

## ***INSTRUCTIONS FOR COMPLETING THE FELONY JUDGMENT FORM***

*Courts must use OCA's forms when entering a felony judgment.<sup>1</sup> Accurate form use reduces intake processing times at the Texas Department of Criminal Justice<sup>2</sup> (hereinafter "TDCJ") and helps TDCJ better implement a court's correctional objectives when calculating confinement, parole, and mandatory supervision periods.*

### ***TIPS FOR AVOIDING MOST COMMON MISTAKES***

- 1) Clearly designate the age range of the victim for aged based offenses in the name of the offense (*e.g.*, **Aggravated Sexual Assault of a Child < 6 yrs, Aggravated Sexual Assault of a Child < 14 yrs, Injury to a Child ≤ 14 yrs, Injury to an Elderly Individual ≥ 65 yrs**).
- 2) Verify that the **name** of the offense, **statute** of the offense, **degree** of the offense, and length of the **prison sentence** are consistent.
- 3) Clearly designate any "drug free zone" offenses.
- 4) For continuous abuse of a child, the **last** date is the official offense date for all calculations.
- 5) For organized criminal activity, the **first** date is the official offense date for all calculations.
- 6) If the defendant is required to register as a sex offender, indicate the age of the victim at the time of the offense in the Sex Offender Registration section of the judgment. The age provided in this section is used to determine the defendant's obligations under the Sex Offender Registration Program. It is not used to determine the defendant's eligibility for parole or mandatory supervision.

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<sup>1</sup> Tex. Code Crim. Proc. art. 42.01 §4.

<sup>2</sup> TDCJ processes over 50,000 judgments per year. See Texas Department of Criminal Justice Statistical Reports: <http://www.tdcj.texas.gov/publications/index.html>.

This document does not provide legal advice or modify the court's judgment, findings or orders in the case. The sole purpose of this document is to provide instructions and guidance for completing the felony judgment forms promulgated by OCA.

**HEADING OR STYLE OF JUDGMENT:**

***Count No.***

If the Indictment or Information contains more than one count, enter the count number of the offense.

***Change of Venue***

If venue was moved from the county of origin, enter the change of venue information in the gray boxes underneath "County, Texas" in the style of the judgment. Click on the first box and select "On change of venue from." Click on the second box and enter the name of the county in which the offense occurred.

***Incident No. /TRN and State ID No.***

The Incident Number, also known as the Incident Tracking Number (TRN), is assigned to the defendant during a specific arrest. The State Identification Number (State ID No.) is a unique number assigned by the Texas Department of Public Safety to every defendant for a lifetime.

Enter the TRN and State ID No., if these numbers have been assigned at the time of the judgment. The attorney for the State should have access to these numbers.

**JUDGE PRESIDING:**

"Judge Presiding" refers to the trial judge, which includes a visiting or judge assigned to the case or sentencing hearing. The visiting, assigned, or elected judge of the court may sign the judgment, even if the visiting, assigned, or elected judge did not preside over the trial or sentencing hearing.<sup>3</sup>

**DATE SENTENCE IMPOSED and DATE PROCEEDINGS DEFERRED:**

"Date Sentence Imposed" means the date that the court pronounced the sentence in open court, not the date that the sentence commences.

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<sup>3</sup>*Eubanks v. State*, 11 S.W.3d 279, 281 (Tex. App.—Texarkana 1999, no pet.); "*Anuscewski v. State*, No. 03-12-00655-CR, 2013 Tex. App. LEXIS 7621, at 4 (Tex. App.—Austin June 25, 2013, no pet.) (mem. op., not designated for publication) (explaining that retired judge who had been assigned to case following trial "had the same authority to sign the written judgment as would the judge who presided over the trial").

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“*Date Proceedings Deferred*” means the date that the court deferred further proceedings and placed the defendant on deferred adjudication community supervision (hereinafter “deferred adjudication”).

**ATTORNEY FOR STATE:**

Enter the name and bar card number of the prosecuting attorney. More likely than not, this will be an assistant district attorney, not the elected district attorney, unless he or she actually handled the case. You can find the bar card number by conducting a search of the attorney's name on the State Bar of Texas website. A link is provided below.  
[https://www.texasbar.com/AM/Template.cfm?Section=Find\\_A\\_Lawyer&Template=/CustomSource/MemberDirectory/Search\\_Form\\_Client\\_Main.cfm&Find=1](https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&Template=/CustomSource/MemberDirectory/Search_Form_Client_Main.cfm&Find=1).

