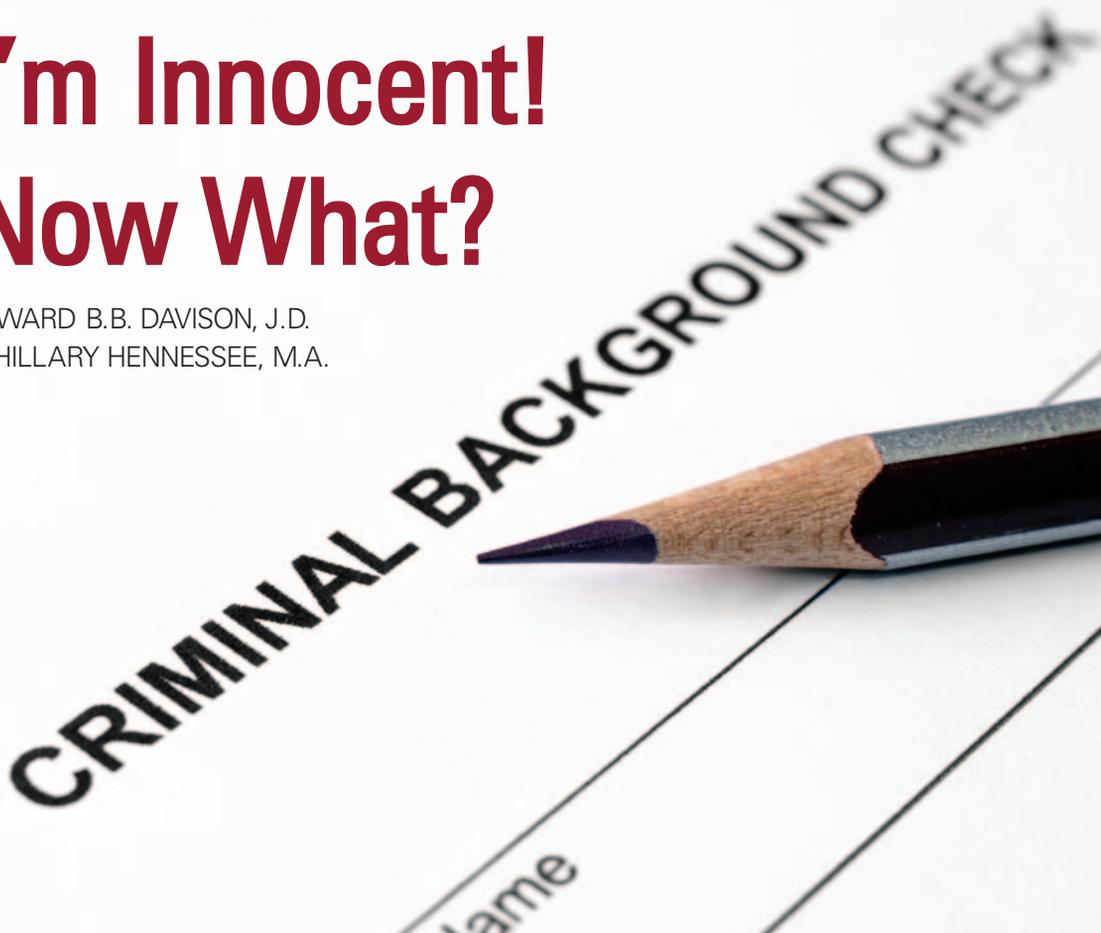


I'm Innocent! Now What?

BY WARD B.B. DAVISON, J.D.
& HILLARY HENNESSEE, M.A.



Congratulations! You hired a good criminal defense attorney who fought for your rights. A jury of your peers found you innocent and now you are free to continue with your life. Or even better, your case was dismissed and you never had to go to trial. But there's still a record of your arrest for assault of a family member, which creates problems.

Perhaps in your line of work employers check criminal history. In this economy, having any type of criminal record can get your résumé shuffled to the bottom of the stack. Unfair? Yes. The end of the unfairness? No. A record of either a conviction or arrest for possession of marijuana can adversely affect your admission to

the college of your choice. It can also disqualify you for many scholarships. Even renting the apartment you want can seem a daunting task because many apartments will not rent to people with a criminal history involving drugs or violence. So you were found innocent by the legal system, but the deck is now stacked against you. Fortunately, your lawyer has a few more tricks up his sleeve. You have to call him to know if they can be used in your case. Let's look at some of these methods.

