

# Creating Criminal Judgments and Orders

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## Today's Roadmap

- ▶ Resources
- ▶ Order of Dismissal
- ▶ Judgment of Acquittal
- ▶ Judgment of Conviction
  - Bill of Costs
  - Restitution
- ▶ Right to Expunction
- ▶ Confidentiality
- ▶ Q and A

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## Resources

- ▶ [www.txcourts.gov](http://www.txcourts.gov)
  - ▶ Texas Rules of Civil Procedure (TRCP)
- ▶ [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
  - ▶ Texas Constitutions and Laws
- ▶ [www.tjctc.org](http://www.tjctc.org) (The Training Center's website)
  - ▶ Deskbooks, including Criminal Deskbook and Fines, Fees, and Costs Deskbook
  - ▶ Legal question board, forms, webinars, recordings for credit, self-paced modules, Charts & Checklists

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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 dismissal
  - Deferred disposition dismissal
  - Compliance dismissal
  - Motion to dismiss by prosecutor
  - No jurisdiction

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## Dismissal Discussion Question

- ▶ May the court dismiss a case because the judge thinks it should not have been filed? Think of an example to illustrate your point.

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## Judgment of Acquittal (1 of 2)

- ▶ A judgment of acquittal should be entered after a trial at which the defendant is found not guilty
  - ▶ Should be found not guilty if the state failed to prove every element of the offense

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## Judgment of Acquittal (2 of 2)

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

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## Acquittal Discussion Question

- 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?
- Is the defendant required to testify?

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## Judgment of Conviction (1 of 6)

- ▶ 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

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## Judgment of Conviction (2 of 6)

- ▶ 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 (3 of 6)

- ▶ 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.

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## Judgment of Conviction (4 of 6)

- ▶ 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.

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## Judgment of Conviction (5 of 6)

- ▶ Many courts have had difficulty resolving cases where predecessors failed to generate written judgments.

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## Judgment of Conviction (6 of 6)

- ▶ 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 (1 of 4)**

- ▶ The judgment of conviction should contain an order that the defendant pay the fine and costs to the State of Texas.

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## **Fine and Costs (2 of 4)**

- ▶ 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 (3 of 4)**

- ▶ Court costs are determined by statute.
- ▶ See the Fine, Fees & Costs Deskbook, Chapter 2.
- ▶ And see the TJCTC Fees and Costs Cheat Sheet!!!

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## **Fine and Costs (4 of 4)**

- ▶ 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 (1 of 2)

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*

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## Bill of Costs (2 of 2)

- ▶ 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.
- ▶ If a court orders restitution that must be included in the written judgment.

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## Restitution Amount

Amount of restitution is usually **unlimited**, except:

- ▶ In Issuance of Bad Check cases, where it is limited to \$5,000. *CCP Art. 45.041(b-1)*
- ▶ Ordered as a condition of deferral, where it is limited to amount of the fine assessed. *CCP Art. 45.051(b)*

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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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## Right to Expunction

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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.

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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.

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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.

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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.

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## Questions and Activities!

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### **What If Defendant's Employer Pays The Full Amount Of Their Ticket: Do You Issue A Judgment Then?**

- A. If the defendant has already entered a written plea of nolo or guilty, then yes.
- B. No, a defendant must always pay for their own crimes.
- C. Yes, public policy mandates that courts clear their dockets efficiently and this helps get cases adjudicated faster.

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## Which Of The Following Statements Is True?

- A. If the defendant knows she will plead guilty, she can start a payment plan before a written judgment is entered.
- B. Just like civil cases, the court is not allowed to put payment plans in their criminal judgments.
- C. Terms of a payment plan may be in a criminal judgment itself or may be created in a separate court order.

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## True or False?

- ▶ In criminal cases, the court is not allowed to order other sanctions and may only order fines, regardless of the case type. That is why they are called fine-only misdemeanors!

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## **Defendant Pays An “Amount Accepted By The Court” For Their Offense. Do You Still Need A Judgment?**

- A. No, the payment of the full amount counts as a plea of nolo contendere, waiver of a jury trial, and criminal judgment.
- B. Yes, the payment of the full amount counts as a plea of nolo contendere, and a conviction judgment is needed anytime someone pleads nolo contendere.

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## **Create a Judgment! (1 of 3)**

Using your handouts, create a judgment based on the following:

- ▶ Defendant is charged with speeding by going 68 mph in a 60 mph zone. This is a Rules of the Road offense.
- ▶ The defendant was granted deferred disposition and complied with all the deferred provisions.

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## Create a Judgment! (2 of 3)

Using your handouts, 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 Court Costs Chart and Cheat Sheet in Charts & Checklists).
- ▶ Any other info you need to complete the judgment?

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## Create a Judgment! (3 of 3)

Using your handouts, 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.
- ▶ Need any other info to complete?

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