found in the Misdemeanor Adult Probation and Supervision Law. These conditions should be used as guidelines only. Some obvious modifications are necessary. For example, instead of a condition that the defendant report to a probation officer, he might be required to report to the court or police or even the defense attorney. Article 45.54 does expressly provide that two special conditions will be deemed reasonable: restitution to the victim in an amount not to exceed the assessed fine, and professional counseling.

The statutory provision that restitution as a condition of deferral cannot exceed the amount of an assessed fine is intriguing. The amount of restitution that can be ordered under ordinary felony and misdemeanor probation is not limited by the maximum fine authorized for an offense but may be "in any sum that the court shall determine." If a defendant were charged with the Class C Misdemeanor of reckless destruction of property, for example, the actual damages may often exceed even the maximum allowable fine of $200. Or, in a worthless check case, the check may be in an amount of more than $200. The reason for tying restitution in Class C misdemeanors to the court's sanction limit is not immediately apparent. Since the matter of restitution is between the victim and the offender, the court does not, or, at least, should not, collect it. Still, as a matter of policy, the decision to so limit the amount may

38. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:
   (1) commit no offense against the laws of this state or of any other state or of the United States;
   (2) avoid injurious or vicious habits;
   (3) avoid persons or places of diabolical or harmful character;
   (4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;
   (5) permit the probation officer to visit him at his home or elsewhere;
   (6) work faithfully at suitable employment as far as possible;
   (7) remain within a specified place;
   (10) participate in any community-based program or participate in an alcohol or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances . . .
Tex. Code Crim. Proc. Ann. art. 42.13, § 6 (Vernon Supp. 1982). Not all conditions from the statute are listed because some obviously would be inapplicable to article 45.54 probation, such as a requirement for reimbursement of appointed counsel.
be supportable. An order of restitution of more than the potential fine would create a disincentive to compliance since the cost of compliance in money terms would be greater than noncompliance. Only in a few cases in which the personal cost of conviction to the defendant cannot be measured strictly in dollars, such as in a theft case,\(^{42}\) might a defendant be willing to pay a restitution amount in excess of the maximum fine.

Another problem may be perceived regarding the relationship of the offense charged and the restitution order. The offense of criminal mischief can be prosecuted in the justice or municipal court when the amount of pecuniary loss is alleged as less than $5.00.\(^{48}\) Consider whether restitution in the amount of more than $5.00 could be required. The answer probably is yes, if the complaint alleging damage of less than $5.00 is viewed simply as a lesser included offense of a higher degree of criminal mischief. The complaint fixes the jurisdiction of the court but is not conclusive of the amount of actual damage.

It should be emphasized also that restitution is to the victim only and cannot be ordered to a third party. Thus, if a bar owner were to receive restitution for damage arising out of a barroom brawl, the defendant must be charged with reckless destruction or criminal mischief rather than assault of a patron, which would allow restitution only to the person assaulted.

The “professional counseling” condition raises other questions. Who is a professional counselor under the article 45.54? Can the court require the accused to pay the cost of counseling? If so, can it order payment when the fees total more than the amount of the fine? The term “professional” would literally require a person with special skill or training in counseling.\(^{44}\) It certainly would include persons whose principal vocation is counseling and who are licensed as such. But what about persons such as ministers with recognized expertise in counseling whose vocation is not devoted exclusively to counseling? Probably those persons who either hold themselves out or who are generally recognized as having expertise would be included. Attendance of a state-sponsored counseling program, provided on a no-cost basis to the defendant, does not raise a reimbursement problem. But such public programs often are not available. Could the court require the cost of private counseling be paid by the defendant? In the case of an indigent, clearly not. In the case of the non-indigent, perhaps, but by analogy to the limit on restitution noted above, it appears he could not be required to pay more than the maximum amount of $200. If so, the utility of this provision in fostering a meaningful counseling program is limited.

---

42. A theft conviction can have serious collateral effects. See, e.g., Tex. Code Crim. Proc. Ann. art. 35.16(a)(2) (Vernon 1965) (exclusion from jury). See also Barriers to Exoneree Employment in Texas (COMP-State Bar of Texas 1976).
EVIDENCE OF COMPLIANCE

The statute places the burden on the defendant to present "satisfactory evidence" of compliance with the deferral conditions. As in the case with evidence of completion of a driver's education course in lieu of a prosecution for a traffic offense, the evidence apparently would need not be that which meets the standard of admissibility at trial. The judge no doubt would be required to consider evidence with some indication of reliability as satisfactory. But how does the defendant prove that he has complied? Would his testimony under oath be satisfactory? What if this evidence were contravened or the judge had personal knowledge of non-compliance? Could the court take notice of other complaints against the defendant?

Due process would require only that the defendant be afforded an opportunity to present evidence of compliance and notice, with an opportunity to explain or rebut, of any information relied on by the judge to find any condition had been violated. In the absence of any contrary evidence, defendant's sworn testimony should be taken as prima facie evidence of compliance.

