

Criminal Expunction and Nondisclosure

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1

1

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2

Resources:

www.txcourts.gov

- Texas Rules of Civil Procedure (TRCP)

statutes.capitol.texas.gov

- All statutes other than the Rules of Civil Procedure

www.tjctc.org (TJCTC website)

- Deskbooks, including the Criminal Deskbook
- Charts, including Expunction Chart!
- Legal question board, forms, webinars, modules, etc.

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3

3

Basics

Expunctions

- Intended for persons wrongly arrested or never convicted following arrest
- Requires complete and permanent destruction of documents related to the arrest and charge

Nondisclosures

- Intended to give a second chance after deferred adjudication and some minor convictions
- Requires sealing of records but, agencies listed in the statutes can still peek



4

Criminal Expunctions

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5

5

Important Point!

- Expunctions apply to custodial and noncustodial arrests!

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6

6

Expunctions for Adults

Governed by Code of Criminal Procedure
Chapter 55A

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7

7

Expunctions for Minors-Not the Focus Today (1 of 2)

- Code of Criminal Procedure Art. 45A.463
 - Dismissals/Acquittals for those under 17
 - Convictions for those under 17 (not alcohol or tobacco)
 - Sexting Offenses
- Alcohol Beverage Code Sec. 106.12 and 101.73
 - Arrests and convictions of ABC Offense

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8

8

Expunctions for Minors-Not the Focus Today (2 of 2)

- Health & Safety Code Sec. 161.255
 - Convictions of tobacco-related offenses
- Code of Criminal Procedure Art. 45.313
 - Juvenile Diversion records expunged
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9

9

Why Is This Important?

- It is a Class B misdemeanor to knowingly release, disseminate, or otherwise use the records or files subject to an expunction order or to knowingly fail to return or to obliterate identifying portions of an expunged record or file.

Code of Criminal Procedure, Art. 55A.402.

10

What is a Class B Misdemeanor?

- A. Fine not to Exceed \$3,000, jail term not to exceed 180 days, or both
- B. Fine not to Exceed \$3,000, jail term not to exceed 365 days, or both
- C. Fine not to Exceed \$2,000, jail term not to exceed 190 days, or both
- D. Fine not to Exceed \$2,000, jail term not to exceed 180 days, or both

11

Expunction Eligibility

- Acquitted
 - Including at your trial or on appeal
- No conviction resulted after arrest
- Upon request of the prosecutor if before trial
- Pardon

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12

12

Prohibited from Expunction

- Conviction or potential prosecution arising from same criminal episode
- Driver's License Suspension or Revocation
 - Except after acquittal
- Arrest for violation of community supervision
- Persons absconding from the jurisdiction after being arrested and released

13

Where Must Expunction Be Filed?

- Must be filed in county where petitioner was arrested, **or**
- Must be filed in county where offense was alleged to occur.
 - But remember, justice courts can only hear expunctions for fine-only charges!

14

Who Can File A JP Expunction?

- Defendant
- Prosecuting Attorney
 - Only in some cases
- Close relative of a deceased defendant

15

Filing Fee

- \$100 to file petition normally
 - Court **may** return all or part of this fee to applicant
- No fee if:
 - Filed within 30 days of being acquitted
 - These types can be filed by defendant or prosecutor

16

Is the Filing Fee the Same for all types of Evictions?

- A. Yes. Juvenile and adult expunctions have the same procedures, including the cost of a filing fee.
- B. No. Each expunction statute has different eligibility rules and procedures.

17

Contents of Petition/Application:

- Petition for Expunction
 - See 55A.253
- See TJCTC's Form page for Expunction Forms

18

Different Procedures

- Automatic Entry of Expunction
- General Procedures

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19

19

Automatic Entry Applies:

- Trial Court Acquittal
- Pardon for Actual Innocence
 - This may include otherwise granted relief based on actual innocence

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20

20

Trial Court Acquittal

(1 of 2)

- On any acquittals in your court, the court must notify defendant of right to expunction
 - TJCTC recommends making it part of your acquittal form and trial scripts
- Expunction can be requested by person or prosecutor
 - State must be notified if not the filer
 - Defendant must consent if not the filer

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21

21

Trial Court Acquittal

(2 of 2)

- Defendant must provide court all necessary information required for the petition.
- Expunction must be granted no later than the 30th day after the acquittal.
- Order must be prepared by:
 - Defense attorney if defendant had one; **or**
 - Prosecutor if defendant did not have an attorney or prosecutor requested the expunction.

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22

22

Actual Innocence

- Defendant must provide court all necessary information required for the petition.
- Expunction must be granted no later than the 30th day after the court receives notice of pardon or otherwise granted relief
- Prosecutor must prepare expunction order

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23

23

When Can A Prosecutor Request an Expunction?

- A. Within 30 days after a trial court acquittal.
- B. After an expunction based on pardon for actual innocence.
- C. If the case has not been tried yet.
- D. Never, it must always be the defendant.
- E. Both A and C.

24

General Procedures:

Hearing is required

- Set no earlier than 30 days from filing
- Send notice to every official, agency, and governmental entity named in petition
- Clerk must keep any return receipts from notices of hearing

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25

25

How to Send Hearing Notice:

- Certified mail, return receipt requested,
- Secure email,
- Secure electronic transmission, or
- Secure fax

26

Expunctions Based on Acquittal!!!

- This includes trial **and** appellate cases.
- Order **must** have attached and incorporate by reference a copy of the acquittal judgment

27

Expunction Order Requirements

- Required General Content
 - See 55A.301
- Pardons Based on Actual Innocence
 - See 55A.205
 -

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28

28

After Order Is Granted:

- Send Notice to DPS and Entities Named in Petition
- Wait for response
- Destroy records or give them to Defendant

29

Retaining Some Info After?