**ATTORNEY FOR DEFENDANT:**

Enter the name and bar card number of the defense attorney. If desired, designate whether the defense attorney was *APPOINTED* or *RETAINED* (hired). You can find the bar card number by conducting a search of the attorney's name on the State Bar of Texas website.  
[https://www.texasbar.com/AM/Template.cfm?Section=Find\\_A\\_Lawyer&Template=/CustomSource/MemberDirectory/Search\\_Form\\_Client\\_Main.cfm&Find=1](https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&Template=/CustomSource/MemberDirectory/Search_Form_Client_Main.cfm&Find=1).

**OFFENSE FOR WHICH DEFENDANT CONVICTED:**

Enter the name of the offense (offense description) for which the defendant was convicted, **not charged**. This is extremely important when the defendant is convicted of a lesser included or different offense.

Two boxes are provided for this entry. The first box contains a drop down list with the name of different offenses. Select the correct name, if it is on the list. If it is not on the list, click on the second box and type the name of the offense. Enter the name that is provided by the statute for the offense.

**CHARGING INSTRUMENT:**

“Charging Instrument” means the document used to charge the defendant with an offense. In felony cases, this is the Indictment or Information.

Click on the box provided to select the name of the instrument used to charge the defendant.

**STATUTE FOR OFFENSE:**

Enter the statutory citation for the offense of conviction, including any subsections that specify the manner in which the offense occurred and any subsections or other statutes that enhance the punishment range due to a special fact or circumstance in the case (e.g., the offense occurred in a drug free zone (Sec. 481.134, Health and Safety Code), the victim was at a tender age (Sec. 22.021(f), Penal Code), or the offense was committed as part of the activities of a criminal street gang (Sec. 71.028(c), Penal Code). A special fact or circumstances ***does not include the defendant's criminal history.***

Two boxes are provided for this entry. Enter the section or article in the first box. Click on the second box to select the name of the applicable statute. “Penal Code” is the default setting. Be sure to change this setting if the defendant was charged under a different statute, such as the Texas Transportation Code or the Texas Health and Safety Code.

***NOTE: Be as specific as possible when entering the statute or statutes for the offense. Don't forget to include any subsection or statute that elevates the punishment range due to a special fact or circumstance of the case. Please remember that a special fact or circumstance does not include the defendant's past criminal history.***

**EXAMPLES**

**(Assault)** There are three different manners of way to commit an assault under Section 22.01 of the Penal Code, and depending on the manner, the offense is classified anywhere from a Class C misdemeanor to a second degree felony.<sup>4</sup>

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<sup>4</sup> A defendant may commit an assault by intentionally, knowingly, or recklessly: (1) causing bodily injury, (2) threatening to cause bodily injury, or (3) causing an offensive or provocative touching.

Defendant is convicted of intentionally causing bodily injury by hitting a person with her fist. The statutory citation is §22.01(a)(1), Penal Code, as this indicates the manner in which the assault occurred.

If the defendant is convicted of intentionally causing bodily injury to her boyfriend by impeding her boyfriend's breathing by covering his mouth and nose with a pillow, the statutory citation changes to Sec. 22.01(b)(2)(B), Penal Code, as this better describes the special status of the victim, a fact that elevates the offense from a Class A misdemeanor to a 3<sup>rd</sup> degree felony.

**(Aggravated Sexual Assault)** An aggravated sexual assault is punishable anywhere from 5 to 99 years or life in prison.<sup>5</sup> However, if the victim is: (1) less than 6 years of age at the time of the offense; or (2) less than 14 years of age at the time of the offense and the offense was committed in the manner specified in the statute, the minimum punishment increases to 25 years and the defendant is no longer eligible for parole.<sup>6</sup> The enhanced punishment is the result of Jessica's Law which is codified at §21.021(f), Tex. Penal Code.

**Jessica's Law provisions (i.e., §21.021(f), Tex. Penal Code) must be clearly indicated if applicable.**<sup>7</sup> For instance, if the court orders the defendant to serve a period of imprisonment **without parole**, the judgment should include: (1) the name of the offense, including the age range of the victim, (e.g., Aggravated Sexual Assault of a Child < 6 Yrs); and/or (2) a specific statutory reference to §22.021(f)(1) or (2), Tex. Penal Code. The statutory reference provides clear notice to TDCJ that the defendant must serve a mandatory minimum sentence of 25 years in prison and is ineligible for parole.

