

CHAPTER 18 EXPUNCTIONS (CHAPTER 55/55A, C.C.P.)

Chapter 55 of the Code of Criminal Procedure allows an acquitted person and certain others to petition for an expunction of criminal records. Prior to the 85th Legislature, only district courts had jurisdiction to accept these petitions. The ability to order expunctions in municipal courts was considerably more restrained, generally limited to certain juvenile convictions or dismissals. An individual that was acquitted or that had charges dropped for a Class C misdemeanor in a municipal court had to file an expunction petition in district court. In an effort to ease the administrative burden on the persons seeking such an order, H.B. 557 (2017) created concurrent jurisdiction for the expunction of Class C misdemeanors between district court, municipal courts of record, and justice courts. Notably absent from courts given expunction authority under Chapter 55 are non-record municipal courts. Effective January 1, 2025, Chapter 55 will become 55A with re-organized and re-numbered provisions (See H.B. 4504, 88th Legislative Session). Statutory references in this chapter reflect the current citation in Chapter 55 and the future citation in Chapter 55A.

1. Chapter 55/55A Expunction in Municipal Courts of Record

Checklist 18-1	Script/Notes
<p><input type="checkbox"/> 1. A municipal court of record may expunge all records and files relating to the arrest (in the county) of a person under the procedure established under Article 55.02/55A.201 if:</p> <p><input type="checkbox"/> a. A person charged with a fine-only misdemeanor is acquitted by the trial court;</p> <p><input type="checkbox"/> b. A person convicted of a fine-only misdemeanor is subsequently pardoned, including on the basis of actual innocence;</p> <p><input type="checkbox"/> c. A person charged with a fine-only misdemeanor is released, has no final conviction, and a charge is no longer pending;</p>	<p>Art. 55.02/55A.201, C.C.P.</p> <p>Art. 55.01(a)(1)(A)/55A.002, C.C.P. If the offense arose out of a criminal episode, and the person was convicted of or may still be prosecuted for another offense during the criminal episode, then the person is not eligible for expunction. Art. 55.01(c)/55A.151, C.C.P.</p> <p>See <i>TMCEC 2024 Forms Book</i>: Admonishment for Expunction on Acquittal.</p> <p>Art. 55.01(a)(1)(B)/55A.003, 55A.004, C.C.P.</p> <p>Art. 55.01(a)(2)/55A.051, C.C.P.</p>

<p><input type="checkbox"/> d. A person is tried and convicted of a fine-only misdemeanor and acquitted by the Court of Criminal Appeals, court of appeals, or if before trial expunction is recommended by the prosecutor; or</p> <p><input type="checkbox"/> e. A person complies with an order of deferred disposition, and the complaint is dismissed.</p> <p><input type="checkbox"/> 2. After acquittal, the trial court should notify the acquitted of expunction.</p>	<p>Art. 55.01(b)/55A.101, C.C.P.</p>
<p><input type="checkbox"/> a. Expunction can be requested in the trial court by either the defendant or the prosecutor.</p> <p><input type="checkbox"/> (1) If the defendant requests expunction, the prosecutor must be notified.</p> <p><input type="checkbox"/> (2) If the prosecutor requests expunction, the acquitted person must consent.</p> <p><input type="checkbox"/> b. If the defendant has an attorney, the attorney must prepare the expunction order. For pro se defendants, the prosecutor shall prepare the order for the court's signature.</p> <p><input type="checkbox"/> c. Upon request of the acquitted person, an order of expunction shall be entered not later than the 30th day after the date of acquittal.</p>	<p>Art. 45.051(e)/45A.305(d), C.C.P.</p>
<p><input type="checkbox"/> 3. A person requesting expunction under Chapter 55/55A for a fine-only misdemeanor (other than after acquittal in the trial court) must file a petition for expunction in a district court, a justice court, or a municipal court of record in the county in which:</p>	<p>See <i>TMCEC 2024 Forms Book: Admonishment for Expunction on Acquittal and Order of Expunction</i>. Art. 55.02. Sec. 1 /55A.201(b), C.C.P.</p> <p>While no petition is required, the requesting party must provide all of the information required of a petition to the court. See the list in Step 4 below.</p> <p>Art. 55.02, Secs. 2(a) and (a-1) /55A.252, C.C.P.</p> <p>Additionally, an ex parte petition may also be filed by a Department of Public Safety representative. Art. 55.02, Sec. 2(e)/55A.257, C.C.P.</p>

