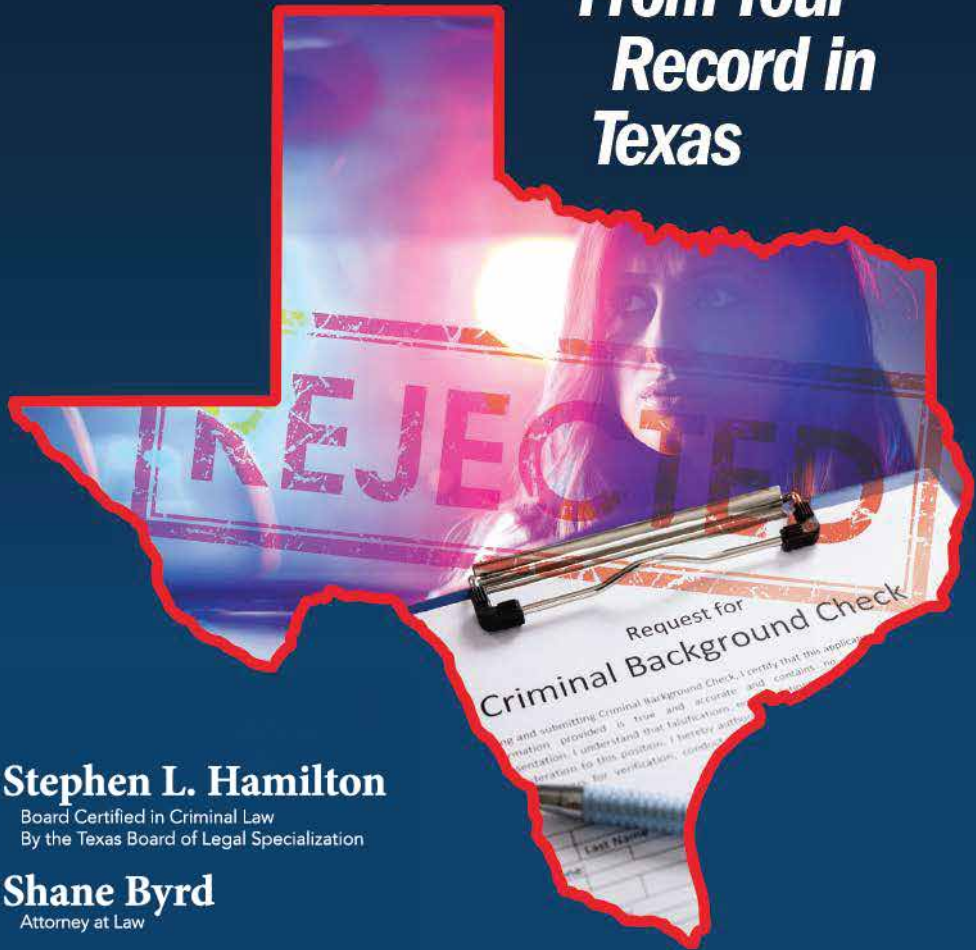


**PROTECT YOUR FUTURE  
KNOW YOUR RIGHTS**

# **A Citizen's Guide to Removing a Criminal Arrest or Conviction**

***From Your  
Record in  
Texas***



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By the Texas Board of Legal Specialization

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**PROTECT YOUR FUTURE ★ KNOW YOUR RIGHTS™**

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*Offices Conveniently Located in*

**Amarillo | Austin | Dallas | Denton | Fort Worth | Houston  
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Board Certified in Criminal Law  
By the Texas Board of Legal Specialization

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# Why You Should Consider Expunction

If you or anyone you know has ever been arrested—for *anything*—you know how damaging it can be, even if it was a mistake, if you didn't actually commit a crime.

Even if charges are dropped and you walk away from the whole experience unscathed, you might not realize that your name is still on the record, listed in the police report, it's still on file as your having been arrested, and sometimes even still on file right next to the crime you were charged with.

That's right. Your name remains on the police report, on the arrest record, and on record as your having been investigated for a crime. You might have been arrested and released 72 hours later, without being charged, because the police were unable to show sufficient probable cause to justify your arrest. Even then?

By rights, that should be the end of it. But it rarely is. Why not?

***Because your name remains a part of the record!***

How will that look to an employer who runs a background check? They will find that arrest in your past.

And even if the police weren't able to establish enough evidence to justify your arrest, as far as you're concerned they will continue to view you as someone with an arrest history and treat you accordingly. It does not stop there.

Practically everyone runs background checks these days. Everyone—from employers to landlords to banks to government and non-government agencies and in between—will discover your arrest record in your background check. Your date might even run a background check on you before agreeing to meet you for coffee.

Anyone who looks can—and *will*—find a record of your arrest if they do a background check. In this age of information, an arrest or charge does

not just vanish because law enforcement failed to convict you. It is all too easy to dig up dirt on anyone with just the click of a mouse.

Regardless of whether you were convicted of—or even committed—a crime, people will treat you differently when they find out you’ve been arrested.

Even if you were wrongly charged with a crime, or someone gave your name instead of theirs at the time of their arrest, that incident is tied to your name—*until YOU do something about it.*

The good news is that you CAN do something about it.

## **Expunction and Non-Disclosure Options**

Expunction and non-disclosure are two options that may be available to you depending on what happened after your arrest, whether or not you were convicted, and the strength of your case.

These options give you the right to deny the arrest ever happened and suppresses access by anyone to the documents detailing your arrest. Expunction and non-disclosure can help you get a fresh start.

### **Expunction**

If you were arrested but never charged, or charged but never convicted, you may be eligible for expunction. This means that all records pertaining to your arrest, the case against you, and the investigation must be wholly destroyed and you do not have to disclose to ANYONE that it ever happened. Not law enforcement officials, not judges, not your boss, and not your friends and family.

And because the slate has been wiped clean, you are not even obligated to divulge what happened if you find yourself under oath. At the same time, anyone with knowledge of your arrest will be bound to deny it ever occurred and prohibited from disseminating information regarding your arrest.

What is truly valuable about expunction is that it is legally enforceable. Anyone who leaks information about an expunged arrest is guilty of a Class B misdemeanor and can be prosecuted.

## Non-Disclosure

Unlike expunction, non-disclosure does not destroy all traces of your arrest, investigation, and conviction but it does seal all documentation pertaining to them. That means there will be no traces of it on your background check and you can deny it ever happened.

Non-disclosure may be an option for you if you have been convicted of a minor, nonviolent misdemeanor. If you completed community supervision or were discharged early from community supervision, you may qualify for this proceeding as well.

If you were convicted or placed on deferred adjudication, you cannot have records of your arrest and case destroyed (expunged), but you can have them sealed.

While there will still be some circumstances under which law enforcement officials could access this information, as well as certain agencies authorized under the statute, it cannot be used against you and you will be largely protected from any repercussions arising from it. Landlords, lenders, academic institutions, and employers will not find any trace of your arrest or prosecution.

Your options depend on the specific circumstances of your arrest, your case, and your life.

If deferred adjudication is your best option, you must observe a designated waiting period from the date the deferred adjudication ended. It is up to you to meet all of the conditions of your sentence or deferred adjudication before the judge schedules a review of your case.

Say, for example, you were convicted of a crime and sentenced to community supervision. This is the hand you have been dealt, so you must do what you are required to do.

However, you still have options to get your life back on track and put this all behind you with relative haste. Early discharge from community supervision and then petitioning for non-disclosure is a great option in this situation. Early discharge means you get off probation as soon as possible.

If you absolutely cannot have an arrest visible on your record, we will want to take a more aggressive approach to get charges against you dropped so that you will remain eligible for expunction.