Defendant is convicted of intentionally using his penis to penetrate the vagina of a child who was less than six years of age at the time of the offense. The complete statutory citation is Sec. 22.021(a)(1)(B)(iii),(a)(2)(B)/(f)(1), Tex. Penal Code.

<sup>5</sup> The Court may impose a fine up to \$10,000, also.

<sup>6</sup> See Tex. Penal Code § 22.021(f); Tex. Gov't Code § 508.145(a). A defendant convicted of an offense under § 22.021 is ineligible for release to mandatory supervision, as well. See Tex. Gov't Code § 508.149(a)(8).

<sup>7</sup> *Bledsoe v. State*, 479 S.W.3d 491, 497-98 (Tex. App.—Fort Worth 2015, pet. denied) (not designated for publication).

***NOTE:*** With respect to Aggravated Sexual Assault under §22.021, Tex. Penal Code, a defendant is ineligible for parole **only** if he or she is punished under Subsection (f) of that section which carries a mandatory minimum sentence of 25 years. **Therefore, regardless of the offense description and statute, if the period of imprisonment is less than 25 years, the defendant will be deemed eligible for parole.**

**DATE OF OFFENSE:**

“Date of Offense” is the date that the offense was committed. However, for offenses with a course of conduct over a period of time (e.g., organized criminal activity, continuous sexual assault of a child), the “Date of Offense” is the first date in a range of dates that the offense was committed **and** the last date that the offense was committed. For offense that occur over a course of time, TDCJ needs both the “beginning date” and “ending date” on the face of the judgment. Failure to provide this information will delay the defendant’s intake processing at TDCJ.

Two boxes are provided for this entry. Enter the date that the offense was committed in the first box. But, for offenses that occurred over a course of time (e.g., organized criminal activity, continuous sexual assault of a child), enter the first date in a range of dates in the first box and the last date in the range of dates in the second box.

**PLEA TO OFFENSE:**

Enter the defendant’s plea to the offense.

The box for this entry contains four options: NOLO CONTENDERE, GUILTY, and NOT GUILTY. Click on the box and select the appropriate plea.

**DEGREE OF OFFENSE:**

“Degree of Offense” means the classification that the statute assigns to the offense (e.g., first degree felony, Class A misdemeanor). Felonies are classified into five categories: (1) capital felonies, (2) first degree felonies, (3) second degree felonies, (4) third degree felonies, and (5) state jail felonies. ***Do not take enhancement paragraphs based on the***

*defendant's past criminal history into consideration when entering the degree of offense.* See Discussion Regarding Degree of Offense below.

A drop down list containing the class of most offenses is provided for this entry. Select the appropriate class of the offense for which the defendant was convicted, **not charged**. An offense designated a misdemeanor in the Penal Code without specification as to punishment or category is a Class C misdemeanor.<sup>8</sup> An offense designated a felony in the Penal Code without specification as to category is a state jail felony.<sup>9</sup>

### **DISCUSSION REGARDING DEGREE OF OFFENSE**

Normally, the degree of offense determines the range of punishment that a court (or jury) can consider when determining the appropriate punishment for a defendant. For instance, if the defendant is convicted of a third degree felony, the range of punishment is 2 to 10 years in prison and a fine up to \$10,000.<sup>10</sup> However, if a defendant has a prior criminal history, the range of punishment is enhanced to a higher category for purposes of sentencing the defendant.<sup>11</sup> When the class of the offense is enhanced for sentencing purposes, the higher category is known as the degree of punishment (a.k.a. degree of enhancement).

When entering Degree of Offense, it is important ***not to confuse*** the degree of the offense with the degree of punishment, especially if the two differ. The degree of punishment does not change the degree of the offense. The degree of the offense remains the same throughout the duration of the trial or plea. So, if a defendant is convicted of a third degree felony in the first phase of the trial or plea (i.e., the guilt/innocence phase), the defendant remains convicted of a third degree felony at the end of the second phase of the trial or plea (i.e., the punishment phase), even if the defendant is punished at the second degree felony range.

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<sup>8</sup> Tex. Penal Code § 12.03(b).

<sup>9</sup> Tex. Penal Code § 12.04(b).

<sup>10</sup> The fine is optional.

<sup>11</sup> The court must make certain findings regarding the past criminal history before the range of punishment can be enhanced.