<input type="checkbox"/> a. The petitioner was arrested; or	
<input type="checkbox"/> b. The offense was alleged to have occurred.	
<input type="checkbox"/> 4. A petitioner seeking expunction shall pay a fee of \$100 for filing a petition for expunction to defray the cost of notifying state agencies of orders of expunction.	Art. 102.006(a-1), C.C.P.
<input type="checkbox"/> a. The fee shall be waived if the petitioner seeks expunction for an offense of which the person was acquitted, and the petition is filed not later than the 30th day after the date of acquittal.	Art. 102.006(b), C.C.P.
<input type="checkbox"/> 5. A petition must be verified and include the following or an explanation for why one or more of the following is not included:	Art. 55.02 Sec. 2(b)/55A.253, C.C.P. A verified petition is one that is confirmed or substantiated by oath. <i>Black's Law Dictionary</i> .
<input type="checkbox"/> a. The petitioner's:	
<input type="checkbox"/> (1) Full name;	
<input type="checkbox"/> (2) Sex;	
<input type="checkbox"/> (3) Race;	
<input type="checkbox"/> (4) Date of birth;	
<input type="checkbox"/> (5) Driver's license number;	
<input type="checkbox"/> (6) Social security number; and	
<input type="checkbox"/> (7) Address at the time of arrest;	
<input type="checkbox"/> b. The offense charged against the petitioner;	
<input type="checkbox"/> c. The date the offense charged was alleged to have been committed;	
<input type="checkbox"/> d. The date of arrest;	
<input type="checkbox"/> e. The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;	

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| <p><input type="checkbox"/> f. The name of the agency that arrested the petitioner;</p> <p><input type="checkbox"/> g. The case number and court of offense; and together with the applicable physical or e-mail addresses, a list of all:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) Law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state; <input type="checkbox"/> (2) Central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and <input type="checkbox"/> (3) Private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction. <p><input type="checkbox"/> 6. The court shall set a hearing no sooner than 30 days from the filing of the petition and shall give each official or agency or governmental entity named in the petition reasonable notice of hearing by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Certified mail, return receipt requested; or <input type="checkbox"/> b. Secure electronic mail, electronic transmission, or facsimile transmission. <p><input type="checkbox"/> 7. If the court does not find that the petitioner is entitled to expunction, enter an order denying expunction.</p> <p><input type="checkbox"/> 8. If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, enter an order of expunction.</p> | <p>Art. 55.01 Sec. 2(c)/55A.254, C.C.P. See <i>TMCEC 2024 Forms Book</i>: Notice of Expunction Hearing.</p> <p>See <i>TMCEC 2024 Forms Book</i>: Order Denying Expunction.</p> <p>Art. 55.01 Sec. 2(c)/55A.255, C.C.P. See <i>TMCEC 2024 Forms Book</i>: Order of Expunction.</p> |
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| <p>❑ 9. When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested. In sending the order to a governmental entity named in the order, the clerk may elect to substitute hand delivery for certified mail under this subsection, but the clerk must receive a receipt for that hand-delivered order.</p> | <p>Art. 55.02 Sec. 3(c)/55A.351, C.C.P.</p> |
| <p>❑ 10. If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention of a record. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.</p> | <p>Art. 55.02 Sec. 5(c)/55A.356, C.C.P.</p> |
| <p>❑ 11. Except in the case of a person who is the subject of an expunction order on the basis of an acquittal, the clerk of the court shall destroy all the files or other records maintained not earlier than the 60th day after the date the order of expunction is issued or later than the first anniversary of that date unless the records or files were released.</p> | <p>Art. 55.02 Sec. 5(d)/55A.356(c), C.C.P.</p> |
| <p>❑ 12. Not later than the 30th day before the date on which the clerk destroys files or other records, the clerk shall provide notice by mail, electronic mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. If the attorney representing the state in the expunction proceeding objects to the destruction not later than the 20th day after receiving notice under this subsection, the clerk may not destroy the files or other records until the first anniversary of the date the order of expunction is issued or the first business day after that date.</p> | <p>Art. 55.02 Sec. 5(d-1) /55A.356(d), C.C.P.</p> |
| <p>❑ 13. The clerk shall certify to the court the destruction of files or other records under Subsection (d) of this section.</p> | <p>Art. 55.02 Sec. 5(e)/55A.356(e), C.C.P. See <i>TMCEC 2024 Forms Book: Certification of Destruction of Records Subject to Expunction Order</i>.</p> |