Texas Young Lawyers Association

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Expunctions in Texas

EXPUNCTIONS IN TEXAS

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EXPUNCTION AND NON-DISCLOSURE ORDERS IN TEXAS

Everyone, at some point, has made a bad mistake or has been in the wrong place at the wrong time resulting in trouble. Unfortunately for some, trouble can result in a criminal record reflecting an arrest, charge or conviction. While most convictions cannot be removed from a person's record, Texas law does allow individuals to permanently remove information about an arrest, charge or conviction from their permanent records in certain circumstances. This is called an expunction. Once a person's record is expunged, all information is removed from the criminal record and that person can deny the incident ever occurred.

Records eligible for expunction include:

i. An arrest for a crime that was never charged;
ii. A criminal charge that was ultimately dismissed;
iii. Certain qualifying misdemeanor juvenile offenses;
iv. Conviction of a minor for certain alcohol offenses;
v. Conviction for Failure to Attend School;
vi. Arrest, charge or conviction on a person's record due to identity theft by another individual that was actually arrested, charged or convicted of the crime;
vii. Conviction for a crime that was later acquitted by the trial court or the Criminal Court of Appeals;
viii. Conviction for a crime that was later pardoned by the Governor of Texas or the US President.

Not all individuals with records eligible for expunction above qualify to receive an expunction. The Court will not grant an expunction to adults who have received deferred adjudication or probation or who have been convicted of a felony within five years of the arrest the person is seeking to have expunged. The Court will also not consider expunction if the offense is part of a "criminal episode" and the applicant for the expunction either has charges pending for a different crime that occurred during that same episode or the person was convicted of a crime that occurred during that same alleged episode.

Finally, a person cannot file a petition seeking expunction of a felony charge that has been dismissed if the statute of limitations for the crime subject to the dismissal has not yet expired. The statute of limitations is the amount of time that the state or

county has to prosecute an action against a person after that person has been arrested for an offense. The statute of limitations is different depending on the crime, but most are at least three years.

Juvenile Offenses

In many instances, any record of a conviction for an offense that a person committed when that person was a minor can be expunged. A misdemeanor punishable by fine committed prior to the age of 17, an offense committed by a minor under the Alcoholic Beverage Code and a conviction for Failure to Attend School are all offenses that may be expunged. As in expunctions for an adult, the individual must follow certain procedures and meet specific criteria before the court will expunge the person's record. For example a person cannot apply for an expunction for a juvenile record until after that person has reached a certain age. Additionally, a person cannot have had multiple convictions.

When a juvenile offender is convicted of an offense, the courts are sometimes required to give the child and the child's parents information about the expunction process and how to apply for an expunction. Different procedures can apply to expunctions for juvenile offenses. Consequently, you should conduct additional research or consult an attorney before attempting to apply for an expunction of a juvenile record.

Applying and Obtaining an Expunction

Prior to beginning the process for expunction, you should review Chapter 55 of the Texas Code of Criminal Procedure and any other statutes that may apply to the offense you are attempting to have expunged. The first step in gaining an expunction is to file a Petition for Expunction with the district court requesting that the court grant an Order for Expunction. A basic form for both the Petition for Expunction and Order for Expunction are included at the end of this pamphlet. As with any legal proceeding, errors in following procedure can have serious consequences. Therefore, it is always advisable to seek the assistance of an attorney.

The person applying for the expunction, known as the Petitioner, will have to prepare and file the Petition or hire an attorney to do so. The Petition should include certain personal identifying information of the Petitioner, the offense charged, when the arrest occurred, when the alleged offense occurred, the name of the arresting agency and a list of all of the agencies or facilities that may have a record of the arrest.

If the offense was charged, the Petition should also contain the cause number for the case, the name of the court, how the charge was resolved (i.e. dismissed, no billed by the grand jury or acquitted) and the date the charge was resolved. The Petition must be verified, meaning that you must have it notarized when it is signed. Finally, the Petition should contain a blank "notice of hearing" so that the court can set a hearing on the issue.

After completing the Petition, it will need to be filed with the proper court. Whether the Petition should be filed in municipal, county or district court will depend on the level of the offense. If the offense was charged, then the Petition will most likely need to be filed in the same Court that was assigned to the case when it was originally charged. After the petition is filed, the court will schedule a hearing and send notice of the hearing to all applicable agencies and facilities, known as Respondents. After the notice has been properly sent, the court will conduct a hearing to allow the Respondents an opportunity to contest the expunction. However, if the Petitioner meets all of the necessary requirements, the court will grant the expunction.

After the court grants the expunction, the Petitioner will need to present an Order for Expunction to the court for the judge's signature. The court will likely expect the Petitioner to have an Order drafted and ready for the judge to sign at the hearing on the expunction. The signed Order must then be submitted to any and all agencies or organizations that may have records or files relating to the expunged offense. The records will then either be deleted or returned to the court clerk pursuant to the court's Order for Expunction.

