

## **INSTRUCTIONS AND INFORMATION FOR EXPUNGING FAILURE TO ATTEND SCHOOL CASES**

Article 45.0541 of the Code of Criminal Procedure, effective September 1, mandates that justice courts expunge all Failure to Attend School (FTAS) cases which have reached final disposition. The Training Center has developed 3 forms to assist courts with this process. The statute mandates only that courts enter an order expunging all documents related to FTAS cases that have been dismissed or that resulted in conviction, and that this order applies to documents in the possession of law enforcement and school districts. There is no requirement that the court send the expunction order to the defendant or to any government agency. However, the intent of the law is that no one should be able to locate records showing that the defendant was charged with or convicted of FTAS. Therefore, the court should take all actions that are reasonable and practicable, within the constraints of budget and time, to ensure that this occurs.

Our first form is a blanket expunction order which requires all forms relating to FTAS cases to be destroyed. This form may be used where the court is unsure which records an agency has or the court has incomplete information regarding FTAS cases (for example if prior court records were lost, destroyed, expunged under other statute, etc.). Keep in mind that DPS cannot expunge any records without a name and date of birth.

Our second form is an expunction order that references a list of cases that the court should attach. This order should be used when the court has a printout of all cases that should be expunged under the order. TJCTC recommends that each court take efforts to obtain a list of FTAS cases, allowing it to use this form and attach the list. Again, keep in mind that DPS cannot expunge any records without a name and date of birth.

Our third form is the most detailed expunction form. This can be used for individual cases, so it is best for low-caseload courts, and should also be used if a specific defendant requests expunction. If a justice court receives such a request, the court should examine the case file and send this order to all agencies that received information on the case, and give a copy of the order to the defendant as well.

### **EXPUNCTION FAQs**

#### **Do we expunge Parent Contributing to Nonattendance cases?**

No, those cases are still criminal, and may not be automatically expunged pursuant to Article 45.0541.

#### **What about FTAS cases that have not been dismissed and where no conviction has been entered?**

Those cases are still pending, and the bill allows the court to proceed on them. However, there will be no benefit to proceeding on these open cases because if the case is dismissed, it must automatically be expunged. Or, if the defendant is convicted, it must automatically be

expunged. Therefore, in many counties, the plan is that the prosecutor will file a motion to dismiss any pending FTAS cases.

**What if the defendant in a case eligible for automatic expunction still owes a fine/costs or hasn't complied with a condition of the court order?**

The case will still be expunged, and the statute says they are released from all penalties and disabilities resulting from the complaint or conviction, so they would no longer owe fines/costs or be required to comply with the court order. If the court has ordered the Department of Public Safety to suspend the defendant's driver's license for failure to pay a fine, the court should order DPS to remove the suspension prior to expunction.

**When must the cases be expunged by?**

There is no explicit deadline. Our advice is to do so as quickly as possible, and also to treat all cases as expunged effective September 1, 2015. For example, if Johnny Smith hasn't complied with the court order in his case, we would not recommend setting a show cause for September 15, with the justification that the clerk hasn't gotten to the 'S' for Smith files yet, so Johnny Smith's case isn't expunged.