However, if you have a strong enough case to avoid conviction and you want your record expunged, you need to be careful when settling out of court, because some plea deals include an agreement to waive your right to expunction.

Expunction and non-disclosure exist because people deserve to put their mistakes behind them and move forward. People deserve genuine second chances. You deserve a genuine second chance, and we will do everything in our power to see that you get it.

## **Reasons to Pursue Expunction or Non-Disclosure**

While the best-case scenario is not to get arrested in the first place, if you have an arrest, a charge, or a conviction on your record, it is time to take a look at how to make the best of a bad situation.

### **Righting Wrongs**

Expunction and non-disclosure procedures are rooted in the reality that police make mistakes and sometimes arrest the wrong person. People have been known to give fake names when they are arrested or use another's identity to land someone else in jail in their place.

Sometimes, this glitch has harmful and far-reaching repercussions for innocent people. Sometimes, people are charged with crimes they did not commit. In most cases, those who have been convicted of a crime still deserve a second chance to live free from the stigma and restrictions resulting from their conviction.

### **Is It Your Right?**

Are you entitled to expunction and non-disclosure? Technically, no. Neither of these proceedings can be found in the Bill of Rights, our country's list of every citizen's fundamental rights, regardless of the circumstances.

Expunction and non-disclosure differ from entitlements in that they are civil legal proceedings, not criminal proceedings. And because you are not

automatically entitled to either of these, it also means that the burden of proof falls on YOU to prove you meet every single requirement to have your records sealed off. The Court does not do it for you or offer it to you.

## **Why Bother?**

Whether you were wrongly accused of a crime, arrested without probable cause, or if you were convicted but have completed community supervision, you have black marks on your record that can be easily found in a simple search. Background checks unearth every arrest and investigation, even if no punitive consequences ever came of it.

If you or anyone you know has ever been arrested, charged with, or convicted of a crime, you know that penalties and probation are only just the tip of the iceberg of consequences. Finding an employer who is willing to hire you, a landlord who will rent to you, or a college that will accept you can become a living nightmare.

Any time you interact with law enforcement, they will spot the arrest on your record and automatically treat you like a criminal. The hard lesson here is that once you are in the criminal justice system, your chances of finding yourself wrapped up in it again skyrocket. Having scraped with the system, you now want to look for your next best option.

With expunction, all records and documentation pertaining to your arrest and the investigation must be destroyed and wiped from your record. With non-disclosure, while records and documentation are not destroyed, they are sealed and cannot be found when a background check is run on you by anyone outside of law enforcement or those agencies authorized by the statute.



# Factors to Consider

When identifying your desired outcome, you need to take an honest look at your situation and your personal goals.

- Where is your life now?
- What impact have your past decisions made on your options for the future?
- What are your goals?
- What is the best possible outcome for your case in meeting these goals?

When you and your lawyer hash out your desired, realistic outcome based on your present circumstances and your future goals, the first question to ask yourself is: *Did I do what they claim I did?*

If you did not commit the crime, your goal should be to keep this whole incident off your record. Do not just fold to a crime you did not commit, especially if you were the victim of identity theft.

Pardons, dismissals, and acquittals are all outcomes that can potentially be expunged. If you are actually innocent, we can likely build a strong case and it puts a wide variety of defense options at our disposal.

The second factor you want to take into consideration is the strength of your case. At Texas Criminal Defense Group, we conduct our own investigation of your case, on your behalf, above and beyond any police investigation.

We have a private investigator on staff with years of experience working for law enforcement, one who possesses a keen eye for holes and oversights in their case. Our PI can track down and question eyewitnesses the police may have dismissed or overlooked.

After reviewing your case, we will identify its strengths and weaknesses, and, after discovery (when the prosecution must share with us all the evidence against you), we will also know the strengths and weaknesses that exist in the case against you.

From there, we take an honest look at our options. If we stand in a place of strength, a good option would be to enter into pretrial negotiations to get your case dismissed. If taking the case to trial to get your charges dismissed or appeal a conviction to try for an acquittal is our best option, that is what we do.

If your case is weak, we can enter into plea negotiations and focus on mitigating the charges and penalties. If a conviction is unavoidable, we will try for deferred adjudication and early discharge to keep you qualified for non-disclosure.

Once we know what your desired outcome is in your situation, we can work toward it from the very beginning.

# Expunction and Non-Disclosure Qualifications

## Expunction

If you were never convicted of a crime, all records of the investigation and your arrest can be expunged. For example, if you were arrested but never charged with anything, you can have that arrest wiped from your record.

If you were charged with a crime but the charges were quashed or dismissed, you qualify for expunction. If you were acquitted at trial, you qualify for expunction. If you were convicted—either in court or through a plea bargain—you do NOT qualify for expunction.

An expunction can hide an arrest from your record but not a conviction. So, if you were convicted, does that mean you are stuck with a visible criminal record for the rest of your life? No. If you were convicted of a minor, nonviolent misdemeanor such as a DWI, non-disclosure may be the next best option for you.

## Non-Disclosure

Remember, while non-disclosure will not result in all record of your conviction being destroyed, this legal proceeding seals off all records pertaining to your conviction and allows you to deny it ever happened.

Your records will still exist, and certain people and entities—law enforcement, licensing boards, certain professions, and state agencies—will still be able to access them.

However, the people with access to your records and the circumstances under which they are permitted to access them will be limited, and you will be able to deny your conviction—or omit any reference to it—to employers, landlords, lenders, colleges and universities, and the vast majority of all people and entities who would want to take a peek into your past.

Even law enforcement is prohibited from circulating or disseminating any record of your arrest to anyone except among themselves. Your records will be sealed from the public and you can put the whole incident behind you.

You may qualify for non-disclosure if you have not been convicted or placed on deferred adjudication for an offense requiring sex offender registration or involving family violence, murder, capital violence, and other violent acts.

While successful completion of this process means your conviction will be sealed, you will still have spent time on probation and therefore cannot have all records of the incident destroyed.

You *can* walk away with only a sealed conviction on your record and then petition to have all records sealed off, however. This proceeding is designed to give people who pay their dues and complete their court-ordered probation a second chance.

Non-disclosure is fairly straightforward as far as complex legal proceedings go, and nearly all first-time offenses can make use of this mitigating procedure.

The downside? Non-disclosure is by no means the same thing as expunction.

While non-disclosure is a great tool for moving forward, unencumbered in your life, compliance is much harder to enforce, and it will not erase every trace of the black marks on your record.

Non-disclosure is, however, a very useful tool to get your life back on track, to be given a second chance. Work with your lawyer to make the best use of this option and take the necessary steps to protect yourself.

# Getting a Second Chance

What does it mean to be given a second chance? It means you do not get a third one.

If you are arrested or charged with another crime while petitioning for expunction or non-disclosure, you will unlikely be successful with that petition. If you commit the same crime you are currently trying to get expunged or sealed, chances are even slimmer that you will succeed.

A second chance means either you or the police messed up once and you deserve the chance to move on with your life. What a second chance does *not* mean is a third, a fourth, or a fifth chance.

If you are making the same mistakes over and over again, it means you have not actually moved on with your life. That is not going to convince a court that you are willing to do what it takes to move forward. For example, while you can petition non-disclosure for a first DWI offense, second and third offenses do not qualify.

Also, because expunction and non-disclosure are both civil proceedings, you, as the petitioner, do not have the same rights afforded to you as someone who is being tried in criminal court.

In criminal court, as the defendant, you have the right to be presumed innocent until proven guilty beyond a reasonable doubt, placing the burden of proof on the prosecutor.

By the time you file your petition for expunction in court, you are already presumed innocent because the charges have been dropped. Or, by the time you file for non-disclosure, you've already been presumed guilty but rehabilitated.

