

# Creating Criminal Judgments and Orders

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## What We Will Cover

- Resources
- Order of Dismissal
- Judgment of Acquittal
- Judgment of Conviction
  - **Bill of Costs**
  - **Restitution**
- Right to Expunction
- Confidentiality
- Create a Judgment!

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## Resources

Criminal Deskbook, Chapters 5 and 7

Fines, Fees and Costs Deskbook, Chpt. 2

Criminal Forms

Legal Board: search “judgment” or “dismissal” or “expunction”

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## What is a Judgment?

- A judgment is a formal order of a court resolving a case by:
  - An Order of Dismissal;
  - A Judgment of Acquittal; or
  - A Judgment of Conviction.
- Every criminal case filed in a justice court should ultimately result in an order of dismissal or a final judgment!

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## Order of Dismissal

- A criminal case filed in justice court may be dismissed for different reasons.
- Most common reasons for dismissal:
  - DSC or deferred disposition
  - Compliance dismissal
  - Motion to dismiss by prosecutor
  - No jurisdiction
- May the court dismiss a case because the judge thinks it should not have been filed?

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## Order of Dismissal: Right to Expunction

- Defendant is entitled to expunction of **arrest records** related to a fine-only misdemeanor if:
  - The offense is no longer pending and did not result in a conviction;
  - No other charges resulting from the arrest are pending; and
  - At least 180 days have elapsed since the arrest.
- See Expunction Chart (Handout 1)
- See Criminal Deskbook at pages 106 - 114

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CAUSE NO. \_\_\_\_\_

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	
DEFENDANT	§	_____ COUNTY, TEXAS

**ORDER OF DISMISSAL**

The charge of \_\_\_\_\_ pending against  
 Defendant is **ORDERED** to be dismissed. The reason for the dismissal is:

A motion to dismiss was filed by the State of Texas and granted by this court.

This case was filed outside the statute of limitations.

Statutory authority granted to this court for a compliance dismissal under the  
 Transportation Code or Parks & Wildlife Code.

Dismissal of a Parent Contributing to Nonattendance case in the interest of justice  
 because of a low likelihood of repeat offenses or sufficient justification for the failure to  
 attend school.

Successful completion of a deferred disposition.

Successful completion of a driving safety course (DSC).

Defendant is notified that this dismissal may result in the right to expunge records related to  
 this case.

ISSUED AND SIGNED on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
 JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
 \_\_\_\_\_ COUNTY, TEXAS

## Order of Dismissal (Handout 2)

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## Judgment of Acquittal

- A judgment of acquittal should be entered after a trial at which the defendant is found not guilty.
  - What is the burden of proof for the prosecution of a criminal case in justice court?
  - What happens if the prosecutor fails to show up for trial and the court proceeds with the trial?
  - Is the defendant required to testify?
  - What does proving every element of the offense mean?

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## Judgment of Acquittal

- If a defendant is found not guilty at trial, the judgment should show that they were acquitted.
  - Not that the case was dismissed
- Don't mix them up and enter a dismissal when the defendant was acquitted!

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## Right to Expunction upon Acquittal

- If the defendant is acquitted:
  - The court must inform defendant of their right to an expunction; and
  - The defendant or prosecutor may request expunction within 30 days of the acquittal.
    - See Criminal Deskbook at pages 106 – 113
- See Expunction Chart (Handout 1)

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CAUSE NO. \_\_\_\_\_

STATE OF TEXAS	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT ____
	§	
_____	§	_____ COUNTY, TEXAS
DEFENDANT	§	

**JUDGMENT OF ACQUITTAL – BENCH TRIAL**

Judge Presiding: \_\_\_\_\_

Date of Judgment: \_\_\_\_\_

Offense and Date: \_\_\_\_\_

Defendant's Plea: Not Guilty

This cause was called for trial in the Justice Court, Precinct No. \_\_\_\_\_, in \_\_\_\_\_ County, Texas on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_m. The State appeared by and through its attorney. Defendant appeared in person and:

Was represented by \_\_\_\_\_.

Waived the right to representation.

Defendant voluntarily waived the right to a jury and entered the plea indicated above freely and voluntarily. The court heard the evidence submitted and the arguments of counsel.

Having received Defendant's plea, and having heard the evidence submitted, the court **FINDS** Defendant **NOT GUILTY** of the charged offense. The court **ORDERS, ADJUDGES, AND DECREES** that Defendant is immediately discharged and released from all liabilities relating to this charge. The court admonishes Defendant that records related to this charge may be expunged upon request by Defendant or by the State with consent of Defendant.

