

JUVENILE RECORDS: EXPUNCTION AND ORDERS OF NONDISCLOSURE

Mark Goodner
Program Attorney & Deputy Counsel
TMCEC
Court Administrators Conference

Juveniles in Municipal Courts

- In 2008, there were 321,669 juvenile cases filed in municipal courts alone
- In 2009, there were 304,023 juvenile cases filed
- Over 100,000 more juvenile cases were filed in justice courts
 - 40,000 to 50,000 in juvenile courts
 - We see more juveniles in municipal and justice courts than in all other courts combined.

Records?

- In the past, they have been treated no differently than any other criminal records.
- Some unique ways to make certain juvenile records disappear
 - Expunction
- New law adds a level of confidentiality...
 - Orders of nondisclosure

Juvenile Justice Code Purposes

- (§ 51.01 Family Code)
 - ▣ to promote the concept of punishment for criminal acts
 - ▣ To provide treatment, training, and rehabilitation
 - ▣ To provide for the care, protection, and the wholesome, moral, mental, and physical development of children coming within its provisions
 - ▣ to remove, where appropriate, the taint of criminality from children committing certain unlawful acts

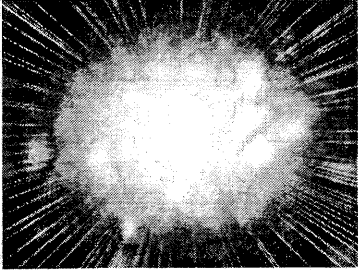
Differences

- Expunction and Orders of Non-Disclosure are not the same and do not have the same effect.
- An expunction destroys any record of the case, while an Order of Non-Disclosure limits the release of information related to a case.
- Municipal courts have dealt with expunctions for a number of years, while Non-Disclosure is a new process.

Expunction Different from Deferred

- Municipal and Justice Courts have the only "TRUE" deferred under Texas law.
- Successful completion of Deferred Disposition under Ch. 45 TCCP results in dismissal without report of conviction
- Expunction requires that reports of conviction or arrest be destroyed and removed
- Orders of Non-Disclosure restrict access to reports of conviction

Expunction



Nondisclosure Order



TCCP Article 55 Expunctions

- General authority for Expunction is found in Chapter 55 of the Texas Code of Criminal procedure.
- Not available when defendant has been convicted.
- Available only to a person who has been arrested and acquitted, no indictment or information has been filed within the statute of limitations, the case was dismissed after information or indictment has been filed, or the person has been pardoned by the Governor.

TCCP Article 55 Expunctions (cont.)

- Article 55 Expunctions intended to remove arrest or jail custody reports as well as records of the Court.
- Must be filed in a District Court where the felony was heard or county of the misdemeanor trial court that heard the case.
- Not available after Deferred Adjudication under Art. 42.12
- Available regardless of age.

Expunctions Related to Age

- **General: Children Convicted or Dismissed after Deferred Disposition of "Fine Only Offenses"**
 - CCP Article 45.0216
- **Failure to Attend School**
 - CCP Article 45.055
- **Offenses Involving Minors and Alcohol**
 - ABC Section 106.12
- **Tobacco Cases**
- **Health & Safety Code Section 161.255**

Expunctions

- All expunctions under TCCP 45.0216, TCCP 45.055, TABC 106.12 and H.S.C. 161.255 are:
 - Available to status offenders (age related offenses)
 - Available when the person has been convicted.
 - Apply only to Class "c" fine only offenses

**General Expunction Statute
CCP Article 45.0216**

- Available for a person who is a "child" as defined under Sec. 51.02 of the Texas Family Code. (Under 17 years of age)
- Available after the Defendant attains seventeen (17) years of age
- Permits expunction after Deferred Disposition under T.C.C.P. 45.051 or Teen Court under 45.052
- Applies to a person convicted of not more than one offense described by Section 8.07(a)(4) or (5)