What you have to prove in these proceedings is that you meet structured, legal, procedural requirements—and that you meet ALL of them. That means the burden of proof is now on you, the defendant. You must prove a preponderance of evidence to win your desired outcome.

There is more. A waiting period must elapse before you can petition for expunction or non-disclosure. The purpose of this waiting period is to make sure evidence does not get destroyed or sealed off if it is needed for an ongoing investigation.

For example, if charges against you were dropped due to identity theft, but records pertaining to your arrest are needed to investigate the real culprit, law enforcement is going to need time to utilize them before they can be destroyed.

If you were arrested but charges were never filed against you, then until the statute of limitations is up, the records pertaining to your arrest may still be needed in order to investigate you or someone else. Once your waiting period is up, however, you can petition for expunction or non-disclosure, depending on your circumstance.

For expunction, this waiting period is based on the charge you were arrested for. For non-disclosure, this waiting period is based on the charge you were convicted of, regardless of the charges of your initial arrest.

For example, say you were originally arrested for Class A misdemeanor possession of marijuana, but in plea negotiations your lawyer was able to reduce your charge so you were only convicted of a Class B misdemeanor.

The period of time you must wait before petitioning for non-disclosure is based on the Class B misdemeanor possession charge that you were convicted of, *not* the Class A misdemeanor you were charged with upon arrest.

# Understanding Expunction and Non-Disclosure Procedures

The first thing you need to understand is that while expunction focuses on your arrest, non-disclosure focuses on your conviction. Your particular expunction proceeding will be entirely based on the nature of your arrest.

- Were you arrested but never charged?
- Were you charged but the charges later dropped?
- Were you the victim of an identity theft that led to your wrongful arrest?

All of these factors play into your expunction process.

In the same way, your non-disclosure procedure is tailored to the nature of your conviction and your successful completion of community supervision.

- What charge were you convicted of?
- Did you successfully complete community supervision?
- Were you discharged early?

These are a few of the factors that shape the procedure of your non-disclosure process.

Second, expunction *destroys* all record of your arrest while non-disclosure *seals off* all record of your conviction. Sealed-off records still exist and can be accessed by law enforcement officials and certain professional and licensing boards in very specific circumstances, but in effect while they still exist, they cannot generally be accessed.

Expunction is a cleaner sweep than non-disclosure, but both keep this part of your past off the public record.

Since expunction destroys all documentation of your arrest, a whole host of organizations and agencies, as well as the state, must be notified when you submit your petition. Any of these entities have the right to oppose the

expunction because if your expunction is approved, they all permanently lose access to your records.

On the other hand, when you file your non-disclosure petition, you need only notify the state in which you were convicted. That means that only the state can oppose your non-disclosure.

Other than qualifying Class C offenses, deferred adjudication automatically disqualifies you from being eligible to have your records expunged. Period. Even though charges against you will be dropped when you complete all of your court-ordered probation, community service, classes, etc., the fact that you were on probation at all means non-disclosure is your only option.

That's right. Spending time under community supervision—even if it means the judge will ultimately dismiss your case—ensures your records will never be completely destroyed.

However, deferred adjudication may be your best option if there is no way to get charges against you dropped. You can still have your records sealed off from the public.

Anyone who does possess the authority to access them will see that you made a mistake in your past and had a run-in with the criminal justice system because of it. They will also see that you took responsibility for your actions and do not have a conviction on your record.

# Is Expunction or Non-Disclosure an Option for You?

Consider this question seriously before consenting to *any* plea agreement, no matter how attractive that agreement might sound to you at the time.

Before you agree to anything, you need to sit down with your lawyer and hash out your long-term goals. For example:

- What do you want your life to be like, after all is said and done?
- What is your best possible outcome?
- Do you hold, or are you working toward, any professional licenses that might now be in danger?
- What are your needs? And the needs of your family?
- Is immigration status a factor?
- How strong is your case?

These are all questions you need to explore with your lawyer so they can advise you on how to best proceed.

If a squeaky-clean record is important to you, a conviction is something you want to avoid at all costs. If your lawyer can challenge the arrest and get the charges against you quashed (tossed out), all you have to do is stand by until the wait period associated with the charge you were arrested on is up and petition for expunction.

If you were only held in custody and charges were never filed against you, all you have to do is wait out the statute of limitations or associated wait period (more on this in the next chapter) before petitioning for expunction.

Whatever you and your lawyer can do to avoid a conviction—and do so without deferred adjudication—do it, so you can petition to get your arrest record expunged.

If conviction is something you can't avoid but can't afford to have on your record either, you and your lawyer can work strategically to set you up to ultimately be eligible for non-disclosure.

Deferred adjudication or negotiating probation instead of time behind bars may be the best option for you. It is not ideal, but it is still an effective long-term option.

Once you complete the mandated waiting periods, and if you are not convicted or placed on deferred adjudication for anything other than a fine-only traffic violation during this time, you can petition for non-disclosure of the charges brought against you, as well as the conviction itself and all other documentation pertaining to this incident and its investigation.

Your lapse in judgment will not follow you into any job interview, college application, or even your first date.

If you have the option to start fresh after an arrest or conviction, our advice is to take it. An arrest is not the end of the world. Deferred adjudication is not going to ruin your life.

Work with your lawyer to make the most of your situation and the opportunities you have at your disposal.

## **Do I Qualify for Expunction?**

Before getting into the different specific situations eligible for expunction, first consider the big picture. If you are wondering if expunction is for you, ask yourself these basic eligibility questions:

1. Was I arrested, or did I receive a Class C citation/ticket?
2. Was I convicted?
3. Is this a new charge?

These are the big three aspects of expunction eligibility. First and foremost, you have to have been arrested. If not, but if you are otherwise eligible, you may have the option of expunging a Class C ticket.

## **Were You Arrested?**

Remember, the whole point of expunction is to hide a past arrest. If you were never arrested—for example, if you were investigated but never actually taken into custody—you have no arrest record to expunge. Therefore, expunction is not something you need to worry about. There is no record to incriminate you. End of story.

But what if you were arrested? That brings us to eligibility question no. 2.

## **Were You Convicted?**

If you were arrested, the second thing you need to establish is whether you were convicted. If the answer is yes, expunction is not for you.

Expunction hides only an arrest, not a conviction. (Non-disclosure hides a conviction and, in that case, may be the best option for you.) You cannot have a conviction, or have served probation, and still qualify for expunction.

Not convicted and you haven't served any time on probation? Then you have one more question to ask yourself.

## **Is This a New (Unrelated) Charge?**

Only misdemeanor and felony arrests are eligible for expunction. While you may think there are no other charges beyond misdemeanors and felonies, that is not actually true. Other charges do exist.

For example, contempt of court, violation of parole or probation, and so-called writ of attachment are all crimes that can be attached to an initial crime.

These are not *new* criminal cases. You cannot just be charged with violating parole or probation without it being related to another charge, because your parole or probation resulted from whatever earlier crime landed you on probation in the first place.

Why does this matter? The point is that if you were now arrested for contempt of court but never convicted, you do not qualify for expunction of that contempt of court charge because it is not a new crime—it is associated with whatever crime brought you to court in the first place.

To be eligible for expunction, you must meet these basic requirements:

- You must have been arrested (or received a Class C citation)
- You must *not* have been convicted or served probation related to that arrest
- The charge you want expunged must be either a misdemeanor or a felony

If you meet these three requirements, expunction is an option you should absolutely consider before proceeding with your criminal case. Once you have met the above three requirements, there are four main instances in which expunction is possible.

## **Expunction Eligibility**

Yes, expunction is designed to give you a second chance, but this is still the criminal justice system. It is not just about what is in your best interest.

Once any record of your investigation and arrest are destroyed, no one has access to them anymore—not the prosecuting attorney, not the police, not the government, not anyone. That is the end of it.