**ISSUED AND SIGNED** on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

## Judgment of Acquittal (Handouts 3 and 4)

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## Judgment of Conviction

- A judgment of conviction should be created and signed **every time** a defendant:
  - Pleads guilty;
  - Pleads nolo contendere; or
  - Is found guilty at trial.
    - Art. 45.041, CCP
- The judgment should be rendered in open court and must be in writing (but an electronic writing is sufficient).
  - Art. 45.041(d), CCP

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## Judgment of Conviction

- A written, signed judgment must also be created if:
  - A defendant pleads guilty by mail;
  - Pays in full the fine and court costs; or
  - Enters a plea while being magistrates at the jail.
- Failing to create a written judgment:
  - Creates confusion as to appeal deadlines; and
  - Results in the defendant not being obligated to pay any fine or court costs associated with the case.
- Many courts have had difficulty resolving cases where predecessors failed to generate written judgments.

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## Judgment of Conviction

- If the defendant is present in court when the judgment is pronounced, then:
  - The court must hold a hearing to determine if the defendant is able to pay the fine and costs and, if necessary, determine alternative methods of satisfaction of the judgment such as community service or an installment plan.
    - Art. 45.041(a-1), CCP

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## Fine and Costs

- The judgment of conviction should contain an order that the defendant pay the fine and costs to the State of Texas.
- The amount of the fine is up to the judge or jury but it must be within the range set by the statute the defendant violated.
  - For example, if a person is convicted of public intoxication, that is a Class C misdemeanor so the fine range is from \$1 to \$500.
  - A fine of \$600 may not be imposed for this offense.

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## Fine and Costs

- Court costs are determined by statute.
  - See the Fine, Fees & Costs Deskbook, Chapter 2.
  - And TJCTC Fees and Costs Cheat Sheet (Handout 5)
- A defendant who is under the conservatorship of the Department of Family and Protective Services or in extended foster care may not be ordered to pay any amount of the fine and costs. Instead, the judge may order the defendant to perform community service.

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## Bill of Costs

- Court costs are not payable by the defendant until a written bill is produced or “is ready to be produced,” containing the items of costs, signed by the officer who charged the cost or the officer entitled to receive payment for the cost.

-- Art. 103.001, CCP

- See TJCTC Fees and Costs Cheat Sheet (Handout 5)

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## Bill of Costs

- It is not necessary to produce a written bill of costs in each case.
  - But there is also nothing wrong with doing that.
- But a “bill of costs” at least needs to be in the court’s software system, ready to be produced on demand.
- A digital signature should be included at the time the bill of costs is created in the software system.

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## Restitution

- A court may also order restitution to a victim in addition to the fine and costs.
- Amount of restitution is unlimited except in Issuance of Bad Check cases where it is limited to \$5,000.  
-- Art. 45.041(b-1)
- If a court orders restitution that must be included in the written judgment.

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## Other Sanctions

- If additional sanctions are imposed for the offense, those must also be included in the written judgment.
- For example, for a minor in possession offense, the judge must order:
  - An alcohol awareness course;
  - Community service; and
  - A Driver's License suspension.

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## Judgment of Conviction (Handouts 6 – 9)

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS § IN THE JUSTICE COURT  
 §  
 v. § PRECINCT \_\_\_\_  
 §  
 DEFENDANT § \_\_\_\_\_ COUNTY, TEXAS

**JUDGMENT OF CONVICTION – BENCH TRIAL**

Judge Presiding: \_\_\_\_\_  
 Offense and Date: \_\_\_\_\_  
 Defendant's Plea: \_\_\_\_\_  
 Court Costs: \_\_\_\_\_  
 Fine: \_\_\_\_\_  
 Jail Credit Given: \_\_\_\_\_  
 Restitution Owed: \_\_\_\_\_ Payable to: \_\_\_\_\_

Defendant appeared on \_\_\_\_\_, 20\_\_\_\_ and freely and voluntarily entered the plea indicated above and waived the right to trial by jury.

The Court **FINDS** that:

Defendant was charged by:  
 Complaint  Citation/written notice.

Defendant appeared:  
 In person.  
 By mail (in accordance with Code of Criminal Procedure Article 27.14).  
 By counsel \_\_\_\_\_.

Defendant:  
 Entered a plea of guilty to the charged offense after being admonished by the court.  
 Entered a plea of nolo contendere (or "no contest") to the charged offense after being properly admonished by the court.  
 Elected to have this cause heard by the court and was found guilty beyond a reasonable doubt by the court after evidence was entered by the attorney for the State.