Nondisclosure Orders

If expunction is not an option due to the nature of the offense, charge or conviction, it may be possible to obtain an Order for Nondisclosure. A nondisclosure order does not completely destroy all record of any offense, but will limit the accessibility of the records. Records subject to a nondisclosure order are removed from public record and cannot be released or accessed by certain private parties. However, the records will remain available to government agencies and will be admissible in certain court actions. Under the Government Code §411.081, a person who has successfully completed deferred adjudication and received a discharge and dismissal of the deferred adjudication may apply for a nondisclosure order.

In addition to successful completion of probation or deferred adjudication, an individual must meet certain criteria in order to qualify for a Nondisclosure Order. For example, a person cannot apply for a nondisclosure order until after the statutory waiting period has passed. During that time, the applicant cannot have been convicted of any other offenses. The waiting time varies anywhere from 0 to 10 years depending on the offense. Individuals charged with family violence, a sex offense requiring registration, aggravated kidnapping, murder and some other specific types of offenses will likely not be able to obtain a Nondisclosure Order.

The process for obtaining an Order of Nondisclosure is substantially similar to obtaining an Order for Expunction. A petition must be filed with the court that was involved with the original offense. A hearing will be conducted after proper notice to the required parties and the court will determine, at that time, whether to grant the order. It should be noted that the court generally has more discretion to decide whether or not an Order for Nondisclosure should be granted than a judge would when an expunction is requested. The judge will deny the order if justice would not be served by granting the order.

No agency, system or person is perfect and mistakes can happen. Although the criminal justice system may be tough on offenders, the law tries to allow those mistakes to be remedied. Whether the error is made by the system or the offender, the law attempts to right wrongs and, when deserved, give second chances.

NO. _____

	§	**IN THE DISTRICT COURT (OR MUNICIPAL COURT)**
EX PARTE (OR IN RE):	§	
	§	**__(leave blank)__ JUDICIAL DISTRICT (OR CITY OF _____)**
_____, An Adult	§	
	§	**OF _____ COUNTY, TEXAS**

PETITION FOR EXPUNCTION OF RECORDS

Now comes, _____(name)_____, Petitioner, requests that the Court issue an order expunging all documents, records and references arising from Petitioners conviction/charge/arrest for ____(name offense[s])____ and release Petitioner from all disabilities resulting from said conviction/charge/arrest. In support, Petitioner shows the following:

1. This Petition is brought pursuant to ____(name applicable statute, e.g. Article 55.01 of the Texas Code of Criminal Procedure)__ .

2. This Court has jurisdiction over this matter as this charge/conviction/arrest and/or all facts giving rise to this Petition occurred in _____ County, Texas.

3. Petitioner's Identifying Information:

   Name: ____(list full legal name)___
   Date of Birth: _____
   Race: _____
   Sex: _____
   Address at time of Arrest: _____
   Current Address: _____
   Driver's License No.: _____ State:_____
   Social Security No.: _____

4. On or about ___(date of arrest__, Petitioner was arrested by _____ Police Department for _____(name offense[s])_____ .

5. The offense was alleged to have occurred on or about (date alleged offense occurred).

6. On or about ___(date of charge)___ , Petitioner was charged with _____(name offense[s])____in the____(name of court and county/city)_ .

7. The Cause Number(s) relating to this charge is/are _____ and were brought in the (___)th District Court of_____County/theMunicipal Court/County Court at Law #___of_____County.

8. This arrest was never charged and dismissed on or about _____.
   (or)

   This charge was dismissed on or about _____.
   (or)

This conviction was pardoned/ acquitted on or about _____.
(or)

Petitioner was acquitted by the trial court/Court of Criminal Appeals on or about _____.

9. (List which of the following circumstances apply:

   Petitioner was released by the Court and the arrest/charge is no longer pending and never resulted in final conviction. The final conviction has been fully overturned by _____ and no other offense or charge is pending which is related to this matter. The Court did not order community supervision pursuant to Art. 42.12 of the Texas Code of Criminal Procedure.)

   Petitioner has not been convicted of a felony in the five years preceding the date of arrest.

10. The following police agencies have information concerning the charge:

    (List the name and full address of all law enforcement agencies, jails, detention facilities, magistrates, courts, prosecuting agencies, correctional facilities and any other state or federal agencies, courts or organizations that may have records or information relating to the arrest, charge or conviction).

11. For the reasons stated herein, Petitioner is entitled to a court order ordering all of the agencies listed above to expunge all records related to the subject arrest and/or charge and/or conviction.