For that reason, your situation must fall into one of four main circumstances to qualify for expunction:

- The charge(s) against you were never filed
- The charge(s) against you were filed but dismissed
- Records regarding your arrest are not needed for any other criminal investigation
  - ♦ This only applies in the event of petitioning for an expunction “early,” where the District Attorney would have to certify the records are not needed for any other criminal investigation
- You qualify for discretionary expunction (such as if your conviction was later overturned), which can be granted based on the discretion of the judge or court

## **Miscarriage of Justice**

All four of the circumstances listed above have to do with miscarriage of justice in some way.

Why would charges never be filed, and why would they be dropped? Often, the reason is because you were arrested without a warrant and without probable cause. It may have just been a bureaucratic oversight that your charges were never filed, but you should not have to be kept in a holding pattern with a stain on your record because someone else did not do their job.

If you found yourself in jail because someone gave your name and identifying information instead of their own, in fairness the consequences should not be your burden to carry.

At the same time, if records of your arrest and investigation might still prove helpful in a criminal investigation, you can bet the police and the attorney representing the state are not about to let those records be destroyed.

It is not a matter of principle, or even a matter of keeping organized the zillions of records that land in archives and depositories. When your case is no longer of use, it does not impact law enforcement if it is no longer in existence.

## **Expunction of Charges Never Filed**

When you are taken into custody, the police can legally hold you for up to 72 hours without filing charges. This is surprisingly common and used as an intimidation tactic. They may want to get information out of you and use arresting you as a tool to frighten you into talking.

If your arrest was made subsequent to your being in detention, the officer must bring the evidence indicating probable cause for that arrest to a magistrate. In your case, the arresting officer may have failed to prove probable cause. Without doing so, the arrest cannot be retrospectively warranted (i.e., a warrant cannot be issued) and charges cannot be filed against you.

So, even though you were already arrested, if there were no grounds for your arrest, no arrest warrant can be justified. No charges can be filed against you because the arrest had no justifiable basis.

Of course, this will not erase an arrest from your record and you will still have gone through the stress and anguish of being arrested and held in custody. But it does make you eligible to erase it by petitioning for an expunction.

Another possibility is administrative oversight. Sometimes officers will simply forget to file charges against you. There have been cases of lost paperwork.

There are plenty of reasons why charges might not have been filed against you, and therefore plenty of reasons why you are eligible for expunction—but not right away.

## Statutes of Limitations and Waiting Periods

Every misdemeanor and felony charge carries a statute of limitations. That's the amount of time that can legally elapse between when the crime was committed and when charges can be brought against you, and it can last for years.

That is a long time to be in limbo, unable to seek expunction, and knowing that at any time the other boot may drop and you'll find yourself facing charges for an arrest you thought you'd put behind you years earlier.

Up until fairly recently, innocent people were forced to wait until the statute of limitations was up before petitioning for expunction. However, in 2011, a law was passed to give relief to people trapped in this holding pattern.

Now, if charges are never filed, you can seek expunction long before the statute of limitations expires, contingent upon how serious the charges are. The current waiting periods are:

- Class C misdemeanor: 180 days
- Class A and B misdemeanors: One year
- Felony charges: Three years

Once your particular waiting period has passed, you can petition for expunction. Of course, this relief statute did not come without a compromise: Although your records will be expunged and you can legally deny the arrest ever happened, law enforcement officials can request copies of your records to be kept if they are still investigating your case. And, since the statute of limitations has not yet expired, they can still charge you up until that time.

The solution to this is to get the attorney representing the state to certify that the records regarding your arrest are no longer needed and can be fully destroyed with your expunction. Once it is certified that your arrest records are no longer useful, they can be completely destroyed. And then, relief—it will all be behind you.

It is important to note here that the reduced waiting period only applies if your charges are not accompanied by other felony charges from the same criminal episode.

For example, if you are arrested for possessing a felony's worth of a controlled substance and a Class C misdemeanor charge for paraphernalia, you cannot just wait 180 days and get your paraphernalia arrest expunged. You have to wait until the statute of limitations for the felony is up before seeking expunction.

## Expunction of Charges Later Dismissed

It is important to clear up any potential confusion with what we mean by your charges being dismissed. What is important here in terms of being eligible for expunction is when and why your charges were dismissed.

If your charges were dismissed *because you completed community supervision successfully as a term of deferred adjudication*, that does NOT qualify you to have your record expunged.

Why not? Because even without a conviction, you were on probation, and that means something happened beyond the arrest that implies you are guilty as charged, even though you subsequently did the right thing and took responsibility for it and turned your life around.

On the other hand, if you are charged but those charges are later dismissed, and you are not convicted, and not subject to any community supervision, you CAN seek expunction.

This could happen either through pretrial negotiations or in court. If you win your case and charges against you are dismissed, you can—and *we strongly recommend you do*—take that extra step and get the whole incident expunged and genuinely put it behind you.

You are not the only one who will want to make the incident disappear. If you were charged based on false information or mistaken identity, you can bet anyone working on your case, from the police to the prosecutor, wants to put the whole unfortunate incident behind them as well.

As long as the record of your case is no longer necessary for any criminal investigation, it is a damaging blip in everyone's past.

Another big reason your indictment or information can be quashed or dismissed is because of lack of probable cause. Remember, while expunction is a civil procedure, criminal prosecution is a completely different creature.

The burden of proof rests on the prosecution, and if there was a lack of probable cause to arrest you in the first place, or a lack of probable cause to actually convict you, the chances are you will not be convicted.

With a capable lawyer in your corner, and a strong case, you can walk away from your charges without conviction or probation, and then you can seek to expunge any and all evidence it ever happened.

Identity theft is another reason charges may have been filed against you and later dismissed. If someone gave your name instead of their own at the time of their arrest or investigation, you might have found yourself in the back of a squad car for something you did not do.

In today's world, identity theft is rampant and it is not uncommon for someone else's name to be implicated in a crime they had no connection to, or even knowledge of. Mistaken identity and charges based on false information should not be permitted to haunt you for the rest of your life.

In some cases, charges may be filed against you even if you were not arrested, because someone else who was arrested led law enforcement to believe they were you.

In this circumstance, if you can prove that you were not actually the person arrested, you can also seek expunction. While you physically were not arrested, an arrest did happen and as far as all the arresting officers and your records are concerned, it was you who was arrested.

On the same note, if misleading evidence was presented to the jury, or your charge came as the result of entrapment, that is a failing on the part of law enforcement and the prosecution and can be expunged from your record as long as no conviction or probation resulted from it.

If charges were filed against you and then dismissed, what that really means is somebody else messed up. That someone was *not* you. Someone gave false information, someone believed and acted on false information, someone arrested you without probable cause, or someone broke the law to entrap you.

Seeking expunction can keep the consequences of someone else's mistakes out of your future for good.

# Discretionary Expunction and Unneeded Arrest Records

There is always a discretionary loophole.

Say you were charged, convicted, and then later acquitted by a court of appeals, which overturns your conviction. You *were* convicted, but then subsequently acquitted, so your conviction is set aside. You qualify for discretionary expunction. This is also true if the period in which review of your case is granted expires.

To be eligible for discretionary expunction, the office of the attorney representing the state of Texas must recommend expunction. Now, no prosecuting attorney is just going to volunteer to do this to help you out. It is up to your attorney to be proactive in presenting a request.

When we at Texas Criminal Defense Group work with clients who might be eligible for expunction, we present documentation to the prosecuting attorney outlining the reasons we feel our client merits expunction, accompanied by any mitigating factors we can come up with, and negotiate with the district attorney to agree to recommend it.