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## Judgment of Conviction (Handouts 6 – 9)

Having received Defendant's plea, and having heard the evidence submitted, the court **FINDS** Defendant **GUILTY** of the charged offense.

The court **ORDERS** Defendant to satisfy the following sanctions authorized by law:  
 \_\_\_\_\_  
 \_\_\_\_\_

The court makes these additional **FINDINGS** and **ORDERS**:

The Court **FINDS** that the defendant committed family violence, as defined by Family Code Section § 71.004, by committing the charged offense and has provided the required admonishment related to Defendant's right to possess firearms.  
 \_\_\_\_\_  
 \_\_\_\_\_

The court:

**WAIVES** the fine because Defendant is presently unable to pay and disposing of the fine by performing community service would be an undue hardship.  
 **ORDERS** Defendant to pay the fine in the amount of \$ \_\_\_\_\_ immediately.  
 **ORDERS** Defendant to pay the fine no later than \_\_\_\_\_, 20\_\_\_\_. If any amount is paid on or after the 31<sup>st</sup> day from judgment, a \$15 time payment reimbursement fee will be assessed.  
 **ORDERS** Defendant to pay the fine in designated intervals (see attached payment plan).  
 **ORDERS** Defendant to dispose of the fine via community service (see attached order).

The court:

**WAIVES** court costs, because Defendant is presently unable to pay the court costs or was a child at the time of the offense.  
 **ORDERS** Defendant to pay court costs in the amount of \$ \_\_\_\_\_ immediately.  
 **ORDERS** Defendant to pay the costs by \_\_\_\_\_, 20\_\_\_\_. If paid on or after the 31<sup>st</sup> day from judgment, a \$15 time payment reimbursement fee will be charged.  
 **ORDERS** Defendant to pay the costs in designated intervals (see attached payment plan).

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## Judgment of Conviction (Handouts 6 – 9)

The court **FINDS** that:

- Defendant owes no restitution in connection with the charged offense.
- Defendant owes restitution to a victim of the offense, and Defendant is **ORDERED** to make restitution to \_\_\_\_\_, the victim of the offense, as specified: \_\_\_\_\_

ISSUED AND SIGNED on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUSTICE OF THE PEACE, PRECINCT \_\_\_\_\_  
\_\_\_\_\_  
COUNTY, TEXAS

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## Conviction: Right to Expunction

- Even a defendant who is convicted of an offense in justice court may have a right to expunction for certain offenses (usually alcohol or tobacco) or if they had only one fine-only misdemeanor before they turned 17.
- See Expunction Chart (Handout 2) and Order to Expunge Records of Conviction (Handout 10)

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## Confidentiality

- Fine-only misdemeanor records become confidential, and may not be disclosed to the public, five years after the date of conviction or dismissal through a deferred disposition.
  - Exception for an offense that is sexual in nature.
- See Criminal Deskbook at pages 105 – 106.

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## Create a Judgment!

- Using Handout 6, create a judgment based on the following:
- Defendant is charged with public intoxication under Penal Code §49.02(a): “A person commits an offense if the person appears in a public place while intoxicated to the degree the person may endanger the person or another.”
- Defendant appears at your office and enters a guilty plea.
- Your judge finds the defendant is able to pay a fine of \$350 and court costs of \$76 (see Handout 5).

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## Create a Judgment!

- Using Handout 6, create a judgment based on the following:
- Defendant is charged with speeding by going 78 mph in a 60 mph zone. This is a Rules of the Road offense.
- The citation states that the court will accept a fine of \$135 plus court costs of \$129 (see Handout 5) for a total of \$264.
- Defendant mails in a check for \$264.

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## Create a Judgment!

- Using Handouts 7 and 11, create a judgment based on the following:
- Defendant is charged with speeding by going 54 mph in a 35 mph zone. This is a Rules of the Road offense.
- Defendant pleads not guilty and asks for a jury trial. The jury returns a verdict of guilty.
- The court orders defendant to pay a fine of \$200 plus court costs of \$133 (see Handout 5 plus \$4 jury reimbursement fee) for a total of \$333.
- But the Defendant tells the court he won't be able to pay his rent this month and asks the court if he can pay \$55.50 a month for the next six months.
- The judge says okay.

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## Create a Judgment!

- Using Handout 3, create a judgment based on the following:
- Defendant is charged with speeding by going 43 mph in a 25 mph zone. This is a Rules of the Road offense.
- Defendant pleads not guilty and asks for a bench trial.
- On the day of trial the county attorney fails to appear. The judge resets the case for trial but the next time the county attorney fails to appear again. The judge calls the case for trial resulting in an acquittal of the Defendant.
- Prepare a judgment!

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## Questions?

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