

Chapter 55 Expunctions

Webinar: June 18, 2019

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Outline of the course

- Resources
- Types of expunctions covered by **Ch. 55**
- Practice Problems

Resources

- Code of Criminal Procedure Chapter 55, 102
- [Criminal Deskbook](#), Chapter 10
- TJCTC Forms: <http://www.tjctc.org/tjctc-resources/forms.html>

What qualifies for an expunction under under Chapter 55?

What qualifies
for an
expunction
under under
Chapter 55?



Arrest records related to fine-only misdemeanors



Misdemeanors & Felonies not resulting in a conviction
or acquittal (adult defendants)



Arrest records related to acquittals (adult defendants)



Request by the Prosecutor



After pardon or acquittal by the Court of Criminal
Appeals or Court of Appeals



If another person uses a person's identifying
information during an arrest

Fine Only Misdemeanors

Fine Only Misdemeanors

- If the offense is no longer pending,
- The offense did not result in a conviction,
- No felony charges arose out of the same arrest,
- At least 180 days have passed since the arrest, and
- The applicant files the petition with the court in the county in which the defendant was arrested or in which the offense was alleged to occur,

The justice court can order the expunction.

Code of Criminal Procedure Arts. 55.01, 55.02.



Misdemeanors With No Conviction or Acquittal

- If the offense is no longer pending or a charging instrument was never presented,
- The offense did not result in a conviction,
- No felony charges arose out of the same arrest,
- At least one (1) year has passed since the arrest,
- The applicant files the petition with the court in which the defendant was arrested or in which the offense was alleged to occur, and
- The prosecutor certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution (including for that of another person)

This will always be filed in either the county or district court!

Code of Criminal Procedure Arts. 55.01, 55.02.

FELONIES WITH NO CONVICTION OR ACQUITTAL

- If the offense is no longer pending or a charging instrument was never presented,
- The offense did not result in a conviction,
- At least three (3) years have passed since the arrest, and
- The applicant files the petition with the court in the county in which the defendant was arrested or in which the offense was alleged to occur,
- ***This will always be filed in either the county or district court!***
- *Code of Criminal Procedure Arts. 55.01, 55.02.*



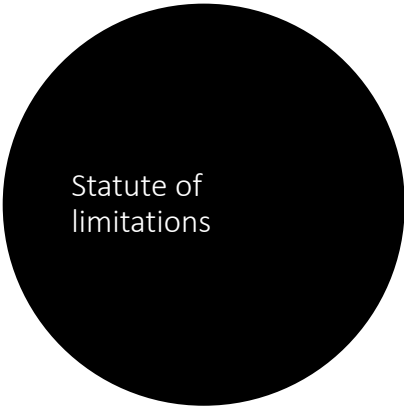
VETERAN'S
COURT OR
PRETRIAL
INTERVENTION

- If a person completes a Veteran's Treatment Court Program* or Pretrial Intervention Program and the charging instrument is dismissed,
- The expunction can happen immediately after the dismissal.

Code of Criminal Procedure Art. 55.01(a)(2)(A)(ii)

*A person can only get an expunction on a case where they completed Veteran's Court one time, and they must submit an affidavit to the court with this information

*Code of Criminal Procedure Art.
55.01(a-3)*



Statute of limitations

- If the Statute of Limitations has passed after an arrest, and no prosecutorial action has been taken on the case (no complaint, information, or indictment has been filed), the person is eligible for the arrest to be expunged.
- This applies to all levels of offenses.

Code of Criminal Procedure Art. 55.01(2)(B).

Acquittals

CCP Art. 55.01(a)(1)(A)

- The trial court must notify the defendant of right to expunction upon acquittal.
- Defendant or prosecutor can make the request.
 - Usually the defendant's attorney prepares the expunction order, but if the defendant is pro se, the prosecutor will.
- The request can be made with the trial court or petition described by CCP 55.02, Sec. 2(b) with **any court in the county** in which the defendant was arrested or in which the offense was alleged to occur.

• *Justice Courts can issue these expunctions.*

Code of Criminal Procedure Arts. 55.01, 55.02.