12. Petitioner requests that the Court set this matter for hearing, notice the interested state agencies entitled to notice under Article 55.02, Section 2, of the Texas Code of Criminal Procedure and order the following:

    a. All applicable agencies to return all records and files concerning the subject arrest, charge and/or conviction to this Court, or if removal and return is not practical, to destroy all portions of the records or files that identify the Petitioner including, but not limited to, all computer entries and notify this Court of same;

    b. All applicable agencies to delete from their records all index references to the records and files that are subject to this Order;

    c. The District Clerk be ordered not to permit inspection of the court records concerning this expunction proceeding by any person other that the Petitioner herein or Petitioner's attorney, and to destroy all public references to this proceeding and maintain all other records in an area not open to inspection;

    d. The Clerk, upon request, to deliver to Petitioner or Petitioner's attorney all files and records returned to the clerk pursuant to the Court's Order;

e. The District Clerk to destroy all such files and records returned to the clerk pursuant to the Court's Order on the first anniversary of the date the order for expunction was issued unless the Petitioner has requested the return of the records;

f. Petitioner be allowed to deny the occurrence of the expunged arrest and prosecution and the expunction proceedings and order;

g. The Department of Public Safety to send a copy of this Order, via certified mail return receipt requested, to the appropriate federal depository of criminal records that there is reason to believe may have any records subject to the Court's Order, together with any explanation of the effect of the Court's Order and a request that the records in possession of the depository, including any information with respect to this proceeding, be destroyed, deleted or returned to the Court.

Petitioner prays, after proper notice and hearing, that the Court grant Petitioner request for expunction and for all other relief to which Petitioner may be justly entitled.

Petitioner prays for general relief.

Respectfully submitted,

I, _____, Petitioner, swear under oath that the facts stated in the above Petition for Expunction of Records are true and correct.

_____
(Name)

SIGNED under oath before me on _____.

_____
Notary Public, State of Texas

Notice of Hearing

This matter is set for hearing on _____ at ____.M. in _____th Judicial District Court/County Court #___ of Collin County, Texas or _____ Municipal Court.

SIGNED on_____.

_____
Judge or Clerk

NO. _____

	§	**IN THE DISTRICT COURT (OR MUNICIPAL COURT)**
EX PARTE (OR IN RE):	§	
	§	**__(leave blank)__ JUDICIAL DISTRICT (OR CITY OF _____)**
_____, An Adult	§	
	§	**OF _____ COUNTY, TEXAS**

ORDER FOR EXPUNCTION

On this date came to be heard Petitioner _____(name)_____ 's Petition for Expunction. Having considered the pleadings, evidence and documents on file with the Court, the Court finds that it has jurisdiction over this action and all parties to this action. The Court finds that all Respondents required to be served, have been properly served with the Petition and that all procedural and substantive requirements for expunction of the criminal records, specified herein, have been met.

Petitioner's identifying information is as follows:

Name: ____(list full legal name)____

Date of Birth: _____

Race: _____

Sex: _____

Address at time of Arrest: _____

Current Address: _____

Driver's License No.: _____ State:_____

Social Security No.: _____

Petitioner was arrested on or about __(date of arrest)__ and charged with _____(name offense[s])_____in the ( )th District Court of _____County/the _____Municipal Court/County Court at Law #____of _____County, under cause number(s)_____ _____. This matter was dismissed/no billed by the Grand Jury on or about _____ (or This conviction was pardoned/ acquitted on or about _____by _____.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Petition for Expunction filed in the above-numbered casus is GRANTED, and all records of the Petitioner's arrest in the above-numbered cause including, but not limited to, all records of Petitioner's prosecution for this offense, is hereby expunged and all release, dissemination or use of records pertaining to such arrest and prosecution is prohibited;

2. All agencies listed herein and Respondents shall return all records and files concerning the above specified arrest, charge and/or conviction to this Court, or if removal and return is not practical, shall destroy all portions of the records or files that identify the Petitioner including, but not limited to, all computer entries and notify this Court of same;

3. All agencies listed herein and Respondents shall delete from their records all index references to the records and files that are subject to this Order;

4. The District Clerk shall not permit inspection of the court records concerning this expunction proceeding by any person other that the Petitioner herein or Petitioner's attorney, and to destroy all public references to this proceeding and maintain all other records in an area not open to inspection;

5. The Clerk, upon request, shall deliver to Petitioner or Petitioner's attorney all files and records returned to the clerk pursuant to the Court's Order;

6. The District Clerk shall destroy all such files and records returned to the clerk pursuant to the Court's Order on the first anniversary of the date this Order for Expunction is issued unless the Petitioner has requested the return of the records;

7. Pursuant to Article 55.03 of the Texas Code of Criminal Procedure, Petitioner may deny the occurrence of the expunged arrest and prosecution and the expunction proceedings and this Order;

8. The Department of Public Safety shall send a copy of this Order, via certified mail return receipt requested, to the appropriate federal depository of criminal records that there is reason to believe may have any records subject to the Court's Order, together with any explanation of the effect of the Court's Order and a request that the records in possession of the depository, including any information with respect to this proceeding, be destroyed, deleted or returned to the Court;

9. The records and files pertaining to the arrest, charge or conviction do not include records relating to the suspension or revocation of a driver's license, permit or privilege to operate a motor vehicle except as provided in Texas Transportation Code §524.015 and §724.048;

10. The District Clerk shall cause a copy of this Order to be delivered, by certified mail, return receipt requested to the following agencies subject to this Order:

(List the name and full address of all law enforcement agencies, jails, detention facilities, magistrates, courts, prosecuting agencies, correctional facilities and any other state or federal agencies, courts or organizations that may have records or information relating to the arrest, charge or conviction).

Signed this _____ day of _____, 2010.

_____

Judge

NOTES

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