

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

Government Code, § 411.081

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

Code of Criminal Procedure, Chapter 55