Other charges in same arrest

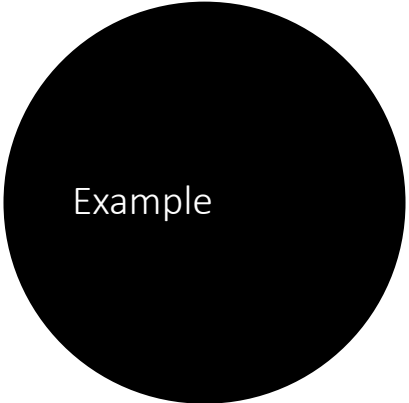
- A court can't order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, if the offense for which the person was acquitted arose out of a criminal episode and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

Code of Criminal Procedure Art. 55.01(c).

- A criminal episode is defined as: the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances:
 - The offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or
 - The offenses are the repeated commission of the same or similar offenses.

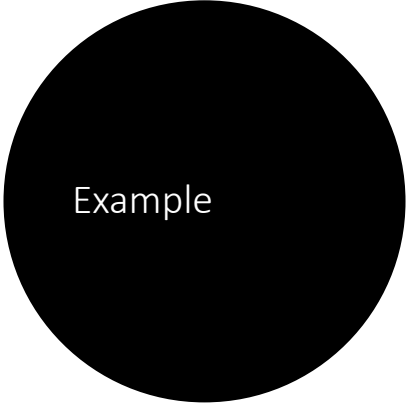
Penal Code 3.01.

WHAT DOES THAT MEAN?!?

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Example

- Rebecca gets arrested for DWI, Speeding, and Failure to ID at the same time, October 1, 2018. All three offenses were alleged to have happened that same night (the speeding was the PC for the stop, and the officer arrested her for DWI and Fail to ID after she said her name was Bronson).
 - The Speeding case was in your court, and the two other cases (DWI & Failure to ID) were in county court.
 - Rebecca was convicted of the Failure to ID, but a jury acquitted her of DWI. The Speeding case was dismissed.
 - She has filed a petition for expunction in your court for the Speeding charge.
-
- Is she eligible??

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Example

- Is she eligible??
 - **NO**
-
- All three charges arose out of the same criminal episode, so Rebecca can't get an expunction of the DWI or Speeding records.

Code of Criminal Procedure Art. 55.01(c).

Incorrect Information

Exceptions

- A person can't get an expunction that would otherwise be eligible under CCP Ch. 55 if:
- The arrest was pursuant to a warrant issued under CCP Article 42A.751(b) *(warrant for violation of conditions of community supervision)*.

OR

- The person intentionally or knowingly **absconded** from the jurisdiction after being released *(unless they are eligible because they participated in Veteran's Court, Pretrial Intervention, or the charging instrument was void or the arrest was made with mistaken or false information)*

Code of Criminal Procedure Art. 55.01(a-1), 55.01(a-2)

Fines & Fees



CODE OF
CRIMINAL
PROCEDURE
ART. 102.006

- **\$100**
- Assessed upon the filing of an ex-parte petition seeking destruction of arrest records as provided by CCP Chapter 55.
- Used to defray the costs of notifying agencies of the expunction order

This fee is waived if:

- The Defendant was **acquitted** of the offense &
- The Defendant made the request for expunction **within 30 days** of the acquittal

OR

The Court may return all or some of the fee to the petitioner at the **Court's discretion** after granting the petition.

WAIVER &
RETURN OF
THE FEE

Civil Filing Fee

- It is the Office of Court Administration(OCA)'s opinion that the civil filing fee applies to all expunction petitions.





If person is
deceased...

- A close relative of a deceased person can seek expunction on behalf of the deceased person if they would have otherwise been entitled to expunction under CCP 55.01.

- A **close relative** is:

- Grandparent,
- Parent,
- Spouse,
- Adult sibling, or
- Adult child

of the deceased person.

Code of Criminal Procedure Art. 55.011.

