

Expunctions

Thea Whalen
Executive Director; TJCTC

1

CONFIDENTIALITY



NONDISCLOSURE



EXPUNCTIONS



2

confidentiality



Code of Criminal Procedure Arts 45.0217 and
45.0218

3

Article 45.0217. ALL CHILD non-traffic cases

The following are CONFIDENTIAL:

- All records and files
- Relating to a child (charged with, convicted, not guilty, dismissed, or deferred)
- fine-only misdemeanor offense other than a traffic offense

4

Juvenile case information may be open to inspection ONLY by:

- judges or court staff;
- a criminal justice agency for a criminal justice purpose;
- DPS;
- an attorney for a party to the proceeding;
- the child defendant; or
- the defendant's parent, guardian, or managing conservator.

5

ADULTS and children

Article 45.0218. 5 year CONVICTIONS/DISMISSED
DEFERREDS

- Following the 5th anniversary after final conviction OR dismissal after deferral
- Fine only misdemeanor offense
- All records and files
- Relate to the person
- Are confidential and may not be disclosed to the public.
- *Does not apply to an offense that is sexual in nature, as determined by the holder of the records, files, or information*

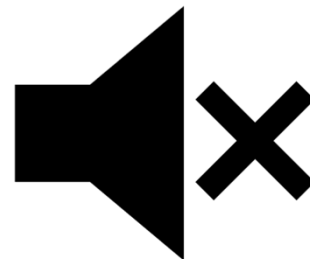
6

(look familiar?) These records, files, and information may be open to inspection ONLY by:

- judges or court staff;
- a criminal justice agency for a criminal justice purpose;
- DPS;
- the attorney representing the state;
- the defendant or the defendant's counsel;
- an insurance company or surety company authorized to write motor vehicle liability insurance in this state if the offense is a traffic offense; or
- for the purpose of complying with or if federal law requires the disclosure as a condition of receiving federal highway funds.

7

nondisclosure



Government Code § 411.0735

8

nondisclosure – non-traffic convictions

Applies only to a person who:

- is CONVICTED of a misdemeanor other than:
 - minor DUI, DWI, FWI, BWI, assembling/operating an amusement ride while intoxicated;
 - organized crime or gang activity; or
 - an offense the court determines was violent or sexual in nature; and
- is not otherwise eligible for an order of nondisclosure of criminal history record information under another statute (i.e. following community supervision)

9

- Upon completion of the sentence
- Person may petition the court that imposed the sentence
- for an order of nondisclosure
- If not convicted or deferred for any other offense (other than a fine-only traffic)
- *After notice to the state, a hearing, and a determination that the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the person was convicted.*

10

"Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

The term does not include:

- **identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or**
- **driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.**

11

OCA resource

- **<http://www.txcourts.gov/rules-forms/orders-of-nondisclosure/>**
- **\$74 filing fee**
 - **(\$28 + \$25 + \$10 + \$6 + \$5 + local fees)**
 - **\$28 fee must be remitted to the state**

12

The screenshot shows the Texas Judicial Branch website. The header includes the logo 'Texas Judicial BRANCH' and a navigation menu with links for Home, Courts, Rules & Forms, Organizations, Publications & Training, Programs & Services, Judicial Data, eFile Texas, and Media. The main content area is titled 'Rules & Forms' and features a search bar. Below the search bar, there is a breadcrumb trail: Home / Rules & Forms / Orders of Nondisclosure. The page is divided into two main sections: 'RULES & FORMS HOME' on the left and 'ORDERS OF NONDISCLOSURE' on the right. The 'ORDERS OF NONDISCLOSURE' section includes an 'Overview' with a link to 'Nondisclosure Overview', a 'Forms for Nondisclosure' section, and two subsections: 'Section 411.072' with links for 'Instructions and Model Letter' and 'Model Order', and 'Section 411.0725' with links for 'Instructions', 'Model Petition', and 'Model Order'.

13

What is an Order of Nondisclosure?

An order of nondisclosure is a court order prohibiting public entities, including courts, clerks of the court, law enforcement agencies, and prosecutorial offices, from disclosing certain criminal records. If you have a criminal record, you may benefit from obtaining an order of nondisclosure.