DISMISSAL OF THE COMPLAINT

By the statute's express provisions, the judge is under no duty to dismiss upon satisfactory compliance with the conditions imposed—"the justice may dismiss the complaint." As a matter of practice, the judge should, as part of the deferred sentencing procedure, condition dismissal on satisfactory compliance. Due process would seem to require automatic dismissal, if that is the understanding. There may be situations, however, in which the judge wishes to leave his options open. For example, in the case of a person convicted of indecent exposure, the conditions might be to stay out of trouble and to get a written report from a licensed psychiatrist or psychologist in six months. If the report indicates that behavior is unlikely to recur, the appropriate disposition may be dismissal. Otherwise, the judge may wish to assess only a nominal fine but leave the conviction intact.

In the case of an accused who only partially complies with the conditions, the judge may wish only to lower the fine. For example, if the order requires counseling and no further violations, and the accused fulfills both, the complaint will be dismissed. If he only does either, the fine will

be lowered.

SPECIAL EXPENSE

The special expense fee, which the judge has absolute discretion to set at any amount not over $50, is analogous to the probation fee in other criminal cases. As with the bond, however, the fee must be waived for an indigent. The fee is to be assessed only in those cases in which the complaint is dismissed. The reason apparently is that payment of a fine plus the special expense fee could result in an amount above the jurisdictional limit. The fee is collected in lieu of costs, which are not allowed unless a judgment of conviction is entered.

APPEAL

The Texas Court of Criminal Appeals has held that the right to appeal is exclusively a matter for the legislature and a general grant of appellate jurisdiction does not give the appellate court "authority to review every adverse order rendered by a lower court." In cases subject to felony or misdemeanor probation, the legislature has provided for a double appeal of both the initial grant of probation and the decision to revoke probation. The legislature did not address in article 45.54 the matter of appeal from, or right to review, a finding by the trial court of noncompliance and a refusal to dismiss the complaint and decision to impose the deferred fine instead. In a similar context, the Court of Criminal Appeals concluded that "evident policy considerations underlying the conditional discharge provisions of the Controlled Substance Act are sufficiently distinctive to warrant the conclusion that the Legislature, by not providing for appellate review, intended there be none." The same conclusion likely applies to article 45.54. Thus, the only review of the defendant will have is the de novo appeal to the county court within ten days after the sentence is announced and deferred. Any review of the judge's exercise of discretion whether to dismiss the complaint on expiration of the deferral period is left to an extraordinary remedy such as mandamus, rather than direct appeal.

51. Tex. Code Crim. Pro. Ann. art. 42.12, § 8(b) (Vernon 1979) and art. 42.13, § 8(a) (Vernon Supp. 1982).
CONCLUSION

Even before passage of the amendment, the press of cases in the county courts has led to the filing in inferior courts of many cases that could have been charged as higher offenses. (In some cases, even the non-offense of an attempted possession of marijuana has been used to invoke the jurisdiction of the lower court.) The new sentencing option of Class C misdemeanors courts may be expected to increase the activity of these courts. The greater flexibility may increase the attractiveness of plea bargaining to reduce charges and to obtain the benefits of the deferral procedure in some cases, particularly theft. Greater use may be made of the Class C misdemeanor of passing a worthless check as a collection device. The practice of reducing DWI charges to public intoxication also might be expected to increase. A greater workload and the additional burden of supervising court-ordered “probation” will cause administrative problems for these courts. Financially, this may be alleviated by the “special expense” fee in deferral cases which could be allocated to a fund for increased staffing. The ultimate significance of the new deferral procedure, of course, cannot be fully discerned. Because of its potential significance, however, article 45.54 warrants careful consideration by attorneys and judges involved in misdemeanor cases. 55

55. A suggested Article 45.54 Order follows:

[CAPTION]

ORDER

The Court orders that the defendant ______________ is guilty of the offense of ______________ [as found by the jury] and that his punishment has been set as a fine of $_____.

Under the authority of Article 45.54, Texas Code of Criminal Procedure, the Court orders that the finding of guilty shall not be final and that no judgment shall be rendered thereon, but the imposition of the fine is suspended for 180 days [or less] from this date, on condition that [the defendant immediately post a bond in the amount of $____] (amount of fine) to be approved by the Court*, and during the term of the suspension the defendant will:

1) make restitution to the victim of the offense up to the amount of $____ [amount of fine];

2) submit to professional counseling as follows:

3) commit no offense against the laws of the State or any other State of the United States.

4) [insert other reasonable conditions]

The Court further orders that if, at the conclusion of ____ days from this date, defendant presents satisfactory evidence that he has complied with the conditions imposed [and shall pay to the Court a special expense fee to be set by the Court, but not to exceed $50.00,*] the complaint will be dismissed.

A copy of this order was delivered to the defendant on this date.

Signed and entered this____ day of ________, 19____.

Judge Presiding

* Omit in cases of indigency.