

# How Do I Expunge My Record?

*presented by:*

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**Royce West**

Senatorial District 23

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# HOW TO EXPUNGE YOUR RECORD

## Process of an expunction:

- ◆ Requires filing a petition with the appropriate court (court of jurisdiction) in the county where the arresting offense, or alleged offense took place - to have any and all records and files of the offense related to the arrest expunged or destroyed.
- ◆ To expunge a record literally means to destroy the record. It would no longer be generally available to the public.

# Who is eligible to have a record expunged?

A person who:

1. was arrested, prosecuted and was later acquitted of wrongdoing or found innocent of the offense – *unless the offense was part of a criminal episode for which they can still be prosecuted.*
2. was arrested and convicted of an offense and later received a pardon from the governor.

# Who is eligible to have a record expunged?

3. *meets each of the following conditions.*

a) the case was never brought to trial: there was no indictment or the indictment was dismissed or thrown out (quashed);

- the statute of limitations has expired for any charges, meaning the time wherein a charge must be brought forth for trial or dropped; **or**

- the person charged successfully completed a pretrial diversion program **or** the indictment was based on false information **or** a mistake was made **or** there is reason to believe that the person charged did not commit the offense **or** because the indictment was void ;

***Previous law - until September 1, 2011***

# Who is eligible to have a record expunged?

b) the person was arrested and later released, was not convicted, and did not receive probation (court-ordered supervision) for a charge other than a Class C - fine only offense; *and*

c) the person has not been convicted of a felony in the previous five years.

***Previous law - until September 1, 2011***

# Who is eligible to have a record expunged?

*New law as of September 1, 2011*

A person is eligible even if the statute of limitations has not expired if -

1. the case was never brought to trial, there was no final conviction, the case is no longer pending, there was no court ordered community supervision (probation) other than for a Class C misdemeanor, and there has not been an indictment and prosecutors agree that the records will not be used in the future for an investigation or to prosecute.

***Eligible immediately!***

# Who is eligible to have record expunged?

A person is eligible even if the statute of limitations has not expired if – (cont'd)

2. at least **180 days** have passed from the date of arrest and the arrest was for a **Class C misdemeanor** *and no felony charge has arisen from the same event*

*OR* at least **1 year** has passed from the date of arrest and the arrest was for a **Class B or A misdemeanor** *and no felony charge has arisen from the same event*

# Who is eligible to have record expunged?

A person is eligible even if the statute of limitations has not expired if - (cont'd)

*OR* at least **3 years** have passed from the date of arrest and the arrest was on **felony charges** *and no other felony charges have arisen from the same event.*



# Who is eligible to have record expunged?

***However*** - if the statute of limitations has not expired, an expunction may be granted,

***but*** - law enforcement and prosecutors may keep the records and files of the case!

# Who is eligible to have record expunged?

A person is eligible if –

3. the statute of limitations for the offense has expired, meaning the time wherein a charge must be brought forth for trial or dropped.

*(...the case was never brought to trial, there was no final conviction, the case is no longer pending, there was no court ordered community supervision (probation) other than for a Class C misdemeanor)*

# Who is eligible to have a record expunged?

A person is eligible if –

4. there has been an indictment and the person charged successfully completed a pretrial diversion program **or** the indictment was based on false information **or** a mistake was made **or** there is reason to believe that the person charged did not commit the offense **or** the indictment was void.

*(...the case was never brought to trial, there was no final conviction, the case is no longer pending, there was no court ordered community supervision (probation) other than for a Class C misdemeanor)*

# A person may also be eligible for an expunction if:

1. the person is tried and convicted of the offense and is later acquitted on appeal *unless* the offense charged was part of a “criminal episode” for which other charges can still be prosecuted.
2. the identifying information of an innocent person was given by the person arrested without the consent or knowledge of the innocent person.
3. the attorney representing the state recommends to the court prior to trial that the records related to the offense are expunged.
4. the records appeared as a result of an error by the Department of Public Safety that makes the information not true for that person.

# A person may also be eligible for an expunction if:

10 years after successfully completing deferred adjudication and receiving a favorable recommendation from the Board of Pardons and Paroles, they are granted a pardon.

- required passage of a *Constitutional Amendment – SJR 9 (passed Nov. 2011)*

***New law - SB144 West***

# A person may also be eligible for an expunction if:

A person may also be eligible for an expunction if he or she is now at least 18 years old and was previously convicted of a single truancy offense.

- **OR** he or she completes conditions as required by the court (*regardless of whether the person has received one or more truancy offenses*).
- **OR** he or she is not yet 21 years old, and presents to the court a high school diploma or GED certificate (*regardless of whether the person has received one or more truancy offenses*).

**New law - SB1489 Whitmire, West**

# A person may also be eligible for an expunction if:

- he or she is 17 years or older and has a single conviction for the new offense of *Sexting*.

***New law - SB407***

# Who is not eligible to have a record expunged?

1. Any person convicted of an offense that is more serious than a Class C Misdemeanor or fine only offense.

*Example of Class C misdemeanors - traffic tickets, parking violations*

***...Unless the person was convicted and the conviction was later overturned or the person received a pardon***



# Who is not eligible to have a record expunged?

2. Any person who was given and successfully completed deferred adjudication for a Class B or greater offense- *even though the case was dismissed by the courts.*

*New law SB144 - West - provides an exception*

3. Certain persons who have been arrested on charges that have been dismissed cannot have record expunged, because the statute of limitations on those charges have not yet expired.

*New law SB462 - West - allows these records to be expunged under certain circumstances.*

# Who is not eligible to have a record expunged?

There are several offenses for which there is **not** a statute of limitations.

## Those include:

- ◆ murder, manslaughter
- ◆ sexual assault offenses or aggravated sexual assault
- ◆ certain sexual offenses – including those involving child
- ◆ certain offenses involving fleeing the scene of an accident (if a death is involved)

# Who is not eligible to have a record expunged?

The statute of limitations for other charges varies depending on the seriousness and classification of the offense.

Felonies

range from 3-10 years before eligible

Misdemeanors

not more than 2 years

# Who is eligible to have a record expunged?

If your identity was used by someone without your consent, who was arrested and charged with an offense, you are eligible to have the record expunged.

## You Must:

- ◆ Contact the local District Attorney's Office
- ◆ consent to be fingerprinted
- ◆ sign a statement declaring that you were not involved in or commit the offense, and that you did not consent to the use of your identity.

# If your identity was used by someone without your consent...

- ◆ You can petition to have the records of the arrest expunged.
- ◆ Your application can be forwarded by the local District Attorney to the petitioning the court to have the record expunged.
- ◆ You should contact the Texas Department of Public Safety to protect yourself against future wrongful arrest.

# Not expunged - Sealed

If you have successfully completed deferred adjudication, you may be eligible to have your record sealed through an **Order of Non-Disclosure**

## To be eligible you:

- ◆ Cannot have ever committed a sex offense that requires registration
- ◆ Cannot have ever committed certain offenses of family violence (*ex. - injury to a child, child endangerment*)
- ◆ Cannot have ever committed an offense of aggravated kidnapping
- ◆ Cannot have ever committed an offense of murder or capital murder

# Not expunged - *Sealed*

The waiting period is:

5 **years** for eligible felonies following completion of supervision

2 **years** for some misdemeanors

or upon dismissal following completion of supervision for other misdemeanors

# Sources:

## Texas Code of Criminal Procedure:

Chapter 55 - Article - 55.01

Chapter 45 - Article 45

Chapter 48 - Article 48



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