LIMITED APPLICATION

- Applies only to Fine Only Offenses and City Ordinances (includes Public Intoxication)
- Art. 45.0216 expunction does NOT apply to:
 - Chapter 106, Minor Alcoholic and Beverage Code Offenses
 - Chapter 161, Health and Safety Code Minor Tobacco Offenses
 - Section 25.094, Education Code Failure To Attend School Offenses
 - Traffic Offenses

Penal Code, § 8.07(a)(4) or (5)

- Applies to a person convicted of not more than one offense described by
 - (a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:
 - (4) a misdemeanor punishable by fine only;
 - (5) a violation of a penal ordinance of a political subdivision;

Penal Code, § 8.07(a)(1-3)

- (1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;
- (2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;
- (3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

Mandatory Defendant Notification

- Under TCCP 45.0216, the Court (Judge) MUST:**
 - inform the person and any parent in open court of the person's expunction rights; AND**
 - provide them with a copy of T.C.C.P. Art. 45.0216.**

Failure to Attend School Expunction, CCP Article 45.055

- Applies only to "Failure to Attend School" offenses filed under the Education Code.**
- Available after the Defendant attains eighteen (18) years of age**
- May be expunged without hearing**
- Only on finding that defendant had not been convicted of another FTAS offense under this code prior to reaching age of 18.**
- Not available after deferred disposition**

FTAS Exp: Mandatory Notification

- Under TCCP 45.054 (FTA School), the Court (Judge) **MUST:**
 - inform the person and any parent in open court of the person's expunction rights; AND**
 - provide them with a copy of T.C.C.P. Art. 45.055.**

Alcohol Expunction, ABC Sec. 106.12

- Applies only to offenses under the Alcoholic Beverage Code.
- Available after the Defendant attains twenty-one (21) years of age
- Only on finding that defendant had not been convicted of another offense under this code prior to reaching age of 21.
- Not available after deferred disposition
- No mandatory notification

Tobacco Expunction, HSC Sec. 161.255

- Applies only to tobacco offenses under the Health and Safety Code.
- Available if the defendant successfully completes an approved "Tobacco Awareness Course" – regardless of age
- Request may be made unlimited times
- Not available after deferred disposition
- Court need NOT inform defendant of expunction right

Art. 55.03. EFFECT OF EXPUNCTION

- When the order of expunction is final:
- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

**Municipal Court
Expunction Procedures**

- Person must make written request (motion)
- Request must be made after date of majority for purpose of offense or code (except Tobacco)
- Requests must be verified motion (sworn)
- Other than Tobacco Offenses, Defendant must make oath that they have not, while under appropriate age, been convicted of any other offenses other than the one they are seeking to have expunged

Order and Notification

- Person making request must pay \$30 fee to defray costs of notifying other agencies at time of request.
- Judge must make specific findings
- Judge must sign written Order of Expunction
- Order must require that conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record.

Clerk Must Disseminate Order

- It is the duty of the Court – through the Court Clerk – to disseminate the Order to all courts, agencies or entities that might have any information related to the case subject to the expunction order
- The order must be sent to police agencies that may have arrest/ detention/ warrant information as well as courts and prosecutors

Orders of Nondisclosure



**ORDERS
OF
NONDISCLOSURE
Texas Government Code
Sec. 411.081(f1)**

SB 1056:

- Added Subsection 411.081(f-1) to the Govt. Code, mandating that criminal courts immediately issue a nondisclosure order on the conviction of a child for a misdemeanor offense punishable by fine only
- Only pertains to conviction of "child" under §51.02, FC
 - At least 10, younger than 17
 - It won't apply to alcohol status offenses committed by 17-20 year olds
- Effective Date: June 19, 2009

Tx. Govt. Code - Sec. 411.081(f1)

- New Procedure for Municipal and Justice Courts**
- Attempt to more fairly mirror juvenile protections under Texas Family Code**
- Attempt to provide same protections afforded to juveniles in more "serious cases"**
- Cases filed in "juvenile court" are civil in nature.**

Order of Nondisclosure

- Applies only upon CONVICTION.**
- Applies only on convictions of a child for a misdemeanor offense "punishable by fine only" which have not been referred to a Juvenile Court**
- Applies only in cases when conduct does not indicate a "Child in need of Supervision" (Sec. 51.03 of the Texas Family Code.)**

No Order of Nondisclosure

A justice or municipal court should **NOT** enter an Order of Nondisclosure when:

- When a child has been placed on or has successfully completed a form of probation
- Probation: Deferred, Teen Court, DSC
- WHY?
- No Conviction!

