

**EXPUNCTION and  
ORDERS OF NONDISCLOSURE**

“Now you see them...  
Now you don’t!  
2009-2010 Academic Year

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**Differences**

- Expunction and Orders of Non-Disclosure are not the same and do not have the same effect.
- An expunction obliterates 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.

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**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

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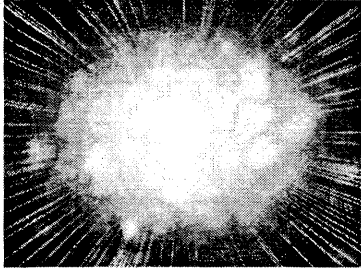
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### Expunction



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### Nondisclosure Order



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### 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.

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**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.

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**Expunctions Related to Age**

- Children Convicted or Dismissed after Deferred Disposition of "Fine Only Offenses"
  - CCP Article 45.0126
- Failure to Attend School
  - CCP Article 45.055
- Offenses Involving Minors and Alcohol
  - ABC Section 106.12
- Health & Safety Code Section 161.255
  - Tobacco cases

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**Expunctions Related to Age (cont.)**

- All expunctions under TCCP 45.126, TCPP 45.055, TABC 106.12 and H.S.C. 161.255 are:
  - Available to status offenders (age related offenses)
  - Available even when the person has been convicted.
  - Apply only on Class "c" fine only offenses

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**General Expunction Statute  
CCP Article 45.0216**

- Available for expunction of records for a person who is a "child" as defined under Sec. 51.02 of the Texas Family Code. (Under 17 years of age)
- Applies only to Fine Only Offenses and City Ordinances (includes public intoxication)
- Available after the Defendant attains seventeen (17) years of age
- Permits expunction after Deferred Disposition under T.C.C.P. 45.051

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**Art. 45.0216 – LIMITED APPLICATION**

- 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

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**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.

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**Failure to Attend School Cases, 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 offense under this code prior to reaching age of 18.

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**Mandatory Defendant 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. 45.0216.

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**Alcohol Cases, ABC Section 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.

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**Tobacco Cases, Health and Safety Code Section 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
- Court need **NOT** inform defendant of expunction right

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**Expunction Procedures**

- Person must make written request (motion)
- Request must be made after date of majority for purpose of offense or code
- 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

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**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.

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**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

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

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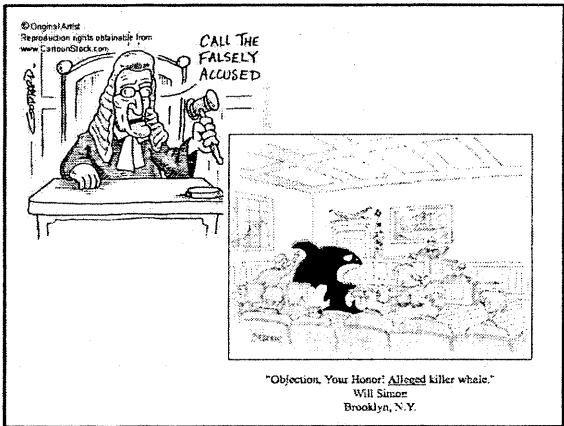
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- Tx. Govt. Code - Sec. 411.081(f1)**
- New Procedure for Municipal and Justice Courts
  - Attempt to more fairly mirror juvenile protections under Texas Family Code
  - Attempt to provide same protections afforded to juveniles in more "serious cases"
  - Cases filed in "juvenile court" are civil in nature.

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**Order of Nondisclosure**

- Applies only upon CONVICTION.
- Applies only on convictions of a child for a misdemeanor offense "punishable by fine only" (Penal and Ordinance) 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.)
- May not apply to Traffic Offenses

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**No Order of Nondisclosure**

- AN ORDER OF NONDISCLOSURE SHOULD NOT BE ISSUED WHEN A CHILD , AS DEFINED UNDER TFC 51.03, HAS BEEN FOUND BY A JUVENILE COURT TO BE A "CHILD ENGAGED IN CONDUCT INDICATING A NEED FOR SUPERVISION."
- AN ORDER FOR NONDISCLOSURE SHOULD NOT BE ISSUED WHEN A CHILD HAS SUCESSFULLY COMPLETED DEFERRED DISPOSITION. (No Conviction)

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**ORDER OF NONDISCLOSURE SHOULD BE ISSUED WHEN:**

The Court should enter an Order of Nondisclosure when:

- the defendant is a CHILD under the age of seventeen (17) and is charged with an offense that is a "fine only" class "C" misdemeanor; and
- A final CONVICTION is entered by the Court; and
- The charge has not been referred to the Juvenile Court ; and
- The offense does not constitute "Conduct Indicating a Need for Supervision"

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**Examples of "CINS" Conduct:**

Example of offenses that might be Conduct Indicating a Need for Supervision (CINS):

- Failure To Attend School
- Runaway
- Inhalation of toxic fumes or vapors
- School violations resulting in expulsion
- Violating a court order for At-Risk child

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**SHORT SUMMARY**

A municipal court should enter an Order of Nondisclosure when:

- a child (under 17 y.o.a.)
- is convicted and the conviction is final
- of a "fine only" misdemeanor offense
- of a penal, alcohol or tobacco offense

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**SHORT SUMMARY (cont.)**

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

- a child is placed on, or successfully completes deferred disposition; OR
- a child is convicted of the following offenses:
  - Failure to Attend School
  - Public intoxication
  - Inhalation of toxic fumes

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**TRAFFIC OFFENSES?**

- Tx D.P.S. has taken the position that Sec. 441.081(f1) does NOT APPLY TO TRAFFIC OFFENSES (Transportation Code)
- If so, the Court will be entering relatively few orders of Nondisclosure

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**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

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**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

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**Dissemination NOT Court's  
Responsibility**

- Unlike Expunctions, the obligation to disseminate information covered by Order for Nondisclosure is not that of the Court Clerk.
- It is the duty of Texas DPS to transmit the protected information to any other affected agencies

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**DPS MUST DISSEMINATE ORDERS**

- 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
- 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!

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**Nondisclosure – Not Information  
Obliteration**

- Unlike expunction, an Order for Nondisclosure DOES NOT require that the clerk track down and destroy or obliterate every entry regarding a case
- An order of Nondisclosure simply means that the information cannot be released or transmitted to anyone other than those agencies specifically provided by statute.

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**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. 441.081(f1) Govt. Code contains a list of authorized agencies or entities to whom information can be given or transmitted.

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**Practical Dilemma...**

- 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"

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**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."**

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