### ***What to Do When the Degree of Punishment Differs From the Degree of Offense?***

First, the judgment does not provide an entry for the degree of punishment. So, do not create a separate field or enter a special order for it. Instead, focus on entering the pleas and findings for the enhancement paragraphs, as this information is what legally justifies punishment at a higher range.<sup>12</sup> If the judgment does not contain findings on the enhancement paragraphs, the omission will delay intake processing at TDCJ or result in an illegal sentence.

#### **EXAMPLES**

**(Repeat Offender)** Defendant is convicted of Kidnapping, a third degree felony. The State alleged an enhancement paragraph asserting that Defendant was previously convicted of a third degree felony. The court found the enhancement paragraph true and sentenced Defendant to 12 years in TDCJ. The **Degree of Offense** is third degree felony, although punishment is in the range for a second degree felony. The judgment must reflect the court's finding of "**TRUE**" for the enhancement paragraph. If it does not, the judgment contains an illegal sentence, as the 12-year sentence is outside of the range of punishment for a third degree felony.

**(Habitual Offender)** Defendant is convicted of Burglary, a second degree felony, after breaking into a neighbor's house to steal money. The State alleged two enhancement paragraphs asserting that Defendant was previously convicted of a third degree felony and a second degree felony. The court found the enhancement paragraphs true and sentenced Defendant to 30 years in TDCJ. The **Degree of Offense** is second degree felony. The judgment must reflect the court's findings of "**TRUE**" on the enhancement paragraphs in order to make this a valid sentence.

### ***FINDING ON DEADLY WEAPON:***

The judgment must reflect any affirmative finding of a deadly weapon, and if the deadly weapon is a firearm, the judgment must indicate that the deadly weapon was a firearm.

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<sup>12</sup> This assumes that the enhancement paragraphs reflect the defendant's past criminal history, not enhancements due to other factors (i.e., the victim's tender age, the defendant is a member of a street gang, the offense occurred in a drug free zone).  
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(04/10/2019)



A drop down list with four options is provided for this entry. "N/A" is the default setting. Change the default setting if the court makes an affirmative finding of a deadly weapon. An explanation of the options is provided below.

**N/A** – the offense did not involve a deadly weapon or the State did not allege a deadly weapon;

**NO** – the State alleged a deadly weapon, but the court did not make an affirmative finding of a deadly weapon;

**YES, A FIREARM** – the State alleged a deadly weapon, the court made an affirmative finding of a deadly weapon, and the deadly weapon was a firearm; or

**YES, NOT A FIREARM** – the State alleged a deadly weapon and the court made an affirmative finding of a deadly weapon, but the deadly weapon was not a firearm.

***NOTE:** An affirmative finding of a deadly weapon has a negative impact on the defendant's eligibility for parole or mandatory supervision. If the judgment does not reflect an affirmative finding of a deadly weapon, TDCJ may not be able to accurately determine the defendant's eligibility for parole or mandatory supervision.*

**TERMS OF PLEA BARGAIN:** (a.k.a. **PLEA AGREEMENT**) (*NEW option to attach a copy of the plea bargain*)

The judgment must contain the terms of any plea bargain accepted by the court.

If the court accepted a plea bargain in the case, summarize the terms of the plea bargain on the judgment form or place an "X" in the box on the judgment that indicates the terms of the plea bargain are attached.

If the terms of the plea bargain do not match the judgment, TDCJ will follow the terms set forth in the judgment.

***NOTE:** If the defendant entered a plea without an agreed recommendation, or if the court held a sentencing hearing to determine the appropriate punishment, there was no plea bargain between the parties.*

**ENHANCEMENT PARAGRAPHS:** *This refers to enhancement paragraphs that reflect the defendant's past criminal history. (The options have changed.)*

The attorney for the State may seek to enhance the range of punishment for the offense **during the sentencing phase** of the trial (or plea) by alleging the defendant's past criminal history in enhancement paragraphs on the charging instrument or in a written motion. If the court finds that the enhancement paragraphs are true, the range of punishment for the offense will be enhanced to the next (for *repeat offenders*) or higher than the next (for *habitual offenders*) class or a mandatory minimum prison sentence will apply.<sup>13</sup> The amount of the enhancement will depend on the degree of the offense and the number and sequence of the prior convictions found true.<sup>14</sup>

If the court found any of the enhancement paragraphs true, enter the defendant's plea and the court's finding for each enhancement paragraph alleged. A drop down list with four options is provided for this entry. "N/A" is the default setting. Don't forget to change the default setting if the State alleged an enhancement paragraph. An explanation of the options is provided below.