An order of nondisclosure legally frees you from having to disclose certain information about your criminal history in response to questions on job applications. You are not required to disclose information related to an offense that is the subject of an order of nondisclosure.

Please note that an order of nondisclosure applies to a particular criminal offense. The order does not apply to all offenses that may be on your criminal history record, but you may obtain multiple orders of nondisclosure for multiple offenses.

As mentioned above, an order of nondisclosure prohibits entities holding

14

Order of Nondisclosure

On this the _____ day of _____, 20____, the Court considered Petitioner's Petition for Order of Nondisclosure.

The State was given notice of the petition and an opportunity to request a hearing.
The State

- requested a hearing.
- did not request a hearing.

The Court

- conducted a hearing on _____, 20____.
- did not conduct a hearing.

After consideration and a hearing, if a hearing was held as indicated above, the Court **FINDS** that Petitioner is entitled to file a petition for an order of nondisclosure under the section of the Government Code indicated below and that issuance of an order of nondisclosure is in the best interest of justice.

- Texas Government Code Section 411.0725
- Texas Government Code Section 411.073
- Texas Government Code Section 411.0735

Accordingly, **IT IS HEREBY ORDERED** that criminal justice agencies are prohibited from disclosing to the public criminal history record information related to the offense of _____ in Criminal Cause No. _____ County, Texas.

15

Timeframes to comply

Within 15 business days of issuance of order, clerk must send copy of order by certified mail RRR, or by secure electronic mail or fax, to the DPS Crime Records Service

DPS then has 10 business days to seal any CHRI and notify any other agencies/departments that would have information, who then have 30 business days to comply

Clerk must seal court records as soon as practicable

16

Why do people want it?

- **If you get a nondisclosure order, you no longer have to admit any part of the criminal proceeding in any application for employment, information, or licensing**
- **Court may not disclose to the public any information contained in the court records that is subject to an order of nondisclosure, except to**
 - **criminal justice agencies or for criminal justice or regulatory licensing purposes;**
 - **the person who is the subject of the order;**
 - **for the purpose of complying with a federal requirement as a condition of receiving federal highway funds; or**
 - **the laundry list in 411.0765**

17

Texas Juvenile Justice Department	Texas Civil Commitment Office
Judicial Branch Certification Commission	
Probate Court/County Clerk for guardianship proceedings	District courts regarding name change petitions
Department of Family and Protective Services	Safe house providing shelter to children in harmful situations
Department of State Health Services	Health and Human Services Commission
Department of Assistive and Rehabilitative Services	Department of Aging and Disability Services
Public or nonprofit hospital	School district or similar
State Board for Educator Certification	Texas Education Agency
Teacher Retirement System	Texas Medical Board
Texas Board of Nursing	Texas State Board of Pharmacy
State Bar of Texas	Board of Law Examiners
Texas Private Security Board	Municipal or volunteer fire department
Texas School for the Blind and Visually Impaired	Texas School for the Deaf
Texas Department of Licensing and Regulation	Texas State Board of Public Accountancy
Texas Department of Insurance	
Securities/Banking/Savings and Lending/Consumer Credit/Credit Union Commissioner	
Department of Information Resources, banks and the like, certain employers regarding employees	

18

expunction

Code of Criminal Procedure Art 45.0216 and Chapter 55
Alcoholic Beverage Code § 106.12
Health and Safety Code § 161.255

19

JUVENILE/MINOR EXPUNCTIONS



NON-TRAFFIC PENAL OFFENSES

MINOR ALCOHOL OFFENSES

MINOR TOBACCO OFFENSES



20

NON-TRAFFIC PENAL OFFENSES

Code of criminal procedure art 45.0216

- Child (under 17) may apply for expunction with the convicting court on or after the 17th birthday
- Applies to one conviction of any penal (non-traffic) fine-only misdemeanor or city ordinance if court finds person was not convicted of any other penal (non-traffic) fine-only misdemeanor or city ordinance while a child
- Applies to first conviction of sexting if court finds person was not found to have engaged in conduct indicating a need for supervision while a child

