Guide to the Differences Between Nondisclosure and Expunction in Texas

Nondisclosure

An individual may petition for an order of nondisclosure (OND) to
• prohibit public entities such as courts and police departments from disclosing certain criminal records; and
• be freed from disclosing criminal history information to individuals and entities not permitted to view ONDs.

An OND only applies to a particular criminal offense—it does not apply to all offenses on one’s criminal record.

Effect of Nondisclosure
• Private entities and individuals cannot access the criminal record, and criminal background companies must remove the information from their records.
• A wide range of government agencies, commissions, and licensing boards are eligible to receive records that are subject to orders of nondisclosure.

Eligibility to Petition for an Order of Nondisclosure
• Must have been placed on deferred adjudication community supervision
• Must have successfully completed deferred adjudication and had case dismissed and discharged
• Offense must be eligible for nondisclosure (violent and sex offenses are not eligible)
• Must not have any disqualifying criminal history (individuals with any record of violent or sex offenses are ineligible)
• Must wait a certain period of time after charge is dismissed (5 years for felonies; 2 years for certain misdemeanors)
• Must not have been convicted or placed on deferred adjudication for any criminal offenses during the waiting period (does not include traffic tickets)

Cost: civil petition fee (~$280) + $28 fee

Expunction

An individual may petition for an expunction to
• have all records destroyed related to a certain criminal charge; and
• be freed from disclosing criminal history information to any person or entity.

An expunction applies to all arrest and court records related to a particular criminal offense.

Effect of an Expunction
• All records are destroyed; no secret record is kept by any agency.
• Criminal background companies must remove the information from their records.

Types of Expunctions
• Acquittals, pardons, actual innocence
• Dismissals and no-bills (not granted if community supervision was performed, except for Class C misdemeanors)
• Discretionary expunctions—at discretion of the prosecutor and agreed upon by the judge
• Identity theft

Eligibility for an Expunction
• Must have been arrested (custodial or noncustodial arrest)
• Arrest must have been for a misdemeanor or felony
• May be subject to a waiting period

Cost: civil petition fee (~$280) + additional fees ($5-15) for each criminal justice agency served with notice

Government Code, § 411.081
Code of Criminal Procedure, Chapter 55

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