- Code of Criminal Procedure Art. 55A.302
 - State establishes some ongoing investigation
 - May include civil investigations
- Code of Criminal Procedure Art. 55A.357
 - Financial transaction documents
 - Must still obliterate all portions that identify defendant in these records
- What are examples of financial transaction docs?
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30

30

Sending Notice of Order

- Certified mail, return receipt requested,
- Secure email,
- Secure electronic transmission,
- Secure fax, or
- Hand delivered if you get receipt for delivery

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31

31

DPS Duty

- They send notice to central federal depository of criminal records
- They send notice to private entities named in order too
- They send notice to any private entities that buy criminal history info from them

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32

32

Court Waiting for Response

After Notice:

- Entities must delete all public index references to records and files that are subject to order, **and**
- Entities send records to court, **or**
- Entities destroy them in some instances and notify court of destruction.

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33

33

Give Records to Defendant

- Court can give all records to petitioner after expunction is granted (instead of destroying them),
- Unless:
 - Basis of expunction is acquittal or mistaken identity

34

Destroy Records(1 of 3)

- The clerk issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.
- the clerk shall destroy all the files or other records maintained under Subsection (b) not earlier than the 60th day after the date the order is issued or later than the first anniversary of that date, unless the records/files were released to Petitioner.

35

Destroy Records(2 of 3)

- Not later than the 30th day before the date on which the clerk destroys records, the clerk shall provide notice by mail, electronic mail, or facsimile transmission **to the attorney** representing the state in the expunction proceeding.

36

Destroy Records(3 of 3)

- If prosecutor objects to the destruction not later than the 20th day after receiving notice under this subsection, the clerk may not destroy the files or other records until the first anniversary of the date the expunction order is issued or the first business day after that date.
- The clerk shall certify to the court the destruction of files or other records.

37

Effect of Final Expunction Order

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided by Subdivision (3), the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

38

What Is The Timeframe The Clerk Should Destroy Records?

- A. Immediately upon final order being entered
- B. 60 days to a year
- C. 180 days to a year

39

Criminal Nondisclosures

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40

40

Nondisclosures Basics

- Court order prohibiting sharing or disclosing certain criminal records (exceptions exist for law enforcement & certain state agencies)
- Does not require destruction of records
- Petitioner is not required to disclose the criminal history information in response to job applications and other inquiries

41

Nondisclosure Requirements for Every Case (1 of 2)

- Successfully Completed sentence/deferral, **and**
- Obtained no other convictions/deferred adjudications (this does not include deferred disposition for fine-only traffic offenses) from sentencing through the end of the statutory waiting period or date of application if no waiting period

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42

42

Nondisclosure Requirements for Every Case (2 of 2)

- **Never** convicted/deferred adjudication for any of the prohibited offenses:
 - Offenses Requiring Sex Offender Registration; Murder; Human Trafficking; Injury to a child/elder/disabled person; Child Abandonment/Endangerment; Stalking; *or* Violation of Bond Conditions in DV, Sex Assault, Stalking, or Trafficking cases or any offense with affirmative finding of family violence

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43

43

Waiting Periods May Apply:

- 2 year waiting period after Deferred Dismissal if:
 - Under Penal Code Chapter 20, 21, 22, 25, 42, or 46
 - Examples: Class C Voyeurism under 21.17 or Disorderly Conduct under 42.01

44

Eligibility After Certain Convictions:

- Satisfy entire judgment
- Person must have never been previously convicted or placed on deferred adjudication community supervision (this does not include deferred disposition) for any other offense other than a traffic offense punishable by fine only; **and**
- The offense must not be sexual or violent in nature (other than Penal Code § 22.01 (assault)).

45

Filing

- Must pay standard filing fee or Inability to Pay Statement
- Must file where original criminal case occurred
 - Convicted or deferred completed

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46

46

Petition and Orders

- Use OCA form:
 - <https://www.txcourts.gov/rules-forms/orders-of-nondisclosure/>

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47

47

General Procedures:

- Court provides notice to prosecutor
- Prosecutor has right to a hearing, unless:
 - Fails to request within 45 days of receiving notice
 - Court decides petitioner is eligible and in best interest of justice

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48

48

After Order is Issued: (1 of 2)

- Clerk seals records
- Clerk has 15 business days following the Order to send all nondisclosed records and information to DPS, who will then seal their records and notice all agencies they report to (including private agencies)
- Individuals and entities then have 30 business days to seal all records

49

Sending Notice of Order

- Certified mail, return receipt requested,
- Secure email,
- Secure electronic transmission, **or**
- Secure fax.

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50

50

After Order is Issued: (2 of 2)

- In application for employment, information, or licensing, petitioner is not obligated to disclose info subject to order.
- Court can **only** disclose the information to petitioner, criminal justice agencies, and the enumerated noncriminal justice entities (Texas Medical Board, Board of Law Examiners, State Bar of Texas, Board of Nursing, Texas Education Agency, Board of Pharmacy, Texas Department of Insurance, etc.)

51

Useful Tools and Sites

- **Texas Fresh Start Assessment App**

<https://georgetown.neotalogic.com/a/TexasFreshStartV2>

- **Texas Judicial Branch – Rules and Forms**

<https://www.txcourts.gov/rules-forms/orders-of-nondisclosure/>

- **Texas State Bar – Resources – Expunctions**

https://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalResources/FreeLegalInformation1/Criminal_Law.htm

- **Texas Fair Defense Project** - <https://www.fairdefense.org/>

52

Who Does Clerk Send Nondisclosure Order to?

- A. Crime Records Service of DPS
- B. DPS and Listed Entities in Petition
- C. Petitioner—they must send notice to DPS and Listed Entities