Contents of the Petition

The petition must include
(or explain why such information is not included)

1. The petitioner's **full name, sex, race, date of birth, driver's license number, social security number, and address at the time of the arrest;**
2. The **offense** charged against the petitioner;
3. The **date** the offense charged against the petitioner was **alleged to have been committed;**
4. The **date** the petitioner was **arrested;**
5. The **name of the county** where the petitioner was arrested and if the arrest occurred in a municipality, the **name of the municipality;**
6. The **name of the agency** that arrested the petitioner; *(continued on next slide)*

The petition must include
(or explain why such information is not included)

7. The case number and court of offense; and
8. Together with the applicable physical or e-mail addresses, a list of all:
 - 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;
 - Central federal depositories of criminal records that petitioner has reason to believe have records or files that are subject to expunction; and
 - 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.

Code of Criminal Procedure Art. 55.02, Sec. 2(f).

Form

<http://www.tjctc.org/tjctc-resources/forms.html>

CAUSE NO. _____

THE STATE OF TEXAS § IN THE JUSTICE COURT
 §
v. § PRECINCT NO. _____
 §
_____ § _____ COUNTY, TEXAS

EX PARTE PETITION FOR EXPUNCTION OF ARREST RECORDS

The above-named petitioner requests expunction of all files and records related to the arrest described in this petition. Petitioner is eligible for expunction of these records because:

- ☐ The petitioner was acquitted of the offense
- ☐ The prosecutor requested expunction of the records prior to the offense being tried
- ☐ The charge is no longer pending and did not result in a conviction; the petitioner has no other pending felony charges related to the arrest; AND at least 180 days have elapsed since the defendant's arrest OR the prosecutor has certified that the records are no longer needed.
- ☐ The petitioner was convicted but subsequently pardoned, or was subsequently acquitted by a court of appeals or the Court of Criminal Appeals.

Petitioner's name: _____ Race: _____ Sex: _____ Date of birth: _____
DL number: _____ Address at time of arrest: _____
SSN: _____ Offense charged: _____ Date of alleged offense: _____
Cause number and court filed in: _____
County and municipality (if any) of arrest: _____
Date of arrest: _____ Arresting agency: _____
Reason any of the above information is missing: _____

Physical and/or email addresses of all entities that that the petitioner has reason to believe have information related to records or files that are subject to expunction (these may include law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state or federal depositories of criminal records, other officials or agencies or other entities of this state or of any political subdivision of this state, and private entities that compile and disseminate criminal history record information for compensation):

Petitioner's Signature _____ Petitioner's Address _____ Date _____

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____

CLERK OF THE JUSTICE COURT OR NOTARY
_____ COUNTY, TEXAS

The Hearing

The Hearing

When the court receives a petition (*other than acquittal at trial*), the court shall:

1. Set a hearing no sooner than 30 days from filing of the petition
2. Give reasonable notice to each official or agency or other governmental entity named in the petition by
 - Certified mail, return receipt requested,
 - Secure electronic mail,
 - electronic transmission, or
 - facsimile transmission.

Code of Criminal Procedure Art. 55.02, Sec. 2(c).

The Hearing

If the petitioner is entitled to expunction the court shall:

1. Enter an order directing expunction.
2. The person subject of the expunction order or an agency protesting the expunction may appeal in the same manner as other civil cases.

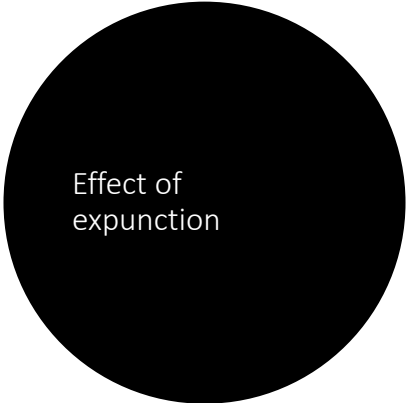
Code of Criminal Procedure Art. 55.02, Sec. 3(a).

The Expunction Order

The Expunction Order

- The order of expunction must contain:
 1. The subject of the expunction order's full name, sex, race, date of birth, driver's license number, and social security number;
 2. The offense charged against the person who is the subject of the expunction order;
 3. The date that the person who is the subject of the expunction order was arrested;
 4. The case number and court of offense; and
 5. The tracking incident number (TRN) assigned to the individual incident to arrest under Art. 60.07(b)(1) by the Department of Public Safety (DPS).