**N/A** – the charging instrument or motion does not contain an enhancement paragraph;

**ABANDONED** – the charging instrument or motion contains an enhancement paragraph, but the State abandoned or did not proceed on it;

**PLEADED TRUE** or **PLEADED NOT TRUE** – depends on the defendant's plea to the enhancement paragraph; and

**FOUND TRUE** or **FOUND NOT TRUE** – depends on the court's finding on the enhancement paragraph.

***NOTE: It is important to enter the findings on the enhancement paragraphs. Failure to do so may result in the judgment containing an illegal sentence or the defendant's early release from prison. TDCJ cannot make assumptions regarding the enhancement paragraphs.***

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<sup>13</sup> Repeat offenders have one prior felony conviction other than a state jail felony conviction, whereas habitual offenders have two or more prior felony offenses other than state jail felony convictions.

<sup>14</sup> See Tex. Penal Code §§12.42, 12.425.

**ADJUDICATION OF GUILT DEFERRED, DEFENDANT PLACED ON DEFERRED ADJUDICATION:** *(NEW –attach a copy of the conditions of deferred adjudication to the judgment)*

After a defendant enters a plea of guilty or nolo contendere, the court may defer further proceedings and place the defendant on deferred adjudication.

If the defendant is placed on deferred adjudication, prepare an Order of Deferred Adjudication, not a Judgment of Conviction. Attach a copy of the document setting forth the conditions of deferred adjudication to the Order.

***NOTE:*** The Order of Deferred Adjudication does not provide an entry for the date the sentence commences. Do not add a field for it, even if the court ordered the defendant to serve confinement as a condition of deferred adjudication. Confinements served as a condition of deferred adjudication are recorded on the first page of the Order under the heading titled, ***“Confinement as a Condition of Deferred Adjudication Community Supervision.”***

**SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION:** *(NEW – attach a copy of the conditions of community supervision to the judgment)*

After the court sentences a defendant to a term of confinement, the court has discretion to suspend the sentence of confinement and place the defendant on community supervision.<sup>15</sup>

If the court placed the defendant on community supervision, place an “X” in the box to indicate that the sentence of confinement was suspended and the defendant was placed on community supervision. Enter the period of community supervision in the two gray boxes. Click on the first box to enter a number. Click on the second box to select the appropriate unit of time (i.e., days, months, years). Attach a copy of the document setting forth the conditions of community supervision to the judgment.

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<sup>15</sup> If the jury sentences the defendant to a term of confinement, the court can suspend the sentence and place the defendant on community supervision only if the jury recommends it.

If the court placed the defendant on community supervision after a jury recommended it, complete the Judgment of Conviction by Jury.

**PUNISHMENT AND PLACE OF CONFINEMENT:**

If the court sentences the defendant to confinement, the judgment must reflect the period and place of confinement.

Three boxes are provided for this entry. Enter a number (length of time) in the first box. Enter the unit of time (i.e., days, months, years) in the second box by clicking on the appropriate unit of time. The third box contains a drop down list with the names of various facilities. Select the name of the appropriate facility. **N/A** is the default setting for this entry. Don't forget to change this setting if the court ordered the defendant confined.

*NOTE: If the court ordered the defendant confined as a condition of community supervision or deferred adjudication, do not enter information regarding punishment and place of confinement here. For cases involving confinement as a condition of community supervision or deferred adjudication, complete the section titled, "Confinement as a Condition of Community Supervision," or "Confinement as a Condition of Deferred Adjudication Community Supervision," respectively. Do not enter jail credit information without also providing a special order that the defendant is entitled to jail time credit on time ordered served as a condition of community supervision or deferred adjudication. Absent a special order, TDCJ will not calculate jail credit for time served as a condition of community supervision or deferred adjudication. Enter the special order on the judgment.*

**DATE SENTENCE COMMENCES:**

"Date Sentence Commences" is the date that the sentence of confinement begins. This entry is needed only if the court executed the sentence or did not place the defendant on deferred adjudication or community supervision. A sentence is executed if the defendant is taken into custody on the sentence, or given a designated date and time to report to the place of confinement to begin the sentence.

If the sentence was executed, enter the date that the confinement begins. **Do not enter a date if the confinement was imposed as a condition of community supervision or deferred adjudication.** Confinement as a condition of community supervision or deferred adjudication begins when the defendant *arrives* at the place of confinement, **absent a special order to the contrary.** A special order is provided in Affirmative Findings and Special Orders for the felony judgment forms. Enter the special order on the Judgment or Order of Deferred Adjudication.