CONDUCT INDICATING A NEED FOR SUPERVISION. 51.03 FC

- (f) Except as provided by Subsection (g), conduct described under Subsection (b)(1) does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).
- (g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

TRAFFIC OFFENSES?

- Tx D.P.S. has taken the position that Sec. 411.081(f1) does NOT APPLY TO TRAFFIC OFFENSES (Transportation Code)
- If so, the Court will be entering relatively few orders of Nondisclosure
- TMCEC feels differently

TRAFFIC OFFENSES?

- Criminal history record information does not include:
- (A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or
- (B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.
- WE ARE NOT THE DEPARTMENT!**

ACTION REQUIRED BY THE COURT

- Upon conviction of a child not engaged in conduct indicating a need for supervision, the Court should:
 - Immediately issue a **WRITTEN ORDER of Nondisclosure**;
 - The Order should prohibit the disclosure of criminal history record information to the public
 - **WITHIN FIFTEEN (15) BUSINESS DAYS**, the Order, containing case specific information **MUST** be sent to the Texas Department of Public Safety

Order Containing Nondisclosure Information Must be Sent to DPS

- Written Order of Nondisclosure must be sent within 15 business days
- Order sent to Texas Department of Public Safety.
- Per DPS, a copy of the nondisclosure order should be sent either by facsimile or electronic mail to:
 - Facsimile: 512.424.5760
 - E-mail to: NonDisclosures@txdps.state.tx.us

Dissemination <u>NOT</u> Court's Responsibility	
<input type="checkbox"/>	Unlike Expunctions, the obligation to disseminate information covered by Order for Nondisclosure is not that of the Court Clerk.
<input type="checkbox"/>	It is the duty of Texas DPS to transmit the protected information to any other affected agencies

DPS MUST DISSEMINATE ORDERS	
<input type="checkbox"/>	TEXAS D.P.S. must disseminate Orders of Nondisclosure to all entities that might have information related to the case within THIRTY (30) DAYS of the date they receive Order
<input type="checkbox"/>	D.P.S. must send a copy of the Order back to the originating Court – thus serving the Court with a copy of its own order!

Nondisclosure – Not Information Obliteration	
<input type="checkbox"/>	Unlike expunction, an Order for Nondisclosure DOES NOT require that the clerk track down and destroy or obliterate every entry regarding a case
<input type="checkbox"/>	An order of Nondisclosure simply means that the information cannot be released or transmitted to anyone other than those agencies specifically provided by statute.

Agencies Entitled to Information

- Even once an Order for Nondisclosure is entered by the Court, certain agencies or entities are entitled, upon proper inquiry, to information regarding a case.
- The Defendant or parents CANNOT AUTHORIZE the release of information.
- Sec. 411.081(f1) Govt. Code contains a list of authorized agencies or entities to whom information can be given or transmitted.

Who has access?

- A criminal justice agency may disclose criminal history record information that is the subject of the order only to:
 - other criminal justice agencies for criminal justice purposes,
 - an agency or entity listed in Subsection (j), or
 - the person who is the subject of the order.

Who does not have access?

- Everyone Else!
- Who is not on the list?
 - Mom
 - Dad
 - Military recruiters

Practical Dilemma for the Courts...

- How does the Court answer requests for information or records?
- Can the Court really comply with the Order of Nondisclosure by telling a requestor that they "cannot give them a copy of any requested documents?"
- The Court must be careful to not confirm that records exist by "refusing to give them copies"

Correct Answer to Requests

- Responses to requests must not be confirmations in themselves.
- Perhaps the best response:

"We do not have records responsive to your request."

Questions?