If we can convince them to recommend it, then expunction is subsequently either approved or rejected at the discretion of the judge. If the judge feels that granting expunction does not serve the best interest of justice, they can block the expunction.

Common causes for discretionary expunction arise when false information or identity theft led to the initial conviction. You can also seek discretionary expunction on behalf of a deceased relative to clear the family name and bring about justice and closure.

## Arrest Records That Are No Longer Necessary

Here in the criminal justice system, if the police can use you to score a conviction, they will. If they cannot use you, you are expendable.

In the context of expunction, being considered expendable is actually a good thing, because the same holds true for your records. If your arrest records will not help the police put someone else behind bars, there is no reason for them to remain on record.

The attorney representing the state of Texas must certify that your records are not needed for any criminal investigation or criminal prosecution in order for the records to be expunged.

# Does My Child Qualify for Expunction?

It's a lot easier to break the law when you are a minor. Everything from underage purchase of tobacco to truancy to sexting—yes, sexting—are crimes that only people under the age of eighteen can commit, for example, or the purchase of alcohol if one is under the age of twenty-one.

Many age-related crimes are eligible for expunction when the minor reaches the age where their past crime is no longer a crime. In other cases, minors can petition for expunction after completing mandatory community service.

If you are wondering whether your child qualifies for expunction, here are some factors you want to consider:

- Was your child *arrested*? Or were they simply *detained*? In most cases, minors are detained and then brought home. Remember, expunction hides an *arrest*, not a detention. If there was no arrest, there is likely no need for expunction.
- Was your child convicted of an *age-related* crime (versus an activity that is criminal, regardless of age)? This means that if your child had done the same thing at a different age, it would not be a crime. For example, if your child has an underage drinking conviction on her record, she can petition for it to be expunged when she turns twenty-one.
- How many offenses occurred? Remember, expunction grants a person a *second* chance, not a third or fourth, no matter how young they are at the time. A lapse in judgment is a freak occurrence. Getting caught drinking underage once is a lapse in judgment. Getting caught drinking underage two, three, or more times demonstrates a habit pattern that cannot be remedied with a legal proceeding.

In many cases, expunction is dependent on your child completing community service, diversion classes, or getting their diploma. For example, your child can petition for expunction of truancy charges if they earn a high school diploma or its equivalent by the age of twenty-one.

If your child is convicted of underage tobacco use or purchase, their record can be expunged after completing a tobacco awareness program and community service relating to tobacco awareness. Again, in most of these cases, more than one offense disqualifies your child from expunction.

Before you take the time to petition for expunction, consult with a lawyer to make sure your or your child's situation actually qualifies. Expunction is a great option if you are genuinely eligible. Otherwise, it is just a waste of your time and money.

Talk to your lawyer first. They can help you to gain a full understanding of your situation and what you can do about it.

Expunction is a great option for putting a lapse in judgment or a bout of bad luck behind you where it belongs.

# The Expunction Procedure

Expunction is the possibility for you to wipe the slate clean and start fresh without a tarnished record. What now?

When it is time to arrange and file your petition for expunction, your attorney and the paralegals at your attorney's office can help you. You will need to gather all of the necessary information about yourself, your charge, your case, and all of the court proceedings stemming from it.

You will fill out a petition and file it with the appropriate court within the prescribed timeframe. Timeframe and place differ depending on what kind of expunction you seek.

Make sure you are absolutely clear on what evidence you need to provide, to whom, and when. You do not want to miss this opportunity because you forgot a date, delivered your petition to the wrong court, or filled out the right petition for the wrong type of expunction. Again, your lawyer or their paralegal can correctly guide you.

## The Civil Nature of Expunction Procedure

By the time you find yourself submitting an expunction petition, chances are you have been immersed in the criminal justice system for a while.

While your charges are criminal charges, expunction is *not* a criminal court proceeding. Regardless of what kind of expunction you seek, the procedure is civil in nature and you are therefore subject to the requirements of civil court.

That means the onus is on you to show a preponderance of evidence in your favor. You must meet all of the requirements for your expunction to be granted. This is not a case of you being considered innocent until proven guilty; this is not about determining whether or not you broke the law.

Think of it like registering a car you just bought. You cannot just omit the license plate number or your driver's license information and expect to get a title in the mail. You have to provide *all* of the required evidence and *all* of the required information to have a shot at your desired outcome.

What is this information?

Your petition must clearly show:

- *Who* you are
- *What* you were charged with
- *Where* the alleged crime took place
- *Where* you were arrested
- *Where* the actual records subject to expunction are

This last step is of the utmost importance for the simple reason that in order to have your records destroyed, you must first know where to find them.

Also, any agency in possession of your records has the right to contest their destruction. You are required to list all of these agencies and archives so they can be notified of your petition for expunction. (Your lawyer can help you ensure you do not overlook any of them.)

While it will vary slightly based on your circumstance, in general you will need to provide your:

- Name
- Gender
- Race
- Date of birth
- Driver's license or identification number
- Social Security number
- Home address of where you were living when arrested

You will also be asked to provide information about your arrest, including the offense you were charged with, the date the alleged offense was committed, the date and location of your arrest, and the arresting agency.

This information indicates who you are, when and where the arrest took place, and where any records of your arrest might be so they can be found and destroyed once expunction is approved.

For this reason, you will also need to provide your case number and court, as well as a comprehensive list of the names and addresses of people, agencies, and archives that would have these records.

This is the general information you must be prepared to supply for your expunction petition. Where you file your petition, when you file your petition, and what happens next varies based on the circumstances of your expunction and the kind of expunction you seek.

# Types of Expunctions

There are four basic types of expunction procedures: the standard expunction, an expunction for an acquittal or pardon, a discretionary expunction or dismissal, and expunction for identity theft.

## Standard Expunction Procedure

A standard expunction procedure means you did not receive an acquittal or pardon, and you were not charged or convicted as a result of identity theft. Chances are, you were arrested but never charged, or charged but never convicted.

For this reason, you are not under the time crunch that other kinds of expunction procedures incur. It goes without saying, however, that the sooner you can get your records expunged, the better it is for you.

Work with your lawyer to get your petition filled out with all the necessary information, evidence, and documentation. *Never file an incomplete petition!* This is a waste of time and opportunity. Make sure you have all the required information before you file.

There is no reason to rush with a standard expunction procedure. The only deadline is what you set for yourself. Once your petition is ready, you can either file it in a district court in the county where the crime allegedly took place, or in a district court in the county in which you were arrested.

## Expunction for Acquittal or Pardon

If you were convicted and then acquitted in a court of appeals, you need to hustle to get your expunction petition filed. You must file your petition with the trial court that acquitted you or in another court in that same district within 30 days of your acquittal, or you will have to pay filing fees.

A similar procedure applies for defendants who receive a post-conviction pardon on the basis of actual innocence. You have 30 days to file your expunction petition with the trial court that granted you this pardon, or another court in that district; otherwise you will be subject to fees.

## Discretionary Expunction or Dismissal

For these types of expunctions, you must file your petition in a district court in either the county where you were arrested, or in the county where the alleged crime took place.

In both discretionary expunctions and expunctions because of dismissal of charges, every agency that is listed on your petition must be served notice of your expunction petition at least 30 days before your hearing is scheduled to occur. This gives them time to oppose expunction if they so choose.

## Expunction for Identity Theft

This is by far the most involved expunction process. If someone managed to pass themselves off as you when arrested or used your identification information to implicate you in a crime you did not commit, it will take some extra effort to clean up the mess.

Do not panic—it can be done.

When you are our client, we sit down with you and guide you in compiling all of the standard expunction petition information, including the necessary personal information and documentation, details on the charge and the arrest, and any agencies that may have access to or possession of records regarding the incident.

Then, we prepare a statement for you confirming your identity and provide evidence that the person arrested was not you.