***NOTE:*** *If a date is entered for “Date Sentence Commences,” complete the section for Punishment Options also.*

**THIS SENTENCE SHALL RUN:** *(NEW – Format change)*

A defendant may have multiple convictions that result in multiple sentences. If this occurs, the judgment is required to reflect whether the defendant's sentence will run consecutively or concurrently. “N/A” is the default setting for this entry. Don't forget to change the entry if the default setting is incorrect.

If the court intends sentences to run consecutively, the text field for the entry must set forth the court, case numbers of the sentences the court intends to run consecutively, date(s) judgment entered, and sentence length for each of the consecutive cases. In order for a sentence to run consecutively, the order of sentences must start with the first judgment entered; that is, a sentence cannot be consecutive to another sentence that has a subsequent date of judgment.

**FINE, COURT COSTS, AND RESTITUTION:** *(For Judgments Adjudicating Guilt or Judgments Revoking Community Supervision, see NOTE below.)*

A judgment must reflect the fine, if any, and court costs assessed and the restitution, if any, ordered paid to the victim. Court costs are mandated by statute, and unless the court waives or reduces the court costs, the defendant has to pay the court costs.

If applicable, enter the amount of the fine, court costs, and restitution. If the court ordered restitution: (1) designate who should receive the restitution payments by selecting “Victim” or “Agency/Agent” in the drop-down list provided; and (2) enter a *special finding* or

attach an Order of Restitution setting forth the amount and frequency of the restitution payments and the name and address of the person designated to receive the payments.

**NOTE:** *If the court enters a Judgment Adjudicating Guilt or a Judgment Revoking Community Supervision, **do not assess the fine, court costs, and restitution a second time.** These items are assessed one time in the original Judgment or Order of Deferred Adjudication. This does not preclude the court from assessing costs incurred **after** the original Judgment or Order of Deferred Adjudication was entered. The Judgment Adjudicating Guilt and the Judgment Revoking Community Supervision should reflect amounts due and owing on the date of the revocation or adjudication. If desired, the court may include a special order directing the District Clerk to provide a credit for payments made toward the fine, court costs, and restitution **prior** to the date of the revocation or adjudication. A special order regarding credit for payments made is provided in **Affirmative Findings and Special Orders** for the felony judgment forms.*

**SEX OFFENDER REGISTRATION REQUIREMENTS:**

Upon conviction or adjudication of certain offenses, a defendant has to register as a sex offender with the local law enforcement or the Texas Department of Public Safety. For a list of offenses that require sex offender registration upon conviction or adjudication, see Tex. Code Crim. Proc. art. 62.001(5).

If a defendant is required to register as a sex offender, the judgment must contain a statement that the defendant is required to register and a statement of the age of the victim [at the time] of the offense.<sup>16</sup> The age of the victim has an impact on the defendant's duty to register. Therefore, it is important to put the age of the victim at the time of the offense on the judgment or order of deferred adjudication, especially if the victim is a child.

If the defendant is required to register as a sex offender, check the box to indicate so. Next, enter the age of the victim at the time of the offense by typing a number in the first box and selecting the appropriate period of time in the second box.

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<sup>16</sup> Tex. Code Crim. Proc. art. 42.01 §1(27).  
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*NOTE: For this section, age does not have to be proven beyond a reasonable doubt, but the best practice is to include an affirmative finding as to the age of the victim at the time of the offense, if the victim is less than 17 years of age.*

***JAIL TIME CREDIT: (FORMAT CHANGE – list total number of days only)***

The defendant is entitled to jail time credit from the date of arrest and confinement to the date of sentencing.<sup>17</sup> The trial court is required to pronounce the jail time credit, if any, at the time of sentencing.<sup>18</sup> **The credit is applied toward confinement served as a result of the conviction, not toward confinement served as a condition of community supervision or deferred adjudication.**<sup>19</sup>

If the court granted jail time credit, enter the total number of days granted in the boxes provided on the judgment. Enter a number in the first box and select the appropriate unit of time in the second box (i.e., years, months, days). **Do not list the credit by date range.** However, if desired, date ranges may be listed on a separate piece of paper and attached to the judgment as supporting documentation.

***NOTE #1: If the court applies jail time credit toward confinement served as a condition of community supervision or deferred adjudication, the judgment or order may contain an illegal credit.***

***NOTE #2: If the court grants jail time credit toward the fine or court costs, enter a special order to that effect.***

***NOTE #3: TDCJ cannot include in its calculations any jail time credit that precedes the date of the offense.***

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<sup>17</sup> Tex. Code Crim. Proc. arts. 42.03 §2(a)(1), 42A.755(c).

