

## Expunction Questions from CLE

**Q:** Are expunction petitions on Austin Community Court cases (Class C's) filed in Travis Co. District Court/Clerk's Office?

**A:** Yes

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**Q:** If we reset an expunction hearing/does the District Clerk re-notice agencies?

**A:** You may only reset the hearing for a later date (not prior) than the original hearing date. We do not re-notice agencies if you merely have a scheduling conflict. If you reset because you have amended the petition with information pertinent to the agencies, we re-notice with the new hearing date. You will need to contact the court coordinator for your assigned court to reset and obtain a new hearing date.

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**Q:** Who do we contact regarding the (a) documentation that you can't substantiate records that have been expunged/non-disclosed or (b) negative letter?

**A:** You can request a records search based on your client's name + d/o/b from the clerk of the court where the expunged/non-disclosed record was originally filed. If there are no other cases in that court for your client, you will receive a negative letter. The District Clerk's letter states:

I, Amalia Rodriguez-Mendoza, District Clerk of Travis County, Texas, do hereby certify that a records search for any non-adjudicated indictment or information and for any adjudication by conviction, deferred adjudication, or imposed sentence relating to an indictment or information was made for the name:

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for the period of \_\_\_/\_\_\_/\_\_\_\_\_ to \_\_\_/\_\_\_/\_\_\_\_\_

and the record search was negative for the above named individual for the period aforesaid, meaning that no non-adjudicated indictment or information and no adjudication by conviction, deferred adjudication, or imposed sentence relating to an indictment or information was found.

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**Q:** DPS is not notifying any private entities of either expunction or nondisclosures. Are the courts & clerks aware that DPS does not comply with this notification provision of both expunction and nondisclosure? If so, have the Judge or court clerks discussed either this problem or a situation?

**A - DPS:** The Department of Public Safety has made every effort to secure the personnel required to notify private entities. DPS is currently notifying entities of orders of nondisclosure and will soon be notifying entities of orders of expunction.

**A - District Clerk:** Art. 55.02, Sec. 3 (c-2) places this requirement on DPS but, unlike the requirement that they certify to the court that their records have been returned or expunged/non-disclosed, the statute does not provide that they certify to the court their compliance with the notification provision. If the statute is amended to provide for such certification, we will update our form accordingly.

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**Q:** Why is there a filing fee on Non disclosure orders in addition to the \$28.00 if the petition uses the same cause number as the case that is already filed with the Clerk's Office?

**A.** The additional \$237.00 fee applies when a petition that establishes a new cause of action or re-opens a previously adjudicated cause of action is filed.

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**Q:** For the Website-Add info on Not Guilty expunctions.

**A:** Felonies: No petition or waiting period is required, but the defendant is responsible for providing to the court (District Clerk) the necessary information to effect the expunction. The expunction order is entered in the original case with a copy of acquittal order attached. No fee is charged if the expunction order is filed within 30 days of the acquittal (courts have plenary power over cases for 30 days after adjudication). However, there is a fee for notifying agencies of the order: \$5.00 for each agency served electronically and \$7.50 for each agency served by mail. If an order is not entered within 30 days, the court no longer has plenary power and a regular expunction petition is filed as a separate cause of action and all filing and notice fees are charged.

**Misdemeanors:** No petition or waiting period is required, but the defendant is responsible for providing to the court (District Clerk) the necessary information to effect the expunction. The expunction order, with a copy of acquittal judgment attached, is filed with the District Clerk, who assigns a new case number. No fee is charged if the expunction order is filed within 30 days of the acquittal. However, there is a fee for notifying agencies of the order: \$5.00 for each agency served electronically and \$7.50 for each agency served by mail. If an order is not entered within 30 days, a regular expunction petition is filed as a separate cause of action and all filing and notice fees are charged.

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**Q:** How is the record “sealed” (stamped? Paper seal?)

**A:** The computer record is electronically sealed and a non-disclosure notation is entered, which appears as an alert on the record when it is accessed. Paper records are removed to a secured location and marked as confidential. Microfilm records are deleted from the public film rolls and removed to confidential film rolls.

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**Q:** Are all non-disclosures now handled through the District Clerk’s Office whether misdemeanor or felony?

A: If the case originated in the District Courts it will be filed in the District Clerk's office in the under the original criminal cause number. If the case originated in County Courts then it will be filed in the County Clerk's office under the original criminal cause number.

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Q: If an agency does not subscribe to electronic filing do we still need to bring in a separate copy for that agency?

A: Yes

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Q: I received a "not guilty" in a misdemeanor DWI (Williamson Co.), the code says to prepare the order, notify the state & a District Judge must sign the order. Neither clerk's office will accept/file the order signed by the District Judge.

A: While statute applies to all jurisdictions, without knowing more about the particulars of this case, we would be speculating as to the reason for rejecting the filing. We may be able to provide better direction if more specific information is desired.

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Q: What, if anything, should be done if a petition and order were filed with the petitioner's full name (not their initials) in the style of the case? Is there still a record of offense?