Once the entire petition is filled out, it is filed with the office of the prosecutor in the county *in which YOU live*.

This is different from all other expunction procedures. Rather than file with the court in the county where the arrest, the trial, or the crime took place, you will instead file with the prosecutor in the county where you live.

This is because it is not about the crime, or the charge, or the trial. This is solely about your personal bout of bad luck—being the victim of a form of identity theft. Your only connection to this crime was the unauthorized use of your name, and the arduous consequences that followed.

# Opposing Expunction

When your records are expunged, they are destroyed. That means no one will see or hear of them again because anyone who did reveal that information would be subject to the penalty of Class B misdemeanor.

Expunction is a permanent procedure—it cannot be undone—which is why so many agencies must be notified when you file your petition. Any of these agencies have the right to oppose the expunction. These are agencies that either have your records on file or can request access to them.

For example, if a police department believes that your records can still be helpful in a criminal investigation, they have the right to oppose expunction of those records. Remember, we are still in the criminal justice system, and if the police can use you, they will. If they cannot, you are expendable—and, again, the good news is: so are your files.

## Expunction Hearing

When you file your expunction petition, a hearing date will be set in no fewer than 30 days from the date you filed. At the same time, all agencies listed must be served notice of your hearing at least 30 days prior to your hearing date. They can then either file a denial or appear at your hearing if they wish to oppose the expunction.

If this happens, you and your lawyer must present new evidence to strengthen your claim to support the expunction in the face of opposition. For this reason, when you go about arranging your petition, you need to prepare for the possibility of opposition in advance.

If your expunction is granted, any agency you have listed in your petition has six months to appeal the expunction order **ONLY** if they were not notified of your petition in time or another clerical error prevented them from exercising their right to oppose.

If one agency is able to successfully appeal your expunction request, the entire request is overturned and all agencies listed can retain or continue

to access your records. The ruling applies across the board. As such, if your expunction is approved, all agencies across the board must comply.

## **If You Waived Your Right to Expunction in a Plea Deal**

Another reason your expunction petition may be opposed is if you agreed to waive your right to expunction in pretrial negotiations. This is why you want to be extra careful when making plea deals and go over every last word in your agreement with your lawyer.

If waiving your right to expunction is a condition for your charges being dropped, work with your lawyer to remedy the situation. *Never sign anything without first carefully reviewing the document and your options in depth with your lawyer.*

From the very beginning of your case, decide whether or not expunction is a priority for you. If expunction and a clean record is your ultimate goal at the end of your scuffle with the criminal justice system, make sure that no matter what happens, you NEVER sign away your ability to seek expunction.

Remember: your record is only eligible for expunction if you walk away *without* a conviction, *without* probation, and *without* having signed away your right to expunction. Stick to those three main criteria and a fresh start will likely be in your future.

# Do I Qualify for Non-Disclosure?

If you cannot get your record expunged, you may still be able to petition for non-disclosure. This effectively seals off all record of your arrest, probation, and conviction from the public record.

Law enforcement, licensing boards, and several other specific agencies can still request access to these records, but only under very specific circumstances. When granted non-disclosure, if someone were to run a background check on you, all records of your arrest, prosecution, and conviction would be sealed and invisible. The purpose of non-disclosure is to hide a successfully completed deferred adjudication or conviction for certain offenses from public record.

## Non-Disclosure Following Deferred Adjudication

The deferred adjudication process involves a judge deferring (delaying) judgment on your case until you complete a series of court-ordered conditions, which may include a period of probation and its required terms, community service, and—depending on the charge—education classes and treatment.

This is called community supervision, because it is as though the community is watching over you to test whether or not you can be a responsible member of society.

After completing part of your community supervision time—the specifics of which we will get into later in this chapter—the judge will review your case, your behavior, and the progress you have made.

The judge may decide to discharge you early from community supervision, and at that time your term of deferred adjudication will be considered successfully completed.

If you have missed appointments and classes, failed drug tests, or have delinquent fines, your term of community supervision will continue.

By the time you successfully complete this term, the judge will again review your performance and discharge you from community supervision, then set aside your conviction.

You can walk away from the incident without a conviction, but your record will still show your arrest, the investigation that followed, your case, and your term of deferred adjudication. In short, any background check on you will turn up dirty laundry.

Deferred adjudication means you were found guilty as charged but given a chance to prove yourself a responsible member of society. The black mark is that you were proven guilty and this will follow you as long as it is visible on your record.

If you have successfully completed deferred adjudication, you are entitled to be able to walk away from the poor judgment call that landed you in the system.

Non-disclosure will seal off your records from employers, landlords, lenders, colleges and universities, and most other people and entities that would run a background check on you.

That means you can meet your date for coffee and rest assured she knows nothing of your brief criminal history. You can deny your arrest and conviction ever occurred and get on with your life.

## **Non-Disclosure Following a Conviction**

HB 3016, a new law effective September 1, 2017, expands the opportunity to petition for non-disclosure by individuals convicted of certain minor, nonviolent misdemeanors, such as a DWI.

Individuals convicted of a first-offense DWI, for example, can petition for non-disclosure after observing sentence conditions for a designated amount of time.

Being convicted of a second or third DWI, of family violence, an offense requiring sex offender registration, and other violent acts, however, automatically exclude someone from being able to petition for non-disclosure of their related criminal history.

# Non-Disclosure Eligibility

You are eligible for non-disclosure in the following three situations:

**1. If you have successfully completed a deferred adjudication probation**

If your conviction was deferred while you completed a period of community supervision, including adhering to probation terms, paying fines, and attending classes or treatment, the judge will dismiss your indictment or information, set aside the verdict, and release you from any penalties you would have faced if convicted.

While you would not qualify for expunction because you served a period of probation, you would be eligible for non-disclosure, in which case all records of your case would be sealed.

**2. If you have been discharged early from a deferred adjudication probation**

The judge may decide to discharge you early from community supervision, and at that time your term of deferred adjudication would be considered successfully completed. At this point, you would be eligible for non-disclosure and all records of your case would be sealed.

**3. If you plead guilty and have a conviction on your record**

If you were convicted of a misdemeanor offense, were sentenced to or served any jail time, and you had never been previously convicted or placed on deferred adjudication community supervision for anything (other than traffic tickets), you may be entitled to a non-disclosure at the appropriate time. This applies only to certain types of misdemeanor offenses, such as a DWI.

If you succeed in being awarded non-disclosure, law enforcement agencies, some licensing boards, and other entities will still be able to access your sealed files, but only under very specific circumstances.

They will be able to see your charge and your involvement with the criminal justice system, but here is the good news: *Individuals who may see your records down the line will not be lay people.*

These are government agencies and departments with a greater depth of understanding and familiarity with the criminal justice system, legal proceedings, and the like. For the most part, the general public will have no access to any record of your run-in with the system.

While non-disclosure is a much more accessible option than expunction, there are still many exceptions that would disqualify you. First and foremost, let us not forget what non-disclosure does: it is an opportunity to give people a second chance. Not a third or fourth chance.

That means if you are charged with anything other than a very minor misdemeanor while you are on deferred adjudication, you might render yourself ineligible for non-disclosure. Do not worry—your parking ticket does not count.

Some offenses simply cannot be sealed off, even if you do successfully complete deferred adjudication or are discharged early from deferred adjudication probation. These include second- and third-offense DWIs, as well as any offense that would require you to register as a sex offender.

Also included on the list are injury to or abandonment of a child, family violence, aggravated kidnapping, violation of a protective order, stalking, and murder. If you have ever been convicted or placed on deferred adjudication for any of these charges, you cannot seek non-disclosure for those or any other offenses.