<sup>18</sup> *Ex parte Ybarra*, 149 S.W.3d 147 (Tex. Crim. App. 2004).

<sup>19</sup> See Tex. Code Crim. Proc. arts. 42.03 §2(a)(1), 42A.755(c); see also *Ex parte Cruthirds*, 712 S.W.2d 749, 752 (Tex. Crim. App. 1986); *Ex Parte Eden*, 583 S.W.2d 632, 634 (Tex. Crim. App. 1979); *Martinez v. State*, 427 S.W.3d 496, 500 (Tex. App. - San Antonio 2014, no pet.).

**VICTIM IMPACT STATEMENT:** *(NEW entry required – Tex. Code Crim. art. 42.01, § 11)*

The victim impact statement is the form used to record the impact of the offense on the victim or the victim's family. Every victim has the right to complete a victim impact statement and to have it considered before sentencing or acceptance of a plea bargain and before a defendant is released on parole. The statement is usually attached to the commitment papers. The law requires the judgment to reflect whether a victim impact statement was returned to the attorney for the State.<sup>20</sup>

A question is provided for this entry. **An answer is required**, even if it remains "N/A," which is the default setting and applies only if the offense did not involve a victim. Change "N/A," to "Yes" or "No," if the offense involved a victim. If the victim did not return the victim impact statement, the answer is "NO," not "N/A."

**DILIGENT PARTICIPATION CREDIT:** *(NEW entry required for state jail felonies – Tex. Code Crim. Proc. art. 42.0199)*

Diligent participation credit is time credit based on a defendant's diligent participation in an educational, vocational, treatment, or work program while confined in the state jail. The credit is awarded at the court's discretion, and it cannot exceed one-fifth of the defendant's sentence.<sup>21</sup> If the defendant is convicted of a state jail felony, the court must decide whether the defendant is presumptively entitled to diligent participation credit, but only if the offense was committed on or after September 1, 2011. If the offense was committed prior to September 1, 2011, diligent participation credit does not apply and the court should enter "N/A" as the answer.

***An answer of "Yes" or "No" is required, if the defendant was convicted of a state jail felony for with the date of offense is on or after September 1, 2011.*** "N/A" is the default setting. Please remember to change the default setting to "Yes" or "No" if the offense occurred on or after September 1, 2011.

<sup>20</sup> Tex. Code Crim. Proc. art. 42.01, § 11.

<sup>21</sup> Tex. Code Crim. Proc. art. 42A.559 (h).



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**NOTE #1:** *“Yes” does not mean that the defendant will receive diligent participation credit. It simply lets TDCJ know that if the defendant meets the other legal requirements, the defendant is entitled to the credit.*

**NOTE #2:** *TDCJ is receiving a high number of State Jail judgments with “N/A” in the diligent participation section of the judgment forms. Please remember to choose “Yes” or “No” in the diligent participation section of the judgments for all State Jail offense dates after 09/01/2011. **If no choice is made and the judgment contains an “N/A” designation, it will be treated as a “No.”***

**COUNSEL/WAIVER OF COUNSEL:** *(NEW option added for trial in absentia)*

Place an “X” in the appropriate box.

**HOW TO HANDLE TRIAL IN ABSENTIA**

OCA did not create a separate judgment for trials in absentia. If the defendant was tried in absentia, edit the judgment form by deleting and replacing certain language. Delete *“This cause was called for (trial or jury) and the parties appeared,”* and replace it with, *“This cause was called and the parties, with the exception of Defendant, appeared.”* Delete *“Counsel/Waiver of Counsel (select one)”* and any option underneath it indicating that the defendant appeared. Finally, delete any other lines that are inconsistent with trial in absentia or that do not accurately reflect what occurred in the defendant’s absence.

**PUNISHMENT OPTIONS (SELECT ONE):**

Complete this section if the sentence was executed, or if the defendant was ordered to serve confinement as a condition of community supervision or deferred adjudication.

Put an “X” in the appropriate box. If the appropriate option is **Confinement as a Condition of Community Supervision**, enter the number of days and place of confinement in the boxes in the first sentence. If the court ordered the period of confinement to begin prior to the defendant’s arrival at the place of confinement, the court must enter a special order to that effect. A special order is provided in *Affirmative Findings and Special Orders for the felony judgment forms*.