21

- Applies to complaint if dismissed under deferred disposition or teen court
- Applies to complaint if defendant was acquitted
- Does not apply to offenses for underage alcohol or tobacco offenses



22

MINOR ALCOHOL OFFENSES

Alcoholic beverage code § 106.12

- Minor (under 21) may apply for expunction with the convicting court on or after the 21st birthday
- Applies to first conviction of any minor alcohol offense if court finds person was not convicted of any other Alcoholic Beverage Code violation while a minor
- Applies to first arrest (custodial or noncustodial) that did not result in conviction for any minor alcohol offense if court finds person was not arrested for any other Alcoholic Beverage Code violation while a minor

23

MINOR TOBACCO OFFENSES

Health and safety code § 161.255

- Minor (under 21) may apply for expunction with the convicting court on or after the 21st birthday
- Applies to any conviction of minor tobacco offense under Section 161.252 regardless of whether person satisfactorily completed the e-cigarette and tobacco awareness program or community service

24

Juvenile/minor expunction procedures

- Judge must inform person and parent in open court of the person's expunction rights and provide them with a copy of Article 45.0216
- Initiated by application of the juvenile/minor, which must be a written sworn request containing a statement that person is eligible
- Must pay a fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expungement
- Hearing is optional
- Court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record
- After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose
- Procedures are separate and distinct from procedures under Chapter 55

25

Chapter 55, code of criminal procedure

- Allows an ACQUITTED person and certain others to petition for an expunction of criminal records and sets out the procedures for application to expunge criminal records



26

Where to file?

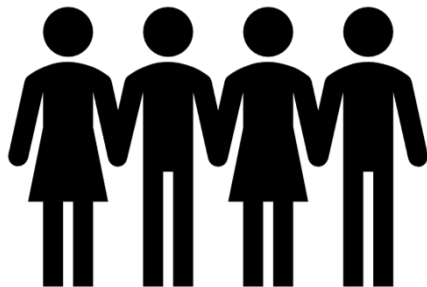
For higher offenses, must go through district court

Municipal courts of record and justice courts have concurrent jurisdiction to expunge fine-only case records

- **Person may file in a municipal court of record or justice court in the county where:**
 - **petitioner was arrested; or**
 - **where offense is alleged to have occurred**

27

RIGHT TO OR ELIGIBILITY FOR EXPUNCTION UNDER CHAPTER 55



Acquittals,
dismissals, and
recommendations

28

RIGHT TO OR ELIGIBILITY FOR EXPUNCTION UNDER CHAPTER 55

- Acquittals by trial court – Art 55.01(a)(1)(A)
- Dismissals – Art 55.01(a)(2) [*at least 180 days have elapsed since date of arrest (or else prosecutor certifies records are no longer needed), and there was no felony charge arising out of same transaction*]
- Prosecutor recommendations prior to trial – Art 55.01(b)(2)

- Subsequent pardons – Art 55.01(a)(1)(B)
- Acquittals by appellate court – Art 55.01(b)(1)
- Clerical errors – Art 55.01(d)(1) → MUST BE IN DISTRICT COURT
- Stolen identities – Art 55.01(d)(2) → MUST BE IN DISTRICT COURT

29

Issues with class c expunctions


“SAME CRIMINAL EPISODE”

This issue arises when there are multiple charges arising out of a single arrest (for example: the citation has two Class C offenses)

Can one case be “*carved out*” for expunction?

- Texas Supreme Court has not given final word, but nine appellate courts hold that the arrest is the unit of prosecution, so the entire arrest must qualify to be expunged (but note that the cases considered were Class B and higher charges)
- The 84th Legislature attempted to clarify and allow “carving out” but bill was vetoed by Governor

30



expunction procedures upon acquittal

- **On acquittal, the trial court shall advise the acquitted person of the right to expunction**

31

expunction procedures upon acquittal

- **Either Defendant (after notice to State) or State (with consent of Defendant) can request expunction and must provide the court with the following verified information (or explanation for why missing):**
 - **Petitioner's full name, sex, race, DOB, DL, SSN, and address at time of arrest**
 - **Offense charged against petitioner, date of offense, and date of arrest**
 - **County/city of arrest and arresting agency**
 - **Case number and court**

32

and...