If non-disclosure is a goal for you from the beginning of your case, you can work with your lawyer to do everything you can to make sure it is still a possibility when all is said and done. Set a goal at the beginning of your case to obtain a non-disclosure and clean up your record.

Then, you and your lawyer can make it a priority to get your charges reduced or changed to charges that are not disqualified from non-disclosure. You can adopt a more aggressive strategy to get charges against you dropped and move forward with expunction if your case is strong.

Consult with your attorney to see whether non-disclosure is actually an option for you before you get your hopes up or file your petition.

There is no use in spending time and energy on something that cannot be achieved when you could instead focus on working toward your best possible outcome.

The first step is to identify what your options are and then work with your lawyer to assess the best path to get there.



# Exemptions to Expunction and Non-Disclosure Orders

To put it bluntly, expunction and non-disclosure are the best you can hope to get once you have been arrested or convicted in the state of Texas. Having your records destroyed or sealed will keep them out of the public eye.

Because neither of these procedures are constitutional rights, judges tend to broadly interpret cases involving these procedures.

For example, it has been ruled that organizations can rely on another's personal observations and personal knowledge of your past without violating an expunction order because no records that have been sealed off and destroyed were necessary to acquire this knowledge.

An expunction order might also contain exemptions that allow certain agencies to retain their records for the duration of a waiting period, or even indefinitely. This compromise is to allow people to petition for expunction before any statute(s) of limitations expire.

Expunction and non-disclosure will not erase every trace of your arrest or deferred adjudication, but it does give you the right to deny both that these events ever occurred and the existence of the orders suppressing records of it.

Records may be retained or left unsealed if there is still an ongoing investigation regarding a separate charge attached to the charge on which you were arrested. Judges are mixed about whether or not parts or all of a criminal episode—or alleged criminal episode—can be expunged.

Another reason your expunged records may be kept by law enforcement officials is if your expunction was the result of an acquittal and the records of your case are still useful in another criminal investigation.

If they are still needed to investigate someone else, or to investigate you for a different crime, the police can request an exception. You may be under investigation for a different crime and the records pertaining to

the arrest you want to get expunged incidentally shed some light on this other investigation.

If your expunction was granted because your arrest derived from identity theft, the police may still need access to the records of your investigation and arrest to find the actual culprit. At this point, however, the burden of proof is on the police to prove why they continue to need your records.

This may look like a lot of exceptions, but even if these exceptions are granted, police are prohibited from releasing your records or disseminating them in any way. These exceptions remain contained and private.

# What Happens After an Expunction or Non-Disclosure Order?

While there is no way to walk away with a squeaky-clean record beyond all access and scrutiny, **expunction** brings you pretty close to erasing your criminal record. For all practical purposes, beyond very specific and rare circumstances, all records of your arrest will no longer exist and you will have the right to omit or deny that it ever occurred.

Even under oath, you and everyone else need only indicate that the matter in question has been expunged and leave it at that. Employers, licensing boards, landlords, and lenders cannot see your arrest or pass judgment on you for it.

With a **non-disclosure** order, all records of your run-in with the criminal justice system will be sealed off and you will be able to omit or deny that it ever happened.

When applying for jobs, your potential employer does not have to be told of your criminal history because you have proven to whatever court convicted you that you have learned from your past transgressions and become a responsible member of society.

Remember, even when agencies can access your records, they will know that you have successfully petitioned for a non-disclosure or expunction. They will also find no convictions on your record.

While there is plenty of social stigma attached to having ever been arrested, it is nowhere near as damaging as wearing a conviction on your record.

At Texas Criminal Defense Group, we think of expunction and non-disclosure as mitigation tools. These tools lessen the damaging consequences of what has already been put in motion. As with any good defense strategy, we start thinking about ways we can mitigate from the very beginning.

Working expunction or non-disclosure into your long-term mitigation plan goes a long way toward erasing the penalties and disabilities a tarnished record can otherwise wield in your future.

## **How Fast Does an Expunction or Non-Disclosure Order Go into Effect?**

How quickly an order goes into effect varies depending on whether it's an expunction or non-disclosure order.

### **An Expunction Order**

As soon as your expunction order is finalized, every entity listed on that order is prohibited from keeping, releasing, or otherwise disseminating your records. That is why it is so important that you and your lawyer sit down to list every agency that might have records on file regarding your arrest.

Once your expunction is approved, the District Clerk sends a notice via certified mail, secure electronic mail, hand delivery, or facsimile to all the agencies listed in your expunction order. These agencies must then notify any archives or central records bureaus they sent your records to and request they be returned.

Meanwhile, the Department of Public Safety (DPS) notifies all their records bureaus and archives to track down any and all records pertaining to that particular arrest. All of these agencies, bureaus, and depositories must then send all files and records they have regarding your arrest back to the District Clerk who issued the notice.

In those instances where files cannot be removed for practical reasons, any reference to you must be removed or redacted (blacked out).

All index references to these files about to be destroyed must be destroyed as well. An expunction order instigates a massive purge of anything that mentions—or refers to something that mentions—your arrest and investigation.

Private agencies are not required to submit your records to the District Clerk's office, but they ARE required to destroy them.

Once all records that have not been destroyed or blacked out elsewhere arrive at the District Clerk's office, they must be kept secure until the destruction date. Each agency is also bound to certify that they have complied with the expunction order.

After the 60th day following the date the expunction order was issued, the District Clerk can destroy your records. And these records **MUST** be destroyed by the one-year anniversary of your expunction order, at the latest.

The District Clerk is required to inform the prosecuting attorney at least 30 days before the records are destroyed. If the prosecutor does not respond within 20 days of notice, destruction can commence.

If the prosecutor objects in that time, the records will be kept until the one-year anniversary of the expunction order, and then destroyed.

If your expunction was because of a pardon or actual innocence, the District Clerk will keep your files in case you want to file a civil suit on the grounds of wrongful imprisonment.

This way, your record will be cleared, but you will still be able to access your records for the purpose of a civil suit on your behalf in the future, if you so choose.

In the case of expunction stemming from identity theft, rather than destroying the documents pertaining to your arrest, your name is removed. If the true identity of the person arrested who stole your identity is known, their name may replace yours, if it is practical and relevant.

After six months, you should be able to run a background check on yourself and have it come up clean. If this is not the case, notify your attorney, the DPS, and the District Clerk to check on compliance.

Anyone who knowingly does not destroy or return files or identifying information subject to the expunction order is guilty of having committed a Class B misdemeanor.

## **Non-Disclosure**

Once your non-disclosure order has been approved, the clerk has 15 days to serve the order to the Department of Public Safety. Within 10 days of receiving the order, the DPS must seal all files.

The DPS then sends a copy of the non-disclosure order to any other agencies that possess or have access to their records. These agencies then have 30 days to seal your records.

All of your records still exist—they are just sealed off. While law enforcement officials and agencies can still access and share your records among themselves, they can only do so for the purposes of law enforcement and not with outside parties.

Agencies outside of the criminal justice system, with a few exceptions, are prohibited from accessing or disseminating your information.

Note that professional licensing agencies that pertain to law and law enforcement, finance, education, medicine, or working with the elderly or disabled can access your sealed records, and so can the Department of Family and Protective Services and state health and mental health agencies.

This list is actually fairly short, and when they access your records they will find no record of a conviction. Your arrest or deferred probation may still raise some red flags, but nothing that can officially stop you from achieving your career goals or getting the medical or mental health help you need.

There is no established timeframe as to how long the DPS has to notify other agencies, which complicates compliance. It is always a good idea to run a background check on yourself after six months to see what, if anything, comes up. If your records have not been sealed, contact the DPS.

## **After 180 Days**

Six months after your expunction or non-disclosure order goes into effect, your record should be clean.