EFFECT OF EXPUNCTION



Effect of expunction

- The release, maintenance, dissemination, or use of expunged records and files for **ANY** purpose is prohibited.
- The person may deny the occurrence of the arrest and existence of the expunction order
 - Except that if the person or any other person with knowledge is **questioned under oath in a criminal proceeding** about the events related to or the expunged records,
 - They may state only that the matter has been expunged.

Violation of the Expunction Order

- A person who acquires knowledge of an arrest while **an officer or employee of the state** or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he **knowingly releases, disseminates, or otherwise uses the records or files.**
- A person who **knowingly fails to return or obliterate identifying portions of a record or file** ordered expunged under Ch. 55 commits an offense.

- Both of these offenses are Class B Misdemeanors.

Code of Criminal Procedure Art. 55.04.



License suspensions and revocations

- If records relate to the suspension or revocation of a driver's license, permit, or privilege to operate a motor vehicle, they may **NOT** be expunged under Ch. 55 except as provided in Transportation Code 524.015 or 724.048.
- If a person is acquitted of a crime that arose from the arrest being expunged, DPS will rescind the suspension and remove references to the suspension from that person's driving record.
- Otherwise, the records are not expunged under Ch. 55.

Code of Criminal Procedure Art. 55.06.



Financial Records

- The court or other entity may maintain receipts, invoices, vouchers, or other records of financial transactions related to the expunction proceeding or the underlying criminal cause.
- The portions of the record that identifies the person who was subject of the expunction order **MUST** be obliterated.

Code of Criminal Procedure Art. 55.02(g).

RETENTION OF
RECORDS BY LAW
ENFORCEMENT
OR PROSECUTOR

- The order CAN allow law enforcement and prosecuting attorneys to retain necessary records and files if the state establishes that there is reasonable cause that they will proceed against the person on an offense arising out of the transaction for which the person was arrested.
- The court MUST allow law enforcement and prosecuting attorneys to retain arrest records and files if the person is eligible for expunction due to the expiration of 180 days from arrest with no pending charges.

Code of Criminal Procedure 55.02, Sec. 4(a), (a-1).

Return or
Destruction

- Each official, agency, or entity named in the order **shall return the records to the court or obliterate all portions of the record or file** that identify the person who is the subject of the order.
- If they return to the court:
 - The court may give the records to the person who is the subject of the order *(except for expunctions on the basis of acquittal)*

Code of Criminal Procedure Art. 55.02, Sec. 5(a), (b).

OR

- The clerk of the court shall destroy all of the records **not earlier than the 60th day** after the date of order of expunction or **later than one year** after the date of order of expunction. The clerk shall certify to the court the destruction of the files or records.

Code of Criminal Procedure Art. 55.02, Sec. 5(d).

Required Notices

- The clerk of the court **shall** send a ***certified copy of the order*** to the Crime Records Service of DPS and to each official or agency or other governmental entity of this state or any political subdivision of this state named in the order.

Code of Criminal Procedure 55.02, Sec 3(c).

- Before destroying files and records, the clerk **shall** provide notice to the attorney representing the state in the expunction proceeding.

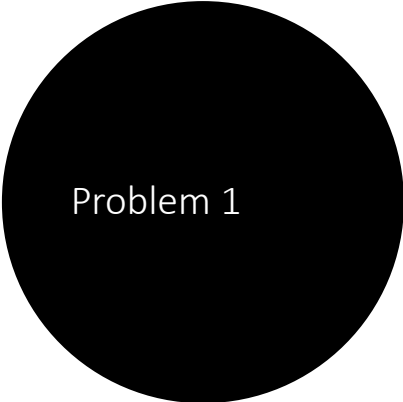
- No less than 30 days prior to the date on which the records are to be destroyed.
- If the prosecutor objects within 20 days of receiving notice, the records may not be destroyed until the one-year anniversary of the expunction order.

Code of Criminal Procedure Art. 55.02, Sec. 5(d-1).