- **Applicable physical or e-mail addresses of all:**
 - **Law enforcement agencies**
 - **Jails or other detention (correctional) facilities**
 - **Magistrates**
 - **Courts**
 - **Prosecuting attorneys**
 - **Central state or federal depositories of criminal records**
 - **Private entities that compile and disseminate for compensation criminal history record information**

that the petitioner has reason to believe have information related to records or files that are subject to expunction

33



- **Order of expunction is prepared by:**
 - **Defense attorney if there is one**
 - **Prosecutor if pro se or expunction is being requested by State**
- **Court shall enter order of expunction not later than the 30th day after date of the acquittal**
- **Same procedure applies for actual innocence pardons (court must enter after Defendant provides information and State prepares order)**

34

expunction procedures for other reasons

- Defendant files ex parte petition with same verified information
- A close relative of a deceased person can file on behalf of deceased person
- Court shall set a hearing no sooner than 30 days from filing of petition and give each official or agency named in the petition reasonable notice of the hearing by certified mail, return receipt requested or secure email or fax
- Court shall enter an order directing expunction if court finds that petitioner is entitled to expunction
 - Attach and incorporate judgment of acquittal and include defendant's full name, sex, race, DOB, DL, SSN, offense and date of offense and arrest, case number and court, and DPS tracking incident number
- May be appealed in same manner as other civil cases

35

After order of expunction is final

The Clerk of the Court shall send a certified copy of the order to:



- Texas Department of Public Safety
Crime Records Division and Driving Records Sections
5805 N. Lamar Blvd.
P. O. Box 4087
Austin, Texas 78773
- and to each official or agency or other governmental entity named in the order

by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested, or be hand delivered with receipt to other government entities

36

- DPS shall notify central depositories and private entities named in order to destroy or return any records subject to the order
- Receiving officials, agencies, and entities shall:
 - Return all records and files that are subject to the order to the court or, in impractical, obliterate all portions of the record or file that identifies the person and notify court of its action
 - Delete from its public record all index references to the records and files
 - For non-acquittal expunctions, can return the records to the petitioner



37



- Court records concerning expunction proceedings are not open to inspection by anyone other than the subject of the order
- Clerk shall obliterate all public references to the proceeding and maintain the records in an area not open to inspection

38

- For **non-acquittal expunctions**, clerks shall destroy all records maintained not earlier than the 60th day nor later than the first anniversary of date of expunction order (and must provide notice of destruction at least 30 days before to the prosecutor for any objection)
- Records of financial transactions from expunction proceeding or underlying criminal case may be retained under internal financial control procedures but all **portions of the record that identify the subject must be obliterated**

39

Effect of expunction

Release, maintenance, dissemination, or use of expunged records and files for any purpose are prohibited

Person may deny the occurrence of the arrest and the existence of the expunction order

Any 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

Note that records relating to the suspension or revocation of a driver's license may not be expunged under Chapter 55 (only under Section 524.015 or 724.048, Transportation Code)

40

FEE FOR justice COURT EXPUNCTION

- **\$100 filing fee to defray the cost of notifying state agencies of orders of expunction**
 - Code of Criminal Procedure Art 102.006(a-1)
- **Fee shall be waived if:**
 - Petitioner was acquitted (unless a criminal episode) and
 - Petition is filed not later than the 30th day after acquittal
 - Code of Criminal Procedure Art 102.006(b)
- **Court may order that any portion of the fee under subsection (a) be returned to petitioner if granted**
 - Code of Criminal Procedure Art 102.006(c)
 - Our fee is under subsection (a-1)
- **Statement of inability to afford payment of costs?**

41

Prosecutors, clerks, judges, officers who acquire knowledge of an arrest and who know of an expunction order commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files

Person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged commits an offense

Offenses are a Class B misdemeanor

Violation of
expunction
order

42



Thank you!