This document does not provide legal advice or modify the court's judgment, findings or orders in the case. The sole purpose of this document is to provide instructions and guidance for completing the felony judgment forms promulgated by OCA.

**NOTE:** *There are limits to the number of days the defendant can serve in jail as a condition of community supervision or deferred adjudication (see below). If the judgment exceeds these limits, the judgment may contain an illegal condition.*

*County jail: (misdemeanor)  $X \leq 30$  days; (felony)  $X \leq 180$  days<sup>22</sup>*

*State Jail: (90 days  $\leq X \leq 180$  days)<sup>23</sup>*

*State Jail: if convicted of certain drug offenses\* (90 days  $\leq X \leq$  a year)<sup>24</sup>*

*State Jail: modification of conditions after violation (90 days  $\leq X \leq 180$  days)<sup>25</sup>*

(\*Drug offenses include offenses under §§481.112, 481.1121, 481.113, or 481.120, HSC)

### EXAMPLES

On 08/31/2018, Defendant was convicted of Possession of a Controlled Substance and sentenced to 15 months in the state jail. However, the court suspended the sentence and placed Defendant on probation for 2 years. The court ordered Defendant to serve 90 days in the state jail as a condition of probation. After sentencing, Defendant spent 60 days in the county jail before he was transported to the state jail. How many days will Defendant serve in the state jail?

**90 DAYS** - Confinement begins when Defendant arrives.

What should the court do if the court wants Defendant to receive credit for the 60 days spent in the county jail?

The court should enter a special order providing a different date for the sentence of confinement to begin. DO NOT ENTER A DATE FOR "DATE SENTENCE COMMENCES" ON THE FRONT OF THE JUDGMENT. That date represents the date confinement begins after the court orders the sentence executed, not suspended, as is the case when the defendant is placed on community supervision.

<sup>22</sup>Tex. Code Crim. Proc. art. 42A.302.

<sup>23</sup> Tex. Code Crim. Proc. art. 42A.555(a)(1).

<sup>24</sup> Tex. Code Crim. Proc. art. 42A.555(a)(2).

<sup>25</sup> Tex. Code Crim. Proc. art. 42A.556.

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**EXECUTION OF SENTENCE:**

Put an “X” in the box if the court ordered the sentence executed. This means that the court did not place the defendant on community supervision or deferred adjudication. **Do not mark this box, if the box on the front page indicates that the sentence was suspended or further proceedings were deferred.**

*NOTE: The defendant is not entitled to jail time credit for confinement served as a condition of community supervision or deferred adjudication.<sup>26</sup>*

**DATE SENTENCE ENTERED:**

This is the date that the judge signed the judgment.

**AFFIRMATIVE FINDINGS AND SPECIAL ORDERS:**

Affirmatively findings and special orders can impact a defendant's punishment, eligibility for parole or mandatory supervision and duties to register as a sex offender. For example, if the court enters an affirmative finding that the offense was committed because of bias or prejudice, the defendant must perform 300 hours of community service upon the defendant's release on parole or mandatory supervision.<sup>27</sup>

If the court entered an affirmative finding or special order, include it on the judgment or order of deferred adjudication. Affirmative findings and special orders are provided in *Affirmative Findings and Special Orders for the felony judgment forms*, or the court may provide its own.

**WHOSE RESPONSIBILITY IS IT TO PREPARE THE JUDGMENT**

It is the court's responsibility to ensure a judgment is prepared. The court may prepare the judgment or order the prosecuting attorney, defense attorney, or court clerk under the supervision of an attorney to do so.<sup>28</sup>

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<sup>26</sup> Tex. Code Crim. Proc. arts. 42.03 §2(a)(1), 42A.755(c).

<sup>27</sup> Tex. Gov't Code § 508.188.

<sup>28</sup> Tex. Code Crim. Proc. art. 42.01 §2.

This document does not provide legal advice or modify the court's judgment, findings or orders in the case. The sole purpose of this document is to provide instructions and guidance for completing the felony judgment forms promulgated by OCA.

**A FINAL NOTE:**

*The sentence served shall be based on the information contained in the judgment.<sup>29</sup> Consequently, omissions and errors in the judgment will have to be corrected or addressed. Please respond promptly to any questions from TDCJ regarding the judgment or sentence in a case.*

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<sup>29</sup> See Tex. Code Crim. Proc. art. 42.01 §1.  
OCA Instructions For Felony Judgment Forms  
(04/10/2019)