While some agencies and administrative bodies will still be able to access your files if your expunction is subject to exceptions, or if yours is a non-disclosure order, take comfort in the fact that employers, colleges,

landlords, blind dates, and nearly anyone else who might have reason to run a background check on you will come up with nothing regarding your sealed or destroyed records.

Nothing completely erases your past, admittedly. These procedures will not completely delete every blip on your record or seal off any indication that you had a brush with the criminal justice system.

However, these procedures work to keep your criminal history from being publicly accessible. *And they do work.* These procedures have helped countless defendants gain a fresh start, with a record that is clean, for all intents and purposes.

If expunction or non-disclosure is a viable option for you, explore them with your lawyer. The sooner you make a decision about what your best possible outcome would be and talk to a lawyer about your situation, the better.

The faster you can develop a strategy, the more options you have to consider, and the better situated you will be to keep as many of them open for as long as possible.

An arrest is stressful, and dealing with charges and deferred adjudication certainly makes life harder. But this will pass, and with a solid strategy and a skilled lawyer you can feel confident about closing this chapter of your life and walking away a better person.

You can move forward without the social stigmas of a criminal record and start all over again—with a clean slate.



# Formulating a Defense Strategy for Expunction or Non-Disclosure

From your very first encounter with law enforcement—whether it's getting word that there is a warrant out for your arrest or your actually being arrested—you need to talk with your attorney as soon as possible. If you have one, call them. If you do not, find one. Quickly.

The sooner you seek legal counsel, the better off you will be. If you find yourself under arrest, invoke your right to remain silent *and stick to it!* Do not talk to the police, including trying to talk your way out of an arrest, do not talk to the other people in your holding cell, and do not discuss the details of your case with ANYONE over the phone—and that includes your attorney.

Remember, anything you say can and will be used against you. And all calls from jail, even those to your attorney, are recorded. You cannot talk your way out of an arrest and you cannot talk your way out of a holding cell. So don't hurt yourself by trying.

Because you can, however, talk yourself into a conviction. Just remain silent until you can speak with your lawyer—and only do it privately, face to face.

## Red Flags—What to Watch Out For

If you want to keep an incident off your record, be careful not to accidentally waive your right to expunction. Believe it or not, this can and frequently does happen. It is easy to fall into a trap if you do not review the fine print of any plea agreements or settlements carefully with your lawyer.

Here are some traps to watch out for:

1. **Plea agreements that settle for a lesser conviction.** A conviction is a conviction, and that means you cannot get your records expunged. A conviction following deferred adjudication is also ineligible for non-disclosure.

By agreeing to a lesser charge, you commit yourself to a criminal record that cannot be sealed. If you are adamant that this cannot go on your record, do not fall into this trap!

2. **Waiving your right to expunction.** Some plea agreements include waiving your right to expunction. If your ultimate goal is to ensure your records are sealed off, *do not agree to this!*

You must thoroughly understand every bit of your plea agreement before you sign it. These are binding and you will be held to the consequences.

If your lawyer has already been able to negotiate avoiding a conviction, do not settle for a tarnished record until you have carefully weighed all your options with your lawyer. There may be other options that will not disqualify you from being eligible to petition for expunction.

The bottom line: never agree to anything without first consulting a skilled criminal defense attorney who will fight for expunction or non-disclosure for you at every opportunity.

# Working with an Expunction Lawyer

At Texas Criminal Defense Group, we establish your desired outcome from the very beginning, when we first speak about your case. Why? Because even if your desired outcome does not ultimately pan out, we cannot move forward unless we know what our objective is.

So, when you sit down with your lawyer, take an honest look at your current situation—your health, your finances, your career, your family.

Next, honestly consider your aspirations for the future. If you know you cannot afford to have an arrest on your record, we will automatically take a more aggressive approach to your case. In these cases, if we have a good defense, we use tactics like suppression hearings to challenge and suppress the arrest.

If walking away from this whole experience without a conviction so your record can then be expunged is your goal, we need to know that from the beginning so we can avoid making agreements or taking actions that could disqualify you from expunction.

If the crime you are charged with falls outside the scope of what qualifies for non-disclosure, we may try to get charges reduced, changed, or dropped.

If you have prior convictions that disqualify you from non-disclosure and expunction in the first place, you must tell us this so we can amend your expectations while still working toward getting you as close to your desired outcome as possible.

No lawyer can guarantee an outcome, good or bad. No responsible lawyer will ever promise you anything. Nothing in law is certain, but if we establish your desired destination, we can devise the best route to get there.

By identifying a desired outcome, we have a target we can always work toward. This is our reference point that guides your defensive strategy. We have been doing this for a long time and we are very good at it.

With experienced lawyers who possess a reputation for success in your corner, like Texas Criminal Defense Group, you have options. When you make the decision from the beginning of your case that expunction or non-disclosure is your desired outcome, we can maneuver the investigation and strategy toward reaching that goal.

# Meet the Texas Criminal Defense Group Team

Attorney Stephen L. Hamilton, a partner at Texas Criminal Defense Group, has been awarded the highest possible AVVO rating (10) and his counsel is highly esteemed by his peers. Stephen ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He is a lifetime legal member of the National Organization for the Reform of Marijuana Laws (NORML), the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.



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Stephen L. Hamilton

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Scientific certifications include completing Blood Testing Gas Chromatograph training (used to test blood for alcohol and/or drug levels) and solid-state forensic drug testing (the legal requirement for Texas lab technicians to establish and identify substances by their precise drug composition).

Stephen has tried over 100 cases to a jury and has obtained not guilty verdicts in cases ranging from traffic tickets to those carrying a punishment range of 25 years to life in prison. He wins cases through all available means: motions, negotiations, trials, and appeals.

Before becoming a partner at Texas Criminal Defense Group, Shane had a solid history as a successful local businessman and owner of three bond companies, National Bonding of Lubbock, Lone Star Bail Bond, and American Bail Bond. Shane worked for more than three decades to assist clients and their families navigate their way through the criminal justice system, liaising with attorneys, judges, clerks, and the courts throughout Lubbock and most of Texas before deciding he wanted to help his clients beyond getting them bonded out of jail.

With his undergraduate degree in criminal justice, he pursued his dream of becoming a criminal defense attorney and graduated with his J.D. from Charlotte School of Law, Charlotte, North Carolina. Returning home to Lubbock, he worked with the firm as of counsel and is now a partner at Texas Criminal Defense Group. He focuses his practice in the area of criminal defense. Shane's strong ties to the Lubbock community extend to ownership of a number of local businesses and the many events he has produced for Texas Tech students. As an active member of the community, he understands that good people make mistakes and is driven by his passion to protect the future of such persons and resolving their cases quickly and positively.



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Shane Byrd

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**If you or a loved one ever find yourself arrested in Texas—because even if the charges are dropped, your name stays in the records—you MUST read this book on how to protect your privacy and maintain confidentiality. Otherwise, anyone doing a simple background check, from a boss or university to a bank, landlord, or even a first date will see your name linked to a crime. Don't let that happen!**

Attorneys Texas Criminal Defense Group believe in empowering people to make the best decisions when confronted with potentially life-altering events caused by an arrest. Everyone is entitled not only to a strong and passionate defense but the chance to expunge any record of their arrest or ensure nondisclosure whenever possible. That is why they have written this book. It will arm you with information on how to expunge or seal your arrest record in Texas and how to formulate the best defense strategy possible. Read it before you consider any settlement or plea agreement; otherwise, it might be too late!

## ABOUT THE AUTHORS



### Stephen L. Hamilton

Attorney Stephen Hamilton is the founding partner and lead trial attorney at Texas Criminal Defense Group ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He has been awarded numerous awards, and his counsel is highly esteemed by his peers. He is a lifetime legal member of the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.

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