EXPUNCTION (ALSO CALLED EXPUNGEMENT) OF YOUR RECORD¹

Black's Law Dictionary defines "Expungement of Record" as "the

removal of a conviction (esp. for a first offense) from a person's criminal record."² Of course, this doesn't apply to you. You were never convicted of the crime you were charged with. The fact that you were arrested, however, still shows up on your criminal history report. That arrest record is stalling your job search, despite your innocence. Lucky for you, Texas is looking out for your needs. If you qualify for an expunction, get one because then the law treats you as if you were never arrested or charged. In fact, with a successful expunction, you can omit ever being arrested or charged for that offense on most applications and still be within your lawful rights.

The information included in this column is for educational and informational purposes only.
Please consult an attorney regarding specific legal questions.

You may possess a right to have the record of your arrest expunged. Article 55 of the Texas Code of Criminal Procedure extends the “Right to Expunction” to “all records and files relating to the arrest” if certain conditions are met.³ The two most common conditions are 1) that you were acquitted or convicted and then subsequently pardoned or 2) that you were released with no final conviction and were not required to be placed on community supervision. The second condition is surrounded with several exceptions and stipulations. The first has a few of its own. That’s why you should call your attorney.

ORDER OF NONDISCLOSURE

You’ve served your deferred adjudication community supervision and your case has been discharged and dismissed. But you can’t get an expunction of your records because you don’t qualify under Texas rules. Another opportunity still exists.

You may qualify to have the records of your arrest and deferred adjudication community supervision sealed from everyone except government agencies. Under the Texas Government Code Section 411.081, the court may “issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication.”⁴ As with expunction, there are several exceptions and conditions to the rule. For instance, many Texas state agencies that may license or employ you still possess the ability to access your sealed records.

SEALING JUVENILE RECORDS

You may want your youthful discretions kept from coloring how people evaluate you as an adult. In this instance, the Texas Family Code is your refuge. Section 58.003 allows the records of your juvenile miscon-

duct to be sealed—sometimes. This option comes loaded with conditions and exceptions. At least two years must have lapsed since the last official action has taken place on your case, your charge must not have been a violent offense, and you must not have been “convicted of a felony or misdemeanor involving moral turpitude.”⁵ Sometimes your records are automatically sealed or under restricted access.⁶

Even when sealed, your juvenile records may still be accessed by various law enforcement departments and may become unsealed for certain reasons depending on your circumstances.

WHAT NOW?

Contact your attorney. Be absolutely honest about why you are exploring these options. Fully disclose the reasons you are asking for your attorney’s services. Failure to be open and honest with your attorney could lead to unnecessary fees and unforeseen results in the future. Remember, your attor-

ney works for you and has a duty to keep everything confidential—and fight for your rights. He will not collaborate with the state or any state department to put you at a disadvantage. There are methods to clear your records. Be sure you use them to the fullest extent possible.

NOTES

1. Bryan A. Garner, *A Modern Dictionary of Legal Usage*, 2nd Edition. (New York, N.Y.: Oxford University Press, 1995). P. 342.
2. Bryan A. Garner, editor, *Black’s Law Dictionary*, 8th ed. (St. Paul, Minn.: West, 2009) P. 621.
3. Texas Code of Criminal Procedure. Title 1. Chapter 55. Article 55.01.
4. Texas Government Code. Title 4. Subtitle B. Chapter 411. Subchapter A. Sec. 411.081(d).
5. Texas Family Code Section 58.003.
6. Texas Family Code Section 58.203.

Ward B.B. Davison, J.D.

practices criminal and civil law in Austin. Visit his website at WardDavisonLaw.com.

Hillary Hennessee, M.A.

is a senior paralegal at Nichols & Gill, P.C. She has completed her master’s degree in Legal Studies from Texas State University.

**TEXAS LAWYERS
FOR TEXAS VETERANS**
Providing Legal Counsel to Those Who Served
www.texasbar.com/veterans