*** More information about these notices can be found in the Criminal Deskbook Chapter 10.B.4. "Expunction Order"*

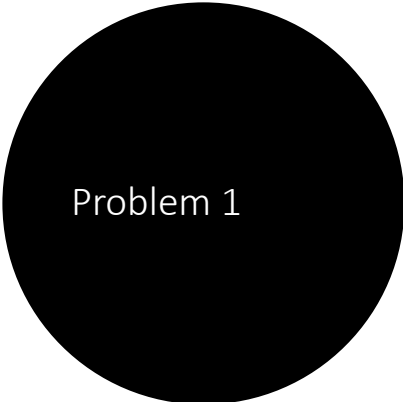
Practice Problems

- Thea was arrested and charged with Graffiti, a Class C Misdemeanor, and Burglary of a Building, a State Jail Felony after she breaks into the shed behind Randy's house and spray paints "Girls Rule!" on the wall on June 1, 2018.
- The District Attorney allows Thea to participate in Pretrial Diversion, and after she completes the program, the district judge signs a dismissal of the Felony on April 15, 2019. The district judge signs an order for expunction on the Felony at the same time as the dismissal.
- The Graffiti case is also dismissed on April 15, 2019 by the JP, because of the successful completion of the Pretrial Diversion on the felony.
- Thea files a petition for expunction on the Graffiti case in the JP Court.
- Is she eligible?



Problem 1

- Is she eligible?
- **YES!**
- Thea's misdemeanor case was dismissed, because she completed the Pretrial Intervention Program. It doesn't matter that there was a felony charge out of the same transaction (it has also already been dismissed).



Problem 1

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Problem 2

- Randy completed a deferred disposition for his public intoxication case from your court. The judge dismissed the case and more than 6 months have passed since the arrest.
- He files the proper petition for expunction in the court where the case was filed.
- Is he eligible for expunction?

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Problem 2

- Yes!
- He was never convicted, the case is no longer pending, and it has been more than 180 days since the arrest (6 months is 180 days).

What are other types of expunctions that you might see in Justice Court?

Criminal Deskbook Chapter 10.B.

Chart on page 78-79

Table of Justice Court Expunction Procedures

Type of Record	Requirements and Procedure	Fee	Authorizing Statute
Dismissals/ Acquittals (Defendant under 17)	The case has been dismissed or the defendant was acquitted. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(h), Code of Criminal Procedure
Arrest Records Related to ABC Offense	The defendant is now 21 years of age and has only one arrest for an offense under Ch. 106, ABC. Noncustodial arrests (citations) count as arrests. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of ABC Offense	The defendant is now 21 years of age and has only one conviction under Ch. 106, ABC. Deferrals do not count as convictions. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of fine-only misdemeanor (Defendant under 17)	The defendant had only one conviction of a fine-only misdemeanor before their 17 th birthday (other than ABC or tobacco offenses) and is now 17. Applicant files with the convicting court. Application must be sworn and written.	\$30	Art. 45.0216(b), Code of Criminal Procedure
Convictions of tobacco-related offense	The defendant complied with the court's order to take a tobacco awareness course or perform tobacco-related community service. Applicant files with the convicting court.	\$30	Sec. 161.255, Health & Safety Code
Conviction of "sexting" offense	The defendant has only one conviction of an offense under Penal Code Sec. 43.261, was never adjudicated by a juvenile court as having engaged in the same conduct, and is now 17. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(b), (f), Code of Criminal Procedure
Arrest Records Related to Fine- Only Misdemeanors Not Resulting in Conviction or Acquittal (Adult defendants)	1) Offense is no longer pending, did not result in conviction, no felony charges are pending and at least 180 days has elapsed since arrest; 2) Prosecutor recommends expunction before trial of offense; or 3) Defendant convicted is subsequently acquitted by court of appeals or court of criminal appeals or pardoned. Applicant files petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$100*	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure
Arrest Records Related to Acquittals (Adult defendants)	Trial court must notify defendant of right to expunction upon acquittal. Defendant or prosecutor can make request. Defendant's attorney prepares expunction order, if defendant is pro se, prosecutor does. Request can be made with trial court or petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$0 ^A	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure

* Court may return all or a portion of this fee to the applicant.

^A Fee is only waived if petition is filed within 30 days of acquittal. If not, fee is \$100, though the court may return all or a portion of this fee to the applicant.

Thank you!

Please post any questions on the Legal Board or call the Legal Line by calling TJCTC at 512-347-9927 and pressing 1.

Note: We might be talking to another judge, constable, or clerk on the other line, so please leave a message!