A: A civil petition for expunction may be filed with the petitioner's full name in the style. Because the expunction case record is public until it is sealed through the expunction order, the use of initials helps to maintain a level of "practical obscurity" until such an order is entered. As long as the court orders the expunction, both the criminal and civil cases are destroyed in accordance with law.

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Q: Is it possible to expunge Assault FV arrests from DPS handgun records/concealed carry license records? If so, is this included as a separate agency?

A - DPS: If a final order of expunction directs DPS to expunge a charge, including Assault FV, and DPS does not appeal the order, then DPS will expunge, remove or obliterate records associated with the charge as directed. This would include expunging the arrest records maintained by the Concealed Handgun Licensing Bureau. It is **not** necessary to list the CHLB as a separate entity.

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Q: Is there a way to check which private entities have ordered copies of criminal records?

A: The Department of Public Safety publishes a list of entities that have purchased the public criminal history database. This list is available at the following link:

[https://records.txdps.state.tx.us/DPS\\_WEB/ForSale/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/ForSale/index.aspx)

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Q: How does an out-of-state petitioner obtain his DPS number? No DPS number in the case file.

A: A petitioner should order a copy of their personal criminal history record to obtain his/her DPS number. The following link shows the procedure for review of personal criminal history record:

<http://www.txdps.state.tx.us/ftp/forms/cr-30.pdf>

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Q: What are you supposed to say if an agent of the federal government asks if you have ever been charged with a crime? The feds are not, as a general rule, bound by state law.

A: While state law does not bind the federal government, the state does have statutory jurisdiction over its courts and agencies and may define what constitutes a criminal record. As long as the expunged/non-disclosed case was adjudicated in a court established under the laws of

the state, and state law provides for a negative answer to such a question, the answer may be “no.”

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**Q:** Did I understand Norma to say that from now on we just bring one original copy of the expunction petition to the Clerk’s Office and we no longer bring one copy for each agency to be notified?

**A:** You do not need to provide copies of your petition if the agencies that you have listed already have an electronic mail address on file with our office. We only need copies for agencies that are not part of our electronic notification process.

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**Q:** What about order? Do we bring you just one expunction order or one for each agency?

**A:** If any agencies listed do not have an electronic mail address on file with our office, you will need to provide a copy for each of those agencies.

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**Q:** Is the County Clerk’s office still revealing names and cause numbers of ‘sealed’ cases?

**A:** Sealed cases are not available for review from our FACTS case management system.

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**Q:** Will the CA or DA oppose expunction before the statute of limitation runs even if the case can’t be refilled, e.g., deferred disp. successfully concluded.

**A:** Either the CA or CA is entitled to oppose on limitations grounds even if the case can’t be re-filed, because those were the facts of Beam. The DA generally opposes before limitations run. The CA evaluates on a case-by-case basis.

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**Q:** Can a copy of the expunction petition and order be obtained (w/the cause #) prior to the 1-year period? (before it's destroyed).

**A:** When the order is granted you will receive two certified copies of the order. You may obtain additional copies of the petition or order prior to the destruction date, which is one year from the date of the order. Cost for copies: \$.50 per page + \$1.00 per page for certification.

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**Q:** Does every private agency need to be listed individually on an expunction petition order? If so, where does one obtain a list of agencies?

**A:** No. The Department of Public Safety will provide notice to those private entities that have purchased the public criminal history database. This list is available at the following link:  
[https://records.txdps.state.tx.us/DPS\\_WEB/ForSale/index.aspx](https://records.txdps.state.tx.us/DPS_WEB/ForSale/index.aspx)

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**Q:** What happens if an agency has not confirmed compliance within one year?

**A:** It is recommended you contact the agency. The District Clerk does not have any enforcement authority in this regard.

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**Q:** If a case is reduced, can the arrest for the 1<sup>st</sup> more serious offense be expunged to reflect the convicting offense immediately?

**A:** The law does not permit expunction of the more serious offense in the "pleadown" situation. In this county, however, the CA is willing to evaluate on a case-by-case basis. The DA is willing to do the same, **BUT ONLY IF** the more serious charge has been dismissed **AND** the defendant pleads to a less serious offense that has been re-filed under its own cause number.

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**Q:** May a deferred disposition on a Class C offense be expunged as soon as the case is dismissed, or does the Beam rule apply?

**A:** The Beam rule applies. If the defendant has successfully completed deferred disposition, the County Attorney will not oppose early expunction, but another agency may oppose it.

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**Q:** How long does it typically take to get confirmation of expunction completion from? 1)DPS 2)APD 3)TCSO

**A:** The agencies comply 30 - 90 (or more) days from the day that the agency receives the signed order. Since we started notifying agencies via electronic mail the response time has improved. The response time from some agencies is now 15 – 30 days from the day that they receive the signed order.

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**Q:** What is Norma Gujarado's email address and direct number?

**A:** 512-854-9270 --- [norma.gujardo@co.travis.tx.us](mailto:norma.gujardo@co.travis.tx.us)

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**Q:** What is the cost for search and negative history letter?

**A:** \$5.00 search fee; \$.50 copy per page, \$1.00 certified per page